



The Scottish Parliament
Pàrlamaid na h-Alba

Social Justice and Social Security Committee

Claire Baker MSP
Convener
Economy and Fair Work
Committee

Social Justice and Social Security Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Email: SJSS.committee@parliament.scot

Via email only

11 May 2023

Dear Claire Baker MSP

The Bankruptcy and Diligence (Scotland) Bill

We understand that the Economy and Fair Work Committee is likely to be designated as the lead committee for consideration of the Bankruptcy and Diligence (Scotland) Bill (the Bill) at Stage 1.

We would like to draw your attention to the work we undertook earlier this session on low income and debt. The focus of our inquiry was to understand the specific challenges faced by people with debt issues and low income in relation to accessing support and finding solutions to their debt situation. This included a focus on the types of debt commonly experienced by this group and what improvements could be made to debt processes and the legislative framework.

The report, [Robbing Peter to Pay Paul: Low income and the debt trap](#), made several recommendations relevant to the subject matter covered by the Bill.

Some of our recommendations have been taken forward by Scottish Government through its recent [Bankruptcy and Debt Arrangement Scheme \(Miscellaneous Amendment\) \(Scotland\) Regulations 2023](#). In particular:

- removing the minimum debt threshold to access a Minimal Asset Process bankruptcy, and
- removing fees to apply for bankruptcy where someone has been assessed as having no disposable income using the Common Financial Tool

There are, however, some other recommendations and issues raised by the inquiry which we wish to highlight to the Committee in case you find it beneficial to explore them as part of your scrutiny of the Bill at Stage 1.

The first of these issues relates to reducing the period that people must wait to reapply for a Minimal Asset Process Bankruptcy. Under the current arrangements, someone can only access Minimal Asset Process bankruptcy once every 10 years. We heard that some people have “deficit budgets” – i.e. not enough money to meet their essential outgoings. They may need to be able to access debt relief more frequently in order to be able to direct more of their income to essential expenditure rather than servicing debts.

The Scottish Government stated in its [response](#) to our report:

“While the Scottish Government recognises that debt relief through bankruptcy is in some instances the only practical solution to unsustainable debt we do not agree that the time period that was introduced as part of the 2015 bankruptcy reforms be revised. Where debt relief through bankruptcy is required within a shorter timeframe, this can be accessed through the full administration process within a five year period. It is acknowledged that the process involved is different and there are separate arrangements for obtaining discharge from debt, however, the application process remains free of charge for the most financially vulnerable.” (page 25)

We also heard that there is a minimum debt threshold for people entering full administration bankruptcy. People must owe at least £3,000 before they can apply for bankruptcy via this route. We recommended that the Scottish Government gave consideration to removing this threshold to enable more people on low income to access bankruptcy.

We made a range of recommendations around improving processes for dealing with public debt – that is debt owed to public bodies, such as council tax arrears, school meal debt and social security debts. Many of these focussed on improved administration processes – such as having a debt management strategy covering the whole public sector and national standards for council tax collection. However, some could relate specifically to the diligence process, such as setting agreed parameters for proportionate Council Tax enforcement action.

The Scottish Government made a range of points in its response in relation to these recommendations, including:

“Overall, the Scottish Government is therefore keen to facilitate local authorities’ adoption of best practice in relation to the collection of council tax and the administration of the Council Tax Reduction scheme. We are not minded to legislate in the way suggested by the Committee given it would undermine the very local accountability associated with administration and collection of a local tax. We would encourage the Committee to engage with local government on this matter.” (page 13)

In relation to earnings arrestment, we noted arrestments can catch wages above £566.51 per month, with a varying percentage of the money above this being paid to creditors. This depends on how much money the person who is in debt earns. There are no clear powers for the creditor to vary the amount seized in a wage arrestment. The amount taken is set out in legislation.

We recommended creditors should be given greater flexibility to reduce the amount of money taken in an earnings arrestment (to address the situation where someone cannot pay their current Council Tax liability because too much money is being taken via an earnings arrestment to pay arrears). This traps them in a cycle of enforcement, which incurs a surcharge of 10% of the amount owed.

Furthermore, we recommended that household composition could be factored into bank and earnings arrestments to enable people who are more likely to live in poverty (such as lone parents, families with three or more children and disabled people) to retain more of their income.

In response to these recommendations, the Scottish Government stated:

“We recognise the issues raised and the desire to ensure an individual’s circumstances are factored into bank and earnings arrestments. We are currently exploring the impact of introducing greater flexibility to the amount of money taken in an earnings arrestment and any further action that may be taken. In addition, as part of the review of diligence, we are considering what more can be done to protect those who are most vulnerable when faced with a bank or earnings arrestment. Our intention to look into this further is set out in Scotland’s Statutory Debt Solutions and Diligence: Policy Review Response. The consultation includes a specific proposal to investigate options for variation of earnings arrestment under certain circumstances and further work on this diligence will be explored.” (page 26)

We hope the information set out above will be useful to the Economy and Fair Work Committee in considering its approach to scrutiny of the Bill and in identifying some potential areas where the Bill could be amended.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Collette Stevenson', written in a cursive style.

Collette Stevenson MSP
Convener
Social Justice and Social Security Committee