

**Citizen Participation and Public Petitions Committee**  
**Wednesday 21 January 2026**  
**2nd Meeting, 2026 (Session 6)**

## **PE2192: Prevent domestic abusers from using bankruptcy to escape debt**

### **Introduction**

**Petitioner** Kevin McGillivray

**Petition summary** Calling on the Scottish Parliament to urge the Scottish Government to amend the Bankruptcy (Scotland) Act 2016 so that debt owed by domestic abusers to their survivors cannot be written off by sequestration.

**Webpage** <https://petitions.parliament.scot/petitions/PE2192>

1. This is a new petition that was lodged on 10 October 2025.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. Every petition collects signatures while it remains under consideration. At the time of writing, 99 signatures have been received on this petition.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered.
6. The Committee has received submissions from the Scottish Government and the Petitioner, which are set out in **Annexe C** of this paper.

### **Action**

7. The Committee is invited to consider what action it wishes to take.

**Clerks to the Committee**  
**January 2026**

## Annexe A: Summary of petition

### PE2192: Prevent domestic abusers from using bankruptcy to escape debt

#### Petitioner

Kevin McGillivray

#### Date Lodged

10 October 2025

#### Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to amend the Bankruptcy (Scotland) Act 2016 so that debt owed by domestic abusers to their survivors cannot be written off by sequestration.

#### Background information

Bankruptcy in Scotland was intended as a safety net for the “honest but unfortunate” debtor – the farmer whose crops failed, the small business ruined by misfortune. It was never meant to be a shield for abusers. Yet in practice, sequestration is now being used to wipe out debts and awards arising from domestic abuse.

In one case, a survivor was awarded £289,900 via arbitration registered in the Court of Session under Section 28 of the Family Law (Scotland) Act 2006. This recognised the financial harm and coercive control she had suffered. However, the award was extinguished by sequestration, allowing her abuser to escape responsibility.

This outcome denies survivors the benefit of lawful decrees, re-victimises them through state processes, and places Scotland in breach of international law, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Article 6 of the European Convention on Human Rights (ECHR). Reform is urgently needed.

## Annexe B: SPICe briefing on PE2192

### Brief overview of issues raised by the petition

The petitioner gives an example of a survivor of domestic abuse who was awarded £290,000 by the courts as a settlement at the end of her relationship with the abuser. The abuser was made bankrupt, which prevented their assets from being used to pay the award.

In the petitioner's view, this is an unfair result, which allowed the abuser to escape their responsibilities. The petitioner also stated that the outcome is in breach of the UN Convention on the Elimination of All Forms of Discrimination against Women and Article 6 of the European Convention on Human Rights. However, it is not clear why this would be the case.

#### Bankruptcy

- Sequestration is the term used in Scots law for entering personal bankruptcy.
- When someone becomes bankrupt, a trustee (usually Scottish Government official the Accountant in Bankruptcy) is appointed to manage their assets on behalf of creditors. All non-essential assets – including a family home – are sold to raise money to pay the person's debts. If the debtor has income above an assessed threshold, they will also be required to make contributions from their income towards paying their debts.
- The purpose of bankruptcy is to provide an orderly process for managing the interests of creditors when someone does not have sufficient income or assets to pay their debts in full. It ensures that creditors are treated fairly (in accordance with the systems and order established in legislation). It also means that creditors cannot get an unfair advantage over each other by racing to seize the debtor's assets through court processes.
- Each class of creditors is treated equally in the bankruptcy process. Preferred debts (including things like employee pay and certain taxes, where relevant) are paid first. Any money left over is paid to ordinary creditors next. Payments are made on a "pro rata" basis, so that all the creditors in a class are paid in proportion to the amount they are owed. If there is enough money to pay 10% of what is owed, a creditor owed £10 would be paid £1 and a creditor owed £100 would be paid £10.
- Once a debtor has gone through the bankruptcy process, any remaining debt will usually be written off. This allows them to make a fresh financial start. A small number of debts are not written off by the bankruptcy process, including court fines, debts incurred through fraud and student loans.
- A trustee can apply to the courts to get control of assets (e.g. for the power to sell a house) if the debtor does not co-operate with them. There are also sanctions for people who abuse the bankruptcy process (e.g. by lying about the assets they own). Bankruptcy Restrictions Orders can be used to continue

bankruptcy restrictions (e.g. not being able to borrow above £2,000 without telling the lender you are bankrupt) for up to 15 years. There are also a range of criminal offences relating to, for example, making false statements or concealing assets.

### **The situation described by the petitioner**

- In all civil court action, it is up to the winner to get any payment ordered by the court from the loser. The winner can instruct court officers to undertake a range of court-sanctioned debt enforcement options (such as seizing money in a bank account) where the loser does not pay. However, if the loser has no (or insufficient) assets, it may not be possible to get full payment. This is one of the risks of litigation.
- It is not uncommon for people to become bankrupt because they cannot pay a court order. So, it may well be that the bankruptcy process is working as it should in the situation described by the petitioner. The abuser's non-essential assets and income will be used by the trustee to repay creditors.
- The abuser's ex-partner will be able to make a claim in the bankruptcy and will be entitled to be repaid at the same rate as other ordinary creditors. However, it is common for repayment rates to be low, and it may be that no money is available for repayment.
- It is possible that the abuser is trying to abuse the bankruptcy process. If they are not genuinely unable to pay their debts, it is possible for anyone with an interest (including the ex-partner) to apply to the court to have the award of sequestration recalled. This restores the debtor to their pre-bankruptcy situation.
- If it is thought that the abuser is hiding income or assets, concerns can be reported to the trustee. The trustee is able to investigate a debtor's financial situation and can get court orders to require assets and income to be handed directly to them. The debtor can be reported to the police if it is suspected they have committed a criminal offence.

Abigail Bremner

**Senior Researcher**

4 November 2025

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at [spice@parliament.scot](mailto:spice@parliament.scot)

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware

however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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## Annexe C: Written submissions

### Scottish Government written submission, 17 November 2025

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

**Does the Scottish Government consider the specific ask[s] of the petition to be practical or achievable? If not, please explain why.**

The Scottish Government does not believe the specific ask of the petition to be necessary.

The Scottish Government firmly believes that the fraudulent use of bankruptcy to further abuse a partner is financial abuse and there are current safeguards in place to prevent this. This includes the powers given to Trustees to investigate and recover assets not disclosed by the debtor or recover funds given unfairly to certain creditors. The debtor will not be discharged from any debt which they incurred fraudulently. There are no current plans to make changes to the area of bankruptcy legislation under the specific ask of this petition.

Personal insolvency is devolved, and in Scotland is governed primarily by the Bankruptcy (Scotland) Act 2016 (the “2016 Act”). The law of bankruptcy is kept under review by the Scottish Government, and the process is in no way intended to discriminate against victims of abuse.

The policy aim of bankruptcy legislation is to balance the rights and interests of those who are owed money and those who are unable to pay their debts in full. Bankruptcy is intended to ensure that those who can do so make a fair contribution to repayment of their debts and provides a fresh start for them at the end of the process.

When someone is made bankrupt, a trustee, who is either a qualified insolvency practitioner or the Accountant in Bankruptcy (AiB), is appointed to administer the bankruptcy. The trustee is bound by the legislation, and it is their statutory duty to realise assets, including property, and ingather funds collected through contributions where appropriate. Legislation sets out that the estate collected will first meet the trustee’s costs of administration prior to any dividend payable to the creditors involved.

During the administration of the case, a trustee will assess whether the individual can pay a contribution from their earnings. This assessment is achieved using the statutory Common Financial Tool (CFT) which sets a level of acceptable expenditure based upon the individual’s circumstances. When using the CFT the trustee will obtain evidence to confirm the individual’s income to ensure a true assessment is made.

The trustee is obligated to fully investigate and realise all assets for the benefit of creditors, including any that were initially undisclosed. They may interview the debtor and seek supporting evidence, but their powers are limited under the 2016 Act. They cannot carry out covert investigations, examine income or bank accounts not held in the debtor’s name, or act beyond the statutory investigation period. If no evidence of undisclosed assets is found, they cannot take the matter further.

A debtor has a legal duty to cooperate fully with the trustee and to disclose all assets owned or acquired during the bankruptcy process. It is a criminal offence to conceal assets. Discharge from bankruptcy is conditional on cooperation with the trustee.

The debtor's financial circumstances are reviewed on a six-monthly basis. Their income and expenditure will be assessed using evidence such as bank statements and enquiries will be made into any newly acquired assets. Any asset acquired by the debtor up to four years from the date of sequestration will be ingathered by the trustee and realised where possible.

Once bankruptcy is awarded, all qualifying debts owed up to the date of sequestration must be included in the debtor's estate. Creditors cannot pursue the debtor directly for repayment and will rank alongside other creditors for any dividends that may be distributed from the estate.

When the debtor is discharged from bankruptcy, they are discharged from liability for most debts which were due when they entered bankruptcy. There are exemptions for specified types of debt set out in section 145 of the 2016 Act. These include liability for debts from fraud or breach of trust. It is for the courts to determine whether a debt falls into this category. However, this does not include an award under section 28 of the Family Law (Scotland) Act 2006.

**What, if any, action the Scottish Government is currently taking to address the issues raised by this petition, and is any further action being considered that will achieve the ask[s] of this petition?**

The Scottish Ministers consulted generally in 2012 on extending the categories of debt which are excluded from bankruptcy and for specific types of debt, more recently child maintenance arrears in 2019. The overall view from stakeholders was to oppose excluding these debts.

In September 2019, the Scottish Ministers committed to undertake a wide-ranging policy review of Scotland's statutory debt solutions with the aim of further enhancing and improving our system. This was in response to a recommendation put forward by the then Economy, Energy and Fair Work Committee following their scrutiny of the Debt Arrangement Scheme (Scotland) Amendment Regulations 2019.

Stakeholders agreed that the review should consist of three stages. Stage one and two have been completed with the introduction of various pieces of legislation including the Bankruptcy and Diligence (Scotland) Act 2024.

We are currently in stage three of the review which is a longer-term strategic review of the statutory debt solutions to assess if they meet the needs of a modern economy. This is an independent review and is being led by Yvonne MacDermid OBE. Two consultations have been published this year, and we await the final report of recommendations to Scottish Ministers by the end of this year. These recommendations will be fully considered by the Scottish Ministers as to how they can be implemented.

**Is there any further information the Scottish Government wish to bring to the Committee's attention, which would assist it in considering this petition?**

The Scottish Government have implemented a number of policies to help support victims and survivors of domestic abuse.

**Equally Safe is Scotland's strategy for preventing and eradicating violence against women and girls.**

- Equally Safe sets out a vision to prevent violence from occurring in the first place, build the capability and capacity of support services, and strengthen the justice response to victims and perpetrators.
- Under the auspices of Equally Safe, we have strengthened the law in relation to violence against women and girls and we have taken forward a great deal of work to ensure those working in the public sector are equipped with the resource and knowledge to confidently and sensitively work with those affected by violence against women and girls.
- Our £21.6m annual Delivering Equally Safe Fund support the work of the strategy, providing financial means to prevention, education, policy and support organisations.

**Fund to Leave**

As part of the measures in the Housing Emergency Action Plan, on 2 September 2025, the Cabinet Secretary for Housing announced a £1m national fund to leave, building on the success of the pilot fund, which provided financial support to women to pay for essentials they need when leaving a relationship with an abusive partner. This was further bolstered by an additional £500k announced on 27 October 2025. Investing this £1.5 million in a new national fund to leave could help up to 1,800 women across the whole of Scotland, improving their housing outcome and assisting with the transition to a more stable and independent future.

**Accountant in Bankruptcy**

**Petitioner written submission, 20 November 2025**

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

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.