

Title of Proposal

THE PROTECTED TRUST DEEDS (SCOTLAND) REGULATIONS 2013

Purpose and intended effect

Background

Over the last eighteen months, Accountant in Bankruptcy (AiB) has been developing its vision of a Financial Health Service. Following a consultation on Bankruptcy Law Reform in early 2012, the Scottish Government set out measures that would be taken forward in a Bill and supporting Regulations during 2013.

These measures include a package of reforms to Protected Trust Deeds (PTDs). Scottish Ministers have been concerned about the performance of PTDs in recent years, in particular, the rising costs of the solution alongside the decreasing returns to creditors. AiB believes that these reforms will deliver improved performance.

A Protected Trust Deed (PTD) is a voluntary agreement between a debtor and their creditors (the people they owe money to) to repay part of what they owe. A trust deed conveys the debtor's estate to a trustee who may realise it to raise funds to pay creditors all or part of what is owed to them. A trustee can also require a debtor to pay a regular contribution from income over a specified period.

The trustee must be a qualified insolvency practitioner. Insolvency practitioners are regulated by law and must be members of a recognised professional body. Independent insolvency practitioners fees are set at their own and their licensing authority's discretion.

Objective

These Regulations are made under paragraph 5 of Schedule 5 to the Bankruptcy (Scotland) Act 1985 (as amended), the Bankruptcy and Diligence etc (Scotland) Act 2007 and section 10 of the Home Owner and Debtor Protection (Scotland) Act 2010.

They make provision about how voluntary trust deeds entered into by debtors for the benefit of their creditors become protected from action by creditors, the consequences of a trust deed being granted that status, the rights of creditors, the discharge of the debtor and trustee from the trust deed, and the administration of trust deeds.

Regulation 3 provides that a trust deed has protected status from the date when it is registered in the Register of Insolvencies by the Accountant in Bankruptcy, who must record the deed following receipt of certain information and documents from the trustee (regulation 11).

Before registration certain conditions require to be met, which are set down in regulations 4 to 10, as follows:

- Regulation 4 states who can and cannot be a debtor under a trust deed, introducing a £5,000 minimum debt level for entry into a trust deed.
- Regulation 5 states who can be a trustee.
- Regulation 6 prescribes additional conditions for a trust deed which excludes a dwelling house—the trustee must provide the debtor and secured creditor with a valuation, the debtor must consent to the trustee dealing with the secured creditor and the secured creditor must record their consent using Form 1A (Parts 1 and 2).
- Regulation 7(3)(c) provides that, after the trust deed is signed by the debtor, a statement must be signed jointly by the trustee and the debtor confirming that the trustee has provided the debtor with advice about the effect of the trust deed.
- Regulation 7(1)(b) provides that the debtor must agree that any estate acquired (which is known as “acquirenda”) for a period of 4 years from the date the trust deed was granted will pass to the trustee.
- Regulation 7(2) prescribes further details which the trust deed must contain if a debtor’s dwelling house is to be excluded.
- Regulation 8 provides that entry to a trust deed is subject to the debtor being unable to pay their debts in full in 4 years from the contribution assessed and, where a contribution from the debtor’s income is taken, it must be payable under the trust deed for the “payment period” of 48 months unless that period is varied. Variation can occur if a shorter period is determined by the trustee, or a longer period is either determined by the trustee where there is a period during which the debtor did not pay the debtor’s contribution, or agreed by the debtor and the trustee.
- Regulation 9 provides that the trustee must send a the notice of the trust deed seeking protected status to AiB for registration on the Register of Insolvencies.
- Regulation 10 provides that the trustee must send certain documents to the creditors, not later than 7 days after the notice is published, and that creditors then have 5 weeks to object. These documents include a statement of the debtor’s income and expenditure as at the date on which the trust deed was granted in the style and format of the Common Financial Statement. If the majority in number (or not less than one third in value) do not object, they are deemed to accede to the trust deed.
- Regulation 10(2) clarifies the definition of “notified creditors” in regulation 2 and provides that a secured creditor of an excluded dwelling house cannot vote for these purposes. Where a dwelling house is excluded, other creditors receive additional information on the effect of an exclusion on any dividend, on any trust deeds in the previous 6 months, on the value of the excluded dwelling house and on the debt owed to the secured creditor.

Regulation 11 provides that the trustee must send information on all trust deeds, including on any dwelling house excluded, to the Accountant in Bankruptcy as soon as practicable after the 5 week publishing period but no later than 4 weeks following this.

Regulations 12 to 18 provide for the effect of a trust deed becoming protected, as follows:

- Regulation 12(3) clarifies the effect of a trust deed becoming protected for a secured creditor who has consented to the exclusion.
- Regulation 17 sets out the circumstances in which a qualified creditor can petition for sequestration.
- Regulation 18 sets out the circumstances in which a qualified creditor can apply to the courts.

Regulations 19 to 23 deal with the administration of the trust deed, as follows:

- Regulation 19 gives the Accountant in Bankruptcy power to give directions to the trustee as to how the administration should be conducted, with intimation of the terms of the direction to the debtor and creditors.
- Regulation 20 requires the trustee to provide information to the trustee and the Accountant in Bankruptcy as required and the trustee can be reported to the sheriff for failures, and subject to censure or other orders.
- Regulation 21, requires the trustee to send statements of account to the debtor, creditors and the Accountant in Bankruptcy. The trustee is also required to send a report on the management of the trust deed to the Accountant in Bankruptcy.
- Regulation 21(4) provides that the trustee cannot take any contribution from income from social security benefit.
- Regulation 22 stipulates documents the trustee must retain for 12 months after the trustee's discharge.
- Regulation 23 deals with the trustee's remuneration. The remuneration must consist of a fixed fee and an additional fee based on a percentage of assets realised together with outlays, subject to unforeseen circumstances. The fee can include remuneration for work done in seeking a secured creditor's consent prior to a trust deed becoming protected. The Accountant in Bankruptcy may, at any time, audit the trustee's accounts and fix the outlays of the trustee in the administration of the trust.

Regulation 24 sets out the conditions which must be met for a debtor to be discharged of debts and obligations under the protected trust deed. If they have been met, the trustee must send a letter of discharge to the debtor informing the debtor that the date of their discharge will be the date that is recorded in the Rol.. Refusal to sell a dwellinghouse as defined in section 5 (4AA) of the 1985 Act or a family home as defined in section 40(4) of the 1985 Act is not treated as failure to meet a debtor's obligations. If the trustee decides a debtor is not to be discharged, he must inform the debtor who may appeal to the sheriff against the trustee's decision. Student loans cannot be discharged under a protected trust deed.

Regulation 25 deals with the discharge of the trustee and defines the date of the final distribution (only for the purposes of regulation 25) including what actions must be carried out by the trustee once discharged. A trustee can still seek discharge where a creditor has not yet collected the funds of the distribution, provided the funds have been placed beyond the control of the trustee.

Regulation 26 provides for electronic delivery of notices and other documents and a presumption for when electronic delivery is taken to have occurred.

Regulation 27 allows inter alia appeals to be made by the debtor, creditor or trustee

to the sheriff by way of summary application against [any determination by the Accountant in Bankruptcy fixing the remuneration payable to the trustee, or any direction by the Accountant to the trustee as to the conduct of the administration of the trust deed].

Regulation 28 provides for a general direction-making power of the sheriff on the application of any interested party.

Regulation 29 makes amends fees payable under the Bankruptcy Fees etc. (Scotland) Regulations 2012 in respect of protected trust deeds.

Regulation 30 revokes the Protected Trust Deeds (Scotland) Regulations 2008 as amended, subject to the saving in regulation 31(1) under which those Regulations will continue to apply to trust deeds granted before 30th November 2013 and a transitional modification in regulation 30(2) which corrects an error in those Regulations as they will continue to apply to those trust deeds.

Rationale for Government intervention

The Scottish Government recognises the responsibility it has to take prompt action where it can to help the Scottish people particularly in this time of economic difficulty, ensuring debt relief products are fit for purpose, support the people of Scotland and to strengthen Scotland's growing economy.

The Scottish Government believes the provisions contained within the regulations will:

- make the current trust deed process more efficient,
- ensure the process is fit for purpose, and
- ensure that it strikes the best balance between the needs of debtors and the rights of creditors.

The regulations, if passed, will 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 entrepreneurship, 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

Within Government

Wide consultation and discussion with colleagues in the Scottish Government has taken place throughout the development of these Regulations. Comments have been sought on the Regulations themselves and the potential impact of the new Regulations on their relevant areas of government business. We liaised with colleagues in the Finance Directorate throughout the development of these regulations regarding the financial impact of the provisions.

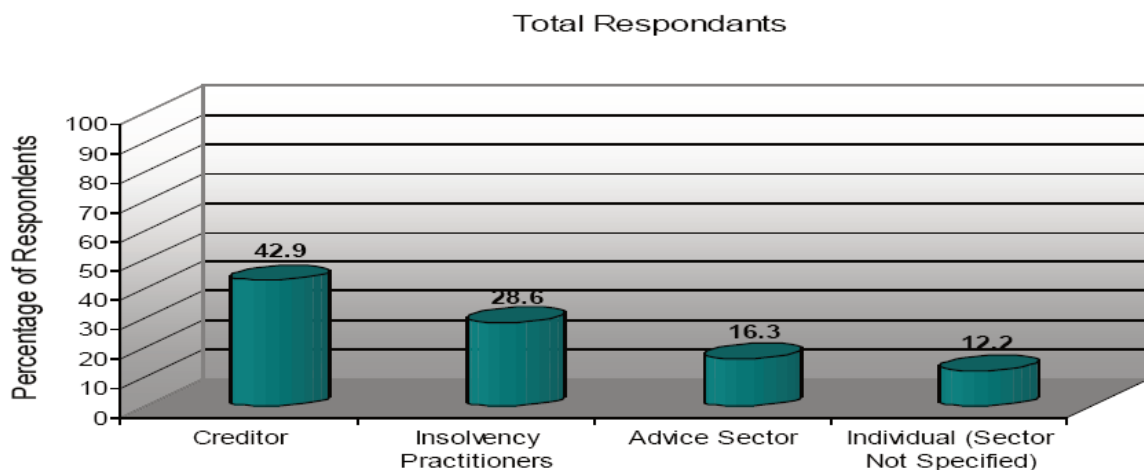
Public Consultation

In 2010 The Protected Trust Deeds Working Group (PTDWG) was established at the request of the then Minister for Community Safety, Fergus Ewing MSP. The PTDWG was chaired by Rosemary Winter-Scott, The Accountant in Bankruptcy (AiB) and Agency Chief Executive and comprised a cross-section of stakeholders from the advice sector creditor organisations, insolvency practitioners and the AiB. The purpose of the PTDWG was to make recommendations for appropriate legislative and non-legislative measures, to ensure the PTD process in Scotland is fit for purpose and strikes the best possible balance between the needs of debtors and the rights of creditors.

The group, although diverse in its range of interests, engaged constructively and achieved a great deal over the short term of five initial meetings. In general, the group agreed that there was scope for improvement to the PTD process and in its Final Report published in June 2010, made several recommendations. These recommendations formed the basis of the consultation 'Protected Trust Deeds – Improving the Process'.

On the 17th October 2011 the consultation was published on the AiB and Scottish Government Consult website and ran until the 31st January 2012.

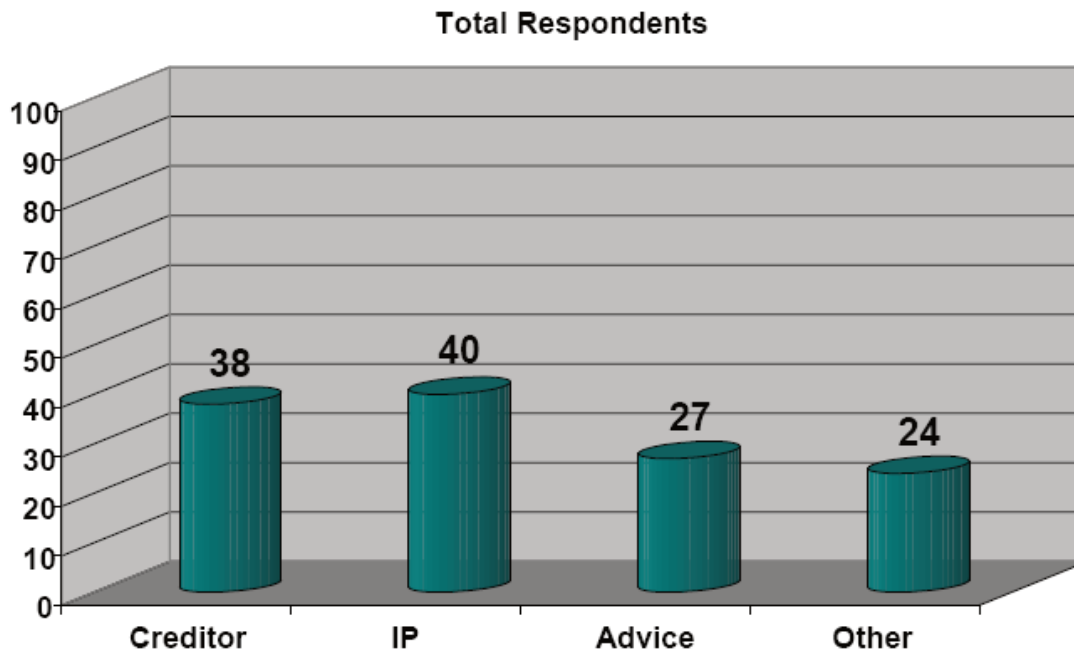
All 49 responses to the consultation were received and collated by the AiB



Further proposed changes to PTDs were consulted on as part of the wider "Bankruptcy Law Reform" consultation which launched in February of 2012. The consultation closed on 18 May 2012 and a report summarising the responses was

published on the Scottish Government's web pages on 28 August 2012.

A total of 129 responses were received by AiB at the close of the consultation. The breakdown of respondents was as follows.



The Scottish Government response to the consultation was published on 1 November 2012, and an update on Bankruptcy Law Reform was published on 28 February 2013. These consultation documents are available on the AiB website, here:

[http://www.aib.gov.uk/guidance/publications/consultations-and-reviews/bankruptcy-law-reform/bankruptcy-law-reform.](http://www.aib.gov.uk/guidance/publications/consultations-and-reviews/bankruptcy-law-reform/bankruptcy-law-reform)

Business

AiB consulted directly with key representatives from a wide range of stakeholder groups. Detail of these discussions can be found in the Scottish Firms Impact Test section.

Options

Option 1 – No change

Sectors and groups affected: Individuals, creditors and the broader Scottish economy.

Benefits – Status quo maintained.

Cost – No cost incurred to Scottish Government other than that already spent on the consultation process. However, decreasing return to creditors would have an adverse effect on the Scottish Economy as a whole.

**Option 2 -
THE PROTECTED TRUST DEEDS (SCOTLAND) REGULATIONS 2013**

Sectors and groups affected – Individuals, creditor, Insolvency Practitioners, the Edinburgh Gazette and the broader Scottish economy.

In addition to affecting both creditors and debtors, and by extension the wider Scottish economy, there will also be an effect on Insolvency Practitioners and the Edinburgh Gazette.

Benefits – The changes are designed to ensure the best possible return to creditors a proportion of which are small and medium enterprises. This will in turn benefit the wider Scottish economy as a whole, although at this time it is not possible to quantify these benefits monetarily.

Costs - Details of costs are outlined in Table A below.

Table A

	Yr1 (£)	Yr2 (£)	Yr3 (£)	Yr4 (£)	Yr5 (£)
System Depreciation	72,000	72,000	72,000	72,000	72,000
System Support	22,800	22,800	22,800	22,800	22,800
System Enhancements	18,000	18,000	18,000	18,000	18,000
System Server	5,000	-	-	-	-
Staff Costs	28,614	30,331	32,151	34,080	36,125
Publications	10,000	10,300	10,609	10,927	11,255
Training Costs	10,000	-	-	-	-
Share of Overheads	95,000	97,850	100,786	103,809	106,923
Total Costs	261,414	251,281	256,346	261,616	267,103
Plus Return @ 3.5%	9,150	8,795	8,972	9,157	9,349
Total Annual Costs	270,564	260,076	265,318	270,773	276,452

Total 5 Year Cost	£1,343,182
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Total anticipated costs are just under £1.3m over the first five years. These costs will be paid from AIB's existing budget and recovered through a statutory fee of £35.00 for online applications and £90.00 for paper applications. These fees allow for 3.5% discounting as recommended in The Green Book and are based on an anticipated application volume of approximately 8,400.

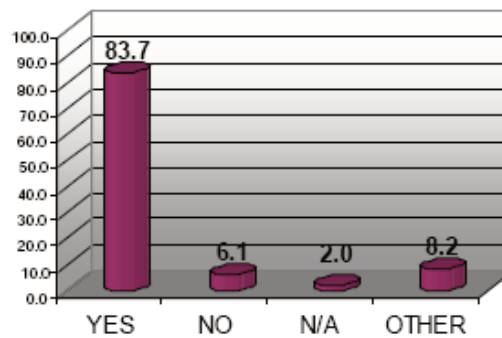
Insolvency Practitioners - We intend to change the way in which trustees charge their fees. Trustees will no longer be able to charge their fees at an hourly rate. Instead, they will be required to charge a single, fixed, upfront fee augmented by further remuneration based on a percentage of funds ingathered through the administration of the case. This is to provide greater transparency to both debtors and creditors.

It is not anticipated, however, that these changes will have any impact on the competitiveness of Scottish companies since we are not restricting the rate of fees which will still be set by the market and the service will still be delivered by insolvency practitioners.

Edinburgh Gazette - The responses to the PTD consultation were overwhelmingly in favour of removing the requirement to advertise trust deeds in the Edinburgh Gazette and moving this provision to the Register of Insolvencies. A break down of responses is in the table below.

Question 14

Do you agree that trust deeds should be advertised in the Register of Insolvencies rather than the Edinburgh Gazette?



Although there will be revenue lost to the Edinburgh Gazette through the removal of this requirement, we will mitigate this loss of revenue by providing the Gazette with “data dumps” which they can then make available on a commercial basis.

Scottish Firms Impact Test

In addition to the consultation, the Scottish Government has hosted a rolling programme of stakeholder events in December 2012/January 2013. There were events in Edinburgh, Glasgow, Inverness and Aberdeen. These events provided stakeholders with the opportunity to communicate their views and contribute to the development of the proposals. A further programme of stakeholder events were carried out in April and May 2013.

These events were attended by representatives from stakeholder groups including creditors, insolvency practitioners and advice organisations. A list of organisations in attendance is included in **Annex A** of this document.

The consultation process was valuable and respondents helped to shape the content of the regulations. 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.

Through face to face engagement with businesses we posed a number of wide ranging open questions to generate discussion on the proposal within the regulations. Following analysis of the responses and through on going engagement with stakeholders not all of the proposals in the consultation were taken forward.

For example, stakeholders expressed concerns that setting of a minimum dividend would have an adverse impact on the PTD market, in particular, leading to an increase in case failures and individuals becoming bankrupt instead. As a result this provision was removed from the regulations.

Competition Assessment

Having considered the Office of Fair Trading competition filter questions –i.e. does the proposal limit suppliers either directly or indirectly and reduce ability and/or incentives to compete? - I 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.

We applied the competition filter and the answers were as follows:

- This proposal will not directly limit the number or range of suppliers.
- This proposal will not indirectly limit the number or range of suppliers.
- This proposal will not limit the ability of suppliers to compete.
- This proposal will not reduce suppliers' incentives to compete vigorously.

Therefore, no full competition assessment was necessary.

Test run of business forms

The forms have been amended and tested internally. In addition to this we hold on-going training sessions with the users of the forms. A summary of the purpose of the form and their relevant provisions within the regulations is included below.

<i>Form</i>	<i>Purpose</i>	<i>Relevant provision of the Regulations</i>
1	Notice in the register of insolvencies by trustee under a trust deed for the benefit of creditors	Regulation 9
1A	Consents required for exclusion of a secured creditor from a protected trust deed	Regulation 6(b)
1B	Agreement in respect of heritable property	Regulation 15(2)
2	Statement of claim by creditors in trust deed	Regulation 10(1)(b)
3	Trust deed protection proposal and trustee's application	Regulation 10(1)(e) and 11(1)(g)
4	Trustee's statement of status of a protected trust deed	Regulation 21(2)
4A	Employee's payment instruction to employer	Regulation 14(2)
4B	Trustee's payment instruction to employer	Regulation 14(3)
4C	Payment variation instruction to employer	Regulation 14(9)
5	Application for discharge of debtor	Regulation 24(1)(b)
6	Application to creditors for discharge of the trustee of a protected trust deed	Regulation 25(2)
7	Trustee statement of realisation and distribution of estate under a protected trust deed	Regulation 25(8)

Legal Aid Impact Test

The introduction of these Regulations will have no impact on the legal aid fund. The Scottish Legal Aid Board has confirmed this assessment.

Enforcement, sanctions and monitoring

The Scottish Government will review the Regulations following their first year of operation in order to assess how successful they have been in meeting their policy objective. AiB will also provide and encourage feedback with stakeholders.

Implementation and delivery plan

The published guidance to support stakeholders when they are considering a PTD as a suitable debt solution for their clients will be updated to reflect these changes.

The Accountant in Bankruptcy will, where appropriate, prepare and publish 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 after the first year of operation. This will involve the analysis of statistical data collated by AiB.

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

Option	Costs	Benefits
1 - No change	No additional costs other than those already incurred in the consultation process	Status quo maintained
2 -	<p>Total five year expenditure is 1,343,182 with total returns over the same period projected to be £1,487,449.</p> <p>This expenditure has already been provided for within AiB budgets and should require no additional funding.</p> <p>For further breakdown or returns and expenditure, see Table A on page 5 of this document..</p>	<p>The changes are designed to ensure the best possible return to creditors many of which are small and medium enterprises, which will in turn benefit the wider Scottish economy as a whole, although at this time it is not possible to quantify these benefits monetarily.</p> <p>The changes are designed to ensure the best possible return to creditors many of which are small and medium enterprises, which will in turn benefit</p>

the wider Scottish economy as a whole, although at this time it is not possible to quantify these benefits monetarily.

Option 2 is recommended. The Scottish Government believes the provisions contained within the regulations will:

- make the current trust deed process more efficient,
- ensure the process is fit for purpose, and
- ensure that it strikes the best balance between the needs of debtors and the rights of creditors.

Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	No Change	No Change
2	The changes are designed to ensure the best possible return to creditors many of which are small and medium enterprises, which will in turn benefit the wider Scottish economy as a whole, although at this time it is not possible to quantify these benefits monetarily.	Total five year expenditure is 1,343,182 with total returns over the same period projected to be £1,487,449. This expenditure has already been provided for within AiB budgets and should require no additional funding. For further breakdown or returns and expenditure, see Table A on page 5 of this document.

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:**Date:**

**Fergus Ewing MSP,
Minister for Energy, Enterprise and Tourism**

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Annex A

Attendees To AiB Stakeholder Events 2012/13

1st Alliance (Ayrshire) Credit Union
1st Class Credit Union
ABCUL
Aberdeen City Council
AG Taggart & Co
Amos & Etheridge - Insolvency Practitioners
Anderson Strathern LLP
Angus Citizens Advice Bureau
Argyll & Bute Citizens Advice Bureau
Armstrong Watson
Association of British Credit Unions
Ayrshire Credit Union Limited
Baker Tilly
Bank of Scotland
BDO LLP
Bebbies Traynor
Bellshill & District CAB
Blackness Solutions Limited
Brodies
Business Management Services
Bute Advice Centre
Cab Coatbridge
Caithness CAB
Campbell Dallas LLP
Carrington Dean
CHAI Advice Service
Christians Against Poverty
Citizens Advice
Citizens Advice and Rights Fife
Citizens Advice Bureau
Citizens Advice Bureau Edinburgh
Citizens Advice Bureau West Lothian
Citizens Advice Scotland
City of Edinburgh Council
Clydesdale CAB
Clydesdale Citizens Advice Bureau
Cowan & Partners Limited
Creditfix Limited
D&G CAS
Dalmuir Credit Union
Debt Advice Worker

Debt Counselling
Deloitte LLP
Dlmac
Dundee Citizens Advice Bureau
Dunedin Canmore
East Ayrshire CAB
East Dunbartonshire Citizens Advice Bureau
East Kilbride Credit Union Ltd
East Renfrewshire Council
Falkirk Citizens Advice Bureau
Falkirk Council
French Duncan LLP
Future Property Auctions
Geoghegans
Glasgow City Council
Glasgow Credit Union
Glen Drummond
Gordon Advice Bureau
Gordon Rural Action
Grant Thornton UK LLP
Hamilton Citizens Advice Bureau
Hastings & Co
Henderson Loggie
Highland Council
HM Revenue & Customs
HMRC, Enforcement & Insolvency
HWCH
IC Loans Ltd
ICAS
Improvement Service
Improvement Service - Improving Outcomes In Money Advice
Project
Insolvency Support Services Ltd
Institute of Credit Management
Inverness CAB
JP Morgan/Max Recovery
Kelsom Associates
KLM
Knightsbridge Insolvency Services
KPMG
Lindsays
Macdonalds Solicitors
MacGregors
Maryhill & Possilpark CAB
Meston Reid & Co
MLM Solutions

MMG Archbold
Money Matters Advice Centre
Money Matters Inverclyde
Mosshill Credit Union Ltd.
Nelson James LLP Sheriff Officers
NHS Credit Union
North Ayrshire Council
North Lanarkshire Council
Partner
Peebles & Distric CAB
Perth Citizens Advice Bureau
PKF (UK) LLP
RBS
Ritson Young
Robin McGregor
Royal Bank of Scotland
RSM Tenon
Rutherglen And Cambuslang Citizens Advice Bureau
Scot West
Scottish Court Service
Scottish Government Business Directorate
Scottish Law Commission
Scottish League Of Credit Unions
Scottish Parliament
Scott-Moncrieff
Scotwest
Senior Money Advice Worker
Shelter Scotland
Shepherd & Wedderburn
Smith Inglis
Society of Messengers at Arms and Sheriff Officers
StepChange Debt Charity
StepChange Debt Charity Scotland
Stirling Council
Stirling Park
Stronachs LLP
Taxi Trade Credit Union
TDC Solutions Limited
TDX Group
The Advice Shop
The Carrington Dean Group
The City of Edinburgh Council
Thomson Cooper
UKAR
Vale of Leven Credit Union
W White & Co

Wick CAB
Wilson Andrews
WRI Associates Limited
Wylie & Bisset LLP
Wylie & Co