**Review of Scotland’s statutory debt solutions**

**Stage 3 Consultation**

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# Foreword from the Stage 3 Lead

Thank you for reading this consultation document, which I hope you will respond to. I have been asked to lead this Stage Three review of debt solutions in Scotland. By this we mean Sequestration (known by some as Bankruptcy), Minimal Asset Procedure, Protected Trust Deeds, and Debt Arrangement Scheme.

This is an almost a once in a lifetime look at what works, and what doesn’t work in our society, for people who are in problem debt, and their creditors. It is therefore essential that the opportunity is taken by all stakeholders to respond to the document and highlight the issues affecting their customers or clients. Also, this is a key opportunity to consider if the administrative system itself works.

The review will take the form of the consultation document being circulated for comment, with responses requested within 8 weeks of publication. The next stage is gathering the information returned through the consultation document and forming views on the submissions. Where there are points or suggestions made in the submissions, that need clarification, interviews will be set up.

This will be followed by workshops/roundtables where the proposed recommendations will be shared. From there, the final report will be written and presented to the Minister at the end of the calendar year.

I wish to thank all stakeholders who have been engaged so far to date, as the consultation document has in some way been shaped on the discussions at the stakeholder roundtable held on 15 March 2024. I also wish to thank my colleagues Professor Elaine Kempson, and Craig Simmons for their sterling support during and after the Roundtable. In addition to the points made at the Roundtable session, some written feedback has been received which has been incorporated into the document. I am mindful that we have a somewhat diverse group of individuals with different desired outcomes, but at the same time they are dealing with people who are in debt.

**I urge you to challenge yourself and colleagues by thinking “what if we had a blank piece of paper?” What would good look like**?”, It is important to take the opportunity for change, and for it to take place through improved legislation.

**Yvonne MacDermid, OBE**

**Stage 3 Lead**

# Background and overview of review

* The Stage 1 and 2 of the review, and the discussions which have taken place have been noted.
* The Minister has made it clear that this Stage 3 review should take as long as needed, as it is unlikely that any change in legislation will be curtailed by the availability of Parliamentary time.
* Tom Arthur MSP, [in providing evidence at the Economy and Fair Work Committee on 21 December 2022](https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/%20cj-21-12-2022?meeting=14075&iob=127481) as part of its scrutiny of the Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023, advised that Stage 3 of the review would be a far more wide-ranging review. This was in response to a question from Colin Beattie regarding independent financial advice. Mr Beattie asked that the work undertaken by the Committee on PTDs be included in the review.
* To kick start the review, a roundtable of stakeholders from various organisations, from different parts of financial services were invited to take part.
* The consultation process will run from **23 May 2024 until 18 July 2024.**

Planned approach to outputs from review, e.g. a set of recommendations for Ministers to consider.

# Instructions to respondents

* Please note where we use the term ‘client’ in this document we are referring to individuals in problem debt.
* Please respond to yvonnemacdermid@yahoo.co.uk and in the subject bar include ‘**Stage 3 review consultation response’**
* Respond by 18 July 2024.
* Where points are raised it would be more powerful if you can provide evidence, which will be dealt with on a confidential basis.

Please note stakeholders do not need to respond to every question.

During this process and any responses please **DO NOT** share any files which may contain personally identifiable information (PII).

# Confidentiality and data protection

Your responses to this consultation will be treated with confidentiality, except as required by law. While your personal information will not be shared with third parties without your consent, please be aware that some information provided may be subject to publication or release to other parties or to disclosure in accordance with access to information regimes such as the Freedom of Information Act 2000, the UK GDPR, and the Data Protection Act 2018. However, any personal data will be anonymised or redacted before publication to protect your or client’s privacy.

# Final report

The report published at the end of this review will include a list of organisations who responded but not the names of individuals. Where suggestions, recommendations or points have been raised by organisations, they may be identified, with their permission.

# Consultation

## Your organisation

**Question 1.** In what sector(s) does your organisation operate? Please select as many as appropriate.

[ ]  a charitable advice provider

[ ]  commercial advice provider

[ ]  local authority

[ ]  creditor

[ ]  debt collection/debt purchase

[ ]  credit union

[ ]  insolvency practitioner

[ ]  payment distributor

[ ]  consumer body

[ ]  academic

[ ]  other

**Question 2.** Does your organisation, or, any evidence you are submitting represent;-

[ ]  anyone in debt

[ ]  a particular client group

[ ]  a client demographic

[ ]  a specific geography. If you chose this option, is it whole of Scotland?

Yes [ ]

No [ ]

If part of Scotland, please specify -

[ ]  ethnic minority group

[ ]  particular vulnerable groups

## Current provisions

**Question 3.** Thinking about the existing provisions:

a) What works well?

b) What doesn’t work well, and why?

c) What gaps, if any exist?

d) Any other comments you would like to make?

**Question 4.** In respect of the statutory solutions, how well do you feel the current provisions work?

**a)** **Sequestration**

[ ]  Very well

[ ]  Quite well

[ ]  Not very well

[ ]  Not at all well

Why did you respond as above?

**b) Minimal Assets Process**

[ ]  Very well

[ ]  Quite well

[ ]  Not very well

[ ]  Not at all well

Why did you respond as above?

**c) Protected Trust Deed**

[ ]  Very well

[ ]  Quite well

[ ]  Not very well

[ ]  Not at all well

Why did you respond as above?

**d) Debt Arrangement Scheme**

[ ]  Very well

[ ]  Quite well

[ ]  Not very well

[ ]  Not at all well

Why did you respond as above?

## Values and principles

An idea was raised at the roundtable event that received strong and broad support. This was that the personal insolvency regime in Scotland should be underpinned by a set of principles and values enshrined in legislation. These would act as the reference point for all decisions made both within the regime and in making changes to the regime. It was noted [Social Security Scotland](https://socialsecurity.gov.scot/) has recently introduced legislative principles and values in its model and this was a useful precedent for the insolvency regime (see section 1 of the [Social Security (Scotland) Act 2018](https://www.legislation.gov.uk/asp/2018/9/contents/enacted) for more information).

**Question 5.** From your perspective, what do you think could be the possible advantages of this approach? Also, what could be the possible disadvantages?

**Question 6.** If you are in support, please set out your views on what the principles and values should be, and why?

## Access to insolvency

The number of people who access a statutory insolvency solution is far lower than the proportion who potentially benefit from one.

**Question 7.** What are the barriers to people accessing statutory debt solutions?

a) the general population

b) those with protected characteristics

c) individuals who are self-employed and other small business owners

**Question 8.** What are potential solutions to remove those barriers?

**Question 9.** Do you think that the stigma linked to debt or bankruptcy acts as a barrier to accessing the most appropriate insolvency solution, and if so, how?

At the roundtable, an idea was raised for a single gateway to insolvency, rather than access being governed by the eligibility of the four current statutory solutions. Here, a single eligibility criterion would apply and once accessed there would be flexibility between debt relief and debt repayment options based on an individual’s circumstances. This was largely welcomed at the roundtable as being easier to understand for consumers, reducing burden on advisers and being an effective way to remove gaps between the current solutions. It was noted it may also solve issues currently seen when people need to transition between solutions once already in an insolvency product (e.g. transitioning from a Protected Trust Deed to a Sequestration).

**Question 10.** What the potential advantages and disadvantages of a single gateway to insolvency?

**Question 11.** What alternatives are there to a single gateway which may improve access to insolvency and / or increase flexibility once in a debt solution?

Access to insolvency often relies on accessing high quality and impartial money advice, as well as having the services in place to administer debt solutions once accessed.

**Question 12.** Do you have any concerns about how money advice and solutions administration is funded?

[ ]  Yes

[ ]  No

If yes, please outline your concerns below.

**Question 13.** How could the funding regime be made more effective?

## Repayments and conditions of insolvency solutions

Stakeholders at the roundtable were broadly in agreement that where a person can afford to repay their debts, they should do so. It was noted however that there was not broad agreement on what being able to pay is defined as. In some cases, people may not be able to pay anything towards their debts.

**Question 14.** What are your views on the most appropriate way to assess what people can afford to repay when in problem debt?

We also heard in the roundtable that currently people in insolvency are not incentivised to improve their financial situation (e.g. by taking overtime or a higher paying job) due to proceeds going to creditors. A broadly supported proposal put forward was to split the proceeds of any increase in income between the client and creditors.

**Question 15.** Do you agree that proceeds of increased income should be shared between client and creditors?

[ ]  Yes

[ ]  No

**Question 15a.** If yes, what proportion should go to the client and what proportion to creditors (e.g. 50/50, 40/60, 30/70, a fixed £ amount etc)?

**Question 16.** Are there other incentives that could be introduced to help people improve their financial situation while in insolvency?

Similarly, at the roundtable there were examples given where people were in repayment solutions for more than 15 years and sometimes, even after that time period, were having to switch to bankruptcy due to issues maintaining repayments. This situation compares to restrictions of months within a Minimal Asset Process and up to four years in a sequestration. It is clear there are very wide variances between the time people spend impacted by insolvency dependent on which solution they access, with often much longer impacts for people in solutions more strongly focussed on repayment. The current solutions take no account of the fact that a debtor may have already been on a repayment plan for many years.

**Question 17.** Should a previous repayment plan be taken into account?

[ ]  Yes

[ ]  No

**Question 17a.** If yes, how?

**Question 18.** Should there be a standard timeframe, which applies to all solutions?

[ ]  Yes

[ ]  No

It is apparent from previous work carried out by the Accountant in Bankruptcy and others that treatment of the family home can be a contentious matter in insolvency. Views and evidence on this topic are welcomed.

**Question 19.** What are your views on what a proportionate and consistent approach to the treatment of the family home in insolvency should be?

## Matters linked to but broader than insolvency

It would be remiss of this review not to acknowledge the growth in the number of people now seen in money advice who are experiencing a ‘deficit budget’. A significant proportion of people have outgoings greater than their income, even after working with a money adviser to increase income and reduce expenditure where possible. It would also be remiss not to recognise the huge proportion of people who are facing problem debt but also have significant linked issues, such as mental health problems, housing issues, employment problems and family issues.

**Question 20.** Can the insolvency regime itself do more to help people experiencing a deficit budget? If so, what?

**Question 21.** How can the insolvency regime better link up with other government services and other support services to help them resolve their problems more holistically?

## Use of technology and other innovation

**Question 22.** What technology and other innovations could be utilised to make the insolvency regime more effective?

## Matters not covered by other questions

Please set out any other points not raised elsewhere which link to ensuring the insolvency regime is effective in the modern Scottish economy.

**Thank you again for completing this Consultation document – all views matter.**