POLICY NOTE

THE COMMON FINANCIAL TOOL ETC. (SCOTLAND) REGULATIONS 2014

SSI 2014/290

The above instrument will, if approved, be made in exercise of the powers conferred by section 5D (as inserted by the Bankruptcy and Debt Advice (Scotland) Act 2014 (the "2014 Act"), 71C and 72(1A) of and paragraph 5 of Schedule 5 to the Bankruptcy (Scotland) Act 1985 ("the 1985 Act"), section 7(2)(bd) of the Debt Arrangement and Attachment (Scotland) Act 2002 and all other powers enabling them to do so.

The Regulations are subject to the affirmative procedure.

Policy Objectives

1. The development and delivery of a single, 'Common Financial Tool' ("CFT") for Scotland is provided for by the 2014 Act, which received Royal Assent on 29 April 2014. Section 3 of the 2014 Act amends the 1985 Act to add a power to make affirmative regulations (new section 5D of the 1985 Act) to specify a method ("the tool") to assess an individual's income and expenditure and to determine an appropriate contribution from a debtor's income.

2. The policy aim of these Regulations, under provision introduced by the Bankruptcy and Debt Advice (Scotland) Act 2014 ("the 2014 Act"), is to ensure 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. This supports one of the core policy principles which underpins the Scottish Government and AiB's programme of bankruptcy reform, that those who can pay, should pay.

3. The use of the CFT will be mandatory in respect of all statutory debt relief and debt management solutions in Scotland. This will support the introduction of the new Scottish "Financial Health Service" which focuses on advice from money advisers as part of the process as a key measure in helping people in Scotland to manage their debts.

4. The CFT will determine whether an individual is able to make a contribution towards repayment of their debts and what the level of their contribution should be. The use of the CFT across the sector and for all statutory debt solutions will ensure consistency and should assist debtors in making informed choices about the debt solution most suitable for their circumstances.

5. These Regulations specify the detail of the CFT. All approved money advisers in Scotland, who are advising debtors on proposals for statutory debt solutions, will be obliged to use the CFT in making debtor applications for sequestrations. Trustees will be obliged to use it in relation to protected trust deeds and money advisers to use it in the context of the Scottish Government's Debt Arrangement Scheme.

6. This instrument makes provision for :

- making the CFT the Common Financial Statement ("CFS") published by the Money Advice Trust ("MAT") subject to the Regulations;

- fixing the debtor's contribution as the whole of their surplus income (the amount of the debtor's surplus income to be determined by an assessment of their income and expenditure, using the CFT);

- allowing the money adviser to take household (as well as the individual debtor's) income and expenditure as permitted by the CFS into account when making their assessment of the debtor's income and circumstances;

- providing that for the purpose of determining a debtor's contribution towards the cost of their bankruptcy or payment in a protected trust deed ("PTD"), where the debtor's sole income is from prescribed benefits, no contribution shall be taken;

- requiring the trustee, when providing initial proposals to AiB to have a Debtor Contribution Order put in place or in making a variation which can be reviewed by AiB, to provide a statement that the trustee has assessed the debtor's income and expenditure using the CFS;

- providing that AiB may report breaches of CFS license requirements to the Money Advice Trust;

- amending the Protected Trust Deeds (Scotland) Regulations 2013, to adjust the provisions in relation to the CFS to take account of the Common Financial Tool now provided for in these Regulations under the BADA(S) Act; and

- making some other changes to the PTD Regulations, including to allow as an outlay a single valuation of heritage before a PTD is entered into.

7. As the tool will also be used for the Debt Arrangement Scheme, currently under the Debt Arrangement Scheme (Scotland) Regulations 2011 (S.S.I. 2011/141 as amended), provision is also made using the powers in section 7(2)(bd) of the Debt Arrangement and Attachment (Scotland) Act 2002 added by section 3(2) of the 2014 Act.

Background

8. Only one third of bankruptcies in Scotland result in a contribution from income being made. Currently, there is no one single tool that is used for assessing the appropriate contribution. The main tools in general use are the StepChange tool and the Common Financial Statement (CFS). The CFS (published by the Money Advice Trust) is a budgeting tool that can be used by advice agencies and other third party organisations to make debt repayment offers to creditors on behalf of clients. This and the StepChange tool contain budget guidelines for certain areas of discretionary expenditure, known as trigger figures.

9. In February 2012, the Scottish Government consulted on bankruptcy law reform (see below). Amongst other proposals, its consultation introduced the concept of a mandatory single tool to be used by all money advisers in Scotland in assessing contributions, for all those accessing debt relief or debt management products. Respondents to the consultation were strongly in favour of a single tool, however there was less support for the development of a new Scottish-specific tool. Of those who were keen to use an existing tool, the majority favoured the CFS.

10. A working group consisting of representatives from the IPA, ICAS, the free money sector, the banking sector, the credit union sector and AiB was set up with a remit to identify or develop a single financial tool, either adopting one of the current main tools or developing a new tool. The working group has subsequently met on five occasions and will continue to meet in order to develop and agree on the guidance to support the CFT.

11. Analysis was carried out and presented to the working group. The analysis supported the view that the CFS would provide a more accurate reflection of actual household expenditure, making it more likely that debtors would be able to sustain payments if the level of their contributions was determined through the CFS. On review, it was concluded that the trigger figures were breached less often in the CFS. Furthermore, the CFS enjoys the support of a significant proportion of stakeholders (for example, from stakeholders from across the advice sector and the British Banking Association), which means that its implementation is likely to be better supported. On the basis of this analysis, it was agreed that MAT's CFS should be adopted as the Scottish CFT.

12. The CFS is a partnership initiative facilitated by the Money Advice Trust (MAT), supported by the British Bankers' Association and the Finance and Leasing Association. The CFS was published in 2002 and represents a commitment from its sponsors in the credit and advice sectors to create a uniform approach to how individual and household budgets are prepared and to encourage consistent responses from creditors to offers of debt repayment.

13. The CFS trigger figures represent pre-agreed levels of certain areas of discretionary household expenditure and help to identify levels of monthly expenditure deemed reasonable when using the tool. The figures are reviewed annually and published in April. Interim changes to the figures may be made if there is a significant increase within any expenditure category. This is agreed by the Money Advice Trust Client Support Steering Group (CSSG), and the AiB will have a representative on the CSSG.

Specific provisions

14. **Regulation 3:** provides for the CFT, including how income and expenditure of the debt is established by reference principally to the Common Financial Statement published by the Money Advice Trust. The basis of the contribution is the debtor's surplus income in excess of the lower of the debtor's expenditure, or the "trigger figures" (which are part of the CFS and set a reasonable level of expenditure). The debtor may be allowed an amount of reasonable expenditure that exceeds the trigger figures. Guidance will also be published by the Accountant in Bankruptcy on types of income and expenditure, how income and expenditure should be verified and further details on money advisers' functions.

15. **Regulation 4:** requires that supporting statements, explanation and evidence is required.

16. Under **Regulation 5:** the Accountant in Bankruptcy can, in relation to debtor applications, notify the Money Advice Trust where it appears money advisers may have breached licence restrictions of the CFS.

17. **Regulations 6 to 10:** make changes to the PTD Regulations (which protect debtors entering into trust deed arrangements with their creditors from other creditors). Consequential changes are made for the introduction of the CFT under the powers in paragraph 5 of Schedule 5 to the 1985 Act (regulation 7), building on the fact that the PTD Regulations already require users to use the CFS.

18. Other miscellaneous and minor amendments are made to the PTD Regulations, including a requirement that trustees should seek a direction from the Accountant in Bankruptcy in circumstances where creditors object to a recommended course of action where a trustee proposes a lower dividend in a Form 4 submitted under the PTD Regulations (**Regulation 8(1)**). A single valuation of specified heritable estate before a trust deed was granted can be allowed as an outlay of the trust deed

19. **Regulation 11:** states that the CFT Regulations do not apply to trust deeds granted before 1 April 2015.

Consultation

20. The Scottish Government gave a commitment to modernise the bankruptcy system in Scotland, ensuring that the people of Scotland have access to the appropriate debt management and debt relief mechanisms which will allow them to deal with the economic challenges society faces today.

21. As mentioned above, in 2012, the Scottish Government consulted on its proposals for bankruptcy law reforms. Its "Consultation on Bankruptcy Reform" - http://www.scotland.gov.uk/Publications/2012/02/6283n was published on 24th February 2012 and remained open until 18 May 2012.

22. Throughout the parliamentary process for the Bill for 2014 Act, the Scottish Government also engaged with various stakeholder groups giving them the opportunity to raise their concerns. This provided stakeholders with the opportunity to contribute to the development of the Bill and these Regulations.

23. In addition to the Consultation on Bankruptcy Law Reform, AiB has held a rolling programme of stakeholder events in December 2012 to August 2014. These events have taken place in Edinburgh, Glasgow, Inverness and Aberdeen. The latest public stakeholder events took place on 8 July 2014 in Edinburgh and 14 July and 11 August 2014 in Glasgow. Further details of these events can be found on AiB's website.

24. At each event, AiB delivered presentations on forthcoming Regulations. At the end of each presentation delegates were invited to participate in a question and answer

session. 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)

Impact Assessments

25. A Business and Regulatory Impact Assessment ("BRIA") has been completed on the effects of the implementation of these Regulations and the instrument and will be published when this instrument is laid before the Parliament. A copy of the BRIA can be found on the Accountant in Bankruptcy website at: www.aib.gov.uk

26. An Equality Impact Assessment ("EQIA") has been completed which refers, in turn, to the EQIA completed in relation to the 2014 Act. AIB administers each bankruptcy on an individual basis and has appropriate measures in place to ensure that the collation and transmission of statistics and information regarding individuals are completed sensitively. The changes set out in these Regulations will apply equally to all. AiB regularly consults with stakeholders, service users and the general public on reforms to bankruptcy law to ensure that the needs of all groups of society who require to enter bankruptcy are considered and that no particular groups are disadvantaged or excluded more than others.

27. A copy of the EQIA can be found on the AiB website at: www.aib.gov.uk and the EQIA published in relation to the 2014 Act can be found on the Scottish Government website at: www.scotland.gov.uk

Financial Effects

28. A Financial Memorandum was published for the Bankruptcy and Debt Advice (Scotland) Bill and can be found at :

    http://www.scottish.parliament.uk/S4_Bills/Bankruptcy%20and%20Debt%20Advice%20(Scotland)%20Bill/b34as4-stage2-supp-fm.pdf

The Accountant in Bankruptcy on behalf of the Scottish Government