**Wider Review of Scotland’s Statutory Debt Solutions**

**Stage 2 Working Groups – Glossary, Acronyms and Legislation**

**March 2022**

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# Glossary

| **Term** | **Definition** |
| --- | --- |
| Acquirenda | Any property or right (e.g. inheritance or windfall) acquired or received by a debtor for a period of four years after the date of sequestration. This property or right would vest with the trustee who can sell or realise for the benefit of creditors. |
| Adviser - Money/Debt | Somebody trained to offer independent debt management advice. |
| Asset Threshold | The maximum level of assets a person can have to allow them to enter a MAP bankruptcy.  |
| Bankruptcy | A formal insolvency process where a trustee is appointed to realise and distribute the bankrupt’s (debtor’s) estate for the benefit of creditors.  |
| Bankruptcy Restriction Order (BRO) | Restrictions placed on a debtor where there has been a level of misconduct either before or after the date of sequestration. The restrictions are imposed by a Sheriff or the Accountant in Bankruptcy and remain in force after the date of discharge for periods varying between two and 15 years, depending upon the severity of the misconduct. These are published on the Register of Insolvencies. |
| Business Debt Arrangement Scheme (DAS) | A statutory debt management tool to help partnerships, trusts or an unincorporated body of persons which are in debt to pay off their creditors over an extended period of time. This also provides them protection from creditors taking action against them to recover their debts. |
| The Committee | Economy and Fair Work Committee (previously the Economy Energy and Fair Work Committee). |
| Common Financial Statement (CFS) | The current statutory tool used to calculate a debtor’s contribution. Operated by the Money Advice Trust and available under license. |
| Common Financial Tool (CFT) | Tool used to assist in the calculation of a debtor’s contribution in all Scottish statutory debt solutions.  |
| Confirmation | The process that vests a deceased person’s estate in the executor to allow them to ingather and distribute the estate. |
| Contractual rate of interest | The rate of interest agreed between the parties when entering into a contractual transaction. |
| Continuing Money Adviser  | An adviser who supports and provides debt management advice to the debtor throughout the lifetime of the Debt Arrangement Scheme (DAS). |
| Contribution Variation | An application to increase, decrease or quash the Debtor’s Contribution Order (payment towards the bankruptcy from a bankrupt’s regular income and is based on the Common Financial Tool assessment). |
| Creditor | Any person, business or organisation which is owed money by another. |
| Creditor Petition | An application by a creditor, through the Court, for the bankruptcy of a debtor’s estate.  |
| DAS Administrator | The Accountant in Bankruptcy who oversees the Debt Arrangement Scheme which includes responsibility for maintaining the Debt Arrangement Scheme Register and approves money advisers, payments distributors and Debt Payment Programmes. |
| DAS Register | An online public register which holds information about those intending to apply for, are applying for, and those who already have a Debt Payment Programme under a Debt Arrangement Scheme (DAS).  |
| Debt Advice and Information Package  | A booklet providing important information for debtors to advise that a creditor is going to take action to recover a debt, what steps to take and where to get advice. A creditor is required by law to provide an individual with a Debt Advice Information Package prior to using most types of diligence. |
| Debt Arrangement Scheme (DAS) | A statutory debt management plan accessed through an approved money adviser. It may help debtors who have one or more debts and want to pay what they owe over an extended period of time, free from the threat of enforcement action by creditors through diligence or bankruptcy.  |
| DAS Debt Payment Programme (DPP) | A proposal under the Debt Arrangement Scheme (DAS) that allows a debtor to pay their debt over an extended period of time. The DPP can be for any amount of money or for any reasonable length of time. |
| Debt Packager  | Commercial business that provides debt advice and generates income by referring customers to debt solution providers and receiving a fee. Debt Packagers must be approved by the Financial Conduct Authority.  |
| Debtor | Any person who owes money to another. |
| Debtor application | When a person applies for their own bankruptcy. |
| Debtor Contribution Order (DCO) | The fixed amount a debtor pays in contributions towards their bankruptcy usually over a 48 month period. This is set by the trustee. |
| Debtor discharge | The date that the debtor is formally discharged from their bankruptcy or Protected Trust Deed (PTD). |
| Debt Relief Order | Nearest equivalent to MAP bankruptcy in England and Wales.  |
| Debt Repayment Solution | A solution which allows debt to be repaid over a period of time e.g. Debt Arrangement Scheme (DAS).  |
| Debt Respite Scheme (Breathing Space) | A UK Government scheme (for England and Wales) that provides individuals with problem debt with legal protection from creditor action. Similar to the moratorium in Scotland.  |
| Diligence | Various forms of legal process taken by creditors to enforce repayment of overdue debts. |
| Direct Earnings Attachment | A deduction from a debtor’s wages to repay an overpayment of social security benefit or tax credit. This is not a form of diligence.  |
| Diligence against Earnings tables | A deduction from a debtor’s wages to recover a debt(s) or a child maintenance arrestment. This is a form of diligence. |
| Dividend | The distribution of funds to creditors in a bankruptcy. This could repay the debt in full or in part. |
| Estate | Everything of value owned by the debtor, including assets and any rights they may have to receive money or goods from anyone else.  |
| Full Administration Bankruptcy | A form of bankruptcy where a debtor has assets valued at more than £2,000 and debts of more than £3,000.  |
| Insolvency | A state in which a person or business is unable to pay their debts.  |
| Insolvency Practitioner  | A person licensed and authorised to act as a trustee in bankruptcies and also as a liquidator, administrator, or receiver of a limited company. |
| Judicial rate of interest | Where a court decree for payment includes interest or states that interest is payable. |
| Lead Generator | Commercial firm that generates income by referring customers to debt solution providers and receives a fee. Lead generators are not approved by the Financial Conduct Authority therefore they cannot provide debt advice.  |
| Low Income Low Asset (LILA) | Was a form of bankruptcy introduced to provide debt relief to debtors who could not afford to pay their debts and had low income and limited assets. It was replaced with Minimal Asset Process (MAP) on 1 April 2015. |
| Maximum Debt Threshold | The maximum amount of debt a person can have to enable them to enter a Minimal Asset Process (MAP) bankruptcy.  |
| Minimal Asset Process (MAP) | A form of bankruptcy for people with total assets of less than £2,000 and debts of between £1,500 and £25,000. |
| Minimum Debt Threshold | The minimum amount of debt a person must owe before they can apply for their own bankruptcy and the minimum amount of debt necessary for a creditor petition for bankruptcy. |
| Minimum Income Standards (MIS) | A research method, developed by the Joseph Rowntree Foundation, to identify what incomes different households require to reach a socially acceptable living standard. |
| Moratorium on diligence | A period of debt relief during which creditors cannot take action to enforce a debt. This protection is available to individuals as well as certain entities. It cannot be granted more than once in any 12 month period. Although it normally lasts for a period of six weeks there is currently a temporary extension to six months.  |
| Offer of Composition | An offer made to creditors seeking their agreement to accept payment or part payment of debts owed by the debtor. Where creditors agree their debt is discharged. |
| Personal insolvency | The awards of bankruptcy in Full Administration Bankruptcy and Minimal Asset Process (MAP) or entering a Protected Trust Deed (PTD). |
| Petition for sequestration | The formal application to court by a creditor or creditors or a trustee under a trust deed for the bankruptcy of a debtor’s estate. |
| Prescribed rate of interest (statutory rate of interest) | The rate of interest prescribed in legislation and payable to creditors when sufficient estate remains after all relevant expenses and creditor claims have been paid in full. |
| Protected Trust Deed (PTD) | A voluntary formal debt solution entered by a debtor which transfers their estate to a trustee to be realised for the benefit of their 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 become binding on all the creditors and prevents them from pursuing their debt or to make the debtor bankrupt. |
| PTD Protocol | A document voluntarily entered by Insolvency Practitioners which promotes good practice and transparency in the Protected Trust Deed (PTD) process. It sets out agreed non-statutory changes to the operational processes within PTDs.  |
| Qualified creditor(s) | A creditor or creditors of the debtor who are owed at least £3,000\* and are able to petition for the debtor’s bankruptcy. \*This has been temporarily increased to £10,000. |
| Quash | The ability for the trustee to end a Debtor Contribution Order (DCO) following a change in the debtor’s circumstances which is evidenced by the Common Financial Tool (CFT). |
| Recall of sequestration | A process to end the bankruptcy and restore as far a possible the debtor, or any persons affected by the bankruptcy to the position they would have been in if the bankruptcy had not been awarded.  |
| Recognised Professional Body (RPB) | Independent professional bodies recognised by The Secretary of State who authorise their members to act as insolvency practitioners. They regulate their members and have rules which their members must follow to be considered fit and proper persons (including requirements for acceptable training, education and experience).  |
| Register of Insolvencies (ROI) | A publicly accessible statutory register that holds details of bankruptcy, Protected Trust Deeds (PTDs) and Moratoriums on Diligence granted of individuals in Scotland and liquidations and receiverships of companies registered in Scotland. |
| Revocation | The ability of the DAS Administrator to end a DAS Debt Payment Programme (DPP) under certain circumstances, including on the award of bankruptcy following a debtor’s application or granting a Protected Trust Deed (PTD), failing to satisfy the conditions of the DPP, failing to make full payments over a two month period, making a false statement when applying for a DPP or its variation or the parties to a joint DPP have separated. |
| Scottish Civil Justice Council | A body that prepares draft rules of procedure for the civil courts and advises the Lord President on the development of the civil justice system in Scotland. |
| Sequestration | The Scottish legal term for personal bankruptcy. |
| Statement of Insolvency Practice 3.3 (SIP 3.3) | A set of principles and key compliance standards which run parallel to statutory frameworks which Insolvency Practitioners are required to comply with when administering Trust Deeds. |
| Standard Financial Statement (SFS) | The common tool used in England and Wales to assess someone’s income and expenditure.  |
| Statutory debt solutions | The debt relief and debt management solutions in Scotland which are bankruptcy, Protected Trust Deeds (PTD), the Debt Arrangement Scheme (DAS) and the Moratorium on Diligence.  |
| Statutory Debt Repayment Plan  | A UK Government run scheme that allows individuals in England and Wales to repay their debts in full through a debt payment programme over an extended period of time during which creditors are unable to take enforcement action. |
| Trigger figures | The spending guidelines set in the Common Financial Tool (CFT).  |
| Trustee | A person who administers a bankruptcy or trust deed. In bankruptcy a trustee can be either the Accountant in Bankruptcy or a private Insolvency Practitioner. In Trust Deeds the Trustee must be an Insolvency Practitioner. |
| Trustee Discharge | The date the trustee is discharged from liability (other than from fraud) after finalising the administration of the insolvent estate.  |
| UK Insolvency Service | A UK Government agency who are responsible for personal (and company) insolvency and debt solutions for England and Wales. |
| Variation | The ability for the trustee to alter the monthly contribution payable under a Debtor Contribution Order (DCO) following a change in the debtor’s circumstances, which is evidenced by the Common Financial Tool (CFT). |

# **Acronyms**

| **Abbreviation** | **Full Title** |
| --- | --- |
| AiB | Accountant in Bankruptcy |
| ASTRA | AiB Supervision of Trust Deeds, Registration and Advertisement system |
| BASYS | Bankruptcy Administration System |
| BRO | Bankruptcy Restriction Order |
| CFS | Common Financial Statement |
| CFT | Common Financial Tool |
| DAS | Debt Arrangement Scheme |
| DCO | Debtor Contribution Order |
| DPP | Debt Payment Programme |
| DRO | Debt Relief Order |
| eDEN | Enhanced DAS Electronic Network |
| FCA | Financial Conduct Authority |
| HMRC | Her Majesty’s Revenue and Customs |
| IP | Insolvency Practitioner |
| IT | Information Technology |
| LILA | Low Income Low Asset |
| MAP | Minimal Asset Process |
| MIS | Minimum Income Standards |
| PIP | Personal Independence Payment  |
| PTD | Protected Trust Deed |
| ROI | Register of Insolvencies |
| RPB | Recognised Professional Body |
| SIP | Statement of Insolvency Practice |
| SFS | Standard Financial Statement |

# Legislation

| **Reference** | **Legislation** |
| --- | --- |
| The 1985 Act | The Bankruptcy (Scotland) Act 1985 |
| The 2007 Act | The Bankruptcy and Diligence etc. (Scotland) Act 2007 |
| The 2014 Act | The Bankruptcy and Debt Advice (Scotland) Act 2014 |
| The 2016 Act | The Bankruptcy (Scotland) Act 2016 |
| The 2013 Regulations | The Protected Trust Deed (Scotland) Regulations 2013 |
| The 2014 Regulations | The Common Financial Tool etc. (Scotland) Regulations 2014 |
| The 2016 Regulations | The Bankruptcy (Scotland) Regulations 2016 |
| The 2021 Regulations | The Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021 |
| The first Coronavirus Act | The Coronavirus (Scotland) Act 2020 |
| The second Coronavirus Act | The Coronavirus (Scotland) (No. 2) Act 2020 |