

Final Business and Regulatory Impact Assessment

Title of Proposal

The Bankruptcy (Scotland) Regulations 2014

Purpose and intended effect

Background

As part of the Scottish Government commitment to modernise the bankruptcy system in Scotland the Accountant in Bankruptcy developed its vision of a Financial Health Service.

In November 2012, the Government issued its response to the consultation on Bankruptcy Law Reform setting out measures that would be taken forward in a Bill.

The Bankruptcy and Debt Advice (Scotland) Act 2014 (“the 2014 Act”) was passed by the Scottish Parliament on 20 March 2014 and received Royal Assent on 29 April 2014. The 2014 Act amends the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”).

Objective

The Scottish Government recognised that bankruptcy legislation needed to be modernised to ensure that debt management and debt relief mechanisms available to the people of Scotland were fit for 21st Century living. With easy access to credit cards and payday lending, the world we live in today is very different from that of 1985 when the 1985 Act came into force.

The overall policy intention behind the provisions of the 2014 Act is to improve the administration of bankruptcy in Scotland, underpinned by the following key principles:

- Ensuring that the people of Scotland have access to fair and just processes of debt advice, debt relief and debt management
- Those individuals who can pay should pay their debts, whilst acknowledging the wide range of circumstances and events that contribute towards financial difficulty and insolvency for both individuals and businesses
- Securing the best return for creditors by ensuring that the rights and needs of those in debt are balanced with the rights and needs of creditors and businesses

Focusing on individual responsibilities, the Bankruptcy (Scotland) Regulations 2014 (“the Regulations”) support the rationale of a ‘Financial Health Service’ providing appropriate debt advice, management and relief.

The main provisions of the Regulations are shown below. Some of these re-enact, with modifications, existing provision, in the Bankruptcy (Scotland) Regulations 2008 (which are largely revoked). Others are new provision, following amendment of the 1985 Act by the 2014 Act, not contained in the 2008 Regulations.

- **Forms** – Regulation 3 (and regulations 5, 12-16, 19 and 22). The Regulations make provision for the majority of the statutory forms to be used in connection with the modernised bankruptcy system. These include: revised Debtor Application forms, Debtor Contribution Order, Trustee Resignation Application and Notice of Abandonment of Heritable Property by Trustee
 - **Register of Insolvencies** – Regulation 4 stipulates the form of the Rol. This regulation also prescribes the conditions under which AiB can withhold debtor information from the Rol
 - **Prescribed payments** – Regulation 6 sets out the ‘prescribed payments’, including Universal Credit, for the purposes of section 5(2ZA)(a)(ii) of the 1985 Act in connection with Minimal Asset Process (MAP) debtor applications
 - **Debt Advice and Information Package** – Regulation 7 prescribes timescales for supplying a Debtor with the Debt and Information Package in advance of a Creditor Petition. This Regulation is existing provision from the Bankruptcy (Scotland) Regulations 2008, replicated in the Regulations
 - **Limited partnerships** – Regulation 8 makes provision about application of the 1985 Act to limited partnerships. This Regulation is existing provision from the Bankruptcy (Scotland) Regulations 2008, replicated in the Regulations.
 - **Apparent Insolvency/Creditor Debt threshold** – Regulation 9 states that the minimum threshold for apparent insolvency on the basis of a Statutory Demand is £1500. This Regulation is existing provision from the Bankruptcy (Scotland) Regulations 2008, replicated in the Regulations.
- Foreign currency** – Regulation 10 makes provision about when a creditor can submit their claim in a foreign currency. Regulation 11 makes provision about how claims in a foreign currency are to be converted into sterling. These Regulations are existing provision from the Bankruptcy (Scotland) Regulations 2008, replicated in the Regulations
- **Financial Education** – Regulation 17 makes provision about completion of mandatory financial education modules by debtors where the trustee considers that the person meets one or more criteria set out in the 1985 Act and that undertaking financial education would be appropriate for the person. The provision for debtors to undertake financial education made in the 1985 Act (as amended by the 2014 Act) and these Regulations contributes to the AiB’s policy aim of providing a ‘Financial Health Service’ for Scotland, which seeks to prevent individuals from experiencing repeated financial difficulties

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 which, it believes, will better serve the interests of the people of Scotland.

The 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, which forms the basis of the provisions in the 2014 Act began with the publication of a comprehensive consultation paper, the Scottish Government's 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.

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 for the 2014 Act 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.

Public Consultation

There has been no specific public consultation on the reforms in this instrument, although changes to the 1985 Act made by the 2014 Act (and which have resulted in new instrument provision contained in this instrument) were debated in the consultation exercise that preceded the Bill.

In addition to the Consultation on Bankruptcy Law Reform the Scottish Government held a rolling programme of stakeholder events in December 2012/January 2013. These events took place in Edinburgh, Glasgow, Inverness and Aberdeen. Further stakeholder events were held in April and May 2013. As a result of stakeholder engagement not all

of the proposals in the consultation were taken forward in the Bill.

Throughout the parliamentary process the Scottish Government continued to engage with various stakeholder groups giving them the opportunity to raise their concerns. This provided stakeholders with the opportunity to contribute to the development of the Bill.

No significant issues were raised during the events.

Representatives from the following sectors responded/contributed to the consultation and subsequent stakeholder events:

Money Advice
Insolvency Practitioners
Creditors - (various representative bodies)
Law Society of Scotland
Sheriffs Association
Local Authorities
Church of Scotland
British Bankers Association
Association of British Credit Unions
Christians Against Poverty
Citizens Advice Bureau
Solicitors
Federation of Small Businesses
Finance and Leasing Association
HMRC
Institute of Credit Management
Office of Scottish Charity Regulator
Scottish Association of Law Centres
Scottish Council on Deafness
Scottish Legal Action Group
Scottish Legal Aid Board
Scottish Power Energy Retail Group
Scottish Women's Aid
Messengers at Arms and Sheriff Officers
Members of the General Public

Business

As previously stated, the debate and discussion around the changes to the 1985 Act made by the 2014 Act and in connection with which provision is made in the Regulations' has been on-going since 2012. Since then, AiB has engaged continuously with stakeholders, including those who represent businesses. The latest public stakeholder events took place on 8 July 2014 in Edinburgh and 14 July 2014 in Glasgow. At each event AiB delivered presentations on forthcoming Regulations to be made under the 1985 Act as amended by the 2014 Act/the 2014 Act. . At the end of each presentation delegates were invited to participate in a question and answer session. This was their opportunity to contribute to the development of the Regulations. No concerns were raised in relation to the proposed content of the Regulations 2014.

In total approximately 130 delegates attended these events, representing a wide range of businesses and representative bodies, including:

Insolvency Practitioners Association
ICAS

Lloyds Banking Group
Credit fix
Solicitors
Money Advice (public and private sector)

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 – The Bankruptcy (Scotland) 2014 Regulations

Benefits – The Regulations re-enact, with modifications, provision in the 2008 Regs and make modest new provision in connection with changes to the 1985 Act made by the 2014 Act. The benefits accruing from these changes will mostly be found in terms of the overall working of the system, for example Regulation 4, which stipulates the information to be included on the Rol, does not introduce a new Rol but will help ensure that the existing Register provides information that will be helpful to users and to AiB.

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

Cost – As with the benefits, the Regulations do not make provisions which have quantifiable costs. The costs of these provisions will be met from within existing budgets which support the administration of insolvency in Scotland. There is, for example, an existing cost in providing and updating information on the Rol. The Regulations will not impact on that overall cost, although they do modify the information that will be provided. AiB's position on the cost of the Regulations, therefore, is that they will not require additional funding to that which is already included in AiB's budget. Equally, they will not have an impact on the cost to users, IPs or money advisers who use the system.

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 Bill for the 2014 Act. The latest public stakeholder events took place on 8 July 2014 in Edinburgh and 14 July 2014 in Glasgow. At each event AiB delivered

presentations on the forthcoming regulations under the powers of the 2014 Act. At the end of each presentation delegates were invited to participate in a question and answer session. This was their opportunity to contribute to the development of the Regulations.

As a result of engaging with stakeholders throughout the process AiB were able to address any concerns as they arose. Consequently, no concerns were raised in relation to the proposals reflected in the Regulations at the recent stakeholder events on 8 and 14 July 2014. These events were attended by approximately 130 delegates including representatives from the following businesses:

Insolvency Organisations
Solicitors
Banking sector
Accountancy firms
Creditor organisations
Private sector Money Advisers

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 changes to the 1985 Act made by the 2014 Act (which have resulted in new instrument provision contained in this instrument) 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 2014 Act and associated regulations, one of which being the Regulations, AiB is 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 Bankruptcy (Scotland) 2014 Regulations (Negative Instrument)

Enforcement, sanctions and monitoring

The Scottish Government will carefully monitor how the modernised arrangements for bankruptcy (following amendment of the 1985 Act by the 2014 Act), including the Regulations are working in practice by carrying out reviews and seeking feedback from stakeholders.

These Regulations require no enforcement or sanction provisions. It is simply the case, for example, that where an application or request submitted to AiB falls out-with the set criteria AiB will return the application/request. AiB will record the number of instances where applications are returned in order to establish what action may be required, if any,

to address this issue.

Implementation and delivery plan

The Regulations will come into force on the 1 April 2015.

The Accountant in Bankruptcy will publish the introduction of the Regulations on the AiB website. The Regulations will also be published on the legislation.gov.uk website. The Accountant in Bankruptcy will, where appropriate, prepare and publish, on their website, guidance to support stakeholders working with the Regulations.

Post-implementation review - To evaluate the impact of the new legislation the Scottish Government has given an undertaking 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 or the associated guidance in light of its findings. 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 the 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	<p>1. No need to change the legislation</p> <p>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.</p>	<p>1. There would be no costs in maintaining the status quo.</p>
2	<p>These Regulations make modest changes to the process by which bankruptcy will be administered in Scotland. The benefits accruing from these changes will mostly be found in terms of the overall working of the system.</p>	<p>1. These Regulations do not make provisions which have quantifiable costs. The costs of these provisions will be met from within existing budgets which support the administration of insolvency in Scotland. AiB's position is that they will not require additional funding to that which is already included in AiB's budget.</p> <p>2. These Regulations will not have an</p>

		impact on the cost to users, IPs or money advisers who currently use the system.

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.

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