Please find the Lloyds Banking Group repost to the call for evidence on the bankruptcy and debt advice (Scotland) Bill.

In the main our response to this call from evidence is the same as to the consultation we submitted in May 2012 which I have attached for information.

However, there are a number of points below which we have pulled out below in more detail.

Money advice and financial education:
Lloyds Banking Group is fully supportive of the inclusion in the Bill to make money advice compulsory regardless of the solution the debtor is exploring.

We also support the provision of financial education for those whose financial difficulties have arisen as a result of their budgeting abilities, although we expressed concern in our original response to the consultation about demand and capacity issues.

Ideally, education could be provided through a range of channels: online, written and face to face. We are supportive of the desire for a common financial tool to calculate income and expenditure and are contributing to the working group set up to achieve this.

Bankruptcy & Minimum Asset Process:
In our original response to the Scottish Government consultation paper we considered it unnecessary to introduce a new low income or no income bankruptcy solution given that LILA already exists.

We would also question the change in the Bill for the Minimum Asset Process to reduce discharge to 6 months given that the Bill looks in other areas to align processes across debt solutions. (i.e.: moratoriums, minimum repayment periods)

We welcome the decision to remove the original proposal to exclude debts incurred 12 weeks prior to bankruptcy application.

DAS
Lloyds Banking Group welcome the changes under DAS which allow more flexibility in payment breaks, now up to 6 months, and appreciate the benefit to debtors of freezing interest and charges at point of notification rather than approval stage.

We still question the need to introduce a composition element to DAS on the basis that if the debt can be repaid in full in a reasonable timeframe, this should be the preferred option.
If, due to a change in circumstances, it cannot, it may be more appropriate to consider an alternative solution.

**Trust deeds**
Lloyds Banking Group is supportive of the key changes proposed in the Bill to the setup and supervision of trust deeds, including a review of fee structure and greater transparency to creditors.

Whilst we agree that it may not be appropriate to include benefit payments to calculate disposable income in some cases, equally we do not wish to exclude debtors from accessing this solution if their benefit income is such that a sustainable plan could be agreed.

Debtors should be able to access solutions which are both appropriate to their needs and sustainable in the long term.

We did not agree with the original proposal to introduce a minimum dividend for trust deeds as we felt it could act as a barrier to access for a number of debtors.

Freezing of equity from the outset: we have some concerns that this policy could have unintended consequences and push the debtor further into difficulty if house prices decrease.

**Annex B**

**Consultation on Bankruptcy Law Reform**

**CONSULTATION QUESTIONS**

**Part 6 Advice**
Question 6.1 - Do you think that money advice should be compulsory for those considering any form of statutory debt relief?
Yes ☒ No ☐

Question 6.1a - If yes, who should give this money advice?
Authorised money advisers

Question 6.2 - Should AiB have a role in the provision of money advice?
Yes ☒ No ☐

We agree that AiB could perform a signposting role to money advisers but have concerns over how the AiB could support an advice role function. Consideration should be given to the role of the Money Advice Service and how they can link in.

Question 6.2a – If yes, what format should that take?
Telephony

Question 6.3 – Would you support an ‘triage’ system to signpost individuals to possible debt relief or debt management options available to them?
Yes ☑ No ☐

Providing the outcome for the customer is consistent regardless of whether they go through AIB or to a money adviser directly.

Question 6.3a – If yes, what format should this ‘triage’ system take?

Digital wherever possible. Telephony and face to face for customers that cannot access internet.

Part 7 Education

Question 7.1 - Should financial education be an integral part of any Scottish statutory debt relief option?

Yes ☑ No ☐

We support this in principle, but query how this would be put into practice in terms of demand/capacity issues. It may not be appropriate for customers who simply had a radical change in circumstances, rather than those that were unable to manage their money/had budgeting issues.

Question 7.1a - If yes, who should deliver financial education?

Money Advice Service equivalent in Scotland.

Question 7.2 - Should this financial education be mandatory for all those who access a statutory debt relief option?

Yes ☑ No ☐

Subject to our comments in 7.1.

Question 7.2a – If yes, what format should the financial education take?

Digital channels where possible, face to face if required.

Question 7.3 - Should financial education be optional based on specific criteria, such as where the individual has previously been bankrupt?

Yes ☑ No ☐

See response 7.1.

Question 7.3a – If yes, what should that criteria be?

See response 7.1.

Question 7.4 - Should participation in financial education be linked to discharge from debt?

Yes ☑ No ☐

Whilst we support this in principle, we would need to know how this would be executed: would the work it would entail justify the value it adds?

Question 7.5 - How could the effectiveness of financial education be evaluated?

Looking at the ‘reoffend’ rate: do customer’s circumstances improve or do they end up in the same position some time later?
Part 8 Common Financial Tool

Question 8.1 - Should a single common financial tool be used to calculate an appropriate contribution from individuals?

Yes ☒ No ☐

CFS

Question 8.1a – If yes, should the same common financial tool be used in the determination of contributions in the Debt Arrangement Scheme, Protected Trust Deeds and Bankruptcy?

Yes

Question 8.1b – If no, how should contributions be calculated?

Comments

Question 8.2 - Should AiB, in conjunction with key stakeholders, develop a specific Scottish Common Financial Tool to calculate the appropriate contribution from an individual?

Yes ☐ No ☒

However, we recognise that this may be appropriate if research was carried out that showed the demographics of Scottish customer to be substantially different to warrant a Scottish tool.

Question 8.2a – If no, what figures should be used to calculate the appropriate amount of contribution from an individual?

☐ A) CCCS guidelines
☒ B) BBA CFS figures
☐ C) Other figures, please specify________
☐ D) A percentage of the individual's income

Comments

Question 8.2b - If a contribution is based on a percentage of an individual's income, what should that percentage be?

☐ A) fixed percentage – 9%
☐ B) fixed percentage – 12%
☐ C) sliding scale percentage based on the individual's income
☐ D) other percentage, please specify_____

N/A

Question 8.3 - Should legislation be amended to allow an assessed contribution to be deducted directly from an individual’s wages?

Yes ☒ No ☐

There should be an option to use this method, but it should not be compulsory. It may be unworkable in some circumstances and create unnecessary administration. It may also prevent customers from seeking help if there is a risk that it may affect their position, or they are concerned about the effect of their employer discovering their financial difficulties.
**Part 9 Application Process**

**Question 9.1** – If money advice should be sought prior to entering any statutory debt relief or debt management product, should applications only be made to AIB through an electronic web portal?

Yes ☒ No ☐

Comments

**Question 9.1a** If yes, should an electronic application web portal be accessed only by authorised money advisers?

Yes ☒ No ☐

Comments

**Question 9.2** - Should applicants be able to submit paper application forms?

Yes ☒ No ☐

Or a money adviser can submit them on customer’s behalf.

**Question 9.2a** – If yes, should the applicant demonstrate that they had money advice prior to submitting their application?

Yes ☒ No ☐

Comments

**Question 9.3** - Where money advice is provided by authorised money advisers, should evidence of apparent insolvency still be required?

Yes ☒ No ☐

Comments

**Question 9.4** - Where money advice is provided should the authorised money adviser still certify that the individual cannot pay their debts as they become due?

Yes ☒ No ☐

Comments

**Question 9.5** – Should a moratorium period be introduced for bankruptcy?

Yes ☒ No ☐

We do not feel this is necessary

**Question 9.5a** – If yes, what should the proposed moratorium period be?

- A) 4 weeks
- B) 6 weeks
- C) 8 weeks
- D) other period, please specify ______.

N/A

**Question 9.6** – Should the individual only be able to access one moratorium period in a 12 month period?

Yes ☒ No ☐

N/A
Question 9.6a – If no, how many moratorium periods should the individual be allowed?

- [ ] A) 2
- [ ] B) 3
- [ ] C) 4
- [ ] D) other, please specify______.

N/A

Question 9.7 – Where an individual intends to apply for bankruptcy, should information about the individual be displayed in a public register during the moratorium period?

- [ ] Yes
- [x] No

Comments

Question 9.7a – If yes, should access to the information on the register be restricted to those parties that have an interest?

- [ ] Yes
- [ ] No

N/A

Part 10 Solutions for Individuals

Question 10.1 – Where it is assessed that an individual could repay their debts within a fixed period (such as 8 years), should DAS be the default option for the individual?

- [x] Yes
- [ ] No

If customers can repay, then they should.

Question 10.1a – If yes, should the period that is used be 8 years?

- [ ] Yes
- [x] No

Comments

Question 10.1b – If no, what should the period be?

- [ ] A) 4 years
- [x] B) 6 years
- [ ] C) 10 years
- [ ] D) another period, please specify______.

There needs to be more data available on the success rate of existing DAS and the failure rates: at what point do plans fail and why?

Question 10.2 - Should the mechanism for charging for a DAS Application be aligned to other statutory debt relief options and an up-front fee charged?

- [x] Yes
- [ ] No

Up front fees can be a barrier to customers accessing the appropriate debt solution

Question 10.2a – If yes, what should the fee cover?

Comments
Question 10.3 – Should AiB be able to charge any other fees for the administration of the debt payment programme?
Yes ☒ No ☐

If it is necessary to increase the 2% fee, this could be done through the appropriate consultation process.

Question 10.4 - Should another appeal or review process in DAS be created to allow an individual or creditor to appeal a decision made by the DAS Administrator?
Yes ☒ No ☐

Comments

Question 10.4a – If yes, should these appeals be made to an independent panel?
Yes ☒ No ☐

Could it be possible to engage the services of the Policy & Cases Committee?

Question 10.4b – If these appeals are not made to an independent panel, where should these appeals go?
See above

Question 10.5 – Should the Debt Arrangement Scheme have an option of composition for individuals in DAS programmes?
Yes ☒ No ☐

If the customer is in a position to repay in full, they should do this.

Question 10.5a – If yes, should composition only be available where the programme has successfully run for over a fixed period, for example 12 years?
Yes ☐ No ☒

N/A

Question 10.5b - If yes, what should that fixed period be?
☐ A) 10 years
☐ B) 12 years
☐ C) 15 years
☐ D) another period, please specify__________.

N/A

Question 10.6 - Should composition only be available where the individual in the programme has paid a fixed percentage of the debt due?
Yes ☐ No ☒

N/A
Question 10.6a – If yes, what should that percentage be?

☐ A) 50%
☐ B) 60%
☐ C) 70%
☐ D) another percentage, please specify________.

N/A

Question 10.7 - If composition was available, should this only be with the agreement of the creditors?

Yes ☒ No ☐

Based on creditor's level of debt, not solely number of creditors for/against

Question 10.7a – If no, should an automatic revocation of the outstanding balance be available where the individual has paid the agreed percentage?

N/A

Question 10.8 – Should there be a minimum debt level for entry into a protected trust deed?

Yes ☐ No ☒

Comments

Question 10.8a - If yes, what should the level be?

☐ A) £3,000
☐ B) £4,000
☐ C) £5,000
☐ D) another amount, please specify_____.

N/A

Question 10.9 – Where an individual is in employment, should provision be made for a statutory notice to be issued to their employer allowing the deduction of the agreed contribution direct from the individual’s salary?

Yes ☐ No ☒

It could be argued that the act of making a regular payment is a form of financial education in itself

Question 10.9a – If yes, who should notify the employer?

N/A

Question 10.10 – Should there be a minimum dividend proposed in a trust deed for it to be eligible for protection?

Yes ☐ No ☒

Comments

Question 10.10a - If yes, is 50p in the £ an appropriate minimum amount?

Yes ☐ No ☐

N/A
Question 10.10b - If not 50p in the £, what would be an appropriate minimum amount?

☐ A) 40p in the £
☐ B) 30p in the £
☐ C) 20p in the £
☐ D) another amount, please specify_________.

N/A

Question 10.11 – Should there be a fixed term for completion of a protected trust deed?
Yes ☒ No ☐

Comments

Question 10.11a - If yes, what should this period be?

☐ A) 3 years
☐ B) 4 years
☒ C) 5 years
☐ D) another period, please specify_________.

Possibly with the option to extend a further 12 months

Question 10.12 – Should there be a link between the term of the protected trust deed and the delivery of the minimum dividend originally proposed?
Yes ☐ No ☒

The term must be increased to increase return to creditors, but we do not feel that it can be linked to a minimum dividend

Question 10.13 – Should the current process that deems consent to a trust deed becoming protected continue?
Yes ☒ No ☐

Comments

Question 10.13a – If yes, are the current thresholds correct?
Yes ☒ No ☐

N/A

Question 10.13b – If the thresholds are not correct, what should they be?

N/A

Question 10.14 – If the current deemed consent process is not appropriate, what should replace it?

N/A
Question 10.15 – Where a trustee in a protected trust deed applies to make an individual bankrupt as a result of their non-compliance, should the trustee in the bankruptcy take the non-compliance into consideration when agreeing the individual’s discharge from debt?
Yes ☒ No ☐
Comments

Question 10.16 – If the protected trust deed fails due to an individual’s refusal to comply with the terms, should it be mandatory that the trustee applies to make the individual bankrupt?
Yes ☐ No ☒
The nature of non compliance should be taken into account.

Question 10.17 - Should the requirement for an individual to prove apparent insolvency be removed as a route into bankruptcy?
Yes ☐ No ☒
Comments

Question 10.18 - Should the minimum debt threshold for an individual be increased?
Yes ☒ No ☐
Comments

Question 10.18a – If yes, should this level be £3,000?
Yes ☒ No ☐
Comments

Question 10.18b – If no, what should this level be?
☐ A) £1,500
☐ B) £2,000
☐ C) £5,000
☐ D) another amount, please specify______.
Comments

Question 10.19 - Should there be different minimum debt thresholds for the different debt relief products?
Yes ☐ No ☒
Comments

Question 10.20 - Should the minimum debt threshold for an individual applying to become bankrupt be the same as that for creditors?
Yes ☒ No ☐
Comments

Question 10.21 - Should the minimum debt threshold for creditor petitions increase?
Yes ☐ No ☒
Comments
Question 10.21a - If yes, what should that level be?
  □ A) £3,500  
  □ B) £5,000  
  □ C) £7,000  
  □ D) another amount, please specify______.

Question 10.22 - Should a new No Income product be developed for individuals who are assessed as being unable to make a contribution and who are in receipt of social security benefits only?
  No

Question 10.23 - In order to access this product should the maximum level of assets be limited, for example to £2,000?
  Yes  □ No  □

  N/A

Question 10.23a – If yes, what should this maximum level of assets be?
  □ A) £1,000  
  □ B) £2,000  
  □ C) £5,000  
  □ D) another amount, please specify______.

  N/A

Question 10.24 - Should an individual who owns heritable property be able to access this product?
  Yes  □ No  □

  N/A

Question 10.24a – If yes, should there be any restrictions on the value of the property or, perhaps, equity?

  N/A

Question 10.25 - As the individual is in receipt of social security benefits only, should they be discharged after 6 months, where they co-operate with their trustee?
  Yes  □ No  □

  N/A

Question 10.25a – If no, what should the period be?
  □ A) 9 months  
  □ B) 12 months  
  □ C) 18 months  
  □ D) another period, please specify________.

  N/A
Question 10.26 - To be eligible to apply for a No Income product, should there be a maximum debt level?
Yes ☐ No ☐
N/A

Question 10.26a – If yes, should the maximum debt level be £17,000?
N/A

Question 10.25b – If no, what should the level be?
☐ A) £10,000
☐ B) £15,000
☐ C) £20,000
☐ D) another amount, please specify________.
N/A

Question 10.27 - Where an individual has no income and is discharged after 6 months, should they be subject to a default credit restriction for a set period post discharge?
Yes ☐ No ☐
N/A

Question 10.27a - If a credit restriction is appropriate, what should the period be?
☐ A) 3 months
☐ B) 6 months
☐ C) 12 months
☐ D) another period, please specify________.
N/A

Question 10.28 - If a credit restriction is appropriate, should there be a specific value attached to this restriction, for example no credit over £3,000?
Yes ☐ No ☐
N/A

Question 10.29 - Should the period for an individual to apply for a subsequent No Income product be extended?
Yes ☐ No ☐
N/A

Question 10.29a – If yes, what should the period be?
☐ A) 7 years
☐ B) 10 years
☐ C) once in lifetime
☐ D) another period, please specify________.
N/A
Question 10.30 - Where an individual has accessed debt relief through the No Income product once, should the individual’s discharge for any subsequent bankruptcy be delayed?
Yes □ No □
N/A

Question 10.30a - If yes, what should the period be?
□ A) 1 year
□ B) 2 years
□ C) 3 years
□ D) another period, please specify______.
N/A

Question 10.31 – Should a new Low Income product be developed for individuals who are assessed as unable to make a contribution?
Yes □ No ☒
Comments

Question 10.32 - In order to access this Low Income product should the maximum level of assets be limited?
Yes □ No ☒
Comments
Question 10.32a - If yes, what level should it be?
□ A) £5,000
□ B) £7,000
□ C) £10,000
□ D) another amount, please specify______.
N/A

Question 10.33 - As the individual in this product is not making any contributions should they be discharged after 12 months, where they co-operate with their trustee?
Yes □ No □
N/A

Question 10.33a – If no, what should the period be?
□ A) 6 months
□ B) 9 months
□ C) 18 months
□ D) another period, please specify______.
N/A

Question 10.34 - Do you think that this product should be available to individuals who own heritable property?
Yes ☒ No □
Question 10.34a – If yes, should this be restricted to properties that have been repossessed or have negative equity?

No

Question 10.35 - Should there be a maximum debt limit to access a Low Income product?
Yes ☐ No ☒

Comments

Question 10.35a - If yes, where should this maximum total unsecured debt limit be set?
☐ A) £20,000
☐ B) £30,000
☐ C) £50,000
☐ D) another amount, please specify_________.

N/A

Question 10.36 - Where an individual needs debt relief and cannot access any other bankruptcy product, they should be able to access the last resort debt relief product?
Yes ☐ No ☒

Question 10.37 - Where the individual had previously been bankrupt or has accessed another statutory debt relief product within the previous 5 years, should their discharge period be extended?

Yes ☐ No ☐

Question 10.37a - If yes, what period should their discharge be?
☐ A) 6 months
☐ B) 12 months
☐ C) 5 years
☐ D) another period, please specify______.

N/A

Question 10.38 - Should a new Payment product be developed for individuals who are assessed as able to make a contribution?
Yes ☐ No ☒

Comments

Question 10.39 - Should the Payment product be available to individuals who are currently trading or who have traded within the preceding 5 years?
Yes ☐ No ☐

N/A
Question 10.40 - Should this product be unavailable to individuals who have debts exceeding a fixed sum?
Yes ☐ No ☐
N/A

Question 10.40a - If yes, what should this sum be?
☐ A) £250,000
☐ B) £500,000
☐ C) £750,000
☐ D) another amount, please specify______.
N/A

Question 10.41 - Do you think the contribution should be for a fixed period?
Yes ☐ No ☐
N/A

Question 10.41a - If yes, for what period?
☐ A) 3 years
☐ B) 4 years
☐ C) 5 years
☐ D) another period, please specify________.
N/A

Question 10.42 – Where monies have been ingathered, should creditors receive regular dividend payments?
Yes ☐ No ☐
N/A

Question 10.42a - If yes, at what intervals?
☐ A) quarterly
☐ B) 6 monthly
☐ C) annually
☐ D) another period, please specify______.
N/A

Question 10.43 – Should both insolvency practitioners and the Accountant in Bankruptcy be the trustee in Payment product cases?
Yes ☐ No ☒
Comments

Question 10.44 - For clarity for applicants and creditors, should there be a fixed charge for administering this Product?
Yes ☐ No ☐
N/A
Question 10.45 – If the monies ingathered are insufficient to pay a dividend to creditors, should the individual’s discharge be deferred until the costs of the administration of the bankruptcy are met?

Yes ☒ No ☐

N/A

Question 10.46 - Should a new High Value product be developed for individuals who are currently trading or have traded in the past 5 years or who have debts in excess of a fixed amount?

Yes ☐ No ☐

Comments

Question 10.46a - If yes, what should this fixed amount be?

☐ A) £250,000
☐ B) £500,000
☐ C) £750,000
☐ D) another amount, please specify______.

Question 10.47 – Where the common financial tool assesses that a contribution should be made, should this be for a fixed period?

Yes ☐ No ☐

Comments

Question 10.47a - If yes, for what period?

☐ A) 3 years
☐ B) 4 years
☐ C) 5 years
☐ D) another period, please specify______.

Comments

Question 10.48 – If the monies ingathered are insufficient to pay a dividend to creditors, should the individual’s discharge be deferred until the costs of the administration of the bankruptcy are met?

Yes ☐ No ☒

See 10.45

Question 10.49 – Should there be a mechanism to transfer an individual from one bankruptcy product to another?

Yes ☐ No ☒

Comments

Part 11 Solution for Sole Traders and Partnerships

Question 11.1 - Should a new Business DAS be developed for sole traders and non-limited liability partnerships where the business is assessed as viable?

Yes ☐ No ☒

Comments
Question 11.2 – Should Business DAS exclude non-business debts?

Yes ☐ No ☐

Comments

Question 11.3 - Prior to entering Business DAS, should business advice be compulsory?

Yes ☐ No ☐

Comments

Question 11.3a – If yes, who should provide that advice?

Comments

Question 11.4 - Should debt relief or composition be incorporated into Business DAS and agreed with creditors at the proposal stage?

Yes ☐ No ☐

Comments

Part 12 Removal of Non-Contentious Creditor Petitions from Court

Question 12.1 - Should all creditor bankruptcy applications to make an individual bankrupt be submitted to the AiB?

Yes ☐ No ☒

Comments

Question 12.1a – If no, should only non-contested creditor applications be considered for award by AiB?

Yes ☒ No ☐

Comments

Question 12.2 – Where an application is submitted to AiB and the individual contests this, who should submit the application to the Sheriff Court for consideration?

AiB

Question 12.3 - Where a creditor notifies an individual of their intention to make them bankrupt, what should the minimum period be that the creditor must wait before submitting the bankruptcy application to AiB?

☒ A) 14 days
☐ B) 21 days
☐ C) 28 days
☐ D) another period, please specify_______.

Comments

Question 12.4 – Should the process of an executor petitioning to bankrupt the estate of an insolvent deceased individual be removed from the court, and replaced with an application to the AiB?

Yes ☒ No ☐

Comments
Part 13 Debtor Co-operation

Question 13.1 – Should the co-operation of a bankrupt individual be linked to discharge?
Yes ☒ No ☐

Comments

Question 13.2 - If an individual has not co-operated, should there be a maximum period that discharge could be deferred?
☐ A) 1 year
☐ B) 3 years
☐ C) 5 years
☐ D) another period, please specify______.

Should be determined by Trustee/AIB

Question 13.3 - Where an individual cannot be located should discharge be deferred indefinitely?
Yes ☒ No ☐

Comments

Question 13.3a – If no, what period should the deferral of discharge be?
☐ A) 1 year
☐ B) 3 years
☐ C) 5 years
☐ D) another period, please specify______.

Comments

Question 13.4 – Should the AiB have the power to defer discharge where an individual has not co-operated, without the need to refer to case to a sheriff?
Yes ☒ No ☐

Comments

Question 13.5 – Who should provide an appeals process?
☒ A) the Sheriff Court
☐ B) an independent tribunal
☐ C) AiB’s Policy and Cases Committee
☐ D) other, please specify______.

Comments

Question 13.6 - Should other types of unsecured debts be excluded from the discharge?
Yes ☒ No ☐

Child maintenance arrears

Question 13.6a – If yes, what other types of unsecured debts should not be discharged and your reasons why?

Comments
Question 13.7 - Where an individual has incurred a debt within a specified period prior to their application for bankruptcy or trust deed, should this debt be excluded from discharge?
Yes ☒ No ☐

Comments

Question 13.7a – If yes, should this be limited to debts for non-essential, luxury items or where it is proven that the individual had no intention to repay?
No, it should not be limited

Question 13.8 - Where an individual has incurred a debt within a specified period prior to their application for bankruptcy or the granting of a trust deed and it is agreed that this debt will be excluded from discharge, what should the specified period be?
☐ A) 4 weeks
☐ B) 8 weeks
☐ C) 12 weeks
☒ D) another period, please specify__12 months__.

Comments

Question 13.9 - Should the child maintenance arrears continue to be claimable and to be discharged in bankruptcies and protected trust deeds when the individual is discharged?
Yes ☐ No ☒

They should not be discharged

Question 13.10 – Should credit union debts continue to be discharged in bankruptcies and protected trust deeds when the individual is discharged?
Yes ☒ No ☐

Comments

Question 13.11 – Should only credit union debts that were incurred by the individual within a specified period prior to them entering bankruptcy or granting a trust deed be excluded from discharge?
Yes ☐ No ☒

Comments

Question 13.11a – If yes, how long should this specified period be?
☐ A) 4 weeks
☐ B) 8 weeks
☐ C) 12 weeks
☒ D) another period, please specify__12 months__.

Comments
Part 14 Modernisation of Legislation

Question 14.1 – Where material policy changes are identified by the Scottish Law Commission as part of their consultation on bankruptcy consolidation, should any recommendation they make regarding these be incorporated where appropriate?
Yes ☒ Yes ☐
Comments

Question 14.2 - Do you agree that a consolidation Bill follow the programme Bill through Parliament?
Yes ☒ Yes ☐
Comments

Question 14.3 - Should creditors be required to submit a claim within a specified timescale?
Yes ☒ Yes ☐
Comments

Question 14.3a - If so, what should this timescale be?
☐ A) 60 days
☐ B) 90 days
☒ C) 120 days
☐ D) another period, please specify________.
Comments

Question 14.3b – If the creditor does not submit a claim within the agreed timescale, what should the penalty be?
As it currently is.

Question 14.4 - Should there be a defined habitual residence test for individuals who wish to apply for statutory debt relief in Scotland?
Yes ☒ Yes ☐
Comments

Question 14.4a - If yes, what aspects should be taken into account?
Comments

Question 14.5 - Should the power to determine the form of the Register of Insolvencies (ROI) be moved from the Act of Sederunt to regulations made under the Bankruptcy (Scotland) Act 1985?
Yes ☒ Yes ☐
Comments

Question 14.6 - Should the ROI be updated after the award of bankruptcy to include the individual's current address where they have moved?
Yes ☒ Yes ☐
Comments
Question 14.7 - What, if any further information should be included on the ROI?
N/A

Question 14.8 - Should some details of an individual who is at risk of violence be withheld from the ROI?
Yes ☒ No ☐

Question 14.9 - Are there any other categories of individuals whose details should be withheld from the ROI? Please specify.
Yes ☐ No ☒

Question 14.10 - Is the supplementary questionnaire effective as an interview aid, or is something else required to replace it?
Yes ☐ No ☐

No strong view

Question 14.11 - Would the use of a common financial tool remove the need to collect further information on a supplementary questionnaire?
Yes ☐ No ☐

No strong view

Question 14.12 - Where a recall of bankruptcy is granted, should the distribution process be clarified?
Yes ☒ No ☐

Comments

Question 14.13 - Should the legislation be amended to ensure that the final interlocutor in a recall is withheld by the Court until it is confirmed that all relevant costs and creditors have been paid?
Yes ☒ No ☐

Comments

Question 14.14 - Should the current prescribed rate of interest be retained?
Yes ☒ No ☐

Comments

Question 14.15 - Should all post-procedure interest and charges be frozen on statutory debt relief products?
Yes ☒ No ☐

Comments
Question 14.15a - If not, should the interest rate be linked to the Bank of England base rate?
Yes ☒ No ☐
Comments

Question 14.16 - Should the requirement to keep a hard copy of a sederunt book be removed?
Yes ☒ No ☐
Comments

Question 14.16a – If yes, should the key documents be retained electronically?
Yes ☒ No ☐
Comments

Question 14.16b – What should the key documents include?
Replicate current information

Question 14.17 - Should the date of sequestration be the award date in both debtor applications and creditor petitions?
Yes ☒ No ☐
Comments

Question 14.17a – If no, should the discharge date be linked to the date the award was made by the sheriff?
Yes ☒ No ☐
Comments

Question 14.18 - Should the ability to apply for a payment holiday be introduced to all statutory debt relief products?
Yes ☒ No ☐
Comments

Question 14.19 - Should the period of the payment holiday be fixed at 6 months as it is in DAS?
Yes ☒ No ☐
N/A

Question 14.20 - If a payment holiday is granted, should this period be added onto the length of the period before discharge?
Yes ☒ No ☐
Comments
Question 14.21 - Should the criteria for a payment holiday be the same for all statutory debt relief products?

Yes ☒ No ☐

Comments

Question 14.22 - Should bankruptcy processes be removed from the Sheriff Court where the process is mainly administrative?

Yes ☒ No ☐

Comments

Question 14.22a - If yes, should AiB have the power to make orders for these mainly administrative processes, with disputed decisions being referred to a sheriff?

Yes ☒ No ☐

Comments

Question 14.23 - Should a panel, separate from the decision maker, decide the outcome of more complex applications and review disputed decisions?

Yes ☒ No ☐

Comments

Question 14.23a - If yes, should the panel have the power to make the final decision in low value, straightforward cases?

Yes ☒ No ☐

N/A

Question 14.24 - Should the make-up of this panel include representatives of a cross-section of stakeholders, such as insolvency practitioners, Recognised Professional Bodies, money advisers, solicitors, etc?

Yes ☒ No ☐

N/A

Question 14.25 - Should all bankruptcy processes currently dealt with by the Sheriff Court be removed to AiB, subject to appropriate appeals?

Yes ☒ No ☐

Comments

Question 14.26 - If all bankruptcy processes were removed from the Sheriff Court, should an independent adjudicator or tribunal be formed to review disputed decisions?

Yes ☒ No ☐

N/A
## Part 15 AiB Role and Powers

### Question 15.1
Does the AiB acting as trustee in approximately 59% of bankruptcy cases, excluding LILA cases, have a positive impact on the existence of a healthy and competitive insolvency sector in Scotland?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

Comments

### Question 15.1a
If no, should the AiB continue to act as a trustee in bankruptcies in Scotland?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

Comments

### Question 15.1b
If the AiB should continue to act as trustee, should she act only as trustee of last resort?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

Comments

### Question 15.2
Where the AiB is trustee and asset realisations and contributions in a bankruptcy case do not meet the cost of case administration, how should any shortfall be funded?

- Should be covered by the initial administration fee

### Question 15.2a
Where the AiB is trustee, should bankruptcies which can cover the costs of administration subsidise those which cannot?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

Comments

### Question 15.2b
If no, should bankrupts be required to cover the minimum costs of administration?

| Yes |

| Yes |

### Question 15.3
Should AiB to have a more proactive role in the supervision of all debt management products?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

Comments

### Question 15.4
Where the AiB makes a direction which is not adhered to by the trustee, should an AiB panel decide on an appropriate course of action?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

Comments

### Question 15.5
Should Scottish Ministers have the power to regulate Scottish Insolvency Practitioners?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

Comments
Question 15.5a - If yes, should this be managed through Recognised Professional Bodies who would monitor and regulate Insolvency Practitioners?
Yes ☐ No ☐

Comments

Question 15.6 - Do you think that the current Memorandum of Understanding between the UK Insolvency Service and Recognised Professional Bodies should be redrafted to allow the provision of information to AiB on regulatory activity related to Scottish cases?
Yes ☐ No ☐

Comments

Question 15.7 – Should there be an information sharing agreement between AiB and the Recognised Professional Bodies which have members who take on personal insolvency work from clients based in Scotland?
Yes ☐ No ☐

Comments

Question 15.8 – Should there be an office of the Official Receiver in Scotland?
Yes ☒ No ☐

Comments

Question 15.9 - If the role of the Official Receiver in Scotland is devolved to the Scottish Government, should this role be carried out by Accountant in Bankruptcy?
Yes ☒ No ☐

Comments

Question 15.9a - If no, who should carry out this role?

Comments

Question 15.10 - If there was an office of the Official Receiver in Scotland, how should this be funded?

Comments