

BANKRUPTCY AND DEBT ADVICE (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Bankruptcy and Debt Advice (Scotland) Bill introduced in the Scottish Parliament on 11 June 2013.

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 34–PM.

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

3. In these notes:

‘AiB’ means the Accountant in Bankruptcy¹;

‘the 1985 Act’ means the Bankruptcy (Scotland) Act 1985 (c.66);

‘the 2002 Act’ means the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17);

‘the BAD Act’ means the Bankruptcy & Diligence etc. (Scotland) Act 2007 (asp 3);

‘DAS’ means the Debt Arrangement Scheme;

‘DAS regulations’ means the Debt Arrangement Scheme (Scotland) Regulations 2011 (SSI 2011/141); and

‘PTD’ means Protected Trust Deed.

THE BILL

Overview

4. The Bill comprises of 53 sections and 4 schedules. Sections are arranged under the following headings:

- Advice and education
- Payments by debtor following sequestration
- Sequestration where debtor has few assets
- Moratorium on diligence
- Application for sequestration
- Administration of estate
- Discharge following sequestration
- Records

¹ The Accountant in Bankruptcy is an officer of court established under sections 1 to 1C of the 1985 Act, also with ministerial executive agency functions.

- Functions of sheriff and Accountant in Bankruptcy in sequestration
- Review of decisions made by Accountant in Bankruptcy
- Miscellaneous amendments
- General
- Schedules

COMMENTARY ON SECTIONS

Advice and education

5. Sections under this heading make provisions for debtors to receive mandatory advice from an approved money adviser before making an application to enter into sequestration and for a specific group of vulnerable debtors to receive targeted financial education, to help improve their awareness of the underlying causes of financial difficulty and improve their ability to better manage their finances and reduce the burden of debt.

Section 1 – Sequestration of estate of living debtor: money advice

6. This section amends the 1985 Act to add a new section 5C ('Money advice'), a new section 5(4BA) and a new section 5(2B)(ba). These changes provide that an application for sequestration by a debtor can only be made if the debtor has been given advice on their financial circumstances, the effect of the proposed sequestration and the process of application for sequestration by a 'money adviser'. The application must now include a declaration by the adviser that advice has been given. Section 5C(2) also provides for a definition of who can act as a money adviser to be prescribed by regulations. A similar process is in place for money advice under the Debt Arrangement Scheme under the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17).

Section 2 – Financial education for debtor

7. This section inserts a new section 43B ('Financial education') into the 1985 Act which, when implemented by regulations about the appropriate courses, will provide for debtors whose financial history and circumstances identify them as being particularly vulnerable to problems arising as a result of recurring debts (according to the criteria in section 43B(2) and (3)), to be required to receive a course of targeted financial education. The content, format and delivery of the targeted financial education will be set out in regulations.

Payments by debtor following sequestration

Section 3 – Debtor's contribution: common financial tool

8. This section inserts a new section 5D into the 1985 Act which gives the Scottish Ministers the power to provide in regulations for a common financial tool for calculating the method used to assess the debtor's income, the amount allowed to the debtor for expenditure and the amount of the debtor's contribution (if any). An individual debtor is required to undertake to pay the contribution determined by the common financial tool in applying for sequestration or

where the debtor did not apply for sequestration in the assessment following sequestration by a creditor. The 2002 Act is also amended to allow the tool to work with the DAS scheme.

Section 4 – Debtor contribution order

9. This section inserts 7 new sections to create a ‘debtor contribution order’, a single method for fixing the payments of a debtor’s contribution. Section 32B introduces a standard period of 48 months for most contributions taken from a debtor’s income following sequestration, subject to the ability to seek a variation to reduce or increase the amount of contributions in section 32E (‘variation and removal of debtor contribution order by trustee’). As at present, contributions from income can continue past the discharge of the debtor. Section 32D makes provisions for a mechanism as in the DAS scheme for contributions to be deducted directly from earnings by way of employers, by the debtor giving the trustee an instruction, or by the trustee giving an instruction to the employer if the debtor fails to pay contributions in respect of 2 payment intervals.

10. As at present, a review of the contribution amount can be sought at any time, under the Bill from the trustee, with provision for review where AiB is the trustee and appeal to the sheriff. Provisions on application, variation and the consequences of a debtor contribution order are set out here. This replaces income payment orders under section 32(2) of the 1985 Act. As at present for income payment orders, a debtor contribution order can be made irrespective of the statutory protection on bankruptcy for pension rights under sections 11 and 12 of the Welfare Reform and Pensions Act 1999.

11. The new section 32F (payment break), introduces the possibility of a debtor paying income in sequestration to seek a payment break of up to 6 months. Regulation 37(1)(h), (3) and (4) of the DAS Regulations provide for a payment break for debtors who have a debt payment programme in place. The Bill will provide for a similar payment break which could be for up to 6 months, with the period of the contribution extended accordingly.

Sequestration where debtor has few assets

Section 5 – Debtor application

12. This section amends section 5 of the 1985 Act (‘Sequestration of estate of living or deceased debtor’), in order to provide for the replacement of the current low income, low asset route in to bankruptcy (as set out in sections 5(2B)(c)(ia) and 5A of the 1985 Act and the Bankruptcy (Scotland) Act 1985 (Low Income, Low Asset Debtors etc.) Regulations 2008 (SSI 2008/81)) with a new ‘minimal asset process’ (‘MAP’) for debtor applications under the 1985 Act, which is intended to provide debt relief to debtors who have limited assets. It allows discharge of the debtor after 6 months, but is subject to eligibility criteria and restrictions on the debtor.

13. This section also inserts, before schedule 1 to the 1985 Act, a new schedule A1 to provide for the application of the Act to ‘minimal asset’ debtors, AiB’s duty to consider whether it ceases to apply, the debtor’s right of appeal against such a decision and modification of certain provisions of the Act in order to provide for the operation of the MAP.

Section 6 – Circumstances where Accountant in Bankruptcy appointed as trustee

14. This section amends section 2 of the 1985 Act ('appointment and functions of trustee in sequestration') in order to provide for AiB to be deemed the trustee in sequestration in all cases where the debtor meets the eligibility criteria for the 'minimal asset' process and where AiB awards sequestration of the debtor's estate, as at present for low income, low asset debtors.

Section 7 – Discharge, conditions etc.

15. This section inserts 3 new sections, section 54C disapplying the discharge procedures for 'minimal asset' cases (which are discharged automatically subject only to being transferred into ordinary sequestration under the arrangements in new Schedule A1), section 55A ('Discharge under section 54A: conditions') and section 55B ('Section 55A: sanctions'). These sections provide that a debtor awarded sequestration on a 'minimal asset' basis is subject to a post-bankruptcy restriction. The restriction will last for a period of 12 months from the date of the debtor's discharge and will impose the following obligations on the debtor:

- a. The debtor (either alone or jointly with another person) must not obtain credit either of £2,000 or more; or of any amount, where at the time of obtaining credit, they have debts of £1,000 (or such other sum as may be prescribed) or more – unless they inform the person from who they are obtaining credit that they are subject to a post-bankruptcy restriction; and
- b. The debtor must disclose to those they wish to do business with, the name (or trading style) under which the debtor was sequestered.

16. The effect of a breach of the restriction during the 12 month period is that AiB will extend the restriction for a further 12 months and any further breach during the extended period (from 12 to 24 months following the date of discharge) will amount to an offence.

Moratorium on diligence

Section 8 – Moratorium on diligence

17. This section inserts into the 1985 Act provisions for a moratorium on diligence to apply on giving notice of intention to apply in relation to sequestration, a protected trust deed or a debt payment programme. It also applies to other bodies, such as trusts and partnerships, that can be sequestered under the 1985 Act.

18. Section 4A provides that, on receipt of written notice of an individual's intention to apply for sequestration, the AiB must, without delay, enter the individual's name into the register of insolvencies and/or the DAS register (as appropriate).

19. Section 4C provides that, once the individual's name has been entered into either the register of insolvencies or the DAS register, then regardless of the debt relief or debt payment solution for which they intend to apply, they will be protected by a moratorium on diligence for a period initially of 6 weeks, where after this will extend to give time for the respective application to be processed. In this context, 'a moratorium on diligence' means that no arrestment, money attachment, interim attachment or attachment of the individual's estate can have effect during the

period for which the moratorium is in place. Only one intimation can be given and, therefore, only one moratorium on diligence applied for within a 12 month period.

20. Section 4D sets out the detailed provision for the period during which the moratorium will be in place, in different circumstances, for example when an individual has requested a review of a decision by AiB.

Application for sequestration

21. Sections under this heading make provisions in relation to the process by which a debtor may apply for sequestration, in order to ensure that the debtor is fully aware of the requirement for them to cooperate with their trustee during the bankruptcy process. They also make changes to the administration of debtor applications to improve the overall efficiency of the process.

Section 9 – Statement of undertakings

22. Subsection (1) of this section inserts a new section 2(8) of the 1985 Act. It imposes an obligation on the trustee to provide to a debtor sequestrated on a court petition with a ‘statement of undertakings’, to be signed by the debtor. The Scottish Government intends that the statement of undertakings will make clear to the debtor that failure to sign or comply with the requirements in place under the 1985 Act as set out in the terms of the statement of undertakings could mean a delay in the debtor’s discharge from bankruptcy.

23. Subsection (2) provides that the debtor in a debtor application must give a statement of undertakings including an undertaking to pay any contribution the debtor might be required to make after a determination using the common financial tool to be provided for under new section 5D of the 1985 Act added by section 3 of the Bill. This undertaking must be submitted with the application, in a form to be prescribed by regulations (under the power added by section 34 of the Bill).

Section 10 – Debtor application: incomplete or inappropriate application

24. This section amends the 1985 Act by inserting 2 new sections, section 11A (‘Debtor application: incomplete application’) and section 11B (‘Refusal of debtor application: inappropriate application’). They apply where AiB either find that a debtor’s application has not been fully completed or consider that an award of sequestration may not be appropriate in the circumstances of the case. They effectively restate provision currently in regulation 14 of the Bankruptcy (Scotland) Regulations 2008—the opportunity is being taken to put these provisions on the face of the primary legislation. They require AiB either to notify the debtor of any further information which may be required or of any fee not submitted within 21 days (or such longer period as may be specified) or to notify the debtor of the reason why AiB considers the application to be inappropriate.

Section 11 – Sequestration: application by executor

25. This section amends sections 5, 6B, 8A, and 12 of the 1985 Act to remove from the sheriff court the process whereby an executor of a debtor’s estate, aware that the debtor was

insolvent, would petition to make the deceased debtor's estate bankrupt. It transfers that process to AiB, with the effect that the process will be altered to a debtor application to AiB.

26. A new subsection 8A(2B) clarifies that the period of time, by the end of which the executor will become liable for the deceased debtor's debts, should be 12 months from the day on which the executor knew or ought to have known that the estate was absolutely insolvent and likely to remain so.

Section 12 – Concurrent proceedings for sequestration: recall

27. This section amends section 10A of the 1985 Act to insert, after subsection (3), three new subsections in order to create a power, in the narrow circumstances where a sheriff has directed AiB to dismiss a debtor application under section 10A(3) of the 1985 Act, for AiB to recall that debtor application (i.e. where sequestration has been awarded on the debtor application). This section also makes provision for the consequences of such a recall.

Administration of estate

Section 13 – Submission of claims to trustee

28. This section amends section 48 of the 1985 Act ('Submission of claims') in order to introduce a requirement that creditors should submit claims within a period of not more than 120 days after the trustee has given notice to creditors inviting them to submit claims, unless there is a reasonable explanation. If a creditor does not submit their claim before this deadline, they will be expected to explain why this was not possible or risk losing a dividend. This is additional to the current time limits in respect of meetings and accounting periods.

Section 14 – First accounting period

29. Section 52 ('Estate to be distributed in respect of accounting periods') of the 1985 Act provides for the payment of interim dividends on the basis of accounting periods – essentially 12 month periods, subject to variation in various circumstances. This section amends that provision in order to allow the trustee to make a dividend payment to creditors at an earlier stage in the administration, should sufficient funds be ingathered. This would be done by shortening accordingly the first accounting period under the 1985 Act for the administration of the estate.

Section 15 – Vesting of estate after sequestration

30. This section amends section 31(5A) (about the reinvestment of non-vested contingent interests, such as an expectation to inherit under a will) and section 32(10) (the meaning of 'relevant date' for purposes of vesting etc.) of the 1985 Act. It extends the period for which *acquirenda*, i.e. property or rights acquired or received by the debtor after the date of bankruptcy, at present up to the debtor's discharge, which would have vested in the trustee had it been part of the estate on the date of sequestration, transfers to the trustee for the benefit of creditors. It will under the Bill fall to the trustee for up to 4 years from the date of sequestration. The same will apply to non-vested contingent interests, such as legacies under a will, the right to which will reinvest in the debtor at the end of a similar 4 year period.

Discharge following sequestration

Section 16 – Discharge of debtor

31. This section replaces section 54 ('Application for discharge: Accountant in Bankruptcy not the trustee') with 3 new sections in order to replace the existing process whereby a trustee is required to apply to the sheriff to defer an automatic discharge, with a new process whereby the trustee (for cases where AiB is not the trustee) will apply to AiB. Any application by the trustee for discharge of the debtor under this section, should provide a report on the debtor's financial position and other matters relevant to the sequestration (section 54(6)). If the trustee does not apply the trustee must explain to the debtor why not and if a debtor disputes this with the trustee an application can be made to the sheriff for directions under section 3(7) of the 1985 Act. The application to AiB must be intimated to any creditor and to the debtor who would have the right to make written representations to AiB within 14 days. Any decision by AiB to grant discharge will be able to be reviewed by AiB and then appealed by the trustee or any creditor to the sheriff. Equally, any decision by AiB to refuse to grant discharge will be able to be reviewed by AiB and then appealed to the sheriff (see section 54B).

32. For cases where AiB is the trustee, the new section 54A ('Discharge where Accountant in Bankruptcy the trustee') provides that AiB should, instead of applying, intimate a report to the debtor and any creditor, together with a proposal for whether discharge is to be granted. The parties will be able to make representations to AiB within 14 days, as above, after which AiB must award or refuse discharge. That award or refusal is to be appealable to the sheriff as with a decision on an application. The decision will not take effect until the 14 day period has elapsed. Further provision is also made in section 54B for reviews and appeals under these sections.

Section 17 – Repeal of discharge on composition

33. This section repeals section 56 ('discharge on composition'), section 56K ('effect of discharge on approval of offer of composition') and schedule 4 of the 1985 Act. Changes made by this section provide for the removal from sequestration of the option for the debtor to propose a composition settlement (a debt relief settlement where debtors must offer partial repayment of no less than 25 pence in the pound) with the creditors in return for a final discharge of their claims.

Section 18 – Deferral of discharge where debtor cannot be traced

34. This section inserts 4 new sections after section 54C of the 1985 Act (inserted by section 7 as noted above), in order to create a requirement on trustees to act in a prescribed way, in circumstances where the debtor's whereabouts cannot be ascertained and the trustee is, therefore, unable to carry out their usual functions.

35. The new section 54D provides that, if the trustee is unable to ascertain the debtor's whereabouts, the trustee must submit to AiB, no sooner than 8 months and no later than 10 months after the date of award of sequestration, a notice to the effect that, despite investigation into the debtor's whereabouts, the trustee has been unable to locate the debtor. If AiB is satisfied that it would not be reasonably practicable for the trustee to continue to search for the debtor, then AiB will issue a certificate deferring the debtor's discharge indefinitely.

36. If AiB issues such a certificate then section 54E allows the trustee to apply to AiB to resign from office, no later than 6 months after the indefinite discharge has been agreed. However, should the debtor be traced before this application is made, the trustee should continue to administer the case as nominated. Where a trustee wishes to resign under the above circumstances, and the trustee has satisfied AiB that the trustee has attempted to trace the debtor and that it is not practical or cost effective to continue the search, AiB must agree to the resignation of the trustee and AiB becomes trustee. The costs incurred in the administration of the case, prior to the case being transferred to AiB, are to lie with the original trustee. Thereafter, should the debtor be traced, the trustee will be able to submit a claim in the sequestration.

37. Section 54F provides for circumstances where the debtor subsequently makes contact and is cooperating with the administration of the estate. In such cases, the trustee, being satisfied that the debtor has made a full and fair surrender of the debtor's estate, including a full disclosure of financial and business affairs and the provision of any relevant account or other documentation related thereto, must give the debtor a notice that allows the debtor to apply to AiB for discharge. This is to apply where AiB is the trustee also. To ensure the debtor does not achieve an advantage of an earlier discharge than other bankrupts, the Bill provides that this notice should not be issued until 1 year from the date the debtor contacts the trustee. If the debtor decides not to apply to AiB for discharge, the debtor will not be discharged until the case is concluded.

38. Section 54G provides for the debtor or any creditor to be able to apply for a review of any decision by AiB to refuse to discharge a debtor under section 54F and for onward appeal to the sheriff. If a sequestration has been granted wholly inappropriately, the debtor may retain their usual rights to recall the sequestration (now exercisable at any time).

Section 19 – Unclaimed dividends and unapplied balances

39. This section amends section 57 ('Discharge of trustee') of the 1985 Act in order to simplify the process and specify that all unclaimed funds should be paid to AiB who will then consign or otherwise manage the funds and return the funds to the public purse on expiry of the specified 7 year period as at present.

Section 20 – Assets discovered after trustee discharge: appointment of trustee

40. This section inserts 3 new sections. The new section 58B enables AiB to reappoint the previous trustee in a sequestration where after the *trustee's* discharge, but before the expiry of 5 years from the date of sequestration, assets valued at £1,000 or more are identified that would have vested in the trustee prior to the debtor's discharge. Some assets which come to light are reclaimable by the trustee for creditors after the discharge of the debtor. To ensure cases are not reopened without good cause under this procedure, section 58B provides that the value of the newly identified estate should be greater than the costs for seeking re-appointment as trustee, and the potential costs for realising the identified new asset. In order to reopen the sequestration, the trustee (including AiB) would have to demonstrate:

- the estimated value of the newly identified estate;
- the reason why the newly identified estate forms part of the debtor's estate;
- the reason why the asset was not recovered;

- the estimated outlays and remuneration of the trustee following their appointment or reappointment; and
- the likely distribution to creditors following an appointment or reappointment.

41. Section 58C creates a requirement that the debtor and any other relevant parties should be informed that the trustee (or AiB) intends to seek reappointment as soon as practicable after reappointment, and reminded of their requirement to cooperate with the trustee in any investigation or realisation of assets.

42. Section 58D enables the debtor or other relevant parties to apply to the sheriff to appeal against the reappointment, within 14 days of notification if they disagree with AiB's decision to reappoint his or herself or another trustee. Should assets be identified more than 12 months after discharge, the trustee will only be able to be reappointed with agreement of the sheriff, as per the current process.

Records

Section 21 – Register of insolvencies

43. Section 21 amends subsection (1)(b) of section 1A to the 1985 Act ('Supervisory functions of the Accountant in Bankruptcy'), in order to provide that the form of the register of insolvencies will, in future, be governed by regulations made by the Scottish Ministers, instead of the Court of Session by act of sederunt.

44. This section also inserts a new subsection (5), in order to allow certain details to be withheld from the register of insolvencies where, in the opinion of AiB, inclusion of any information would be likely to jeopardise the safety or welfare of any person. The Scottish Government expects that there would be a reference generally on the RoI which will explain that: 'information may be withheld from the register to protect individuals'.

Section 22 – Sederunt book

45. This section amends section 1A ('supervisory functions of the Accountant in Bankruptcy') section 57 ('Discharge of trustee'), section 58A ('Discharge of Accountant in Bankruptcy'), section 62 ('sederunt book and other documents'), as well as inserting a new Schedule 3A ('Information to be included in the sederunt book').

46. These changes to the 'sederunt book' or formal records required to be kept by the trustee provide that a sederunt book must be sent as an electronic version 'in such format as the Accountant in Bankruptcy may from time to time direct.' The intention is that this will allow AiB to enable electronic transmission and receipt of documents although trustees may continue to hold the sederunt book in any format that they choose, before sending it to AiB, in accordance with section 57(1)(b) of the 1985 Act. Whilst the sederunt book will no longer be in a paper 'book' format at the time that it is sent to the AiB, the Scottish Government still intends to retain the name 'sederunt book' used in the 1985 Act.

Section 23 – Abolition of certain requirements in relation to Edinburgh Gazette

47. This section amends section 16 (‘Petitions for recall of sequestration’) and section 45 (‘Public examination’) and repeals section 71 (‘Edinburgh Gazette’) in order to remove the requirement to advertise the award of bankruptcy or appointment of replacement trustees in the Edinburgh Gazette. In future, AiB will arrange for the award of bankruptcy or appointment of replacement trustees to be advertised in the register of insolvencies.

Functions of sheriff and Accountant in Bankruptcy in sequestration

48. These sections make provision for certain miscellaneous bankruptcy notes, currently presented to the sheriff court, to be presented to and decided on by AiB instead.

Section 24 – Application by trustee for direction on matters in sequestration

49. This section amends section 3(6) of the 1985 Act in order to provide for trustees (except for AiB) to be able to apply directly to AiB for directions. If a decision cannot be made, or matters are more complex than anticipated or for any other reason, subsection 3A(3) provides for AiB to also be able to refer the matter to the sheriff for the sheriff’s directions. As with the sheriff’s directions, this can be on the handling of the bankruptcy generally and not only on a point of law. The trustee, debtor, creditor or anyone having an interest would have the right to be heard at the hearing before the sheriff.

50. Subsection 3A(4) provides that the trustee may apply to AiB for a review of any direction under this section. An application for a review must be made within 14 days of the decision being made and subsection 3A(7) confirms that a right of onward appeal to the sheriff remains, once AiB has reviewed its decision.

Section 25 – Recall of sequestration by sheriff

51. This section amends sections 16 (‘Petitions for recall of sequestration’) and 17 (to be re-titled, ‘Recall of sequestration by sheriff’) of the 1985 Act in order to modify the process for the recall of bankruptcy. Where the only ground for recall is that the debtor can pay the debtor’s debt in full (except where the debtor is claiming that the debtor was not apparently insolvent at the date of sequestration) application must be made to AiB and not the sheriff—see the new provisions made by section 26 of the Bill. Where appropriate, the final order will be withheld until all funds have been distributed to creditors.

Section 26 – Recall of sequestration by Accountant in Bankruptcy

52. This section inserts 8 new sections after section 17 of the 1985 Act:

- section 17A (‘Application to Accountant in Bankruptcy for recall of sequestration’)
- section 17B (‘Application under section 17A: further procedure’)
- section 17C (‘Interim recall of sequestration by Accountant in Bankruptcy’)
- section 17D (‘Procedure following grant of interim recall of sequestration’)
- section 17E (‘Recall of sequestration by Accountant in Bankruptcy’)

- section 17F ('Recall where Accountant in Bankruptcy the trustee')
- section 17G ('Reference to sheriff')
- section 17H ('Recall of sequestration by Accountant in Bankruptcy: review and appeal')

53. The new section 17A enables AiB to deal with applications for recall on the ground of payment of debts in full (after the date of sequestration), and are generally straightforward and non-contentious.

54. Section 17B sets out the procedure and requirement for such an application. The basis for a grant of recall by AiB in these circumstances should include payment of the remuneration of, and outlays reasonably incurred by, the interim trustee and/or trustee. Payment of all other costs, including the expenses of the creditor, should also be made before recall can be granted. The new section 17B, therefore, stipulates that the following conditions should be met before an award of recall of sequestration will be granted:

- within 21 days of service of the notice of application, the trustee (if not AiB, nor the applicant) will be required to submit to AiB a current statement of the debtor's assets and liabilities and a statement of the debtor's affairs;
- the trustee will be required to submit to AiB a statement stating whether in the trustee's opinion the debtor can pay his or her debts in full, including the payment of any remuneration, outlays and expenses;
- the trustee will be required to notify all known creditors of the application before the end of a 7 day period beginning with the day on which the application for recall was made;
- the trustee will be required to submit any claim for payment of outlays (reasonably incurred) and remuneration along with the statement of the debtor's assets and liabilities;
- where the trustee is the applicant, the statement of the debtor's assets and liabilities and the statement of the debtor's affairs, together with the statement as to whether the debtor can pay his or her debts in full should be submitted with the application; and
- if any claims are made by a creditor during the 14 day period the trustee should submit an updated statement of assets and liabilities to AiB.

55. Section 17C makes provision for AiB to be able to grant an interim award of recall from sequestration on the basis that AiB is satisfied that the debtor has sufficient funds to pay the debts in full. Subsection (2) stipulates that the decision to grant an interim award of recall should be made on the basis of the information provided in the application and by the trustee, representations made by those upon which a copy application has been served and any other interested party. The effect of interim recall is not the same as that of recall; in particular, the estate of the debtor will remain sequestrated.

56. Following the granting of an interim award of recall, section 17D places a requirement on the trustee to distribute the sums due to creditors, make payment of remuneration and outlays of

the trustee, pay relevant expenses and reinvest appropriate sums in the debtor within 6 weeks or other period (which may be prescribed by regulations) of the date of the interim order. Within 6 weeks of the granting of the interim order, the trustee should confirm to AiB if all debts and other relevant payments have been made. AiB should then decide whether recall should be granted. The trustee should also be able to seek an extension of 4 weeks (or such other period as may be prescribed).

57. Section 17E makes provision for AiB to be able to grant an award of recall. This must be on the basis that all the debts have been paid and that all other payments have been made including payment of outlays, remuneration and expenses. The effect of recall granted by AiB is the same as that provided for in section 17(4) and (5) of the 1985 Act. If an application has been made but the trustee has not confirmed that there has been payment of all the sums due within the relevant period (6 weeks, or extended) the sequestration will continue.

58. Section 17F makes provision for applications to be made to AiB for recall in cases where AiB is the trustee where the grounds are that the debts have been paid in full. Once an application is made under this section AiB will thereafter have similar functions to the trustee (where not AiB) in relation to ascertaining whether or not there are sufficient funds and ensuring that payment is made.

59. Subsection 17F(2) creates a requirement for AiB to notify known creditors.

60. Subsection 17F(5) requires AiB to make a determination of the fees and outlays which should be calculated in accordance with section 69A of the 1985 Act, which determination must be made at or prior to the determination as to whether to grant an award of recall and should be subject to appeal to the sheriff, whose decision will be final.

61. Subsection 17F(6)(a) specifies that AiB must be satisfied that the debtor can pay his or her debts in full before granting an award of recall.

62. If an order for interim recall is granted, then subsection 17F(7) requires AiB (as trustee) to then make payment to creditors and make all other relevant payments within 6 weeks of that decision and be required to recall the award of sequestration as soon as payment is made, or at the latest within 6 weeks of the date of the decision to grant interim recall.

63. Section 17G enables AiB to refer the application to a sheriff for consideration under section 17 of the 1985 Act in cases where the AiB considers it appropriate at any time until recall is granted.

64. Section 17H provides that either the debtor, a creditor, the trustee or any person with an interest may apply to AiB for a review of certain decisions related to the grant or refusal to grant recall. An application for a review must be made within 14 days of the decision being made

65. Section 17H(5) makes provision to enable determinations made by AiB in relation to recall, including decisions whether to grant or refuse an order for interim recall and recall, to be appealed to the sheriff, including once AiB has reviewed its decision. Appeals must be made

within 14 days of the date of the review decision. The debtor, trustee and any creditor or other person having an interest may appeal. In the case of an appeal against the decision of AiB in relation to interim recall, subsection 17H(7) enables the sheriff to remit the case to AiB, who should then continue to deal with the application.

66. The sheriff retains the general power to consider recall in all other cases, and there remains a right of appeal to the sheriff where AiB has determined whether the award of sequestration should be recalled.

Section 27 – Appointment of replacement trustee

67. This section provides that the existing section 25 of the 1985 Act should be replaced by 3 new sections, a new section 25 ('Appointment of replacement trustee'), section 25A ('Applications to Accountant in Bankruptcy: procedure') and section 25B ('Applications and appeals to sheriff: procedure').

68. The new section 25 provides that, on the election of a replacement trustee, the original trustee should immediately make a report of the proceedings at the statutory meeting to AiB instead of to the sheriff. If AiB was the original trustee, the report is made to the sheriff. If there are no objections, which must state the grounds for objection, then AiB is required to declare the elected person appointed.

69. Section 25A provides that any person who wishes to object to the election of the replacement trustee under this procedure should submit their objections to AiB, at which point AiB is to make clear to the other parties that they have the right to make written representations, and then to make a decision. If there is an objection to AiB's decision then the trustee, the objector or any other interested person may apply to AiB for a review of its decision. An application for a review must be made within 14 days of the decision being made. Section 25A(8) confirms that the right of onward appeal to the sheriff remains, once AiB has reviewed its decision.

70. Section 25B places similar duties on the sheriff as at present under section 25, i.e. it sets out the procedure for hearing objections. This section only applies in cases where a person is appealing a decision by AiB, under the new subsection 25A(8) or where AiB itself has an objection under the new subsection 25(3)(b). The sheriff must make clear to other parties that they have the right to make written representations (in the same way as AiB must under section 25A).

71. This section also at subsection (2) amends section 28 of the 1985 Act (resignation and death of trustee) to substitute the current application to the sheriff where there is no election of a new trustee following the resignation or death of the trustee, with an application to AiB. An application by an eligible person to be appointed trustee can be made to AiB within 14 days, failing which AiB will become trustee. This section is not relevant where AiB was originally trustee as the role will not fall vacant for these reasons.

Section 28 – Replacement of trustee acting in more than one sequestration

72. This section provides that the existing section 28A of the 1985 Act should be replaced by two new sections, a new section 28A ('Replacement of trustee acting in more than one sequestration') and section 28B ('Determination etc. under section 28A: review'). This section is not relevant where AiB is the trustee as the role will not fall vacant.

73. Section 28A removes the requirement to petition the Court of Session for removal of the trustee from office and instead enables AiB to appoint someone to be trustee directly. Subsection 28A(6) places a duty on AiB to notify its decision to the former trustee, the debtor, any creditor known to AiB and each sheriff who awarded sequestration.

74. The new section 28B provides that any person listed under subsection 28A(6) (i.e. the former trustee, the debtor etc.) will be able to ask AiB to review its decision within 14 days of making and notifying the decision and, if they are not satisfied with the result of AiB's review, to appeal the result by a single petition to the Court of Session, if the appeal relates to two or more sequestrations that were awarded in different sheriffdoms or, otherwise, to the sheriff with jurisdiction.

Section 29 – Removal of trustee and trustee not acting

75. This section amends section 29 of the 1985 Act in order to provide for AiB to be able to deal with the removal of a trustee. AiB will look at the application to remove the trustee and will make the necessary order required under revised section 29(1)(b) of the 1985 Act and, if subsequently required, revised section 29(3).

76. New Section 29(3A) provides that the trustee, the commissioners or any creditor may apply to AiB for a review of any decision of AiB to raise an order to remove a trustee from office. An application for a review must be made within 14 days of the decision being made. New Section 29(3)(C)(a)&(b) provides that AiB must on receipt of an application for review take into account any representations made by an interested person within 21 days of the application being made. Thereafter AiB must confirm, amend or revoke their decision within 28 days of the application being made. Section 29(4) confirms that the right of onward appeal to the sheriff remains, once AiB has reviewed its decision.

Section 30 – Contractual powers of trustee

77. This section amends section 42 ('Contractual powers of trustee') of the 1985 Act in order to provide that applications to request a longer period in which to adopt or refuse a contract entered into by the debtor should be submitted to AiB for a decision instead of the sheriff (unless AiB is the trustee), with recourse to the sheriff on appeal.

Section 31 – Bankruptcy restrictions order

78. This section replaces the existing section 56A with a new section ('Bankruptcy restrictions order') in order to give AiB, instead of the sheriff, the power, upon conclusion of an investigation, to make a bankruptcy restrictions order. Bankruptcy restrictions orders impose

certain restrictions on a debtor where there has been a level of misconduct by the debtor either before or after the date of bankruptcy, as described in section 56B of the 1985 Act. The restrictions remain in force after the date of discharge for periods varying between 2 and 15 years, depending upon the severity of the misconduct. The new sections 56A(3) and 56A(4) will enable representations to be made by the debtor to AiB.

79. The new subsection 56E(4) provides that if the debtor wishes to object to the granting of a bankruptcy restrictions order, then they should apply to AiB for a review of its decision. An application for a review must be made within 14 days of the decision being made. Section 56E(7) confirms that the right of onward appeal to the sheriff remains, once AiB has reviewed its decision.

Section 32 – Conversion of a protected trust deed into sequestration

80. This section amends section 59A of the 1985 Act, in order to transfer, from the sheriff courts to AiB, powers in relation to such orders to convert protected trust deeds² into sequestrations as are required to be made under that section. ‘Member State liquidator’ for these purposes includes trustees in bankruptcy or the equivalent in personal insolvency in other EU Member States.

Section 33 – Power to cure defects in procedure

81. This section modifies section 63 of the 1985 Act, in order to allow applications to AiB to cure certain, but not all, defects which could previously be remedied under section 63 of the 1985 Act by the sheriff. Subsection 63A(4) specifies that the process involves notifying any interested parties and giving them the opportunity to make representations. The sheriff’s power is restricted accordingly, save in relation to documents lodged with or issued by, or time limits in relation to proceedings before the sheriff, but an order of AiB under section 63B(4) is subject to appeal to the sheriff, which will be final. The defects which can be remedied are as follows:

- any clerical or incidental error in any document
- to waive any failure to comply with any time limit in the 1985 Act, where there is no specific provision in or made under the Act about how failure to adhere to the timescale should be dealt with.

Section 34 – Regulations: applications to Accountant in Bankruptcy etc.

82. This section inserts a new section 71C (‘Regulations: applications to Accountant in Bankruptcy etc.’) after section 71B in the 1985 Act in order to provide, for the Scottish Ministers, a power to make, by regulations, provision in relation to the procedure to be followed in relation to an application to AiB (insofar as this is not provided for in the 1985 Act). Regulations made under this section will make provision for such matters as the format and content of documents required for an application, including for instance the form of the debtor

² **Protected trust deed** - A trust deed is a form of insolvency by which a debtor transfers estate to a trustee to be realised for the benefit of creditors. A trust deed may be protected as long as a majority in number or a third in value of creditors do not object to its terms. Once protected, the terms of the trust deed becoming binding on all the creditors.

application and the statement of undertakings to be provided by the debtor (certain specific powers in the 1985 Act have also been repealed). This partly also replaces the inherent powers of the courts to make rules of court for the disposal of cases.

Section 35 – Valuation of debts depending on contingency

83. This section amends paragraph 3 of Schedule 1 to the 1985 Act to enable creditors to apply to AiB, instead of the sheriff, to place a value on a contingent debt in order that the creditor may be able to claim that value in the sequestration. Sub-paragraph 3(6) makes provision for appeal to the sheriff.

Review of decisions made by Accountant in Bankruptcy

84. These sections provide that prior to any opportunity to appeal to the sheriff from certain decisions of AiB, the party who wishes to appeal must ask AiB to review the matter in question. The new review process extends to decisions AiB makes which are currently appealable to the sheriff, with certain exceptions. Those entitled to appeal may do so after AiB reviews a decision, even if that person did not ask for the original determination to be reviewed (i.e. a creditor may ask for an appeal of AiB's reviewed decision even if the debtor asked for the review).

Section 36 – Review of decisions about interim trustee

85. This section modifies sections 13A ('Termination of interim trustee's functions when interim trustee is not appointed as trustee'), 13B ('Termination of Accountant in Bankruptcy's functions where not appointed as trustee') and 18 ('Interim preservation of estate'). An interim trustee is usually (although not always) appointed on the basis of a creditor petition, for example when the creditor believes that action needs to be taken quickly in order to safeguard the debtor's estate. Later in the process, AiB may decide to appoint the interim trustee as trustee or to terminate the interim trustee's functions and appoint a different trustee. This section enables an interim trustee who has not been appointed as trustee to apply to AiB for a review of its decision.

Section 37 – Review of decision not to award sequestration

86. This section modifies section 15 of the 1985 Act ('further provisions relating to award of sequestration') in order to make provision for the debtor and concurring creditor to apply to AiB for a review of its decision not to award bankruptcy on a debtor application within 14 days.

Section 38 – Review of decisions about replacement trustee

87. This section modifies section 26A of the 1985 Act ('Accountant in Bankruptcy to account for intromissions') in order to enable a party to apply to AiB for a review of its decisions about discharging AiB in relation to AiB acting as trustee.

Section 39 – Review of decisions about adjudication of creditor's claims

88. This section modifies section 49 of the 1985 Act ('adjudication of claims'). Under section 49, where AiB is the trustee, then AiB will consider creditors claims, on the basis of the information provided, and make an adjudication about the amount of debt which is due to each

creditor, either agreeing each claim in whole or in part or rejecting it if they do not consider that it is valid. This section makes provision for creditors and debtors to apply to AiB for a review of its decision as trustee regarding its adjudication of creditors' claims under section 49(1) or (2). Section 49(6E) provides that only a debtor with a pecuniary interest in the outcome can appeal.

Section 40 – Review of decision about discharge of trustee

89. This section amends section 57 of the 1985 Act ('Discharge of trustee') in order to make provision for interested parties to apply to AiB for a review of its decision to grant, or refuse, discharge of the trustee. The interested party (i.e. the trustee, the debtor and any creditor who has made representations) can ask AiB to review the decision within 14 days of the decision being made. Where there has been a review, the date of the review decision is to be the date the discharge decision is effective from and the initial discharge will be postponed until the 14 day review request period has elapsed.

Miscellaneous amendments

90. Sections 41 to 48 make miscellaneous amendments to the 1985 Act, some of which give effect to points raised by the Scottish Law Commission in their consultation on consolidation of the 1985 Act.

91. The changes include removing the criminal offence for failure to return a statement of assets and liabilities (section 41(2)(a)(i)); clarifying the date of renewal of the effect of sequestration as an inhibition or freezing diligence (section 44); making clear an action for division and sale or vacant possession can provide for a decision of the sheriff on whether a trustee in sequestration is entitled to dispose of the family home (section 45); purely declaratory provision to make clear in the scheme of the 1985 Act that student loans are not written off in sequestration (section 46); increasing from £500 to £2000 the amount of credit which can be obtained by an undischarged bankrupt before they are required to disclose that status on obtaining that credit (section 47); and repealing provision for Bankruptcy Restriction Undertakings (section 48).

General

Section 50 – Ancillary provision

92. This section has the effect of creating a power to make supplementary, incidental, consequential, transition, transitory or savings provisions by order made by the Scottish Ministers for the purposes of or in connection with provisions made in or under the Bill. The order is subject to the negative resolution procedure of the Scottish Parliament, unless the instrument modifies another enactment such as an Act (including this Bill) in which case it is subject to the affirmative resolution procedure.

Schedules

Schedule 1 ('minimal asset' debtors with few assets)

93. Schedule 1 is introduced by section 5(2) and introduces a new Schedule A1 ('Debtors to whom section 5(2ZA) applies: application of Act') to provide for the application of the Act to

‘minimal asset’ debtors. It includes provision for how that ‘minimal asset’ status modifies sequestration for the operation of the MAP, AiB’s duty to consider whether that status ceases to apply, the debtor’s right of appeal against such a decision and the modification of certain provisions of the Act where that status has ceased to apply.

Schedule 2 (Sederunt book)

94. Schedule 2 is introduced by section 22(5) and sets out information to be included in the sederunt book.

Schedule 3 (minor and consequential amendments)

95. Schedule 3, introduced by section 51(1), sets out minor and consequential amendments. It includes certain provisions to implement in the 1985 Act a number of recommendations from the Scottish Law Commission as part of its project in working towards a full consolidation of the 1985 Act³. The amendments are technical amendments which can be reviewed and incorporated in a consolidation Bill in due course.

96. They include paragraph 28(a) and consequential repeals amending section 72(1) of the 1985 Act to clarify that the general power to make different provision for different cases or classes of case extends to all of the subordinate powers in the 1985 Act. The effect is to confirm it extends to the affirmative Parliamentary procedure regulation-making powers in the Act⁴.

Schedule 4 (repeals)

97. Schedule 4 details repeals in consequence of the changes made by the Bill.

³ Link to Scottish Law Commission *Report on the Consolidation of Bankruptcy Legislation in Scotland*, http://www.scotlawcom.gov.uk/files/7113/6853/1202/Report_on_the_Consolidation_of_Bankruptcy_Legislation_in_Scotland.pdf

⁴ The Scottish Law Commission discussed this issue in their Report, *ibid*, p.12.

FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Bankruptcy and Debt Advice (Scotland) Bill ('the Bill') introduced in the Scottish Parliament on 11 June 2013. It has been prepared by the Scottish Government, to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

BACKGROUND

2. As stated in its Annual Report for 2011-12⁵, The Accountant in Bankruptcy (AiB) continues to move towards full recovery of the costs incurred in the provision of its services. This is in accordance with the Scottish Public Finance Manual which states that: '[T]he standard approach to setting charges for public services (including services supplied by one public sector organisation to another) is full cost recovery⁶'. It is proposed that, wherever possible, additional costs incurred as a result of the implementation of this Bill will be recovered through AiB fees on a full cost recovery basis.

3. AiB currently recovers costs through statutory fees which are set out in the Bankruptcy Fees etc. (Scotland) Regulations 2012. The regulations contain charges applicable to various users of AiB's services, including debtors contributing to their application for bankruptcy, creditors petitioning for the bankruptcy of a debtor, as well as Insolvency Practitioners (IPs) and external trustees who require AiB's supervision to administer bankruptcies. The regulations will be updated to reflect the Bill.

4. Although various parties are the subject of fees contained in the regulations, ultimately it is creditors in insolvency proceedings who fund full cost recovery. Any fees paid by debtors for the application or administration of their bankruptcy could otherwise have been repaid to the creditor. Any fees paid by IPs or trustees are generally reclaimed from the insolvent estate, which again reduces the funds available for creditors.

5. AiB's net expenditure has reduced by 42% from £4.8 million in 2009-10 to £2.8 million in 2011-12. Estimated net expenditure for 2012-13 is under £1.0 million meaning less than 10% of AiB's total costs require funding from the public purse. Aside from fee income reviews, a key part of AiB's effort towards full cost recovery is delivered through implementing efficiencies, including the streamlining and modernisation of AiB processes, and cost reduction achieved through procurement. For example in 2011-12 AiB delivered 29% cash releasing efficiency savings against the 3% efficient government target which, in monetary terms, amounted to a £0.6 million saving. These savings were generated through shared services for building security, use of AiB's own Register of Insolvencies ('RoI') for publishing insolvency related notices and other

⁵ [AiB Annual Report, 2011-12, p.15](#)

⁶ [Scottish Public Finance Manual, Fees and Charges, para 12](#)

savings delivered through procurement and improved supplier management. AiB expects that the Bill will drive further efficiency savings.

GENERAL

6. The financial implications of this Bill have been considered under the following headings:

- I The financial implications for the Scottish Government (paragraphs 7 - 48).
- II The costs on local authorities and other public bodies (paragraphs 49 - 64).
- III The costs on other bodies, individuals and businesses (paragraphs 65 - 74).

I FINANCIAL IMPLICATIONS FOR THE SCOTTISH GOVERNMENT

7. The financial implications for the Scottish Government are considered to be the financial implications for AiB. AiB is an Agency of the Scottish Government in terms of the Scotland Act 1998. The Chief Executive is also The Accountant in Bankruptcy ('the Accountant'), who is an independent statutory officer appointed under section 1 of the Bankruptcy (Scotland) Act 1985, as amended. Where there are financial considerations for Scottish public bodies other than the AiB, such as the Sheriff Courts, these are considered under 'costs on local authorities and other public bodies' below.

8. AiB's estimate of the costs requiring additional funding which arise as a result of this legislation is in the range of £75,271 - £81,271. For reference, these figures are the equivalent to approximately 0.6% of AiB's total expenditure (£12,046,000) in 2011-12. AiB expects to be able to manage this marginal level of additional costs within its existing budget and without any increase in fees.

9. The overall cost implications of this legislation are estimated to be in the range of £712,317 - £839,384. The greater proportion of these costs represent costs displaced from existing budgets.

10. The cost implications of this legislation are described below under 3 main headings as follows:

- Costs incurred in relation to the development and delivery of a Common Financial Tool;
- Costs incurred in relation to the administration of a new 'Minimal Asset Process' ('MAP'); and
- Costs incurred in relation to changes to the administration of bankruptcy in Scotland.

Common Financial Tool

11. The Bill will make the use of a single Scottish Common Financial Tool ('CFT') mandatory for money advisers in respect of statutory debt solutions. The CFT will determine whether an individual is able to make a contribution towards repayment of their debts and what

the level of their contribution should be. The Bill contains the provisions for the introduction and effect of the CFT. Further details will be set out in the regulations.

12. Information on the financial implications of the CFT is provided on the basis that there will be a single, online CFT for use by money advisers. The financial implications are as follows:

- Cost of developing and delivering a CFT;
- Cost of maintaining a CFT – for example, there will be an ongoing requirement to update the ‘trigger figures’ on which the CFT will base its determination, to take account of factors such as inflation. This may have cost implications; and
- Cost of training staff in the use of a common financial tool.

13. Based on current working assumptions, AiB estimates that the CFT will require approximately 6 weeks of additional developer time, at a cost of £600 per day or £3,000 per week, resulting in a total additional cost of £18,000 (all figures excluding VAT). This assessment is based on the time taken by AiB to develop an online triage tool, in effect a forerunner of the CFT.

14. In relation to ongoing costs, i.e. of maintaining the tool and training staff, it is not possible to estimate these costs at this stage. This is because there are questions which are material to the operational model for the CFT which have not been answered, for example whether the CFT will be maintained by the AiB or by another organisation.

15. Furthermore, it is not clear, in either instance whether these will represent additional costs. For example, if the cost of maintaining and updating the CFT is to fall on a partner organisation, rather than AiB, it is likely that this will be one of the organisations (either the debt charity, StepChange or the Money Advice Trust) who currently provide online financial tools for use by money advisers (the StepChange financial budget and the Common Financial Statement). The cost of updating and maintaining these tools will be an existing cost on these organisations.

16. In order to have advice on the operational model for the CFT, AiB has convened a Scottish Common Financial Tool Working Group (‘SCFTWG’). The SCFTWG consists of representatives of:

- Money Advice Scotland
- Money Advice Trust
- Association of British Credit Unions Ltd (Scotland)
- Royal Bank of Scotland
- Citizen’s Advice Scotland
- Nationwide Building Society
- British Banker’s Association
- Lloyds TSB Group

- StepChange
- AiB Policy Development.

17. The SCFTWG has been meeting since February 2013 and will deliver its findings on a single CFT at the end of 2013. This is an expert group which AiB expects, will deliver an authoritative view on the best option for a CFT, once it has had an opportunity to fully consider the available research and evidence.

Minimal Asset Process

18. The Bill will introduce a new debt relief product, to be called the Minimal Asset Process ('MAP'). The MAP will replace AiB's existing Low Income/Low Asset ('LILA') route into sequestration. There were 3,481 applications to the AiB under the LILA criteria in 2012-13. The MAP is intended to be used by individuals who meet certain criteria. (For example, applicants will be eligible to enter the MAP if they have been receiving income-related benefits for at least 6 months.)

19. Introduction of the MAP will be supported by new systems and processes at AiB (or, where appropriate, updates to existing systems and processes). The main financial implications of this provision will relate to the development and delivery of these new systems and processes and the cost of administering the MAP. Costs in relation to the development and delivery of the MAP will include:

- Training of AiB staff to administer the MAP. This will be a component of the administrative cost of the MAP, as training will be ongoing;
- Development and publication of the required guidance for money advisers and individuals who will access the MAP. This will also be a component of the administrative cost of the MAP; and
- Development and delivery of the required IT systems and processes.

20. As with LILA, at the moment, most applications to the MAP will incur a cost to AiB as there are unlikely to be any assets in the case to cover expenditure and the debtor will have no income from which to make any contribution. AiB estimates the cost of administering the MAP to be as follows:

- An estimated cost per MAP case in the region of £100.00;
- Giving estimated total costs for the administration of the MAP, based on 2012-13 LILA volumes, in the region £348,100 (although case volumes for the MAP may vary from those for LILA).

21. In relation to the cost of delivery of the required IT systems, MAP functionality will be integrated into a new CMS system (discussed at paragraphs 45 to 48 below), development of which is currently at the pre-procurement stage. At this stage, it is difficult to precisely separate out or isolate costs that relate solely to the MAP's specific requirements. As an illustrative estimate, based on the expected number of applications for each type of bankruptcy, the estimated development cost, solely in relation to the MAP, is in the region of £135,000 -

£180,000. This cost would include the functionality to transfer a case from MAP to a full bankruptcy.

22. AiB does not expect that the replacement of the LILA with the MAP will require additional funding because the MAP replaces an existing process and the costs of administering the MAP are expected to be less than the existing costs of administering LILA. This is because the MAP is expected to be a more automated process.

AiB review function

23. The Bill will make provision for a debtor, creditor or a money adviser acting on behalf of a debtor to be able to apply for a review to be completed on a decision by AiB. Currently there is no option to request a review, the only options available are either to make a complaint or to appeal to the Sheriff Court. AiB dealt with 51 complaints in 2012-13 and 73 in 2011-12. The number of cases defended in court has been low, estimated at 4/5 in recent years. The time spent in handling a complaint varies greatly, depending on the issue and it is likely that the time required to handle a review will also vary to a similar extent. The range of costs incurred will also vary, as a consequence.

24. For reference, AiB estimates that the cost of handling a complaint is in the range £71.50 - £1,563 - giving an overall estimated range of costs for complaints as follows:

- £3,646 - £79,713 in 2012-13
- £5,219 - £114,099 in 2011-12.

25. The review process will not be a comparable, like for like, replacement for either complaints or shrieval appeals. The process will require more time and resource than lower level complaints but not nearly as much as defending an appeal to the sheriff. The number of reviews will be lower than the number of complaints, as some complaints are made and will continue to be made about matters which do not relate to decisions by AiB.

26. There will, therefore, be some costs which will require additional funding incurred as a result of this provision but also some displacement from the pre-existing administrative cost of dealing with complaints, as some customer complaints will, in future, be handled as reviews instead. It is not possible to estimate these additional costs, at this time, as there are too many unknown variables but AiB expects to be able to manage these additional costs within its existing budget.

Changes to the administration of bankruptcy

Provision for e-Applications to AiB

27. The Bill will make provision to support debtor applications to the AiB by way of a web-based e-application process (via an authorised money adviser who requires to be consulted under the mandatory advice role set out below). The main financial implications of this provision will relate to the development and delivery of new systems.

28. Based on current working assumptions, AiB estimates that the e-Application portal will require approximately 8-10 weeks of additional developer time, at a cost of £600 per day or £3,000 per week, resulting in total additional costs in the range £24,000 - £30,000 (all figures excluding VAT).

Transferring debtors from the MAP to full bankruptcy

29. The Bill will make provision for the AiB to be able to transfer debtors from the new MAP to full administration bankruptcy, where such transfers are required by a change of the debtor's circumstances or because of error or omission. The AiB estimates that the number of cases likely to be made subject to such a transfer will be broadly comparable with the number of cases which have previously been transferred from the existing LILA product to full administration. Table 2 (below) gives the number of LILA transfers since 2009/10. It is worth noting that a) the number of cases transferred has fallen in 2012/13 and b) the criteria for the MAP will be clearer than LILA, which should result in a further reduction in the number of cases transferred as there will be more clarity for money advisers as to whether they should be using the MAP as opposed to the full bankruptcy route.

Table 2

Year	Number
2009/10	1024
2010/11	1311
2011/12	1076
2012/13	774

30. There may also be minimal administration costs, for example, arising from the need to interview debtors or carry out further investigation work to determine if they should be transferred. This is currently the case with transfers from LILA to full administration. AiB estimates that the costs for re-opening a bankruptcy case after discharge would include:

- 8 hours of A3 time at £18.00/hour; and
- 1 hour of B1 time at £22.75/hour.
- Giving an estimated direct payroll unit cost per re-opened case of (£144 + £22.75) = £166.75 and an illustrative overall cost (based on 774 LILA transfers in 2012-13) in the region of £129,000

31. Given that the number of transfers from the MAP is expected to fall in comparison with the number of LILA transfers and that the costs of transferring MAP cases are expected to be less than the existing costs for LILA, AiB does not expect that these costs will require additional funding in order to deliver the ability to transfer these debtors from the MAP to full administration bankruptcy. AiB does not intend to charge an additional fee to the debtor, as a result of their transfer from the MAP to full administration.

Re-opening bankruptcy cases after discharge

32. The Bill will make provision for the AiB to be able to re-open bankruptcy cases after the trustee has been discharged. AiB does not intend to charge an additional fee to the debtor, as a

result of the re-opening of their case. A cost/benefit analysis will be carried out to inform any decision to re-open a case and, on the basis of that analysis, AiB expects that any re-opened case will result in an increase in returns to creditors.

33. AiB estimates that there will be a need to re-open approximately 50 cases per year. This estimate is based on current experience although, at the moment, a significant proportion of cases which are being re-opened, are re-opened as a result of payments to the debtor in relation to mis-sold payment protection insurance (PPI) policies. Payments in relation to PPI mis-selling are still being made and it is likely that this will continue to be a factor in the number of re-opened cases for a period but, over time, the number of cases re-opened as a consequence of PPI mis-selling will eventually fall.

34. AiB or other trustees will initially incur additional costs as a result of re-opening the case. The additional costs will be charged to the case and recovered through any funds ingathered into the case. Ultimately, therefore, the costs are deducted from the return to creditors. AiB expects that this will not have a material impact on fees as the number of cases re-opened will be relatively low. AiB estimates that the costs for re-opening a bankruptcy case after discharge would include:

- 8 hours of A3 time at £18.00/hour; and
- 1 hour of B1 time at £22.75/hour.
- Giving an estimated direct payroll unit cost per re-opened case of (£144 + £22.75) = £166.75 and an illustrative overall cost (based on 50 re-opened cases) in the region of £8,338.

Power to defer discharge

35. The Bill will make provision to enable the AiB to make the discharge of a bankrupt individual conditional on an application for discharge being made and upon cooperation with his or her trustee. If the debtor is held not to have cooperated, for example if the debtor has failed to maintain ongoing liabilities or to comply with the requirement to undergo financial education, then the debtor's discharge may be deferred administratively by the AiB. Also where an individual cannot be contacted or located there will be a procedure for deferring discharge indefinitely subject to suitable safeguards.

36. The option to defer discharge is considered to be a last resort and is only likely to be used in cases where the debtor is considered to be able to make contributions but has not been doing so. Currently a trustee has to apply to the Sheriff Court in order to defer a debtor's discharge. This does not happen often, there have only been 3 cases recently where AiB, as trustee, has applied to the Sheriff Court for a deferral of discharge. In all three cases, the outcome was better cooperation with the trustee and funds ingathered. Simplifying the process, by comparison to the existing requirement to apply to the Sheriff Court, is likely to increase the number of deferred discharges, however AiB still expects that the number of debtors who would have their discharge deferred as a result will be low.

37. AiB will incur some additional administrative costs as a result of deferring debtors' discharges. Evidence gathering and preparatory work will be required to get the debtor to

comply. There will be some off-setting benefits, for example to creditors who should benefit from the AiB's action to make debtors maintain their ongoing liabilities, however these are not expected to materially subtract from the additional costs.

38. AiB estimates that the cost for a case where discharge is deferred would include an upfront cost of:

- 8 hours of A3 time at £18.00/hour; and
- 1 hour of B1 time at £22.75/hour.
- Giving an estimated direct payroll unit cost per deferred case of (£144 + £22.75) = £166.75.

39. There would then follow a recurring cost which is estimated to be 4 hours of A3 time or £72.00 per twelve month period of deferred discharge. AiB believe that it is unlikely that a debtor will have their discharge deferred for more than two years, giving an estimated overall additional cost of £166.75 + (2 x £72.00) = £311 per two year deferred case - giving an estimated direct payroll (based on 3 cases) in the region of £933.

Transfer of bankruptcy administration functions from the Sheriff Courts to the AiB

40. This provision will give AiB powers to decide on certain miscellaneous bankruptcy notes, currently presented to the sheriff courts - reducing the burden on the courts in respect of dealing with bankruptcy procedures that could be categorised as 'administrative' in nature.

41. This change will be cost neutral as AiB will recover the full cost of operating this process from the application fees, paid by the applicant at the time the note is submitted for consideration. Fees will be set by fees order ahead of the commencement of these provisions. It is not possible to estimate these costs, at this time, as the work to develop the necessary processes has not yet commenced. However, AiB expects to be able to make information on costs available when it brings forward the relevant fees order.

Withholding information from the Register of Insolvencies

42. Currently, the Register of Insolvencies ('ROI') holds information on all sequestrations and protected trust deeds that fall under the jurisdiction of the Court of Session. The register also holds information on Scottish companies, limited liability partnerships and friendly and provident societies that have gone into liquidation or receivership since 1 July 1999. The Bill will make provision to allow certain details to be withheld from the ROI where there is the risk of violence and/or abuse to the individual or a member of their household.

43. The financial implications of this provision relate to the IT costs of modifying the existing RoI. Based on current working assumptions, AiB estimates that these modifications should require approximately 8 weeks of additional developer time, at a cost of £600 per day or £3,000 per week, resulting in total costs of approximately £24,000 (all figures excluding VAT). These figures have been derived from the cost of a range of previous development proposals for adapting the RoI.

44. There may also be some additional costs incurred by some creditors, resulting from additional administration to establish whether a particular customer, whose details have been withheld from the RoI is insolvent and for AiB to carry out administrative work in the event of a request for information on an individual whose full details are not shown on the modified RoI. It is not possible to quantify these costs.

Case Management System

45. AiB considers that, where the financial implications set out above relate to the cost of IT changes or development, for example, in relation to the cost of delivering the MAP, then any consideration of these implications should also take into account the wider context of AiB's programme to introduce a new CMS.

46. The requirement for a new case management system is driven by the age of AiB's existing system (MIDAS) which is now 8 years old. The platform on which MIDAS was built was deemed to be dated in 2009, by the AiB's Programme Change and Control Board. The need to replace MIDAS has not, therefore, arisen as a result of the Bill and a new CMS is to allow AiB to deliver significant business benefits.

47. The programme to deliver the new CMS is currently at the pre-procurement stage. AiB Efficiency and Technology Team are working to a timetable which would procure a supplier in late 2013 and develop the new CMS by the end of 2014. The new CMS will allow AiB to offer a wider set of digital services and for all stakeholder groups an enhanced ability to interact electronically with AIB. This development supports the Scottish Government's strategy of public services being available online.

48. The cost, estimated as part of the initial business case for the new CMS, is expected to be in the range £1.5 million - £2 million over 3 years. Because the project team should be able to define system specifications based on the known requirements of the Bill during development, it is unlikely that this cost profile will be significantly impacted by the proposed changes in the Bill. In this way, additional costs in relation to the Bill will be reduced.

II. COSTS ON LOCAL AUTHORITIES AND OTHER PUBLIC BODIES

49. Financial implications for local authorities relate primarily to money advice services operated by local authorities. Not all money advice services are provided by local authorities however, for reasons of narrative clarity, the cost implications for all money advisers are considered under this section.

Mandatory Requirement to have advice from an authorised money adviser

50. The Bill will make provision to require that an individual must access money advice through an approved money adviser, prior to applying for any form of statutory debt relief. There are currently 119 approved organisations delivering money advice in Scotland, comprising 91 public sector organisations (such as Local Authority debt advice charities) and 28 private sector organisations. Money advice is provided free of charge by public sector organisations and private sector organisations are required by law to advise debtors of the availability of free

advice. The requirement to access money advice will not, therefore, lead to the debtor incurring additional costs as free money advice is widely available through a variety of channels.

51. Advice is already compulsory before entering the Debt Arrangement Scheme and before entering a Protected Trust Deed (PTD). However, the situation for bankruptcy is different. There are currently three routes into bankruptcy, as follows:

- The ‘Low Income/Low Asset’ (LILA) product;
- Apparent insolvency; and
- The Certificate for Sequestration.

52. Of these three routes into bankruptcy, there is already an existing requirement that a debtor should consult a money adviser before taking the Certificate for Sequestration route into bankruptcy, as the adviser has to sign the certificate before the application can proceed. The Bill, therefore, effectively extends a requirement that already exists for the Certificate for Sequestration route into bankruptcy to the other two routes, to ensure consistency. Also, it is AiB’s belief that, in the vast majority of cases where debtors take either of the other two routes into bankruptcy, i.e. the apparent insolvency route or LILA, that these debtors are also already being given advice.

53. AiB estimates, based on research into existing cases, that only between 6-8% of current applications that take either the Apparent Insolvency or LILA routes are made without the debtor having had access to money advice. It is likely that a proportionate increase of this scale will have a manageable impact on money advisers’ capacity and caseload, particularly as the range of channels available to money advisers to provide advice is expanding, more advice is now offered over the telephone or via online advice tools such as StepChange’s ‘Debt Remedy’ tool. It is not possible to estimate the additional costs to money advisers which may be incurred as a result of this change. Money advisers’ caseload may vary for a number of reasons, for example as a result of benefit changes by the UK government and this legislation would represent just one factor in a complex picture. Also, a debtors contact with an adviser, in the course of seeking advice, will vary greatly from organisation to organisation and client to client.

Provision for e-Applications to AiB

54. The increase in costs on authorised money advisers arising as a result of the provision above will be off-set, to some extent, by savings arising as a result of AiB’s provision of a web portal enabling ‘e-Applications’ from authorised money advisers to AiB. Further information on the cost implications of this web portal for AiB are set out at paragraphs 27 to 28 above.

Requirement for a debtor to undertake financial capability education

55. The Bill will include provision to require targeted financial education for debtors whose circumstances and/or financial history meet the criteria set to identify those in need of financial education. The criteria are as follows:

- If the debtor has previously, within the last 5 years, been bankrupt or has entered into a PTD or Debt Payment Programme; or

- If the debtor is currently subject to a bankruptcy restrictions order or bankruptcy restriction undertaking; or
- If the trustee considers that the pattern of the debtor’s behaviour is such that he or she would benefit from financial capability education.

56. The requirement for financial education will be triggered if a debtor is in financial difficulties and meets one of the above criteria. Financial education will be provided by authorised money advisers and will be delivered in accordance with a new national standard. The cost implications of this provision are:

- Developing a national standard for financial capability; and
- Developing an e-learning training modules for advisers and debtors

Developing financial capability standard

57. AiB has been working with money advice sector stakeholders to deliver the requirements for financial capability education. The process is likely to involve the Scottish National Standards Working Group on Financial Capability. The working group includes representatives from Money Advice Scotland; Money Advice Service; Citizens Advice Scotland; Scottish Legal Aid Board; Glasgow City Council and the Scottish Government.

58. The working group will look at financial capability and then the appraisal of the existing standards and competences alongside the Scottish National Standards in information and advice, in order to develop a new framework. Subsequent steps would involve testing and piloting the framework with agencies involved in the wider money advice sector.

59. Table 3 (below) sets out AiB’s initial estimate of the cost implications of this work. These figures are based on initial discussions with stakeholders and have yet to be formally confirmed.

Table 3

Activity	Resource (cost)
Appraisal of existing standards	600
Identifying any gaps	100
Re-draft standards and competences to fit with Scottish National Standards and develop new framework	2000
Pilot/Test the framework, run workshops and liaise with stakeholders	5000 including room hire costs and catering
Final framework	600
Estimated Total Cost	£8,300

Developing Training Modules

60. Work to develop training modules to deliver the new financial capability standard would follow development of the standard itself and would be managed as part of the same, overarching project, as set out above. Again, this work is still at an early stage and any discussion around planning, requirements and costs remains subject to agreement with stakeholders. However, AiB anticipates that this work will comprise four 'stages', as follows:

- Stage 1 – Identifying content of modules (based work to develop the financial capability standard)
- Stage 2 – Piloting the modules with money advisers
- Stage 3 – Piloting the modules with debtors
- Stage 4 – Delivery of the final product.

61. Table 4 (below) sets out AiB's initial estimate of the cost of this work. As above, these figures are based on initial discussions with stakeholders and have yet to be confirmed.

Table 4

Activity	Resource (cost)
Identify the content of the module	1000
Develop and Pilot e-module with advisers and set up workshops	5000
	2000
	2000
Pilot e-module with debtors and set up workshops	1000
	1000
Produce final version	1000
Total	£13,000

62. The SG Welfare Reform Division currently provides a budget to AiB to fund Money Advice, Training, Resources, Information and Consultancy Services ('MATRICS'). AiB expects that the costs in tables 3 and 4 above will be met from the MATRICS budget and therefore the costs will ultimately be met by the Scottish Government through an existing funding arrangement, and that there will be no additional funding requirement.

Money advisers' workload

63. The criteria which will trigger the requirement for a debtor to be offered financial capability education are set out above. In order for these criteria to be triggered, the debtor must already have an ongoing relationship, in some shape or form, with a money adviser. This is because the criteria can only be triggered if the debtor has current financial difficulties which require him or her to obtain advice.

64. AiB considers, therefore, that this provision will not lead to a rise in money advisers' caseload as they will already be providing advice to debtors who meet the criteria for financial education. It will lead to a change in advisers' existing relationships with some of their clients, for example, it may create a requirement for advisers to spend more time with existing clients, in order to ensure that they receive the financial capability education that they need however it is AiB's position that this change in the amount of time that money advisers may need to spend with some of their existing clients will not have a material impact on their overall capacity and caseload.

III COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

65. Costs to businesses are also examined in the Business and Regulatory Impact Assessment ('BRIA') which will be published alongside the Bill. Individuals and businesses affected would include creditors and also anyone with an interest in the practice and process of insolvency in Scotland.

66. A number of the provisions in the Bill are expected to have a positive effect on the return, by way of contributions, to individuals and businesses who are creditors. These include the following:

- the CFT (expected to make consistent determinations of the amount of disposable income a debtor has and, therefore, the amount that they are able to pay in contributions);
- powers to encourage debtor cooperation, including the power to defer discharge. (In recent cases, the outcome from AiB applications to defer discharge has been better cooperation and more funds ingathered);
- powers to re-open bankruptcy cases after discharge (AiB expects that cases will only be re-opened where there is evidence to suggest that the debtor is able to pay a contribution and, therefore, that this provision should lead to an increase in funds ingathered);
- transfer of functions from the Sheriff courts (expected to drive efficiencies in the overall process and reduce creditor costs when applying for decisions).

67. AiB considers that, in keeping with the principle of 'those who can pay, should pay', the net overall financial implication of the Bill for creditors should be positive in that it should result in a more efficient process and lower costs. However it is not possible to quantify these benefits, at this time.

68. The Bill also has implications for bodies, individuals and businesses who have an interest in the practice and process of insolvency, as follows:

Electronic Sederunt Book

69. A trustee is required to retain documents relating to a bankruptcy ('the sederunt book') during the period of a bankruptcy and submit the sederunt book to AiB on discharge. AiB must retain the sederunt book for a period of six months after the debtor has been discharged from their bankruptcy. The Bill will enable trustees to retain and submit to AiB, sederunt books in electronic form. The implications of this provision will be a benefit to AiB and other trustees, in terms of a reduction in the storage and other costs associated with the retention of a large number of paper documents. The Scottish Government's position is that it is not able to quantify this benefit but, nevertheless, holds it to be a demonstrable example of the efficiency savings that will arise from a service fit for the 21st century.

Creditor claims within 120 days

70. The Bill will make provision to enable AiB to require creditors to submit claims within 120 days after notification by the trustee. Where a claim is not so submitted, creditors should have to explain why this was not possible or risk losing a dividend. The onus would be on the creditor to ensure that a claim was submitted complete with proof of debt, including their payment details, within the specified timescale. The financial implications of this provision will either be:

- That creditors will benefit from early receipt of dividend payments; or
- That creditors will lose out on potential dividend payments through failure to submit claims within the 120 day deadline.

71. The Scottish Government's position is that it will not be possible to estimate the number of creditors who might potentially lose out on dividends through failure to submit claims before the 120 days deadline – as this will depend on a number of factors outwith the AiBs control, not least creditor behaviour and their own, internal systems or controls. Also, in cases where creditors failed to submit claims, there would not necessarily be any evidence that they had failed to do so because the 120 days deadline had passed or because they had failed to do so for other reasons.

72. The Scottish Government also holds that any benefit arising from this provision – from creditors receiving dividends earlier than might otherwise have been the case – are not material to the overall financial implications of this Bill as the benefit relates to creditors receiving dividends sooner rather than receiving higher dividends. However, as with the provision for electronic copies of the sederunt books discussed at paragraph 69 above, the Scottish Government believes this to be another example of the efficiency savings that will arise from the Bill.

Transfer of functions from the Sheriff courts

73. The Bill provides for new procedures, as part of the transfer of bankruptcy administration functions from the Sheriff courts to AiB. As detailed above, AiB expects to recover the costs of operating these processes by charging fees, to be paid by the applicant. This does not necessarily represent a new cost on the applicant because the Sheriff courts currently charge a fee to carry

out these functions, described, generally as ‘notes in sequestration’. The current Sheriff court fee for notes in sequestration is £55.

74. AiB’s fees to carry out these functions will be set by a fees order ahead of the commencement of these provisions. It is not possible to estimate these costs, at this time, as the work to develop the necessary processes has not yet commenced. AiB expects to be able to make information on costs available when it brings forward the relevant fees order. Based on current working assumptions, AiB does not expect the level of fees set in relation to these new processes to exceed the current level set by the Sheriff courts.

Summary of cost estimates

75. Table 5 (below) sets out a summary of the cost implications and estimated additional costs provided in this financial memorandum:

Table 5

Provision	Cost	Costs requiring additional funding
Common Financial Tool (CFT)		
Cost of developing and delivering a CFT	£18,000 (excl. VAT) (based on 6 weeks of developer time at £3,000/week)	The costs requiring additional funding are estimated to be £18,000 . These will be one-off and not recurring costs and are expected to be incurred over a period from financial year 2013-14 – 2014-15
Minimal Asset Procedure (MAP)		
Cost of administering the MAP	£100 estimated unit cost per MAP case. Based on 3,481 LILA applications in 2012-13, this gives an estimated administration cost in the region > £348,100 per year.	These recurring costs will not require additional funding because the MAP replaces an existing AiB process.
Cost of developing and delivering systems to support the MAP	Based on the expected number of applications for each type of bankruptcy, an illustrative estimate of the development cost, solely in relation to the MAP, would be in the range £135,000 - £180,000	These costs will not require additional funding because the IT costs for the MAP will be met from the budget for the new CMS, the cost of which does not arise as a result of this legislation.
AiB Review function		
Administrative cost of carrying out reviews	In the range - £3,646 - £79,713 (based on the estimated cost of administering complaints – there will be fewer requests for reviews than complaints but reviews will	This change represents a new process for AiB. The figures provided are illustrative. It is not currently possible to quantify the costs requiring

	cost more)	additional funding. These will be recurring costs and are expected to be incurred post-commencement of this legislation, from financial year 2015-16 onwards
E-applications to AiB		
Cost of developing and delivering a web portal to enable E-applications to AiB	£24,000 - £30,000 (excl. VAT) (based on 8-10 weeks of developer time at £3,000 per week)	The costs requiring additional funding are estimated to be £24,000 - £30,000 . These will be one-off and not recurring costs and are expected to be incurred over a period from financial year 2013-14 – 2014-15
Transferring debtors from the MAP to full administration bankruptcy		
Cost of transfers from the MAP to full administration bankruptcy	£166.75 upfront cost/case (based on 8 hours of A3 time and 1 hour of B1 time to investigate and gather evidence to support transferring the case) Based on 774 transfers from LILA to full administration in 2012-13, this gives an estimated cost of £129,000	These costs will not require additional funding because the MAP replaces an existing AiB process for which the debtor pays a fee. These will be recurring costs and are expected to be incurred post-commencement of this legislation, from financial year 2015-16 onwards
Reopening cases after discharge		
Cost of reopening cases after discharge	£166.75 upfront cost/case (based on 8 hours of A3 time and 1 hour of B1 time to investigate and gather evidence to support re-opening the case) Based on 50 re-opened cases, this gives an estimated cost of £8,338	The costs requiring additional funding are estimated to be £8,338 . These will be recurring costs and are expected to be incurred post-commencement of this legislation, from financial year 2015-16 onwards
Deferring discharge		
Administrative cost of deferring discharge	£166.75 upfront cost/case (based on 8 hours of A3 time and 1 hour of B1 time to investigate and gather evidence to support deferral) £72.00 recurring cost/year of deferral (based on 4 hours of A3 time) AiB consider that it is unlikely that a case will be deferred for more than 2 years giving an	The costs requiring additional funding are estimated to be £933 based on 3 cases). These will be recurring costs and are expected to be incurred post-commencement of this legislation, from financial year 2015-16 onwards

	estimated overall cost of £311 per 2 year deferred discharge. Based on 50 re-opened cases, this gives an estimated cost of £933	
Withholding information from the Register of Insolvencies		
Cost of developing and delivering systems to modify the existing RoI platform to support withholding information	£24,000 (excl. VAT) (based on 8 weeks of developer time at £3,000 per week)	The costs requiring additional funding are estimated to be £24,000 . These will be one-off and not recurring costs and are expected to be incurred over a period from financial year 2013-14 – 2014-15
Financial Capability Education		
Cost of developing a national standard	£8,300 (estimates based on discussions with stakeholders)	These costs will not require additional funding because they will be displaced from the existing MATRICS budget. These will be one-off and not recurring costs and are expected to be incurred over a period beginning in financial year 2013-14.
Cost of developing training modules	£13,000 (estimates based on discussions with stakeholders)	These costs will not require additional funding because they will be displaced from the existing MATRICS budget. These will be one-off and not recurring costs and are expected to be incurred over a period beginning in financial year 2013-14.
Estimated total costs	£712,317 - £839,384	
	Estimated costs requiring additional funding	£75,271 - £81,271

These documents relate to the Bankruptcy and Debt Advice (Scotland) Bill (SP Bill 34) as introduced in the Scottish Parliament on 11 June 2013

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 11 June 2013, the Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney MSP) made the following statement:

‘In my view, the provisions of the Bankruptcy and Debt Advice (Scotland) Bill would be within the legislative competence of the Scottish Parliament.’

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 11 June 2013, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

‘In my view, the provisions of the Bankruptcy and Debt Advice (Scotland) Bill would be within the legislative competence of the Scottish Parliament.’

These documents relate to the Bankruptcy and Debt Advice (Scotland) Bill (SP Bill 34) as introduced in the Scottish Parliament on 11 June 2013

BANKRUPTCY AND DEBT ADVICE (SCOTLAND) BILL

EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -
www.scottish.parliament.uk

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by APS
Group Scotland.

ISBN 978-1-78351-351-2