Money Advice Scotland welcomes the opportunity to respond to the Bankruptcy and Debt Advice Bill, as introduced, and to provide written evidence to the Economy, Enterprise and Tourism Committee.

In order to prepare our evidence and to seek as many views as possible, MAS hosted a consultation day which was attended by over 30 members of Money Advice Scotland. A presentation was given by Claire Orr, Executive Director of the Accountant in Bankruptcy’s Office. Delegates were drawn from various parts of money advice including both free and fee charging sectors. Organisations represented included local authorities, CABX, housing associations, Insolvency Practitioners amongst others.

**Background to Money Advice Scotland**
Money Advice Scotland is the national umbrella organisation in Scotland which promotes and champions the development of free, independent, impartial, confidential money advice and financial inclusion. Money Advice Scotland was set up in 1989, and has provided the following services to its members.

- Standards and quality framework development
- Qualifications
- Training
- Research and policy input
- Annual Conference
- Seminars and other events
- Publications
- Consultancy
- Organisational audits

Money Advice Scotland is an approved centre for the delivery of Scottish Vocational Qualifications in Advice and Guidance. It is currently working with the Institute of Money Advisers in England and Wales and has developed the Scottish version of the Certificate in Money Advice Practice, which will see its first intake of candidates in October 2013, who will complete their course in January 2014.

With regard to training of money advisers, the organisation has been using standards to underpin its training for almost 20 years. In more recent times, the Scottish Government in conjunction with the advice sector has developed the Scottish National Standards in information and Advice (SNS), and Money Advice Scotland was a pivotal player in their development. These standards are enshrined in current training and also help shape the Certificate in Money Advice Practice, together with the National Occupational Standards in Advice and Guidance, and Legal advice.
General comments
Money Advice Scotland welcomes a review of the bankruptcy laws and the fact that this Bill will be followed by a Consolidation Bill at some later point, which will make it easier for those using the legislation on a daily basis.

Members of Money Advice Scotland, who deal with clients in debt, fully understand the impact of over-indebtedness upon clients, and particularly that of bankruptcy. For some people bankruptcy is indeed a first and last resort, and legislation needs to be able to recognise the different needs of debtors across Scotland. We have some concerns that whilst the proposed legislation is recognising different needs and situations of individuals, for example the minimal asset procedure, on the other hand for some debtors the system proposed may well be seen as punishing them in terms of the length of payment, which is 4 years. We should bear in mind that bankruptcy is a form of debt relief and not debt management (as in the Debt Arrangement Scheme) and that individuals are in the situation as they cannot meet their obligations as they fall due.

Specific comments
We have limited our comments to those sections which we have a particular interest in.

Section 1 - Advice
We fully agree that debtors should have advice before entering into any debt products. We are pleased to note that the bankruptcy laws will be consistent with the existing Debt Arrangement Scheme which requires a debtor to seek advice from an approved adviser. We recognise however that there may be people who feel they don’t need the advice, or indeed who do seek advice and then take action to do something else other than what was advised.

There was concern expressed at our consultation day that there is a difference in giving advice and the options for solving debt problems, and as mentioned previously people often do something different to what is advised. Also, we recognise that there may be issues in terms of some of the money advice sector who feel they don’t have the capacity to provide training to staff and volunteers to enable them to become approved advisers, or indeed advisers themselves don’t wish to become “approved”. Also, in the case of the voluntary sector where there is a significant reliance on volunteers, there could be a reduced supply of approved advisers, if the volunteers don’t wish to sign up to be “approved advisers”. Hence, there may be an issue with supply of approved advisers.

In terms of the quality of advice it was felt that given the move towards “approved advisers” for more of the agencies who potentially will be working to the Scottish National Standards in Information and Advice, which we would thoroughly endorse. Consumer protection is paramount and by having standards in place which are externally audited should help boost consumer confidence.
Section 2 - Financial Education
We agree in principle that financial education for debtors should be welcomed. However, our members who attended the consultation day raised some issues with regard to the interpretation of section 43B(2) (of the 1985 Act) as whilst acknowledging that there may be a need in some cases, that just because someone has gone through sequestration or another debt remedy doesn’t automatically mean that the debtor is in need of financial education. For example, it may be the case that the debtor is a sole trader and that the economic downturn has resulted in the debtor going bankrupt.

The money advice sector is also concerned as to who will provide the financial education, and will they be required to take instructions from a trustee to provide such financial education? In addition given the current funding across the sector, will there be other additional resources available for this function?

Section 3 - Debtors contribution: common financial tool
We fully endorse the use of a common financial tool, which will address some of the issues which we have raised over time where debtors are being treated differently according to what debt product they choose. Our understanding is it is likely that the British Bankers Association and Money Advice Trust Common Financial Statement will be the preferred model. It is well recognised, tried and tested. In our view this will provide parity for debtors and a degree of certainty. Current use of different tools being leads not just to frustration, but debtors feeling a lack of control and a mis-trust often of their advisers, particularly if they are required to give a much increased contribution (once they see a trustee) than they had first understood.

Section 4 - Debtor Contribution Order

48 months period
In the first instance we believe that the new period of 4 years (48 payments) is too long. We also question where the evidence is that the existing system isn’t working for creditors and debtors, in this economic climate where wages are staying at levels of 2 years ago and more, inflation, and the general cost of living is difficult, it does not make economic sense to increase the period of bankruptcy. We are also very concerned as to the overall impact of welfare reform and Universal Credit, which is not rolled out yet, and could have serious implications for people in debt. We already hear of individuals who have been affected by the “bedroom tax” and the impact on their budgets. They will have less money in their pockets all round, and indeed less to offer their creditors. Individuals who managed to pay back debts may well be faced with the fact that they will be trapped by their debt situation for a long time.

In addition whilst the view may be that there will be a better return for creditors it may result in less, as there will be trustees’ fees over 48 months and not 36 months (with a few exceptions), as is usually the case at present.

We know from speaking to our members that where there are lengthy periods of repayment there is more likelihood of the payment arrangements being broken as
debtor find it difficult to sustain payments, especially if there is no access to credit, and an emergency arises.

Discharge period
As we know, bankruptcy is a debt relief product, unlike a Debt Payment Programme under the Debt Arrangement Scheme where there is an expectation that the debtor will pay 100% of the debt. If debtors are not paying then perhaps it would be worth looking at the discharge period and equalising that with the payments.

Deductions from earnings
With regard to deductions from earnings, where a debtor fails to pay their contributions in respect of 2 payment intervals, and employers being given an instruction to make deductions, we are concerned that this policy may be counter productive, as it could result in dismissal and in which case no one gets paid.

Payment break
In principle we welcome the payment break, however there have been a number of issues raised by our consultees. The current system allows for peaks and troughs for individuals and if they have an emergency etc and trustees can be flexible. In the new system, the payment break is only triggered under certain circumstances. People’s lives don’t fall neatly into categories. We are concerned that for example, someone going through bankruptcy requires to buy a new boiler in the middle of winter, and hasn’t had a reduction of at least 50% in their disposable income etc, so doesn’t qualify for a payment break. The debtor is then left with a choice of paying creditors and sitting with no heating, or indeed purchasing a boiler and then having to take the consequences that follow. We are concerned that in some ways this could be seen as pushing debtors down a road, and there could follow severe consequences.

Review and Appeal
Concerns were expressed by consultees that both a review and appeal of a decision by a trustee, would be heard by the Accountant in Bankruptcy, especially as the Accountant in Bankruptcy herself could be the trustee.

Section 5 - Debtor application
As mentioned previously we fully support the use of the common financial tool. This new section introduces bankruptcy for debtors with no contribution to be made after being assessed by the common financial tool, or where debtors have been in receipt of a prescribed payment (i.e. benefit) for a period of at least 6 months. Whilst in principle such a section is to be welcome. With regard to fees we would however propose that for these cases there should be a fee waiver.

The following points are those raised during our consultation.

- Will the reduced fee encourage more people to attempt to go into this route as opposed to another route with a more expensive fee? We hope that by the person seeking money advice that should be eliminated.
• We also question whether the assets are too high, also whether the debts are too low and may actively encourage some people (particularly young people with low amounts of debts) to consider this especially if they are still trying to gain employment. We are concerned about the impact on their lives, if they start out with being a bankrupt.
• We believe that the £10,000 limit may well exclude some people from this procedure, as often debtors can owe one creditor more than £10,000.
• There was concern that some of the bankrupts could well have Payment Protection Insurance cases ongoing, which could result in their bankruptcy moving from Minimal Asset procedure into full administration and the duration of the bankruptcy would also change, and discharge.

Section 6 - Circumstances where Accountant in Bankruptcy is appointed trustee
No comments.

Section 7 - Discharge, conditions etc
A six month period for the Minimal Asset Procedure seems fair.

Section 8 - Moratorium on Diligence
We support a (6 week) moratorium on diligence where a debtor has acknowledged their debt situation and seeking advice to find an appropriate solution. Also that it acts as a diligence blocker. That said, one of the concerns we have is where funds held in a bank account could be frozen when the intimation is made. It could be that the intimation is taken no further as a different solution is found, and the debtor (and perhaps another party) could suffer as a result if their bank account is frozen. In essence there could be some unintended consequences of this, but on balance, the new legislation would benefit from it rather than without it, to equalise it with the Debt Arrangement Scheme.

Section 9 - Statement of undertakings
No comments.

Section 10 - Debtor application: incomplete of inappropriate application
We agree with the proposals as it closes the gap which exists at present.

Section 11 - Sequestration: application by executor
No comments.

Section 12 - Concurrent proceedings for sequestration: recall
We would question the Accountant in Bankruptcy’s role in recalling a sequestration.

Section 13 - Submission of claims to trustee
No comments.
Section 14 - First accounting period
We agree with the 6 month period for a payment to be made to creditors. This shows good faith on the part of the debtor and this should be released to creditors as soon as it is practicable.

Section 15 - Vesting of estate after sequestration
Given our earlier comments this should remain at 3 years.

Section 16 - Discharge of debtor
To allow for certain situations we acknowledge the merits of the Accountant in Bankruptcy being permitted to discharge the debtor where they were not the original trustee.

Where there is a review and appeal we have concerns where the Accountant in Bankruptcy is the trustee and effectively would be reviewing their own decisions. There would need to be sufficient “Chinese Walls” in place to give confidence and integrity to the system.

Section 17 - Repeal of discharge on composition
We have some issues with the repeal of section 56 and 56K.

Section 18 - Deferral of discharge where debtor cannot be traced
Whilst acknowledging the difficulties where a debtor cannot be traced and the trustee is not able to carry out their functions, however, our concern is that by allowing a deferral, which seems to be open ended, potentially there could be many debtors who will never be discharged, and who seek credit and end up back in the same system again.

Section 19 - Unclaimed dividends and unapplied balances
We would question why unclaimed dividends and balances are being returned to the Accountant in Bankruptcy. Would it not be more appropriate to divide these between the other creditors.

Section 20 - Assets discovered after trustee discharge: appointment of trustee
We can see the merits of this, but would comment that debtors will need to be made well aware of this provision and examples given as to what that might cover, including for example a PPI claim.

Section 21 - Register of Insolvencies
We welcome the inclusion within section 1A of the 1985 Act, the reference to where information need not be included in the Register, where it is likely to jeopardise the safety or welfare of any person.

Section 22 - Sederunt book
In keeping with our IT policies it makes absolute sense to have an electronic version of the sederunt book.
Section 23 - Abolition of certain requirements in relation to Edinburgh Gazette
We support the abolition of the requirements of the Edinburgh Gazette which will help save money for the public purse.

Section 24 - Application by trustee for direction on matters in sequestration
Some of the same issues apply here when decisions are made and then reviewed by the same agency. It is acknowledged however there is an appeal to the Sheriff which would be only after it had gone through due process within Accountant in Bankruptcy’s office itself.

Section 25 - Recall of sequestration by Sheriff
It makes sense to keep recall of sequestration out of the court system.

Section 26 - Recall of sequestration by Accountant in Bankruptcy
We see no reason for not including this in the legislation. However similar to other points where there is a review and appeal there needs to be “Chinese walls”, or other organisation involved in the decision making process.

Section 27 - Appointment of replacement trustee
No comments.

Section 28 - Replacement of trustee acting in more than one sequestration
Given the circumstances it makes sense for the Accountant in Bankruptcy to assume this role. However the issue with review of the decision arises again and our point is similar to that made earlier around “Chinese walls” etc.

Section 29 - Removal of trustee and trustee not acting
No comments.

Section 30 - Contractual powers of trustee
Issues arise again with the review process, in terms of ensuring that the same person who makes the initial decision isn’t involved at a later stage. “Chinese walls” need to be in place to ensure transparency.

Section 31 - Bankruptcy Restriction order
We are concerned about the removal of the Bankruptcy Restriction Undertaking and replacing it wholesale with a Bankruptcy restrictions Order. We believe that is a punitive step, and a negative aspect of the Bill.

Section 32 - Conversion of protected trust deed into sequestration
No comments.

Section 33 - Power to cure defects in procedure
This seems sensible.
Section 34 - Regulations: applications to Accountant in Bankruptcy etc
No comments.

Section 35 - Valuation of debts depending on contingency
No comments.

Section 36 - Review of decisions about interim trustee
Where reviews take place there should be “Chinese” walls to ensure that there are different people involved in the decision making, from the original decision, and that it is transparent.

Section 37 - Review of decisions not to award sequestration
Where reviews take place there should be “Chinese” walls to ensure that there are different people involved in the decision making, from the original decision, and that it is transparent.

Section 38 - Review of decisions about replacement trustee
Where reviews take place there should be “Chinese” walls to ensure that there are different people involved in the decision making, from the original decision, and that it is transparent.

Section 39 - Review of decisions about adjudication of creditor’s claims
Where reviews take place there should be “Chinese” walls to ensure that there are different people involved in the decision making, from the original decision, and that it is transparent.

Section 40 - Review of decisions about discharge of trustee
Where reviews take place there should be “Chinese” walls to ensure that there are different people involved in the decision making, from the original decision, and that it is transparent.

Section 41 - Failure to send statements of assets and liabilities
No comments.

Section 42 - Time limits for sequestration of limited partnership
No comments.

Section 43 - Petition for sequestration by trustee under trust deed
No comments.

Section 44 - Effect of sequestration: renewal of period of inhibitions etc
No comments.

Section 45 - Division and sale of debtor’s family home
No comments.
Section 46 - Effect of discharge of debtor
No comments.

Section 47 - Offence of obtaining credit: increase in amount
We welcome the increase which better reflects modern day living.

Section 48 - Bankruptcy restrictions undertaking: repeal
See our earlier comments at Section 31.