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**Future of the Common
Financial Tool
Consultation 2017**

Future of the Common Financial Tool – Consultation 2017

Introduction

1. There have been significant reforms to Scottish statutory debt solutions in recent years following on from a wide-ranging consultation conducted in 2012/13. The Bankruptcy and Debt Advice (Scotland) Act 2014 (“the 2014 Act”) and associated Regulations, which came into force on 1 April 2015, implemented the bulk of these reforms, although other legislative changes have also been introduced in relation to the Debt Arrangement Scheme and for protected trust deeds. This legislative programme culminated in the consolidation and simplification of bankruptcy legislation and the commencement of The Bankruptcy (Scotland) Act 2016 (“the 2016 Act”) on 30 November 2016.
2. One of the key changes implemented from 1 April 2015 was the introduction of the Common Financial Tool (CFT) as a standardised method to assess the debtor’s income and expenditure to help establish the amount of the debtor’s contribution. The CFT was introduced - using a tool initially developed by the Money Advice Trust in 2002 - for use across all statutory debt solutions in Scotland to help ensure consistency and transparency.
3. While Scotland was the first part of the United Kingdom to adopt the concept of a CFT in legislation under-pinning debt solutions, further work has since been carried out to develop a Standard Financial Statement (SFS). The SFS is intended to provide a single format for assessing a debtor’s income and expenditure for all debt management and relief products across the whole of the UK. This will provide consistency and assurance for both the money advice sector and creditors that the debtor will be paying no more and no less than is appropriate towards their debts.
4. This work has been led by the Money Advice Service (MAS) in partnership with a governance group composed of debt advice organisations, creditors and other key stakeholders. Although many of these organisations have UK-wide remit, Scottish organisations on the governance group include Accountant in Bankruptcy (AiB), Citizens Advice Scotland and Money Advice Scotland. The primary purpose of the governance group is to ensure agreement with the principles, guidance, format and functions of the SFS.
5. All parties - creditors, debtors, insolvency practitioners and third sector money advisers - have recognised the value of adopting a standard income and expenditure tool. The intention is for the SFS to be used by government and private sector organisations across the UK.
6. The SFS was launched on 1 March 2017. The SFS figures are based on the [Living Costs and Food Surveys](#) (LCF) conducted by The Office for National Statistics throughout the year. The LCF collects information on spending patterns and the cost of living that reflect household budgets across the UK.

7. MAS is currently working with central and local governments and local authorities in order to promote the wider use of the SFS across the UK. A significant number of organisations have already committed to using the SFS including major banks, Scottish local authorities, Scottish free-to-client advice service providers and the Insolvency Service.

The full list of SFS member organisations is on the [SFS website](#).

8. In Scotland, legislation currently prescribes the CFT as the Common Financial Statement (CFS). It is clear, therefore, that action would be required if a consistent and sustainable solution is to be applied across the UK.
9. AiB is carrying out this consultation to establish:
 1. Whether you agree that the SFS should be adopted as the CFT for all Scottish statutory debt management and debt relief solutions? and, if so
 2. Whether adoption of the SFS from 1 April 2018 will allow sufficient time for an orderly and effective transition?
10. We are inviting you to provide feedback on specific questions regarding the SFS (see Annex). Your responses will be analysed and used, along with a range of other available information and evidence, to determine the recommendations AiB will make to Scottish Ministers in the autumn.

Background

11. The 2014 Act and The Common Financial Tool etc. (Scotland) Regulations 2014 introduced important changes to the process and operation of statutory debt solutions in Scotland. In particular, the CFT was adopted as the single mechanism for assessing a debtor's contribution in all of the available Scottish statutory debt solutions.
12. The policy aim of this legislation and the use of a single tool are to help achieve consistency and transparency in relation to the determination of the amount of contribution a debtor might pay if they are in a Scottish statutory debt solution.
13. During the consultation on bankruptcy reform, stakeholders were asked about the preferred option for the CFT. A majority of respondents expressed the view that the CFS, available under license from the Money Advice Trust (MAT), should be adopted. When the Scottish Parliament accepted that view, and passed Regulations adopting the CFS as the Scottish CFT, it also accepted there was no need for a specific Scottish tool – and a UK tool, such as the CFS, included the flexibility to fully reflect Scottish debtors' circumstances.
14. The launch of the SFS provides a new UK-wide option which was not available when the decision to adopt the CFS was made.

15. There are several advantages in using the same tool across the UK – and one endorsed by such a wide range of different organisations. These include:
- A single format for gathering income and expenditure information
 - A single set of spending guidelines
 - Increased efficiency in conducting reviews of spending guidelines
 - Consistency in the debt advice process for the consumer, advisers and creditors
 - Potential for more streamlining, system alignment and data sharing amongst organisations involved
16. All other things being equal, it can also be expected the SFS will, over time, replace all the other available tools used to assess debtors' incomes, expenditure and contributions. But there are two issues relevant in considering adoption of the SFS for Scottish statutory debt solutions:
- i) The likely impact on the income and expenditure calculation in changing the method of assessment from the CFS to the SFS; and
 - ii) The practicalities of changing systems and processes necessary to facilitate a change in tool

The Impact on Income and Expenditure Calculation

17. Both the CFS and the SFS are only tools for use in assessing income and expenditure – they do not automatically determine what contribution the debtor should be required to pay. Applied appropriately, either tool should produce the same outcome.
18. AiB has been made aware of some concerns raised by the money advice community based on some early analysis comparing the CFS to SFS. In particular, this appeared to show an increase in excess income over expenditure figures in some cases. The early analysis showed a greater number of breaches of trigger figures, potentially resulting in higher contributions were expenditure to be capped at the trigger figure limits. But there should be no direct correlation between the level of the trigger figures and the level of the resulting contribution.
19. The Accountant is very clear that trigger figures are not and should not be seen as spending limits – and justifiable spending above trigger figures will be allowed whichever tool is used. The Accountant is equally clear that Scottish bankruptcy legislation is based on the principle that debtors who can pay either all of their debts or a contribution towards them, should do so – so unnecessary spending, even within trigger figures, should not be allowed under either tool.
20. It is acknowledged it is not always easy for debtors to provide evidence to support necessary spending above the trigger figure limit, so trigger figures can be perceived as spending limits. As the CFS and SFS spending categories differ, the trigger figures and the need to provide a rationale for

higher spending, will apply in different areas when using the SFS. However, the same basic principles will continue to apply and the role of money advisers and insolvency practitioners in assessing and evidencing a debtor's income and expenditure will remain the same whichever tool is in use.

Analysis

21. AiB has conducted an initial and illustrative comparison exercise to determine any potential differences in debtor contributions were the CFS and SFS trigger figures treated as if they were limits. Following discussion with stakeholders, a specific comparison was also completed on the Housekeeping spending category within the SFS.
22. It must be emphasised the analysis did not give any consideration to the potential for evidence or acceptable explanations to justify any trigger breach. Further, it must be accepted that any exercise to model existing data and transpose to a new tool does place a caveat over the level of analytical assurance that can be expected.

The statistical analysis presentation and findings is on [AiB's website](#).

Practicalities

23. Moving to a new tool requires both changes to systems and processes and training of those who have to use them. Within AiB, we are confident we will be able to adapt our systems and guidance notes to the use of the SFS before the proposed adoption date of 1 April 2018, provided the Scottish Parliament makes a final decision on going down this route by the end of the year, and we do not believe this will involve significant cost. Without detailed understanding of the systems and processes our key delivery partners and stakeholders use, we are not in a position to judge whether or not this time period would be sufficient for you to also make the necessary changes, and would welcome your views.
24. When the CFT was introduced, transitional arrangements were put in place to make the CFT the means for undertaking any future review of income and expenditure irrespective of whether the CFS was used for the initial calculation of the existing contribution. Similar arrangements would need to be agreed for any transition to the SFS and your views on these issues are sought in the questions set out in the Annex.
25. The SFS is not intended for the public to use and all organisations who wish to use the SFS must first [apply for](#) and receive a membership code number and agree to abide by the [SFS Code of Conduct](#).
26. MAS has a statutory responsibility to improve the quality, consistency and availability of debt advice services across the UK. To achieve this, MAS is collaborating with representatives from the debt advice and creditor sectors to ensure agreement with the principles, guidance, format and function of the SFS.

27. An SFS governance group was established when the SFS was being developed for the purpose of monitoring and contributing to the development of the SFS. AiB is a member of the governance group and we will represent the views of Scottish stakeholders for the Scottish statutory debt management and debt relief solutions.

The Alternative

28. The Accountant considers the case for adopting the SFS is a strong one, and if this case is accepted, then the SFS should be adopted without undue delay. However, if the responses to this consultation show either moving to the SFS from the proposed date of 1 April 2018 would impose significant practical burdens on the stakeholder community, or Scottish stakeholders do not accept the case for adopting the SFS, then the default position is to continue with the status quo. One major draw-back in this approach is that it would result in a wider UK debt management system involving more than one tool – defeating the original policy intention behind the introduction of the CFT.
29. The Money Advice Trust has said it will maintain the availability of the CFS for as long as it takes those who use it to move to adopt the SFS, and they are aware of the additional time requirements that reflect the need for us to amend legislation. This means the status quo is an option for the short to medium term. If respondents to this consultation felt strongly that maintaining the CFS was a better option for the longer term than moving to the SFS, AiB would continue current discussions with the MAT to establish how that can be achieved.

Consultation Process

30. Your views and suggestions will be analysed and used as part of any decision making process, along with a range of other information and evidence. If you would like your responses to be kept confidential, please tick the appropriate box at the end of this paper.
31. The responses to this consultation will be summarised and published on AiB's website and will also contribute towards AiB's decision on recommendations put to Ministers on the future of the CFT.

Your Feedback

32. Your feedback is important to us – please take the time to answer the questions and send your response to AiB by 27 October 2017.

Annex

QUESTIONS

1. Do you agree that the **Standard Financial Statement (SFS)** should be adopted in Scotland as the new **Common Financial Tool**?

Yes No Don't know

If you answered 'No' to Q1 - please go to Q3

2. If introduced, should the **SFS** be used in the review of existing contributions which were not originally determined using the **SFS**?

Yes No

If you answered 'No' to Q2, what would be the appropriate method for reviewing the contribution amount?

Answer: The existing contributions that are being paid in a case should continue to be assessed using the tool that was in place when they applied for their remedy. There is clear evidence that the SFS will have a detrimental effect on debtors, by requiring many to make a larger contribution. Although clients will be aware that contributions can go up and down, they will be under the impression that this would only occur if their circumstances changed. If contribution were increased, without any improvement in a client's circumstances, this would be grossly unfair.

Please now go to Q5

3. For what reason(s) do you believe the **SFS** is not the appropriate tool for all **Scottish statutory debt management and debt relief solutions**?

Please provide information and any evidence that supports your reason(s).

Answer:

The SFS is inappropriate as:

- 1) It is not transparent and the trigger figures are not publicly available to clients. Although this may be suitable for the rules of a tool that people voluntarily sign up to, it is not appropriate for a tool that is part of a statutory remedy and incorporated into legislation. I would go so far as to question the legality of the Scottish Government Minister proposing that such rules are incorporated into legislation and would suggest that this may be incompatible with their obligation under the Scotland Act 1998 and the European Convention of Human Rights.

Any rules that are incorporated into legislation should be transparent and accessible. We have no tradition of secret laws or rules in Scotland.

- 2) Based on all the available information from Money Advice Scotland and from the Accountant in Bankruptcy's own research, it is clear that the introduction of the SFS will be detrimental for a number of clients' and will result in them paying them more than they are currently paying. This was never the intention of the SFS, but there is strong evidence it will be the outcome if incorporated into law in Scotland.
- 3) I believe the introduction of the SFS will create further obstacles for client wanting to enter debt solutions. It appears clear that the introduction of the Common Financial Tool had this affect, with the adoption of the Common Financial Statement. I do not believe it would be wise to now adopt the SFS, which largely follow the CFS model, but evidence shows will have a more adverse effect on debtors.
- 4) I believe continuing with this model will continue to place a costly administrative burden on advice services as the CFS has, with the need to verify large amounts of information. This is likely to be more the case with the SFS with the transferring of travel and other items into fixed costs, where everything will need to be verified. With public sectors cuts likely to be in the region of £300 million and my own employer looking to cut services by 30% in terms of the provision of advice, to move to a model that will stretch capacity further is not sensible.

4. What do you consider an appropriate method for determining a debtor's contribution for a Scottish statutory debt management and debt relief solution?

Please provide information and any evidence that supports this and detail who you consider should manage and fund this process.

Answer:

I support the adoption of minimum expenditure standards for specific expenditure groups, like household and travel. This would mean clients, based on household composition, would be given certain allowances which they have to spend. There should be no requirement to verify this expenditure. Where these amounts are not acceptable, verification would be required to justify why figures have been exceeded.

I believe this is similar to the model adopted by the Insolvency Service of Ireland with their Reasonable Living Expenses and found when I used it in the past, as an Irish Personal Insolvency Practitioner, that it was easier to use and I believe provided fairer results than the Scottish Common Financial Tool. I believe this is also similar to the Minimum Income Standards that were created by the Joseph Rowntree Foundation and would encourage the creation of a Scottish tool using this model.

I would also support the proposal of the Institute of Chartered Accountants of Scotland that a percentage of the disposable income should then be the agreed contribution in all case, DPPs, Trust Deeds and Sequestrations.

I believe this would make the arrangements more sustainable and would cut down the need for variations, which will improve capacity and reduce costs.

I believe this model could be independently maintained by a University, but remain the property of the Scottish Government. I believe it should be funded by the Money Advice Service, using funds they obtain for the whole of the UK, with their levy on creditors. Alternatively, a specific levy should be place on all the funds ingathered in trust deeds, sequestrations and DPPs to pay the maintenance cost of this tool.

5. If the SFS is to be introduced from 1 April 2018, will you be able to make any required changes to your IT and other operating systems, in time to use the SFS from this date?

Not applicable

If you answered 'No' to Q5, how long after 1 April 2018 do you believe you will be ready to use the SFS?

Up to 3 months 3 to 6 months a longer period (Please specify) _____

RESPONDENT INFORMATION FORM

Please note that this form must be returned with your response to ensure that we handle your response appropriately.

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Forename

2. Postal Address

<input type="text" value="██████████"/>		
<input type="text" value="██████"/>		
<input type="text" value="██████"/>		
<input type="text"/>		
Postcode <input type="text" value="██████"/>	Phone <input type="text" value="██████████"/>	Email <input type="text" value="████████████████████"/>

3. Sector

Please tick as appropriate

Advice Sector

Creditor

Local Authority

Solicitors/Advocates

Insolvency Practitioners

Debtor

Sheriff Officer & Messenger at Arms

Judiciary

Other If other please specify _____

4. Permissions - I am responding as...

Individual / **Group/Organisation**
Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes **No**

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes **No**

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate **Yes**

Please return your response to OPC@aib.gsi.gov.uk or to: Graeme Perry, AiB, 1 Pennyburn Road, Kilwinning, Ayrshire, KA13 6SA by 27 October 2017.