

Annex B

Consultation on Bankruptcy Law Reform



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Institute of Credit Management

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

King

Forename

Philip

2. Postal Address

The Water Mill, Station Road, South Luffenham

Rutland

Oakham

Leicestershire

Postcode LE15 8NB

Phone 01780 722912

Email governance@icm.org.uk

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

CONSULTATION QUESTIONS

Part 6 Advice

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

Yes No

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

Preferably the non-paying sector but it is accepted this may not be practically possible.

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

Yes No

Regulation of debt management firms to ensure good standards.

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

Face to face meetings – ‘phone – email – website – skype?: Face to face meetings should be preferable.

Question 6.3 – Would you support an ‘triage’ system to signpost individuals to possible debt relief or debt management options available to them?

Yes No

Yes, but it is emphasised the debtor’s financial position and conduct should be thoroughly examined to ensure debt relief is not being used as a method of evading properly constituted debts. This is particularly important if the debtor is in business as opposed to being a ‘consumer’ debtor.

Question 6.3a – If yes, what format should this ‘triage’ system take?

See 6.2.a

Part 7 Education

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

Yes No

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

Not known, however, if possible through the money advice sector.

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

Yes No

It is important that those contemplating debt relief should be aware of all of its consequences – particularly bankruptcy.

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

Not known, however face to face meetings would be the preference although owing to numbers this may be difficult to achieve.

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

Yes No

Debtors who have already been bankrupt should be aware of its implications upon them as well as the hardship it could also cause creditors.

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

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?

Yes No

If 7.3.a applies then yes

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

It could be evaluated by the debtor being given a written test to establish budgeting understanding.

Part 8 Common Financial Tool

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

Yes No

This will ensure a 'level playing field' with creditors having greater confidence in the regime.

Question 8.1a – If yes, should the same common financial tool be used in the determination of contributions in the Debt Arrangement Scheme, Protected Trust Deeds and Bankruptcy?

Yes

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

N/A

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?

Yes No

The BBA Common Financial Statement widely recognised in England & Wales should be used

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

- A) CCCS guidelines
- B) BBA CFS figures
- C) Other figures, please specify _____
- D) A percentage of the individual's income

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

- A) fixed percentage – 9%
- B) fixed percentage – 12%
- C) sliding scale percentage based on the individual's income
- D) other percentage, please specify _____

Basically the amount should be as much as possible but consistent with allowing the bankrupt and family sufficient sustenance and to be able to live in dignity as opposed to punishing the bankrupt.

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

Yes No

This will streamline the collection process allowing all parties to benefit.

Part 9 Application Process

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?

Yes No

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?

Yes No

If it is decided this option is to be adopted only those with the necessary training should be allowed this facility.

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

Yes No

Only if 9.1 is impractical

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

Yes No

This will be consistent with applicants being aware of the serious nature and consequences of indebtedness.

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

Yes No

However there should be sufficient investigation to demonstrate the sequestration process is not being used as a method of defrauding creditors.

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?

Yes No

For creditors to have faith in the process debtors must demonstrate their inability to pay debts. Further, such an inability should not be as a result of debtors, wilfully incurring debt with their having no intention for it to be repaid.

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

Yes No

The following answers assume a moratorium is to be introduced.

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

- A) 4 weeks
- B) 6 weeks
- C) 8 weeks
- D) other period, please specify – 2 weeks

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

Yes No

N/A

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

- A) 2
- B) 3
- C) 4
- D) other, please specify_____.

N/A

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?

Yes No

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

Yes No

How is 'those parties that have an interest' defined. This should include all prospective creditors.

Part 10 Solutions for Individuals

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?

Yes No

Of course, if it is reasonable that the indebtedness be cleared earlier then this should be adopted.

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

Yes No

8 years should be the 'long stop' period with shorter timescales being encouraged.

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

- A) 4 years
- B) 6 years
- C) 10 years
- D) another period, please specify_____.

If the indebtedness is capable of being cleared earlier then this should be adopted.

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?

Yes No

Relieving the financial burden on the AIB should be encouraged.

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

The administration of the plan

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

Yes No

It is hoped creditors will not be asked for a contribution.

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?

Yes No

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?

Yes No

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

Sheriff Court

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

Yes No

Because there are already numerous vehicles for debt relief the DAS should only be available where indebtedness can be fully repaid.

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?

Yes No

N/A

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

- A) 10 years
- B) 12 years
- C) 15 years
- D) another period, please specify_____.

N/A

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

Yes No

If there is to be compensation then an individual should be obliged to pay the highest percentage

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

- A) 50%
- B) 60%
- C) 70%
- D) another percentage, please specify_90%

Please see above comments.

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

Yes No

Perhaps a threshold of 75% of creditors will be acceptable?

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

N/A

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

Yes No

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

- A) £3,000
- B) £4,000
- C) £5,000
- D) another amount, please specify_____.

The level should be the same as for bankruptcy

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?

Yes No

This will facilitate ease of payments

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

The trustee

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

Yes No

The minimum dividend should be linked to the amount determined by the Common Financial Statement

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

Yes No

However, a lower amount may be considered in exceptional circumstances.

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

- A) 40p in the £
- B) 30p in the £
- C) 20p in the £
- D) another amount, please specify_____.

See previous answer.

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

Yes No

Creditors have little faith in a system which appears to allow trust deeds to continue for an indeterminate length of time.

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

- A) 3 years
- B) 4 years
- C) 5 years
- D) another period, please specify_____.

Consistent with repaying the minimum dividend

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?

Yes No

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

Yes No

If creditors feel sufficiently aggrieved about their bad debt then they will usually object to the proposal. Inactivity on their part is possibly consistent with their consent to the proposal.

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

Yes No

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

50% or greater in value or number

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

N/A

Question 10.15 – Where a trustee in a protected trust deed 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?

Yes No

Individuals should be aware that their non co-operation can have serious consequences. This should be a sufficient deterrent.

Question 10.16 – If the protected trust deed 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?

Yes No

Individuals should not see their entry into a trust deed as an easy option for debt relief. Their failure to comply should have serious consequences.

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

Yes No

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

Yes No

The level should be the same as creditor petitions.

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

Yes No

See above answer.

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

- A) £1,500
- B) £2,000
- C) £5,000
- D) another amount, please specify_____.

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

Yes No

Such differences will lead to confusion and complexity.

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

Yes No

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

Yes No

This could have an adverse effect on debt relief as well as preventing creditors from pursuing a debtor via a sequestration route. Their choice should not be diluted.

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

- A) £3,500
- B) £5,000
- C) £7,000
- D) another amount, please specify_____.

N/A

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?

Yes

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

Yes No

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

- A) £1,000
- B) £2,000
- C) £5,000
- D) another amount, please specify_____.

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

Yes No

There will be concern that such debtors will be subject to a 'light touch' regime. Debtors could own substantial heritable property and be in receipt of benefit.

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

N/A

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?

Yes No

But only subject to investigation as to debtor's conduct of events leading to sequestration

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

- A) 9 months
- B) 12 months
- C) 18 months
- D) another period, please specify_____.

This should depend on debtor's behaviour using the debt restriction order criteria

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

Yes No

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

Yes

Question 10.25b – If no, what should the level be?

- A) £10,000
- B) £15,000
- C) £20,000
- D) another amount, please specify_____.

N/A

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?

Yes No

However, such a restriction should apply depending upon the reasons for bankruptcy and the debtor's co-operation.

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

- A) 3 months
- B) 6 months
- C) 12 months
- D) another period, please specify_____.

See above answer. 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.

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?

Yes No

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

Yes No

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

- A) 7 years
- B) 10 years
- C) once in lifetime
- D) another period, please specify_____.

There should be an exception to any time limit that depending on the debtor's conduct no further application in a lifetime can be made.

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?

Yes No

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

- A) 1 year
- B) 2 years
- C) 3 years
- D) another period, please specify_____.

Possibly a longer period dependent upon the debtor's conduct.

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

Yes No

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

Yes No

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

- A) £5,000
- B) £7,000
- C) £10,000
- D) another amount, please specify_____.

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?

Yes No

However, the period should be longer depending upon the reasons for the indebtedness and the extent to which the debtor has co-operated with the trustee.

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

- A) 6 months
- B) 9 months
- C) 18 months
- D) another period, please specify_____.

See previous answer.

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

Yes No

Even although the debtor has a low income the value of their heritable property could be considerable.

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

N/A

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

Yes No

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

- A) £20,000
- B) £30,000
- C) £50,000
- D) another amount, please specify_____.

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

Yes No

However, a thorough investigation as to the causes of the indebtedness should be carried out and the full implications of bankruptcy explained to the debtor.

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?

Yes No

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

- A) 6 months
- B) 12 months
- C) 5 years
- D) another period, please specify_____.

If the debtor has behaved in a capricious manner then there should be an opportunity to extend the period of discharge.

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

Yes No

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

Yes No

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

Yes No

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

- A) £250,000
- B) £500,000
- C) £750,000
- D) another amount, please specify_____.

Unsure

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

Yes No

Question 10.41a - If yes, for what period?

- A) 3 years
- B) 4 years
- C) 5 years
- D) another period, please specify_____.

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

Yes No

For obvious reasons creditors are happy when they see monies being ingathered towards their debt.

Question 10.42a - If yes, at what intervals?

- A) quarterly
- B) 6 monthly
- C) annually
- D) another period, please specify_____.

If it is reasonable for payments to be made quarterly then this should be considered.

Question 10.43 – Should both insolvency practitioners and the Accountant in Bankruptcy be the trustee in Payment product cases?

Yes No

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

Yes No

Creditors will welcome this thus ensuring that all receipts by the IP are not absorbed in fees.

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?

Yes No

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?

Yes No

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

- A) £250,000
- B) £500,000
- C) £750,000
- D) another amount, please specify_____.

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

Yes No

Question 10.47a - If yes, for what period?

- A) 3 years
- B) 4 years
- C) 5 years
- D) another period, please specify_____.

However, if it is likely that the debtor will be in a position to make a contribution greater than 5 years this should be considered.

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?

Yes No

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

Yes No

Part 11 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?

Yes No

If in a business DAS presumably goods and services will be provided only on a proforma basis. This will not work in practice.

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

Yes No

If they are adopted then they will have to include all debts

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

Yes No

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

Not known

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

Yes No

There should be no provision for debt relief or composition

Part 12 Removal of Non-Contentious Creditor Petitions from Court

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

Yes No

Bankruptcy is such a serious issue that anything less than a court process will minimise its impact. Significant legal issues can arise at any stage in a bankruptcy petition. Their correct forum should be nothing less than judicial.

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

Yes No

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?

The petitioning creditor

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?

- A) 14 days
- B) 21 days
- C) 28 days
- D) another period, please specify_____.

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?

Yes No

Part 13 Debtor Co-operation

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

Yes No

Individuals should appreciate that bankruptcy is not an easy option. There should be a quid pro quo that debt relief provides the individual. Failure to co-operate must affect that person's discharge.

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

- A) 1 year
- B) 3 years
- C) 5 years
- D) another period, please specify_____.

Consideration should be given to an additional period depending upon the individual's behaviour.

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

Yes No

Not greater than 20 years

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

- A) 1 year
- B) 3 years
- C) 5 years
- D) another period, please specify_____.

20 Years

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

Yes No

Application to sheriff court should be a requirement

Question 13.5 – Who should provide an appeals process?

- A) the Sheriff Court
- B) an independent tribunal
- C) AiB's Policy and Cases Committee
- D) other, please specify_____.

No adequate argument has been given to move from a judicial process to a largely administrative one. These are serious issues worthy of judicial application.

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

Yes No

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

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 trust deed, should this debt be excluded from discharge?

Yes No

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?

Yes. See response to 13.6.a above

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?

- A) 4 weeks
- B) 8 weeks
- C) 12 weeks
- D) another period, please specify_____.

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.

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?

Yes No

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

Yes No

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?

Yes No

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

- A) 4 weeks
- B) 8 weeks
- C) 12 weeks
- D) another period, please specify_____.

N/A

Part 14 Modernisation of Legislation

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?

Yes No

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?

Yes No

See above.

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

Yes No

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

- A) 60 days
- B) 90 days
- C) 120 days
- D) another period, please specify_____.

However a longer period should be permissible in cases of inadvertence.

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

Dividend should be lost unless creditor can show inability to submit claim timeously was due to inadvertence.

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

Yes No

Failure to adopt this could result in 'forum shopping'.

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

Debtors main residence in Scotland for a defined period. Unsure what that period should be – possibly greater than one year.

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

Yes No

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

Yes No

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

Any directorships held by the debtor. Name and address of any business carried on by debtor including the known business name. Details of any partnership and trading address.

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

Yes No

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

Yes No

Do not know

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

Yes No

Not known

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

Yes No

Not known

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

Yes No

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?

Yes No

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

Yes No

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

Yes No

Why should it be extended beyond the DAS?

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

Yes No

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

Yes No

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

Yes No

Question 14.16b – What should the key documents include?

Not known

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

Yes No

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

Yes No

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

Yes No

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

Yes No

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

Yes No

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

Yes No

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

Yes No

But restricted to non-creditor petitions

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?

Yes No

Subject to the response in 14.22

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

Yes No

But restricted to non-creditor petitions

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

Yes No

Subject to above

Question 14.24 - Should the make-up of this panel include representatives of a cross-section of stakeholders, such as insolvency practitioners, Recognised Professional Bodies, money advisers, solicitors, etc?

Yes No

Consideration should also be given to creditor representative bodies.

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

Yes No

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?

Yes No

Disputed decisions should be referred to the sheriff court. I cannot understand why there is such a desire to remove this from the court's jurisdiction. In any event, from the debtor's point of view, such matters can be addressed in the court of the debtor's domicile.

Part 15 AiB Role and Powers

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?

Yes No

Not known

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

Yes No

However, the AIB must exercise all powers available to it to assess the debtor's behaviour. No doubt this will impact on funding issues.

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

Yes No

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?

Funded in terms of question 15.2.a

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

Yes No

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

Yes

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

Yes No

But see response to question 15.5a

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?

Yes No

It should be dealt with through the existing Regulators and process

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

Yes No

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

Yes No

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

Yes No

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

Yes No

Question 15.8 – Should there be an office of the Official Receiver in Scotland?

Yes No

This will have a significant positive impact. Currently no asset companies cannot be liquidated due to lack of funds to pay a liquidator. The appointment of an official receiver will substantially reduce fraud in 'phoenix' company scenarios. It will benefit the Scottish economy.

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 Accountant in Bankruptcy?

Yes No

Question 15.9a - If no, who should carry out this role?

N/A

Question 15.10 - If there was an office of the Official Receiver in Scotland, how should this be funded?

Initially form the realisation of the company's assets. If this is impracticable partly by the petitioning creditor – but such a contribution will have to be reasonable to ensure the appointment is made and creditors not deterred from using the process because of cost.