

Final Business and Regulatory Impact Assessment

Title of Proposal

The Common Financial Tool etc. (Scotland) Regulations 2014

Purpose and intended effect

Background

Section 3 of the Bankruptcy and Debt Advice (Scotland) Act 2014 (BADAS) inserts a new section 5D in the Bankruptcy (Scotland) Act 1985 which gives Scottish Ministers the power to specify a method (the tool) to assess an individual's income and expenditure to determine an appropriate contribution (if any) from a debtor's income. The use of the common financial tool will be mandatory for statutory debt relief and debt management solutions in Scotland.

The Scottish Common Financial Tool Working Group (SCFTWG) was established to consider the requirements of a new tool. The Group examined the use of existing tools – the Stepchange tool and the Common Financial Statement (CFS) operated by the Money Advice Trust – as well as the possibility of creating a Scottish specific tool. Following analysis of the two main tools, it was agreed that the Common Financial Statement (CFS) would be adopted as the Scottish Common Financial Tool (CFT).

Objective

Only one third of bankruptcies in Scotland result in a contribution being made. At present, there is no single tool for assessing the amount of available surplus income from which a contribution may be paid. 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. These regulations will ensure that the application of the CFT is consistent across the money advice and insolvency sectors and, with the introduction of the requirement for debtors to pay a contribution for a minimum of 48 months, supports the premise of 'those who can pay, should pay'.

Debtors wishing to enter statutory debt relief or debt management products (bankruptcy, protected trust deeds and the Debt Arrangement Scheme (DAS), with the exception of Business DAS, must have their income and expenditure assessed using the CFT, and take advice – in the case of bankruptcy and DAS - from an approved money adviser

The Regulations will:-

- Specify that the CFT as set out in BADAS will be defined as the Common Financial Statement (CFS) operated by the Money Advice Trust
- Stipulate that a Debtor's contribution from income will be 100% of the surplus income identified by the CFT (over the expenditure levels allowed for in the CFS or where a reasonable amount is allowed where there is evidence and a reasonable explanation)
- Provide that (in determining a debtor's contribution towards the cost of their bankruptcy or payment in a PTD), where the debtor's sole income is from prescribed benefits, no contribution shall be taken. (The option for a debtor going

into a debt payment programme via the DAS Scheme to make payments from benefit income has been retained, in response to representations from stakeholders)

- Together with Bankruptcy (Money Advice and Deduction from Income etc.) (Scotland) Regulations 2014, they—
 - require money advisers to verify income and expenditure and confirm debts
 - require money advisers, who must use the tool, to apply to the Money Advice Trust (MAT) to obtain a valid license and to include a condition that the money adviser must adhere to the guidelines as set out by MAT
 - allow AiB to issue guidance on the treatment of types of income and expenditure, how income and expenditure are verified, and the conduct of money advisers in using the CFT

Rationale for Government intervention

In recognition of its responsibility 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, the Scottish Government made a commitment to implement changes to Bankruptcy legislation which, it believes, will better serve the interests of the people of Scotland.

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 entrepreneurialship, 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 2014 Act - the discussion and debate on the modernisation and reform of bankruptcy the basis of the provisions in this Act began with the publication of a comprehensive consultation paper, Consultation on Bankruptcy Law Reform, The consultation was a broad, inclusive and detailed consultation containing 193 questions on bankruptcy reform. 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 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 Consultation

A summary of the consultation responses is outlined below:-

Question 1 - Should a single common financial tool be used to calculate an appropriate contribution from individuals?

	Total Responses	Organisations only
Yes	100	70
No	13	8
N/A	12	8
Comment only	4	3
Total	129	89

Question 1a - If yes, should the same common financial tool be used in the determination of contributions in DAS, protected trust deeds and bankruptcy?

The majority of respondents did consider that the same common financial tool be used whatever statutory debt relief solution was accessed.

Question 1b - If no, how should contributions be calculated?

Of those respondents who answered this question, the majority felt that the existing systems work and that it should be based on the individual's circumstances.

Question 2 - Should AiB, in conjunction with key stakeholders, develop a specific Scottish common financial tool to calculate the appropriate contribution from an individual?

	Total Responses	Organisations only
Yes	59	45
No	54	32
N/A	12	9
Comment only	4	3
Total	129	89

Question 2a - If no, what figures should be used to calculate the appropriate amount of contribution from an individual?

	Total Responses	Organisations only
CCCS guidelines	4	0
BBA CFS figures	25	14
Other figures -	13	7
% of income	4	4

N/A	83	64
Total	129	89

Question 2b - If a contribution is based on a percentage of an individual's income, what should that percentage be?

	Total Responses	Organisations only
Fixed percentage – 9%	2	2
Fixed percentage – 12%	0	0
A sliding scale percentage based on the individuals income	26	21
Another percentage	16	11
N/A	85	55
Total	129	89

Question 3 - Should legislation be amended to allow an assessed contribution to be deducted directly from an individual's wages?

	Total Responses	Organisations only
Yes	67	49
No	42	26
N/A	11	8
Comment only	9	6
Total	129	89

Respondents to the consultation were strongly in favour of a single tool. There was significant support in the consultation for the Common Financial Statement, operated by the Money Advice Trust, to be adopted as the Scottish Common Financial Tool.

As a result, the Scottish Common Financial Tool Working Group (SCFTWG) was set up to assess whether to use an existing tool, or to design a new, Scottish-specific tool. The SCFTWG has met on five occasions and will continue to meet in order to develop and agree on the guidance to support the CFT.

In addition to the consultation and SCFTWG, a rolling number of stakeholder events were held throughout 2012-14.

Within Government

AiB worked with colleagues across the Scottish Government, including finance officials, to draft an initial Financial Memorandum, which was published alongside the 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 Act, including the implications for individuals and businesses.

Business

There were attendees at AiB's public stakeholder events, at which the introduction of the CFT was discussed, representing a wide range of businesses and bodies representing businesses, including:

- Lloyds Banking Group
- HMRC
- Insolvency Practitioners Association

- ICAS
- Deloitte LLP
- KPMG
- Grant Thornton UK LLP
- ABCUL
- The Carrington Dean Group
- Scott & Co, Sheriff Officers

The introduction of the CFT was 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 make no change 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.

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 – There would be no costs in maintaining the status quo.

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

Option 2 – Common Financial Tool Regulations

Benefits – Evidence presented to AiB's Common Financial Tool Working Group supports the view that adopting Money Advice Trust's CFS as the single CFT will help provide a more accurate reflection of actual household expenditure thus making it more likely that debtors would be able to sustain payments of contributions. AiB's analysis has shown that the use of the CFS results in fewer instances of triggers values being exceeded than an alternative tool.

If debtors are better able to sustain payments then, AiB's analysis suggests that use of the CFS as a single CFT (along with other changes being made under the BADA(S) Act, for example, the requirement at 3(2) in these Regulations, that the debtor's contribution shall be the whole of their surplus income, as assessed using the tool) could lead to a 107% increase in the funds gathered by AiB

The CFS has support from across the insolvency landscape (see also the section on Consultation above). The tool 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 uniformed approach to how individual and household budgets are prepared and to encourage consistent responses from creditors to offers of debt repayment

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

Cost – The CFS is free to use (subject to the terms of the MAT’s license agreement). As such, the adoption of the CFS as a single CFT for Scotland should not negatively impact on the cost of delivering money advice. The cost to AiB, of incorporating the CFS into its new case management system, will now be met as part of the overall budget for the development of that system. As reported in the Scottish Government’s Supplementary Financial Memorandum on the BADA(S) Bill (published on 7 March 2014), the overall cost of the whole new system will be £899,950. Due to the integration of the system, it is not possible to isolate a specific cost for functionality to support the use of the CFT, from this overall cost.

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.

There were attendees at AiB’s public stakeholder events, at which AiB’s proposed new fee structure was discussed, representing a wide range of businesses and bodies representing businesses, including:

- Lloyds Banking Group
- HMRC
- Insolvency Practitioners Association
- ICAS
- Deloitte LLP
- KPMG
- Grant Thornton UK LLP
- ABCUL
- The Carrington Dean Group
- Scott & Co, Sheriff Officers

The introduction of the CFT has been discussed with these stakeholders. No significant concerns were raised either in relation to the principle that there should be a single CFT or with the proposals that the MAT’s CFS should be used as the CFT in Scotland. Business stakeholders acknowledge that there needs to be a consistent method of determining the level of a debtor’s contribution and that AiB’s analysis has shown that the use of the CFS results in fewer instances of triggers values being exceeded than an alternative tool. Business members of the SCFTWG have also feed-in to the development of our proposals for the CFT.

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

In support of the provisions in the Bankruptcy and Debt Advice (Scotland) Act 2014 and associated regulations, one of which is the Common Financial Tool 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

The Scottish Legal Aid Board have confirmed that they do not expect there to be an impact on the legal aid fund as a result of the provisions in the Common Financial Tool etc. (Scotland) Regulations 2014.

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.

Use of the CFT, as required by the BADA(S) Act and these Regulations will be monitored by Money Advice Trust (MAT), who issue licenses to use the tool. Regulation 5 provides that AiB may notify the trust of contraventions of MAT's 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, via the power (under regulation 4(2) of the Bankruptcy (Money Advice and Deduction from Income etc.) (Scotland) Regulations 2014, due to be laid alongside this instrument) to revoke or suspend the approval of a Money Adviser who fails, without good cause, to apply the CFT in line with the Act and Regulations.

Implementation and delivery plan

The Common Financial Tool etc. (Scotland) Regulations 2014 will come into force on the 1 April 2015. When commenced these Regulations will apply to all cases where the debtor application for sequestration has been received by Accountant in Bankruptcy on or after 1 April 2015, except where transitional provision is made to allow a sheriff in making, or varying an existing, Income Payment Order (IPO) to take account of the CFT. It will be clear however that the introduction of the CFT is not itself a change of circumstances to allow a variation of an IPO, and the sheriff can have regard to other factors alongside the CFT.

The Accountant in Bankruptcy will publicise the various statutory instruments on their website, as well as their appearing 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 stated 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.

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

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	1. No need to change the legislation 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.	1. There would be no costs in maintaining the status quo.
2	1. The single CFT will make it more likely that debtors would be able to sustain payments of contributions. 2. AiB's analysis has shown that the use of the CFS results in fewer instances of triggers values being exceed than an alternative tool. 3. The single CFT could lead to a 107% increase in the funds ingathered by AiB 4. The single CFT will create a uniformed approach to how individual and household budgets are prepared and to encourage consistent responses from creditors to offers of debt repayment.	1. The CFS is free to use (subject to the terms of the MAT's license agreement). As such, the adoption of the CFS as a single CFT for Scotland should not negatively impact on the cost of delivering money advice. 2. The cost to AiB, will now be met as part of the overall budget for the development of that system. Due to the integration of the system, it is not possible to isolate a specific cost for functionality to support the use of the CFT, from this overall cost.

Declaration and publication

I have read the 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:****Minster for Energy, Enterprise and Tourism, Fergus Ewing MSP.****Scottish Government Contact point:**

Laura-Jane Sneddon
LauraJane.Sneddon@aib.gsi.gov.uk
0300 200 2697