ACCOUNTANT IN BANKRUPTCY
SCOTLAND'S INSOLVENCY SERVICE

Consultation on Bankruptcy Law Reform

The Report of the Summary of Responses

An agency of
The Scottish Government

Report on Public Consultation

Contents

I. Ministerial Foreword

Bankruptcy law in Scotland dates back to 1621. Although it has been amended over the years, the Scottish Government recognises that for debt management and debt relief mechanisms to be most effective, they must be fit for Scottish society in the 21st Century. A society where access to loans and credit cards has meant an increase in consumer debt our forebears would have difficulty recognising.

The Scottish Government has a broad and ambitious agenda for reform. For the first time in a generation, this Government has examined, not just the processes, but the principles of bankruptcy and other debt solutions. Debt solutions, which must be fair to not only the indebted individual, but also the creditor who is owed money for services or goods provided.

This report summarises the responses to the consultation, the proposals of which were aimed at ensuring that appropriate, proportionate, debt management and debt relief mechanisms are available to the people of Scotland. Initial analysis of these responses has indicated that not all of the proposals in the consultation will be taken forward. The feedback will, however, help formulate those areas where there is support for modernisation of our legislation.

I am grateful to all those who took the time to contribute to the consultation, those responses will assist us in developing debt solutions that will place Scotland as a world leader in this field.

Fergus Ewing, MSP
Minister for Energy, Enterprise and Tourism

II. Background

Bankruptcy law in Scotland dates back to 1621, although it was the Bankruptcy (Scotland) Act 1856 that laid down the scheme that is largely retained in today's legislation. The Bankruptcy (Scotland) Act 1913 followed and this operated for over 70 years until the Bankruptcy (Scotland) Act 1985 (the Act) came into force. The 1985 Act has been amended on a number of occasions, including by the Bankruptcy (Scotland) Act 1993, the Bankruptcy and Diligence etc. (Scotland) Act 2007 and the Home Owner and Debtor Protection (Scotland) Act 2010.

This is the first time in a generation that the principles and concept of bankruptcy and other debt management solutions have been considered. The world we live in today, with easy access to credit cards and payday lending, for example, is quite different to that of 1985. Consumer debt has increased. The financial situation in recent years, including the credit crunch and recession has an increasing impact, not just in Scotland, but worldwide. Although the Home Owner and Debtor Protection (Scotland) Act 2010 took steps to address some of the problems associated with the ongoing financial climate, we recognise that our legislation requires to be modernised to ensure that we can effectively address the challenges our society faces today.

The Bankruptcy Law Reform consultation was the start of the journey to modernise the debt relief and debt management solutions in Scotland. There were 129 responses to the consultation which were collated by the Accountant in Bankruptcy (AiB). This report summarises these responses and in light of these we will consider the next steps. We are carefully looking at all the points made and issues raised by stakeholders to consider and formulate the way forward. It is anticipated that a Bill will be brought forward based on those proposals where there was support from stakeholders and further consideration will be given to the areas where there was less support. Not all of the measures to be brought forward will require primary legislation. Therefore, there will be changes to our subordinate legislation and guidance documents too. The Bill will provide for a new model of debt advice, debt management and debt relief. It will be followed by a consolidation exercise relying on the work of the Scottish Law Commission (SLC) to ensure that we have a single piece of legislation, aiding the accessibility and understanding of bankruptcy law.

We are seeking to develop a service for debt advice, debt management and debt relief fit for the 21st Century. It aims to place Scotland as a world leader in terms of both practice and provision of debt solutions. The service will harness together the efforts of the Accountant in Bankruptcy (AiB), insolvency practitioners (IPs), the money advice sector more generally and creditors. The key principles of the service are:

- Ensuring that the people of Scotland have access to fair and just processes of debt advice, debt relief and debt management.
- Those debtors who can pay should pay their debts, whilst acknowledging the wide range of circumstances and events that contribute towards financial difficulty and insolvency for both individuals and businesses.
- Securing the best return for creditors by ensuring that the rights and needs of those in debt are balanced with the rights and needs of creditors and businesses.

We propose that the provision of appropriate debt advice, management and relief should be seen as a 'Financial Health Service', providing rehabilitation to individuals and organisations in relation to their financial pressures, while acknowledging their financial responsibilities.

Summary of the responses

The following is an executive summary of the responses to the proposals in consultation:

Advice

- Money advice to be made compulsory prior to accessing any form of statutory debt relief;
- AiB not to have a role in giving money advice;
- Support for developing a 'triage' system to signpost individuals to possible debt relief or debt management options available to them.

Education

- Support for financial education to be an integral part of the Scottish statutory debt relief option, under specific criteria;
- Financial education should not be mandatory or be linked to discharge from debt;

Common Financial Tool

- Support to have one Common Financial Tool to be used throughout Scotland, no matter which statutory debt relief or debt management option is entered by an individual;
- Consider, in conjunction with stakeholders, a Scottish specific common financial tool;
- Allow assessed contributions to be deducted directly from an individual's wages;

Application Process

- Support for applications to be sent through an electronic web portal, but not exclusively, paper applications should also be available;
- Support to introduce a moratorium period of 6 weeks in statutory debt relief products, these to be displayed in a public register;

Debt Arrangement Scheme (DAS)

- DAS should not be the default option where an individual can pay their debts in 8 years, although there was support for a shorter period;
- An up-front fee to access DAS should not be introduced;
- Support for the introduction of an appeals process, and appeals panel for DAS decisions made by the DAS Administrator;
- Composition in DAS should be available, after the programme has run for 12 years and 70% of the debt has been paid;

Protected Trust Deeds

- Support for a minimum debt level of £10,000 for entry into a protected trust deed;
- Support for a minimum dividend in protected trust deeds;
- There should not be a fixed term for completion of a protected trust deed;
- The current process of deemed consent and current thresholds should continue;

Bankruptcy

- Support for the removal of Apparent Insolvency as criteria in debtor applications;
- The minimum debt level for debtor's bankruptcy should increase to £3,000
- Support for a 'No Income' product for individuals on state benefits who have up to £10,000 of debt and up to £2,000 of assets;
- These individuals should have a bankruptcy restriction of up to 12 months after discharge;
- The 'Low Income Product' bankruptcy is not required;
- The 'Payment Product' bankruptcy is not required;
- The 'High Value Product' bankruptcy is not required;
- Support that the existing bankruptcy should be retained;

Business DAS for Sole Traders and Partnerships

- Support for a new Business DAS to be developed;
- Where possible Business DAS should exclude non-business debts;
- Prior to entering Business DAS, advice should be provided from Business Gateway, Insolvency Practitioners, Scottish Enterprise or the Money Advice Service;
- Composition should be incorporated in Business DAS;

Creditor Petitions

- Creditors should continue to petition the court for an individual's bankruptcy;
- An executor of a deceased individual's estate should be able to apply to AiB to make the deceased individual's estate bankrupt;

Debtor co-operation

- Support for discharge to be linked to a bankrupt individual's co-operation with their trustee;
- Where an individual cannot be located their discharge should be deferred indefinitely;
- AiB should have the power to defer discharge rather than refer the case to a sheriff;

Treatment of debt

- No support for other types of unsecured debts to be excluded from discharge;
- Support for debts that were incurred within 12 weeks of a debtor application or the granting of a trust deed should be excluded from discharge;
- Child maintenance arrears should continue to be claimable and be discharged in bankruptcy and protected trust deeds;
- Credit union debts should continue to be discharged in bankruptcy and protected trust deeds;

Modernisation of legislation

- Support for policy changes identified by the Scottish Law Commission regarding the consolidation of bankruptcy legislation should be incorporated where appropriate;
- The consolidated Bill should follow the programme Bill;
- Creditors should have to submit a claim with 120 days;

- Support for a defined criteria of ‘habitual residence’;
- The Register of Insolvencies(ROI) should be moved from the Act of Sederunt;
- The ROI should be updated with the debtor’s current address and information should be withheld from the ROI for individuals who are at risk of violence;
- The supplementary questionnaire is an effective interview aid and the information from the common financial tool could not replace it;
- Support for the recall of bankruptcy process to be clarified and that the final interlocutor should be withheld until all funds have been distributed;
- The current prescribed rate of interest should be retained and all post-procedure interest and charges be frozen;
- A hard copy of the sederunt book is no longer required, but key documents should be retained electronically;
- Support for the debtor’s discharge to be linked to the date of award;
- Payment holidays of up to 6 months should be available in all statutory debt relief products and the period of time added onto the length of the product before discharge is granted;
- Payment holiday eligibility criteria should be the same in all products;

Removal of administration from the Courts

- Support for the removal of bankruptcy processes to be removed from the Sheriff Court;
- AiB should have the power to make orders for some bankruptcy processes and a separate independent panel should be used to review complex or disputed decisions;
- Some of the bankruptcy processes should be retained by the Sheriff Court;

AiB role and powers

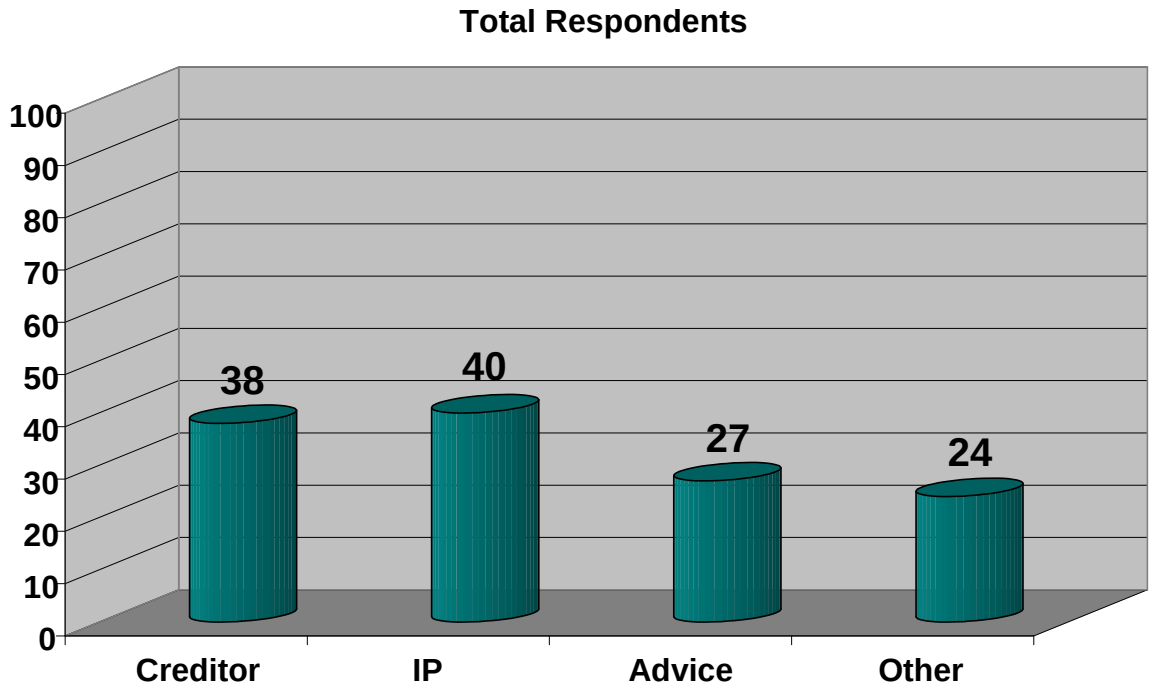
- Respondents felt that AiB did have a positive impact on the existence of a healthy and competitive insolvency sector in Scotland;
- AiB should continue to be trustee in bankruptcies and should continue to act as trustee of last resort;
- The costs of an individual’s administration should not cross subsidise other bankruptcies which should be paid from the public purse;
- AiB should not have a more proactive role in supervising debt relief products;
- An AiB panel should not determine an appropriate course of action where a trustee has not followed an AiB direction;
- There was equal support for and against Scottish Ministers having the power to regulate Scottish insolvency practitioners;
- However, there was support for a Memorandum of Understanding between the UK Insolvency Service and Recognised Professional Bodies (RPBs) to be redrafted to allow information on regulatory activity related to Scottish cases to be issued to AiB;
- Support for an information sharing agreement between AiB and the RPBs;
- There should be an office of the Official Receiver in Scotland and this role should be carried out by AiB;
- The Official Receiver in Scotland should be self funded with only some public funding.

III. Table of abbreviations

AiB	Accountant in Bankruptcy
ABCUL	Association of British Credit Unions Limited
BBA	British Bankers' Association
CAB	Citizens Advice Bureau
CCCS	Consumer Credit Counselling Service
CFS	Common Financial Statement
CMEC	Child Maintenance and Enforcement Commission
CSA	Child Support Agency
DAS	Debt Arrangement Scheme
DPP	Debt Payment Programme
EU	European Union
HMRC	Her Majesty's Revenue and Customs
ICAS	Institute of Chartered Accountants of Scotland
INSOL	International Federation of Insolvency Professionals
IP	Insolvency Practitioner
IVA	Individual Voluntary Arrangements
LILA	Low Income Low Assets
OR	Official Receiver
PTD	Protected Trust Deed
ROI	Register of Insolvencies
RPB	Recognised Professional Body
RPO	Redundancy Payments Office
SCCR	Scottish Civil Courts Review
SCS	Scottish Court Service
SLC	Scottish Law Commission
SQ	Supplementary Questionnaire
UKIS	United Kingdom Insolvency Service

IV. Evaluation

A total of 129 responses were received by AiB at the close of the consultation. A list of the organisations who responded (and who gave their permission for the details to be disclosed) can be found in Annex A of this document. We have included comments from respondents throughout the report, however where a respondent did not want their details disclosed these have not been attributed to any organisation or individual. The following chart breaks down the respondents into 3 key stakeholder sectors; Creditor, IP (Insolvency Practitioner) and Advice. Where a respondent could not be identified as belonging to one of these sectors they have been categorised as 'other'.



Of the 38 creditor responses received, 20 were from credit unions and the remaining 18 were from creditors and creditor representatives. 40 of the responses were from individuals, of which 20 were insolvency practitioners, 7 were money advisers and 13 were from other sectors.

Methodology

Throughout the document there are small charts representing the responses to the questions asked in the consultation. Where the respondent has a 'yes' or 'no' answer, the number of responses are recorded accordingly. A number of respondents only answered some of the questions. Therefore, where no answer was provided, that is recorded as 'N/A'. Some respondents provided comments, rather than answering the question. These are recorded as 'Comment only'. For example the chart below demonstrates that 30 of respondents responded 'yes', 35 responded 'no' and 14 made comments.

	Total Responses	Organisations only
Yes	30	26
No	35	18
N/A	50	34
Comment only	14	11
Total	129	89

We had 89 organisations respond to the consultation and 40 individuals. We have, therefore, also considered the responses from the organisations separately. The second column demonstrates the responses from the organisations only. In the chart above, the data shows that although the majority of respondents did not support the proposal, whereas the majority of organisations responded positively.

V. Consultation Response Results

1. Advice

1.1 In the current Scottish model, advice is available from money advisers in the third sector, through advisers in local authorities and through IPs and debt management companies. Advice is compulsory prior to entering the Scottish Government's debt management solution, the Debt Arrangement Scheme[1]. Similarly, advice is a requirement before an individual can grant a trust deed which may become protected. On the other hand, entry to bankruptcy does not require advice to be taken and an individual can apply directly to AiB without having received any form of advice. Given the significant consequences associated with bankruptcy, we proposed that the provision of money advice should be an essential part of the process.

1.2 Furthermore, due to delays in accessing money advice through current providers, and the fact that individuals seeking to apply for bankruptcy come to AiB looking for advice, we also asked whether AiB should have any advice giving role.

1.3 The following is an analysis of the questions asked relating to advice provision.

Question 6.1 - Do you think that money advice should be compulsory for those considering any form of statutory debt relief?

	Total Responses	Organisations only
Yes	93	62
No	19	14
N/A	10	8
Comment only	7	5
Total	129	89

The Consumer Credit Counselling Service (CCCS) – "It would be widely positive if all people seeking statutory debt relief in Scotland received free money advice."

Question 6.1a - If yes, who should give this money advice?

1.4 Of those who commented the majority said that money advice should be provided by the current approved providers. The Institute of Chartered Accountants of Scotland (ICAS) said "Money advice needs to be sought at an earlier date; by the time financial difficulties arise debt advice is what is required and such advice should only be given by those who have the necessary qualifications and practical experience so that the debtor is made aware of the available options and of the consequences of opting for a particular process."

[1] http://www.legislation.gov.uk/ssi/2011/141/regulation/20/made

Question 6.2 - Should AiB have a role in the provision of money advice?

	Total Responses	Organisations only
Yes	39	29
No	69	45
N/A	16	11
Comment only	5	4
Total	129	89

Dumfries and Galloway Citizens Advice Service - "We believe that there would be a conflict of interest in AiB providing money advice."

Question 6.2a - If yes, what format should that take?

1.5 As the majority of respondents were not in support of AiB providing advice, this question was not answered on the whole. A private individual did comment that "it would have a massive conflict of interest if it (AiB) were to provide initial advice. Debtors have ample source of free debt advice and there is no need for it to be provided by the AiB."

Question 6.3 - Would you support a 'triage' system to signpost individuals to possible debt relief or debt management options available to them?

	Total Responses	Organisations only
Yes	77	56
No	27	17
N/A	15	11
Comment only	10	5
Total	129	89

Credit Services Association – "It is sometimes the case that our customers appear to be in the incorrect debt relief scheme…One could say it would be beneficial to both the creditor and the individual if the most appropriate debt relief option was sought from the outset. If individuals knew the options that were available to them, it may prevent them from heading straight to bankruptcy instead of using it as a last resort option."

Question 6.3a - If yes, what format should this 'triage' system take?

1.6 The majority of the respondents who answered this question felt that the triage system should signpost people to suitably qualified and regulated practitioners and prioritise clients who are under imminent threat. Castle Credit Union said "technology-enabled system appropriate for this stage, but one-to-one money advice should be received before accessing debt relief."

Summary

1.7 Respondents were generally in favour of money advice being compulsory for those considering any form of statutory debt relief. They did not, however, agree that AiB should have a role in the provision of money advice. A triage system was welcomed by the majority, although there were differing views about what format this should take.

2. Education

2.1 Education does not currently form a formal part of the service offered by money advisers or IPs, although there can often be advice given on budgeting and income maximisation. However, the concept of lifelong (financial) learning/health fits in with the INSOL recommendations on both pre and post bankruptcy debt counselling. Furthermore, there is currently no requirement on an individual to seek help to ensure that when they complete their debt management or debt relief solution, they have the skills to avoid ending up in financial difficulty again.

2.2 We recognise that lack of financial skills will not be the sole issue in every case. Individuals may become bankrupt due to a catastrophic change of their circumstances, such as loss of employment. It could be argued that individuals who may be on the cusp of becoming bankrupt or entering another debt solution may be too focused on their immediate problems to consider their financial future. We proposed that a financial education role should be a central part of the 'Financial Health Service', seeking to impact on the culture and behaviours of individuals to prevent repeated financial difficulties. We also proposed that, subject to the AiB's or the trustee's assessment, discharge should be linked to evidence of completion of a personal financial management module.

2.3 The following is an analysis of the questions asked relating to financial education.

Question 7.1- Should financial education be an integral part of any Scottish statutory debt relief option?

	Total Responses	Organisations only
Yes	74	52
No	37	23
N/A	10	7
Comment only	8	7
Total	129	89

A responding organisation stated that it "believes that financial education can play an important role in helping consumers in financial difficulty to rehabilitate and, where appropriate, re-establish a relationship with mainstream credit."

Question 7.1a- If yes, who should deliver financial education?

2.4 Respondents gave a variety of options as to who could deliver financial education, including local authorities, the Scottish Government, the Money Advice Service and professional money advisers.

Question 7.2 - Should this financial education be mandatory for all those who access a statutory debt relief option?

	Total Responses	Organisations only
Yes	18	10
No	90	64
N/A	13	8
Comment only	8	7
Total	129	89

TDX Group Ltd – "We accept that some arrangements entered into may not actually require financial education due to their nature. For example a single financial 'shock' such as job loss may require a formal solution, but does not demonstrate a protracted mismanagement of personal finances that needs educational assistance. We would therefore support education based on the assessment of the Trustee, but mandatory completion if set. The cost of financial education to the economy and to credit lenders should be clearly understood before a final structure is established."

Question 7.2a - If yes, what format should the financial education take?

2.5 Face to face and online were suggested along with a variety of other answers. The Royal Bank of Scotland said that "where education is provided it should be offered in the most appropriate format for the customer i.e. face to face, telephone or online."

Question 7.3- Should financial education be optional based on specific criteria, such as where the individual has previously been bankrupt?

	Total Responses	Organisations only
Yes	68	45
No	38	27
N/A	18	12
Comment only	5	5
Total	129	89

Max Recovery – "This makes more sense to us."

Question 7.3a - If yes, what should that criteria be?

2.6 Respondents gave a variety of answers including, regard should be given to circumstances which led to bankruptcy, where the debtor has been previously bankrupt, and if it is demonstrated individuals lacked skills to manage their affairs then this should be the criteria.

Question 7.4 - Should participation in financial education be linked to discharge from debt?

	Total Responses	Organisations only
Yes	45	35
No	64	39
N/A	14	10
Comment only	6	5
Total	129	89

TDX Group Ltd – “Where the need for financial education has been set then it is a sensible approach to link its participation to discharge.”

Citizens Advice Scotland (CAS) – “Financial education/money advice should be an important part of debt advice and should be available to all individuals who would benefit from it, but discharge should not be contingent on completing a financial education module.”

Question 7.5 - How could the effectiveness of financial education be evaluated?

2.7 There were various suggestions, such as a written test to be given to the debtor to establish their understanding of budgeting, or analysis of insolvency statistics, including long-term studies or research.

Summary

2.8 Respondents were in favour of financial education being an integral part of any Scottish statutory debt relief option, however did not consider this should be mandatory. Instead it should be optional based on specific criteria. Furthermore discharge from debt should not be linked to receipt of financial education.

3. Common Financial Tool

3.1 It is vital that where an individual can pay a contribution, that they do so. These funds, together with asset realisation, cover the cost of the administration of the debt relief and debt management processes and provide a return to creditors. A contribution is calculated from the individual's surplus income, however, there is no one single tool that is used for assessing the appropriate contribution.

3.2 Ensuring transparency and clarity for individuals is the over-arching principle in moving to any new financial assessment model. An individual must be informed how much they are being asked to pay at the start of the process and for the duration of their debt management or debt relief solution, subject to unforeseen changes of circumstances. Therefore, we proposed the introduction of mandatory use of a common financial tool in determining whether an individual should make a contribution in the Debt Arrangement Scheme, protected trust deeds and bankruptcy. We would, however, ensure that any common financial tool developed would take into account the individual's ability to sustain their contribution.

3.3 The following is an analysis of the questions asked relating to a Common Financial Tool.

Question 8.1 - Should a single common financial tool be used to calculate an appropriate contribution from individuals?

	Total Responses	Organisations only
Yes	100	70
No	13	8
N/A	12	8
Comment only	4	3
Total	129	89

Money Advice Scotland – "We absolutely agree there should be ONE common financial tool used across all areas of debt remedies. Not to use one tool gives rise to people in the same situation being treated differently and according to what remedy they chose. Currently there are at least 3 tools being used, which all give different outcomes for a client."

Question 8.1a - If yes, should the same common financial tool be used in the determination of contributions in DAS, protected trust deeds and bankruptcy?

3.4 The majority of respondents did consider that the same common financial tool be used whatever statutory debt relief solution was accessed. Citizens Advice Scotland said "yes – consistency and clarity for debtors, money advisers and creditors is essential."

MLM CPS Ltd - "Genuine surplus funds will not vary with case type"

Question 8.1b - If no, how should contributions be calculated?

3.5 Of those respondents who answered this question, the majority felt that the existing systems work and that it should be based on the individual's circumstances.

Question 8.2 - Should AiB, in conjunction with key stakeholders, develop a specific Scottish common financial tool to calculate the appropriate contribution from an individual?

	Total Responses	Organisations only
Yes	59	45
No	54	32
N/A	12	9
Comment only	4	3
Total	129	89

3.6 Responses were fairly evenly split as to whether a specific Scottish tool should be developed, although when the responses from individuals are discounted, the overall response is more evidently in favour of the development of a specific Scottish Tool. Responses, however, such as “Why re-invent the wheel” from a money adviser to “Existing tools are unsatisfactory”, from the credit unions that responded, show that opinion was mixed.

> Credit Services Association – “As Scottish debt relief can differ from those in England and other parts of the UK, it would be fairer to establish a Scottish Financial Tool that is designed to target areas that are appropriate specifically for a Scottish scheme…”

Question 8.2a - If no, what figures should be used to calculate the appropriate amount of contribution from an individual?

	Total Responses	Organisations only
CCCS guidelines	4	0
BBA CFS figures	25	14
Other figures, please specify	13	7
A percentage of the individual's income	4	4
N/A	83	64
Total	129	89

3.7 Of those who were keen to use an existing tool, the majority favoured the BBA Common Financial Statement.

Question 8.2b - If a contribution is based on a percentage of an individual's income, what should that percentage be?

	Total Responses	Organisations only
fixed percentage – 9%	2	2
a fixed percentage – 12%	0	0
a sliding scale percentage based on the individual’s income	26	21
another percentage	16	11
N/A	85	55
Total	129	89

3.8 The credit unions that responded wanted a contribution to be based on a sliding scale percentage of an individual's income. Other than this, there was not much support for a percentage of the debtor's income to be used. The Money Advice Trust stated, "This type of model does not acknowledge that there are many different household compositions which will affect their reasonable domestic needs."

Question 8.3 - Should legislation be amended to allow an assessed contribution to be deducted directly from an individual's wages?

	Total Responses	Organisations only
Yes	67	49
No	42	26
N/A	11	8
Comment only	9	6
Total	129	89

Campbell Dallas LLP – "This would help solve the problem of persistent defaulters however should be last resort to collect contributions. The debtor should still have the option to make payment direct from their own bank account."

Summary

3.9 Respondents were in favour of one common financial tool being used to establish a contribution from a debtor, whether in DAS, bankruptcy or a trust deed. The development of a specific Scottish tool was favoured over the existing tools such as BBA or CCCS. Respondents also favoured an amendment to legislation to allow an assessed contribution to be deducted directly from an individual's wages.

4. Application Process

4.1 At present all debtor applications to the AiB for bankruptcy are completed in paper form and sent by post. This can cause some delays in awards of bankruptcy being made, especially in the few cases where a form goes missing or is delayed. We proposed, therefore, to introduce a new web-based electronic application process.

4.2 Applications for bankruptcy would be made electronically by an authorised money adviser as is the case with the Debt Arrangement Scheme (DAS) at present. The proposed application process would have ensured that an individual would have received advice from the authorised money adviser regarding options for dealing with their debt. The definition of an authorised money adviser would be prescribed under regulations but we proposed that it would be similar to those currently prescribed as an approved money adviser for DAS[2].

4.3 The following is an analysis of the questions asked relating to the application process for bankruptcy.

Question 9.1 - If money advice should be sought prior to entering any statutory debt relief or debt management product, should applications only be made to AiB through an electronic web portal?

	Total Responses	Organisations only
Yes	48	38
No	63	39
N/A	11	7
Comment only	7	5
Total	129	89

Institute of Credit Management – "A variety of options should be on offer to ensure there is no barrier to the requisite advice being made available."

Question 9.1a - If yes, should an electronic application web portal be accessed only by authorised money advisers?

4.4 The majority who responded to this, answered 'Yes'. Most were in favour of this option as it would evidence that the debtor had accessed money advice, however it noted that in some areas access to a money adviser could be difficult, and it was important to ensure this wasn't a barrier to debt relief. The Federation of Small Businesses said "The application process is complex. If we understand it correctly, it requires submission of proof of financial viability/repayment capabilities, assessment of debt etc. It would make more sense that an authorised money adviser completes the process on behalf of the applicant. This would not ensure without doubt that the applicant has received comprehensive advice on their situation as is their right, but it would greatly increase the probability. An additional factor is the objectivity afforded by the application being made by a third party, given the pressures under which an individual requiring debt relief is likely to be."

[2] http://www.legislation.gov.uk/ssi/2011/141/regulation/9/made

Question 9.2 - Should applicants be able to submit paper application forms?

	Total Responses	Organisations only
Yes	71	43
No	38	32
N/A	14	9
Comment only	6	5
Total	129	89

Scottish Association of Law Centres – "It is likely that in the future this option will simply die out. However it would be better to have the electronic infrastructure in place before completely prohibiting paper application forms."

Question 9.2a - If yes, should the applicant demonstrate that they had money advice prior to submitting their application?

4.5 Those who responded were in favour of applicants demonstrating they had had advice prior to making their application. For example West Dunbartonshire CAB Service stated, "This should be mandatory and the money advice agency should confirm advice has been not just sought but given." Money Advice Scotland also agreed that advice must be sought, stating, "In order to ensure that the right option has been chosen and that the debtor is aware of their responsibilities aside from making payments where possible, they should be able to demonstrate that they have thought the process through and are aware of possible outcomes. A coding system could be introduced which could identify where advice was sought, and the name of the adviser."

Question 9.3 - Where money advice is provided by authorised money advisers, should evidence of apparent insolvency still be required?

	Total Responses	Organisations only
Yes	42	25
No	68	51
N/A	13	7
Comment only	6	6
Total	129	89

Consumer Credit Counselling Service – "If all advisers offering access to statutory debt relief are authorised, the Scottish Government should allow the adviser discretion to determine insolvency as is currently the case with the Certificate for Sequestration. We would be strongly in favour of the Scottish Government removing the requirement for evidence of apparent insolvency to access statutory debt relief and leave the route entirely in the hand of authorised money advisers."

Question 9.4 - Where money advice is provided should the authorised money adviser still certify that the individual cannot pay their debts as they become due?

	Total Responses	Organisations only
Yes	103	72
No	4	2
N/A	17	10
Comment only	5	5
Total	129	89

Wilson Andrews – "Yes; it is fundamentally important that only individuals who cannot reasonably service their debts access a debt remedy and so the adviser should certify this is the case to ensure debt avoidance isn't encouraged".

4.6 We anticipate that the requirement for the individual to have received appropriate advice may result in an increase in demand on authorised money advisors and may result in increased waiting times. Similar concerns were identified when the DAS was introduced. As a result the approved money adviser can intimate that an individual intends to apply for a debt payment programme to the DAS Administrator. This results in a moratorium period of 6 weeks[3] where creditors are unable to take any enforcement action. We, therefore, proposed to introduce a similar system of intimation and moratorium for bankruptcy which would be recorded on a public register that could be accessed by all interested parties.

Question 9.5 - Should a moratorium period be introduced for bankruptcy?

	Total Responses	Organisations only
Yes	66	48
No	47	29
N/A	13	9
Comment only	3	3
Total	129	89

Legal and Debt Solutions Ltd. – "It does not matter which remedy a debtors seeks, whether it be DAS or sequestration, or whatever – a moratorium should be generic."

Question 9.5a - If yes, what should the proposed moratorium period be?

	Total Responses	Organisations only
4 weeks	3	1
6 weeks	49	37
8 weeks	8	3
Other period, please specify	11	4
N/A	58	44
Total	129	89

Citizens Advice Scotland – "The moratorium period should be aligned with the 6 week period in the Debt Arrangement Scheme."

[3] http://www.legislation.gov.uk/ssi/2011/141/regulation/30/made

Question 9.6 - Should the individual only be able to access one moratorium period in a 12 month period?

	Total Responses	Organisations only
Yes	83	64
No	9	4
N/A	33	19
Comment only	4	2
Total	129	89

Wilson Andrews - "Yes – to ensure creditors are not unfairly prejudiced by individuals abusing the system."

Question 9.6a- If no, how many moratorium periods should the individual be allowed?

	Total Responses	Organisations only
2	8	6
3	0	0
4	0	0
Other period, please specify	4	2
N/A	117	81
Total	129	89

Question 9.7 - Where an individual intends to apply for bankruptcy, should information about the individual be displayed in a public register during the moratorium period?

	Total Responses	Organisations only
Yes	84	62
No	14	7
N/A	26	15
Comment only	5	5
Total	129	89

TDX Group Ltd – "We believe that providing this information on a central public register would assist creditors and their agents to cease collections activity."

Question 9.7a - If yes, should access to the information on the register be restricted to those parties that have an interest?

	Total Responses	Organisations only
Yes	34	25
No	53	40
N/A	39	23
Comment only	3	1
Total	129	89

Glasgow Credit Union – “Prospective lenders who are not already creditors must be able to see this information. We see no problem with listing in ROI since the moratorium is a prelude to bankruptcy”.

Summary

4.7 Respondents wanted options for applications other than by electronic means to be retained, with some money advisers citing internet access problems, which could leave some debtors unable to access bankruptcy applications. However, the majority also considered that an individual must submit proof that they have received advice, prior to an application being accepted. If mandatory advice is adopted as a precursor to bankruptcy, respondents indicated that there should be no requirement for an individual to prove apparent insolvency. Respondents were in favour of the authorised money adviser certifying that the individual cannot pay their debts as they become due as the ‘route in’ to debt relief.

4.8 With regard to moratoria, respondents were in favour of these. Where granted, respondents were very clear that there should be only one moratorium in any 12 month period, and it should be displayed in a public register with universal access, to provide protection for creditors.

5. Solutions for individuals

5.1 Individuals in Scotland currently benefit from the choice between the formal debt solutions of DAS, trust deeds (which may become protected) and bankruptcy; or they may make voluntary agreements with creditors which are outwith these statutory processes. Although advice may have been provided to the individual about which solution is best for their individual circumstances, this is not currently a requirement in all situations. This means that an individual may end up choosing a solution which is not the most appropriate option for their particular circumstances.

5.2 In line with the key principles of our vision, individuals who can pay their debts, should pay, securing the best return for creditors.

5.3 The following is an analysis of the questions asked relating to proposed changes to DAS, trust deeds and bankruptcy.

DAS

5.4 DAS is currently the only statutory debt payment process that allows individuals in Scotland to pay their creditors over an extended period, without the threat of debt enforcement, bankruptcy, or potential homelessness. DAS enables individuals to resolve serious debt problems in a dignified way. All interest and charges are frozen when the programme is approved and are written off provided the programme is completed. Creditors recover at least 90% of the debt that was owed to them at the commencement of the programme, if the programme is completed, without having to resort to legal remedies.

5.5 There is no maximum period for which a debt payment programme can last under DAS and we do not propose to change this. In 2011 the average period for an individual to repay their debts in full through a DAS debt payment programme is 8 years 4 months. Therefore, we proposed that if debts could be re-paid within 8 years (using an agreed common financial assessment tool that took into account the sustainability of the individual's contributions over the long term) that DAS would be the statutory option.

Question 10.1- Where it is assessed that an individual could repay their debts within a fixed period (such as 8 years), should DAS be the default option for the individual?

	Total Responses	Organisations only
Yes	37	29
No	76	46
N/A	11	9
Comment only	5	5
Total	129	89

Money Matters, North Ayrshire Council – "To maintain and succeed in repayment scheme debtors must be fully committed. Anything that removes individual choice as to how to manage their debts will reduce their chance of success."

Question 10.1a - If yes, should the period that is used be 8 years?

	Total Responses	Organisations only
Yes	25	24
No	34	20
N/A	62	37
Comment only	8	8
Total	129	89

Institute of Credit Management - “8 years should be the long stop period with shorter timescales being encouraged.”

Question 10.1b - If no, what should the period be?

	Total Responses	Organisations only
4 years	4	1
6 years	12	6
10 years	5	1
another period, please specify	24	18
N/A	84	63
Total	129	89

5.6 The majority of respondents who answered this question were in support of 6 years. Others felt that anything longer than that should be for the individual to decide based on their circumstances. MLM CPL Limited said “we do not believe in compulsion at all but we suggest that the maximum period should be aligned with contributions in bankruptcy and PTDs and therefore put forward a period of 5 years. If individuals choose to contribute over a longer period, that is acceptable as it is currently.”

5.7 Currently, the AiB takes 2% from each contribution to cover the costs of the application process. The AiB does not charge any other fees for the administration of the debt payment programme. We proposed to amend this current process and instead charge an up-front application fee which would be payable by the individual to AiB, as with bankruptcy.

Question 10.2 - Should the mechanism for charging for a DAS application be aligned to other statutory debt relief options and an up-front fee charged?

	Total Responses	Organisations only
Yes	40	26
No	49	27
N/A	17	16
Comment only	23	20
Total	129	89

CCCS – “No. Upfront fees can cause significant consumer detriment by preventing indebted consumer from accessing an appropriate debt solution.”

Armstrong Watson – “Introducing a fee for a DAS application would be in line with statutory debt relief options.”

Question 10.2a - If yes, what should the fee cover?

5.8 Most respondents were in favour of the fee covering the start-up costs, application process and initial administration costs. Alan McIntosh said "the fee should only cover the application process. We do, however, need to differentiate between free sector and private sector cases as the private sector do most of the application themselves at no expense to the public purse. I would suggest therefore for certain low income applicants there should be no fee and it should be tapered for others increasing with the level of contribution they can make. Having different fees for the private and public sector which reflects the work undertaken by the private sector will allow competition and will ensure the price of applying stays low and possibly lower than applying through the public sector."

Question 10.3 - Should AiB be able to charge any other fees for the administration of the debt payment programme?

	Total Responses	Organisations only
Yes	23	12
No	63	43
N/A	39	31
Comment only	4	3
Total	129	89

R3 – "The total cost for administration of the debt payment programme should be clearly set out at the outset."

Question 10.4 - Should another appeal or review process in DAS be created to allow an individual or creditor to appeal a decision made by the DAS Administrator?

	Total Responses	Organisations only
Yes	83	59
No	25	13
N/A	14	10
Comment only	7	7
Total	129	89

A responding organisation stated that they "support the proposal for the establishment of an additional appeals process to allow creditors to appeal a decision of the DAS administrator."

Stephen Cowan – "This will be particularly important in situations where creditors consider the currency of the programme is too long."

Question 10.4a - If yes, should these appeals be made to an independent panel?

	Total Responses	Organisations only
Yes	72	52
No	16	13
N/A	38	21
Comment only	3	3
Total	129	89

The City of Edinburgh Council – “This would make the process fairer and more transparent.”

Question 10.4b - If these appeals are not made to an independent panel, where should these appeals go?

5.9 The majority of respondents felt that the appeals should be heard at the Sheriff Court.

5.10 The DAS Regulations previously contained an option for composition, where the money adviser proposed this at the outset of the programme being considered. This was excluded from the 2011 Regulations due to low uptake. It was proposed to re-introduce composition into DAS where the debt payment programme has been running successfully for a fixed period (such as 12 years) and the individual has paid at least a fixed percentage (such as 70%) of their debt. This would allow for long term DAS debt payment programmes to be cut down.

Question 10.5 - Should the Debt Arrangement Scheme have an option of composition for individuals in DAS programmes?

	Total Responses	Organisations only
Yes	58	41
No	53	35
N/A	13	8
Comment only	5	5
Total	129	89

ICAS – “A distinction should exist between DAS and bankruptcy processes including Protected Trust Deeds. DAS is a process for those debtors who can repay their debts in full. It does not and should not offer debt relief.”

Question 10.5a - If yes, should composition only be available where the programme has successfully run for over a fixed period, for example 12 years?

	Total Responses	Organisations only
Yes	35	33
No	30	15
N/A	60	38
Comment only	4	3
Total	129	89

Credit Services Association – “The composition option should not be open to the individual as a consideration from the outset of the DAS as the scheme should not be looked upon as a way for an individual to clear or ‘write off’ a proportion of their debt. The option should only be offered to individuals after a detailed review of the account after a set period of time.”

Question 10.5b - If yes, what should that fixed period be?

	Total Responses	Organisations only
10 years	7	3
12 years	15	15
15 years	0	0
another period, please specify	11	9
N/A	96	62
Total	129	89

Rutherglen Credit Union Ltd. – "We are satisfied with the proposed 12 years, although the percentage of debt repaid and compliance with the DPP are greater considerations."

Question 10.6 - Should composition only be available where the individual in the programme has paid a fixed percentage of the debt due?

	Total Responses	Organisations only
Yes	46	33
No	30	20
N/A	41	26
Comment only	12	10
Total	129	89

PKF (UK) LLP – "This may lead to an automatic composition in each case"

Question 10.6a - If yes, what should that percentage be?

	Total Responses	Organisations only
50%	5	4
60%	1	1
70%	30	25
another percentage, please specify	11	6
N/A	82	53
Total	129	89

The Scottish Association of Law Centres – "The AiB should set down a minimum percentage leaving it to the debtor to seek discharge where the percentage has been met. It should be open to the AiB to refuse discharge if there is an indication that the debtor can afford to make a higher payment. Accordingly the percentage should not be too low. However, 50% would not be too low, and an even lower sum might be regarded by the AiB as appropriate in certain limited circumstances."

Question 10.7 - If composition was available, should this only be with the agreement of the creditors?

	Total Responses	Organisations only
Yes	77	49
No	20	14
N/A	29	24
Comment only	3	2
Total	129	89

Aberdeenshire Council – "Yes – a proposal should be sent to creditors to agree or disagree with a proposal and if creditors of sufficient number/based on the value of their debt agree then composition could be imposed. A bankruptcy settlement is imposed based on the assets/surplus income available so creditors should in some circumstances expect composition."

Question 10.7a - If no, should an automatic revocation of the outstanding balance be available where the individual has paid the agreed percentage?

5.11 The majority of respondents who answered this question felt that it was paramount that the creditors should be involved in the process. A private individual said "no, do not remove creditor involvement. This would remove any checks and balances from the system and give all power to the AiB or adjudicating officer, which cannot be acceptable in a supposed democratic society."

Stirling Council – "No because there are debtors who simply want to repay all their debt within the chosen solution."

Summary

5.12 The majority of respondents were not in favour of DAS being the default option where a debtor could pay their debts within 8 years. It was felt that 8 years was too long. For example, Armstrong Watson commented "We consider that the period for a DAS scheme should be approximately 6 years – it has to be fair and equitable. If a debtor is going to take 8 years to pay off a debt they should be offered debt relief to allow them to get on with their life."

5.13 Respondents were not in favour of an up-front fee being charged for DAS, or of AiB being able to charge any other fees for the administration of DAS. They were in favour, however, of an appeals process being set up for DAS, with appeals being considered by an independent panel.

5.14 With regard to composition, respondents agreed that composition should be available in DAS where the programme has run for a fixed period, a fixed percentage of the debt has been repaid, and creditors agree.

Protected Trust Deeds (PTDs)

5.15 Trust deeds are voluntary agreements between individuals and creditors. They convey the individual's right to their assets to a trustee. Through the sale of assets, and contributions from an individual's income, the trustee (after paying their costs of

administering the trust deed) will pay a dividend to creditors. The dividend may repay part or all of what the individual owes. Currently, a trust deed generally runs for a period of 3 years, although in some circumstances they exist for much longer.

5.16 A trust deed can become protected if a sufficient number of creditors either agree to the trust deed, or are deemed to have agreed to its terms. Once protected, the trust deed is binding on all creditors, who can then take no further action to pursue the debt owed, providing the individual complies with the terms of the trust deed. Upon completion of the trust deed, the individual is discharged from the debts included in the trust deed.

5.17 Currently there is no minimum or maximum debt level required for an individual to be eligible to grant a trust deed. The costs associated with the administration of a trust deed can, in some cases, appear to be disproportionate to the level of debt owed by the individual. This may be due to additional work undertaken by the trustee which was not foreseen at the time of the granting of the trust deed. Based on trust deeds protected during 2010/11 the average trustee's fees and outlays proposed by trustees was £5,600. Therefore, we proposed a number of changes to the way in which a protected trust deeds could become protected, including having a minimum debt, introduction of a minimum dividend and changes to the deemed protection criteria.

Question 10.8 - Should there be a minimum debt level for entry into a protected trust deed?

	Total Responses	Organisations only
Yes	58	43
No	52	32
N/A	16	12
Comment only	3	2
Total	129	89

Credit Services Association – "This would help prevent an individual from entering into a Trust Deed where the debt is low and there may be a means available to repay the debt."

Payplan Scotland Ltd. – "Each individual's circumstances is different, and cases should be treated individually. There may be cases where an individual with a low level of debt would benefit from a Trust Deed."

Question 10.8a - If yes, what should the level be?

	Total Responses	Organisations only
£3,000	13	7
£4,000	2	1
£5,000	12	4
another amount, please specify	34	32
N/A	68	45
Total	129	89

5.18 The majority of respondents specified £10,000 as an appropriate amount to be a minimum debt level for entry into a protected trust deed. R3 Scottish technical Committee

said “those who consider there should be a minimum level of debt suggest it could be up to £10k.”

5.19 Throughout the lifetime of a trust deed the costs and outlays associated with the administration can vary, which may result in a reduction of a dividend payable to creditors. The proposed dividend in the trust deed may sometimes not be realised due to difficulties in collecting the agreed contribution from the individual. A potential way considered to counter this was to have a statutory mechanism to collect these agreed contributions directly from the individual’s employer.

Question 10.9 - Where an individual is in employment, should provision be made for a statutory notice to be issued to their employer allowing the deduction of the agreed contribution direct from the individual’s salary?

	Total Responses	Organisations only
Yes	57	45
No	56	33
N/A	12	7
Comment only	4	4
Total	129	89

Morton Fraser – “Although we have answered yes, this answer is qualified. We take the view that issuing statutory notices to employers could have a detrimental effect on debtors, due to the natural embarrassment this could cause. We suggest that debtors be given the option to pay direct from their salary. If a debtor fails to honour this, then a statutory notice may be issued to the employer.”

A private individual stated that “this will assist payments and minimise administration costs, increasing the return to creditors, which maintains the flow of money around the market place.”

Question 10.9a - If yes, who should notify the employer?

5.20 The majority of respondents stated that the trustee should notify the employer. Michael MJ Reid stated that the “trustee or debtor, both will sign the form.”

5.21 Currently a trust deed does not require a minimum dividend to be paid to creditors in order to achieve protected status. Of the PTDs which closed in 2010/11, over a third failed to pay any dividend to ordinary creditors. Of the 64% which paid a dividend to creditors, the average dividend paid was 16.2p in the £.

5.22 In recent years some creditors have taken a greater interest in PTDs and have actively rejected the protection of trust deeds which propose a dividend of less than 10p in the £. To secure creditors’ interests, we proposed that in future all trust deeds must offer creditors a minimum dividend prior to the trust deed being eligible for protection. In line with the Key Principle that an individual who can pay should pay their debts and to improve returns to creditors, we suggested that the minimum dividend should be 50p in the £.

5.23 Furthermore to improve dividends to creditors, we proposed that a PTD have a fixed term of 5 years and the term of the PTD be linked to the delivery of the dividend originally proposed or to a minimum dividend. This would ensure that in cases where there are no

changes to the individual's circumstances, creditors would receive the dividends which were indicated at the commencement of the PTD.

Question 10.10 - Should there be a minimum dividend proposed in a trust deed for it to be eligible for protection?

	Total Responses	Organisations only
Yes	56	43
No	55	33
N/A	12	8
Comment only	6	5
Total	129	89

ABCUL – "ABCUL strongly believes there should be a minimum dividend proposed in a trust deed for it to be eligible for protection, and that this minimum should be 50p in the pound. We recognise that this proposal will meet with objections from many insolvency practitioners. However, credit unions have seen countless examples over the years of PTDs which are quite clearly of primary benefit to trustees who collect a very healthy profit at the expense of creditors who see next to nothing of the debt they are owed."

Insolvency Practitioners Association (IPA) – "Minimum dividend requirements were widely utilised by creditors in England and Wales and largely abandoned due to their adverse impact upon sustainability and success rates. A debtor's circumstances may change significantly over the course of a PTD."

Question 10.10a - If yes, is 50p in the £ an appropriate minimum amount?

	Total Responses	Organisations only
Yes	29	24
No	55	37
N/A	38	22
Comment only	7	6
Total	129	89

Grampian Credit Union – "In many cases, a PTD which pays less than 50p in the £ to creditors is nonetheless profitable for the trustee. It is wholly unacceptable for a trustee to claim the bulk of repayments for themselves. If a dividend of 50p in the £ cannot be realised, a PTD is not an appropriate solution."

Question 10.10b - If not 50p in the £, what would be an appropriate minimum amount?

	Total Responses	Organisations only
40p in the £	2	1
30p in the £	5	3
20p in the £	6	4
another amount, please specify	29	17
N/A	87	64
Total	129	89

5.24 The majority of respondents either suggested 10p in the pound or that no minimum amount should be specified. Armstrong Watson stated that "no amount should be specified. The outcome of the PTD discussions and consultation was a Trust Deed protocol which the market has effectively implemented. There is no advantage to being too prescriptive in a voluntary process."

Question 10.11 - Should there be a fixed term for completion of a protected trust deed?

	Total Responses	Organisations only
Yes	34	21
No	71	54
N/A	17	8
Comment only	7	6
Total	129	89

KPMG LLP – "The rate of return dictated by market/creditors will likely establish the length of the PTD. It should remain flexible between 3 and 5 years."

Question 10.11a - If yes, what should this period be?

	Total Responses	Organisations only
3 years	10	6
4 years	7	5
5 years	12	6
another period, please specify	11	10
N/A	89	62
Total	129	89

Question 10.12 - Should there be a link between the term of the protected trust deed and the delivery of the minimum dividend originally proposed?

	Total Responses	Organisations only
Yes	49	41
No	53	31
N/A	20	12
Comment only	7	5
Total	129	89

Payplan Scotland Ltd - “Trustees should be encouraged to extend the term of the Trust Deed where appropriate, to compensate for any missed payments by the debtor to the Trust Deed. This should help ensure that creditors received the dividend they originally signed up for.”

Renfrewshire Advice Works – “Provided IP’s charges are capped.”

5.25 At present, creditors do not have to give positive consent to a trust deed becoming protected. The creditors will be notified normally by post of the trust deed along with information about the individual’s circumstances, the proposed dividend and the anticipated fees and outlays. Based on this information the creditor will decide whether to object to the protection of the trust deed. Creditors have 5 weeks to respond.

5.26 Where a creditor does not state their objection to the trust deed becoming protected, they will be deemed to have acceded to its terms. The trust deed will become protected unless, within the relevant period, the trustee has received notification in writing from the majority in number or not less than one third in value of those creditors that they object to the trust deed.

5.27 Therefore, the consultation asked whether the current deemed consent process and associated thresholds required to be changed. We also asked that, if respondents considered that the current deemed consent process was no longer appropriate, what should replace it, with the aim of encouraging greater creditor engagement in the process.

Question 10.13 - Should the current process that deems consent to a trust deed becoming protected continue?

	Total Responses	Organisations only
Yes	85	53
No	23	22
N/A	17	10
Comment only	4	4
Total	129	89

Christians Against Poverty – “We believe that the current system allows creditors to consent to the protection of a trust deed where they would prefer the dividend to the alternative (bankruptcy).”

Question 10.13a - If yes, are the current thresholds correct?

	Total Responses	Organisations only
Yes	76	46
No	5	3
N/A	45	37
Comment only	3	3
Total	129	89

Question 10.13b - If the thresholds are not correct, what should they be?

5.28 The majority of respondents did not answer this question as they felt that the current thresholds for determining whether a trust deed should become protected are correct.

Money Advice Trust said “we see no reason to change the current thresholds. We appreciate that active objections by smaller creditors may not, in themselves, prevent the trust deed becoming protected. However, we believe that it is the majority voice (or deemed voice) of creditors that should continue to be a deciding factor in whether a trust deed becomes protected.”

Question 10.14 - If the current deemed consent process is not appropriate, what should replace it?

5.29 Again, the majority of respondents did not answer this question. Of those who did respond, most were in favour of a change to active creditor consent. A responding organisation stated that “there should be active consent. There should also be more onus on the proposer of the trust deed to ensure that creditors receive notice of the proposals. Sometimes the papers are issued to the wrong place, late or not at all. This process can mean that consent is deemed to have been given without a creditor having the opportunity to object to the trust deed.”

5.30 Normally, the individual will be discharged from the debt included in the PTD if they comply with the terms. If an individual refuses to comply with the terms of the PTD, the trustee can apply to make them bankrupt. However, this does not happen in all cases. Therefore, we propose to make this a mandatory step. Currently, the trustee can be discharged without discharging the individual, allowing the creditors to pursue the individual for the amount they are owed. If the individual cannot comply with the terms due to a change in their financial circumstances the trustee can still discharge the individual from their debts.

Question 10.15 - Where a trustee in a PTD applies to make an individual bankrupt as a result of their non-compliance, should the trustee in the bankruptcy take the non-compliance into consideration when agreeing the individual’s discharge from debt?

	Total Responses	Organisations only
Yes	76	53
No	29	21
N/A	17	9
Comment only	7	6
Total	129	89

Association of British Credit Unions Limited – “ABCUL believes a debtor’s behaviour should be an important factor in determining their treatment in debt relief, so non-compliance with a PTD should impact upon a debtor’s discharge and it should be mandatory that the trustee applies to make such a debtor bankrupt.”

Question 10.16 - If the PTD fails due to an individual's refusal to comply with the terms, should it be mandatory that the trustee applies to make the individual bankrupt?

	Total Responses	Organisations only
Yes	47	36
No	62	41
N/A	16	9
Comment only	4	3
Total	129	89

Nolans Solicitors – "There may be no means of paying for this except via the public purse so this mandatory step should not be introduced."

Summary

5.31 Respondents were in favour of a minimum debt level and a minimum dividend in protected trust deeds. The favoured minimum debt level was £10,000. Although 29 respondents were in favour of a 50p minimum dividend, with other respondents favouring 20p, 30p and 40p in the £. Additionally, 29 were also in favour of another amount outwith these values. Respondents were also split over the introduction of a link between the term and the delivery of the dividend agreed at outset, however, when the individuals were discounted, the organisations who responded were in favour. Respondents did not favour setting a fixed term for trust deeds, rather they thought a degree of flexibility should be retained in this debt relief option. Where an individual has wilfully not complied with their trust deed, rather than as a result of a change in circumstance, respondents agreed that this non compliance should be taken into account with regard to discharge from debt in a subsequent bankruptcy. They did not, however, believe that such a subsequent bankruptcy should be mandatory.

5.32 Respondents were in the main content that deemed consent should remain, and that the current thresholds for objection to the trust deed should stay at the current levels. If a trust deed fails due to the individual's non-compliance, respondents did not consider that it should be mandatory to make the non-compliant individual bankrupt.

Bankruptcy

5.33 We proposed to introduce new Scottish statutory debt relief criteria for individuals and to define a range of products within bankruptcy. In order to do this, we wanted to ensure that the key principles of the service - that individuals who can pay their debts should pay and the best return for creditors should be secured - were adhered to. Therefore, we intended that one of the defining features of the range of products within bankruptcy should be whether an individual can or cannot pay a contribution. We proposed that 'bankruptcy' should be split into different products subject to the individual's circumstances. For example, where an individual has previously traded, has been assessed as being unable to pay a contribution or is in receipt of social security benefits.

5.34 Subsequent to the proposal that individuals should seek money advice from an authorised money adviser prior to applying for debt relief or debt management, we suggested that the requirement for an individual to prove apparent insolvency would no longer be required. We proposed that should the apparent insolvency requirement be removed in respect of debtor applications, an individual should be required to demonstrate

to a money adviser that they were unable to pay their debts as they became due, as a mandatory part of the application process. Creditors would still have to prove that a debt was owed, for example, by demonstrating a decree and proof of expiry of charge for payment within the relevant period, when petitioning for an individual to be made bankrupt.

Question 10.17 - Should the requirement for an individual to prove apparent insolvency be removed as a route into bankruptcy?

	Total Responses	Organisations only
Yes	51	43
No	54	29
N/A	18	12
Comment only	6	5
Total	129	89

5.35 Some of those who answered no to this question, went on to advocate that apparent insolvency could be satisfied by the debtor demonstrating this to a money adviser through the certificate for sequestration process, or something akin to this process, or having to prove that there is no way that they can pay off their debt in a reasonable time and can not pay the debt as due. This could be done where application is made through a money adviser, or with a certificate provided by a money adviser.

5.36 Although figures are very evenly balanced between yes and no, where the figures for organisations only are used, this indicates greater support for the requirement for an individual to prove apparent insolvency to be removed. A responding organisation stated that "if it has the effect of forcing the debtor to seek advice before going down the route of formal bankruptcy it will bring it into line with other forms of debt relief."

> Insolvency Support Services Ltd. - "Threshold conditions are essential for entry to sequestration if there is to be control over when it is appropriate to apply for sequestration. Policy on ease of access to sequestration will determine the appropriate conditions or threshold. Although the Certificate of Sequestration already allows debtors without apparent insolvency to access bankruptcy, it does not cover a scenario where the debtor has an excess of liabilities over assets. Further, if creditors must constitute apparent insolvency as a pre-qualifying condition, it seems invidious to remove the right from the debtor to use apparent insolvency in the same way."

5.37 Currently the qualifying debt threshold required for an individual to be awarded bankruptcy, on a debtor application, is £1,500. The debt level for creditor petitions is currently £3,000.

5.38 Given the increase in consumer borrowing, and changing economic climate in the 18 years since the debt limit was set, this amount could be argued as being unrealistically low and in need of review.

Question 10.18 - Should the minimum debt threshold for an individual be increased?

	Total Responses	Organisations only
Yes	66	52
No	46	25
N/A	15	10
Comment only	2	2
Total	129	89

Money Advice Trust – "We believe that it should remain at £1,500. For clients who have debt levels of around £1,500, who live in rented accommodation and have few assets, bankruptcy can be a viable option for them. Such clients may be faced with little prospect of their income increasing in the future, for example due to disability, illness or caring responsibilities. If the debt threshold were to be increased, it would prevent such clients from considering the bankruptcy remedy and would limit their ability to deal with their debts effectively."

A private individual stated that "an individual can be insolvent no matter how low the level of debt. If they can't repay, they can't repay."

Question 10.18a - If yes, should this level be £3,000?

	Total Responses	Organisations only
Yes	42	25
No	33	31
N/A	46	26
Comment only	8	7
Total	129	89

MLM CPS Limited - "An individual is applying for bankruptcy based on the totality of his debts. Bankruptcy seems a draconian solution for such a relatively low level of debt, although for some people £3,000 may be impossible to repay."

Armstrong Watson – "This would align levels for debtor and creditor applications. There is concern, however, that an increase in the level would limit the choice for those with minimal debt."

Question 10.18b - If no, what should this level be?

	Total Responses	Organisations only
£1,500	17	12
£2,000	1	0
£5,000	17	16
another amount, please specify	3	3
N/A	91	58
Total	129	89

Office of the Scottish Charity Regulator – "OSCR strongly objects to a proposal to increase the minimum debt threshold for bankruptcy insofar as that threshold would apply to insolvent SCIOs."

Question 10.19 - Should there be different minimum debt thresholds for the different debt relief products?

	Total Responses	Organisations only
Yes	46	34
No	59	36
N/A	21	16
Comment only	3	3
Total	129	89

Citizens Advice Scotland – "The differing incomes of individuals seeking debt relief inevitably mean that some individuals will have a greater ability to repay than others. It is therefore logical that debtors with lower incomes – such as those accessing No Income or Low Income bankruptcy – should have a lower minimum debt level than those accessing DAS or a PTD."

Question 10.20 - Should the minimum debt threshold for an individual applying to become bankrupt be the same as that for creditors?

	Total Responses	Organisations only
Yes	65	47
No	42	25
N/A	17	12
Comment only	5	5
Total	129	89

MLM CPS Limited – "This is not necessarily logical. A creditor is pursuing a single debt but a debtor is applying based on the totality of his debts."

Question 10.21 - Should the minimum debt threshold for creditor petitions increase?

	Total Responses	Organisations only
Yes	43	34
No	63	38
N/A	19	13
Comment only	4	4
Total	129	89

Gordon MacLure - "No – It may encourage certain individuals to run up further debts without fear of bankruptcy."

Question 10.21a - If yes, what should that level be?

	Total Responses	Organisations only
£3,500	2	1
£5,000	30	27
£7,000	2	2
another amount, please specify	4	4
N/A	91	55
Total	129	89

Alan McIntosh – "The amount presently is too low and people can be sequestrated for trivial amounts."

Summary

5.39 The majority of respondent organisations agreed that apparent insolvency should be removed as a route into bankruptcy. A majority of individuals and organisations who responded also agreed that the minimum debt level for a debtor application for bankruptcy should be raised to £3000, in line with creditor's petitions. However there was support for different debt levels being introduced for different products. Respondents were not in favour of a rise in the minimum debt threshold for creditors' petitions.

No Income Product - bankruptcy:

5.40 We proposed to introduce a 'No Income' bankruptcy product for individuals whose only income is social security benefits (that is benefits paid by Department for Work and Pensions and not including any tax credits) and who have limited assets. Individuals would be discharged from this product, subject to their co-operation, after 6 months.

Question 10.22 - Should a new No Income product be developed for individuals who are assessed as being unable to make a contribution and who are in receipt of Social Security benefits only?

	Total Responses	Organisations only
Yes	49	30
No	22	13
N/A	20	18
Comment only	38	28
Total	129	89

5.41 The majority of those who gave a yes/no answer were in favour of this product. There were however several respondents who misunderstood the proposals for new bankruptcy products, and believed that the 'No Income' product was being proposed in addition to what was already available. Some respondents stated, for example: "No. There are existing products available and another one would simply overcomplicate the advice process unnecessarily." and "No I thought that we already had this in LILA." There were many amongst the 'Nos' who supported LILA, stating this was working, and made it clear that they did support a product to meet the needs of individuals who are mostly in the low income, low assets group.

BBA – “The BBA believes that a No Income product could be an appropriate insolvency solution for those only in receipt of benefits and with limited assets.”

Aberdeenshire Council – “Yes – as long as there are robust checks and balances.”

5.42 In summary, although there was confusion over this proposal, the majority of respondents were in favour of either this product or retention of a product for low income low asset debtors.

Question 10.23 - In order to access this product should the maximum level of assets be limited, for example to £2,000?

	Total Responses	Organisations only
Yes	54	42
No	22	13
N/A	46	27
Comment only	7	7
Total	129	89

Money Advice Trust – “We believe some limitations on the level of assets in this way for a ‘No Income’ product would be a sensible measure. This would ensure that only the most financially vulnerable debtors would be able to access this option.”

Question 10.23a - If yes, what should this maximum level of assets be?

	Total Responses	Organisations only
£1,000	4	1
£2,000	28	28
£5,000	8	3
Another amount, please specify	9	8
N/A	80	49
Total	129	89

The Royal Bank of Scotland – “Further analysis is required to understand what level of assets is being recorded for those debtors currently using the LILA bankruptcy route.”

Question 10.24 - Should an individual who owns heritable property be able to access this product?

	Total Responses	Organisations only
Yes	19	10
No	59	44
N/A	48	31
Comment only	3	4
Total	129	89

Citizens Advice Scotland – “This product should be limited to those with a low level of assets.”

Question 10.24a - If yes, should there be any restrictions on the value of the property or, perhaps, equity?

5.43 The majority of the respondents did not answer this question. Of those that did there was a general feeling that there should be no equity or less than £5,000 worth of equity in the property at the date of sequestration.

Question 10.25 - As the individual is in receipt of social security benefits only, should they be discharged after 6 months, where they co-operate with their trustee?

	Total Responses	Organisations only
Yes	44	34
No	50	29
N/A	31	22
Comment only	4	4
Total	129	89

ICAS – "One must not lose sight of the fact that circumstances may change and that additional information may come to light after the 6 month period. The system should encourage debtor responsibility whereas this proposal may lead to irresponsible borrowing by debtors who have no intention of repaying their debts."

Aberdeenshire Council – "As long as entitlement to qualifying benefits is continuous throughout the period and an entitlement is in place at the point of proposed discharge."

Question 10.25a - If no, what should the period be?

	Total Responses	Organisations only
9 months	0	0
12 months	37	20
18 months	0	0
Another period, please specify	4	4
N/A	88	65
Total	129	89

PKF (UK) LLP – "3 years on the basis the term is changed. This should be consistent throughout all potential bankruptcy products."

5.44 At present, there is no maximum debt threshold for individuals under any of the statutory debt relief mechanisms. In England and Wales, the Debt Relief Order[4] has a maximum debt limit of £15,000. Similarly, elsewhere in the world there are debt options which have a maximum debt level set.

5.45 We proposed that a maximum debt level of £17,000 be applied where an individual has 'No Income'.

[4] http://www.legislation.gov.uk/uksi/2009/457/contents/made

Question 10.26 - To be eligible to apply for a No Income product, should there be a maximum debt level?

	Total Responses	Organisations only
Yes	35	30
No	40	22
N/A	45	29
Comment only	9	8
Total	129	89

West Dunbartonshire CAB Service – "Having a maximum debt level does not change the fact that an individual has no income."

TDX Group Ltd – "A maximum debt level is likely not to be necessary. The No Income product will be provided to address specific debtor traits. We have not seen analysis in this area, but would expect that the debtor profile itself limited borrowing and therefore a limit is naturally set."

Question 10.26a - If yes, should the maximum debt level be £17,000?

	Total Responses	Organisations only
Yes	4	3
No	28	25
N/A	89	53
Comment only	8	8
Total	129	89

Citizens Advice Scotland – "We would be happy with this debt level, provided that the Last Resort bankruptcy is suitable for those with a high level of debt."

Question 10.26b - If no, what should the level be?

	Total Responses	Organisations only
£10,000	23	18
£15,000	5	5
£20,000	3	3
Another amount, please specify	12	3
N/A	86	60
Total	129	89

5.46 Of those respondents who answered this question, the majority felt that there should not be a maximum limit set.

5.47 At present, the legislation restricts an individual from applying for their own bankruptcy for a period of 5 years after the date of award. To prevent an individual from possibly regarding this debt relief solution as an 'easy option', we proposed that, for any subsequent applications for debt relief through No Income product, we would restrict access or delay discharge.

Question 10.27 - Where an individual has no income and is discharged after 6 months, should they be subject to a default credit restriction for a set period post discharge?

	Total Responses	Organisations only
Yes	52	39
No	36	21
N/A	33	25
Comment only	8	4
Total	129	89

Credit Services Association – "This may help to prevent the individual from entering back into financial difficulty and also may afford the creditor some protection in that they will not lend money until the individual is in a better position to be able to make repayment."

Question 10.27a - If a credit restriction is appropriate, what should the period be?

	Total Responses	Organisations only
3 months	2	2
6 months	10	10
12 months	34	26
another period, Please specify	17	9
N/A	66	42
Total	129	89

5.48 Of those respondents who answered this question the majority felt that the restriction should be 12 months subject to the particular circumstances of the case. Stephen Cowan stated that "the period should reflect the extent to which the debtor was capricious in using credit as opposed to debtors have without fault found themselves in difficult financial circumstances."

Money Advice Scotland – "It is important that individuals are able to start participating again in society, and to lengthen the period would inhibit that."

Question 10.28 - If a credit restriction is appropriate, should there be a specific value attached to this restriction, for example no credit over £3,000?

	Total Responses	Organisations only
Yes	47	36
No	18	12
N/A	54	32
Comment only	10	9
Total	129	89

Money Advice Scotland – "No credit over £1500."

Question 10.29 - Should the period for an individual to apply for a subsequent No Income product be extended?

	Total Responses	Organisations only
Yes	43	29
No	32	24
N/A	49	33
Comment only	5	3
Total	129	89

Glasgow Central Citizens Advice Bureau – “To prevent the product being abused.”

Question 10.29a - If yes, what should the period be?

	Total Responses	Organisations only
7 years	2	2
10 years	31	24
once in a lifetime	1	1
another period, please specify	13	9
N/A	82	53
Total	129	89

Drumchapel Credit Union – “With financial education provided, once in a lifetime may also be fair.”

ICAS – “5 years - This would be consistent with existing debtor application criteria.”

Question 10.30 - Where an individual has accessed debt relief through the No Income product once, should the individual’s discharge for any subsequent bankruptcy be delayed?

	Total Responses	Organisations only
Yes	54	39
No	26	14
N/A	40	28
Comment only	9	8
Total	129	89

Stirling Council – “However this should be closely linked to the effective delivery of financial education.”

Question 10.30a - If yes, what should the period be?

	Total Responses	Organisations only
1 year	3	2
2 years	4	2
3 years	35	31
another period, please specify	7	5
N/A	80	49
Total	129	89

Summary

5.49 Respondents were generally in favour of either the 'No Income' product as described, or a similar 'Low Income Low Asset' product. They were in favour of a limit to the maximum debt allowed for those accessing this product, and that those who own heritable property should not be able to access this product. Respondents were very much split on whether an individual in the 'No Income' product should be discharged after 6 months. Several stakeholders were concerned that with a 6 month discharge from a 'No Income' product, some individuals would give up work to take advantage of this product, have their debts written off and then go back to work once discharged.

5.50 Respondents were also in favour of a post discharge credit restriction.

Low Income Product - bankruptcy:

5.51 We proposed a new Low Income product where individuals have income other than solely welfare benefits, and have been assessed using the Common Financial Tool as being unable to make a contribution, if, for example, their income, including any benefits was equal to or less than the National Minimum Wage. Where an individual did not earn any income and they are not eligible for benefits, we proposed that they too would meet the Low Income criteria.

5.52 We suggested that to be eligible to access the Low Income product, individuals would have no single asset worth more than £1,000 (except a vehicle which is reasonably required and is valued at no more that £3,000) and that an individual's total assets would not exceed £10,000 (excluding the vehicle). Individuals with heritable property would not be able to access this product . The maximum level of unsecured debts would not exceed £30,000 and individuals would be discharged, subject to their co-operation, after 12 months.

Question 10.31 - Should a new Low Income product be developed for individuals who are assessed as unable to make a contribution?

	Total Responses	Organisations only
Yes	44	35
No	59	34
N/A	22	16
Comment only	4	4
Total	129	89

West Dunbartonshire Council Advice Service – “Some individuals who are working have less money than some people on benefits.”

PKF(UK) LLP – “This over engineering of the bankruptcy process is unnecessary.”

Question 10.32 - In order to access this Low Income product should the maximum level of assets be limited?

	Total Responses	Organisations only
Yes	50	37
No	15	10
N/A	54	32
Comment only	10	10
Total	129	89

MLM CPS Limited – “We consider that there is a risk that imposing thresholds which act as a precursor to entry to less rigorous regimes may incline individuals to understate the value of their assets, either inadvertently or intentionally. We believe that assets should be treated consistently within the sequestration process, being included or excluded on the same basis. If a no income/no asset product is introduced, individuals on contributory benefits who have no assets can access that solution. If they have assets, they should be dealt with in the same way as any other individual with assets bearing in mind that growing number of homeowners now find themselves in a position of low or negative equity. Why should the mere fact of property ownership mean you are subject to a bankruptcy regime which is different form that applied to a non home owner?”

Question 10.32a - If yes, what level should it be?

	Total Responses	Organisations only
£5,000	14	7
£7,000	0	0
£10,000	25	25
Another amount, please specify	6	4
N/A	84	53
Total	129	89

Citizens Advice Scotland – “The current limit of £10,000 in LILA would be the most suitable limit.”

Question 10.33 - As the individual in this product is not making any contributions should they be discharged after 12 months, where they co-operate with their trustee?

	Total Responses	Organisations only
Yes	63	44
No	18	11
N/A	41	27
Comment only	7	7
Total	129	89

Max Recovery – "There should be consistency of approach across all of the various processes. Clearly, if there is misconduct then this period should be extended."

Question 10.33a - If no, what should the period be?

	Total Responses	Organisations only
6 months	3	2
9 months	0	0
18 months	0	0
Another period, please specify	7	6
N/A	119	81
Total	129	89

5.53 Where an individual has heritable property they cannot currently access bankruptcy through the Low Income Low Asset criteria. This is the case even where an individual's heritable property has zero or negative equity or where an individual's property has been repossessed or voluntarily surrendered but not yet sold. In these circumstances although the heritable property cannot be practically regarded as an asset, ownership still prevents the individual from accessing bankruptcy through LILA.

Question 10.34 - Do you think that this product should be available to individuals who own heritable property?

	Total Responses	Organisations only
Yes	27	18
No	51	33
N/A	38	27
Comment only	13	11
Total	129	89

Citizens Advice Scotland – "No – This product should be limited to those with a low level of assets."

Question 10.34a - If yes, should this be restricted to properties that have been repossessed or have negative equity?

5.54 At present, there is no maximum debt threshold for individuals under any of the statutory debt relief mechanisms. Elsewhere in the world there are debt options which have a maximum debt level set. We proposed to restrict access to a Low Income product to those individuals with a maximum total unsecured debt of £30,000.

Question 10.35 - Should there be a maximum debt limit to access a Low Income product?

	Total Responses	Organisations only
Yes	36	28
No	43	25
N/A	41	30
Comment only	9	6
Total	129	89

Insolvency Practitioners Association – "A maximum debt level would ensure that entry into the process was limited to smaller cases, which appears to be the intention."

Question 10.35a - If yes, where should this maximum total unsecured debt limit be set?

	Total Responses	Organisations only
£20,000	24	22
£30,000	4	2
£50,000	0	0
another amount, please specify	5	1
N/A	96	64
Total	129	89

5.55 The majority of respondents who responded to this felt that this product was not required.

Last Resort Debt Relief - bankruptcy

5.56 Where an individual needed debt relief and could not access any other statutory debt relief product, we proposed they would be able to apply for bankruptcy of last resort. The individual would have to owe a minimum of £3,000.

5.57 Under these proposals, access would be available to individuals who were assessed, using the common financial tool, as being unable to make a contribution. The individual could however have assets, including heritable property and would be discharged from this product, subject to their co-operation, after a fixed period.

Question 10.36 - Where an individual needs debt relief and cannot access any other bankruptcy product, should they be able to access the last resort debt relief product?

	Total Responses	Organisations only
Yes	63	45
No	30	20
N/A	29	17
Comment only	7	7
Total	129	89

Nicola Birrell – "If bankruptcy reform is done correctly there is no need for an extra category."

Question 10.37 - Where the individual had previously been bankrupt or has accessed another statutory debt relief product within the previous 5 years, should their discharge period be extended?

	Total Responses	Organisations only
Yes	66	49
No	38	23
N/A	23	15
Comment only	2	2
Total	129	89

Credit Services Association – "If an individual has previously been made bankrupt, there must be a form of deterrent in place in order that the individual will consider entering into a further debt relief scheme more carefully. Should the discharge not be extended in this situation, it may create the circumstance in which an individual may use bankruptcy to continually discharge debts without appreciating the seriousness of the process."

Question 10.37a - If yes, what period should their discharge be?

	Total Responses	Organisations only
6 months	2	2
12 months	6	3
5 years	36	27
Another period, please specify	17	13
N/A	68	44
Total	129	89

East Renfrewshire Credit Union Ltd. – "The availability of debt relief must be protected from abuse."

Summary

5.58 The majority of respondents supported the concept of extending the discharge period for an individual who had previously accessed a debt relief option.

Payment Product – bankruptcy

5.59 For those individuals that can pay something towards their debts but can not repay their debts in full in 8 years, we proposed a product that provided a return for creditors by ingathering a regular payment from an individual's excess income, based on the common financial tool, over a fixed period of time.

5.60 We proposed that the Payment product would also be accessed where individuals had assets, including heritable property, that would vest in the trustee and could be sold for the benefit of creditors. These individuals would not have traded within the preceding 5 years and would not have debts exceeding £500,000. We proposed that both insolvency practitioners and the Accountant in Bankruptcy could be trustee in these cases.

Question 10.38 - Should a new Payment product be developed for individuals who are assessed as able to make a contribution?

	Total Responses	Organisations only
Yes	38	30
No	70	43
N/A	15	11
Comment only	6	5
Total	129	89

Dumbarton Credit Union – "This product would be a welcome development and appears preferable to PTDs for creditors."

R3 – "Current products are available for those who are able to make a contribution - sequestration and PTDs."

Question 10.39 - Should the Payment product be available to individuals who are currently trading or who have traded within the preceding 5 years?

	Total Responses	Organisations only
Yes	39	21
No	42	34
N/A	43	31
Comment only	5	3
Total	129	89

KPMG LLP – "Trading is a complex issue with significant risk to Trustee. Every case is different and we do not believe that it is possible to fix process or fees on this type of case."

Question 10.40 - Should this product be unavailable to individuals who have debts exceeding a fixed sum?

	Total Responses	Organisations only
Yes	33	26
No	33	18
N/A	51	34
Comment only	12	11
Total	129	89

A private individual stated that "the level of debt should not be relevant to the term of bankruptcy or the ability to access a specific product. The proposed changes will over complicate bankruptcy legislation."

Insolvency Support Services Ltd. – "Product not required."

Question 10.40a - If yes, what should this sum be?

	Total Responses	Organisations only
£250,000	6	3
£500,000	14	12
£750,000	0	0
Another amount, please specify	8	2
N/A	101	72
Total	129	89

5.61 The majority of respondents who answered this question felt that this product was not required.

Question 10.41 - Do you think the contribution should be for a fixed period?

	Total Responses	Organisations only
Yes	61	40
No	5	2
N/A	55	39
Comment only	8	8
Total	129	89

MLM CPS – "Debtors and creditors require certainty. We would not wish to see a situation where a debtor could be required to contribute for an indefinite period. This would be a retrograde step."

Question 10.41a- If yes, for what period?

	Total Responses	Organisations only
3 years	27	13
4 years	1	1
5 years	32	27
Another period, please specify	5	3
N/A	64	45
Total	129	89

5.62 The majority of respondents who answered this question felt that this product was not required. A private individual stated that "this has to be case to case bases, the reason for the debt and the ability for the debtor to be able to make a payment for a period which will not affect the business."

Question 10.42 - Where monies have been ingathered, should creditors receive regular dividend payments?

	Total Responses	Organisations only
Yes	84	59
No	5	2
N/A	33	23
Comment only	7	5
Total	129	89

Armstrong Watson – “Funds should be distributed to creditors as soon as it is practical to do so, taking into account the cost of so doing. It may not be cost effective to pay dividends at regular intervals. What can be considered is the timing of the first dividend.”

Question 10.42a - If yes, at what intervals?

	Total Responses	Organisations only
Quarterly	26	20
6 monthly	12	10
Annually	26	10
Another period, please specify	17	13
N/A	48	36
Total	129	89

Robert Barclay – “When deemed appropriate in circumstances.”

5.63 There was support for creditors to receive regular dividend payments. The view was that this should be done as soon as practical, but there was no consensus on the intervals of payment.

Question 10.43 - Should both IPs and the Accountant in Bankruptcy be the trustee in Payment product cases?

	Total Responses	Organisations only
Yes	58	40
No	25	14
N/A	41	31
Comment only	5	4
Total	129	89

A responding organisation stated that “if such a product is introduced insolvency practitioners should act as trustees. The Accountant in Bankruptcy should only be eligible to act if no insolvency practitioner consents to act.”

Question 10.44 - For clarity for applicants and creditors, should there be a fixed charge for administering this product?

	Total Responses	Organisations only
Yes	45	36
No	36	19
N/A	40	28
Comment only	8	6
Total	129	89

ABCUL – “There must be a fixed fee and no potential for abuse as seen with PTDs.”

Question 10.45 - If the monies ingathered are insufficient to pay a dividend to creditors, should the individual's discharge be deferred until the costs of the administration of the bankruptcy are met?

	Total Responses	Organisations only
Yes	41	29
No	56	39
N/A	29	19
Comment only	3	2
Total	129	89

Alan Stewart – "Defeats Entrepreneurial Spirit."

Wilson Andrews – "This would be unfair to those individuals whose circumstances deteriorate through no fault of their own during their bankruptcy. Discharge could be delayed for a very considerable and uncertain period of time. This would seem a draconian step back to the 1913 Act where debtors didn't get discharged until they had paid."

Summary

5.64 The majority of respondents felt that a payment product was not required. However, there was support for more regular dividend payments to creditors where funds were available

High Value Product - bankruptcy

5.65 Currently where an individual needs debt relief and does not qualify under another statutory debt relief product they may be able to apply for their own bankruptcy regardless of the amount of debt run up.

5.66 The administration of cases with high level of debts can result in more time being spent investigating how the debt was incurred. The trustee will also investigate what has happened to any assets and potentially carry out an audit of the business accounts, where available, to ascertain if the business is still viable.

5.67 We proposed that a High Value product should be introduced for use where an individual was currently trading or had traded in the past five years, or where an individual had unsecured debts in excess of £500,000. Insolvent entities, such as trusts and Scottish Charitable Incorporated Organisations[5] would be able to access debt relief through the High Value product.

[5] http://www.oscr.org.uk/about-scottish-charities/scio/

Question 10.46 - Should a new High Value product be developed for individuals who are currently trading or have traded in the past 5 years or who have debts in excess of a fixed amount?

	Total Responses	Organisations only
Yes	39	30
No	62	39
N/A	22	15
Comment only	6	5
Total	129	89

MLM CPS Ltd – "There should be consistent treatment of income and assets in ALL cases of bankruptcy…It is not clear what the high value product is intended to deliver here. Either they can contribute or they can't. Either they have assets or they don't. If there is nothing to fund the case, then what is being proposed here."

Question 10.46a - If yes, what should this fixed amount be?

	Total Responses	Organisations only
£250,000	7	4
£500,000	14	14
£750,000	0	0
Another amount, please specify	8	6
N/A	100	65
Total	129	89

Question 10.47 - Where the common financial tool assesses that a contribution should be made, should this be for a fixed period?

	Total Responses	Organisations only
Yes	68	44
No	18	12
N/A	37	27
Comment only	6	6
Total	129	89

A private individual stated that "the debtor needs certainty about what commitment is required. It should be for a fixed term, provided the debtor meets all payments as they become due."

Question 10.47a - If yes, for what period?

	Total Responses	Organisations only
3 years	33	19
4 years	3	0
5 years	28	23
Another period, please specify	7	6
N/A	58	41
Total	129	89

Campbell Dallas LLP – “Will be dependant on the individual circumstances.”

Question 10.48 - If the monies ingathered are insufficient to pay a dividend to creditors, should the individual’s discharge be deferred until the costs of the administration of the bankruptcy are met?

	Total Responses	Organisations only
Yes	35	25
No	53	34
N/A	35	24
Comment only	6	6
Total	129	89

A responding organisation stated that “this would suggest/indicate that this was the incorrect debt relief product and the wrong advice given. The decision to proceed with any form of statutory programme should depend upon individual circumstances and an assessment as to whether or not this is the right solution for the debtor based upon – level of debt, ability to repay fees, as well as an appropriate return to creditors.”

5.68 We proposed to create a range of bankruptcy products, suggesting that there should be a mechanism to transfer an individual from one product to another in a simple way. This would ensure that the individual was in the most suitable and cost effective product based on their circumstances.

Question 10.49 - Should there be a mechanism to transfer an individual from one bankruptcy product to another?

	Total Responses	Organisations only
Yes	60	43
No	39	23
N/A	26	19
Comment only	4	4
Total	129	89

Stirling Council – “This should be undertaken only in conjunction with the continuing money adviser.”

PKF (UK) LLP – “This would be unworkable and is a case of ‘moving goal posts’ for the debtor/creditors.”

Summary

5.69 Respondents were by and large against the development of a variety of different products for bankruptcy, with general concerns about the potential complexity of a system incorporating these products and about the ‘over engineering’ of bankruptcy. They were, however, in favour of a mechanism to transfer an individual from one bankruptcy product to another, to ensure that the individual was in the most suitable and cost effective product based on their circumstances.

6. Solution for Sole Traders and Partnerships

6.1 We proposed that a new Business DAS be developed for viable businesses. This product would be for sole traders and partnerships for their business debt only, which would be separated out from individual consumer debt. Similar to the current DAS system a moratorium period would be available. We intended that this product would only be available where the business is viable and where it may have disposable assets that can be turned readily into money in the short to medium term.

6.2 The following is an analysis of the questions asked relating to a solution for sole traders and partnerships.

Question 11.1 - Should a new Business DAS be developed for sole traders and non-limited liability partnerships where the business is assessed as viable?

	Total Responses	Organisations only
Yes	60	40
No	45	29
N/A	19	15
Comment only	5	5
Total	129	89

Society of Messenger-at-Arms and Sheriff Officers (SMASO) – “In our view the existing provisions work satisfactorily and we are not convinced that there is a need for a new "business DAS product"

Scottish Council on Deafness – “All support for sole traders and non-limited liability partnerships must be accessible, especially for Deaf, Deafblind and Deafened people. All meetings about debts and bankruptcy must have appropriate professional registered communication support provided if the individual/people involved require this, for example, the sole trader is a Deaf Sign Language user, then an Interpreter should be provided by the advisory organisation/business/agency.”

Question 11.2 - Should Business DAS exclude non-business debts?

	Total Responses	Organisations only
Yes	45	31
No	39	25
N/A	40	28
Comment only	5	5
Total	129	89

Money Advice Scotland – “Clients with businesses are presently using DAS as an option, and it is important that individuals are able to deal with all of their debts, especially as often the business debts are inter-woven with personal and household debts.”

Alan Adie – “DAS already does this for sole traders.”

Question 11.3 - Prior to entering Business DAS, should business advice be compulsory?

	Total Responses	Organisations only
Yes	64	42
No	15	12
N/A	45	30
Comment only	5	5
Total	129	89

Federation of Small Businesses – "If a business DAS were to be introduced, compulsory business advice would be consistent with the arrangements for the existing DAS"

Nicola Birrell – "An individual needs to know that the DAS will be viable and that they will still be able to generate enough income to continue trading despite the DAS. Otherwise they may be better looking at winding up the business and looking at insolvency or a personal DAS."

Question 11.3a - If yes, who should provide that advice?

6.3 Of those respondents who answered this question, the Money Advice Service, Business Gateway, Scottish Enterprise and R3 members were suggested.

Question 11.4 - Should debt relief or composition be incorporated into the Business DAS and agreed with creditors at the proposal stage?

	Total Responses	Organisations only
Yes	49	36
No	32	21
N/A	45	29
Comment only	3	3
Total	129	89

Money Advice Scotland – "Where creditors can agree. However, if some of the creditors are also small businesses it may be difficult to achieve."

Summary

6.4 There was support for a new Business DAS to be developed where the business was assessed as being viable. Respondents indicated that where possible the Business DAS should exclude non-business debts and that prior to entering Business DAS, advice should be provided from Business Gateway, Insolvency Practitioners, Scottish Enterprise or the Money Advice Service. There was also support for composition to be incorporated in Business DAS.

7. Removal of non-contentious Creditor Petitions from Court

7.1 We proposed that the courts are removed from non-contentious creditor and trustee in a trust deed petitions for bankruptcy. At present, there is significant duplication of effort between two public sector organisations: the courts[6] and AiB. We considered that the removal of the courts from routine, uncontested procedures would minimise duplication and assist with our aims of effective government and equity.

7.2 The following is an analysis of the questions asked relating to removing non-contentious creditor petitions from the courts.

Question 12.1 - Should all creditor bankruptcy applications to make an individual bankrupt be submitted to the AiB?

	Total Responses	Organisations only
Yes	47	33
No	65	47
N/A	14	8
Comment only	3	1
Total	129	89

West Dunbartonshire Council Advice Service - "Should be able to access the courts for right to reply and in the interest of natural justice."

7.3 A responding organisation stated that their "experience is that many debtors appear at court and we do not agree the suggested process will be less cumbersome or time consuming. On the contrary, the proposal builds an extra step in the process by requiring the debtor to contact the Accountant in Bankruptcy about contesting the petition before any court hearing is fixed. The consultation says nothing about the proposed timetable for setting the court hearing and any further delay may simply afford debtors an opportunity to remove assets."

Question 12.1a - If no, should only non-contested creditor applications be considered for award by AiB?

	Total Responses	Organisations only
Yes	26	15
No	36	26
N/A	58	41
Comment only	9	7
Total	129	89

R3 – "It is impossible to determine prior to the application being considered, whether an application will be contested. Creditor applications by their very nature are contentious in that a debt due has not been paid. If application were made to the AiB and then referred to the Court, this would lead to delay, duplication and cost. Petitions at the instance of creditors, which can have far reaching effects and fundamentally impact on an individual's rights must be considered by the Courts to ensure such applications are given detailed consideration at an appropriate level of

[6] http://www.scotcourts.gov.uk/

expertise. Removing creditor petitions from the Court would result in a loss of the expertise and knowledge of the Courts and the Sheriff Clerks."

Question 12.2 - Where an application is submitted to AiB and the individual contests this, who should submit the application to the Sheriff Court for consideration?

7.4 The majority of respondents felt that AiB should submit the application to the Sheriff Court for consideration. Credit Service Association said "in order to create fairness and an open system, perhaps the individual, the Creditor and the AIB should have the right to be able to take a contested application to the Court. If this was to be the case, perhaps the guidelines as to when an appeal can be brought should be clearly laid down and further, the guidelines may differ according to the party bringing the appeal. For example, it may be the case that a Creditor could appeal on the grounds that they were not correctly served with the papers."

Question 12.3 - Where a creditor notifies an individual of their intention to make them bankrupt, what should the minimum period be that the creditor must wait before submitting the bankruptcy application to AiB?

	Total Responses	Organisations only
14 days	38	29
21 days	14	10
28 days	19	13
Another period, please specify	7	5
N/A	51	32
Total	129	89

1st Alliance (Ayrshire) Credit Union – "This is a reasonable period for the debtor to seek a resolution or to contest."

Morton Fraser – "There should be no minimum period, as this gives debtors an opportunity to dissipate assets."

7.5 The current process to bankrupt the estate of an insolvent deceased individual is by petition of an executor, or a person entitled to be appointed as executor, to the court. We proposed to change the process for making an insolvent deceased individual's estate bankrupt, by requiring an application to AiB by the executor.

Question 12.4 - Should the process of an executor petitioning to bankrupt the estate of an insolvent deceased individual be removed from the court, and replaced with an application to the AiB?

	Total Responses	Organisations only
Yes	57	39
No	39	27
N/A	25	15
Comment only	8	8
Total	129	89

Money Advice Scotland – "This should make for removing costs and dealing with the matter quicker."

A responding organisation stated that they “can see some merit in this in that it may be putting an executor’s petition on the same footing as a debtor petition. However there may be questions more appropriate for the court to consider before sequestration is awarded.”

Summary

7.6 There was some support for AiB to receive creditor applications for an individual’s bankruptcy, however, a greater number of respondents felt that creditors should continue to petition the court. The majority of respondents agreed that AiB should deal with applications for bankruptcy from executors of insolvent deceased individuals.

8. Debtor co-operation

8.1 Currently, there are situations in which individuals in bankruptcy choose not to co-operate with their trustee. In such situations, the process for delaying their discharge requires an application to be made to the sheriff by the trustee or a creditor within 9 months of the date of sequestration. This is not always practical and may result in an individual receiving their discharge automatically.

8.2 In the future, we propose that co-operation of an individual is more closely linked to their discharge. We propose that AiB will have the power to defer access to debt relief, where we or the trustee (if not the AiB) considers it appropriate, without the need to apply to a sheriff, by deferring discharge where an individual has not co-operated.

8.3 The following is an analysis of the questions asked relating to the co-operation of the debtor.

Question 13.1- Should the co-operation of a bankrupt individual be linked to discharge?

	Total Responses	Organisations only
Yes	103	71
No	9	7
N/A	13	8
Comment only	4	3
Total	129	89

Money Advice Trust – "Yes, but this needs to be done in an intelligent way so that the reasons for non-cooperation are uncovered and taken into account…"

Question 13.2 - If an individual has not co-operated, should there be a maximum period that discharge could be deferred?

	Total Responses	Organisations only
1 year	2	2
3 years	16	4
5 years	23	15
Another period, please specify	56	45
N/A	32	23
Total	129	89

Credit Services Association – "No. It may be beneficial not to have a maximum period as this may create a culture by where it is thought that even if the individual does not cooperate, that they will still be discharged after a certain amount of time and thus cooperation may not be forthcoming."

Question 13.3 - Where an individual cannot be located should discharge be deferred indefinitely?

	Total Responses	Organisations only
Yes	58	48
No	48	24
N/A	21	15
Comment only	2	2
Total	129	89

A private individual stated that "there needs to be a distinction between someone who can't be located and someone who blatantly proves uncooperative. Where a debtor can't be located there should be a summary administration process to limit reporting obligations."

ICAS – "Just because an individual cannot be located does not indicate that he would not co-operate. Consideration has to be given to whether the Trustee has been able to deal with the estate effectively for the benefit of the creditors. Each case has to be considered on its own merits."

Question 13.3a - If no, what period should the deferral of discharge be?

	Total Responses	Organisations only
1 year	0	0
3 years	11	3
5 years	13	7
Another period, please specify	12	8
N/A	93	71
Total	129	89

A responding organisation stated that "in addition to having a maximum period there should be an option that any period will be deferred for a year from the time the debtor makes himself known to the Trustee."

Question 13.4 - Should the AiB have the power to defer discharge where an individual has not co-operated, without the need to refer the case to a sheriff?

	Total Responses	Organisations only
Yes	66	46
No	44	28
N/A	17	13
Comment only	2	2
Total	129	89

Campbell Dallas – "However criteria would have to be laid down in legislation with an appeal process to the court."

White Cart Credit Union – "Deferred discharge in these cases should be the default and not the exception."

Question 13.5 - Who should provide an appeals process?

	Total Responses	Organisations only
The Sheriff Court	59	39
An independent tribunal	37	25
AiB's Policy and Cases Committee	6	1
Other, please specify	4	1
N/A	23	23
Total	129	89

Margaret Shields – "An independent tribunal made up from money advice sector."

Summary

8.4 There was significant support for the individual's discharge to be subject to co-operation with their trustee. Where an individual cannot be located, respondents indicated that their discharge should be deferred indefinitely. There was also support for AiB to have the power to defer discharge without referring the case to a sheriff.

Treatment of debt

8.5 Elsewhere in the world, where an individual has incurred a single debt in excess of £1,000, in the 90 days prior to them becoming bankrupt, these debts are not included in bankruptcy and not written-off. These excluded debts tend to be for non-essential luxury items or can be where the individual had no intention to repay. We proposed that the statutory debt relief products available in Scotland should incorporate a similar exemption alongside the consideration of a Bankruptcy Restriction Undertaking or Order. This would mean that the individual would still be liable to repay these debts after their discharge.

8.6 The following is an analysis of the questions asked relating to the treatment of debt.

Question 13.6 - Should other types of unsecured debts be excluded from the discharge?

	Total Responses	Organisations only
Yes	40	34
No	68	40
N/A	19	13
Comment only	2	2
Total	129	89

Alan McIntosh – "This is a slippery slope and extending the list of excluded debts will only dilute the effectiveness of the remedy. We should examine the method we deal with claims and defer any dividend being paid on interest until the capital amount remaining on the debt is paid in full. This will mean treating creditors fairly and not equally."

Question 13.6a - If yes, what other types of unsecured debts should not be discharged and your reasons why?

8.7 Most respondents who answered this question suggested credit union debts, large debts incurred within a short period prior to bankruptcy and child support maintenance arrears. Alan Adie stated that the "debts incurred for non essential items within a short period before the date of sequestration."

Institute of Credit Management - "Any debt, including trading debt where it can be shown debtor was aware it was unlikely the debt would be paid."

Question 13.7 - Where an individual has incurred a debt within a specified period prior to their application for bankruptcy or the granting of a trust deed, should this debt be excluded from discharge?

	Total Responses	Organisations only
Yes	60	44
No	45	24
N/A	20	17
Comment only	4	4
Total	129	89

West Dunbartonshire Council Advice Service – "Could be viewed as a fraudulent application for debt."

Question 13.7a - If yes, should this be limited to debts for non-essential, luxury items or where it is proven that the individual had no intention to repay?

8.8 The majority of respondents suggested that it should include debts which were incurred in the knowledge that they probably would not be repaid. Credit Services Association said "no, this may cause a grey area by where there could perhaps be an argument over which items are to be considered 'non essential'. For the purpose of a non specific loan, it may be difficult for a party to prove what the credit was used for."

Question 13.8 - Where an individual has incurred a debt within a specified period prior to their application for bankruptcy or the granting of a trust deed and it is agreed that this debt will be excluded from discharge, what should the specified period be?

	Total Responses	Organisations only
4 weeks	9	7
8 weeks	7	3
12 weeks	42	35
Another period, please specify	16	10
N/A	55	34
Total	129	89

Stephen Cowan – "16 weeks. However this period should be longer where it can be shown there was an intention to grant a gratuitous alienation or other preference."

Summary

8.9 The majority of respondents did not support the exclusion of other types of unsecured debts from discharge. There was, however, support for the exclusion from discharge of debts that were incurred within 12 weeks of a debtor application or the granting of a trust deed.

The treatment of Child Maintenance Debts

8.10 Currently, in Scotland, arrears of child maintenance are included in a bankruptcy and any unpaid balance will be written off when the individual is discharged. The Child Maintenance and Enforcement Commission (CMEC)[7] believe that this disadvantages Scottish children whose parents live apart. Therefore they would like arrears of child support maintenance to survive the discharge of bankruptcy in Scotland as they do in England and Wales. They would also like this to apply to PTDs.

8.11 The following is an analysis of the question asked relating to how arrears of child maintenance debt should be treated.

Question 13.9 - Should the child maintenance arrears continue to be claimable and to be discharged in bankruptcies and protected trust deeds when the individual is discharged?

	Total Responses	Organisations only
Yes	64	39
No	40	32
N/A	21	14
Comment only	4	4
Total	129	89

Fife Council Money Advice Service – "CSA needs to be reviewed to stop arrears occurring"

[7] http://childmaintenance.org/

Citizens Advice Scotland – "We believe that bankruptcy should be a clean slate for individuals to get them back on their feet. Bankruptcy should be used as an opportunity to get back on track with child maintenance payments."

A responding organisation stated that "child maintenance arrears being for the benefit of the welfare of children should be claimable in a sequestration but not discharged on discharge of sequestration."

Summary

8.12 The majority of respondents agreed that child maintenance arrears should continue to be claimable and be discharged in bankruptcy and protected trust deeds.

The treatment of Credit Union Debts

8.13 Currently in Scotland, credit union debts are included in bankruptcies and PTDs and any unpaid balance will be written off when the individual is discharged. There are concerns that the effect of debts discharged in PTDs and bankruptcy could have adverse effects on the viability of credit unions. It has been suggested that credit unions could be afforded special protection from debt write-off. This is because of the low interest charged by credit unions meaning that they are more likely to be impacted by unpaid debt than high interest lenders, as they must lend considerable sums to recoup their loses.

8.14 The following is an analysis of the questions asked relating to how credit union debts should be treated in bankruptcy and protected trust deeds.

Question 13.10 - Should credit union debts continue to be discharged in bankruptcies and protected trust deeds when the individual is discharged?

	Total Responses	Organisations only
Yes	71	45
No	34	28
N/A	22	14
Comment only	2	2
Total	129	89

Max Recovery – "Whilst it is unfortunate and we can see that it is difficult for credit unions, we do not see that there is any case for their debt to be treated any differently than other creditors. We are very uneasy about erosion of the two principles of relief from debt and the pari passu distribution of the estate."

Geraldine Gray – "Credit unions debts should not be written off in bankruptcy, as many credit unions would be unable to survive."

Consumer Credit Association – "We strongly disagree with the suggestion that credit union debts should be excluded from bankruptcies… this would make credit union loans less attractive to consumers (because they could never be written off)."

Question 13.11 - Should only credit union debts that were incurred by the individual within a specified period prior to them entering bankruptcy or granting a trust deed be excluded from discharge?

	Total Responses	Organisations only
Yes	20	12
No	76	53
N/A	30	21
Comment only	3	3
Total	129	89

Macgregors Chartered Accountants – “Preferred status not justified.”

A private individual stated that “an unsecured debt is an unsecured debt. Commercial lenders take a risk based approach to lending, Credit Unions should not be treated any differently.”

Question 13.11a - If yes, how long should this specified period be?

	Total Responses	Organisations only
4 weeks	3	1
8 weeks	3	1
12 weeks	13	7
Another period, please specify	7	4
N/A	103	76
Total	129	89

8.15 The majority of respondents who commented at this question suggested that the specified period should be either 6 months or 12 months.

Summary

8.16 The majority of respondents agreed that credit union debts should continue to be discharged in bankruptcy and protected trust deeds. In addition, they were not in support of credit union debts incurred in the immediate period before bankruptcy or granting a trust deed being excluded.

9. Modernisation of legislation

9.1 The following is an analysis of the questions asked relating to modernising the legislation, including the consolidation of the Bankruptcy Acts, timeframe for creditor claims and the recall process and other subjects relating to modernisation.

Consolidating Legislation

9.2 As part of the modernisation programme, the Scottish Law Commission issued a consultation paper on the Consolidation of Bankruptcy Legislation in Scotland in August 2011[8]. The primary aim of consolidation is to bring earlier enactments on a given subject matter into one statute, making the law more accessible both to practitioners and to those affected by it. Due to the many pieces of legislation relating to bankruptcy, consolidation was proposed, with the intention of presenting a consolidation Bill soon after the programme Bill. This would allow for the modernisation and consolidation to be brought into force together.

Question 14.1 - Where material policy changes are identified by the Scottish Law Commission as part of their consultation on bankruptcy consolidation, should any recommendation they make regarding these be incorporated where appropriate?

	Total Responses	Organisations only
Yes	74	50
No	20	15
N/A	29	19
Comment only	6	5
Total	129	89

A responding organisation stated that “general modernisation and update of the Bankruptcy legislation is wholly desirable.”

Institute of Credit Management – “It would be sensible if these could be incorporated in a single Act of the Scottish Parliament.”

Question 14.2 - Do you agree that a consolidation Bill follow the programme Bill through Parliament?

	Total Responses	Organisations only
Yes	91	65
No	8	5
N/A	27	16
Comment only	3	3
Total	129	89

William White – “SCS supports the modernisation and consolidation of bankruptcy legislation into one Bill as this would simplify court processing and training for SCS staff.”

[8] http://www.scotlawcom.gov.uk/news/making-bankruptcy-law-accessible/

Money Advice Scotland – "We would welcome a Consolidated Act in the future as it makes for better law, and for easier interpretation of the will of parliament, without the need to refer to so many different pieces of legislation, as at present."

Summary

9.3 The majority of respondents supported the incorporation of policy changes identified by the Scottish Law Commission and agreed that the consolidated Bill should follow the programme Bill.

Timeframe for Creditor claims

9.4 Trustees need to know the exact amount of debt that the individual owes in order to calculate the dividend due to each creditor and the amount to be ingathered from the individual's estate. At present there are varying timescales for the submission of creditor claims dependent on the debt relief product. Any delay in receiving a claim can impact on the calculation of dividends. If the evidence of debt claimed shows a different figure to that initially provided by the individual then a recalculation of a dividend would be required. This may mean that the trustee does not have the full information on which to base any decisions, such as whether to sell assets.

9.5 We, therefore, proposed that all statutory debt relief products should have the same requirement for creditors to submit a claim by a specified time.

Question 14.3 - Should creditors be required to submit a claim within a specified timescale?

	Total Responses	Organisations only
Yes	98	70
No	8	5
N/A	21	12
Comment only	2	2
Total	129	89

Carrington Dean Group Limited – "For 20 years at least lenders have claimed they do not have sufficient time to provide claims or evidence of debt within a reasonable period yet they have spent millions installing sophisticated IT systems."

Question 14.3a - If yes, what should this timescale be?

	Total Responses	Organisations only
60 days	17	8
90 days	10	4
120 days	53	45
Another period, please specify	11	9
N/A	38	23
Total	129	89

Question 14.3b - If the creditor does not submit a claim within the agreed timescale, what should the penalty be?

Scott - Moncrieff - "Unable to rank for dividend purposes"

Scottish Transport Credit Union Ltd. – "If the creditor was not contacted by the trustee, there should be no penalty. If the creditor failed to respond, it is reasonable that they forfeit a dividend. However, there must be a mechanism for appeals in such cases."

Summary

9.6 There was substantial support for the proposal that creditors should have to submit a claim within 120 days of notification of an individual's bankruptcy.

Habitual Residence

9.7 The purpose of the habitual residence test is to ensure that persons from other nations do not actively take up residence in the UK with the sole aim of accessing debt relief.

9.8 Currently, the Bankruptcy (Scotland) Act 1985, as amended, states that an individual has to be habitually resident at the relevant time in order to gain the right to apply for bankruptcy. When deciding if an individual is habitually resident, consideration is given to their personal circumstances such as where the individual's 'centre of main interest' lies. The term 'habitually resident' is not defined in legislation, but there is a substantial body of domestic and EU case law on what it means. As a result, while there are existing rules to apply, the criteria of 'habitual residence' can be complex, and open to interpretation. Thus, we proposed to introduce a habitual residence test with defined criteria for individuals who wish to apply for statutory debt relief in Scotland.

Question 14.4 - Should there be a defined habitual residence test for individuals who wish to apply for statutory debt relief in Scotland?

	Total Responses	Organisations only
Yes	77	58
No	28	14
N/A	22	15
Comment only	2	2
Total	129	89

Money Advice Scotland – "The view is that it is difficult to implement a defined habitual residence test to make it meaningful."

Sarah Elphinstone – "Cases and conventions in Private International Law have deliberately refrained from giving the term "habitual residence" a definition because each case requires to be decided on its own individual merits. Attempting to invent criteria for assessing an individual's habitual residence would be contrary to this principle."

Question 14.4a - If yes, what aspects should be taken into account?

9.9 There were a number of different aspects suggested by respondents that should be taken into consideration when considering whether someone met the habitual residence test, including the length of time resident in Scotland and where the debt was incurred.

Campbell Dallas stated that the "reason for staying in the country, do they work here, how long do they expect to stay here, future plans, centre of main interest as per existing laws."

> Stirling Council – "An individual's right to reside, that they be resident, settled intention to reside, period of residence."
>
> Nicola Birrell - "How long they have stayed here, where the debt originated."

Summary

9.10 There was support for defined 'habitual residence' criteria.

Modernisation of Information contained in the Register Of Insolvencies (ROI)

9.11 The information to be contained in the ROI is currently laid down in Appendix 2 of the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008[9]. If changes need to be made to the information contained in the ROI this must be put before the Sheriff Rules Council for their consideration. We are considering removing Appendix 2 from the Act of Sederunt and placing it in regulations made by the Scottish Ministers subject to negative procedure in the Scottish Parliament under the Bankruptcy (Scotland) Act 1985.

Question 14.5 - Should the power to determine the form of the ROI be moved from the Act of Sederunt to regulations made under the Bankruptcy (Scotland) Act 1985?

	Total Responses	Organisations only
Yes	72	54
No	17	8
N/A	35	22
Comment only	5	5
Total	129	89

> ABCUL – "We agree that the ROI should be updated to show a debtor's current address if they move home after the award of bankruptcy. Credit unions have expressed the view that an individual's National Insurance Number would be a helpful additional piece of information to be visible on the ROI, although we recognise that there may be potential problems with placing this on a public register. We accept that current address details of a person at genuine risk of violence should rightly be withheld from the ROI, but we welcome the caveat that the AiB will consider applications for more information from creditors who demonstrate a potential interest in such an individual."

9.12 There have been recent changes to the information to be recorded on the ROI to include the individual's date of birth (where known). We believe that this has helped users of ROI to correctly identify persons of interest. At present the ROI displays the individual's address at the date of bankruptcy as well as all known previous addresses. It does not, however, display any subsequent changes of address.

[9] http://www.legislation.gov.uk/ssi/2008/119/schedule/appendix/2/made

Question 14.6 - Should the ROI be updated after the award of bankruptcy to include the individual's current address where they have moved?

	Total Responses	Organisations only
Yes	62	49
No	42	23
N/A	23	15
Comment only	2	2
Total	129	89

A private individual stated – "most definitely – as in some cases it is deliberate acts of deceit, with the offenders moving to different areas to avoid detection and payment of debts/child maintenance payments." Another individual stated that "this has no benefit in identifying historical debts and is an infringement on individual privacy, stifling rehabilitation of the indebted."

Question 14.7 - What, if any further information should be included on the ROI?

9.13 The majority of respondents who answered this question suggested including any information which would assist creditors in tracing debtors, subject to data protection, including any known business directorships or partnerships. The City of Edinburgh Council stated that the "Date of Birth and last known address. Too much information could lead to fraudulent activity."

North Lanarkshire Council – "Trustee details, contribution, date of discharge."

9.14 At present the ROI is a free public register which can be searched using an individual's name, town, or even general area. This may lead to a reluctance on the part of some individuals to apply for debt relief, even where it may be their best option, as they fear their details will be publically available. This is a particular concern where individuals are at risk of violence. We, therefore, proposed to make specific provision to allow certain details to be withheld from the ROI, especially where an individual is in fear of violence to themselves or a member of their household.

Question 14.8 - Should some details of an individual who is at risk of violence be withheld from the ROI?

	Total Responses	Organisations only
Yes	97	72
No	8	3
N/A	21	11
Comment only	3	3
Total	129	89

Scottish Women's Aid – "We welcome this initiative to restrict the information publicly available on the Register of Insolvencies (ROI), since this matter has indeed been an issue for women experiencing domestic abuse…We would stress, however, that it should not be simply on the basis that a person is at risk of violence. The test should be at risk of violence and/or abuse."

Scottish Council on Deafness – "Yes, especially people who are at risk of domestic violence or violence from an ex-partner; or if the person has been subject to a violent attack where the attacker has been charged. Vulnerable people should not be made more vulnerable simply because they become insolvent."

Question 14.9 - Are there any other categories of individuals whose details should be withheld from the ROI? Please specify.

	Total Responses	Organisations only
Yes	12	7
No	70	52
N/A	40	23
Comment only	7	7
Total	129	89

9.15 A number of respondents suggested individuals with mental health issues should possibly be withheld from the ROI. North Lanarkshire Council suggested "any clients deemed to be vulnerable."

Summary

9.16 The majority of respondents agreed that the power to determine the form of the Register of Insolvencies (ROI) should be moved from the Act of Sederunt into the Bankruptcy Regulations. They also agreed that the ROI should be updated with the individual's current address and information should be withheld from the ROI where individuals are at risk of violence.

Remove the supplementary questionnaire

9.17 The supplementary questionnaire (SQ) is used to gather further information from a bankrupt individual during a face to face or telephone interview and contains questions relating to their financial circumstances, which can help establish whether a contribution can be paid by the individual. Since we proposed that all individuals are assessed for a contribution using a common financial tool then we believe the SQ is no longer necessary.

Question 14.10 - Is the SQ effective as an interview aid, or is something else required to replace it?

	Total Responses	Organisations only
Yes	52	30
No	10	8
N/A	61	45
Comment only	6	6
Total	129	89

Campbell Dallas LLP – "The supplementary questionnaire is very effective as an interview aid."

Question 14.11 - Would the use of a common financial tool remove the need to collect further information on a supplementary questionnaire?

	Total Responses	Organisations only
Yes	41	34
No	52	30
N/A	34	23
Comment only	2	2
Total	129	89

R3 - “The Common Financial Statement assists in the assessment of the debtor's financial position. An alternative would be to build in to the CFS enough detail to reflect all the information required by the Supplementary Questionnaire and have one document covering both bases.”

Summary

9.18 The majority of respondents felt that the supplementary questionnaire is an effective interview aid and that the information from the proposed common financial tool could not replace it entirely.

Recall in Bankruptcy

9.19 Changes to legislation introduced in 2008 required an application for recall of an award of bankruptcy to be made to the Sheriff Court rather than the Court of Session. This has led to some inconsistencies in the way the recall process is dealt with in the courts, with a lack of clarity as to who is responsible for distributing funds. We proposed that the legislation specifies who is responsible for distributing the monies to creditors where a recall of bankruptcy is granted.

Question 14.12 - Where a recall of bankruptcy is granted, should the distribution process be clarified?

	Total Responses	Organisations only
Yes	96	69
No	2	1
N/A	30	18
Comment only	1	1
Total	129	89

MLM CPS Limited – “There are inconsistencies of approach at present. We are supportive of mechanism to increase consistency in all cases.”

Question 14.13 - Should the legislation be amended to ensure that the final interlocutor in a recall is withheld by the Court until it is confirmed that all relevant costs and creditors have been paid?

	Total Responses	Organisations only
Yes	84	61
No	9	6
N/A	34	20
Comment only	2	2
Total	129	89

9.20 A responding organisation stated that the "trustee should remain in office until all remaining monies are distributed. Currently the legal basis upon which a trustee distributes funds after a recall has been granted is uncertain."

> The Scottish Court Service (SCS) – "It is not clear what the legal authority would be to allow the court to retain a court order once it has been granted. Payment of costs is not traditionally a matter for the courts. The introduction of a further step to confirm costs have been paid, and particularly with cases involving party litigants seeking recall, may result in an additional cost to SCS."

Summary

9.21 There was significant support for the clarification of the distribution process where a recall of bankruptcy has been granted. Respondents also agreed that the final interlocutor should be withheld until all funds had been distributed.

Interest rate on bankruptcy debts

9.22 When creditors are ultimately paid dividends on debts at 100p in the £, the current prescribed rate of interest payable on those debts, between the date of sequestration and the date of payment, is 8%. This post-procedure rate of interest has been prescribed since 1 April 1993, despite fluctuations in the Bank of England base rate.

9.23 In 2006, following a comprehensive review, the Scottish Law Commission's Report on Interest on Debt and Damages[10] was published. The draft Bill[11] that resulted from that work was the subject of a consultation exercise undertaken by the Scottish Government in 2008. Taking account of the responses to that exercise, we proposed that all post-procedure interest and charges are frozen on statutory debt relief products, similar to DAS.

Question 14.14 - Should the current prescribed rate of interest be retained?

	Total Responses	Organisations only
Yes	50	36
No	45	31
N/A	30	18
Comment only	4	4
Total	129	89

[10] http://www.scotlawcom.gov.uk/law-reform-projects/completed-projects/interest-on-debt-and-damages/
[11] http://www.scotland.gov.uk/Resource/Doc/209411/0055426.pdf

ICAS – “No, the rate is out of date but the requirement is sound. It should be regularly updated through legislation.”

ABCUL – “In the very rare cases where 100p in the £ is paid, it is reasonable that interest should also be paid.”

Question 14.15 - Should all post-procedure interest and charges be frozen on statutory debt relief products?

	Total Responses	Organisations only
Yes	61	37
No	42	33
N/A	24	17
Comment only	2	2
Total	129	89

Money Advice Scotland – “For the purposes of ensuring clarity around timescales and expectations of debts being concluded it is essential that interest and charges be frozen.”

Question 14.15a - If not, should the interest rate be linked to the Bank of England base rate?

	Total Responses	Organisations only
Yes	24	16
No	30	25
N/A	72	45
Comment only	3	3
Total	129	89

ICAS – “If the law were to be changed then any interest should be linked to the Bank of England base rate. A rate at 1.5% above Bank of England rate would not be unreasonable.”

Summary

9.24 There was general support for the current prescribed rate of interest to be retained and for all post-procedure interest and charges to be frozen.

Requirement for a sederunt book

9.25 The sederunt book is the national record of a bankruptcy in Scotland. Historically upon completion of a bankruptcy, the sederunt book was filed at the AiB and later forwarded to the National Archives and stored forever. The sederunt book can also be made available for inspection to interested parties.

9.26 The National Records of Scotland (formerly the National Archives of Scotland) have stated that storage space is no longer available for sederunt books. Furthermore, the sederunt book process is out-dated and time consuming for both the trustee and AiB, with

very few people requesting access to view the sederunt book either during or post bankruptcy. We therefore proposed to only store key documents electronically, in a secure area of the ROI.

Question 14.16 - Should the requirement to keep a hard copy of a sederunt book be removed?

	Total Responses	Organisations only
Yes	88	64
No	11	3
N/A	25	17
Comment only	5	5
Total	129	89

Max Recovery – "This is now an outdated concept. However, there should be the same level of accessibility to whatever replaces it."

Question 14.16a - If yes, should the key documents be retained electronically?

	Total Responses	Organisations only
Yes	89	63
No	1	1
N/A	37	23
Comment only	2	2
Total	129	89

ICAS – "This would be advantageous. Confirmation should be sought from the Courts on whether or not electronic copies of key documents will be acceptable if for any reason court actions on cases arise in the future and the outcome should be communicated to stakeholders. It may be that certified copies produced from electronic copies will suffice."

Question 14.16b - What should the key documents include?

9.27 The majority of respondents suggested that the existing documents should be retained, including the Award, Court interlocutors and any legal documents. Paul O'Donnell stated that the "current document list is acceptable."

Scottish Women's Aid – " …any documents in the Sederunt Book may potentially disclose information otherwise withheld from the ROI, such as addresses, and consideration should therefore be given to redacting information or restricting access to the Sederunt Book in the circumstances outlined above." (risk of violence and/or abuse)

Summary

9.28 The majority of respondents agreed that a hard copy of the sederunt book is no longer required, however, this was subject to key documents being retained electronically.

Change the date of sequestration – creditor petitions

9.29 Currently where an individual is made bankrupt following a debtor application, the date of sequestration is the date of award. Where a creditor or a trustee under a trust deed petitions for an individual to be made bankrupt, the date of sequestration is the date of the first warrant to cite. This is to protect creditors as any additional debt incurred by the individual during the period between the date of the first warrant to cite and the date of award will not be included in the bankruptcy. In some petitions, as an extra safeguard, the creditors ask the sheriff to appoint an interim trustee where the individual is trading or where there is a perceived risk of the individual disposing of assets.

9.30 The time that elapses between the warrant to cite and award date in creditor petition cases has led to some practical difficulties in the handling of some bankrupt estates, especially where the sheriff has continued a hearing to consider additional information. This can result in a situation where an individual can be automatically discharged very soon after the award of bankruptcy, leading to issues where the trustee has insufficient time to administer the bankruptcy or to allow them to apply to defer discharge of the debtor. To counter this problem we suggested that the individual's discharge could be linked to when the award of bankruptcy is made by the sheriff, rather than the date of the first warrant to cite. Alternatively, we suggested that the date of sequestration could be the same as the date of award in all cases.

Question 14.17 - Should the date of sequestration be the award date in both debtor applications and creditor petitions?

	Total Responses	Organisations only
Yes	59	35
No	43	35
N/A	22	14
Comment only	5	5
Total	129	89

R3 – "If the date of sequestration is the date of award, discharge should be linked to that date. Where debts are incurred by the debtor after the warrant to cite, in practice these rarely get paid thus changing the date of sequestration to the date of award will not unduly prejudice creditors."

Question 14.17a - If no, should the discharge date be linked to the date the award was made by the sheriff?

	Total Responses	Organisations only
Yes	46	36
No	2	1
N/A	78	49
Comment only	3	3
Total	129	89

Armstrong Watson – "Practical difficulties are currently encountered where there is a warrant to cite and the debtor has incurred additional debts after the warrant to cite date. These are rarely paid which results in a loss to creditors."

Summary

9.31 There was general support for the debtor's discharge to be linked to the date of award in a creditor petition.

Introduce payment holidays into all statutory debt relief products

9.32 The Debt Arrangement Scheme (Scotland) Regulations 2011 introduced provision for a payment holiday variation of 6 months[12] for individuals who had experienced income shock.

9.33 We proposed to introduce a similar provision into all statutory debt relief products where a contribution was being made.

Question 14.18 - Should the ability to apply for a payment holiday be introduced to all statutory debt relief products?

	Total Responses	Organisations only
Yes	71	47
No	38	27
N/A	19	14
Comment only	1	1
Total	129	89

West Dunbartonshire CAB Service – "This would help people deal with emergencies and unemployment."

Question 14.19 - Should the period of the payment holiday be fixed at 6 months as it is in DAS?

	Total Responses	Organisations only
Yes	54	42
No	32	19
N/A	39	25
Comment only	4	3
Total	129	89

Wilson Andrews – "A consistent approach would be beneficial"

Question 14.20 - If a payment holiday is granted, should this period be added onto the length of the period before discharge?

	Total Responses	Organisations only
Yes	79	57
No	9	4
N/A	37	25
Comment only	4	3
Total	129	89

[12] http://www.legislation.gov.uk/ssi/2011/141/regulation/37/made

R3 – “Provided there are arrears of contributions”

Alan McIntosh – “For a maximum of six months, even where more than one payment holiday has been granted, otherwise we could have people being refused a discharge for ridiculous lengths of time due to ill health or irregular employment, when there is no evidence they are refusing to cooperate.”

Question 14.21 - Should the criteria for a payment holiday be the same for all statutory debt relief products?

	Total Responses	Organisations only
Yes	67	47
No	23	14
N/A	36	26
Comment only	3	2
Total	129	89

North Lanarkshire Council – “In line with DAS.”

R3 – “S32 allows contributions to be varied in sequestration, therefore the existing provisions are adequate and no change is required.”

Summary

9.34 The majority of respondents agreed that payment holidays of up to 6 months should be available in all statutory debt relief products, with the period of the payment holiday added onto the length of the product before discharge is granted. They also agreed that the payment holiday eligibility criteria should be the same in all products.

10. Removal of administration from the Courts

10.1 The Bankruptcy (Scotland) Act 1985[13], as amended (the 1985 Act), gives the Sheriff Court various roles in bankruptcy. Over and above creditor petitions for bankruptcy, there are around 2,000 orders made by the Sheriff Court each year in relation to applications under various sections of the 1985 Act. It is estimated that almost half of these interactions involve the sheriff or sheriff clerk in what can be considered an administrative role or, in some cases, a short chambers hearing. The remaining processes carried out by the courts are assigned to a sheriff who will hear arguments in open court from all parties involved and make a judicial decision.

10.2 Lord Gill, in the Scottish Civil Courts Review (SCCR)[14], described how many low value civil cases were being considered by busy sheriffs who were over-qualified to deal with them. Lord Gill recommended that a new third tier of judiciary should be created in Scotland, and made various recommendations for the kind of civil business which should fall within the competence of this third tier.

10.3 Courts are busier than ever and are under increasing pressure to process higher workloads with fewer resources. These pressures potentially mean that the service provided is less effective and access to justice may take longer than originally anticipated. We, therefore, proposed to remove the requirement for the Sheriff Court to deal with applications for various actions under the 1985 Act, by transferring responsibility for these processes to the AiB.

10.4 We acknowledged that there would need to be a separation of duties where AiB was also the trustee. We proposed that this would be dealt with by creating a stand alone division or decision making function to deal with these applications and orders, separate from day to day operation of AiB's case management functions.

10.5 In addition to making decisions on applications for orders that are mainly administrative in process, we asked whether the AiB should introduce a decision making, and adjudication function. Ultimately, the right of appeal to a sheriff in a wide range of circumstances would remain.

10.6 The following is an analysis of the questions asked relating to the transfer of certain function from the Scottish Courts to AiB.

Administration only functions

10.7 We estimate that around three quarters of the court's current functions under the 1985 Act may be dealt with by sheriff in chambers. We proposed that these functions could be dealt with by an application and administrative decision-making process by AiB, saving court time, reducing the length of time an applicant must wait for a decision, and potentially reducing legal costs.

[13] http://www.legislation.gov.uk/ukpga/1985/66/contents
[14] http://www.scotcourts.gov.uk/civilcourtsreview/

Question 14.22 - Should bankruptcy processes be removed from the Sheriff Court where the process is mainly administrative?

	Total Responses	Organisations only
Yes	64	46
No	40	26
N/A	22	14
Comment only	3	3
Total	129	89

Payplan Scotland Limited – "It should reduce costs and speed up the process."

Society of Messengers-at-Arms and Sheriff Officers (SMASO) - "We would consider the involvement and oversight of the Court as an essential part in the process of Sequestration given the judicial nature of insolvency and the effect it has on a debtor's estate."

Question 14.22a - If yes, should AiB have the power to make orders for these mainly administrative processes, with disputed decisions being referred to a sheriff?

	Total Responses	Organisations only
Yes	60	44
No	20	15
N/A	47	29
Comment only	2	1
Total	129	89

Money Advice Scotland – "If it takes away from the courts and reduces costs. Providing of course that there is a system of appeal which is independent."

Administration and extended decision making function

10.8 We proposed an option that would see a wider range of applications being handled by AiB, including some that are currently dealt with by a short hearing. We suggested that a panel separate from the AiB decision maker, such as a new statutory Policy and Cases Committee[15] could consider both decisions on applications and review any AiB decision maker decisions that are disputed.

Question 14.23 - Should a panel, separate from the decision maker, decide the outcome of more complex applications and review disputed decisions?

	Total Responses	Organisations only
Yes	52	37
No	41	29
N/A	32	19
Comment only	4	4
Total	129	89

Macgregors Chartered Accountants - "Yes - Independent of AiB"

[15] http://www.aib.gov.uk/publications/policy-and-cases-committee-terms-reference

Wilson Andrews – “Whilst there are clear benefits for administrative duties to be removed from the Sheriff Court more complex matters should not be. In addition we would be concerned by the conflict of interests for one part of the AiB to review disputed decisions of another part of the AiB. Conflicts of interest arising from self review are universally perceived to be unacceptable.”

Question 14.23a - If yes, should the panel have the power to make the final decision in low value, straightforward cases?

	Total Responses	Organisations only
Yes	47	34
No	17	13
N/A	63	41
Comment only	2	1
Total	129	89

Money Matters, Social Services, North Ayrshire Council – “The right to appeal to an independent and impartial body should be available in all AIB decisions.”

Question 14.24 - Should the make-up of this panel include representatives of a cross-section of stakeholders, such as IPs, Recognised Professional Bodies, Money Advisers, Solicitors, etc.?

	Total Responses	Organisations only
Yes	59	41
No	12	10
N/A	54	34
Comment only	4	4
Total	129	89

Credit Services Association – “This would help to create a balanced decision and also make the thinking behind the decision broader.”

Full decision making and hearing function

10.9 We proposed an enhanced option that would see all bankruptcy processes currently dealt with by the Sheriff Court transferred to the AiB. We suggested that decisions would be made by a panel, such as a new statutory Policy and Cases Committee, where a hearing is currently required, with the panel having the discretion to hear parties if required. The panel would only refer to the sheriff on points of law or if it considered that a judicial decision was necessary. Disputes raised in respect of decisions made by the panel would be considered by an independent adjudicator or tribunal, which would be entirely separate from the day to day operations of the AiB and separate from any decision maker.

Question 14.25 - Should all bankruptcy processes currently dealt with by the Sheriff Court be removed to AiB, subject to appropriate appeals?

	Total Responses	Organisations only
Yes	41	31
No	62	40
N/A	22	14
Comment only	4	4
Total	129	89

A private individual stated that "the Judiciary offer experience and expertise that the AIB do not posses, as they each have different perspectives and aims."

Question 14.26 - If all bankruptcy processes were removed from the Sheriff Court, should an independent adjudicator or tribunal be formed to review disputed decisions?

	Total Responses	Organisations only
Yes	51	38
No	23	17
N/A	49	28
Comment only	6	6
Total	129	89

The Insolvency Practitioners Association – "No major deficiencies in the current system have been identified and the economic case for this has not been made out."

Macgregors Chartered Accountant – "Yes, otherwise AiB far too powerful."

Summary

10.10 Respondents agreed that a Consolidation Bill should follow a programme Bill through Parliament. They also agreed, in line with the responses to the recent Protected Trust Deed consultation, that there should be a fixed timescale for creditor claims to be received by a trustee. The preferred period was 120 days. Most of those who commented stated that where a claim was not received within this timescale, it should not rank, nor receive a dividend.

10.11 Respondents were keen to have more clarity over what constitutes habitual residence. Respondents were also happy to remove the requirement for a paper Sederunt book, and instead capture necessary documents electronically. They were in favour of retention of the current prescribed interest rate, but there was also support for post-procedure interest and charges being frozen on statutory debt relief products.

10.12 Respondents were in favour of the removal of the power to determine the form of the ROI from the Act of Sederunt to regulations made under the Bankruptcy (Scotland) Act 1985 and also very clear that where there was a risk of violence/abuse to an individual, their current address should be withheld from the Register of Insolvencies.

11. AiB role and powers

AiB's role as a trustee in bankruptcies

11.1 The Bankruptcy (Scotland) Act 1993 amended the 1985 Act to allow the Accountant in Bankruptcy to act as a trustee in a bankruptcy. This change was to provide some control on the amount of public funds being spent on the bankruptcy process. Prior to this change public purse monies were used to pay private IPs to administer cases where there was insufficient funds to cover their costs and outlays.

11.2 It was envisaged at that time that private IPs would accept nomination as trustee only in those cases where there was funds in the bankrupt individual's estate to meet their fees and outlays. Alternatively, a creditor could underwrite the costs and outlays. In all other cases, where funds were not available, the AiB would act as trustee of last resort with the costs and outlays being met, wholly or in part, by the public purse.

11.3 As the purpose of this consultation was to examine the principles and concepts of bankruptcy it was considered a good opportunity to test the rationale for the AiB's role as trustee.

11.4 The following is an analysis of the questions asked relating to whether the AiB should continue to have a role as trustee in bankruptcies.

Question 15.1 - Does the AiB acting as trustee in approximately 59% of bankruptcy cases, excluding LILA cases, have a positive impact on the existence of a healthy and competitive insolvency sector in Scotland?

	Total Responses	Organisations only
Yes	57	41
No	30	19
N/A	34	23
Comment only	8	6
Total	129	89

A private individual – "Currently yes, but their ambitions to increase their workload will have a large impact on the private sector and reduce competition and expertise."

West Lothian Credit Union – "We note AiB costs as trustee are often much lower than private sector trustees' fees."

Question 15.1a - If no, should the AiB continue to act as a trustee in bankruptcies in Scotland?

	Total Responses	Organisations only
Yes	29	17
No	15	10
N/A	79	57
Comment only	6	5
Total	129	89

Alan Adie – "Unless fixed fees were paid to IPs for acting as trustee."

Question 15.1b - If the AiB should continue to act as trustee, should she act only as trustee of last resort?

	Total Responses	Organisations only
Yes	49	29
No	44	39
N/A	33	18
Comment only	3	3
Total	129	89

KPMG LLP – "…we believe there is a role for AiB in facilitating the procurement of Insolvency Services on a volume basis."

NHS (Scotland & North England) Credit Union Ltd. – "The AiB may prove better equipped to ensure a return for creditors than some private sector IPs."

Question 15.2 - Where the AiB is trustee and asset realisations and contributions in a bankruptcy case do not meet the cost of case administration, how should any shortfall be funded?

11.5 The majority of respondents who answered this question suggested public funding should be used to meet the costs of administration. R3 stated that "public funding would appear to be the only option as a debtor cannot be expected to pay unless it is accepted that a debtor can only obtain debt relief where he has sufficient funds to meet the cost of case administration."

Carrington Dean – "Public Funding"

Question 15.2a - Where the AiB is trustee, should bankruptcies which can cover the costs of administration subsidise those which cannot?

	Total Responses	Organisations only
Yes	41	31
No	58	36
N/A	28	20
Comment only	2	2
Total	129	89

Payplan Scotland Ltd – "The government should fund any shortfall through subsidisation from other bankruptcies which can cover the costs of administration, as it is likely the debtor will not be able to fund any shortfall due to having little disposable income in these cases."

Macgregors Chartered Accountants - "Not allowed in Private Practice."

Question 15.2b - If no, should bankrupts be required to cover the minimum costs of administration?

11.6 The majority of respondents who answered this question thought that individuals should only pay what they could afford and the public purse should cover the costs where an individual was not able to. Wilson Andrews said "the principle should always be that the

individuals only pay what they can reasonable afford to pay. Where an individual cannot afford to pay anything; it is unfair to ask them to pay the administration costs and this may well become a barrier to entry."

Summary

11.7 The majority of respondents agreed that AiB has a positive impact on the existence of a healthy and competitive insolvency sector in Scotland. They also agreed that the AiB should continue to be trustee in bankruptcies and should continue to act as trustee of last resort.

11.8 They also felt that the costs of an individual's administration should not cross subsidise other bankruptcies where there are insufficient funds to administer the case. These costs should be paid from the public purse.

AiB's supervisory powers

11.9 AiB's supervisory functions were enhanced by changes introduced in 2008[16] which gave AiB the authority to direct a trustee in the administration of a PTD. The legislation also places trustees in a bankruptcy under a statutory duty to provide such information as the AiB considers necessary to enable her to discharge her functions under the Act. The Protected Trust Deed (Scotland) Regulations 2008[17] extended this requirement to trustees under a PTD in respect of specific documents that must be supplied to the AiB.

11.10 We consider that the current supervisory role may not always be sufficient to ensure that statutory obligations are being met by trustees in all cases. We consider that a more proactive role in the supervision of bankruptcy cases is now appropriate. We also consider that there may be modifications or enhancements required in the supervision of PTDs.

11.11 Furthermore, at present, there is no mechanism to gather information from bankruptcy cases where the trustee is an IP. This makes it difficult to identify trends or identify good or bad practice which could assist in producing updated legislation and guidance.

11.12 We proposed, therefore to make changes to the current supervision regime to give AiB a more proactive role and compelling the trustee to act on AiB's directions, where these are made.

11.13 The following is an analysis of the questions asked relating to whether AiB should have additional or enhanced supervisory powers.

[16] http://www.legislation.gov.uk/ssi/2008/334/contents/made
[17] http://www.legislation.gov.uk/ssi/2008/143/contents/made

Question 15.3 - Should AiB have a more proactive role in the supervision of all debt relief products?

	Total Responses	Organisations only
Yes	47	36
No	49	30
N/A	30	21
Comment only	3	2
Total	129	89

Carrington Dean – "Debt management encompassing all debt management companies and "charities" funded by the banks. However the AiB should have a supervisory role here not an advisory one."

Insolvency Practitioners Association - "Licensed Insolvency practitioners are monitored and regulated in their compliance as relates to PTD and IVA cases by their RPBs. An extension of AiB powers would be an unnecessary increase in the regulatory burdens already placed on practitioners."

Question 15.4 - Where the AiB makes a direction which is not adhered to by the trustee, should an AiB panel decide on an appropriate course of action?

	Total Responses	Organisations only
Yes	43	36
No	53	32
N/A	32	20
Comment only	1	1
Total	129	89

Nolans Solicitors – "The matter should be referred to the existing regulatory bodies for insolvency practitioners and chartered accountants/solicitors."

Summary

11.14 Opinion was divided on whether AiB should have a more proactive role in supervising debt relief products in Scotland. Respondents felt that an AiB panel should not determine an appropriate course of action where a trustee has not followed an AiB direction.

Regulation of Insolvency Practitioners in Scotland

11.15 The current UK regulatory system for IPs is reserved to Westminster, and falls within the functions of the UK Insolvency Service (UKIS)[18]. The UKIS works with RPBs who authorise and monitor the work of IPs. The Secretary of State also directly authorises a number of IPs, a process managed by UKIS.

11.16 There are seven RPBs authorised by the UK Secretary of State. The UKIS monitors the regulatory activities of the RPBs to ensure that the sector is regulated effectively. These regulatory activities are carried out in accordance with a Memorandum of

[18] http://www.bis.gov.uk/insolvency

Understanding between the UKIS and the RPBs[19] which sets out the principles covering the granting of authorisations, ethics and professional standards, the handling of complaints, retention of records, and the disclosure of regulatory information to other RPBs and to the Secretary of State.

11.17 An individual who is authorised as an IP under associate or affiliate schemes is subject to the relevant RPB's professional rules and regulations and their regulatory and disciplinary schemes[20]. The RPBs have a range of sanctions they are able to take which are embodied in their professional rules and regulations, for example, withdrawing an IP's licence.

11.18 At present, the Scottish Government has no formal role in respect of the regulation of IPs, although the AiB does have responsibility for supervision of the IPs' functions in bankruptcy. In terms of the Bankruptcy (Scotland) Act 1985, the AiB is responsible for supervising the performance of interim trustees and trustees other than the AiB, trustees under PTDs, commissioners, and also for investigating complaints against trustees and commissioners.

11.19 While there are various requirements on trustees and others to provide documents there is no requirement to provide the AiB with information on request, and no express requirement on the RPBs to provide the AiB with any information. The AiB is unable to ascertain if action is being taken by the RPB in respect of any complaints received against their members. Consequently, the AiB does not know whether any RPB members have, for example, been issued with a directive to act, the reasons behind any given directive, or the findings of any examination into AiB cases.

11.20 There is currently no basis upon which RPBs could be compelled to provide the AiB with the same information provided to the UKIS under the Memorandum. Furthermore, the provision of such information from the UKIS to the AiB falls outside the stated purpose of the Memorandum.

11.21 The regulation of IPs is a reserved matter, however, some of the challenges identified in duplication of monitoring work and the deficiencies in awareness of RPBs actions in respect of their members could be resolved now. The supervision process could ultimately be enhanced to ensure that it complements the RPB monitoring process, avoiding duplication in areas where it is clear that monitoring activity is taking place.

11.22 There could, for example, be an agreement between RPBs and the AiB to share certain types of information related to regulatory and supervisory activities. This could allow poor practice to be highlighted and dealt with at an early opportunity and allow for the sharing of information on best practice throughout the sector.

11.23 The following is an analysis of the questions asked relating to whether AiB should have a role in the regulation of insolvency practitioners in Scotland.

[19] http://www.bis.gov.uk/insolvency/insolvency-profession/Professional%20conduct/memos-of-understanding/mou-consistency-in-authorisation-of-IPs

[20] http://www.legislation.gov.uk/ukpga/1986/45/part/XIII/crossheading/restrictions-on-unqualified-persons-acting-as-liquidator-trustee-in-bankruptcy-etc

Question 15.5 - Should Scottish Ministers have the power to regulate Scottish Insolvency Practitioners?

	Total Responses	Organisations only
Yes	49	39
No	49	28
N/A	28	19
Comment only	3	3
Total	129	89

Scottish Association of Law Centres - “The power should be delegated to the AiB but Scottish Ministers should have the ultimate responsibility”

1st Class Credit Union – “There is significant frustration that complaints by credit unions regarding the conduct of IPs rarely make any progress. The number of examples of poor practice seen by credit unions, especially regarding PTDs, means firmer regulation of the industry is essential.”

Question 15.5a - If yes, should this be managed through Recognised Professional Bodies who would monitor and regulate Insolvency Practitioners?

	Total Responses	Organisations only
Yes	29	18
No	28	25
N/A	68	43
Comment only	4	3
Total	129	89

A responding organisation stated that “this should be conducted by the AiB as there are inconsistencies between the bodies and this explains why there are varying standards experienced with trust deeds.”

KPMG LLP – “In our experience the current model in place for the UK works well and we believe that the RPB’s in Scotland should have a continuing role in the regulation of Insolvency Practitioners.”

Alan McIntosh – “Professional bodies should no longer be regulators, but representative bodies of their member’s interests. There is a conflict of interest in them performing both roles.”

Question 15.6 - Do you think that the current Memorandum of Understanding between the UK Insolvency Service and Recognised Professional Bodies (RPBs) should be redrafted to allow the provision of information to AiB on regulatory activity related to Scottish cases?

	Total Responses	Organisations only
Yes	54	44
No	34	18
N/A	38	24
Comment only	3	3
Total	129	89

Alan Adie – “Only personal insolvency cases.”

The Insolvency Practitioners Association – “The Memorandum of Understanding governs relationships between those bodies authorised to license insolvency practitioner. There are currently 7 such RPBs and further body is unnecessary. The AiB already sits as an observer on the Joint Insolvency Committee.”

Wilson Andrews – “Where this relates to the AiB’s existing supervisory function then this would appear to be sensible.”

Question 15.7 - Should there be an information sharing agreement between AiB and the Recognised Professional Bodies which have members who take on insolvency work from clients based in Scotland?

	Total Responses	Organisations only
Yes	57	47
No	35	19
N/A	34	20
Comment only	3	3
Total	129	89

KPMG LLP – “In view of the AiB’s supervisory role in Personal Insolvency we believe this is appropriate albeit it should be restricted to personal insolvency cases and should not relate to Corporate insolvency.”

Max Recovery – “This seems entirely reasonable.”

Summary

11.24 There was equal support for and against Scottish Ministers having the power to regulate Scottish insolvency practitioners. However, there was support for the Memorandum of Understanding between the UK Insolvency Service and Recognised Professional Bodies (RPBs) to be redrafted to allow information on regulatory activity related to Scottish cases to be issued to AiB. Respondents also supported an information sharing agreement between AiB and the RPBs.

Liquidator of last resort for Scotland

11.25 Compulsory liquidations in England and Wales are dealt with by an Official Receiver (OR) who will manage the case and may arrange for the appointment of an IP to act as the liquidator, if appropriate. Whilst a creditor of a Scottish company can present a petition to a court in Scotland for the compulsory liquidation of a company, there is no OR in Scotland, nor is there an equivalent office holder.

11.26 All liquidations are dealt with by licensed IPs granting the winding up order the court appoints an IP as interim liquidator. The interim liquidator then convenes a meeting of creditors to appoint a liquidator, who may or may not be the same person as the interim liquidator. The IP is required to consent, in writing, to their nomination as liquidator. The court cannot grant a winding up order where no IP agrees to act as liquidator. This creates

an unsatisfactory situation where the company, and its staff and creditors, can be left in limbo where, due to a lack of funds, no IP will consent to act.

11.27 If AiB were to become the OR in Scotland, cases with no assets, or low value assets, could be formally wound up, with AiB responsible for the investigation of these companies. A minimum administration procedure could be adopted when, after initial investigation, it is clear that no assets exist. For these cases, the cost of administration could be minimised.

11.28 The following is an analysis of the questions asked relating to whether there should be an Official Receiver in Scotland.

Question 15.8 - Should there be an office of the Official Receiver in Scotland?

	Total Responses	Organisations only
Yes	47	41
No	46	24
N/A	31	20
Comment only	5	4
Total	129	89

Aberdeenshire Council – "Agree VERY strongly that there should be a liquidator of last resort."

KPMG LLP – "We are not convinced of the need for an Official Receiver role in Scotland. We believe that establishing an OR's office would be a significant cost to the Public Purse, to the detriment of the free market and for no clear benefits."

Question 15.9 - If the role of the Official Receiver in Scotland is devolved to the Scottish Government should this role be carried out by the Accountant in Bankruptcy?

	Total Responses	Organisations only
Yes	46	38
No	32	18
N/A	46	29
Comment only	5	4
Total	129	89

TDX Group Ltd – "We would also see this role being available to independent insolvency practitioners. This would provide support to the AiB and enable creditors to choose where the administration could be carried out, including streamlining costs and processes."

MAX Recovery Ltd. – "This would be the sensible approach to take. However, responsibility for enforcement matters should be UK-wide."

A private individual stated that they were "not sure the AiB could fund the additional work from what it has identified as work where there is no prospect of receiving a fee for the work done. I also have concerns as to the quantity and technical capability of the AiB staff in effectively being all things to all people in the new augmented role the

AiB envisages for itself. Particularly as there is no prior experience of corporate investigation within the AiB."

Question 15.9a - If no, who should carry out this role?

11.29 The majority of respondents who answered this question felt that it should be "qualified regulated insolvency practitioners" who could possibly provide the service under a tendered contract. Other comments suggested that the Official Receiver was not required or where it was it should be undertaken by another separate organisation.

William White – "Independent authority – Scottish Government"

A private individual stated that "this should be a separate body and the AIB does not currently have the resources and skills to service this work so the cost to the public purse would be significant."

Question 15.10 - If there was an office of the Official Receiver in Scotland, how should this be funded?

11.30 Most respondents to this question suggested a combination of self funding through fees and public funding through a combination of fees but moving towards self-funding over a period of time. Wilson Andrews said that they "consider that an appropriate administrative charge to each case, and the costs of dealing with cases which have insufficient assets should be met from public funds. Inevitably the costs would reduce any return that may be available to creditors."

Fife Council Money Advice Service – "Self funded"

Summary

11.31 The majority of respondents agreed that AiB acting in approximately 59% of bankruptcy cases, excluding LILA cases, had a positive effect on a healthy insolvency sector in Scotland. Of those who did not agree, the majority were in favour of the AiB continuing to act as trustee in bankruptcies. Whilst the majority of respondents believed that AiB should continue to act as trustee of last resort, when the figure for organisations only was examined, this showed that AiB should continue to act as trustee in all cases where appointed.

11.32 Respondents agreed that bankruptcies which provide a return should not subsidise the costs of administration of those which can't, as this would be unfair. Rather, respondents believed that any shortfall be covered by the public purse, and that those who cannot afford to pay towards their administration should not be required to do so.

11.33 On supervision of trustees, respondents were split on whether AiB should have a more proactive role than at present. Where the AiB makes a direction which is not adhered to by the trustee, respondents again were marginally opposed to an AiB panel deciding on an appropriate course of action. Others believed that the existing regulatory bodies were the correct organisations to deal with supervision of trustees.

11.34 Respondents were split 50/50 on whether Scottish Ministers should have the power to regulate Scottish Insolvency Practitioners. When the individuals' responses were discounted, however, there was support for this. Respondents were again split on whether

any such powers should be managed through Recognised Professional Bodies. They were in favour of the redrafting of the current Memorandum of Understanding between the UK Insolvency Service and Recognised Professional Bodies to allow the provision of information to AiB on regulatory activity related to Scottish cases.

11.35 Again there was split opinion on whether there should be an office of the Official Receiver in Scotland. There was, however, support for this role to be carried out by AiB should the role be devolved to Scottish Ministers. The majority of respondents felt that the Official Receiver in Scotland should be self funded with only some public funding.

VI. Next Steps

This Government has a broad and ambitious agenda for Reform which focuses on outcomes and improvements to the whole system. The current five year term of office provides the opportunity to develop and deliver this reform. The consultation was the start of that journey.

Based on this report the Scottish Government is considering its response. We are carefully looking at all the points made by stakeholders as part of their response to the consultation. We also intend to have a number of stakeholder workshops to discuss the outcomes from the consultation and the possible way forward. At these workshops we will be looking to discuss and consider in more of the detail, some of the proposals included in the consultation and will be looking to our stakeholders to help us refine this.

It is hoped that the Scottish Government would then be in a more informed position to publish its response to the consultation which will identify the proposed modernisation of the bankruptcy legislation.

Following this, it is anticipated that a Bill will be brought forward to make the changes identified through consultation, though not all of these changes will require primary legislation. Therefore, there may be some subordinate legislative changes occurring prior to or at the same time as the Bill process. This Bill will provide for a new model of debt advice, debt management and debt relief. It will be followed by a consolidation exercise relying on the work of the Scottish Law Commission (SLC) to ensure that we have a single piece of legislation, aiding the accessibility and understanding of bankruptcy law.

ANNEX A

As part of the consultation, all respondents were asked to indicate using the appropriate tick box whether they wished their full or partial details to be made available to the public. A mark of ‘Private individual’ has been used to indicate respondents who either chose for their details to remain private or where no tick box was marked to indicate choice of disclosure.

In addition, where a response has been received from a representative of a group of members, their response has been categorised under the sector its members are associated i.e. Creditor, Insolvency Practitioner or Advice sector.

Responses per sector

- 38 Creditor sector responses received
  - 19 Credit Unions
  - Association of British Credit Unions Ltd.
  - 3 Banking Groups
  - British Bankers Association
  - 4 Councils
  - Institute of Credit Management
  - Credit Services Association
  - Federation of Small Businesses
  - Finance and Leasing Association
  - 6 other creditor organisations

- 40 Insolvency Practitioner responses received
  - 37 Insolvency Practitioners – 20 individuals & 17 organisations
  - R3 Association Recovery Professionals
  - Institute of Chartered Accountants Scotland
  - The Insolvency Practitioners Association

- 27 Advice sector responses received
  - 3 Citizens Advice Bureaux
  - 7 Council advice services
  - 7 Individuals
  - Scottish Council on Deafness
  - Money Advice Scotland
  - Citizens Advice Scotland
  - Money Advice Trust
  - Consumer Credit Counselling Service
  - 5 other advice giving organisations

- 24 responses where sectors are other than above.
  - 13 Individuals
  - 4 Solicitors
  - Scottish Association of Law Centres
  - Scottish Court Service
  - Society of Messenger-at arms and Sheriff Officers
  - Scottish Legal Aid Board
  - Office of the Scottish Charity Regulator
  - 2 other organisations

Below is a list of all respondents to the consultation who have given permission for their names to be known.

No	Respondent Name
1	Alan Stewart
2	Private individual
3	Private individual
4	Stephen Cowan
5	Craig Connal QC
6	Harper Macleod LLP
7	Michael J M Reid
8	Margaret Shields
9	The Insolvency Practitioners Association
10	Private individual
11	PKF(UK)LLP
12	Private individual
13	Alan McIntosh
14	Scotwest Credit Union
15	Johnston Carmichael LLP
16	BDO LLP
17	Consumer Credit Counselling Service
18	Private individual
19	British Bankers Association
20	Private individual
21	Private individual
22	Desmond Middleton
23	Finance and Leasing Association
24	Lindsays
25	Institute of Chartered Accountant of Scotland (ICAS)
26	Private individual
27	Private individual
28	Robert Barclay
29	Scottish Association of Law Centres
30	Private individual
31	RSM Tenon
32	Aberdeen City Council - Debt Advice
33	Association of British Credit Unions Limited (ABCUL)
34	Dumfries & Galloway Citizens Advice Service
35	Alan Adie
36	Private individual
37	Scottish Court Service (SCS)
38	Nicola Birrell
39	Institute of Credit Management
40	Private individual
41	Clydesdale Bank PLC
42	Renfrewshire Advice Works

43	Scottish Council on Deafness
44	Stirling Council
45	Miller McIntyre & Gellatly
46	Fife Council Money Advice Service
47	William White
48	Child Maintenance and Enforcement Commission
49	Geraldine Gray
50	Gordon MacLure
51	Paul O'Donnell
52	Sarah Elphinstone
53	Macgregors Chartered Accountant
54	Scottish Power Energy Retail Ltd
55	Society of Messenger-at-Arms and Sheriff Officers (SMASO)
56	Armstrong Watson
57	Private individual
58	Credit Services Association
59	Deloitte LLP
60	Federation of Small Businesses
61	Her Majesty's Revenue and Customs
62	Private individual
63	Scott – Moncrieff
64	Private individual
65	Scottish Legal Aid Board
66	1st Alliance (Ayrshire) Credit Union
67	Private individual
68	Consumer Credit Association
69	Drumchapel Credit Union
70	East Renfrewshire Credit Union Ltd.
71	The Royal Bank of Scotland
72	White Cart Credit Union
73	Private individual
74	Campbell Dallas LLP
75	Castle Credit Union
76	Private individual
77	Glasgow Central Citizens Advice Bureau
78	Money Matters, Social Services, North Ayrshire Council
79	Blantyre & South Lanarkshire Credit Union
80	Creditfix Limited
81	Grampian Credit Union
82	Easterhouse Citizens Advice Bureau
83	Pollok Credit Union
84	Money Advice Scotland
85	Sovereign Credit Union Ltd
86	MLM CPS Limited
87	Dumbarton Credit Union
88	West Dunbartonshire Council Advice Service

89	The City of Edinburgh Council
90	Glasgow Credit Union
91	Rutherglen Credit Union Ltd
92	Carrington Dean Group Limited
93	Christians Against Poverty
94	R3 Scottish Technical Committee
95	NHS (Scotland & North England) Credit Union LTD
96	West Dunbartonshire CAB Service
97	French Duncan LLP
98	TDX Group Ltd
99	Private individual
100	Citizens Advice Scotland
101	Dalmuir Credit Union Ltd
102	East Kilbride Credit Union Ltd
103	West Lothian Credit Union
104	Campbell Dallas LLP
105	Fiona McMillan
106	Scottish Transport Credit Union Ltd
107	1st Class Credit Union
108	Private individual
109	Private individual
110	Legal and Debt Solutions Limited
111	Wilson Andrews
112	Scottish Women’s Aid
113	Private individual
114	MAX Recovery Ltd
115	Private individual
116	Money Advice Trust
117	Morton Fraser
118	Michelle Byrne
119	Nolans Solicitors
120	North Lanarkshire Council
121	Payplan Scotland Limited
122	Scottish Legal Action Group
123	South Lanarkshire Council – Money Matters Advice Service
124	Private individual
125	Aberdeenshire Council
126	Insolvency Support Services Ltd
127	KPMG LLP
128	Office of the Scottish Charity Regulator
129	Lloyds Banking Group

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