

Final Business and Regulatory Impact Assessment

Title of Proposal

The Bankruptcy Fees (Scotland) Regulations 2018

Purpose and intended effect

Background

Accountant in Bankruptcy (AiB) is a statutory office holder and agency of the Scottish Government. The main function of AiB is the delivery and supervision of personal insolvency casework. The Scottish Government sets fees and charges in order to fund AiB's important public functions.

AiB funding comes from three sources: debtors, creditors and the public purse. The fall in the number of bankruptcy cases completing, together with the forecasted number of new cases means that AiB's income is forecasted to fall sharply in future years.

The forecasted decrease in income means that without changes to fees and charges, AiB will not be able to cover its expenditure without an increasing call on the public purse. Table 1 shows a forecasted deficit of £1.82 million in 2018-19 and £1.98 million in 2019-20 and increasing in further years.

Table 1: AiB income and expenditure: 2015-16 to 2022-23

	Actual		Forecast					
	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
	£000	£000	£000	£000	£000	£000	£000	£000
Income	(12,408)	(12,520)	(11,700)	(10,200)	(9,800)	(8,986)	(8,986)	(8,986)
Expenditure	11,740	12,654	12,200	12,800	12,600	12,784	12,974	13,169
Net expenditure / (surplus)	(668)	134	500	2,600	2,800	3,798	3,988	4,183
Net expenditure / (surplus) exc. Policy development & sponsorship	(1,801)	(1,024)	(285)	1,816	1,981	2,958	3,128	3,293

AiB works towards the principle of full cost recovery, where the users and those who benefit from the service AiB provides where possible meet the costs associated with those services.

In recent years, AiB's income has been sufficient to cover the expenditure in providing its functions so that in 2014-15 and 2015-16 AiB effectively returned small sums to the Parliament (£812,000 and £668,000 respectively). Public funding for AiB has fallen steadily from 2007-08 when £6.8 million was provided up to the repayments in 2014-15 and 2015-16.

In 2014-15 and 2015-16, AiB was self-financing owing to the large caseload seen in the

preceding years – with most income arising at the end of bankruptcy cases. The personal insolvency caseload of AiB reached a record level in 2009-10 and remained at historically high levels until 2012-13, when a period of significant decline in case numbers started.

The decline in the personal insolvency caseload of AiB has meant that there are fewer cases in which to recover costs that relate to the administration of insolvency. Overall, total personal insolvencies have declined by 56% from 22,998 in 2009-10 to 10,032 in 2016-17.

AiB's income from debtors and creditors through the payment of fees and charges is dependent on the number of bankruptcies, ultimately dependent on the economic cycle. Given AiB's sources of income it is our strong view that it would be inappropriate to seek to raise fees and charges for debtors at this time. A balance must be struck between proportionate changes to fees and charges for creditors and demands on the public purse.

Objective

The aim of Bankruptcy Fees (Scotland) Regulations 2018 is to move AiB onto a more sustainable path of future income through increases to its fees and charges. They replace 2017 regulations of the same name which did not come into force, taking account of views in the Scottish Parliament. In particular, the 2017 changes to increase thresholds for commissions payable on asset realisations have not been replicated and the provision for AiB to charge 8% interest on late payment of statutory fees has been removed. The cap applied to an individual audit fee has also been removed. The Regulations have been amended and aim to:-

- Continue to set a fees structure that is fair and transparent, while reflecting the costs involved to AiB in the delivery and supervision of personal insolvencies;
- Freeze debtor application fees for Minimal Asset Process and Full Administration bankruptcies so that low cost, effective and accessible debt relief is available to those that need it most.
- Ensure that changes to fees and charges for creditors are balanced with demands on the public purse.
- Move towards full cost recovery but appreciate that raising fees too greatly in any one year would not be desirable.

The table of fees in the Schedule to the Regulations is divided into two parts. Part 1 lists the fees payable for the functions of the AiB in respect of the functions carried out as interim and/or trustee in a bankruptcy. Part 2 lists the fees payable for all statutory functions of the Accountant.

Rationale for Government intervention

To ensure access to fair and just processes of debt advice and debt management for the people of Scotland while taking into account the rights and interests of those involved, aligned to the delivery of the following National Outcomes:

- Realising our full economic potential with more and better employment opportunities for people.
- Tackling the significant inequalities in Scottish society.

- Having strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.
- Our public services are high quality, continually improving, efficient and responsive to local people's needs.

The Bankruptcy Fees (Scotland) Regulations 2018 continue to put in place a fee structure that is transparent and fair. This is achieved through the provision of low cost access to bankruptcy for those who need it, reasonable charges for bankruptcy administration processes that can facilitate a reasonable outcome for creditors and a system that minimises public subsidy towards the administration of Scotland's statutory insolvency mechanisms.

Consultation

Within Government

AiB had direct contact and discussion with the following divisions and agencies in the formulation of these proposals:

- Scottish Government Finance and DG Economy have provided advice on the wider policy implications.
- Scottish Government Courts and Justice colleagues.
- Legal Aid Team, Scottish Government has provided advice on the implications for the legal aid fund to meet the requirements of the completing this BRIA.

Public Consultation

AiB conducted on behalf of the Scottish Government a public consultation to obtain views and opinions of all those individuals and organisations that would in some way be affected by the proposed changes to its fees and charges.

Public consultation on the future of funding AiB took place from 4 December 2017 to 12 March 2018¹. AiB received a total of 10 responses to the consultation; six from the advice sector, two from creditors and two from professional bodies. A summary and analysis of the responses to the consultation along with full details of the proposals for fees regulations are available here on [AiB's website](#). The summary response shows that 70% of the respondents agreed that the proposals set out in the consultation and which have been brought forward here represented a fair way of generating additional income.

The Scottish Ministers, in view of the Fairer Scotland Duty which exists under the public sector duty regarding socio-economic inequalities in the Equality Act 2010, have in particular considered the impact of these proposals on those with low wealth and low income. The Bankruptcy Fees (Scotland) Regulations 2018 decision to hold debtor application fees flat to allow access to debt relief has been taken to ensure that this does not impact on the most vulnerable citizens. It also takes account of maintaining some level of responsibility on individuals not to enter unsustainable debt with adverse

¹ *Funding the Accountant in Bankruptcy 2018-19*, <https://www.aib.gov.uk/aib-2017-fees-consultation-document>

consequences for others in society, and means debtors will not lightly take the serious step of applying for bankruptcy.

AiB will also undertake further research into the debtor experience of bankruptcy fees, focusing on the Minimal Asset Procedure. The research will include looking at how debtors fund the upfront application fee after a suggestion was made in a response to the consultation. This will allow an evidence-based assessment of the extent to which, if any, such fees act as an obstacle to those needing debt relief. The results of the research will be published in advance of the next fees review.

Business

The following organisations responded to AiB's public consultation on its future funding:

- Citizens Advice and Rights, Glenrothes
- Yuill & Kyle Solicitors, Glasgow
- City of Edinburgh Council Advice Shop
- Advice Services, Inverclyde Council
- Chartered Institute of Credit Management
- Money Advice Scotland
- North Lanarkshire Council
- Institute of Chartered Accountants of Scotland
- Citizens Advice Scotland
- R3 Association of Business Recovery Professionals, Scottish Technical Committee

AiB have taken full account of these responses when finalising the changes to the Regulations.

Options

Option 1 – No action

Option 2 – Introduce the Bankruptcy Fees (Scotland) Regulations 2018

Sectors and groups affected

The following sectors and groups are likely to be affected by Bankruptcy Fees (Scotland) Regulations 2018:

Debtors: The current fees system asks debtors to make a small contribution to the costs of bankruptcy via an upfront application fee. This is set at £90 for a Minimal Asset Process (MAP) application or £200 for a full administration. It is important to note that under the Bankruptcy Fees (Scotland) Regulations 2018 the application fees for MAP and Full Administration will be frozen and remain unchanged. Debtors, therefore, will not be directly affected by these proposals in terms of up front bankruptcy costs. The public consultation highlighted a small number of cases where the increase in the AiB administration costs would impact on the funds returned to a debtor in circumstances where the bankruptcy

realisations have been sufficient to pay all costs, bankruptcy creditors and statutory interest due.

Creditors: Creditors contribute towards the overall cost of the personal insolvency system through the fees and charges when taking action to make a debtor bankrupt and those taken from cases where funds are available. At the same time, creditors benefit from the personal insolvency system through the amounts returned. In 2016-17, £17.0 million was repaid to creditors in bankruptcy cases, £29.4 million in protected trust deeds and £37.3 million was repaid by debtors in the Debt Arrangement Scheme.

The proposals would not affect a particular group of creditors, as broadly speaking, the creditor make-up in cases is generally the same in both cases with and without funds realised.

Under the proposals, creditors would make an increased contribution to the overall cost of the personal insolvency system. An increase in contributions by creditors to the costs of administering bankruptcy cases will lead to a reduction in dividends paid out.

As most bankruptcy cases that generate funds run for three or four years the overall impact on creditors will not be fully felt until the proposed fee changes have fully worked through the system. The estimated additional increase in AiB's income (around an additional £1 million per year by 2022-23) from these proposals would mean a reduction in dividends returned to creditors for new insolvencies on or after 1 June 2018. This reduction overall is small relative to the total amounts returned to creditors outlined above.

Benefits – option 1

No benefits have been identified which relate to a 'no action' option.

Benefits – option 2

The proposals continue to ensure that the personal insolvency fees structure is fair, transparent and streamlined. The proposals rule out asking debtors to pay more and strike a fair balance between asking creditors to contribute more to the cost of administering bankruptcies and minimising the call on the public purse. The proposals also avoid a burdensome steep increase in fees in any one year and address concerns raised during the scrutiny of the previous Bankruptcy Fees (Scotland) Regulations 2017.

Specific benefits include:

- The changes to the fees and charges set by AiB will more accurately reflect the costs associated with the administration of insolvencies. It is anticipated that once the new fees and charges have fully established the proposals would raise around an additional £1 million per year by 2022-23 (see table 2). This will reduce the call on the public purse to make up the difference between AiB's income and expenditure.
- Freezing MAP and Full Administration debtor application fees will mean that the

- most vulnerable debtors continue to benefit from low-cost access to bankruptcy.
- The addressing of previous concerns with earlier fee proposals raised by the Economy, Jobs and Fair Work Committee (see [consultation document](#) for further details).

Table 2: Estimated additional income from AiB proposals: 2018-19 to 2022-23

Source	Estimated increase in income				
	2018-19	2019-20	2020-21	2021-22	2022-23
	£000	£000	£000	£000	£000
Fixed administration fee	0	0	0	0	693
Creditor petition fee	200	200	200	200	200
Supervision of sequestration	25	25	25	25	25
Protected trust deed: Publishing notice in ROI	30	30	30	30	30
Protected trust deed: Registering PTD	20	20	20	20	20
Registering Court Order for replacement trustee	17	17	17	17	17
Total additional income through increase in fees and charges	292	292	292	292	985

Costs – option 1

The ‘no action’ option would mean a decrease in AiB’s income and an increased call on the public purse, and ultimately taxpayers. Keeping fees and charges at their current level would mean a deficit for AiB of £1.82 million in 2018-19 and £1.98 million in 2019-20 (after excluding expenditure items outside of full cost recovery). This would not be consistent with Scottish public finance best practice and the deficit would have to be funded from the public purse.

Costs – option 2

It is not anticipated that there would be significant one-off direct costs related to introducing the proposals. Table 2 showed the estimated additional income from these proposals, and the increase in AiB’s income would mean a reduction in dividends returned to creditors. Overall, however, this will be a small amount relative to the total amounts returned to creditors and the full additional income will not be fully worked through the system until 2022-23. It is not anticipated, therefore, that there will significant costs from creditors changing their behaviour. Indeed, since previous proposals, AiB has had confirmation from creditors responsible for most creditor applications for bankruptcy that the previous proposals would not have affected their decision over whether or not to seek bankruptcy against a debtor.

Scottish Firms Impact Test

AiB consulted with business organisations through the public consultation that took place from 4 December 2017 to 12 March 2018. Responses to this consultation included money

advice organisations and insolvency professionals. The consultation highlighted several issues, which are discussed in more detail in the consultation response.

Competition Assessment

There should be no competitive advantage to any particular individual or group as a consequence of the amendments to the bankruptcy fees structure as the increase will apply equally to all.

England and Wales have a broadly similar model for funding personal insolvency but with significant differences including much larger upfront fees for both debtors and creditors, and a much larger “fixed fee” element across all cases. A summary comparison between the fees charges in England and Wales and these proposals can be found in the policy note accompanying these regulations.

Test run of business forms

No new forms will be introduced as a consequence of this review. AiB will continue to monitor the use of forms and the on-line bankruptcy case management system to ensure that the changes introduced as part of this review are incorporated and fit for purpose.

Legal Aid Impact Test

The Scottish Legal Aid Board has confirmed they do not expect there to be an impact on the legal aid fund as a result of the provisions in the Bankruptcy Fees (Scotland) Regulations 2018.

Enforcement, sanctions and monitoring

The majority of the fees will only be collected where there are sufficient funds in the debtor’s estate to recover the fees. Where there are insufficient funds available and the Accountant is the trustee, the public purse covers the costs of the service provided. To mitigate the need to undertake enforcement, sanctions etc. some of the fees charged are required to be paid in advance of the service provided.

Implementation and delivery plan

The 2014 Fees Regulations will continue to apply to any sequestration where a petition was presented or debtor application applied for prior to 1 June 2018. Similarly, the 2018 Fees Regulations will have no effect on any trust deed which was executed before 1 June 2018. AiB will communicate all fees changes with a particular focus on the insolvency profession for whom the changes have most relevance. There are no changes in the fees levied for debtors to access bankruptcy. All necessary changes will be implemented in AiB’s case management IT systems and it is considered that the changes set out here will have minimal impact on systems used externally within the insolvency sector.

Post-implementation review

AiB regularly reviews the bankruptcy fee structure to assess whether these are appropriate, fair and contribute towards the recovery of AiB’s costs in respect of its

statutory duties.

AiB has made a public commitment to carry out regular fee reviews. These reviews will consider the amounts and the methodology of charging all future fees for the statutory functions undertaken by AiB and will take account of activity levels and forecast income.

Summary and recommendation

It is recommended that **Option 2** be implemented.

Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	There would be no realisable financial benefit.	There would be a significant burden on the public purse and ultimately the taxpayer would meet the forecast AiB deficit of £1.82 million in 2018-19, £1.98 million in 2019-20 and increasing in further years.
2	<p>The proposals will more accurately reflect the fixed costs associated with on-going administration of insolvencies, reducing the burden on the public purse and ultimately the tax payer.</p> <p>It is estimated that once this proposed fee structure has been fully established this option will generate around an additional £1 million in income by 2022-23. This is assuming volumes do not vary significantly from current levels.</p> <p>By not increasing the existing MAP or debtor application fees, this additional income will be generated without impacting on the most vulnerable debtors with few assets.</p>	<p>The fees are levied to recover part of the operational administration costs incurred by AiB. Any shortfall would be subsidised by the public purse as part of the overall AiB budget from the Scottish Government. The increase in AiB's income would mean a reduction in dividends returned to creditors. The full additional income will not be fully worked through the system until 2022-23 and will be a small amount relative to the total amounts returned to creditors.</p> <p>There is no change to the administration processes; we therefore do not anticipate additional policy or administrative costs as a result of this option.</p>

Declaration and publication

Sign-off for Final BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Minister's name: Mr Paul Wheelhouse

Minister's title: Minister for Business, Innovation and Energy

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