

Economy and Fair Work Committee

SSI cover note

31st Meeting 2022, (Session 6), 21 December 2022

Title of Instrument: Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023

Laid Date: 24 November 2022

Reporting deadline: 18 January 2023

Type of instrument: Affirmative

Parliamentary procedure:

The affirmative procedure means an instrument cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).

Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee (usually the committee which examined the Bill for the Act that the SSI is made under or whose remit is most aligned).

It is usual practice for the lead committee to take evidence from the relevant Scottish Minister and officials in advance of formally considering the motion to approve the instrument. During the evidence session, the committee can ask the minister and any officials questions about the instrument.

Next, the Minister proposes, by motion, that the lead committee recommend the instrument or draft instrument be approved. The committee has up to 90 minutes to debate the motion. Officials are not allowed to speak in any debate.

The lead committee must report its decision on the motion to Parliament within 40 days of the instrument being laid. If the Committee agrees the motion and recommends the instrument should be approved, that recommendation is put to a vote in the Chamber. If the lead committee does not approve the motion to approve an instrument, it reports that fact to the Parliament and it is then for the Parliamentary Bureau to decide whether MSPs should vote on it in the Chamber.

Purpose

1. The Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023 aim to update and improve existing statutory debt solutions in Scotland by amending—
 - [the Bankruptcy \(Scotland\) Act 2016](#) (the 2016 Act);
 - [the Debt Arrangement Scheme \(Scotland\) Regulations 2011](#); and
 - [the Bankruptcy Fees \(Scotland\) Regulations 2018](#).
2. The Regulations are attached at **Annexe A**, the Policy Note is attached at **Annexe B**, and a Business and Regulatory Impact Assessment is attached at **Annexe C**.

The Regulations

3. Regulation 2 amends section 2(2) of the 2016 Act, removing the minimum debt threshold for entry into a [Minimal Asset Process \(MAP\) bankruptcy](#). The minimum debt threshold is currently £1,500.
4. Regulation 3(2) amends the Debt Arrangement Scheme (Scotland) Regulations 2011. It extends the application criteria for the [Debt Arrangement Scheme](#) (DAS) to include a reduction in disposable income of 50% or more for a deferment of payment of up to 6 months.
5. Regulation 3(3) updates the relevant form contained in schedule 1 of the Debt Arrangement Scheme (Scotland) Regulations 2011 to reflect these changes.
6. Regulation 4(2) amends the Bankruptcy Fees (Scotland) Regulations 2018 to extend the criteria for waiving bankruptcy application fees, including the removal of all application fees for MAP bankruptcy.
7. Regulation 4(3) amends the Bankruptcy Fees (Scotland) Regulations 2018 to increase the deposit that must be paid by creditors, where the Accountant in Bankruptcy is nominated as trustee in bankruptcy, to £750 (replacing the current fee of £300).

Delegated Powers and Law Reform Committee consideration

8. The Delegated Powers and Law Reform Committee [considered the instrument at its meeting on 6 December](#) and made no recommendations.

For decision

9. The Committee must decide whether or not to agree the motion to approve the regulations and report to Parliament by 18 January 2023.

**Economy and Fair Work Committee Clerks
16 December 2022**

Draft Regulations laid before the Scottish Parliament under section 225(4) of the Bankruptcy (Scotland) Act 2016, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2023 No.

INSOLVENCY

BANKRUPTCY

DEBT

The Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023

Made - - - - 2023

Coming into force - - 6th February 2023

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 5(4) and 7 of the Debt Arrangement and Attachment (Scotland) Act 2002(a), sections 2(5) and 205(1) of the Bankruptcy (Scotland) Act 2016(b) and all other powers enabling them to do so.

A draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament in accordance with section 225(4) of the Bankruptcy (Scotland) Act 2016(c).

Citation and commencement

1. These Regulations may be cited as the Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023 and come into force on 6 February 2023.

Amendment of the Bankruptcy (Scotland) Act 2016

2. In section 2(2)(b)(i) of the Bankruptcy (Scotland) Act 2016 (sequestration of estate of living debtor) for “£1,500 or such other” substitute “such”.

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- (a) 2002 asp 17 (“the 2002 Act”). Section 5(4) of the 2002 Act was amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 asp 3 (“the 2007 Act”), section 212. Section 7 was amended by the 2007 Act, section 212 and by the Bankruptcy and Debt Advice (Scotland) Act 2014 asp 11, sections 3 and 53. Section 9(1) of the 2002 Act contains a definition of “prescribed” relevant to the exercise of statutory powers under which these Regulations are made.
- (b) 2016 asp 21 (“the 2016 Act”). Section 228(1) of the 2016 Act contains a definition of “prescribed” relevant to the exercise of statutory powers under which these Regulations are made.
- (c) The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). These Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

Amendment of the Debt Arrangement Scheme (Scotland) Regulations 2011

3.—(1) The Debt Arrangement Scheme (Scotland) Regulations 2011(a) are amended as follows.

(2) In regulation 37 (grounds for variation)—

(a) in paragraph (1)(h)(b)—

(i) omit “specified in paragraph (3)”,

(ii) after “more” insert “, and it is envisaged the disposable income will be reduced for the period of deferment”, and

(b) omit paragraph (3).

(3) In Form 4(c) of schedule 1 (application for variation of a debt payment programme) for section 3h (grounds for variation) substitute section 3h set out in the schedule of these Regulations.

Amendment of the Bankruptcy Fees (Scotland) Regulations 2018

4.—(1) The Bankruptcy Fees (Scotland) Regulations 2018(d) are amended as follows.

(2) After regulation 7A(e) (exemption from fees for debtors in receipt of certain benefits), insert—

“Exemption from bankruptcy application fees for debtors assessed as having no surplus income

7B. Despite item 22 in Part 2 of the table of fees, no fee is payable to AiB under that item for the determination of a debtor application in relation to a debtor who, at the date of making the application, is assessed by the common financial tool(f) as having no surplus income.”.

(3) In Part 2 of the schedule (fees for other functions of the Accountant in Bankruptcy)—

(a) in column 2 of item 1(b) for “£300” substitute “£750”,

(b) in column 3 of item 1(b) for “£200” substitute “£300”,

(c) for item 22 substitute—

“22. For considering determination of a debtor application in relation to a debtor to whom section 2(2) of the Act does not apply £150”.

(4) Paragraphs (2) and (3) have no effect in relation to sequestrations as regards which the petition was presented or the debtor application was made before 6 February 2023.

Name

Authorised to sign by the Scottish Ministers

St Andrew’s House

Edinburgh

Date

(a) S.S.I. 2011/141.

(b) Paragraph (1)(h) was amended by S.S.I. 2013/225, S.S.I. 2014/294 and S.S.I. 2018/297.

(c) Form 4 was relevantly amended by S.S.I. 2018/297.

(d) S.S.I. 2018/127.

(e) Regulation 7A was inserted by S.S.I. 2021/148, regulation 9.

(f) The “common financial tool” is defined in section 89 of the 2016 Act (see S.S.I. 2016/397).

SCHEDULE

Regulation 3(3)

Amendment to Form 4 (application for variation of a debt payment programme)

- h The debtor, or in the case of a joint DPP the debtors, wishes to defer payment for a period not exceeding 6 months, with the period of the DPP to be extended accordingly, as the debtor's disposable income has reduced by 50% or more and it is envisaged the disposable income will be reduced for the period of deferment. Yes No

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Bankruptcy (Scotland) Act 2016 (“the 2016 Act”), the Debt Arrangement Scheme (Scotland) Regulations 2011 (“the DAS Regulations”) and the Bankruptcy Fees (Scotland) Regulations 2018 (“the Bankruptcy Fees Regulations”).

Regulation 2 amends section 2(2) of the 2016 Act to remove the minimum debt threshold of £1,500 required for sequestration of an estate to be carried out by debtor application (known as the “minimal asset process”).

The DAS Regulations provide for a scheme for the repayment of debts in Scotland (“the Debt Arrangement Scheme”). They provide for the procedure and forms in respect of a repayment arrangement under the scheme, which is described as a debt payment programme (“DPP”). Regulation 3(2) extends the circumstances under which a DPP may be varied. Regulation 3(3) updates Form 4 (application for variation of a debt payment programme) of the DAS Regulations.

Regulation 4(2) inserts a new regulation 7B in the Bankruptcy Fees Regulations which provides an exemption from debtor application fees for debtors assessed as having no surplus income. Regulation 4(3) amends the table of fees in the schedule of the Bankruptcy Fees Regulations. The fee payable for administration of a petition following award of sequestration where the Accountant in Bankruptcy is the trustee is £750 (replacing the fee of £300). The fee payable in respect of a debtor application in relation to a debtor to whom the minimal asset process under section 2(2) of the Act applies is removed. Regulation 4(4) provides a saving for petitions and applications for sequestration lodged before 6 February 2023.

A Business and Regulatory Impact Assessment has been prepared and is available online at www.legislation.gov.uk.

POLICY NOTE

The Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023

SSI 2023/XXX

1. The above instrument is made by Scottish Ministers in exercise of the powers conferred by sections 5(4) and 7 of the Debt Arrangement and Attachment (Scotland) Act 2002, sections 2(5) and 205(1) of the Bankruptcy (Scotland) Act 2016 and all other powers enabling them to do so. The instrument is subject to the affirmative procedure.

The purpose of this instrument is to extend the application criteria for a payment break in the Debt Arrangement Scheme where there is a reduction in disposable income which may be caused by an increase in living costs. It removes the minimum debt threshold for entry to a Minimal Asset Process (MAP) bankruptcy and extends the criteria for waiving bankruptcy application fees including the removal of all application fees for MAP bankruptcy. The instrument increases the deposit that must be paid by creditors where AiB is nominated as trustee in bankruptcy following a court petition.

Policy Objectives

2. The aim of the Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023 is to amend and improve the existing statutory debt solutions in Scotland. These changes are aimed at: providing improved access to debt relief for the most financially vulnerable through MAP bankruptcy; providing additional protections to those participating in a debt payment programme under the Debt Arrangement Scheme (DAS); to promote the sustainability and success of these programmes where increased living costs impact on the ability to meet payments; providing wider access to fee exemption in both Full Administration and MAP routes to bankruptcy; and increasing the deposit that must be paid by creditors where Accountant in Bankruptcy (AiB) is nominated as trustee in bankruptcy following a court petition - with the aim of limiting the pressures on the public purse created in cases where no funds are recovered through the bankruptcy process and by the implementation of reforms to reduce income derived from bankruptcy application fees.
3. The specific measures included to improve access to MAP bankruptcy include the removal of the minimum debt level of £1,500 that currently forms part of the eligibility criteria. Additionally, the criteria for fee exemption for those applying for bankruptcy is extended to include those who, at the date of making the application, have been assessed by the Common Financial Tool as having no surplus income. This is additional to the existing fee exemption that applies to those in receipt of certain benefits. DAS measures provide for additional criteria under which a deferment of payment of up to 6 months can be accessed. This now includes applications resulting from a reduction in disposable income of 50% or more and it is envisaged that the disposable income will be reduced for the period of deferment.
4. In brief, these Regulations amend the Bankruptcy (Scotland) Act 2016, the Debt Arrangement Scheme (Scotland) Regulations 2011 and the Bankruptcy Fees (Scotland) Regulations 2018 to:

- Remove the minimum debt level to access MAP bankruptcy;
 - Extend the criteria for applying for a payment break in DAS to allow for a reduction in disposable income;
 - Extend the application fee waiver for individuals who have been assessed by the Common Financial Tool as having no surplus income; and
 - Increase the fee payable for the administration of sequestration where AiB is appointed trustee following the award of sequestration from £300 to £750.
5. The changes to fees made by these Regulations have no effect in relation to sequestrations where the petition was presented or the debtor application was made before 6 February 2023.
 6. In relation to the removal of the minimum debt level to access MAP bankruptcy, the policy intention is for this to apply to all applications submitted on or after the date these Regulations come into force. This is achieved without need for specific saving provision as the wording of the provision being amended (section 2(2)(b)) provides that these debt levels apply at the date the application is made. In any event, there would be no effect in practice as if a debtor met the criteria before this amendment comes into force then they would continue to meet the criteria after since the minimum threshold is being removed altogether.
 7. In relation to the amendment extending the criteria for applying for a payment break in DAS, the policy intention is for this to apply for all new and existing DAS programmes. This is achieved without need for specific provision since regulation 37 allows applications for variation of a debt payment programme to be made and, as of 6 February 2023, the extended criteria will be available regardless of when the programme was entered into.

Background

Background on bankruptcy

8. Bankruptcy or sequestration is the state of being legally and publicly declared unable to meet debts when they fall due. Declaration of bankruptcy, by either a sheriff or the Accountant in Bankruptcy, results in the debtor's estate being transferred to a trustee to administer for the benefit of the individual's creditors. Some items will be exempt from transfer including items deemed essential. In administering the estate, the trustee may ingather funds and sell non-essential assets or property. The trustee will distribute these ingathered funds in order of priority (see section 129 of the 2016 Act) with bankruptcy administration fees being paid first.
9. This process has the effect of removing the liability to pay debts incurred prior to the date of bankruptcy. This is subject to a number of exceptions, including student loans and fines. There may be a requirement to make some payment from disposable income towards the pre-bankruptcy debts. At the end of bankruptcy, a debtor is afforded a fresh start.

Background on the Debt Arrangement Scheme

10. The Debt Arrangement Scheme was introduced on 30 November 2004 and provides a facility for the orderly repayment of debt. It is a formal debt solution that allows people

who are unable to pay their debts as they fall due, but who have a reasonable level of surplus income, to pay those debts over a longer period. This is achieved through a debt payment programme, helping those with debt problems manage their way out of debt and offering them the potential to start over when their debts are cleared. The Debt Arrangement Scheme provides protection from the threat of any action to enforce payment of the debt. All interest, fees and charges are frozen from the date of application and written off at the end of the debt payment programme provided that the programme is completed.

Consultation

11. In 2019 the Scottish Government committed to take forward a wide-ranging review of Scotland's statutory debt solutions. The initial stage of this review culminated in immediate changes being introduced through the Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021. The second stage of this policy review brought together three stakeholder led working groups to examine the existing statutory debt solutions and determine where improvements could be made. The working groups comprised sector specialists with involvement in debt advice and the operation of debt solutions and included money advice professionals, insolvency professionals, creditor bodies and academics. In its final report the group concentrating on bankruptcy and cross-cutting issues recommended that the minimum debt threshold in MAP bankruptcy be removed, allowing anyone experiencing problems of unsustainable debt, particularly the most financially vulnerable, access to debt relief. The Scottish Government accepted the recommendation made and has proposed that this change be introduced. This formed part of the response to the recommendations put forward by the working groups which was published for consultation on 12 August 2022. The responses highlight strong support for this change, with 66% of respondents agreeing with the proposal and only 15% of respondents indicating disagreement.
12. Further consultation has been undertaken by the Scottish Parliament through the recent inquiry into low income and debt conducted by the Social Justice and Social Security Committee. This inquiry included testimonies, via focus groups, from people on low incomes who have experience of debt. There was also evidence taken at Committee sessions from debt advisers, public sector and third sector organisations, creditors, regulators and the Accountant in Bankruptcy. The Committee's final report "[Robbing Peter to pay Paul: Low income and the debt trap](#)" recommended that the minimum debt threshold for access to MAP bankruptcy be removed. While welcoming the action taken to reduce and remove fees for debtor application bankruptcy, the report also recommended that fee waivers be extended to applicants who had been assessed as having no surplus income using the Common Financial Tool.
13. The requirement to take further action to promote the sustainability and success of debt payment programmes under DAS has been identified by AiB as the DAS administrator and key stakeholders involved in the delivery of the scheme. The existing options for applying for a deferral of payments (or payment break) of up to 6 months are limited and do not allow for significant and unplanned increases in expenditure, such as the recent significant increases in energy bills, resulting in difficulty in meeting scheduled payments under DAS. The issue was discussed at the most recent meeting of the DAS Review Board held in August 2022. This is a sector specialist group, chaired by AiB, which brings together a range of stakeholders with an interest in DAS delivery. This includes debt advice specialists, insolvency and DAS professionals and creditor organisations. There was

consensus on the need to take further action on payment breaks to provide some additional protection to clients that have entered a DAS debt payment programme and who have been impacted by the on-set of the cost of living crisis.

14. There has been targeted consultation on limited reform to the fee arrangements associated with bankruptcy administration. This action is necessary to ensure that AiB administration costs, where it acts as the trustee in bankruptcy, are recovered where possible, thereby avoiding any significant additional burden on the public purse considering the fiscal constraints currently being faced. In approximately half of current creditor petition bankruptcy awards administered by AiB, there are no funds collected that can pay either the debt or the cost of AiB's role in administering the case. In the absence of any mitigating action, these costs are met by the public purse. The proposal to increase the deposit creditors must provide where AiB is nominated as trustee has been discussed with stakeholders. A considerable proportion of creditor petition bankruptcies are instigated by local authorities for council tax debt and there has been specific consultation with COSLA on this reform. No specific concerns have been raised. The fee levied in these cases is, in effect, a deposit which will be returned to the petitioning creditor in full, with priority over other creditors, where funds have been realised in the bankruptcy.
15. The Minister for Public Finance, Planning and Community Wealth hosts a regular cross sectoral working group involving key stakeholders. This met most recently on 3 November 2022 where the proposals included in this instrument were discussed. There was a high level of support for reform in these areas.

Impact Assessments

16. A Business and Regulatory Impact Assessment has been completed on the effects of the instrument and published when this instrument was laid before the Parliament. A copy can be found on www.legislation.gov.uk.
17. While no equality issues were raised as part of the consultation process a full Equality Impact Assessment (EQIA) has been completed and is published on the Scottish Government website . There have been no negative impacts identified for any of the equality groups and the measures included have not been assessed as directly or indirectly discriminatory under the Equality Act 2010. The changes introduced are primarily associated with reducing cost and improving accessibility to debt relief for the most financially vulnerable. Bankruptcy and DAS are accessible to all, irrespective of their age, race, gender, disability or sexual orientation.
18. AiB administers each bankruptcy and DAS debt payment programme on an individual basis and has appropriate measures in place to ensure that the collation and transmission of statistics and information regarding individuals are completed sensitively and in accordance with the law. AiB regularly consults with stakeholders, service users and the public on reforms to debt solutions to ensure that the needs of all groups of society in bankruptcy are considered and that no groups are disadvantaged or excluded more than others.
19. In view of the Fairer Scotland Duty regarding socio-economic inequalities which exists under the Equality Act 2010, the impact of these proposals on those with low wealth and low income has been considered. The proposed changes will make bankruptcy more

accessible and removes perceived barriers to bankruptcy by further removing fees for the applicants. Removing fees for those assessed as having no surplus income through the Common Financial Tool ensures the protection bankruptcy offers is more accessible than ever to the most financially vulnerable.

Financial Effects

20. The changes introduced to the fees levied where AiB is appointed trustee following the award of bankruptcy in the court will impact on the overall funding of AiB and the operation of the existing fees order. This will reduce the burden on the public purse in funding any deficit in the Scottish bankruptcy system. Although this change will increase the initial fees charged to creditors in those cases where AiB is appointed as trustee, these costs are reimbursed in full where funds have been realised during the bankruptcy process. A Business and Regulatory Impact Assessment has been completed outlining these funding implications.
21. The extension of the current fee remission criteria to include those who have no disposable income will have limited financial impact on Accountant in Bankruptcy who will see a small reduction in the fees collected from those seeking their own bankruptcy. There will be a positive financial impact for those that meet the revised fee waiver criteria. Although the changes to the payment break criteria in DAS will have some impact on creditors in terms of the payment scheduling, practical implications would see debts being repaid over a longer timescale. In addition, the flexibility afforded through payment deferral should improve the sustainability of payments programmes, resulting in more DAS cases concluding successfully. This is a beneficial outcome for creditors.

**The Accountant in Bankruptcy on behalf of the Scottish Government
November 2022**

Annex

Specific Provisions

1. **Regulation 2:** Removes the Minimal Asset Process bankruptcy debt threshold – allowing access to this form of bankruptcy for those with lower levels of unsustainable debt.
2. **Regulation 3:** Introduces a new criteria for payment variation (payment break) applications in the Debt Arrangement Scheme where disposable income has reduced by 50% or more and it is envisaged that the disposable income will be reduced for the period of the deferment of payments.
3. **Regulation 4:**
 - a. Extends the eligibility for fee waiver in bankruptcy applications to include those that have been assessed by the Common Financial Tool as having no surplus income.
 - b. Increases the creditor fee levied where AiB is appointed trustee following a court award of sequestration from £300 to £750.

Business and Regulatory Impact Assessment

Title of Proposal

The Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023

Purpose and intended effect

These Regulations will make provision to ensure that legislation relating to Scottish statutory debt solutions is fit for purpose and provides the necessary support and protection to the people of Scotland.

Background

The Scottish Government committed to a policy review of the statutory debt solutions (moratorium protection, bankruptcy, Protected Trust Deeds and the Debt Arrangement Scheme) with the aim of further enhancing and improving our system. This policy review was organised into three stages. The first stage review concluded with immediate changes being introduced through the [Bankruptcy \(Miscellaneous Amendments\) \(Scotland\) Regulations 2021](#). These included important measures to improve access to bankruptcy to reduce or remove application fees for those in need of debt relief. The second stage was undertaken by stakeholder led working groups. Their remit was to look at the operation of existing statutory debt solutions, aimed at providing recommendations and options for improvement. Included within their recommendations was the removal of the minimum debt level for entry to a Minimal Asset Process (MAP) bankruptcy.

In addition to this review the Scottish Parliament's Social Justice and Social Security Committee produced a report: [Robbing Peter to pay Paul: Low income and the debt trap](#) following an inquiry into 'Low income and debt problems'. The report recommended the minimum debt level for MAP bankruptcy be removed. The Scottish Government recognises that the removal of the minimum debt level entry for a MAP bankruptcy is a positive step in widening access to debt relief for those most financially vulnerable, particularly given the current cost of living concerns.

The Social Justice and Social Security Committee also recommended that the bankruptcy application fee be removed for individuals who have been assessed as having no surplus income using the Common Financial Tool. The Scottish Government agrees with this recommendation and recognises that the application fee for the most financially vulnerable could potentially be a barrier to accessing debt relief and given the increased cost of living, the removal of such a potential barrier would be a positive step.

Cost of living increases have the potential to impact on those who are utilising the Debt Arrangement Scheme (DAS) to pay debts over an extended period. Reductions in disposable income can threaten the sustainability of payment programmes under DAS – successfully completed DAS payments programmes create benefits for creditors and those who have paid the debts. This additional

measure will allow breaks in payment, which will include where living costs have impacted on the ability to meet contributions. Those participating in DAS benefit from the prevention of debt recovery action, freezing of interest and charges and the ability to protect assets including the family home. There is a risk that cost of living increases may put significant numbers of these payment programmes at risk of revocation, placing those involved in a vulnerable position. Increasing flexibility in the criteria for an individual to apply for a variation to defer payments in DAS would provide greater levels of protection for those who have experienced an unforeseen increase in their expenditure.

The action on increasing the creditor petition deposit is necessary to ensure that AiB administration costs where it acts as the trustee in bankruptcy are recovered where possible, thereby avoiding any significant additional burden on the public purse. This is important considering the fiscal constraints currently being faced. In approximately half of current creditor petition bankruptcy awards administered by AiB, there are no funds collected that can pay either the debt or the cost of AiB's role in administering the case. In the absence of any mitigating action, these costs are met by the public purse.

Objective

The cost of living crisis is having an effect on individuals within society, in particular the most vulnerable.

These proposals will help people in severe financial difficulty to alleviate some of their concerns while potentially giving them a fresh start by having easier access to debt relief. Additionally, they will provide a mechanism help ensure that DAS payment programmes may remain in place during challenging periods of increased living costs.

The measures included are as follows:

- Remove the minimum debt level to access MAP bankruptcy;
- Extend the criteria for applying for a payment break in DAS to allow for a reduction in disposable income including, for example, where this is due to increases in living costs;
- Extend the application fee waiver for individuals who have been assessed by the Common Financial Tool as having no surplus income; and
- Increase the fee (deposit) payable for the administration of sequestration where AiB is appointed trustee following the award of sequestration from £300 to £750.

Rationale for Government intervention

The Scottish Government recognises the responsibility it has to take action to help the people of Scotland by ensuring its debt management and debt relief solutions are fit for purpose and are accessible to those who need help, particularly with the current cost of living.

These Regulations contribute to the Vision, Ambition and Programmes set out in Scotland's National Strategy for Economic Transformation aimed at building a wellbeing economy:

Vision: A Wellbeing Economy - by ensuring our statutory debt solutions are available and fit for purpose for those who need it

Ambition: Fairer – by ensuring that our statutory debt solutions are designed to help people in severe financial difficulty and give them a fresh start and improved life chances, while helping provide predictability and confidence for lenders.

Programmes for Action: A Fairer and More Equal Society - by making our statutory debt solutions as accessible to as many people as possible and sustainable to meet the needs of the people of Scotland.

Consultation

The timescale for these regulations has not allowed for full consultation on all proposals, which would apply under normal circumstances. However, a significant level of stakeholder consultation has been conducted and there is stakeholder agreement that these reforms are both beneficial and essential to support the people of Scotland, particularly in the context of the current cost of living crisis.

In 2019 the Scottish Government committed to take forward a wide-ranging review of Scotland's statutory debt solutions. The initial stage of this review culminated in immediate changes being introduced through the Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021. The second stage of this policy review brought together three stakeholder led working groups to examine the existing statutory debt solutions and determine where improvements could be made. The working groups comprised of sector specialists with involvement in debt advice and the operation of debt solutions and included money advice professionals, insolvency professionals, creditor bodies and academics. In its final report the group concentrating on bankruptcy and cross-cutting issues recommended that the minimum debt threshold in MAP bankruptcy be removed, allowing anyone experiencing problems of unsustainable debt, particularly the most financially vulnerable, to access to debt relief. The Scottish Government accepted the recommendation made and has proposed that this change be introduced. This formed part of the response to the recommendations put forward by the working groups which was published for consultation on 12 August 2022. The responses highlight strong support for this change, with 66% of respondents agreeing with the proposal and only 15% of respondents indicating disagreement.

Further consultation has been undertaken by the Scottish Parliament through the recent inquiry into low income and debt conducted by the Social Justice and Social Security Committee. This inquiry included testimonies, via focus groups, from people on low incomes who have experience of debt. There was also evidence taken at Committee sessions from debt advisers, public sector and third sector organisations, creditors, regulators and the Accountant in Bankruptcy. The Committee's final report "[Robbing Peter to pay Paul: Low income and the debt](#)

[trap](#)” recommended that the minimum debt threshold for access to MAP bankruptcy be removed. While welcoming the action taken to reduce and remove fees for debtor application bankruptcy, the report also recommended that fee waivers be extended to applicants who had been assessed as having no surplus income using the Common Financial Tool.

The requirement to take further action to promote the sustainability and success of debt payment programmes under DAS has been identified by AiB as the DAS administrator and key stakeholders involved in the delivery of the scheme. The existing options for applying for a deferral of payments (or payment break) of up to 6 months are limited and do not allow for significant and unplanned increases in expenditure resulting in difficulty meeting scheduled payments under DAS. The issue was discussed at the most recent meeting of the DAS Review Board held in August 2022. This is a sector specialist group, chaired by AiB, which brings together a range of stakeholders with an interest in DAS delivery. This includes debt advice specialists, insolvency and DAS professionals and creditor organisations. There was consensus on the need to take further action on payment breaks to provide some additional protection to clients that have entered a DAS debt payment programme and who have been impacted by the on-set of the cost of living crisis.

There has been targeted consultation on limited reform to the fee arrangements associated with bankruptcy administration. This work is necessary to ensure that AiB administration costs where it acts as the trustee in bankruptcy are recovered where possible, thereby avoiding any significant additional burden on the public purse considering the fiscal constraints currently being faced. In approximately half of current creditor petition bankruptcy awards administered by AiB, there are no funds collected that can pay either the debt or the cost of AiB’s role in administering the case. In the absence of any mitigating action, these costs are met by the public purse. The proposal to increase the deposit creditors must provide where AiB is nominated as trustee has been discussed with stakeholders. A considerable proportion of creditor petition bankruptcies are instigated by local authorities for council tax debt and there has been specific consultation with COSLA on this reform. No specific concerns have been raised. The fee levied in these cases is, in effect, a deposit which will be returned to the petitioning creditor in full, with priority over other creditors, where funds have been realised in the bankruptcy.

The Minister for Public Finance, Planning and Community Wealth hosts a regular cross sectoral working group involving key stakeholders. This met most recently on 3 November 2022 where the proposals included in this instrument were discussed. There was a high level of support for reform in these areas.

Options

There are 3 main options here:

1. Immediate action is taken to draft and lay secondary legislation. This would enable provisions that are predominantly aimed at mitigating some of the impacts of cost of living in relation to debt solutions to be implemented as soon as possible.

2. Deferring implementation of reforms and considering alongside other issues coming forward as part of the more general review of debt solutions – this would delay the implementation of these measures.
3. Do nothing. The measures here have been widely welcomed and some are included as recommendations of the Social Security and Social Justice Committee. There are benefits to progressing this legislation in early course.

Scottish Firms Impact Test

AiB and Scottish Ministers have engaged with stakeholders through various working groups. The majority of stakeholders are in favour of introducing this secondary legislation. Consequently, no significant concerns have been raised in relation to the proposals contained in the Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023.

Sectors and groups affected – Debtors, creditors, insolvency practitioners, the money advice sector and the broader Scottish economy.

Funding Implications

Any changes being introduced to the bankruptcy application fee structure will impact on the funding of AiB and the operation of the existing fees order. The fee structure in place at the moment is designed to ensure where possible that AiB's costs incurred through determining bankruptcy applications, acting as trustee in bankruptcies and in supervising all the debt solutions are met by an appropriate fees order. This is designed to ensure AiB's costs are recovered without AiB becoming reliant on core government funding: any change to the fee structure could impact on this. As such, the financial impact of the proposed changes is outlined below.

These regulations propose further measures to remove bankruptcy application fees – extending the criteria for fee waiver from those in receipt of certain benefits to all those that have been assessed as having no surplus income using the Common Financial Tool.

The primary impact of fee reduction and waiver in relation to AiB funding was seen following the introduction of the initial action in this area – first introduced through the Coronavirus (Scotland) (No.2) Act 2020 and made permanent through the Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021. The provisions in this instrument will further reduce fee income – the changes in effect remove all application fees for MAP bankruptcy. The reduction in income is dependent on activity levels – the estimate is that the new application fee waiver criteria will result in a reduction in income in the range of £15,140 to £46,680 (based on low to high activity level estimates).

The more significant issue relates to the AiB administration costs in cases where AiB is the trustee following bankruptcy awarded in the sheriff court and where no funds are subsequently generated to recover these costs. Analysis of all of these

bankruptcies that closed in the financial years 2019-20, 2020-21 and 2021-22 shows that 56.6% of these cases resulted in no recovery of the administration costs – at an average cost to the public purse for each case of £1,997.36 in the absence of any mitigating action through petitioning creditor fees (deposits).

This data has been used to forecast impact on AiB income and the associated requirement for the public purse to meet the cost of bankruptcy administration. The table below highlights scenarios on AiB income under the current and revised fee arrangements based on low, medium and high activity levels – based on actual figures in recent years.

Table: Creditor Petition and MAP fee analysis

Example cases volumes awarded [note 1]	Low	Medium	High
Number of Creditor Petitions (CP) awarded	164	994	1,721
Total CP fee ingathered under current structure (£) [note 2]	73,800	447,300	774,450
Total CP fee ingathered under proposed structure (£) [note 3]	147,600	894,600	1,548,900
Number of MAP bankruptcies awarded	1,514	2,181	4,668
Total MAP fee ingathered under current structure (£) [note 4]	15,140	21,810	46,680
Total MAP fee ingathered under proposed structure (£) [note 5]	0	0	0
Total fees ingathered under current structure (£)	88,940	469,110	821,130
Total fees ingathered under proposed structure (£)	147,600	894,600	1,548,900

Notes:

note 1: Low, Medium and High volume years are based on historic case volumes in 2020-21, 2018-19 and 2011-12 respectively. It should be noted that MAP did not exist in 2011-12 and therefore the example volume for this year is based on LILA bankruptcies

note 2: The current Creditor Petition fee structure refers to the total fee of £450. This includes the initial fee of £150 and the subsequent fee of £300.

note 3: The proposed Creditor Petition fee structure refers to a proposed total fee of £900. This includes the initial fee of £150 and a subsequent fee of £750.

note 4: The current MAP fee structure refers to the fee of £50. From the Official Statistics published by AiB, we know that approximately 80% of MAP cases do not require an application fee to be paid due to exemptions. This has been taken into account when calculating these figures and therefore the total MAP fee ingathered is based on 20% of these estimated volumes being subject to a fee.

note 5: The proposed MAP fee structure refers to the removal of all application fees for MAP bankruptcy.

Taking into account the assessment on the cost to the public purse arising in the estimated 56.6% of creditor petition bankruptcies that do not realise the funds to

recover costs, the total cost to the public purse without any mitigating action would be:

£185,754 – low activity

£1,124,514 – medium activity

£1,945,429 – high activity

This shows that the proposed action to increase the subsequent creditor petition fee from £300 to £750 will not fully mitigate the cost to the public purse under each of the scenarios presented – however, there is a significant shortfall that would need to be met in the absence of any action. This would amount to an £1,124,299 annual shortfall in a high activity scenario based on the difference between the total cost to the public purse of £1,945,429 less the fees ingathered under the current structure which total £821,130. This sum reduces to £396,529 with the revision to the fee structure in force.

While there is an impact arising from the increase in the fees levied against creditors in court bankruptcies where AiB is appointed as trustee, these costs are fully recoverable where sufficient funds are realised in the bankruptcy.

The equivalent creditor fee/deposit in force in [England and Wales](#) was increased from £990 to £1,500 with effect from 1 November 2022.

Whilst we recognise the increase in creditor petition fees will have financial impact on creditors, on account of the issues set out here, and of the nature of the petition fee as a deposit that is returnable where there are sufficient funds in the debtor's estate, we consider this is reasonable and proportionate in the circumstances.

Competition Assessment

The Competition and Markets Authority competition filter questions have been considered – in particular, whether the proposals limit suppliers either directly or indirectly and reduce their ability and/or incentives to compete.

We can confirm that these changes will apply equally to all who engage with the Scottish insolvency and statutory debt solutions system. There should be no competitive advantage to any particular individual or group as a consequence of the introduction of these Regulations. These reforms proposed are to improve access to debt solutions and alleviate the pressures on those seeking to repay their debt through DAS.

Test run of business forms

The changes being introduced will only require minor adjustments to existing statutory forms and guidance – no new forms are envisaged.

Legal Aid Impact Test

The Scottish Legal Aid Board has confirmed that they do not foresee any impact on the legal aid fund as a result of the provisions in the regulations.

Enforcement, sanctions and monitoring

The Scottish Government will carefully monitor how these regulations are working in practice by carrying out reviews and seeking feedback from stakeholders.

Accountant in Bankruptcy (AiB) has an existing pool of engaged stakeholders representing all sectors with an interest in debt and the money advice sector in Scotland.

Implementation and delivery plan

If approved by the Scottish Parliament, the Bankruptcy (Miscellaneous Amendment) (Scotland) Regulations 2023 will come into force on 6 February 2023.

AiB will publish the introduction of the regulations on their website. The new regulations will also be incorporated in the legislation published on the legislation.gov.uk website. AiB will, where appropriate, prepare and publish, on their website, guidance to support stakeholders when implementing the new legislation.

Post-implementation review

To evaluate the impact of the new legislation the Scottish Government has given an undertaking that AiB will carry out a review of these provisions after they have been in place for an appropriate amount of time. This will involve the analysis of statistical data and feedback from stakeholders collated by AiB.

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

Summary and recommendation

Option	Total benefit per annum; economic, environmental, social	Total cost per annum; economic, environmental, social, policy and administrative
1. Immediate action is taken to draft and lay secondary legislation	The proposals would ensure immediate help is given to people in severe financial difficulty because of cost of living - alleviating some concerns by potentially giving them a fresh start	While the reforms provide social benefit, there remains a cost to the public purse in administration of bankruptcy processes – as highlighted in the financial implication section above. This

	<p>with easier access to debt relief. Additionally, it would introduce protections to help ensure that DAS payment programmes can remain viable where possible over a challenging time. Bankruptcy fee revisions will provide immediate assistance to those that meet the revised waiver criteria and the overall cost to the public purse will be reduced through the revised creditor petition fee arrangements.</p>	<p>would amount to an £1,124,299 annual shortfall in a high activity scenario based on the difference between the total cost to the public purse of £1,945,429 less the fees ingathered under the current structure which total £821,130. This sum reduces to £396,529 with the revision to the fee structure in force.</p>
<p>2. Reviewing the position after further consultation on the specific provision</p>	<p>This option would not derive immediate benefits of the measures included.</p>	<p>There has been a considerable amount of consultation and evidence gathered through different forums on reforms required to the current statutory debt solutions. Stakeholders agree that these proposals will assist in providing immediate help to people with problem debt and in severe financial difficulty due to the cost of living. Any delay could be detrimental to the people of Scotland with problem debt. There would be no mitigation of the costs to the public purse that will be achieved through the revised fee structure.</p>
<p>3 Do nothing</p>	<p>This option would not derive any benefits from the measures included.</p>	<p>The current cost of living is particularly affecting the most vulnerable in our society, especially those with problem</p>

		<p>debt. The Scottish Government recognises the need to take action to help the people of Scotland and the do nothing option would be considered as detrimental to this effort. There would be no mitigation of the costs to the public purse that will be achieved through the revised fee structure.</p>	
<p>Recommendation</p> <p>Our recommendation is to take immediate action to draft and lay secondary legislation as out lined in Option 1 above.</p>			

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed TOM ARTHUR

Date 24/11/22

Minister's name: Tom Arthur

Minister's title: Minister for Public Finance, Planning and Community Wealth

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