What is your general view on the Bill and broadly, are you supportive of it?
Generally the ICM is supportive of the Bill on the understanding that those debtors who have been feckless, irresponsible as well as those business debtors who have run up trade debt with little concern for their creditors, should be addressed more judiciously. The ICM is happy that those debtors who are on state benefit should have simplified routes to bankruptcy as well as early discharge thus permitting them a fresh start.

Did you take part in the Scottish Government’s consultation on the Bill and have your views been reflected?
The ICM did take part in the Scottish Government’s consultation on the Bill and some of the Institute’s concerns have been reflected in the Bill.

What is your view on the following proposals within the Bill:

(a) Advice and education: provision of compulsory money advice from an approved money adviser for anyone considering accessing a statutory debt relief or debt management product; mandatory requirement for individuals to participate in financial education [Policy Memorandum (PM) paras. 18-33]
The Institute supports the requirement for advice and education. However, there is concern as to the type and quality of advice and to the stated aim of the education. The Institute is also concerned that sufficient resources will be made available to achieve these purposes. The Institute appreciates that much detailed work will be required to fulfil those objectives. The Institute will be happy to assist the Accountant in Bankruptcy with advice and assistance with their educational requirements.

(b) Payments by debtor following bankruptcy: development of a common financial tool to be used to calculate the amount of any contribution to be made by an individual from any surplus income they have; allowing the Accountant in Bankruptcy to make an order fixing the debtor’s contribution towards their bankruptcy; requiring debtors, assessed as being able to make contribution towards their bankruptcy, to make such payments throughout payment period (48 months); allowing an assessed contribution to be deducted from the debtor’s wages; provision of a payment break up to six months [PM paras. 34-73]
The Institute endorses the sentiment of the policy objective “that those who can pay should pay”. It agrees that with the introduction of a common financial tool, a greater degree of consistency will be achieved. This should encourage creditor confidence in the bankruptcy process.

With reference to the ‘debtor contribution order’, the Institute welcomes the requirement for appropriate debtors to be obliged to pay these. The Institute is concerned that in certain circumstances the proposed period of 48 months should be extended, particularly where a ‘business/trade’ debtor has shown little regard for the
consequences his financial behaviour has had in relation to creditors. As such the Institute is in agreement with the proposal that the 48 months monthly payments may be varied in appropriate circumstances. If possible the Institute would welcome a mechanism whereby such contribution orders may be facilitated other than from the debtor’s employer and, if appropriate, from self-employed income.

The Institute is in favour of the ‘payment break’ concept.

(c) Bankruptcy where debtor has few assets: introduction of ‘minimum assets process’ to replace the ‘Low Income Low Asset’ route [PM paras. 74-88]

Whilst the Institute is happy with this proposal, there is a concern that feckless or residual debtors in receipt of state benefit may take advantage of the otherwise laudable proposal.

Will there be any investigation carried out to ensure that such debtors do not ‘take advantage of the system’? As such the Institute acknowledges that to be applicable debtors must not have been bankrupt within 5 years of the date of the application.

(d) Moratorium on diligence: introduction of six week single moratorium on diligence [PM paras. 89-95]

The Institute is not entirely in favour of the moratorium but accepts the likelihood of its introduction, particularly to achieve consistency with the DAS.

The Institute wishes to emphasise the integrity of the public register to reflect the currency of any moratorium.

(e) Application for bankruptcy: requirement to sign a ‘Statement of Undertaking’ relating to the debtor’s duties and obligations during the bankruptcy process; removal of provisions from the Bankruptcy (Scotland) Act 1985 relating to incomplete and inappropriate debtor applications; application for bankruptcy from executors of the estate of insolvent deceased individuals; recall of award of bankruptcy [PM paras. 96-116]

The Institute is very much in favour with the requirement to have the debtor sign a ‘Statement of Undertaking’ and that a failure to sign or comply with it should be linked to the debtor’s discharge.

The Institute supports the remaining provisions of this section.

(f) Administration of estate: introduction of a time frame (120 days) for creditor claims; variation in length of first accounting period to no less than 6 months; extending ‘aquirenda’ (any property or right acquired or received by a debtor after the date of bankruptcy, and at present, before date of discharge) period to 4 years [PM paras. 117-137]

The Institute endorses the concept of ensuring the best return for creditors and the 120 day period within which, subject to exceptions, such claims have to be submitted. The Institute welcomes the proposals for dividends to be paid to creditors more regularly and in particular for the first accounting period to be no less than 6 months. The Institute agrees that the period of aquirenda be increased to 4 years after the date of bankruptcy.
(g) **Discharge following bankruptcy:** process for debtor’s discharge from bankruptcy (application, review, appeal, repeal, deferral, unclaimed dividends, discovery of assets) [PM paras. 138-200]

The Institute welcomes the proposal that discharge from bankruptcy should not be automatic and that it, in certain circumstances, be linked with the debtor’s compliance throughout the period of the estate’s administration.

In particular, the Institute is in favour of granting creditors the power to object to the debtor’s discharge.

The Institute agrees with the rest of the proposals contained in this section.

(h) **Records:** removal of power to prescribe the form of the Register of Insolvencies; modernisation of the sederunt book process; removal of requirement to publish in the Edinburgh Gazette [PM paras. 201-223]

The Institute is concerned that the proposals to alter public registers will make it difficult to identify debtors. Accordingly the debtor’s address should only be redacted in exceptional circumstance such as welfare or safety.

The Institute agrees with the remainder of the proposals in this section.

(i) **Functions of sheriff and Accountant in Bankruptcy in bankruptcy:** transferring further bankruptcy processes from the courts to AiB; introduction of e-application process; recall of bankruptcy provisions; appointment, replacement, removal of trustee [PM paras. 224-291]

The Institute remains concerned that the Sheriff’s functions are transferred to the Accountant in Bankruptcy in the manner described. The Institute continues in the belief that bankruptcy is still a process which should be seen as judicial as opposed to administrative. In the event of the proposal being implemented the Institute welcomes the various appeal opportunities to the Sheriff Court.

Subject to the foregoing, the Institute accepts the inevitability of the section’s remaining proposals and welcomes the possibility of shrieval appeal and/or intervention.

(j) **Review of decisions made by Accountant in Bankruptcy:** requiring appellant to seek AiB review of certain decisions prior to appeal to sheriff [PM paras. 292-303]

The Institute is in favour of the proposals contained in this section.

(k) **Miscellaneous amendments:** as recommended by Scottish Law Commission bankruptcy consolidation review [PM paras. 304-306]

The Institute endorses the sentiment of improving legal clarity in these areas.