StepChange Debt Charity Scotland (previously known as the Consumer Credit Counselling Service) welcomes this opportunity to comment on the Bankruptcy and Debt Advice (Scotland) Bill, Stage 1.

StepChange Debt Charity Scotland is an independent charity dedicated to overcoming problem debt. We are Scotland’s largest provider of specialist online and telephone debt advice. Every year we help thousands of Scots reach practical solutions based on their individual needs, helping transform the lives of those struggling with the stress and worry of problem debt.

We provide budgeting advice, Debt Payment Programmes under the Debt Arrangement Scheme, Debt Management Plans, including token payment plans, and LILA Bankruptcy. In addition we work with insolvency firms to give our clients access to trust deeds and sequestration, and also provide equity release, settlement offers and welfare benefits advice.

Our considerable experience and expertise, built up over 20 years of helping our clients deal with their debts, makes us well placed to respond to your questions.

General view
In our response to the Scottish Government’s (SG) consultation we were broadly supportive of the changes proposed to the bankruptcy legislation. We did raise some concerns about the proposals and most of these have been taken into consideration in the final Bill. However, there remain a few areas where the charity is concerned.

Advice and education: [paras.18-33]
The charity encourages people to seek free debt advice at the earliest opportunity so that an appropriate solution is identified promptly. Therefore, we support the SG provision of compulsory money advice from an approved money adviser for anyone considering accessing a statutory debt relief or debt management product. We are, however, concerned about the detrimental impact on the advice sector of access to free advice, at a time where more and more people are seeking assistance and resources are being cut.

There is still uncertainty around the mandatory requirement for individuals to participate in financial education, both in what will be required of the debtor and who will deliver this service and bear the cost. The charity feels that it is very subjective (section 2 at 43B(2)(c)), and unclear about what the consequences will be to the debtor or their trustee if a financial education course is not undertaken. In addition, it is unclear whether this section applies to debtors under the minimum assets process (MAP) and if it does, whether the financial education has to be taken before the debtor’s discharge at six months.
Payments by debtor following bankruptcy: [paras. 34-73]
StepChange Debt Charity has a nationally recognised budgeting tool which is well respected and received by creditors. Our tool is also used by numerous other organisations to determine clients’ contributions, including the AiB. We understand that the SG has decided to adapt another nationally recognised tool provided by Money Advice Trust (MAT). We believe this decision is based on limited analysis (50 bankruptcy cases) undertaken by the Accountant in Bankruptcy (AiB), where they conclude that it will provide more sustainable contributions from debtors, with fewer payment plans becoming broken.

Although the charity supports the general principal that a recognised tool be used to determine contributions, we are puzzled why both tools cannot be used in parallel. This would mitigate any risk to the SG should there be a problem with either tool.

We believe the issue is not whether budget tools differ; it is whether creditors trust the approaches of the organisations using them. As has been shown over the previous 20 years both creditors and insolvency practitioners (IPs) have faith in our counselling and budgeting tool. The AiB currently uses our budget tool. Creating a situation where there was the only one tool may create significant difficulties for organisations not set-up to use it and could mean added expense for debt advisors, IPs, creditors and ultimately consumers.

The proposal to use the MAT tool will require the charity to fundamentally change our money adviser IT system in Scotland, to reflect the different methodology for assessing clients’ contributions. There will be a considerable time and a cost to the charity which we expect to be tens of thousands of pounds (we would be happy to provide the Committee with details of this cost separately should they find this helpful). We are a UK-wide charity that helped over 400,000 people in 2012 – around 5% of them Scots - using a UK-wide IT system. Each day last year around 1,100 people across the UK sought our help. An alternate budgeting tool for use in Scotland alone may require a new and independent IT arm for the charity.

We are assuming that the CFT would not be used retrospectively on all debtors who are currently in recognised debt solutions as this would require an arduous review of all debtors, with a huge impact on adviser time and costs to reassess all debtor contributions. In addition, it would potentially result in less funds being ingathered, which may result in insufficient monies to cover public purse costs.

We are puzzled why the AiB needs to make an order fixing the debtor’s contribution towards their bankruptcy where they are not the trustee. Surely this is only adding cost and delay in the sequestration?

The charity is concerned that making it easier for contributions to be deducted from earnings will add more stress to those in debt, who may worry that it may have an impact on their employment. We suggest that deductions from income should only be allowed with the express permission of the individual.

The charity welcomes the provision of a payment break of up to six months.
Bankruptcy where debtor has few assets: [paras. 74-88]
The charity welcomes the introduction of a low cost route into bankruptcy for our clients. However, we are concerned that the eligibility criteria for the Minimum Assets Process (MAP) - in particular the level of debt fixed at £10,000 - will reduce access to this route for some clients. The average debt of a Scottish StepChange Debt Charity client in 2012 was £14,506, which would result in around 50% not being eligible for MAP. Indeed, AiB’s own data shows that nearly 65% (2,262) of current LILA clients (3,481) would not be eligible for MAP.

In addition, we remain concerned about what is expected of a debtor who is made bankrupt under the MAP route and is subsequently moved to full administration. Will their period of bankruptcy under MAP be considered when determining the period of contributions or their discharge?

Moratorium on diligence: [paras. 89-95]
The charity welcomes the introduction of six week single moratorium on diligence. Although there is a small risk that some people may use this to dispose of assets, we believe that this is minimal in comparison to the safeguards it provides clients whilst they are seeking advice.

We feel that applications under bankruptcy should be treated in the same way as those under the Debt Arrangement Scheme, where the moratorium continues until a final decision to grant or refuse the programme is made. It does not appear that the Bill provides similar protection. In particular it appears to be silent where the debtor application is incomplete and they need to provide additional information to the AiB within 21 days.

Application for bankruptcy: [paras. 96-116]
Although the charity welcomes enhanced e-technology and the introduction of an e-application form, the proposals are for the money advisers or insolvency practitioners to submit applications electronically, not the client. This will impact on our advisers’ time and on our resources, especially where information is double handled due to separate, independent IT systems.

The charity welcomes the provision for an application for bankruptcy from executors of the estate of insolvent deceased individuals, and also for the recall of award of bankruptcy.

Administration of estate: [paras. 117-137]
The charity has some concerns about extending ‘aquirenda’ period to four years. This section and section 20 (assets discovered after trustee discharge) makes it very difficult to understand how the debtor moves on with their life post discharge if their future assets are at risk.

Discharge following bankruptcy: [paras. 138-200]
The charity is concerned that the new process for debtor’s discharge from bankruptcy is overcomplicated and confusing to debtors. We are puzzled why the AiB needs to agree the discharge where there is a trustee appointed, as this will only add cost and delay to the process. The proposed process seems to have a very different onus on the trustee’s duty’s compared to that of the AiB.
We believe there is a risk that where a debtor is making a contribution for 48 months, or where they have an asset, a trustee will not look to defer the debtor until after that period or until all assets realised. Under section 54(7), the trustee has to declare that the debtor has complied, co-operated and surrendered their estate. We do not believe that a trustee will declare that part way through a sequestration. Therefore, the charity feels that those debtors who make a contribution or who have assets are going to be disproportionately treated. They will not get early discharge and are likely to have a worse credit reference as a result.

In addition, we are confused at how the appeal process will work, as it does not appear that the final decision to discharge or refuse discharge under sections 54(10) or 54A(2) is notified to all parties.

The charity does not understand why there is a need to defer a discharge indefinitely where a debtor cannot be traced. This is assuming that all these debtors are ‘bad’ in some way, when in fact they may have mental or other health issues. Also, it is worth noting that under the current legislation, just because the debtor cannot be traced does not mean that their assets cannot be realised by the trustee. In addition, we question whether the integrity of the Bankruptcy legislation has been compromised under section 54E(5)(c) where a post-bankruptcy cost can be claimed in the same bankruptcy? This could set a precedent and have serious unintended consequences.

**Functions of sheriff and Accountant in Bankruptcy in bankruptcy: [paras. 224-291]**

The charity has some concerns about the impartiality of the AiB when undertaking some of these functions. In particular, we would like the assurance that independent arms of the AiB are undertaking this role, especially where the Accountant is the trustee in a case where a decision is required.

**Review of decisions made by Accountant in Bankruptcy: [paras. 292-303]**

The charity has some concerns about the impartiality of the AiB when reviewing certain decisions prior to appeal to sheriff. In particular, we would like the assurance that independent arms of the AiB are undertaking this role. In addition, to ensure that there is no perceived favouritism for those cases where the Accountant is the trustee, we feel that the AiB should report on their decision making quarterly.

**Miscellaneous amendments: [paras. 304-306]**

The charity welcomes the provisions recommended by Scottish Law Commission bankruptcy consolidation review

StepChange Debt Charity is happy to provide further information should the Committee find it helpful. Thank you for the opportunity to comment on the Bankruptcy and Debt Advice (Scotland) Bill's.