Introduction
KPMG LLP are a Global Professional Services Firm. In Scotland, our Restructuring practice have for the last 15 years administered a significant volume of Personal Insolvencies, both sequestrations and protected trust deeds.

KPMG LLP also supply Contracted out insolvency services to the Accountant in Bankruptcy (AiB). From the AiB’s Annual Report to 31 March 2012, the AiB was acting as Trustee in c21,700 sequestrations. At that date, KPMG LLP were administering 4,947 sequestrations as Provider under the Contract. This represents approximately 29% of cases, excluding LILA applications, where the AiB was Trustee.

KPMG LLP has taken part in the Consultation process, responding to the initial Consultation Document, participating in Stakeholder events and contributing to a number of working groups set up to consider various aspects of the Bill in more detail.

KPMG LLP supports the objectives of the Bill, to ensure that appropriate, proportionate debt management and debt relief mechanisms are available to the people of Scotland and that these are fit for the 21st Century.

Executive summary
Our comments focus on payments by debtor following bankruptcy. We support the policy objective that “debtors who can pay should pay”.

Significant progress has been made in recent years in sequestration, under the Insolvency Services Contract in particular, in ensuring that debtors who are in employment pay some level of contribution to their sequestration. This has the benefit of reducing the cost to the public purse of the sequestration process and improving returns to creditors.

We are concerned that proposals in the Bill could increase cost to the public purse/reduce returns to creditors through:

- determining the level of contribution prior to any involvement by the Trustee on behalf of creditors;
- Utilising a Common Financial Tool that could reduce average contributions/returns to creditors.

We are also concerned that:

- there has been limited, if any, analysis of the cost/benefits of attempting to collect contributions for a 4 year period compared to the current 3;
- there should be clarity that providing a debtor co-operates they should not have to advise their employer of their sequestration;
that the costs to employers of collecting Debtor Contributions could be significant;
that there are gaps in the provisions for recovery if a contribution is not to be paid from income from employment.

We would welcome the opportunity to share the benefit of our experience in recovery of contributions from debtors during the consultation process.

Payments by debtor following bankruptcy

Common Financial Tool
Whilst not clear in the Bill, we understand that a decision has been made to adopt the Common Financial Statement (CFS) as the Common Financial Tool. Whilst this is helpful in providing additional detail, we have concerns that this decision will have significant impact on the realisations generated from contribution collections on sequestration cases where the AiB is Trustee.

On the cases that the AiB administers as Trustee, the AiB requires her in house teams and providers to utilise the StepChange (formerly CCCS) Guidelines when determining a level of contribution that a debtor can afford to pay.

In 2010 we interviewed a small sample of debtors using both the CFS and the StepChange guidelines. This suggested that using the CFS generated contributions which were on average 30% lower than the StepChange figures.

In the year to 31 December 2012, total contributions collected from cases contracted out to providers were c£3.2 million. A decline of 30% represents a potential reduction of c£1 million per year in recovery for the public purse/creditors. This calculation does not include cases administered by the AiB’s in house team which will increase this annualised figure. We recommend that the impact on the return to creditors/public purse of this decision is carefully considered.

Debtor Contribution Order
A key proposed change to the process is that the AiB may make a Contribution Order, using the CFS, at the point of award of sequestration.

We do not support the idea that a debtor contribution should be determined (on paper) at the time of the award of Sequestration. While there is an attraction to the debtor in very quickly understanding what their contribution is expected to be, we feel that there can be no substitute for a proper detailed assessment of a debtor’s income and expenditure to negotiate a reasonable and importantly sustainable contribution (particularly if the contribution term is to last 4 years). This is a key area where the Insolvency profession bring their skill and experience to increase returns for creditors.

Whilst theoretically if Money Adviser (filling in the debtor application), AiB (making the award) and Trustee (trying to generate a return for creditors) are all using the CFS they should arrive at the same answer, in practice this will not be the case. What is being overlooked here is that the Money Adviser is acting in the interests of their client, the debtor, and the Trustee will be acting in interests of the creditors.
Whilst we note that the Trustee can vary the contribution after it has been assessed by the Money Adviser in the debtor application and set by the AiB, this will be very difficult in practice. Once a debtor thinks they have agreed a contribution it will be difficult to change their mind if the Trustee thinks it should be higher.

This approach could increase administration for the AiB and generate confusion. The AiB will set the contribution and award sequestration. Inevitably there will be debate in some cases with the debtor and their Money Adviser about the level of contribution awarded. Who is then going to deal with the debate, the AiB or the now appointed Trustee?

Overall we see no benefit to this change and think a proper assessment of the position should be carried out by the Trustee with the debtor following the Trustee’s appointment. This gives the debtor one clear point of contact.

Essentially we think the current process works well and does not require change. In our view unless these issues are addressed returns to creditors are at risk.

**Change in payment period to 48 months**
As noted above, we support the policy aim of improving returns to creditors. The change of the time period for contribution payments from 3 to 4 years was a relatively late change in the Consultation process and we understand that there has been limited if any analysis of the cost benefits of this change.

In our experience “breakage rates” for contribution payments in year 3 are significantly higher than years 1 and 2 and it follows that this is likely to be worse in year 4. We suggest that a proper assessment of the likely recovery of contributions compared to the cost of a further years administration is done.

**Variation and removal of contribution order**
Considerable reporting of variations in contributions will be required to the AiB’s office. Whilst acknowledging that this could be done via an effective case management system, we think that this is an onerous burden of administration with no clear benefit.

**Deductions directly from wages**
It is important that there is clarity that a Trustee will only notify a debtor’s employer if they do not comply with the Contribution Order. If there is a requirement that the employer be notified, debtors will understandably be concerned about the impact on their current employer and also their ability to change employment in the future.

This section only addresses the recovery of contributions from a debtor who has an “employer”. Contributions can be agreed from significant pension incomes, self employed income, rental income (without the need to assume landlord obligations). Often these relate to higher value contributions from professionals, including QC’s, lawyers or medical professionals who are not employees. There is also potentially a gap where employers are not in Scotland.
The removal of the previous section on Income payment Orders and replacement with the Debtor Contribution Order leaves a gap in enforcement options if the debtor does not fall in to the employed category. We understand that the debtor will be required to sign a Statement of Undertakings and their discharge may be affected if payment is not made. However, we believe that these will be of limited assistance in the recovery of contributions. It is important that this be properly addressed.

In our experience there has been resistance from employers to collecting payments from an employee’s income (it adds administrative cost for them and often these are small businesses). The detail of the Regulations will be important.

**Permitted 6 month payment break**

We do not believe there is a requirement for this aspect of the Bill. If a debtor cannot afford to pay they should not be required to make a contribution. If a 6 month payment break is added to a 4 year contribution period then, debtors may not be receiving discharge until around 5 years after sequestration which is a significant departure from the current 1 year automatic discharge.

**Advice and Education**

**Advice**

In general we support the principle that a debtor should receive advice prior to accessing debt relief. In the consultation concerns were raised that there should be an “opt out” on this requirement. If the debtor is, for example, a business or financial professional then they may not need advice. Not everyone wants to sit in front of an adviser and share their financial position. The requirement to do so with no “opt out”, arguably restricts access to debt relief.

We deal with significant volumes of sequestration cases under the AiB Contract for Insolvency Services. In our experience the problem is usually not a lack of advice prior to sequestration but rather poor advice. There is nothing in this Bill which addresses this.

It is unclear within the Bill who will fall within the definition of Money Adviser who can provide debt advice. We consider that best advice is obtained from those with sufficient experience and knowledge to advise an individual of the implications of all the options available to him. We believe that it is important this definition includes Insolvency Practitioners.

**Education**

We understand that there is a significant amount of detail to follow by Regulation in this part of the Bill. We think the following should be addressed.

**When** must the Trustee notify the debtor that they need to complete this course of education? Is this something that is intended is done at the outset of a case or is it intended to be done prior to the debtor receiving his discharge?

The Trustee’s responsibility appears to be to **notify** the debtor that they must undertake the course. Who is going to **monitor** that they attend/complete?
What will the consequences be for the debtor of not attending/completing? In the statement of undertakings it implies that the debtor may not receive their discharge, however, there doesn’t appear to be provision for this within the discharge sections of the Bill;

Who is going to fund this education?

The missing detail makes it difficult to comment on how this will operate in practice. We have concerns that this system of financial education will be costly to develop and implement with limited impact and effectiveness.

**Discharge following bankruptcy**

In principle we support the move away from a 1 year automatic discharge which placed the onus and cost of any deferral of discharge firmly on the Trustee. However, we have concerns about the amendments to the process as drafted.

If a Trustee is to make a declaration that a contribution order has been complied with then it is likely that a debtor who pays a contribution and therefore returns more to his creditors will be penalised by having to wait 4 years to receive his discharge.

This is contrasted with a debtor who has no income or assets at the date of sequestration and enters the new Minimal Asset Procedure and receives discharge in 6 months.

The process also appears to differ depending on whether the AiB is Trustee or an Independent Insolvency Practitioner is Trustee. We cannot understand why these processes should be different.

We do not support the indefinite discharge of a debtor who cannot be traced, there are various reasons why debtors cannot be traced and these are not all the fault of the debtor. The absence of the debtor does not necessarily prevent the Trustee from dealing with their Estate.