

PE2192/B: Prevent domestic abusers from using bankruptcy to escape debt

Petitioner written submission, 20 November 2025

The Scottish Government's submission contains significant inaccuracies and was prepared by the Accountant in Bankruptcy (AiB), the very agency whose statutory powers and operational limitations are at the centre of the petition. The body under examination should not be the author of the Government's response. The submission includes legally incorrect statements, narrow statutory interpretation and material omissions, including the assertion that "debts incurred fraudulently" are not discharged. Section 145(2) of the Bankruptcy (Scotland) Act 2016 is exhaustive. There is no general exclusion for liabilities arising from fraudulent conduct, misrepresentation, coercive control, economic abuse or deceptive financial behaviour. Unless a liability falls within a narrow statutory category or a court orders otherwise, it is discharged. This loophole enables perpetrators to eliminate liabilities arising from their behaviour.

The bankruptcy framework is structurally incapable of addressing economic abuse. Economic abuse often involves complex financial behaviours that trustees cannot detect under existing powers. These include income concealment, routing earnings through partners or associates, manipulation of household finances, use of dormant companies, inconsistent declarations across legal forums, informal or cash-based income, and misleading statements in civil proceedings or arbitration. Trustees cannot obtain financial information belonging to partners, associates or connected companies, cannot compel HMRC to release intelligence, cannot access bank accounts in third-party names, and must rely heavily on self-reported income through the Common Financial Tool. The insolvency system presumes transparency; economic abuse operates through concealment, coercion and deliberate financial distortion. As a result, trustees are structurally unable to identify or challenge these patterns.

The suggestion that creditors can simply "submit a claim" does not reflect reality for victims of economic abuse. Trustees may fail to record or accurately classify claims. Sequestration can extinguish the very award needed to fund legal representation, leaving victims without the resources required to challenge trustee decisions or errors. Trustees may accept debtor statements even when inconsistent with judicial findings or with financial information produced in other contexts. Victims of domestic and economic abuse often cannot engage with the insolvency process at the required time due to the effects of coercive control. The statutory right to lodge a claim therefore does not translate into meaningful participation, protection or fairness.

Where a court orders repayment to remedy financial abuse—whether arising from unjustified enrichment, compensation or any other civil liability—that order is the legal remedy for the harm. Its purpose is to restore the victim to the position they would have been in but for the abuse. If sequestration extinguishes that repayment, the remedy itself is removed. The victim loses the funds taken and the judicial redress intended to restore them, while the perpetrator retains the financial benefit of the abuse. This undermines the purpose of civil justice and defeats the protective aims of domestic-abuse policy.

Extinguishing a judicial remedy through an administrative insolvency process, without the authorisation or reconsideration of the court that granted it, interferes with the victim's rights under Article 6 of the European Convention on Human Rights, which protects the enforcement of judgments, and Article 1 of Protocol 1, which protects court-ordered financial awards as "possessions". Section 57(2) of the Scotland Act 1998 prohibits Scottish Ministers and devolved bodies from acting incompatibly with Convention rights. Allowing sequestration to eliminate a judicial remedy without court oversight places the operation of the insolvency framework in conflict with Scots law unless a court expressly permits such interference. A process that can extinguish the remedy granted by the Court of Session is constitutionally unsound.

A recent example illustrates the systemic failure. A victim of economic abuse faced a fraudulent civil claim. The Court of Session overturned that claim and granted a decree recognising the financial harm. Despite being the judicial remedy for proven wrongdoing, the decree was treated as extinguished within the sequestration process by the AiB. Meanwhile, the perpetrator continued to live a lifestyle inconsistent with genuine insolvency, supported by assets, vehicles and business structures placed in a partner's name. That lifestyle was enabled by funds taken from the victim, yet the remedy intended to restore those funds was eliminated. The framework therefore allowed a court-established liability arising from fraud to be nullified administratively, without judicial oversight, while the perpetrator's lifestyle remained unaffected. The insolvency process, as currently structured, protects the perpetrator and punishes the victim a second time.

The SPICe briefing repeats several misunderstandings. It significantly overstates trustee investigatory powers, underestimates the complexity of economic abuse, assumes that sequestration "may be working as intended", and suggests that recall is an effective safeguard. In practice, recall is inaccessible. The "payment-in-full" route requires the repayment of all debts plus trustee fees and expenses, which is impossible for most victims. The "irregularity" route applies only to defects in the original award, not to income concealment or misrepresentation discovered later. Recall cannot reinstate a discharged liability, correct misclassification, or fix flawed trustee decision-making. It is not a meaningful protection for victims of coercive control or economic abuse.

The safeguard sought by the petition is narrow, proportionate and essential. It would ensure that court-established financial liabilities arising from coercive control, economic abuse, deliberate financial misrepresentation or related misconduct are not automatically discharged without judicial scrutiny. This reform would align the insolvency framework with human-rights obligations, protect the integrity of civil justice, and prevent sequestration from being used as a mechanism to extinguish remedies granted to victims. It does not compromise legitimate debt relief. It prevents the insolvency system being weaponised to defeat court-ordered redress, undermine ECHR protections, or shield perpetrators from accountability.

Legislative reform is therefore required to close this systemic loophole and ensure that the personal insolvency system cannot be exploited to nullify judicial remedies, conceal wrongdoing, or re-victimise those subjected to economic abuse.