

Final Business and Regulatory Impact Assessment

Title of Proposal

The Bankruptcy (Money Advice and Deduction from Income etc.) (Scotland) Regulations 2014

Purpose and intended effect

Background

Money Advice

The money advice landscape in Scotland is made up of free advice, available from third sector organisations and local authorities and advice for which there is a fee, usually through Insolvency Practitioners and Debt Management firms. Insolvency Practitioners operate in a regulated framework while third sector organisations do not.

Prior to the Bankruptcy and Debt Advice (Scotland) Act 2014 (“the 2014 Act”) coming into force, individuals entering into bankruptcy did not require to have taken advice before applying directly to the Accountant in Bankruptcy for an award of bankruptcy. Evidence collated by Accountant in Bankruptcy shows that between 6-8% (6-8% = approximately 500 per year) of people applying in the year 2011-2012 applied for bankruptcy, which is a last resort debt remedy, without having taken advice from a money adviser.

By contrast, it is a requirement that all individuals entering into any other Scottish statutory debt management/relief solutions such as a Debt Payment Programme under the Debt Arrangement Scheme or a Protected Trust Deed must have taken advice prior to entering into the solution. Advice in respect of the Debt Arrangement Scheme is available through ‘approved’ advisers, the definition of which is currently set out in The Debt Arrangement Scheme (Scotland) Regulations 2011 and includes advisers in both the third sector and private sector to ensure sufficient choice and to help meet demand.

Given the consequences of bankruptcy, it is desirable to ensure that people in debt understand the full range of debt solutions available to them, are made aware of the impact of such solutions and are guided to the most appropriate remedy for their circumstances.

Deduction from Income

In current bankruptcy legislation, there is no provision by which a debtor or a trustee in bankruptcy can instruct a debtor’s employer or another third party to take the debtor’s assessed contribution directly from the debtor’s earnings or other income and forward this directly to the trustee. Feedback from stakeholders, including ICAS, has suggested that having such provision would have a positive impact on the

amounts ingathered and, therefore, on returns to creditors. This supports one of the central policy principles behind the 2014 Act, in relation to its bankruptcy reform programme, that those who can pay, should pay.

Currently, there is provision within the Protected Trust Deeds (Scotland) Regulations 2013, for a debtor to instruct their employer, at any time to take the assessed contribution from the debtor's earnings from employment and pay this to the debtor's trustee.

The Protected Trust Deeds (Scotland) Regulations 2013 also provides for the trustee to instruct the employer to make a deduction from the debtor's earnings from employment. The Regulations limit this provision to circumstances where the debtor has failed on 2 consecutive occasions to pay the assessed contribution to the trustee.

Objective

The policy intentions of these Regulations are :

- to ensure that compulsory money advice given to debtors prior to obtaining bankruptcy is of a high standard by prescribing approved categories of money advisers and persons who may not be approved to provide advice for this purpose;
- to place a requirement on approved advisers to retain evidence of the advice given to the debtor, the income and expenditure of the debtor at the date of application for bankruptcy for a period of 2 years; this will allow AiB to audit approved money advisers and, where appropriate suspend or revoke the approval status of advisers;
- to provide for both the debtor and the trustee to instruct an employer or other third party to take the debtor's assessed contribution amount from the debtor's income and pay this directly to the trustee, and the effect of that and the consequences of not making those payments. The trustee will be limited to instructing the deduction only in circumstances where the debtor has failed on 2 occasions to pay the assessed contribution to the trustee.

Rationale for Government intervention

To ensure that appropriate, proportionate, debt management and debt relief mechanisms are available to the people of Scotland which are fit for the 21st Century by ensuring that:

- The people of Scotland have access to fair and just processes of debt advice, debt relief and debt management;
- Those individuals 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;

- The best return for creditors is secured, by ensuring that the rights and needs of those in debt are balanced with the rights and needs of creditors and businesses. The Bankruptcy (Advice and Deduction from Income etc.)(Scotland) Regulations 2014, contribute to the Scottish Government Economic Strategy to make Scotland a more successful country with opportunities for all to flourish, through increasing sustainable economic growth, aligned by the delivery of the following national outcomes:
- **Business** – A culture of entrepreneurship, leadership, creativity and international ambition
- **Inequalities** – We have tackled the significant inequalities in Scottish society
- **Employment opportunities** – Realising our full economic potential with more and better employment opportunities for our people
- **Communities** – We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.

Consultation

The discussion and debate on the modernisation and reform of bankruptcy, which forms the basis of the provisions in these Regulations, began with the publication of a comprehensive consultation paper, the Scottish Government's Consultation on Bankruptcy Law Reform. The consultation was a broad, inclusive and detailed document containing 193 questions. The consultation was published on the Scottish Government website and ran from 24 February 2012 until the 18 May 2012 inclusive.

A total of 129 responses were received. This is three times the number of responses received in previous recent bankruptcy consultations. Respondents represented a wide range of individuals and organisations with knowledge and experience of or an interest in insolvency matters. The Scottish Government's response to the consultation was published on 7 November 2012. Some of the comments received from respondents are contained in the 'Report of the Summary of Responses' held on the AiB website.

The consultation process was valuable and respondents helped to shape the content of the 2014 Act. The Scottish Government is grateful to all who contributed their time, input and assistance in the development of debt solutions for the people of Scotland.

Public

Through further consultation with stakeholders, it has been established that the majority of people currently considering a statutory debt relief or debt management option will seek advice. Therefore, it is envisaged that the introduction of compulsory money advice will not have a major impact on the money advice sector. Based on research into existing cases, AiB estimates that between 6-8%, approximately 500 of

current applications per year which take either the Apparent Insolvency or Low Income Low Asset routes into bankruptcy, are made without the debtor having accessed money advice prior to submitting their application.

The Scottish Government consulted on whether or not money advice should be compulsory when a debtor is considering any form of statutory debt relief and if so who should provide this money advice.

The majority of respondents, 93 of the 129 respondents, were in favour of money advice being compulsory for those considering any form of statutory debt relief. When asked who should provide this money advice respondents stated that money advice should continue to be provided by the current approved providers, as defined in the Debt Arrangement Scheme (Scotland) Regulations 2011 (DAS).

The main alternative approach considered was to give AiB a role in the provision of money advice, as often those seeking to apply for bankruptcy look to AiB for such advice. AiB do not have a money advice giving role, however, they do have a role in making advice accessible. The majority of respondents did not support the proposal for AiB to have an advice giving role. Some respondents expressed concern that there would be a conflict of interest for AiB, given current function/roles.

In the consultation, respondents were asked 'if having calculated the amount of contribution to be paid by the individual, using the common financial tool, should the legislation be changed to allow an assessed contribution to be deducted directly from an individual's wages'. Respondents were also broadly in favour of this proposal.

New provisions introduced by the 2014 Act will, where a debtor is subject to a debtor contribution order, allow an employer, as instructed by the debtor, or by the trustee where the debtor fails so to instruct his or her employer and fails to meet 2 payments, to make a deduction from the debtor's earnings, as specified by the debtor contribution order, and pay the sum directly to the debtor's trustee. The debtor's employer must comply with an instruction to make deductions directly from the debtor's earnings.

Within Government

AiB worked with colleagues across the Scottish Government, including finance officials, to draft an initial Financial Memorandum, which was published alongside the Bankruptcy and Debt Advice (Scotland) Bill in June 2013, and a further Supplementary Memorandum, published in March 2014. These documents set out a detailed account of the financial implications of the 2014 Act, including the implications for individuals and businesses.

Business

The debate and discussion around the changes in these regulations has been on-going since 2012. Since then, AiB has engaged continuously with stakeholders, including those who represent businesses. The latest public stakeholder events took place on 8 July 2014 in Edinburgh and 14 July 2014 and 11 August in Glasgow. At each event, AiB delivered presentations on the forthcoming regulations under the

powers of the 2014 Act. At the end of each presentation delegates were invited to participate in a question and answer session. This was their opportunity to contribute to the development of the regulations. No concerns were raised in relation to the Bankruptcy (Advice and Deduction from Income etc.) (Scotland) Regulations 2014.

In total approximately 130 delegates attended these events, representing a wide range of businesses and representative bodies, including:

Insolvency Practitioners Association
ICAS
Lloyds Banking Group
Credit fix
Solicitors
Money Advice (public and private sector)

Options

There were two options considered in relation to these regulations:

Option 1 – No change

The first option is to 'do nothing'. That is to make no changes to the current bankruptcy legislation. However, in light of the recent economic crisis to do nothing would leave the people of Scotland with options for dealing with debt which are out of date and not fit for 21st Century Living.

Sectors and groups affected: No change to individuals, creditors and the broader Scottish economy.

Benefits :The benefits in keeping the status quo is that there would be no need to change the legislation nor would stakeholders, particularly individuals or organisations providing money advice, having to make system changes, or train their staff in new procedures.

Costs - There would be no additional costs in adopting this option.

Option 2 – The Bankruptcy (Advice and Deduction from Income etc.) (Scotland) Regulations 2014 will introduce:

- To ensure compulsory money advice for debtors obtaining bankruptcy is of a high standard, approved categories of money advisers and persons who may not be approved;
- Deductions of an assessed contribution to be made from a debtor's income by an employer or other third party and forwarded directly to the debtor's trustee.
- Limiting the circumstances to when a trustee can instruct a deduction

from the debtor's income to where the debtor has failed to make 2 payments of the assessed contribution to the trustee.

Sectors and groups affected:

The proposed changes in these regulations will impact on the following groups:

- Money Advisers including Insolvency Practitioners
- Debtors
- Employers and other third parties who pay the debtor a regular income
- Trustees and creditors

Benefits

The proposed changes deliver the following benefits:

- On the coming into force of these Regulations, the advice sector will see a small rise in the number of individuals seeking their advice in order to enter into bankruptcy. Based on research into existing cases, AiB estimate that this will be limited to approximately 500 cases per year with a geographical spread throughout Scotland. At Local Authority level this equates to 16 additional cases per year on average per local authority.
- The introduction of this requirement will ensure that all debtors receive advice from a qualified money adviser and are aware the most appropriate form of debt management/relief solutions for their individual circumstances . The money adviser will also inform the debtor of the possible consequences of entering into their chosen debt/management debt relief solution.
- The introduction of a provision to allow a debtor to instruct their employer to take the assessed contribution directly from the debtors earnings or other income provides debtors with an addition vehicle by which to pay their contribution to the trustee. This may result in contributions being made in a timeously manner reducing the requirement on the trustee to chase up payment of the debtors assessed contribution.
- Employers and other third parties who pay a regular income to the debtor and receive an instruction to pay the assessed contribution directly to the trustee may have to make changes to their payroll systems or other payment systems to accommodate this requirement. The Regulations make provision for the employer or third party to take a fee from the debtors income for providing this service. The fees for that can be charged for this service is equivalent to that stated in section 71 of the Debtors (Scotland) Act 1987, the employer of third party can deduct this fee from the debtors income or earnings.

Costs

The mandatory requirement to provide money advice before making an application for sequestration will have some impact on costs for money advice organisations. Advice is already compulsory before entering either of the other statutory debt

solutions available in Scotland (Protected Trust Deeds and the Debt Arrangement Scheme), so this provision would only impact on applications for bankruptcy where the debtor would not, otherwise, have sought advice.

AiB carried out analysis of the likely impact of this provision in the BADA(S) Act, which was published in the Financial Memorandum for the Act (Available via the Scottish Parliament website). AiB's analysis which was based on research into existing cases, showed that only between 6-8% of current applications are made without the debtor having had access to money advice. Subsequent analysis showed that this equates to approximately 500 cases per year across Scotland.

It is likely that a proportionate increase of this scale will have a manageable impact on money advisers' capacity and caseload, particularly as the range of channels available to money advisers to provide advice is expanding, more advice is now offered over the telephone or via online advice tools such as StepChange's 'Debt Remedy' tool.

Money advisers' caseload may vary for a number of reasons, for example as a result of welfare reforms by the UK government and this legislation would represent just one factor in a complex picture. Also, a debtor's contact with an adviser, in the course of seeking advice, will vary greatly from organisation to organisation and client to client. It is not possible, therefore, to accurately estimate the additional costs to money adviser organisations which may be incurred as a result of this change.

Scottish Firms Impact Test

AiB have, from the inception of the programme of bankruptcy reform in Scotland, engaged with stakeholders, including businesses, on a continuous basis through face to face meetings, seminars, workshops and stakeholder events. The foundation of these discussions were formed by the questions posed in the [Consultation on Bankruptcy Law Reform](#). Stakeholder response to the consultation fed into the development of the proposals in the Bankruptcy and Debt Advice (Scotland) Bill. The latest public stakeholder events took place on 8 July 2014 in Edinburgh and 14 July 2014 in Glasgow. At each event AiB delivered presentations on the forthcoming regulations under the powers of the 2014 Act. At the end of each presentation delegates were invited to participate in a question and answer session. This was their opportunity to contribute to the development of the regulations. No concerns were raised in relation to the Bankruptcy (Advice and Deduction from Income etc.) (Scotland) Regulations 2014.

As a result of engaging with stakeholders throughout the process AiB were able to address any concerns as they arose. Consequently, no concerns were raised in relation to the proposals contained in the Bankruptcy (Advice and Deduction from Income etc.) (Scotland) Regulations 2014 at the recent stakeholder events on 8 and 14 July 2014. These events were attended by approximately 130 delegates including representatives from the following businesses:

Insolvency Organisations

Solicitors
Banking sector
Accountancy firms
Creditor organisations
Private sector Money Advisers

Competition Assessment

Having considered the Competition and Markets Authority competition filter questions – i.e. does the proposal limit suppliers either directly or indirectly and reduce ability and/or incentives to compete? – I can confirm that these changes will apply equally to all who engage with the regulations. There should be no competitive advantage to any particular individual or group as a consequence of the introduction of the regulations.

Test run of business forms

In support of the provisions in the Bankruptcy and Debt Advice (Scotland) Act 2014 and associated regulations, one of which being the Bankruptcy (Advice and Deduction from Income etc.) (Scotland) Regulations 2014, AiB are introducing a new system, known as BASYS. Prior to implementation on 1 April 2015 AiB will be holding stakeholder events for frontline users seeking their comments on the new system and associated forms.

AiB will continue to monitor the use of the forms post implementation to ensure they are fit for purpose and easy to use.

Legal Aid Impact Test

Although this may result in an increase in the advice sought on money issues, the aim is that this is done through qualified money advisers so will not call on advice and assistance. This therefore should not have an impact on the legal aid fund. This has been confirmed by the Scottish Legal Aid Board.

Enforcement, sanctions and monitoring

The Scottish Government will carefully monitor how the new legislation and regulations are working in practice by carrying out reviews and seeking feedback from stakeholders.

Implementation and delivery plan

The Bankruptcy (Advice and Deduction from Income etc.) (Scotland) Regulations 2014 will come into force on 1 April 2015. When commenced they will apply where a debtor application is received by Accountant in Bankruptcy on or after 1 April 2015. The intention is that a debtor application signed before that date can be received after that date without money advice having been given, but that to the extent that is the case, it is treated as an incomplete application under the 1985 Act and further information can be requested.

The Accountant in Bankruptcy will publicise the introduction of the regulations on their website. The new regulations will also be incorporated in the legislation published on the legislation.gov.uk website.

The Accountant in Bankruptcy will, where appropriate, prepare and publish, on their website, guidance to support stakeholders when implementing the new legislation.

• **Post-implementation review**

To evaluate the impact of the new legislation the Scottish Government has given an undertaking that the Accountant in Bankruptcy will carry out a review of these provisions a year after they come into force. This will involve the analysis of statistical data and feedback from stakeholders collated by the Accountant in Bankruptcy. They will be looking at, amongst other things, the number of applications and requests for review of decisions made by AiB. They will also ensure that the associated forms are fit for purpose.

The Scottish Government will review the findings of this research and consider whether any changes are necessary to the legislation or associated guidance in light of its findings. Any changes identified will be brought to the attention of the Scottish Parliament and Parliamentary committees where necessary. A final report detailing the findings and conclusion of the review will be published.

Summary and recommendation

After due consideration and continuous consultation with those directly affected by these regulations, it is recommended that Option 2 is implemented for the reasons given in the table below.

• **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	The benefits in keeping the status quo is that there would be no need to change the legislation nor would stakeholders have to set aside time to familiarise themselves or train their staff in new procedures.	There would be no costs in maintaining the status quo.
2	All debtors entering into bankruptcy will be aware of the available statutory debt management/relief solutions and the possible consequences of entering into these solutions. AiB will audit the quality of advice provided by money advisers to debtors entering into bankruptcy . Where it is found that the advice given was incorrect, it will be possible if good cause is shown to suspend or revoke the approval status of advisers. AiB will inform the money advisers' organisation of their findings. This will help ensure that the quality of advice given to debtors is of a high quality.	AiB have considered the costs associated with these changes and are confident that these costs and any additional training costs can be met from their existing budget. Where costs may impact on money advice services operated by Local Authorities, these will be offset by the Scottish Government through an existing funding arrangement. More widely, it is not possible to disaggregate the impact of these Regulations as money advisers' caseload may vary for a number of reasons.

	<p>The requirement placed on an employer or other party to pay the debtor's assessed contribution from the debtor's earnings or other income to the trustee, may result in a higher dividend being paid to creditors as trustees will not be required to chase debtors for the assessed contribution. This requirement will also ensure that those who can pay and choose not to pay do in fact pay. In circumstances where the debtor or trustee has instructed an employer or third party to make a deduction from the debtors earnings or other income the employer or third party can charge a fee and take this fee from the debtors earnings or other income. The fee for this service is limited to that prescribed in section 71 of the Debtors (Scotland) Act 1987.</p>	
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Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Fergus Ewing MSP, Minister For Energy, Enterprise and Tourism

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