Final
Business and Regulatory Impact Assessment

Title of Proposal

The Common Financial Tool etc. (Scotland) Amendment Regulations 2015

Purpose and intended effect

Background

Section 3 of the Bankruptcy and Debt Advice (Scotland) Act 2014 (the BADA(S) Act) inserts a new section 5D in the Bankruptcy (Scotland) Act 1985 giving the Scottish Ministers the power to specify a method to assess an individual's income and expenditure and determine an appropriate contribution (if any) from a debtor's income. From 1 April 2015, the use of this Common Financial Tool (CFT) will be mandatory for statutory debt relief and debt management solutions in Scotland.

The Scottish Common Financial Tool Working Group ("the Group") was established to consider the requirements of the CFT. Analysis was carried out and the group examined the use of existing tools as well as the possibility of creating a Scottish specific tool. It was agreed that the Common Financial Statement (CFS) operated by the Money Advice Trust would be adopted as the Scottish CFT. The group also discussed a number of options on how to build the financial capability of individuals in Scottish Statutory debt solutions so that they are more able to deal with unexpended expenses and income shocks such as the cost of repairing or replacing a washing machine without entering into costly borrowing options such as high cost short term loans.

Objective

These Regulations will amend the CFT method for determining an appropriate amount of a living debtor's income to be paid to the trustee after sequestration of the debtor's estate provided for in the Common Financial Tool etc.(Scotland) Regulations 2014, made under the above amendments to the Bankruptcy (Scotland) Act 1985 by the BADA(S) Act. They do this by :

- adding to the CFT so that a debtor may retain a limited amount from their income towards meeting contingencies which may arise; and

- making minor corrections and clarifications to the Common Financial Tool etc. (Scotland) Regulations 2014, including as those Regulations amend the Protected Trust Deeds (Scotland) Regulations 2013.

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, to support the people of Scotland and to strengthen Scotland's economy, the Scottish Government made a commitment to implement changes to Bankruptcy legislation.

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 discussion and debate on the modernisation and reform of bankruptcy, the basis of the provisions within the BADA(S) Act, began with the publication of a comprehensive consultation paper. In addition to the consultation, the Group was set up to identify a single Common Financial Tool (CFT) to be used throughout Scotland. The tool would be used to assess the amount of contribution to be paid by an individual regardless of which statutory debt relief/ management solution the individual entered into.

Members of the Group included:

Liz McVey	StepChange Debt Charity
Barry Stewart	ICAS/Wilson Andrews
Pat Sproull	Highland Council Money Advice
Donald McKinnon	Wylie and Bisset
Claire King	Money Advice Service (By phone)
Frank McKillop	ABCUL Scotland
Bee Thakur	Money Advice Service
Pauline Allan	Citizens Advice Scotland
Antoinette Eaton	Lloyds Banking Group
Jenny Sims	Lloyds Banking Group
Alexander McDermott	Nationwide
Matthew Wilson	Money Advice Trust

After consideration of which tool should be used to assess the amount of contribution to be paid by an individual in a Scottish statutory debt solution, the Group agreed that the single CFT should be the Common Financial Statement.

The group also discussed the potential inability of an individual in a statutory debt solution to manage any unexpected expenses or income shocks which might occur during in the period during which they were required to make payments, as 100% of their surplus income (after the use of the CFT) would be committed to paying their contribution. The Group agreed that a debtor should be able to retain a small proportion of their income to meet any contingent expenses such as the breakdown of a car or domestic appliance. The Group were specifically asked for their thoughts on the maximum amount allowable within the savings/contingency provision of the tool. The majority were in agreement and welcomed a contingency allowance ceiling of £20.00 per month.

The contingency allowance was also discussed at the stakeholder events in December 2014, January and February of 2015. The majority of stakeholders, at all of the events, agreed that the introduction of a contingency allowance would be consistent with a Scottish Financial Health Service and help debtors build financial capability and resilience by ensuring they were more able to deal with unexpended expenses and income shocks, such as the cost of repairing or replacing a washing machine without entering into costly borrowing options such as high cost short term loans.

Within Government
AiB worked with colleagues across the Scottish Government to develop its programme for legislative change centred on the BADA(S) Act. An initial Financial Memorandum was published alongside the Bill in June 2013, and a further Supplementary Memorandum in March 2014. These documents set out a detailed account of the financial implications of the Act, including the implications for individuals and businesses. Since the Act received Royal Assent, AiB has continued to work with other Scottish Government officials, as required, in order to develop secondary legislation and prepare for the operational delivery of its BADA(S) Act reforms.

Business

A wide range of attendees of businesses and bodies representing businesses attended events held in Edinburgh on 13 January, Glasgow on 19 January and Inverness on 3rd February 2015, including:

- Money Advice Scotland
- Citizens Advice Scotland
- Local Authorities
- Geoghegans Chartered Accountants
- ICAS
- HMRC
- DWP
- Lloyds Banking Group
- Royal Bank of Scotland
- Anderson Strathern
- Wilson McKenderick Solicitors
- Shelter Scotland
- Deloitte LLP
- Campbell Dallas LLP
- Grant Thornton UK LLP
- KPMG
- Begbies Traynor
- ABCUL

The introduction of a contingency allowance for debtors who are in a Scottish statutory debt solution 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 changes to the Common Financial Tool etc. (Scotland) Regulations 2014. However, to do nothing would leave those debtors who are in a Scottish statutory debt solution with fewer options, which could lead to them having to turn to high cost short term lenders to fund any unexpected expenses or income shocks incurred during the term of their debt solution.

Benefits – The benefits in keeping the status quo is that there would be no need to change the legislation.

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

Option 2 – Common Financial Tool etc. (Scotland) Amendment Regulations 2015

AiB has carried out an analysis to estimate the impact of the new contingency allowance when a debtor is being assessed using the CFT to determine their monthly surplus income. The impact on all three statutory debt solutions in Scotland - bankruptcies, Protected Trust Deeds "(PTDs") and the Debt Arrangement Scheme ("DAS") – has been considered.

The Regulations would be amended to allow a debtor to retain an amount of income for contingencies and this will be treated as an item of expenditure in the CFT. The amount can be up to 10% of the debtor's monthly contribution or a maximum of £20 per month. For the purposes of this analysis, the monthly contribution is assumed to equal the debtor's total monthly surplus income.

Impact on Bankruptcies

Costs - In considering the impact this change will have on bankruptcies, it is important to note that only around one third of bankruptcies result in the debtor making any contribution at all and this will not change as a result of this amendment.

For those bankruptcies that do involve a debtor making contribution, we estimate this amendment may reduce the average monthly contribution by 5%. This will mean that the fees paid to the provider organisations who administer the bankruptcies on behalf of AiB, which are based on a percentage of the contributions ingathered, might also reduce by 5%.

Benefits – It is estimated that for those debtors making a contribution to their bankruptcy, an average of £13 per month will be kept for contingency each month, amounting to an average of £633 over the 48 month contribution period. Just over 40% of the debtors in the sample would be able to include a contingency of the maximum value of £20 per month. Therefore, we would expect that 13% of all bankruptcies awarded from April 2015 onwards could include a contingency allowance at the maximum value of £20 per month.

Sectors and groups affected – Individual debtors, AiB, Insolvency Practitioners, creditors and the broader Scottish economy.

Impact on PTDs

Costs – In considering the impact this change will have on PTDs, it is important to note that PTDs are voluntary arrangements that require creditors' consent. Hence the impact on PTDs may not apply evenly as creditors will have a choice as to whether to agree to it or not.

Currently around 70% of PTDs conclude with a dividend paid to creditors and this change should not impact on this proportion. Analysis carried out by AiB shows that, of PTDs where a dividend is paid, the expected dividend figure could reduce by 21%, from 18.4 p in the £ to 14.6 p in the £. This is based on PTD cases protected in 2014. It is estimated that this change will also result in average monthly contributions reducing by 9% (from £159 to £144). The analysis also showed that the average cost of administration will reduce by 3%. This includes the Trustee's fixed fee plus their fee for realising assets and contributions, plus any statutory outlays. As the majority of this cost is made up of a Trustee's fixed fee, the overall impact on the total cost is much smaller.

Benefits – It is estimated that an average of £15 per month will be kept for contingency and this will result in an average of £710 over the 48 month contribution period. This should also result in the contributions being more sustainable over the 4 year period resulting in fewer breakages. It is estimated that around 17% of the debtors would be able to include a contingency of the maximum value of £20 per month.

Sectors and groups affected – Individual debtors, AiB, Insolvency Practitioners (Trustees), creditors and the broader Scottish economy.

Impact on DAS

Costs – As this contingency allowance will potentially reduce the amount a debtor can pay each month, the impact this will have on DAS is that the average expected length of a debt payment programme (DPP) under DAS will increase. The analysis shows that we estimate the average expected length will increase from its current figure of 5.9 years to 6.4 years – an increase of 6 months. This should not impact on payment distributor or AiB fees overall other that it will take both parties longer to receive their full amount (due to the extended length of a DPP).

Benefits – It is estimated that an average of £14 per month will be kept for contingency each month or an average of £1,180 over the full length of the DPP. An estimated 36% of new DAS cases would be able to include a contingency of the maximum value of £20 per month. This should result in a more sustainable Scheme and may also result in proportionally fewer revocations and variations.

Sectors and groups affected – Individual debtors, AiB, Payment Distributors, Money Advisers, creditors and the broader Scottish economy.

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.

There were attendees at AiB's public stakeholder events, representing a wide range of businesses and bodies representing businesses, including:

- Lloyds Banking Group
- HMRC
- ICAS
- Deloitte LLP
- KPMG
- Grant Thornton UK LLP
- ABCUL
- Geoghegans Chartered Accountants
- Royal Bank of Scotland

The introduction of the contingency allowance has been discussed with these stakeholders. No significant concerns were raised. Business stakeholders acknowledge that there needs to be an allowance which would allow an individual to meet unexpected expenses throughout the period that they are in a statutory debt solution.

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

No forms are required

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) Amendment Regulations 2015.

Enforcement, sanctions and monitoring

The Scottish Government will carefully monitor how the new regulations are working in practice by carrying out reviews and seeking feedback from stakeholders. The Scottish Government will review the findings of this research and consider whether any changes are necessary to the legislation and will update the associated guidance in light of its findings.

Implementation and delivery plan

The Common Financial Tool etc. (Scotland) Amendment Regulations 2015 will come into force on the 1 April 2015. When commenced, these amending Regulations will also apply from 1 April 2015.

In addition to this Scottish Statutory Instrument being published on the legislation.gov.uk website, Accountant in Bankruptcy (AiB) will publish the Scottish Statutory Instrument on their website. AiB will, where appropriate, prepare and publish guidance on their website 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 AiB 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 AiB.

The Scottish Government will review the findings of this research and consider whether any changes are necessary to the legislation, or the associated guidance in light of its findings. Any changes identified will be brought to the attention of the Scottish Parliament and Parliamentary committees where necessary. A final report detailing the findings and conclusion of the review will be published.

Summary and recommendation

After due consideration and discussion 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 make system changes, or train their staff in new procedures.	1. There would be no financial costs in maintaining the status quo.
2	1. Monthly contributions for debtors in bankruptcy should be more sustainable over the 4 year period resulting in fewer breakages. Debtors will also be able to retain an average contingency of £633 over the 48 month contribution period. An estimated 13% of all bankruptcies awarded from April 2015 onwards will include a contingency at the maximum value of £20 per month. 2. Monthly contributions for debtors in a PTD should also be more sustainable over the 4 year period resulting in fewer breakages. It is estimated that an average of £15 per month will be kept for contingency and this will result in an average of £710 over the 48 month contribution period. An estimated 17% of the debtors in a PTD recorded from April 2015 onwards would be able to include a contingency of the maximum value of £20 per month. 3. This should result in a more sustainable DAS and may also result in proportionally fewer revocations and variations. It is estimated that an average of £14	1. For those bankruptcies that do involve a debtor making a contribution, we estimate this amendment will reduce the average monthly contribution by 5%. This will mean that the Provider organisations who administer the bankruptcies on behalf of AiB could see their fees, which are based on a percentage of the contributions ingathered, also reduce by 5%. 2. For PTDs, the expected dividend figure could reduce by 21%, from 18.4 p in the £ to 14.6 p in the £. 3. The average expected length of a DAS DPP will increase from its current figure of 5.9 years to 6.4 years – an increase of 6 months.

	per month will be kept for contingency each month or an average of £1,180 over the full length of the DPP. An estimated 36% of new DAS cases would be able to include a contingency of the maximum value of £20 per month.	

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:

Fergus Ewing

Date: ……

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