



Insolvency Practitioners' Association

Response to The Scottish Parliament's consultation on the review of changes introduced by Bankruptcy and Debt Advice (Scotland) Act 2014

About the IPA

The Insolvency Practitioners Association (IPA) is a membership body recognised in statute for the purposes of authorising Insolvency Practitioners (IPs) under the Insolvency Act 1986 and Insolvency (Northern Ireland) Order 1989. It is the only Recognised Professional Body (RPB) to be solely involved in insolvency and for over fifty years the IPA is proud to have been at the forefront of developments and reform within the insolvency profession.

The IPA has approaching 2,000 members, of whom approximately 600 are Licensed Insolvency Practitioners. Additionally, the IPA regulated IPs authorised by the ACCA under a collaboration agreement effective from 1 January 2017 to 31 December 2019, when the ACCA ceased to be an RPB.

The IPA's IPs are subject to a robust regulatory regime, applied by the IPA's dedicated regulation teams carrying out complaints handling, monitoring and inspection functions.

The IPA has a longstanding and continuing commitment to improving standards in all areas of insolvency (and related) work. It was the first of the recognised bodies to introduce insolvency-specific ethics guidance for IPs, and the IPA continues to be a leading voice on insolvency matters such as the development of professional standards, widening access to insolvency knowledge and understanding, and encouraging those involved in insolvency case administration and insolvency-related work to acquire and maintain appropriate levels of competence and skills.

The comments and opinions expressed below, and in the attached, represent the views of the IPA's Secretariat, and are not intended to reflect the opinion of each individual and firm member of the IPA. Our comments in this response are based primarily on our role as an RPB and an Anti-Money Laundering (AML) Supervisor under the Money Laundering Regulations 2017 (MLR2017).

Introduction

The IPA welcomes the opportunity to comment on the Scottish Parliament's consultation on the Review of changes introduced by Bankruptcy and Debt Advice (Scotland) Act 2014

We fully support the objective of ascertaining the effectiveness and operational impact of the reforms introduced with effect from 1 April 2015 in the light of representations made by stakeholders in the key areas of:

- Statutory Moratorium on Diligence;
- Common Financial Tool;
- Debtor Contribution Order;
- Minimal Asset Process Bankruptcy; and
- Financial Education.

We set out our responses to the specific questions within the consultation below.

With reference to financial education the IPA would be willing to explore contributing to the education modules to be included in the schools' curriculum.

Further enquiries should be addressed to:

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Insolvency Practitioners Association

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Q1. Do you consider the current six-week period of protection afforded by the moratorium process to be sufficient?

No

Q1a. If you answered “no” to Q1 what do you consider the appropriate time for a moratorium in Scotland?

60 days

We think that the moratorium process works well, and that 6 weeks is long enough to allow the individual to take advice and make a decision. However, in light of the Breathing Space proposals for a 60-day moratorium in E&W, we would support an equivalent moratorium period in Scotland for consistency across the UK. Such a longer period would also be of assistance if one of the options being actively pursued is the approval of a DAS.

Q2. Do you believe that interest, default fees and charges in respect of debts at the time of the moratorium application should be frozen during the moratorium period?

No

Q2a. Please provide a reason for your answer to Q2?

Answer: Currently interest, default fees and charges are not frozen at the time of the commencement of the moratorium, and we see no reason for this to change. Further diligence is prevented by the moratorium whereas the costs of existing diligence have already been incurred. We understand that a significant proportion of creditors will voluntarily freeze the account at the date of the moratorium to minimise further exposure to a bad or doubtful debt, so there is no reason to introduce a statutory freeze. Debts are admitted to the solution at a specific date set out in law (eg date of sequestration, date of the DPP commencing) and having a second earlier date at which debt could have been frozen or quantified would be too confusing. It could potentially add cost to the process of adjudication and agreeing claims both for the IP and creditors where there was more than one possible date at which creditors could claim.

Q3. Do you believe the Scottish Government should explore further provisions in the moratorium, similar to those in the UK Breathing Space scheme, which have a reserved competency?

No. We think that the moratorium process works well.

Q3a. If you answered “yes” to Q3 which of the following areas should the Scottish Government explore?

Stopping creditor enforcement action (excluding a commenced earnings arrestment) during the moratorium period.

Preventing creditors from contacting debtors in relation to repayment of a debt during the moratorium period.

Preventing deductions from benefits during the moratorium period.

Preventing the forced installation of pre-payment meters, or the disconnecting of fuel supplies during the moratorium period.

Preventing the eviction of debtors for unpaid debts under section 19 of the Housing (Scotland) Act 1988 during the moratorium period.

All of the above.

Q4. Do you believe that the Scottish Government should consider further separate provisions in the moratorium, similar to those in the UK Breathing Space scheme, for those receiving mental health crisis care?

Yes (although we are unaware how often this is an issue in practice)

Q4a. If you answered “yes” to Q4, which of the following principals for those receiving mental health crisis care should be given consideration?

The removal of the restrictions on accessing the moratorium once within a 12-month period.

The period of moratorium protection being extended.

Both of the above options

However, we have reservations as to how this would be implemented or operated in practice. A longer moratorium period of 60 days may of itself be sufficient to allow action or a decision to be made where an individual presents with a mental health crisis.

Q4b. If you ticked the box for extending the period of protection how long should the period of protection last?

Duration of mental health crisis care

Other

Q4c. If you answered “other” to Q4b what period of protection should apply?

Answer: _____

Q5. Do you think the provision of a CFT to provide a consistent approach to the assessment of contributions remains an appropriate feature within insolvency legislation?

Yes

Q5a. If you answered “no” to Q5, what approach should be adopted to assess the contributions in statutory debt solutions?

Answer: _____

Q5b. If you have answered “yes” to Q5, should the CFT be an income and expenditure tool designed to assess individual circumstances?

Yes

Q5c. If you answered “yes” to Q5b, which tool should be adopted as the CFT?

CFS SFS Other (Please explain below)

Answer: _____

Q5d. If you answered “no” to Q5b, what model should be adopted to assess the contributions in statutory debt solutions?

Answer: _____

Q6. Do you believe 6 weeks is sufficient period of time for a trustee to submit a DCO proposal to AiB in a creditor petition bankruptcy?

No

Q6a. If you answered “no” to Q6 what would be a sufficient timescale?

8 weeks 10 weeks 12 weeks

No time limit (with requirement to report progress at regular intervals)

Other

Q6b. If you answered “other”, what would be a sufficient timescale?

Answer: _____

Q7. Do you believe that the minimum debt allowed for MAP application should be increased?

No

Q7a. If you answered “yes” to Q7, what level should it be increased to?

N/A £2,000 £2,500 £3,000 Other

Q7b. If you answered “other” to Q7a please specify the amount

Answer: _____

Q7c. Should the debt threshold for creditor petition or full administration debtor application bankruptcy be increased (currently £3,000)?

No

Q7d. If you answered “yes” to Q7c, what level should it be increased to?

Answer: N/A

Creditor Petition Debt Level: _____

Full Administration Debtor Application Debt Level: _____

Q8. Do you think that there should still be a maximum debt threshold in a MAP application?

Yes

Q8a. If you answered “yes” to Q8, at what level should the debt ceiling be set?

£17,000 £20,000 £25,000 Other As this would be consistent with DROs

If you answer “no” to Q8 please explain why?

Q9. Do you think student loan debt, that is not discharged in bankruptcy, should be excluded from the maximum debt criteria in MAP?

Yes and so should all debts from which a debtor is not discharged by statute

Q9a. If you answered “no” to Q9 please explain why?

Answer: _____

Q10. Do you think the total asset and individual asset limits should be increased?

No

Q10a. If you have answered “yes” to Q10, what limit should be applied?

Combined Assets

£3,000 £4,000 Other

Individual Asset

£2,000 £3,000 Other

Q10b. If you answered “other” to either part of Q10a what amount do you think the combined and individual asset limits should be increased to?

Answer: _____

Q11. Do you believe that the current content of the financial education modules is sufficient to meet the policy intention of promoting financial capability?

No

Q11a. If you answered “no” to Q11 what improvements would you suggest?

Answer: We think that the modules are well-intentioned, but of little practical value to an individual who has chosen or been forced into bankruptcy. Arguably financial education post appointment is too late. Debtors who have been struggling with debt repayments over a period of time are usually exceptionally skilled at budgeting, and have no intention of repeating the cycle of problem or excessive debt.

We think therefore that personal financial education could be part of the wider Scottish school curriculum, before individuals are able to borrow at age 18. A national financial educational programme available online and in person could be made available for those over 18, and links available through Revenue Scotland, local libraries, the money advice sector etc.

Q12. Should the remaining balance of any outstanding child maintenance arrears be discharged following the conclusion of bankruptcy and protected trust deed procedures in Scotland?

Yes

Q12a. Please explain the reason for your response at Q12.

Answer: we are concerned that an increased category of debts exempted from discharge will undermine the concept of debt relief. If an individual seeks, and requires, debt relief, then debt relief should be granted where appropriate. In circumstances where a creditor's right to reclaim is either postponed until discharge, or continues in parallel with a contribution, the individual faces arrears of child maintenance immediately on discharge. No statistics are provided on what level of arrears in child maintenance this relates to, nor what the financial impact this has on individual families.

Q13. Do you consider that the currently prescribed 8% rate of interest for dividends in bankruptcy is appropriate?

No

Q13a. If you have answered "no" to Q13, what interest rate do you think should be applied?

BoE Rate BoE Rate + 1% BoE Rate + 2% Other

We would also suggest that there should be an agreed ceiling, which the rate would not exceed to address unexpected or wild fluctuations of the base rate.

We would also suggest that the Accountant in Bankruptcy tracks and documents the relevant interest rate applicable for ease of reference by trustees in the event that interest becomes payable.

Q13b. If you have answered "other" to Q13a, what alternative option would you suggest?

Answer: _____

Q14. Do you consider that the currently prescribed 8% judicial rate of interest remains appropriate?

No

Q14a. If you have answered "no" to Q14, what interest rate do you think should be applied?

BoE Rate BoE Rate + 1% BoE Rate + 2% Other

We would also suggest that there should be an agreed ceiling, which the rate would not exceed to address unexpected or wild fluctuations of the base rate.

We would also suggest that the Accountant in Bankruptcy tracks and documents the relevant interest rate applicable for ease of reference by trustees in the event that interest becomes payable albeit that this may only occur in a small proportion of cases.

Q14b. If you have answered "other" to Q14a, what alternative option would you suggest?

Answer: _____

Other Issues

Please feel free to include below any other matters that should be considered as part of this policy review.

Technical review

We are aware that there is intended to be an accompanying technical review of the Bankruptcy (Scotland) Act 2016 and we will have a number of recommendations to make in relation to the Debtor Contribution Order (DCO), discharge and recall processes.

DCO

In relation to DCOs we are of the view that the current legislation is deficient in capturing bonuses or undeclared earnings in retrospect, and existing DCOs are not variable or extendable in these situations.

Financial limits

We think there is an argument for all financial limits in the statute to be index linked and reviewed annually.

Vesting and assets

The role of the family home (and its definition) in personal bankruptcy (sequestration and PTD) needs to be reviewed

Non-vested contingent assets should be formally and fully defined

Review of rules on vesting of personal pensions in light of draw down provisions

Consideration as to the extent of damages for personal injury vesting

Money advice sector

Funding for money advice sector as they are now an integral part of the system. We would support increased access to money advice in the public sector, but it must be adequately funded and reviewed regularly for competency.

Other areas

Clarification of the payment of interest on recall

General review of discharge and the re-opening of cases

Clarification of claims relating to council tax

Discharge of trustee where debtor has been found, but refuses to co-operate