

BANKRUPTCY AND DILIGENCE (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

SUPPLEMENTARY FINANCIAL MEMORANDUM

INTRODUCTION

1. As required under Rule 9.7.8B of the Parliament's Standing Orders, this supplementary Financial Memorandum is published to accompany the Bankruptcy and Diligence (Scotland) Bill (introduced in the Scottish Parliament on 27 April 2023) as amended at Stage 2.
2. The Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Financial Memorandum published to accompany the Bill as introduced.
3. The purpose of this supplementary Financial Memorandum is to set out the expected costs associated with the new and amended provisions included in the Bill following the amendments made at Stage 2. This document addresses those amendments with anticipated or potential cost implications. Amendments agreed at Stage 2 which are not covered in this supplementary Financial Memorandum are considered not to significantly or materially affect the assumptions in the original Financial Memorandum.

DEBTOR NON CO-OPERATION IN SEQUESTRATION

Section 5B Failure of debtor to co-operate with trustee in sequestration

4. The purpose of the amendment is to insert new provisions (sections 147A, 147B and 147C) into the 2016 Act to allow a trustee to be replaced by the Accountant in Bankruptcy (AiB) in cases where a debtor has failed to cooperate with the trustee, to the extent that that the trustee is prevented from carrying out their statutory functions. These provisions will apply where the debtor has not been discharged from bankruptcy, the trustee has not been able to carry out their functions because the individual has not cooperated with the trustee and the case is at least five years old. The effect of this amendment is to provide a route for the trustee to resign office due to the debtor's failure to cooperate. Where Accountant in Bankruptcy (AiB) grants the trustee's application, then AiB is deemed to be the new trustee in the sequestration. This amendment also provides a route for AiB to put a sequestration on hold if AiB is already the trustee and the debtor is no longer cooperating.

SAVINGS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

5. By transferring cases to AiB, trustees will save the cost of statutory fees and nugatory administrative tasks which continue to accrue even where a case has fallen dormant due to the debtor's non-cooperation. The change will not adversely affect creditors. The change will not remove any obligations on debtors.

6. Under existing provisions, a debtor is refused discharge from bankruptcy if they fail to cooperate with their trustee. Under the amendment (the new Section 147A), trustees may apply for any such cases that are more than five years old to be transferred to the Accountant. The maximum number of cases that trustees might seek to transfer is therefore the same as the number of cases where discharge has been refused for non-co-operation which are five years old. The following table sets out the number of such cases for each year, as follows:

IP Cases potentially transferred to AiB		Cases over 5 years old in year					
		Year	Cases	24/25	25/26	26/27	27/28
	2015	35	35	35	35	35	35
	2016	46	46	46	46	46	46
	2017	77	77	77	77	77	77
	2018	77	77	77	77	77	77
	2019	144	144	144	144	144	144
	2020	43		43	43	43	43
	2021	24			24	24	24
	2022	42				42	42
	2023	3					3
	Total	491	379	422	446	488	491
	Saving (at £850 per case)		£322,150	£358,700	£379,100	£414,800	£417,350

7. For each case, for every year, trustees are required to carry out administrative work. The annual costs charged by Insolvency Practitioners varies considerably for the administration of cases where the debtor is non-cooperative, from around £750 to £4,700, depending on the case and the charge-out rates of the trustee. For the purposes of this estimate we have used the lowest figure to represent the minimum value of savings to trustees. In addition, trustees currently pay a statutory administration fee of £100 per annum to AiB. The £850 per case figure used in the table above therefore comprises the £750 lowest estimate of trustees' own costs plus the £100 fee payable to AiB. The total potential saving will be split across every trustee with a case that is transferred. Given the trustee would otherwise have had ongoing annual costs for each case, the potential savings extend beyond the year that the case was transferred.

SAVING TO THE SCOTTISH ADMINISTRATION

8. The amendment (the new Section 147C) also introduces a process parallel to section 147A for those cases where AiB is already the trustee and has a non-cooperative debtor, allowing AiB to remain trustee but without the ongoing duties to prepare an annual state of affairs or to consider discharge every twelve months. For the purpose of modelling the costs we have assumed cases are at least 5 years from the date of sequestration before falling into this category.

AiB cases affected		Cases over 5 years old in year				
Year	Cases	24/25	25/26	26/27	27/28	28/29
2015	135	135	135	135	135	135
2016	248	248	248	248	248	248
2017	329	329	329	329	329	329
2018	326	326	326	326	326	326
2019	266	266	266	266	266	266
2020	47		47	47	47	47
2021	77			77	77	77
2022	77				77	77
Total	1,505	1,304	1,351	1,428	1,505	1,505
Potential saving at £30 per case	£45,150	£39,120	£40,530	£42,840	£45,450	£45,450

9. We estimate that AiB would save an estimated £40,000 annually due to simplification of processes (assuming an estimated annual cost of £30 per case per year for sending unanswered queries to debtors required under existing provisions, for approximately 1,300-1,500 cases). This is offset by the loss of an estimated £40,000 in statutory fees from trustees (approximately 400 cases at £100 each). Therefore, this provision would be cost and savings neutral to the Scottish Administration.

OVERALL

10. We therefore estimate a net saving of around £322,150 across all trustees in year one, and no overall costs to other parties.

This document relates to the Bankruptcy and Diligence (Scotland) Bill (SP Bill 27A) as amended at Stage 2

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