I write in relation to Committee’s Stage 1 report on our Bankruptcy and Debt Advice (Scotland) Bill and I wanted to begin by reiterating the thanks I offered, when I opened the Stage 1 debate, both to your members and yourself for your work in producing a sensible, considered and helpful report. In particular, I am pleased to have Committee’s support for the general principles of the Bill.

I attach the Scottish Government’s full response to Committee’s report in which, I hope, we have addressed your recommendations and provided the necessary detail and the clarification you have sought.

I look forward to Stage 2 of the Parliamentary process for the Bill and to continuing to work with Committee in a positive and collaborative way.

PS I will write again re the CFT/CGS.

FEEGUS EWING
I would like to thank the Economy, Energy and Tourism Committee, Finance Committee and Delegated Powers and Law Reform Committee for their consideration of this legislation at Stage 1. As I said during the debate at Stage 1, I welcome the report and the Economy, Energy and Tourism Committee’s support for the key principles of the Bankruptcy and Debt Advice (Scotland) Bill.

Stakeholders are an essential part of the Parliamentary process and of making the processes of bankruptcy and debt relief work in Scotland. We will continue to engage with stakeholders and to listen to their views, as I did when I met recently with representatives of some of our stakeholder organisations on 14 January. These discussions have been helpful and positive and I am keen for them to continue.

There is one issue, discussed during the debate at Stage 1, which I would wish to clarify, and that is in relation to the proposal to extend the payment period after bankruptcy to the equivalent of 48 monthly payments. I am pleased that Committee has understood our reasoning in this matter and that it has supported this important policy principle of the Bill, just as it supported the same change when it was previously made in relation to Protected Trust Deeds (PTDs). However, I am concerned that there may be a lingering misunderstanding of the effect of this change and I would, therefore, like to restate a point I made on 18 December.

It is totally wrong to say that what we are doing will result in those who cannot pay having to pay more than they do now. Under the proposals in the Bill, only those who are assessed, using the Common Financial Tool, as being able to make a contribution towards the cost of their bankruptcy will pay. This will be, as it is now, a significant minority of all those who enter bankruptcy. Our current figures suggest that a contribution is only paid in less than a third of all bankruptcy cases.

I am proud of the Scottish Government’s record in providing for the needs of the most vulnerable and the least well-off, in terms of our bankruptcy legislation and related endeavours. When we recently made changes to PTDs, we made certain that a trustee would not be able to take payment from a debtor’s benefits income and put it towards the cost of their trust deed, thus protecting this vital support. Throughout this year, we have been campaigning vigorously against the scourge of high-interest lending, which can exacerbate the effects of poverty and low incomes on struggling households. With this Bill, we will enable those who enter bankruptcy by way of the new Minimal Asset Process to access quick, effective debt relief, without paying a contribution if they are not able to do so.
In its actual, practical effect, this legislation will help ensure that those who are most vulnerable will not have to pay. I am pleased that the Committee has taken this on board and I know that others have as well. I have also noted the Committee’s desire for further information on some areas and I am keen to clarify as many of these issues as I can.

Responses to all of the key points raised in the Stage 1 report are set out below. For ease of reference, we have used the paragraph numbering from the summary of Conclusions and Recommendations in the Committee’s report. I welcomed the debate at Stage 1 and I look forward to continuing to work positively and collaboratively with the Committee and the Parliament, as the Bill progresses through the Parliamentary process.

FERGUS EWING MSP
MINISTER FOR ENERGY, ENTERPRISE AND TOURISM
JANUARY 2014.
RESPONSE TO STAGE 1 REPORT: KEY POINTS

Money Advice

5. What impact will a 6-8% increase in cases mean to the free money advice sector with regards to actual client numbers and the time spent by debt advisers with clients, factoring in the complexity of cases involved?

The number of bankruptcies awarded in Scotland has been declining since 2008-09 and the Accountant in Bankruptcy (AiB) expects this to continue. Using the 2013-14 forecasted volume for the total number of bankruptcies as a guide, and assuming the upper bound of 8%, AiB estimate the impact would be an additional 501 debtors using a money advice service in a year.

This equates (at Scotland level) to:

- 10 additional case per week
- 29 additional cases in the quietest month
- 52 additional cases in the busiest month

Or, (at Local Authority level) to:

- 60 additional cases per year in Glasgow
- 43 additional cases per year in Fife
- 39 additional cases per year in South Lanarkshire
- 37 additional cases per year in North Lanarkshire
- 28 additional cases per year in Edinburgh
- 22 additional cases per year in Dundee
- 22 additional cases per year in West Dunbartonshire
- 21 additional cases per year in West Lothian
- 21 additional cases per year in Highland
- 19 additional cases per year in Renfrewshire
- 18 additional cases per year in Falkirk
- 16 additional cases per year in North Ayrshire
- 16 additional cases per year in Aberdeen City
- 14 additional cases per year in Aberdeenshire
- 14 additional cases per year in Dumfries & Galloway
- 11 additional cases per year in East Ayrshire
- 10 additional cases per year in Angus
- 10 additional cases per year in Perth & Kinross
- 9 additional cases per year in Moray
- 9 additional cases per year in Scottish Borders
- 7 additional cases per year in Stirling
- 7 additional cases per year in Midlothian

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1 N.B. These figures refer to the estimated additional impact of the mandatory money advice provision only and do not take into account other factors that may impact on the demand on the money advice sector.
• 7 additional cases per year in South Ayrshire
• 7 additional cases per year in East Lothian
• 7 additional cases per year in Inverclyde
• 7 additional cases per year in East Renfrewshire
• 6 additional cases per year in East Dunbartonshire
• 6 additional cases per year in Argyll & Bute
• 5 additional cases per year in Clackmannanshire
• 2 additional cases per year in Eilean Siar
• 1 additional case per year in Shetland and Orkney

That is 16 additional cases per year on average per local authority

5. Does the Scottish Government estimate that the mandatory provision of money advice will lead to a reduction in cases in the free money advice sector and, if so, when it would expect to see such a reduction?

Citizens Advice Scotland have suggested that the UK Government's welfare changes may drive up the need for advice at the rate of 10 benefit problems for every 100 benefit claimants every year in Scotland. In comparison, the Bill's requirement for mandatory money advice is only expected to give rise to an estimated additional 501 cases per year across the whole of Scotland. It is unlikely, therefore that we will be able to evidence a reduction in caseload for the free money advice sector for some time – partly because of the scale and impact of the UK Government's welfare changes.

5. What other factors did the Scottish Government take into consideration, for example, increased work for the free money advice sector as a result of welfare reform, when it made its decision not to make specific funding available as a consequence of this Bill; and whether, in the light of concerns expressed in evidence, it will make additional funding available to the free money advice sector?

The Scottish Government recognises the excellent work carried out by our Third Sector partners and the pressures that they are under as a result of factors such as the UK Government’s welfare changes. We have listened to concerns raised by the sector and Committee around the cost of proposals for targeted financial education and, as the Minister for Energy, Enterprise and Tourism announced in the chamber on 18 December, the Scottish Government intends to support the roll-out of this programme with an additional £200,000 of ring-fenced funding.

This will be in addition to the £7.9 million which is already being provided to advice and support organisations to help those affected by welfare reform. This support includes:

• £5.1 million towards the new £7.45 million Making Advice Work grant funding programme which we have established with Money Advice Service;
• £2.5 million to Citizens Advice Scotland to help bureaux across the county; and
• £300,000 last year to help relieve immediate pressures on organisations.

We would, of course, like to do more to mitigate the impacts of welfare reform, however we can only do so much with the powers and resources available to us. The solution is for the Scottish Parliament to have full control over welfare so that it can put in place policies which more closely reflect the values and ambitions of the people of Scotland.

6. It is recommended that the Scottish Government put processes in place to assess the direct impact of mandatory money advice on the free money advice sector (once it is in force) and any increase in workload for the sector.

The Scottish Government believes that it is in everybody’s interests for the advice sector to have a clear, statistical baseline against which it can evidence increases in demand. Statistics for the sector were previously published by the Scottish Government, with the last published figures relating to 2008-09. A standard framework for reporting statistical information had been developed in consultation with the money advice sector.

Collection and collation of these statistics went into abeyance in 2009, as a result of a reduction in monitoring requirements. However, AiB is now working with the money advice sector to investigate how the relevant information can be voluntarily provided, collected and collated in order to implement this recommendation.

6. It is recommended that the Scottish Government put processes in place to monitor, either through case recording systems or specific research, what advice is given by approved money advisers and whether this is accepted or ignored by the debtor (and, if possible, for what reason). This could assist in testing the quality of the advice given, gauging the performance of money advisers, and tracking the progress of debtor cases. This information should be reviewed independently and published as part of the AiB annual report.

Openness and transparency are crucial to AiB’s work and the agency already publishes a substantial range of information and data about all aspects of its work. AiB is working with the money advice sector to investigate how relevant data can be voluntarily provided, collected and collated in order to implement this recommendation and we expect that an even wider range of information will be made available in future. All data published in AiB’s Annual Report is subject to review by Audit Scotland.

7. The Committee invites the Scottish Government to enter into discussions with the UK Government and the financial/credit industry to gauge whether to increase the levy and contributions paid by the industry to the debt/monetary advice agency to help meet any increased costs.

AiB already engages with UK government colleagues on a regular basis and across a wide range of issues. We will raise the question of an increase to the levy and contributions paid by the industry, through the appropriate channels, on the next opportune occasion.
8. The Committee asks the Scottish Government to confirm that those currently categorised as money advisers under the Debt Arrangement Scheme will similarly be classed as money advisers in respect of the requirements under this Bill and that this will include insolvency practitioners.

Authorisation for providers of mandatory money advice, under the changes proposed under the Bill, is proposed to follow regulation 3 of the Bankruptcy (Certificate for Sequestration) (Scotland) Regulations 2010.

This will include:

- insolvency practitioners from the fee charging sector;
- those who work as money advisers for organisations which have been awarded accreditation at Type 2 level or above against the Scottish National Standards for Information and Advice Provision; and
- those who work as money advisers for CAS or local councils.

It does not however include organisations (or members thereof) who are working towards Type 2 accreditation.

9. The Scottish Government is asked to indicate when Regulations which will set out the definition of a money adviser will be laid before the Parliament.

The Bill is expected to complete the Parliamentary process by April 2014, subject to Parliament’s consideration and agreement. It is envisaged that most of the measures in the Bill could be brought into force in April 2015, following the Scottish Government’s planned Bankruptcy Consolidation Bill, which is being taken forward in partnership with the Scottish Law Commission. We would, therefore, expect to lay these regulations before Parliament between April 2014 and Spring 2015.

10. The Committee urges the Scottish Government to consider that the minimum requirement for an adviser across all debt solutions and in both the free and fee charging sectors should be to have attained type 2 of the Scottish National Standards for Advice and Information. We also invite the Scottish Government to set out how it will monitor/audit all sectors of the industry to ensure that all approved money advisers meet this standard.

Please see our response to 8. (above). In addition, on the question of monitoring, Committee will be aware that there are already monitoring processes in place. The fee paying sector, that is, Insolvency Practitioners (IPs) are licensed and authorised to act in relation to insolvency matters. They are regularly monitored by their Recognised Professional Bodies (RPBs) to ensure they are performing to a required standard in line with their code of ethics. The Scottish Government Information and Advice Standards Unit (IASU) is responsible for the ongoing monitoring of those organisations who have attained type 2 of the National Standard for Advice and Information.

11. The Committee invites the Scottish Government to detail how it will ensure there will be a minimum standard with respect to the quality and content of
online advice tools and how such tools used across debts sectors will be monitored/audited and regulated.

Where online advice tools are provided as a service by money advice organisations, who have attained type 2 of the National Standard for Advice and Information, then they are already subject to monitoring by the authority (IASU) referred to in our response to 10. (above).

12. The Committee further invites the Scottish Government to outline what safeguards it will put in place to minimise instances of conflicts of interest when advisers suggest particular debt solutions which are not in the best interest of the debtor or creditor but of the trustee.

As noted in our response at 10. (above), the fee paying sector, that is, Insolvency Practitioners (IPs) are licensed and authorised to act in relation to insolvency matters. They are regularly monitored by their Recognised Professional Bodies (RPBs) to ensure they are performing to a required standard in line with their code of ethics, which includes providing best advice. The Bankruptcy (Scotland) Act 1985 already provides process of detailed scrutiny and audit by AiB of trustee administration of sequestration cases. There are sanctions and powers of direction over trustees available where concerns arise.

Financial Education

16. The Committee invites the Scottish Government to outline what system of monitoring and review it will put in place with regards the content of the [Financial Education] module and the Standard and which external bodies will be involved.

The National Standard and related competencies are being developed for the sector, by Money Advice Scotland (MAS). AiB will work with MAS to build feedback and evaluation forms into the module. We expect that there will also be regular reviews of the content of the module, using feedback from participants and that MAS will continue to monitor the accuracy of the information provided in the module on an ongoing basis. AiB will also reconvene the Scottish National Standards on Financial Education working group to draw on their expertise.

18. The Committee invites the Scottish Government to assess the direct impact of financial education (once it is in force) on the free money advice sector and any increase in workload for the sector.

The Scottish Government recognises the excellent work carried out by Money Advice Scotland in developing the content, format and delivery of the learning module. We also recognise the increasing pressure on all advice sector organisations as a result of the UK Government’s welfare reform changes. The Scottish Government has listened to concerns raised by the sector and Committee, around the cost of the financial education and intends to support the roll-out of this programme with an additional £200,000 of ring-fenced funding to support training and preparedness.
It is envisaged that the majority of individuals who undertake the learning module will use the e-learning module and therefore it will be sent to them by email or they will be able to access it remotely, via the MAS portal, minimising the impact on sector resources and advisers’ time. The module will also be available in hard copy for individuals who are unable to access the internet.

As is customary with new legislation, AiB will conduct a review following introduction, to ensure the policy objectives are being met. As part of our regular review of the module, we will conduct an assessment of its impact on the advice sector. We will be able to monitor the number of debtors accessing the module through data collected by Money Advice Scotland.

20. The Committee invites Scottish Government to outline how it will monitor the efficacy and success of the provision of financial education, for example, reductions in the number of people getting into debt as a direct result.

As referred to in our responses to 16. and 18. (above), there will be feedback forms built into the module which will allow individuals who have undertaken the module to comment on how useful it has been and what they have learned. The feedback will be collated by Money Advice Scotland and will be reported back to AiB.

21. The Committee recommends that the Scottish Government enters into discussions with the UK Government and the financial/credit industry to gauge whether to increase the levy and contributions paid by the industry to the debt/money advice agency to help meet any increased costs from the provision of financial education.

As referred to in our answer to 7. (above), AiB already engages with UK government colleagues on a regular basis and across a wide range of issues. We will raise the question of an increase to the levy and contributions paid by the industry, through the appropriate channels, on the next opportune occasion.

23. The Committee asks the Scottish Government to detail its strategy for making the module available to those who require financial education in both e-format and hard copy and how it will ensure that no individual is excluded or disadvantaged as a result of them not being able to access, use, or complete the module through a lack of availability in the format they require.

As referred to in our response to 18. (above), the module is being developed with a view to its being widely available. It will be available in hard copy for individuals who are unable to access the internet and will be designed to ensure that it can be completed online and offline. The £200,000 of ring fenced funding will help support training for advisers which will better equip them to work with those who need additional assistance to complete the module.

24. The Committee asks the Scottish Government to specify what the cost of making the financial education module available will be in (a) eformat and (b) hard copy printing and distribution.
The cost of developing the module is being met within existing budgets through funding provided to Money Advice Scotland for the Money Advice Training, Resources, Information and Consultancy Services (MATRICS) project. This includes £8,300 to develop a national standard and £13,000 to develop the module. The module is being developed as an e-learning module but it can be printed for hard copy distribution. If required, the trustee will refer the individual to an approved money adviser for delivery of the module. If there are additional costs associated with printing and distribution (and it is anticipated that this will not usually be the case) then we would expect that these would be met by the money adviser. As the Minister for Energy, Enterprise and Tourism announced in the chamber, on 18 December, the Scottish Government also intends to support the roll-out of this programme with an additional £200,000 of ring-fenced funding.

25. The Scottish Government to specify what other formats (e.g. audio, large print) and languages the financial education module will be available in.

Individuals who undertake the financial education module should be able to request that it is made available in other formats. We expect that reasonable requests would be met.

26. The Scottish Government to confirm the eventual costs of development and delivery of the module once such figures are available.

The Scottish Government will make these costs known as soon as they are available, however the costs of development are being met within existing budgets as set out in the Financial Memorandum. In addition, as the Minister for Energy, Enterprise and Tourism announced in the chamber on 18 December, the Scottish Government also intends to support the roll-out of this programme with an additional £200,000 of ring-fenced funding.

Common Financial Tool

29. The Committee invites the Scottish Government to outline how it will prepare guidance to sit alongside the Tool and which organisations will be involved in its preparation. We recommend that as wide as possible cross section of interested parties, including StepChange Debt Charity Scotland, are involved.

The Scottish Government’s Common Financial Tool Working Group will be reconvened in early 2014. The group consists of representatives of creditors, the insolvency sector and the money advice sector including StepChange Debt Charity.

30. The Committee invites the Scottish Government to outline how it will monitor whether and how such guidance is then used by debt advisers.

It is currently our expectation that there will be some form of directive in place, which will make it mandatory for the appropriate guidance on the use of the tool to be followed in all cases. This will be essential for in order for the tool to deliver our key policy outcome, i.e. for two different advisers or IPs to assess the same client, on different occasions, and arrive at the same determination, in terms of the individual’s
ability to pay a contribution and the amount thereof. We are prepared to consider statutory options to make guidance mandatory, if there is evidence to suggest that this might be necessary. Once the guidance is in place, AiB will develop a review process for the guidance and how it is used by debt advisers. It is envisaged that this will be reviewed on an annual basis.

**Debtor Contribution Orders**

35. The Committee invites the Scottish Government to indicate whether it intends the new provisions to enable sources of income beyond employment, for example, in relation to pension income, rental income or self-employed income to be deducted from a debtor's income.

The Scottish Government has listened to feedback from stakeholders and has considered amendments to allow the trustee to instruct third parties, other than employers, to take the agreed amount, as calculated with reference to the Common Financial Tool on a monthly basis, and forward to the trustee.

The proposed amendments sit alongside existing provision, and operate where the trustee has the right to claim this income. Currently an Income Payment Order under the Bankruptcy (Scotland) Act 1985, and the Debtor Contribution Order which will replace it in the Bill, can make provision in certain circumstances for the trustee to take contributions e.g. from pension income. Rental income is another example which, after the date of sequestration, vests in the trustee as arising out of estate vested in the trustee.

36. The Committee invites the Scottish Government to detail how any associated administrative costs for an employer will be minimised.

Our expectation is that the employer or others will be able to deduct an equivalent statutory sum to that set out in the Diligence against Earnings (Variation) (Scotland) Regulations 2006 for earnings arrestment (currently £1 per deduction). This would be provided for in regulations to follow the Bill, subject to Parliamentary scrutiny in due course.

**Permitted Six Month Payment Break**

38. The Committee invites the Scottish Government to clarify whether there is sufficient flexibility in the system proposed to allow for the granting of a payment break to a debtor in response to unforeseen emergencies (e.g. boiler breakdown).

We believe there will be sufficient flexibility in the system. While a payment break will not be available in this example, where the debtor has a change in their financial situation, there is the option of a payment variation or a payment break, where applicable. The appropriateness of these options and their suitability for an individual debtor's circumstances would best be decided after a discussion between the debtor and their trustee. Also, with the Bill's provisions in force, the debtor's ability to pay a contribution would be assessed using the Common Financial Tool, which is
proposed to follow the Common Financial Statement, which provides for unforeseen emergencies, such as home maintenance or repairs.

Other Issues

39. The Committee recommends that an amendment to the Bill is made to make it easier for un-discharged bankrupts to hold a bank account provided that this issue is within the scope of the Bill and the Scottish Parliament's legislative competence.

The Scottish Government is grateful to Committee for its recommendation. As the Minister for Energy, Enterprise and Tourism said during the Stage 1 debate, "It is important that we look at [this] and do what we can to make the necessary provision during the amending stages." The Scottish Government intends to lodge amendments to follow a similar approach to that under consideration for the UK Deregulation Bill.
Minimum Assets Process and Low Income/Low Asset Debtors

41. The Committee invites the Scottish Government to publish, one year after the introduction of the Process, a report on the impact of this new ‘early discharge’ provision and what actions it will take if further improvements are needed.

The Scottish Government is pleased to give an undertaking that AiB will keep under review the new measures introduced by the Bill, including ‘early discharge’, in order to evaluate the impact of the new legislation and to ensure the policy objectives have been met. This will involve the analysis of statistical data collated by AiB and feedback from stakeholders.

The Scottish Government will review the findings of this research and consider whether any changes are necessary to the legislation or associated guidance in light of its findings. Any changes identified will be brought to the attention of the Scottish Parliament and relevant Parliamentary committees where necessary.

45. The Committee recognises the concerns expressed by a cross-section of organisations in evidence about the £10,000 maximum debt level for entry to the Minimal Assets Process and how this may prevent intended beneficiaries from accessing this route into bankruptcy. Given the evidence presented to the Committee, we ask the Scottish Government to respond, in the Stage 1 debate, as to whether it will increase this figure.

As the Minister for Energy, Enterprise and Tourism announced during the Stage 1 debate, the Scottish Government will lodge an amendment at Stage 2 to raise the maximum debt level for entry to the Minimal Assets Process to £17,000. Carrington Dean, a personal financial solutions company, stated in their written evidence to Committee, “We also believe the maximum amount of debt allowed for debtor’s using this procedure is too low at £10,000 and should be closer to the average level of debts that debtors using the LILA Route have, which is approximately £17,000.” We have listened to stakeholders and increased the maximum debt level to £17,000 which is well above the average debt figure of £14,506 quoted by StepChange Debt Charity. This sets the threshold high enough to allow 75 per cent of all current low-income, low-asset cases to enter the MAP. We hope this provides the necessary assurance that debt relief will be available for those who need it most.

46. If the Scottish Government is not minded at this stage to increase the maximum debt level, we invite the Scottish Government to detail in its response to this report how the £10,000 figure will be monitored and what triggers would cause it to increase the level at a future point.

We believe our response to 45. (above) addresses this point.

Functions of Sheriff and Accountant in Bankruptcy

50. The Committee invites the Scottish Government to indicate whether any additional funds will be required by the AiB to cover its costs as a result of any
increase in staff, training, seeking external legal and/or insolvency advice to deal with the increase in workload and responsibility.

The proposals contained within the Bill will result in a reorganisation of AiB staff, (which has already begun, as a result of changes to the Debt Arrangement Scheme which are now operational). No additional staff will be required at this stage. AiB has relocated its review team to a separate area in its building, away from where operations staff are based. AiB has considered the cost of these changes (and any additional costs for training or professional advice) in detail and is confident that they can be met from their existing budget.

51. The Committee invites the Scottish Government to report, before the conclusion of Stage 1, on the outcome of any meeting it has with the Sheriffs' Association and outline what actions are to be taken, and when, as a result.

The Scottish Government will advise the Committee on the outcome of any discussions that take place with the Sheriff's Association.

We have considered changes to the relevant procedures in the Bill, to take account of the points raised (e.g. to ensure points of real legal difficulty as raised by stakeholders can be dealt with by the sheriff where appropriate but efficiently) and to improve the procedures under the Bill, and the Scottish Government is proposing amendments to that end.

52. The Committee further invites the Scottish Government to seek the views of key organisations, such as, the Sheriffs' Association, Law Society of Scotland, Insolvency Practitioners Association, Institute of Chartered Accountants in Scotland, the Association of British Credit Unions Ltd. StepChange Debt Charity Scotland, and Money Advice Scotland on what internal mechanisms the AiB should put in place to guarantee the required separation of staff responsibilities, negate conflicts of interest, ensure there is openness in the internal decision-making process, and how that process itself, and the decisions made, will be clearly and properly publicised and recorded on the AiB website.

AiB has mechanisms in place which enable the proper transparency and scrutiny appropriate for an Agency of the Scottish Government. Ultimately it is not the internal division of functions which is important but the availability to a court of full jurisdiction – which will be retained in all cases.AiB will ensure that their internal arrangements continue to operate to the satisfaction of the courts, the Scottish Government, independent auditors, such as Audit Scotland, and the Parliament to whom they are ultimately accountable. AiB is always happy to listen to the points raised by stakeholders, where they may have concerns in this area.

53. The Committee asks the Scottish Government to outline what monitoring the AiB will put in place to assess whether there has been any diminution with respect to the overall process of decision-making and in the quality of the decisions made and how it will publicly report (in the AiB annual report) on performance in relation to the exercise of these new functions.
Openness and transparency are crucial to AiB’s work and the agency already publishes a substantial range of information and data about all aspects of its work. AiB notes Committee’s recommendation to publicly report on performance in relation to these new functions, in its Annual Report, and will take this into consideration when deciding how the range of currently published information could be expanded. All data published in AiB’s Annual Report is subject to review by Audit Scotland.

54. The Committee asks the Scottish Government to confirm that all information relating to those functions currently dealt with by sheriffs and which is publicly accessible will also be made publicly available should the proposed functions be transferred.

AiB will ensure that information relating to functions currently dealt with by sheriffs, which is publicly accessible, will be published on its website.

Moratorium on Diligence

56. The Committee invites the Scottish Government to confirm whether applications under bankruptcy will 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.

AiB envisages that, after the implementation of its new case management system, a significant majority of applications will be made electronically, making the process more efficient in practice. As a result, AiB believes that it is realistic to expect that applications will be determined within 6 weeks.

57. The Committee invites the Scottish Government to clarify what protection the Bill provides when the debtor application is incomplete.

The moratorium, as provided for by section 8 of the Bill, protects the debtor throughout the period during which further information can be requested by AiB, on receipt of an incomplete application from the debtor.

57. The Committee invites the Scottish Government to clarify the position in relation to any funds held in a bank account which might be frozen when the intimation is made and whether there could be some unintended consequences as a result.

Banks may, if the terms and conditions of the individual’s bank account allow, freeze a customer’s bank account. Although notice of the moratorium is required to be given in order for it to be effective legally, nothing requires the debtor to intimate their intention to apply for sequestration in advance of making an application. However, it remains the Scottish Government’s view that the moratorium would be a very valuable additional protection against diligence, should the debtor decide that the debtor wishes to use it.

Discharge following bankruptcy
60. The Committee call on the Scottish Government to clarify the circumstances in which a debtor would be assessed as not having cooperated with the trustee and, to confirm how a debtor who has remained cooperative but who has not complied with the statement of undertaking as a result of changing circumstances could be confident of discharge.

The Bill does not change the action to be taken by a trustee where the debtor fails to co-operate, and prevents them from carrying out their statutory duties. Section 64 of the Bankruptcy (Scotland) Act 1985 already requires the debtor to take every practicable step, in particular execute any document, necessary to enable to trustee to perform his or her functions. Accordingly if the trustee requires assistance from the debtor to carry out his statutory functions, failure to provide that is non-co-operation. Given that the Bill proposes linking a debtor’s discharge with their co-operation it is only right that the debtor is made aware of their responsibilities throughout their bankruptcy. As trailed by the Minister for Energy, Enterprise and Tourism on 18 December, the Scottish Government intends to bring forward amendments at Stage 2 to clarify the operation of the discharge process in practice more generally.