

Final Business and Regulatory Impact Assessment

Title of Proposal

The Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021

Purpose and intended effect

These Regulations will make provision to ensure that our statutory debt solutions are fit for purpose and they provide the necessary support to the people of Scotland in response to the economic consequences of the Coronavirus pandemic.

Background

The Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020 introduced several measures dealing with debt and insolvency. In short, these provisions provide individuals with an extended period of statutory protection from debt enforcement action being taken by creditors (the Moratorium), lower cost access to self-nominated bankruptcy for those who require relief from debt (with fee removal for the most financially vulnerable consumers) and an increased debt threshold for creditors to pursue bankruptcy action through the courts. There are also measures to assist processes through electronic signature and exchange of documents, virtual meetings of creditors in bankruptcy proceedings and an extension in the period of time that trustees have to submit proposals to Accountant in Bankruptcy (AiB) on debtor contribution orders payable during processes.

At the present time the Acts have been extended to 31 March 2021, with the option for further extension to the latest possible date of 30 September 2021. This is subject to review and any further extension will require Parliamentary approval. Stakeholders in this area are strongly supportive of the need for further extension, in view of the anticipated surge in demand for debt solutions as the economic consequences of the pandemic unfold. Although we are not seeing increases in those accessing bankruptcy at this time, it is considered that this will be inevitable. We know from the evidence provided by advice agencies and factors including the increases in those seeking moratorium protection that more people are already facing issues with unsustainable debt.

The Minister for Business, Fair Work and Skills met with stakeholders on 26 October 2020 to discuss the scope for a general review of Scotland's debt solutions. A three stage approach was agreed – immediate priorities that could be delivered in the current Parliamentary session, medium term recommendations for any necessary reform to existing solutions for the incoming administration and a longer term strategic view.

Subsequent discussions with stakeholders undertaken by AiB in November 2020 has resulted in a number of immediate priorities being identified that could make a positive impact and bring about benefits both in response to COVID-19 and the

longer term. This would be achieved by putting some of the emergency provisions on a permanent footing, where appropriate powers to do so exist.

Objective

There is no doubt that the coronavirus pandemic is having an impact on the economy. The Scottish Government will continue to do whatever it can to help those affected by it.

The proposals would make some of the changes introduced through the Coronavirus (Scotland) (No. 2) Act permanent and they would also bring forward the expiry of the measures in the 2020 Act that are being replaced. These would help people in severe financial difficulty and give them a fresh start and provide predictability and greater confidence for lenders.

These are as follows:

- Reduce bankruptcy application fees for debtors. Primarily, the reduction of the full administration fee to £150 and the Minimal Asset Process fee to £50;
- Remove bankruptcy application fees for those individuals in receipt of prescribed benefits;
- Increase the debt threshold for entering a Minimal Asset Process bankruptcy from £17,000 to £25,000;
- Remove student loans from the debt threshold calculation in accessing Minimal Asset Process bankruptcy;
- Allowing the electronic signature of bankruptcy forms; and
- Increasing the length of time for a trustee to submit an initial proposal for the Debtor's Contribution Order from 6 weeks to 12 weeks.

Rationale for Government intervention

The Scottish Government recognises the responsibility it has to take action to help the people of Scotland by ensuring its debt management and debt relief solutions are fit for purpose and are accessible to those who need help, including those who are struggling as a result of the Covid-19 pandemic.

These Regulations contribute to the Scottish Government's 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 strategic objective and national outcomes:

Wealthier and Fairer – ensuring that our statutory debt solutions are designed to help people in severe financial difficulty and give them a fresh start and provide predictability and confidence for lenders.

Realising full economic potential – by ensuring our statutory debt solutions are available and fit for purpose for those who need it.

Providing high quality public services, continually improving, efficient and responsive to local people's needs – by ensuring our statutory debt solutions

are sustainable to meet the needs of the people of Scotland.

Tackling inequalities in Scottish society – by making our statutory debt solutions as accessible to as many people as possible.

Consultation A

The timescale for these regulations have not allowed for full consultation, which would apply under normal circumstances. Consequently, addressing immediate priorities through legislation required some degree of cross-sector agreement that any reforms would be both beneficial and essential. However, a significant level of stakeholder consultation has been conducted.

The Minister for Business, Fair Work and Skills held a Working Group on Statutory Debt Solutions meeting on 26 October 2020. This meeting reached consensus on a 3 stage process to review Scotland's debt relief and management solutions.

AiB also took forward a series of stakeholder meetings to establish views on immediate priorities.

Five stakeholder meetings took place between 9th and 11th November – this included all of those attending the Minister's meeting on 26th October (although 4 members were unable to attend and 2 fed in written views) and other stakeholders who have a strong interest in existing debt solutions.

Attendees

Robert Kelly	Association of British Credit Unions Ltd
Ian Fiddeman	UK Finance
Eileen MacLean	IPA/R3/Insolvency Support Services
Thomas Fox	Harper McDermott
Donna McKenzie-Skene	University of Aberdeen
Alisdair MacPherson	University of Aberdeen
Jemiel Benison	Citizens Advice Scotland
Dermot O'Neill	Scottish League of Credit Unions
Jim Maxwell	Watch Portfolio Management
David Menzies	ICAS
Yvonne MacDermid	Money Advice Scotland
Emma Jackson	Christians Against Poverty
Rachel Gregory	Christians Against Poverty
Andy Douglas	HMRC
Graeme Macleod	Carrington Dean
Calum Jones	Kepstorn solicitors
Colin McMahon	Nationwide Building Society
Sharon Bell	StepChange
Meg Van Rooyen	Money Advice Trust
Frances McCann	Scotwest Credit Union
Lynne Flower	KPMG
Anne Hastie	Law Society of Scotland

Sarah-Jayne Dunn	Citizens Advice Scotland
Angela Kazmierczak	Aberdeen City Council
Donald McKinnon	Wylie & Bisset
Rowan Duffin-Jones	Insolvency Practitioners Association

Not Attending – Offered Written Views

Ewan Watson	IC Loans
Alan McIntosh	Inverclyde Health and Social Care Partnership

Summary

The discussions revealed a high level of agreement on the case for immediate change and to place legislation on a more stable footing (some of these are provided for under the emergency COVID-19 Acts).

Consultation B

A consultation was undertaken in late 2019 to early 2020 as part of a review of the Bankruptcy and Debt Advice (Scotland) Act 2014. This consultation concluded prior to the COVID-19 pandemic and therefore did not focus on the temporary changes introduced by the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020.

However, the review did involve consideration of the period of time for a trustee to submit a Debtor Contribution Order proposal. 74% of those consulted did not believe the pre-covid timescale of 6 weeks for submission was sufficient. The consultation highlighted several reasons for this. Primarily, these focused on delays beyond the trustee's control, such as delays in receiving the award of sequestration and the time required to gather the evidence needed to accurately produce a proposal. A majority consensus was reached around a more appropriate timescale of 12 weeks. Consequently, this makes clear that it is seen as advantageous and appropriate to make this temporary timescale permanent.

Options

There are 3 main options here:

1. Immediate action is taken to draft and lay secondary legislation. This would ensure these provisions remain in place beyond September 2021, providing greater clarity for those seeking help through a statutory debt solution.
2. Reviewing the position in the new Parliamentary session with legislation introduced where necessary to follow on from the expiry of emergency provisions. However, there is very little Parliamentary time between the next election and the end of September when the measures will come to an end. This could risk a "gap" between the cessation of emergency provisions and the introduction of new legislation.
3. Do nothing. Stakeholders have welcomed the coronavirus provisions and it would be considered a retrograde step if some of these are ceased in March

or September 2021 with no action being taken.

Sectors and groups affected – Debtors, creditors, insolvency practitioners, the money advice sector and the broader Scottish economy.

Funding Implications

Any changes being introduced to the bankruptcy application fee structure will impact on the funding of AiB and the operation of the existing fees order. The fee structure in place at the moment is designed to ensure where possible that AiB's costs incurred through determining bankruptcy applications, acting as trustee in bankruptcies and in supervising all the debt solutions are met by an appropriate fees order. This is designed to ensure AiB's costs are recovered without AiB becoming reliant on core government funding; any change to the fee structure could impact on this. As such, the financial impact of the proposed changes are outlined below.

These Regulations propose the following reforms to the fee structure:

- Permanent reduction of the MAP debtor application fee to £50;
- Removal of all debtor application fees where prescribed benefits are in payment; and
- Permanent reduction of the FA bankruptcy fee to £150.

Financial Year 2019-2020

Generated income

The revenue generated for AiB in the financial year of 2019-20 was a result of the original fee structure. The original fee involved: application fees for MAP being charged at £90; Full Administration (FA) being charged at £200; and no exemption existing for those on benefits. Under this structure AiB received revenues of £554.4k. MAP applications accounted for £181.8k and FA for £362.6k of the total.

Calculating difference in fees under the new fee structure

Analysing the bankruptcies carried out between April and December 2020 under the reduced fee structure helps identify a trend in those qualifying for the full fee exemptions and those paying application fees. Applying this data to the 2019-20 bankruptcy figures allows comparisons in revenue streams under the two fee structures to be obtained:

- i. The April to December 2020 data shows that 85.2% of all MAP cases paid no application fee as a result of those applicants being in receipt of qualifying state benefits. This means only 14.8% of MAP applications would actually pay the reduced fee of £50. Applying this to the overall MAP cases in 2019-20 shows that approximately £15k would have been raised. Comparing this to the actual MAP revenue received in 2019-20 shows that the reduced fee income would have resulted in a funding difference of around £166.8k.

- ii. A second trend observed from the data shows that 60.7% of FA applications qualified for the fee exemption. This means that 39.3% paid the application fee of £150. Applying this to the 2019-20 FA case numbers reveals that the generated income would have been £107k. This highlights a funding gap of around £255.7k when compared with the actual fees generated in 2019-20.

Consequently, if the financial year of 2019-20 had been subject to the reduced fee levels the overall income would have been around £122k. This is £422.5k less than the revenue actually generated in 2019-20. This underlines the potentially detrimental financial implications of these changes for AiB.

(Note the totals may not equal the sum of constituent parts due to rounding.)

Financial Year 2020-21

As the Scottish Statutory Debt Solution Statistics publication covered data up to December 2020, we are able to extrapolate the January-March 2021 data, by applying three-month moving averages to each type of debtor application received, to project AiB's expected case numbers. This allows us to estimate AiB's income for 2020-21 and compare the two fee structures. It should be noted the original fees are applied for all cases awarded prior to 27 May 2020 when the Coronavirus (Scotland) (No.2) Act came into force. There were 197 cases awarded under the original fee structure from 01 April – 27 May and this has been accounted for in the data below:

	April-Dec 2020	2020-21
Number of debtor applications	1,632	2,197
Fee Structure (£)		
Original structure	201,770	270,000
Reduced fee structure	60,050	72,350
Difference (£)	141,720	197,650

Source: Scottish Statutory Debt Solutions Statistics, December 2020

It should be underlined that the 2020-21 figures are estimated and should be treated with caution. However, they help demonstrate the impact making the reduced fee structure permanent will have on AiB's finances. For the year 2020-21, this could be as much as a £197k gap.

Impact Analysis

As already illustrated, making the reduced fee structure permanent will impact future revenue streams of AiB. The overall impact of this will depend on the level of uptake of the bankruptcy processes. The different revenue generated under low, medium, high and very high uptake has been modelled for all bankruptcy cases to highlight these future funding issues.

For the impact analysis, we assume the following number of cases break down by type of debtor applications (DA):

level	DA	FA	MAP
1. Low	2500	1150	1350
2. Medium	5000	2300	2700
3. High	7500	3450	4050
4. Very High	10000	4600	5400

Furthermore, we also assume that under the reduced fees:

- An estimated 50% of FA cases are those debtors receiving prescribed benefits and thus would not need to pay any application fee; and
- An estimated 79% of MAP cases are those debtors receiving prescribed benefits and thus would not need to pay any application fee.

Original Fee Income:

level	Income
1. Low	£351.5k
2. Medium	£703k
3. High	£1,054.5k
4. Very High	£1,406k

Reduced Fee Income:

level	Income
1. Low	£100.4k
2. Medium	£200.9k
3. High	£301.3k
4. Very High	£401.7k

This demonstrates that these proposed changes to the fee structure would have a lasting impact on AiB's future revenue. The extent of this funding gap varies depending on bankruptcy application levels. This could create a deficit ranging from £251.1k with low application levels to £753.2k with high predicted activity levels.

However it is anticipated that AiB can absorb some of the income deficit through continued efficiency savings, particularly in terms of ongoing development of IT systems. Any remaining shortfall will need to be covered by the Scottish Government. It should also be noted that 2020-21 has been an exceptional year in terms of low application numbers – far lower than expected when the budget for 2020-21 was set.

Scottish Firms Impact Test

AiB has engaged with stakeholders via a working group and smaller stakeholder sessions. Feedback from both has fed into the development of these proposals.

The majority of stakeholders are in favour of introducing this secondary legislation.

Consequently, no significant concerns have been raised in relation to the proposals contained in The Bankruptcy (Scotland) (Miscellaneous Amendments) Regulations 2021.

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 Scottish insolvency system. There should be no competitive advantage to any particular individual or group as a consequence of the introduction of these Regulations. The reforms proposed are to improve access to debt solutions and help streamline the processes involved.

Test run of business forms

There will be no requirement to introduce new forms as it will only require minor adjustments to existing statutory forms and guidance.

Legal Aid Impact Test

The Scottish Legal Aid Board has confirmed that they do not foresee any impact on the legal aid fund as a result of the provisions in the regulations.

Enforcement, sanctions and monitoring

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

AiB has an existing pool of engaged stakeholders representing all sectors with an interest in debt and the money advice sector in Scotland.

Implementation and delivery plan

If approved by the Scottish Parliament, the Bankruptcy (Fees) (Miscellaneous Amendments) (Scotland) Regulations 2021 will come into force on 29 March 2021.

AiB will publish 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. 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 given an undertaking that AiB will carry out a review of these provisions after they have been in place for an appropriate amount of time. 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 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. A final report detailing the findings and conclusion of the review will be published.

Summary and recommendation

Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	Immediate action is taken to draft and lay secondary legislation.	This would ensure the relevant provisions remain in place beyond September 2021, providing greater clarity for those seeking help through a statutory debt solution.
2	Reviewing the position after the election with legislation introduced where necessary to follow on from the expiry of emergency provisions.	There is very little Parliamentary time between the commencement of the next session the end of September when the measures will come to an end. This could risk a “gap” between the cessation of emergency provisions and the introduction of new legislation.
3	Do nothing.	Stakeholders have welcomed the coronavirus provisions and it would be considered a retrograde step if some of these are ceased in March or September 2021 with no action being taken.

Recommendation

Our recommendation is to take immediate action to draft and lay secondary legislation as outlined in Option 1 above.

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: Jamie Hepburn

Date: 27th January 2021

Minister's name: Jamie Hepburn MSP

Minister's title: Minister for Business, Fair Work and Skills

Scottish Government Contact point:

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