

# Business and Regulatory Impact Assessment

## **Title of Proposal**

The Common Financial Tool (Scotland) Regulations 2018

## **Purpose and intended effect**

- **Background**

The Common Financial Tool (CFT) was introduced on 1 April 2015 for the purpose of assessing an individual's contribution in all of the available statutory debt solutions.

The policy aim of the CFT was to help achieve consistency and transparency in relation to any determination of the level of contribution that a debtor might pay in respect of Scottish statutory debt solutions.

The public consultation on the CFT provided significant support from respondents for the adoption of the Common Financial Statement (CFS) to be used as the CFT.

The CFS has been used as the CFT since its introduction on 1 April 2015.

For a number of years the UK has attempted to mirror the position in Scotland by having a single tool for assessing an individual's income and expenditure.

On 1 April 2017, the Standard Financial Statement (SFS) was introduced in England and Wales, where it has replaced the CFS and the tool previously published by StepChange.

- **Objective**

The Regulations will specify that the CFT will be defined as the SFS operated by the Money Advice Service (or the Single Financial Governance Body), replacing the CFS.

The policy intention of the proposed Regulations is to ensure consistency and transparency for debtors and their creditors in assessing the amount of available surplus income to repay debts. By adopting the SFS in Scotland, these Regulations will ensure that the assessment of debtor contributions is consistent across the UK for the money advice and insolvency sectors.

- **Rationale for Government intervention**

The Scottish Government recognises the responsibility it has to take action where it can to help the people of Scotland by ensuring that debt relief products are fit for purpose, support the people of Scotland and strengthen Scotland's economy.

These Regulations 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

- **Within Government**

As part of our role within the SFS Governance Group, the Accountant in Bankruptcy (AiB) consulted with the UK Insolvency Service to consider the work they were undertaking for the implementation of the SFS.

As they did not have a single tool process at the time, the adoption of the SFS had a greater impact on their processes and systems than it would for AiB and Scotland. They had no significant issues adopting the SFS.

- **Public Consultation**

In August 2017, a public consultation was undertaken to establish stakeholders' views on the SFS replacing the CFS as the tool to use in Scottish statutory debt solutions.

There were 63 responses received from across the money advice and creditor sectors. 31 responses came from organisations and 32 from individuals. The 32 individual responses came from three business sectors – 22 from the Advice Sector, nine from the Local Authority Advice sector and one from an insolvency practitioner.

There were differences of opinion regarding the introduction of the SFS in Scotland. The Scottish money advice sector was concerned that the introduction of the SFS would have a negative impact on debtors while potentially increasing the burden on providing evidence for the debtor's expenditure.

The creditor sector wanted a consistent process to be used across the UK, both for administrative efficiency and to give them reassurance of fairness when asked to approve a debtor's contribution amount.

The organisations currently using the SFS had responded by confirming they did not have any issues with the SFS.

AiB has also worked with the Money Advice Service and the SFS Interim Governance Group to assess how the concerns raised about the SFS could be addressed.

Since the consultation ended, the revised 2018 SFS and CFS trigger figures have been determined and made available to all licence holders.

AiB undertook case analysis to accompany the consultation and subsequently updated this analysis with the latest 2018 trigger figures. The analysis provided an illustrative comparison of the CFS and SFS. The high-level analysis was based on 1,511 real debtor income and expenditure details held in the CFT.

Using the 2018 trigger figures, the analysis showed fewer trigger breaches under SFS across all spending categories. Under the SFS, 75% of sampled cases did not see a trigger breach compared with 62% of cases under the CFS. More detail on the analyses undertaken by AiB and findings is available [here](#).

This additional statistical information suggests that the increased contributions which concerned the Scottish money advice sector has been significantly reduced, if not removed altogether.

AiB has also obtained assurance from the SFS Governance Group that, going forward, the methodology underpinning the SFS will not be further changed unless on-going monitoring suggests the tool is not producing the intended result.

As part of the contribution process AiB allows trigger figures to be breached if supporting evidence is provided. This is currently the case with the CFS and will continue with the adoption of the SFS. AiB regularly reviews the evidence requirements from the Money Advice sector and this will not change when moving to the SFS.

- **Business**

AiB is a member of the SFS Governance Group whose remit is for the introduction and maintenance of the SFS. The other members represent a wide range of businesses and bodies representing businesses, including:

Lloyds Banking Group  
Finance & Leasing Association  
British Banking Association (UK Finance)  
Nationwide Building Society

The introduction of the SFS has been discussed with these stakeholders and no significant issues were raised.

## **Options**

### **Option 1 – No Change**

The first option is to 'do nothing.' That is to retain the CFS. Currently, the Money Advice Trust (MAT) publish the CFS but they have confirmed that, longer term, they will cease to manage the CFS or annually update the trigger figures. Therefore, another party will be required to publish the CFS in order for it to be retained as the CFT. No other organisations have volunteered, or been recommended by stakeholders, to publish the CFS.

**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, have to adopt a new tool, make system changes, or train their staff in new procedures.

**Cost** – As there is no alternative organisation to publish the CFS this would fall upon AiB, incurring costs for either internally researching and determining the necessary expenditure figures for the tool, or outsourcing that function. It would also mean that Scotland is out of step with the rest of the UK.

**Sectors and Groups affected** – No change to individuals, creditors and the broader Scottish economy.

### **Option 2 – Adopt the Standard Financial Statement**

**Benefits** – The SFS has support from across the insolvency landscape. The tool is a partnership initiative facilitated by the Money Advice Service. The adoption of the tool will ensure there is consistency across the UK when assessing an individual's income and expenditure.

The SFS is a tool which has been updated to incorporate modern lifestyles highlighting the outdated expenditure categories used in the CFS. For example, the CFS has an expenditure category for phone. The SFS has altered this expenditure to include television and broadband packages as most households now generally have a media package in a single payment.

The SFS has also removed the trigger figure for an individual's travel expenses. This allows more flexibility for the individual as this expense can vary substantially on a case by case basis.

The essential mechanism of the CFT would remain unchanged as the SFS is consistent with the CFS in that respect.

**Sectors and groups affected** - Individuals and organisations providing money advice, creditors and the broader Scottish economy.

**Costs** – The SFS is free to use (subject to the terms of the Money Advice Service license agreement). The CFT is freely accessible to the money advice sector through the case management systems which are managed by AiB. Some stakeholders may choose to update their own IT systems, incorporating the SFS. As the SFS will become the standard for non-statutory solutions such as Debt Management Plans the money advice sector will be required to use the SFS. However, it may not be necessary for them to update their own systems at a cost as AiB's case management system will incorporate the SFS and will always be available to them free of charge. The cost to AiB, of incorporating the SFS into its case management system, will be minimal. Any upgrades required will be absorbed in the on-going technical improvements to the system that are carried out within normal operational process.

### **Scottish Firms Impact Test**

From the inception of the SFS, AiB have been engaging with stakeholders, including business, on a continuous basis through face to face meeting, workshops and stakeholder events.

AiB chairs the CFT working group which includes members who represent:

- IPA (Insolvency Practitioners Association)
- ICAS
- HMRC
- ABCUL
- Lloyds Banking Group

The introduction of the SFS has been discussed with these stakeholders. No significant concerns were raised. Business stakeholders acknowledge the benefits of having a consistent method of determining the level of a debtor's contribution across the UK.

### **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? We 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**

The appropriate statutory forms will be updated to incorporate the SFS. The CFT will be updated and tested on our online systems for all statutory products.

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**

The Scottish Legal Aid Board have confirmed that they do not foresee any impact on the legal aid fund as a result of the provisions in the Debt Arrangement Scheme (Scotland) Amendment Regulations 2018.

### **Enforcement, sanctions and monitoring**

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

Until the single financial guidance body assumes the function, use of the SFS will be monitored by the Money Advice Service, who issue licenses to use the tool. Regulation 18 of the Bankruptcy (Scotland) Regulations 2016 will be amended to provide that AiB may notify the body who publish the SFS of contraventions of license requirements, should it become aware of any. AiB will, as a matter of course, retain records on the use of the tool, for operational, management information and performance reporting purposes.

AiB may also have recourse to the power (under regulation 5(2) of the Bankruptcy (Scotland) Regulations 2016) to revoke or suspend the approval of a Money Adviser who fails, without good cause, to apply the SFS in line with those Regulations.

### **Implementation and delivery plan**

The Common Financial Tool (Scotland) Regulations 2018 will come into force on the 1 April 2019. These Regulations will apply to all sequestrations initiated and trust deeds executed on or after 1 April 2019 (and to variations relating to sequestrations initiated or trust deeds executed before that date).

AiB will publicise these Regulations on their website. They will also appear on the legislation.gov.uk website. AiB 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 stated that AiB will carry out a continuous monitoring of these provisions after they come into force. This will involve the analysis of statistical data and feedback from stakeholders collated by AiB.

The Scottish Government will review the findings of this research and consider whether any changes are necessary to the legislation, the SFS or the 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.

### **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	<p>1. No need to change the legislation.</p> <p>2. No need for stakeholders, particularly individuals or organisations providing money advice, to adopt a new tool, make system changes, or train their staff in new procedures</p>	<p>1. There would additional costs and administrative duties for AiB to maintain and publish the CFS unless an alternative organisation takes on that role.</p>
2	<p>1. Using the SFS will unify the assessment of individual's income and expenditure across the UK.</p> <p>2. The SFS will modernise the CFT to capture the expenditures of modern day households.</p> <p>3. AiB's analysis has shown that the use of the SFS results in fewer instances of triggers values being exceeded than the CFS.</p>	<p>1. The SFS is free to use (subject to the terms of the Money Advice Service license agreement).</p> <p>2. The CFT is freely accessible to the money advice sector through the case management systems which are managed by AiB. Therefore, AiB do not foresee any necessary major cost implications for stakeholder groups as the sole result of these draft Regulations.</p> <p>3. The cost to AiB, of incorporating the SFS into its case management system, will be minimal. Any upgrades required will be absorbed in the on-going technical improvements to the system that are carried out within normal operational process.</p>

**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:****Minister's name****Minister's title****Scottish Government Contact point:**

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