Executive summary
The Association of British Credit Unions Limited (ABCUL) welcomes this opportunity to submit evidence to the Scottish Parliament’s Economy, Energy and Tourism Committee on the Bankruptcy and Debt Advice (Scotland) Bill. We have consulted credit unions across Scotland at length on the issues it covers over the last few years, and we are grateful for this opportunity to convey the views of Scotland’s credit union movement to the Committee.

ABCUL welcomes many of the Scottish Government’s proposals for reforms which could deliver a debt advice, debt management and debt relief service fit for the modern era and fairer to creditors and debtors alike. In particular, we welcome the stated principle that those who can pay their debts should do so. We believe it is very important that we step back from the culture of heavily marketed debt relief for commercial profit which has grown up, and better consider the adverse impact this can have on creditors and the wider Scottish economy, not least credit unions.

We welcome a number of the key measures in the Bill, including the:
- requirement for anyone seeking debt management or statutory debt relief to first receive advice from an approved money adviser;
- requirement for debtors’ whose insolvency can be seen as a result of poor financial capability to receive financial education;
- adoption of a single standard common financial tool to calculate debtors’ contributions to all Debt Payment Programmes (DPPs), Protected Trust Deeds (PTDs) and bankruptcies;
- extension of the payment period for PTDs from 3 years to 4 years;
- power for the Accountant in Bankruptcy (AiB) to refuse to discharge a debtor who has not complied with the terms of their bankruptcy and co-operated with their trustee.

However, we feel it is important to ensure these measures achieve their intended outcomes. In particular, we feel that:
- those advisers providing the compulsory money advice must be independent from the person or company subsequently managing the recommended debt management or debt relief product, so that there can be no suggestion of a conflict of interest or a temptation to steer debtors towards the “solution” which delivers the biggest profit to trustees;
- the common financial tool adopted must not be skewed towards the debtor or have allowances routinely “maxed out”, including allowances for what appear to be luxury items. When someone is unable to repay their debts in full, there must be a recognition that lifestyle sacrifices must be made in order to make a decent contribution to creditors;
- while extending the payment period of PTDs to 4 years is welcome, we believe some PTDs should be allowed to run for at least 5 years relative to the debt to allow for a greater amount of funds to be ingathered and distributed to
creditors. An even longer payment period may be fairer to creditors in particularly high value PTDs.

While we broadly welcome the measures in the Bill and believe it will represent a significant improvement to existing bankruptcy legislation, we are disappointed that a number of the proposals credit unions were particularly supportive of in the consultation process have ultimately been dropped from the final Bill and the PTD Amendment Regulations. In particular, credit unions would have liked to see:

- a minimum debt level of £10,000 for entry into a PTD (rather than £5,000 as proposed), since lower debts should be repayable through DAS;
- a minimum dividend of at least 30p in the pound for any Trust Deed to become protected, with trustees’ fees being cut when this appears difficult to achieve – not returns to creditors;
- the exclusion from discharge of all debts incurred within 12 weeks of applying for debt relief as it is reasonable to assume that the debtor probably knew the debt would never be repaid;
- consideration of exclusion from discharge of all debts to credit unions in PTDs and bankruptcies because credit unions are impacted disproportionately by debt write-off, damaging their ability to pay a dividend to savers or to lend to others in need.

Credit unions in Scotland

ABCUL is the main trade association for credit unions in Scotland, England and Wales. As a co-operative itself, ABCUL is owned, funded and democratically controlled by its member credit unions. The majority of Scotland’s credit unions are ABCUL members, and they in turn serve the majority of Scotland’s individual credit union members.

Credit unions are not-for-profit financial co-operatives owned and controlled by their members for whom they provide safe savings, affordable loans and a range of ethical financial products. There are currently 107 credit unions in Scotland serving over 327,000 members, with combined assets of over £388 million, holding savings of £335 million and lending £240 million.

Credit unions have had serious concerns about various aspects of debt relief for a number of years. As a movement rooted in the values of thrift, trust and honest borrowing, we are particularly concerned that an “easy debt relief” culture has grown up in recent times. There must be a better balance possible between the old shame and stigma of insolvency and the apparently blasé and routine attitude to debt relief widely promoted today. When we see debt relief products so extensively advertised on television, radio, online, in print and in public spaces, it is quite clear that in these very challenging economic times, selling debt relief is a hugely profitable business for some practitioners.

In what are difficult economic times for individuals, small businesses and social enterprises alike, we welcome the Scottish Government’s stated intention to develop a “Financial Health Service” to minimise the impact of debt relief on the wider Scottish economy and to facilitate the financial rehabilitation of individuals forced to seek debt remedies. As local, ethical co-operatives often prepared to serve people whose only other option would be high cost alternatives, credit unions are especially
well placed to support this financial rehabilitation, and we hope the Scottish Government will recognise the unique and positive role credit unions play in Scotland’s economy and in communities across the country.

**Advice and education**
ABCUL welcomes the proposal that money advice from an authorised money adviser should be compulsory for all individuals considering any form of statutory debt relief. However, we have serious concerns about the quality and neutrality of the advice often given to individuals at present, especially when credit unions report examples of a debtor who could have repaid their debts through DAS instead entering a PTD which significantly enriches the trustee at the creditors’ expense.

We therefore believe it is important that the quality of advice is monitored and inspected. To avoid any conflicts of interest, we also believe that where an insolvency practitioner is also an authorised money adviser, he/she should not serve as that individual’s trustee should a PTD or bankruptcy be the recommended option.

ABCUL supports the Bill’s recommendations for mandatory financial education for certain debtors. We believe the value of credit union membership to help encourage a savings habit, provide affordable credit and generally help build a greater sense of financial responsibility could potentially be included as part of such education.

**Payments by debtor following bankruptcy**
ABCUL agrees that a common financial tool should be used to calculate an appropriate contribution from individuals towards their debts, and that the same tool should be standard in all DAS, PTDs and bankruptcies. We believe the best option would be a new Scottish Common Financial Tool established by the AiB in conjunction with key stakeholders, including credit unions.

In this new Scottish Common Financial Tool, ABCUL would like to see a contribution to a credit union account established as one of the categories in recognition of the value of credit union membership and access to an ethical financial services provider, especially for people in need of “financial rehabilitation” who are seeking to rebuild their finances from insolvency.

Credit unions feel that when a person is unable to pay their debts, there has to be an expectation that some luxuries must be forfeited so that they can pay as much of what they owe as possible. For example, the preservation of a heavy smoking habit or satellite television or the choice to drive to work should not take precedence over the repayment of debts. A situation which allows people to write off debts with no tangible impact upon their standard of living – especially in cases where an unaffordable lifestyle led to insolvency – sends out a very dangerous and morally corrosive message; essentially that “repaying debt is optional” – a situation which is not only bad for creditors, but is socially and economically unsustainable.

ABCUL agrees that the law should be changed to allow an assessed contribution to be deducted directly from an individual’s wages as this should reduce the instances of payment programmes failing. For the same reason, we support the proposal to allow payment breaks up to six months.
Moratorium on diligence
ABCUL is content for the proposed six week moratorium period to be introduced for bankruptcy as already exists for DAS, as we recognise that the requirement for applications to be submitted by an authorised money adviser (which we support) may lead to some delays in accessing debt relief, and it is fair that an individual who formally notifies their intention to enter bankruptcy should have protection from creditors from that stage. We are pleased that the Bill will limit debtors to one moratorium period in a 12 month period so that it is not open to abuse, and that the fact a debtor is subject to a moratorium will be notified through the Register of Insolvencies and the DAS Register.

Administration of estate
Credit unions are satisfied that creditors should submit claims within 120 days as proposed. However, we believe it should be 120 days from the date the creditor is first contacted by the trustee, with the onus placed upon the trustee to identify and contact creditors.

Discharge following bankruptcy
ABCUL believes it is important that debtor behaviour must be a relevant factor in determining an individual’s right to benefit from debt relief. If a debtor does not cooperate with their bankruptcy or cannot be located, their discharge should be deferred indefinitely. We therefore welcome this proposal.

Records
We are satisfied with the proposal to remove the requirement to publish personal insolvency notices in the Edinburgh Gazette, with this information fully available online in the Register of Insolvencies.

Functions of sheriff and AiB in bankruptcy
ABCUL welcomes the proposal to transfer the power to make a Bankruptcy Restriction Order (BRO) from the sheriff to the AiB. Many credit unions have reported examples of debtor misconduct prior to or following the date of bankruptcy. In some cases, it appears the debtor has given false information in order to obtain the credit union loan which quickly becomes unrecoverable. While our preference would be for the exclusion from discharge of debts incurred in the 12 weeks prior to applying for statutory debt relief, it is important that requesting investigation into debtor misconduct and the issuing of a BRO is at least a simpler and more robust process.

Review of decisions made by AiB
ABCUL welcomes the creation of a review process for AiB decisions which does not require the expense and inconvenience of going to the sheriff. While our preference in the consultation was for an independent panel to have this function, we are hopeful that the proposal to allow the AiB’s internal compliance process to perform this function will prove equally effective.

Conclusion
ABCUL hopes this submission will be of use to the Committee as it considers this Bill, and we look forward to providing oral evidence on this subject in the autumn.