

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT SCOTLAND ACT 1998 (INSOLVENCY  
FUNCTIONS) ORDER 2017

*Monday 4 December 2017*

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**not later than**

**Friday 8 December 2017**

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**The Committee consisted of the following Members:**

*Chair:* MR CHRISTOPHER CHOPE

- |   |  |
|---|--|
| † Costa, Alberto ( <i>South Leicestershire</i> ) (Con)            | † McFadden, Mr Pat ( <i>Wolverhampton South East</i> ) (Lab) |
| † Ellis, Michael ( <i>Deputy Leader of the House of Commons</i> ) | † Offord, Dr Matthew ( <i>Hendon</i> ) (Con)                 |
| † Ellman, Mrs Louise ( <i>Liverpool, Riverside</i> ) (Lab/Co-op)  | Robinson, Mr Geoffrey ( <i>Coventry North West</i> ) (Lab)   |
| † Elmore, Chris ( <i>Ogmore</i> ) (Lab)                           | Sheppard, Tommy ( <i>Edinburgh East</i> ) (SNP)              |
| † Graham, Luke ( <i>Ochil and South Perthshire</i> ) (Con)        | † Stewart, Iain ( <i>Milton Keynes South</i> ) (Con)         |
| † Grant, Bill ( <i>Ayr, Carrick and Cumnock</i> ) (Con)           | † Thomson, Ross ( <i>Aberdeen South</i> ) (Con)              |
| † Hair, Kirstene ( <i>Angus</i> ) (Con)                           | † Whitfield, Martin ( <i>East Lothian</i> ) (Lab)            |
| † Laird, Lesley ( <i>Kirkcaldy and Cowdenbeath</i> ) (Lab)        | † Whittaker, Craig ( <i>Calder Valley</i> ) (Con)            |
| † Lucas, Ian C. ( <i>Wrexham</i> ) (Lab)                          | Kenneth Fox, <i>Committee Clerk</i>                          |
|   | † <b>attended the Committee</b>                              |

## Sixth Delegated Legislation Committee

Monday 4 December 2017

[MR CHRISTOPHER CHOPE *in the Chair*]

### Draft Scotland Act 1998 (Insolvency Functions) Order 2017

6 pm

**The Deputy Leader of the House of Commons (Michael Ellis):** I beg to move,

That the Committee has considered the draft Scotland Act 1998 (Insolvency Functions) Order 2017.

The draft order, which was laid before the House on 20 September 2017, is part of a package of measures aimed at updating and modernising corporate insolvency in Scotland, particularly the insolvency rules that apply to the winding up of companies. It follows on from the recent modernisation of company insolvency rules in England and Wales that culminated in the Insolvency (England and Wales) Rules 2016.

To briefly give some background, I should explain that the law on corporate insolvency in Scotland and the division of legislative responsibilities between the Scottish and UK Parliaments and Governments is complex, particularly in relation to winding up. For business associations, for example, the general legal effect of winding up is reserved, but the process of winding up is excepted from the reservation. In practice, it is not always clear whether a winding-up matter relates to a reserved aspect or a devolved aspect.

In an effort to facilitate the efficient, effective and user-friendly modernisation of Scotland's insolvency rules, particularly those that relate to companies, both Governments have therefore agreed that it would be of benefit to lawmakers and practitioners alike if the complicated exercise of assessing which rules relate to a reserved matter, and which do not, could be avoided. Accordingly, both Governments have agreed to the preparation of a combined order under sections 63 and 108 of the Scotland Act 1998. Section 63 enables an order to

“provide for any functions...exercisable by a Minister of the Crown in or as regards Scotland, to be exercisable...by the Scottish Ministers concurrently with the Minister of the Crown”.

Conversely, section 108 enables an order to

“provide for any functions exercisable by a member of the Scottish Government to be exercisable...by a Minister of the Crown concurrently with the member of the Scottish Government.”

The draft order will allow for the mutual conferring of functions on Scottish Ministers and a Minister of the Crown so that both have the power to introduce, as appropriate, rules or regulations on winding up for companies, incorporated friendly societies and limited liability partnerships in Scotland, irrespective of whether those rules or regulations relate to reserved matters under schedule 5 to the 1998 Act.

Under the draft order, a Minister of the Crown and the Scottish Government Ministers must reach agreement before either can make rules or regulations on the

winding up of companies, incorporated friendly societies and limited liability partnerships under the functions that it confers. That approach will enable each Administration to make provision on winding-up matters without any doubt being cast on the scope of the relevant enabling powers. Users of winding-up legislation will also benefit, because the draft order furthers our aim that the rules on the winding up of companies in Scotland be contained in a single instrument rather than split between two. The immediate intention is that the Scottish Government, with the consent of the UK Government, will introduce an instrument to make provision for both the reserved and devolved aspects of winding up, as part of the current project to replace the Insolvency (Scotland) Rules 1986 with updated and modernised rules.

I hope the Committee agrees that this is a sensible approach that will enable the modernisation of corporate insolvency in Scotland to move forward in an effective manner. I believe it provides an excellent example of our two Governments working together to make the Scottish devolution settlement work for people and industry in Scotland.

**Martin Whitfield** (East Lothian) (Lab): I am grateful to the Minister for his excellent explanation of the draft order. Has a procedure been envisaged to deal with disagreement between Ministers in Westminster and in Holyrood?

**Michael Ellis:** All these matters are carefully considered. It is anticipated that whatever happens, the process enabled by the draft order will be preferable to the current situation, which is clearly rather confused.

I commend the draft order to the Committee.

6.5 pm

**Lesley Laird** (Kirkcaldy and Cowdenbeath) (Lab): It is a pleasure to serve under your chairmanship, Mr Chope. As the Minister set out, the order is part of a package of measures aimed at updating and modernising corporate insolvency in Scotland, particularly insolvency rules for companies. The law on winding up in Scotland is complex because it is a mixed area of competence. Section C2 of schedule 5 to the 1998 Act provides:

“In relation to business associations...the general legal effect of winding up”

is reserved, but

“the process of winding up, including the person having responsibility for the conduct of a winding up or any part of it, and his conduct of it or of that part”

is excepted.

It is not always clear whether a winding-up matter relates to the general legal effect of winding up, or whether it falls within the exception provided for the process of winding up. Accordingly, rather than attempt the complicated exercise of trying to assess, as part of the modernisation process, which rules relate to a reserved matter and which do not, the draft order provides for the mutual conferral of functions on a Minister of the Crown and Scottish Ministers under sections 63 and 108 of the 1998 Act, so that each can make winding-up rules for company insolvency in Scotland irrespective of whether they relate to reserved matters. This approach makes it clear that each Administration has the power

to make, in the exercise of those powers, all subordinate legislative provision on winding-up matters without any doubt being cast on the scope of the relevant enabling powers. The Labour party therefore supports the draft order.

*Question put and agreed to.*

6.7 pm

*Committee rose.*





