RESPONSE TO
CONSULTATION ON
DAS – COMMON FINANCIAL TOOL

ACCOUNTANT IN BANKRUPTCY
**Introduction**

1. The Institute of Chartered Accountants of Scotland (ICAS) is the oldest professional body of accountants and represents over 21,000 members who advise and lead business across the UK and in almost 100 countries across the world. ICAS is a Recognised Professional Body (RPB) which regulates insolvency practitioners (IPs) who can take appointments throughout the UK. We have an in-depth knowledge and expertise of insolvency law and procedure.

2. ICAS’s Charter requires it to primarily act in the public interest, and our responses to consultations are therefore intended to place the public interest first. Our Charter also requires us to represent our members’ views and protect their interests. On the rare occasion that these are at odds with the public interest, it is the public interest that must be paramount.

3. ICAS is interested in securing that any changes to legislation and procedure are made based on a comprehensive review of all of the implications and that alleged failings within the process are supported by evidence.

4. ICAS is pleased to have the opportunity to submit its views in response to the Accountant in Bankruptcy (AiB) consultation on the Common Financial Tool in DAS issued as part of their Interim Response to their 2016 DAS consultation. We shall be pleased to discuss in further detail with the AiB any of the matters raised within this response.

**Response**

5. We have set out our response to the consultation questions below:

**Question 1:** What is your preferred choice for determining the level of contribution to be made by debtors in the future?

<table>
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<th>Option 1</th>
<th>Continue with current arrangements where all surplus income is used as a contribution amount in a DPP, whilst encouraging debtors to make the most of the current savings provision.</th>
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<td>Option 2</td>
<td>Introduce some additional flexibility around the CFT surplus income, but only where this will not extend the length of the DPP to beyond a specific period to help ensure the sustainability of the DPP.</td>
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<td>Option 3</td>
<td>Introduce flexibility by removing the requirement to use the full surplus income as calculated by the common financial tool to determine the level of contribution. There would still be a requirement to circulate a completed CFT to creditors, together with the proposed contribution level. This would allow creditors to consider whether or not to accept or object to the proposal.</td>
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**Question 2:** If option 2 was to be adopted, flexibility will only be offered providing it does not extend the DPP beyond a specific period of time. What timescale do you consider to be reasonable?

- 7 years
- 8 years
- Other please specify

Where the time period meets the ‘fair and reasonable’ test

Please explain why you consider this a suitable time period

We do not consider that a fixed period is suitable for a debt management solution which already has an overriding ‘fair and reasonable’ test. A proposed Debt Payment Programme is either fair and reasonable or not. The imposition of a fixed period in legislation in
circumstances where there is additional flexibility in the usage of CFT calculated surplus income seems incompatible with this principle.

The Interim Consultation Response indicates (page 5) that the longer a DPP period the greater the degree of uncertainty of completion or breakage of contributions will exist. Placing a limit on the period of the DPP may assist with limiting the potential for a DPP failure. However, this logic must apply whether or not the CFT calculated surplus is attributed fully to the DPP or not. Indeed, you would expect that where there is some flexibility in attributing the CFT calculated surplus to the DPP that this should provide some headroom for changing circumstances, and logically therefore there should be an increased chance of successful completion of the DPP. It is therefore illogical to place a time restriction on the completion of the DPP in this situation while allowing greater DPP periods where the chance of breakage is higher as a result of 100% of the CFT calculated surplus being utilised.

No evidence has been provided as to why the periods of 7 or 8 years have been suggested as being suitable or appropriate. The Interim Consultation Response indicates (page 5) that the average duration of a successful DPP is 3 years. The suggestion of 7 or 8 years appears entirely arbitrary and is unsupported by evidence. Unless there is a strong evidence base for any fixed period to be introduced we would not support such a change in legislation. If this route is pursued following the consultation, then the period settled on must be determined on a sound evidence base.

18 August 2017

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