

# **Review of the Bankruptcy and Debt Advice (Scotland) Act 2014**

## **The Report of the Summary of Responses**



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## The Report of the Summary of Responses

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i. Ministerial Foreword



This report summarises the responses to the consultation: Review of Bankruptcy and Debt Advice (Scotland) Act 2014 which was undertaken in late 2019 to early 2020.

The publication of this report was delayed due to the overriding priority of supporting Scotland's response to the COVID-19 pandemic.

The purpose of the consultation was to review the legislative changes that came into force on 1 April 2015 and to establish if any further improvements are needed.

The aim of the changes that were implemented by the 2014 Act was to deliver a fair and equitable insolvency system that balances the needs of those struggling with unsustainable debts while safeguarding the interests of both creditors and other borrowers by providing that those who can pay their debts do pay their debts.

The consultation concluded prior to the COVID-19 pandemic and therefore does not reflect the temporary changes which were implemented by both the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020.

The temporary provisions introduced by these Acts have been extended to 31 March 2021. The introduction and extension of these provisions does not deflect from the importance of the responses provided to the consultation.

The Scottish Government is committed to continuous improvement and we were keen to seek feedback from stakeholders on the effectiveness of these reforms.

I am grateful to all those who took the time to contribute to the consultation, those responses will assist us in developing debt solutions that will place Scotland as a world leader in this field.

A handwritten signature in blue ink, appearing to read 'Jamie Hepburn', written in a cursive style.

Jamie Hepburn MSP

## Minister for Business, Fair Work and Skills

### ii. Background

On the 1 April 2015 the Bankruptcy and Debt Advice Scotland Act 2014 (“the 2014 Act”) came into force introducing some significant reforms to the bankruptcy process in Scotland. The 2014 Act amended the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”) in several key areas and was the latest of a number of legislative instruments which have been targeted at improving and modernising the bankruptcy system in Scotland.

The 2014 Act reforms were developed and introduced in direct response to the feedback received from the [Consultation on Bankruptcy Law Reform](#) which was published in 2012. This sought views on how to develop a service for debt advice, debt management and debt relief fit for the 21<sup>st</sup> Century.

The Scottish Government is committed to an ongoing review of policies and newly implemented legislation and undertook this consultation on the 2014 Act reforms after a reasonable period of time had elapsed to allow the changed processes to become established.

Feedback from stakeholders on the changes introduced in 2015 has been that they have generally worked well in practice. However, it has been acknowledged there are some areas where further reform and improvements could be made. In light of this, the consultation concentrated on the areas introduced by the 2014 Act that have been highlighted as needing some improvement.

These key areas are as follows:

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

The consultation sought views on two additional areas that have been raised as follows:

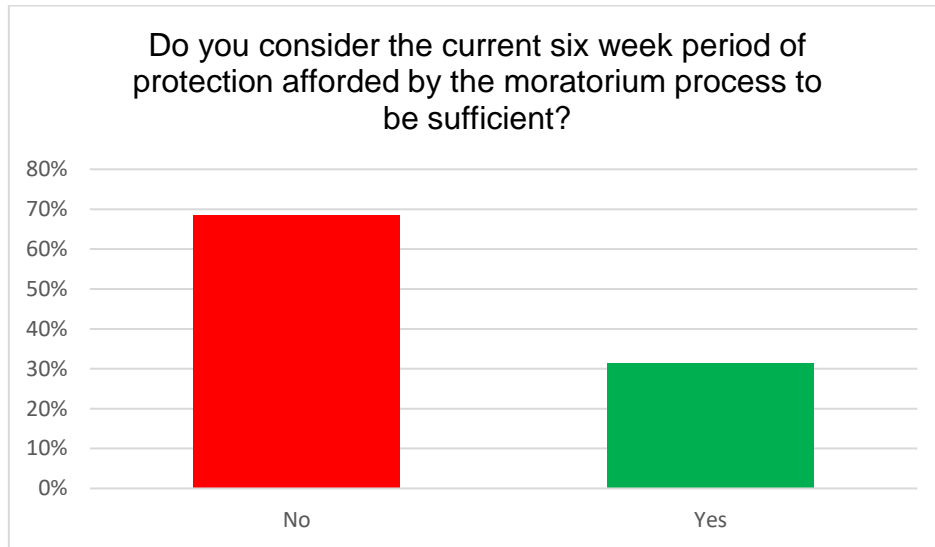
- The discharge of child maintenance debts in bankruptcy
- The statutory and judicial rate of interest.

iii. Summary of Responses

The following is an executive summary of the responses to the proposals in the consultation:

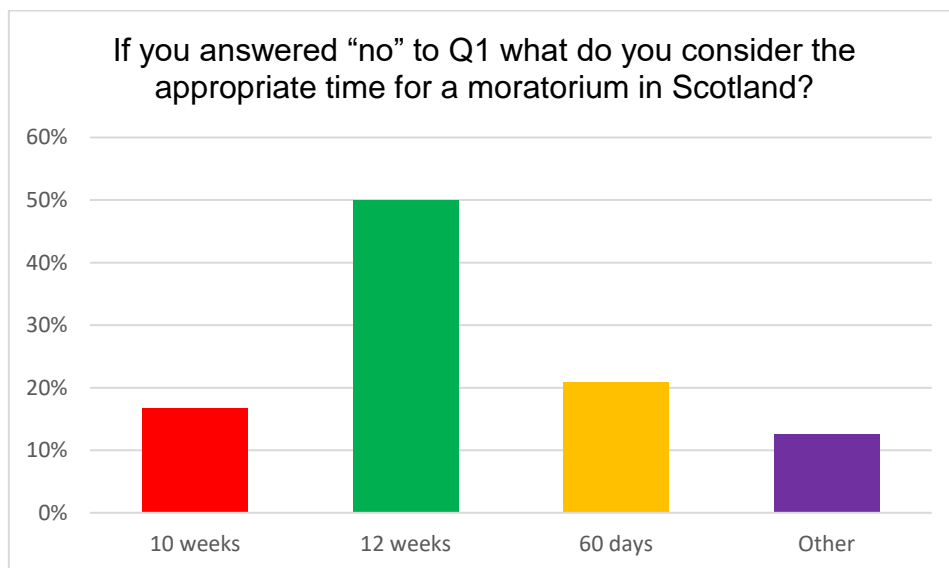
**Statutory Moratorium on Diligence**

**Question 1: Do you consider the current six week period of protection afforded by the moratorium process to be sufficient?**



- 85% of respondents to the consultation answered this particular question.
- 69% of those who answered the question do not believe the six week period of protection is sufficient.

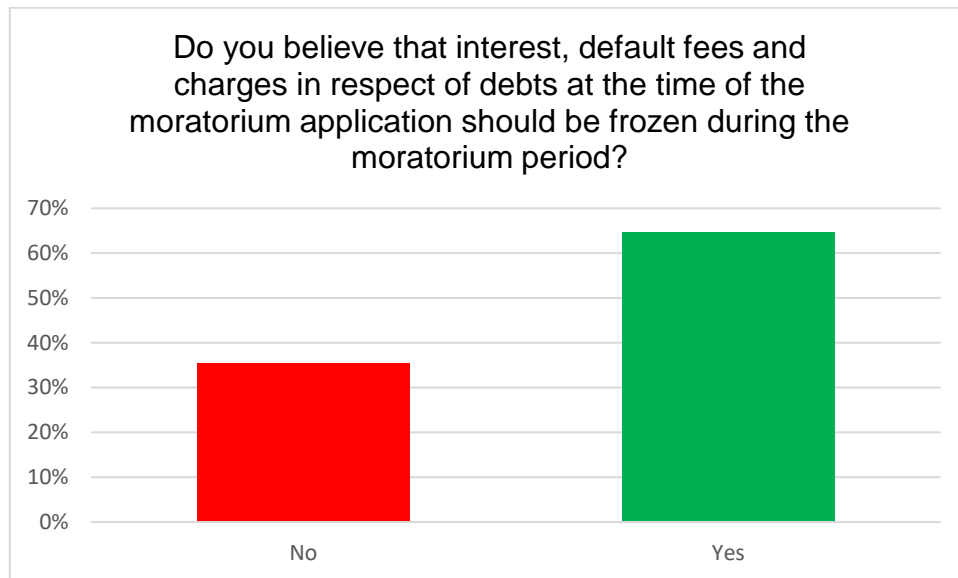
**Question 1(a): If you answered “no” to Q1 what do you consider the appropriate time for a moratorium in Scotland?**



## Review of the Bankruptcy and Debt Advice (Scotland) Act 2014

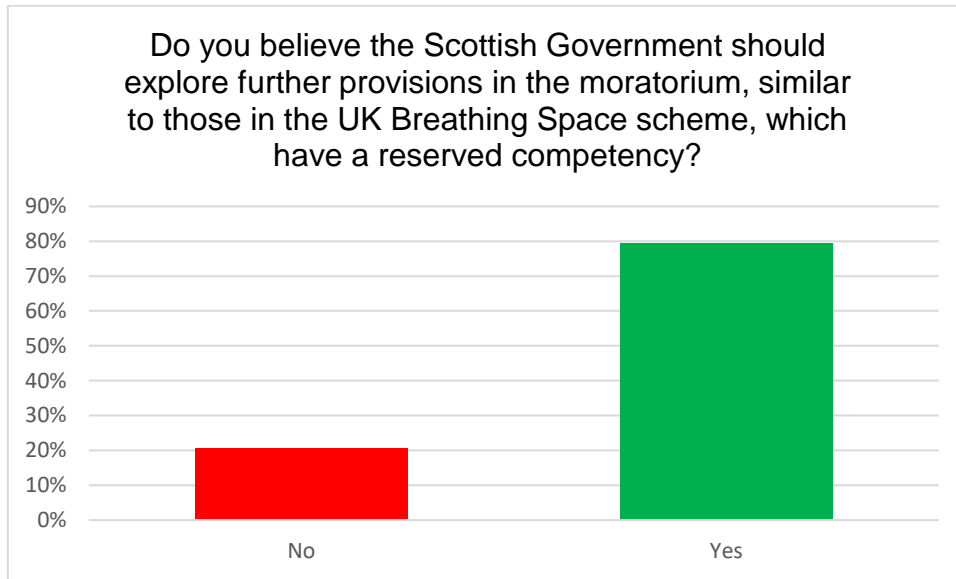
- Of the respondents who did not believe the current moratorium period was sufficient, 50% thought that a 12 week period was a more suitable period.
- 21% preferred a 60 day moratorium period while 17% believed 10 weeks was more appropriate.

**Question 2. 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?**



- Three quarters of the total consultation respondents answered this particular question
- 65% of those respondents believe that interest, defaults fees and charges should be frozen during the moratorium period.

**Question 3. 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?**

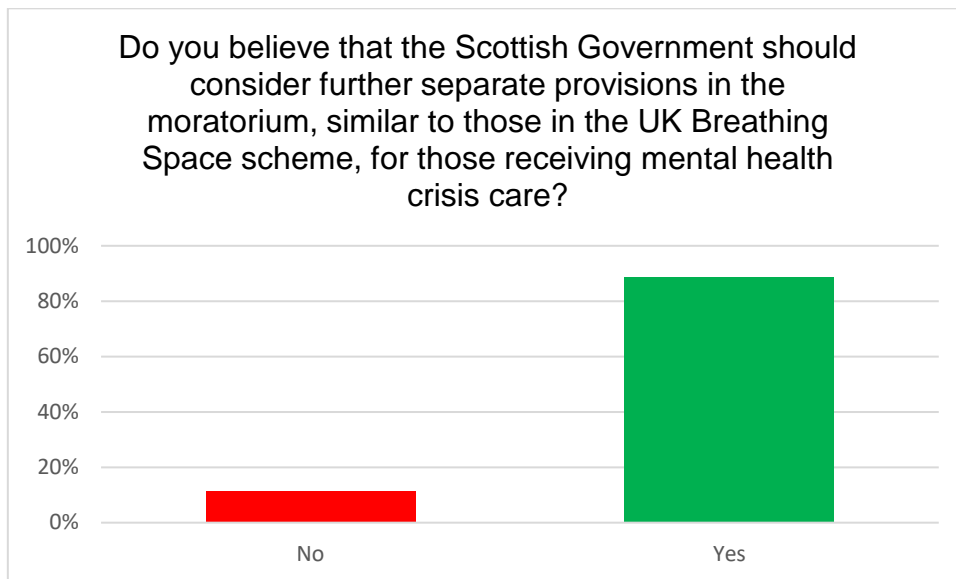


- 83% the total consultation respondents answered this particular question.
- 79% of those respondents believe the Scottish Government should explore further provisions in the moratorium which have a reserved competency.

**Question 3a. If you answered “yes” to Q3 which of the following areas should the Scottish Government explore?**

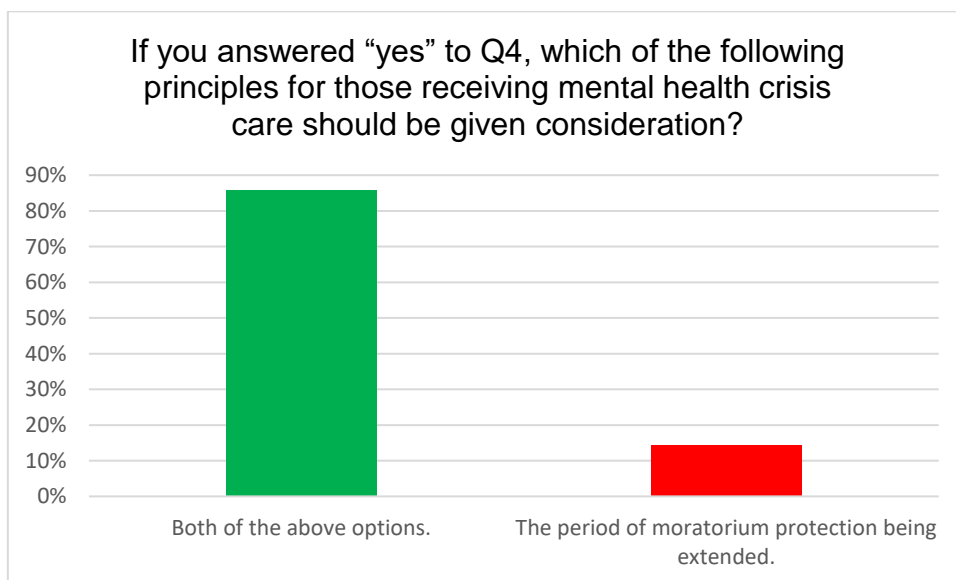
- Of those respondents who answered this question, 91% believe all provisions should be considered by the Scottish Government. The remaining 9% only agreed on the provision for preventing eviction and deduction from benefits.

**Question 4. 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?**



- 85% of the total consultation respondents answered this particular question.
- 89% of those respondents believe the Scottish Government should consider further separate provisions for those receiving mental health crisis care.

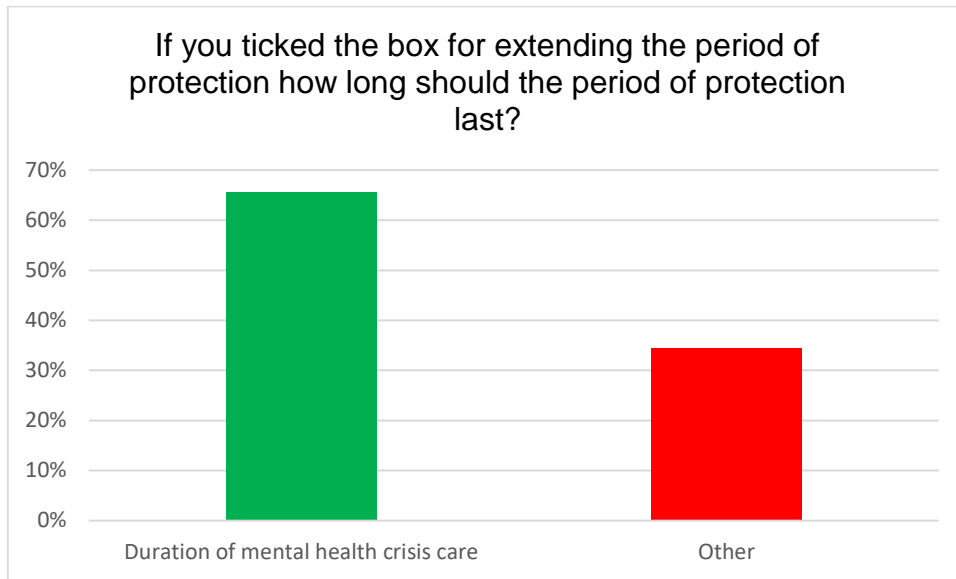
**Question 4a. If you answered “yes” to Q4, which of the following principles for those receiving mental health crisis care should be given consideration?**



- 86% of respondents who believe consideration should be given separate provisions for those receiving mental health crisis care believe both the period of protection and the number of times an individual can apply for a moratorium should be considered.
- No respondents believe that only the number of times an individual can apply for a moratorium should be considered.



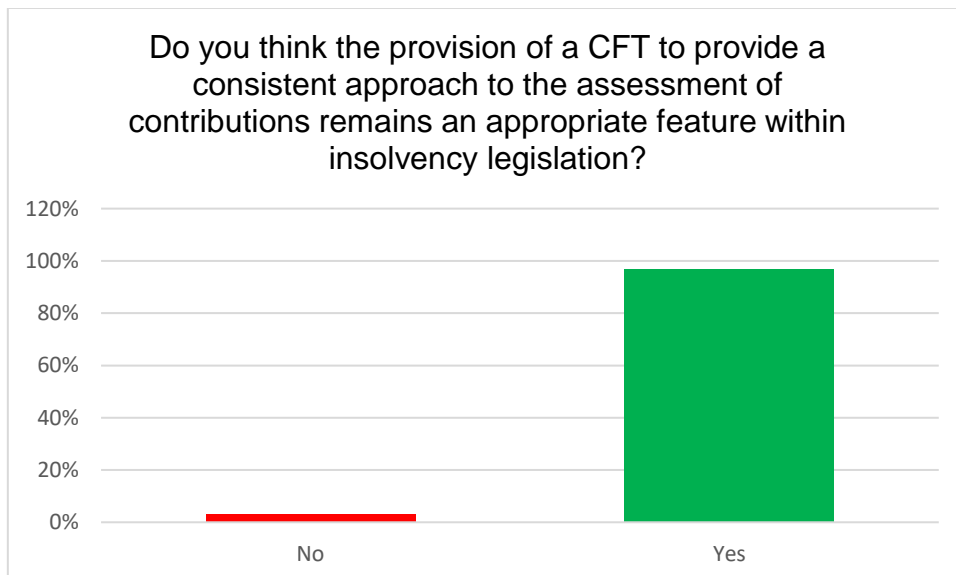
**Question 4b. If you ticked the box for extending the period of protection how long should the period of protection last?**



- Two thirds of those who believe the period of protection should be extended believe it should be for the duration of the mental health crisis care.

**Common Financial Tool (CFT)**

**Question 5. 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?**



- Three quarters of the total consultation respondents answered this particular question.

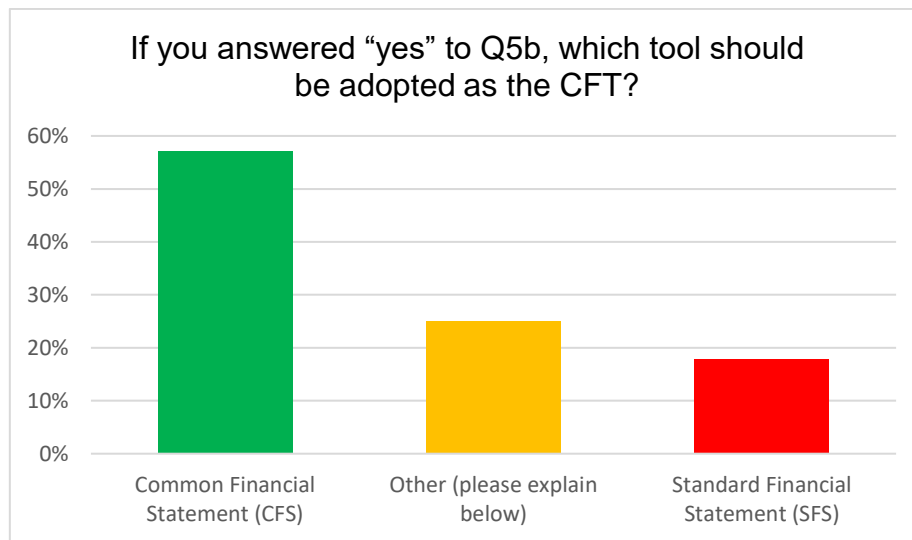
## Review of the Bankruptcy and Debt Advice (Scotland) Act 2014

- Of those respondents who answered this question 97% believe the CFT remains an appropriate approach to the assessment of contributions.

### **Question 5b. If you have answered “yes” to Q5, should the CFT be an income and expenditure tool designed to assess individual circumstances?**

- 100% of respondents to this question believe the Common Financial Tool should be an income and expenditure tool designed to assess individual circumstances.

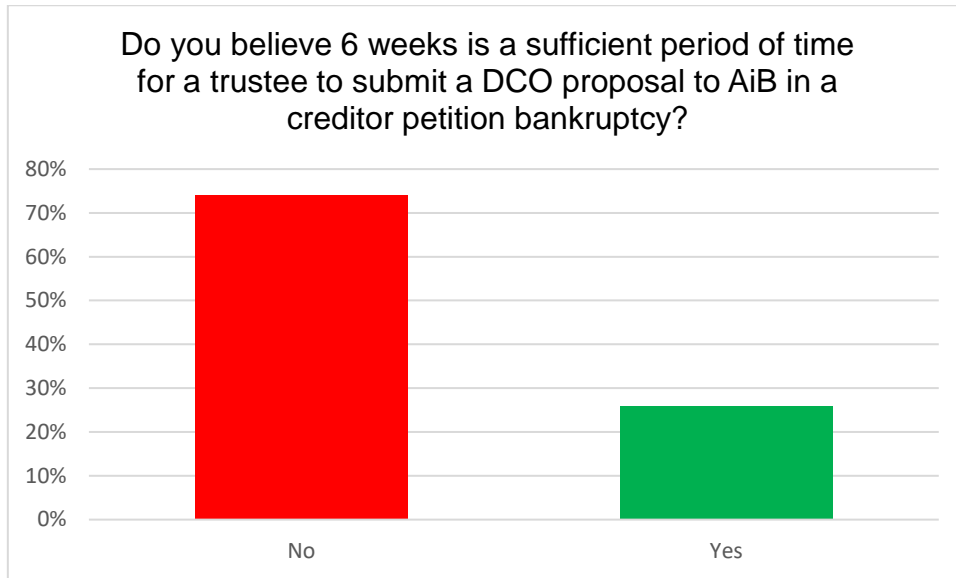
### **Question 5c. If you answered “yes” to Q5b, which tool should be adopted as the CFT?**



- Of the respondents who answered this question, 57% believe the Common Financial Statement is the most appropriate tool, 18% believe it should be the Standard Financial Statement and 25% believe it should be an alternative tool not listed.

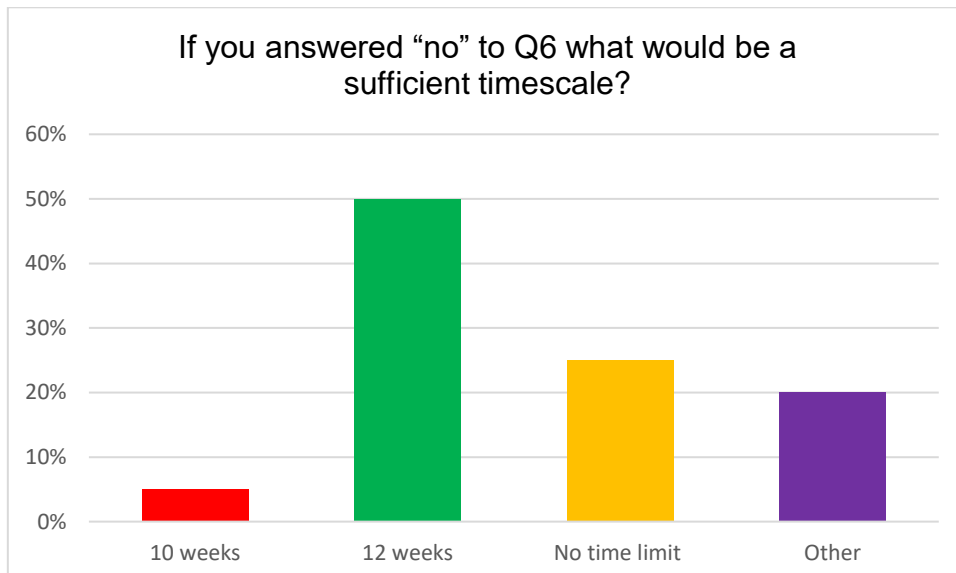
## Debtor Contribution Order (DCO)

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



- Two thirds of the total consultation respondents answered this particular question.
- Of those respondents who answered this question 74% do not believe 6 weeks is a sufficient period of time to submit a DCO proposal.

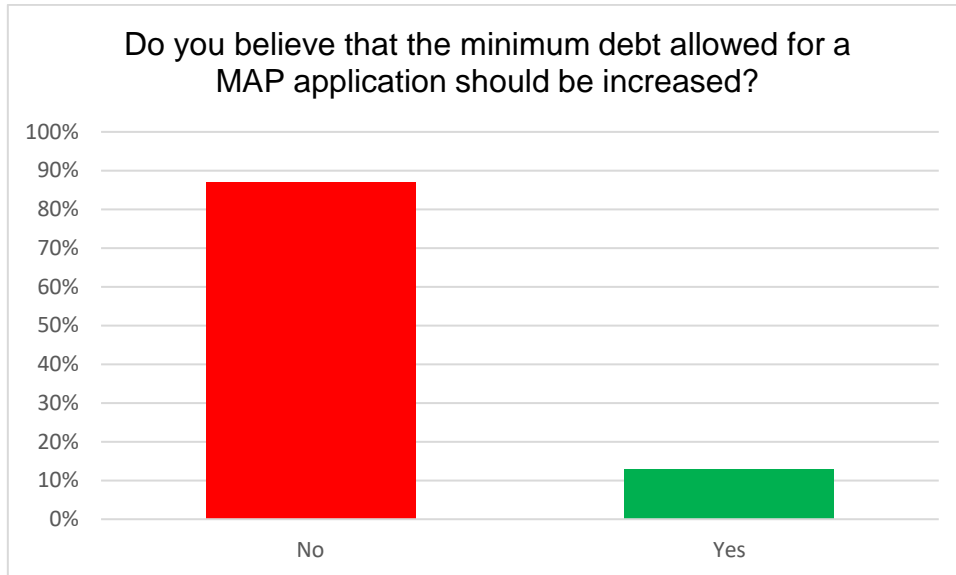
**Question 6a. If you answered “no” to Q6 what would be a sufficient timescale?**



- Of the respondents who answered this question, 50% believe 12 weeks is the most appropriate timescale, 5% believe it should be 10 weeks, 25% do not believe there should be a time limit and 20% believe an alternative timescale not listed would be more appropriate.

## Minimal Asset Process (MAP)

**Question 7. Do you believe that the minimum debt allowed for a MAP application should be increased?**

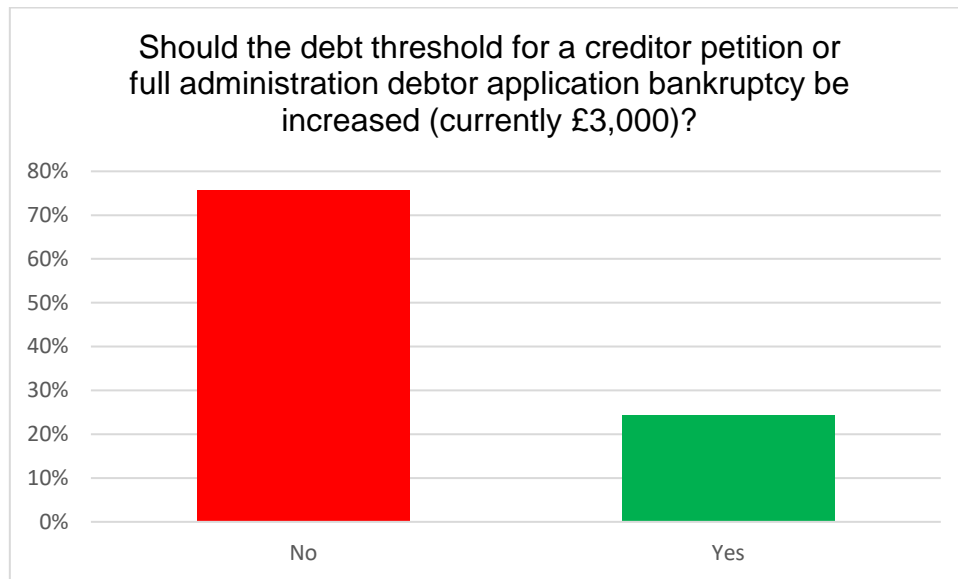


- Three quarters of the total consultation respondents answered this particular question.
- Of those respondents who answered this question 87% do not believe the minimum debt level for a MAP application should be increased.

**Question 7a. If you answered “yes” to Q7, what level should it be increased to?**

- Of those respondents who answered this question two thirds believe the level of debt should be £3,000 while the other third believe it should be £2,500.

**Question 7c. Should the debt threshold for a creditor petition or full administration debtor application bankruptcy be increased (currently £3,000)?**

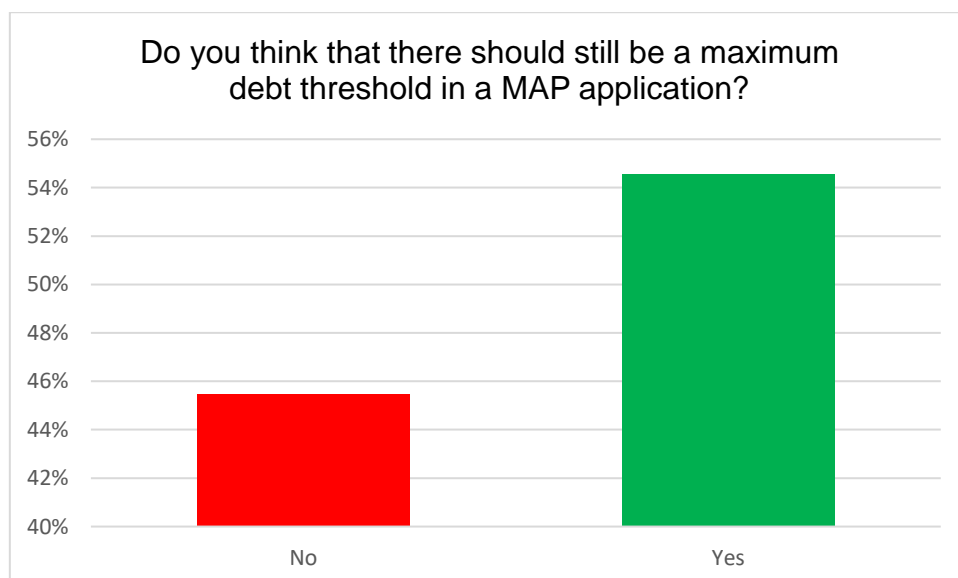


- 80% of the total consultation respondents answered this particular question.
- Of those respondents who answered this question 76% do not believe that the debt threshold for creditor petition or full administration bankruptcies should be increased.

**Question 7d. If you answered “yes” to Q7c, what level should it be increased to?**

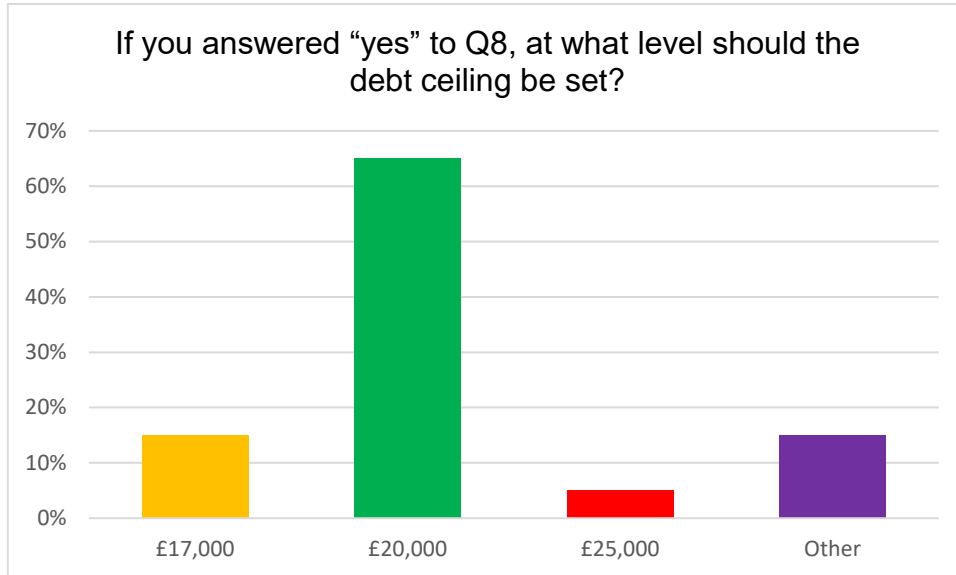
Of the respondents who believed the debt threshold of a creditor petition should be increased 86% believed it should be increased to £5,000.

**Question 8. Do you think that there should still be a maximum debt threshold in a MAP application?**



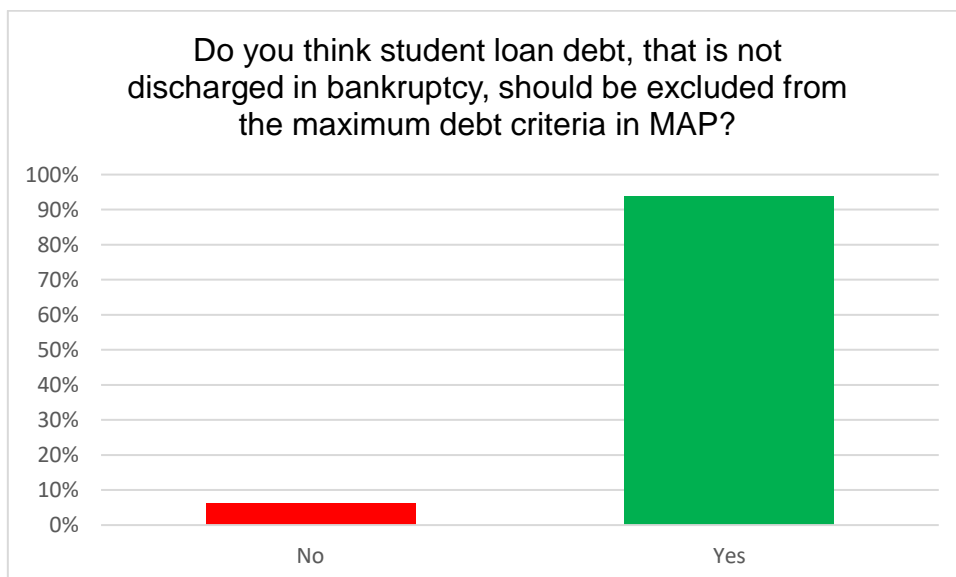
- 80% of the total consultation respondents answered this particular question.
- Of those respondents who answered this question 55% believe there should still be a maximum debt level for a MAP application.

**Question 8a. If you answered “yes” to Q8, at what level should the debt ceiling be set?**



- Of the respondents who answered this question, 65% believe the debt ceiling should be £20,000, 15% believe it should be £17,000, 15% believe it should be another amount not listed and 5% believe it should be £25,000.

**Question 9. Do you think student loan debt, that is not discharged in bankruptcy, should be excluded from the maximum debt criteria in MAP?**

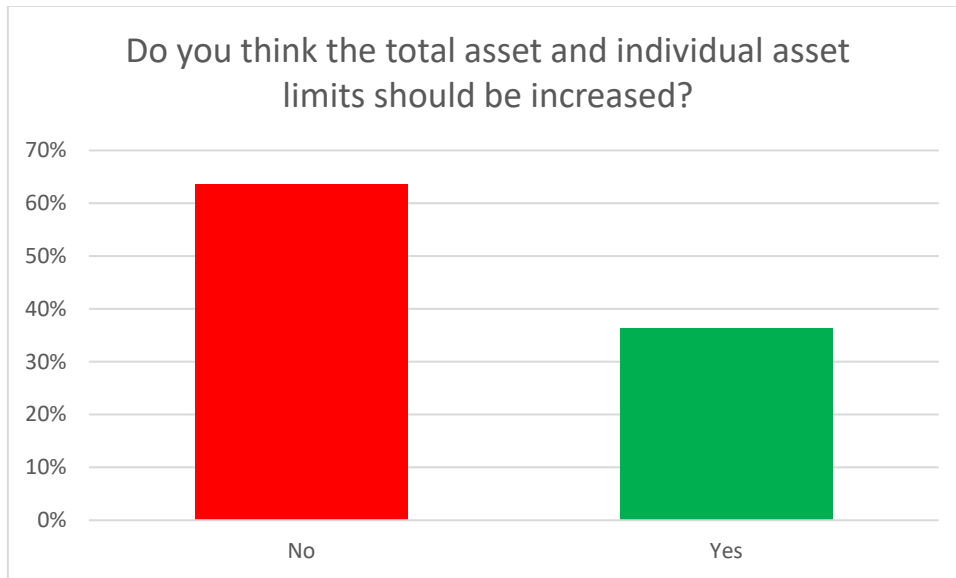


- 78% of the total consultation respondents answered this particular question.

## Review of the Bankruptcy and Debt Advice (Scotland) Act 2014

- Of the respondents who answered this question, 94% believe that student loans, not discharged in bankruptcy, should be excluded from the maximum debt criteria in MAP.

### **Question 10. Do you think the total asset and individual asset limits should be increased?**



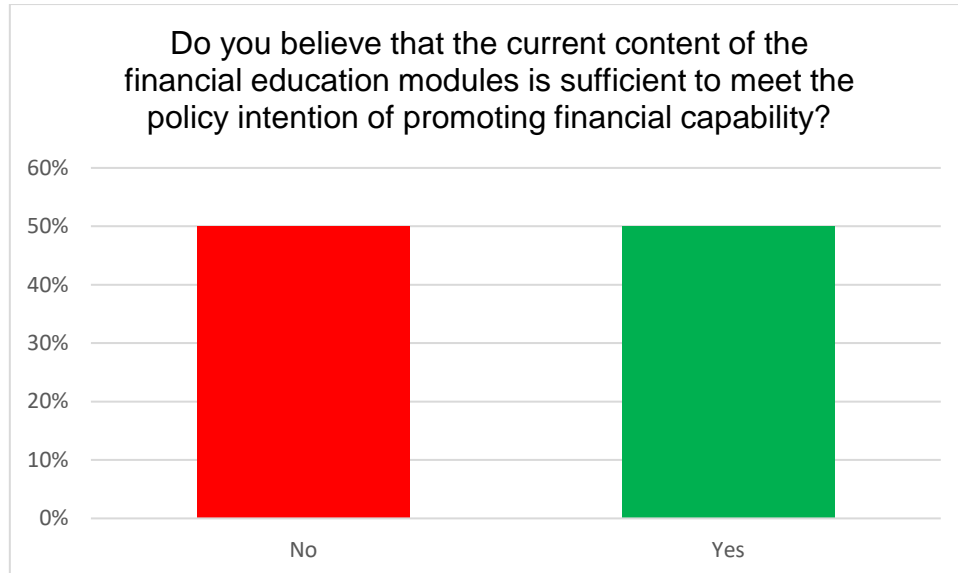
- 80% the total consultation respondents answered this particular question.
- Of those respondents who answered this question 64% do not believe the total asset and individual asset limits should be increased.

### **Question 10a. If you have answered “yes” to Q10, what limit should be applied?**

- Of the respondents who answered this question, 45% believe the limit for total assets should be £3,000, 33% believe it should be £4,000 and 22% believe it should be another amount not listed.
- Of the respondents who answered this question, 36% believe the limit for individual assets should be £2,000, 28% believe it should be £3,000 and 36% believe it should be another amount not listed.

## Financial Education

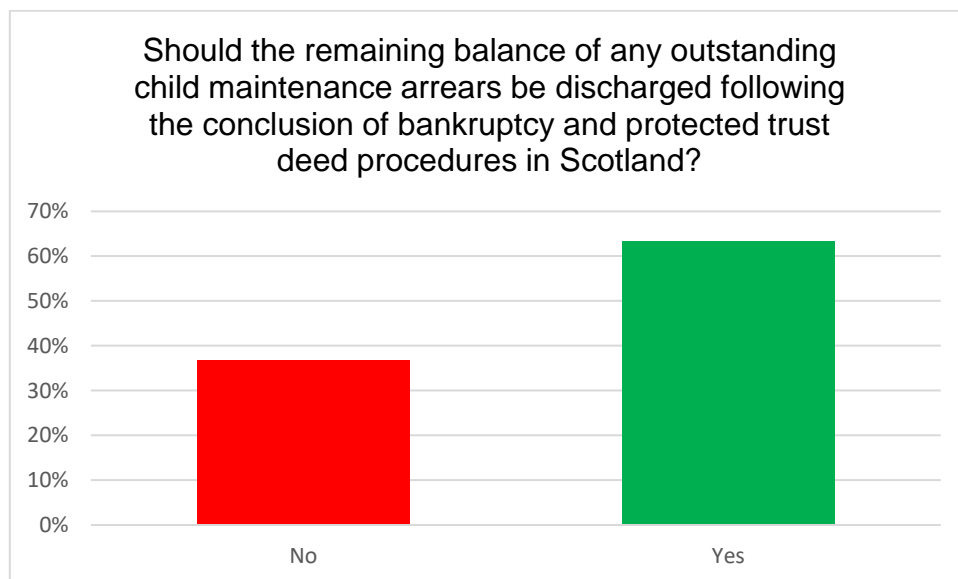
**Question 11. Do you believe that the current content of the financial education modules is sufficient to meet the policy intention of promoting financial capability?**



- 64% of the total consultation respondents answered this particular question.
- Half of those respondents who answered this question believe the content of the financial education modules is sufficient while the other half do not.

## Discharge of Child Maintenance Debts

**Question 12. Should the remaining balance of any outstanding child maintenance arrears be discharged following the conclusion of bankruptcy and protected trust deed procedures in Scotland?**



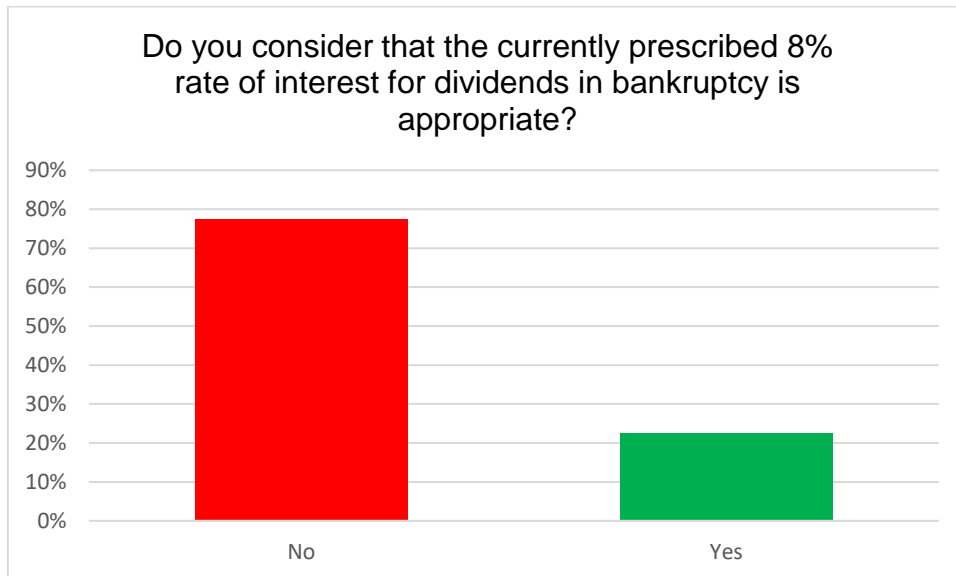


## Review of the Bankruptcy and Debt Advice (Scotland) Act 2014

- 73% of the total consultation respondents answered this particular question.
- 63% of those respondents believe the balance of any outstanding child maintenance arrears should continue to be discharged in bankruptcy and protected trust deeds.

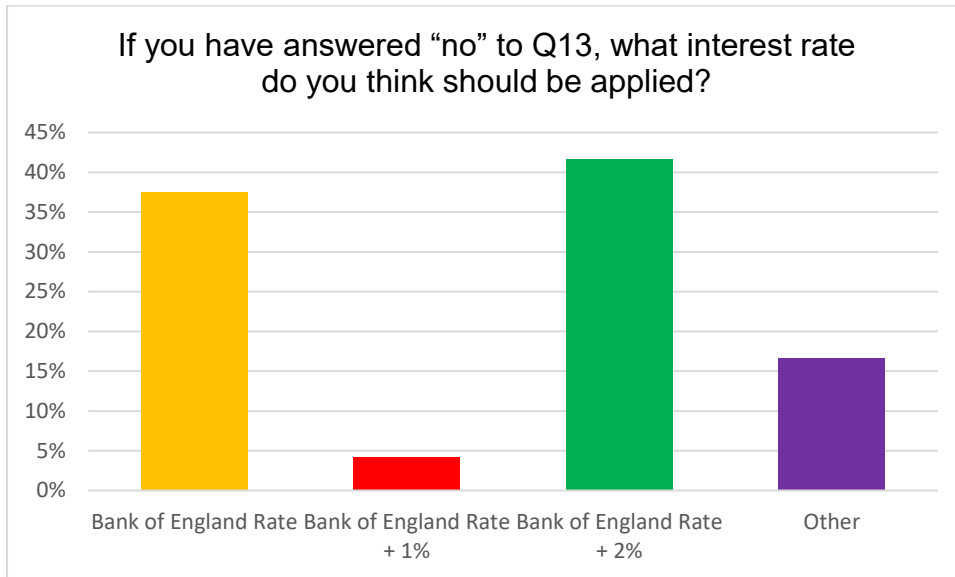
### Prescribed Rate of Interest on Dividends in Bankruptcy

**Question 13. Do you consider that the currently prescribed 8% rate of interest for dividends in bankruptcy is appropriate?**



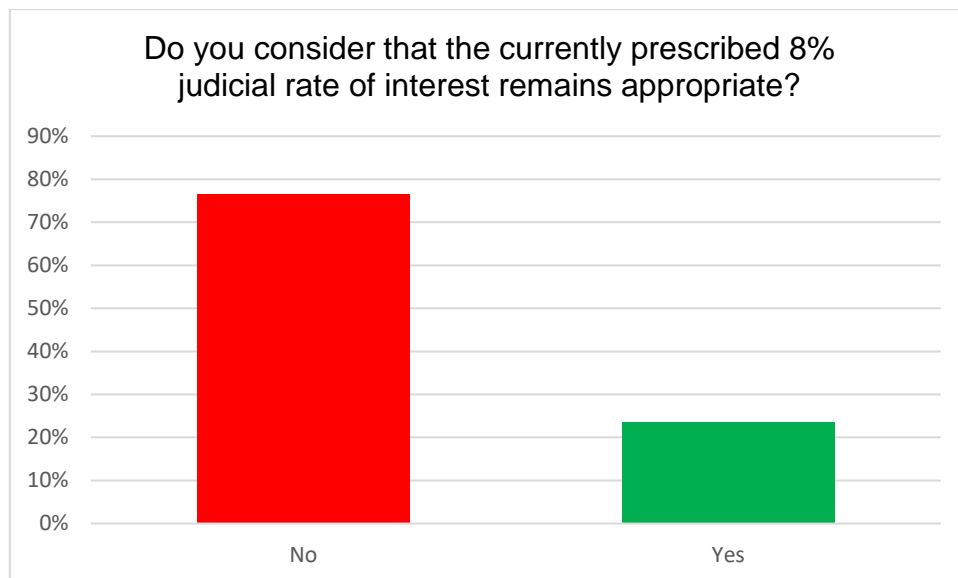
- A quarter of the total consultation respondents answered this particular question.
- 77% of those respondents do not believe the current prescribed rate of interest for dividends in bankruptcy is appropriate.

**Question 13a. If you have answered “no” to Q13, what interest rate do you think should be applied?**



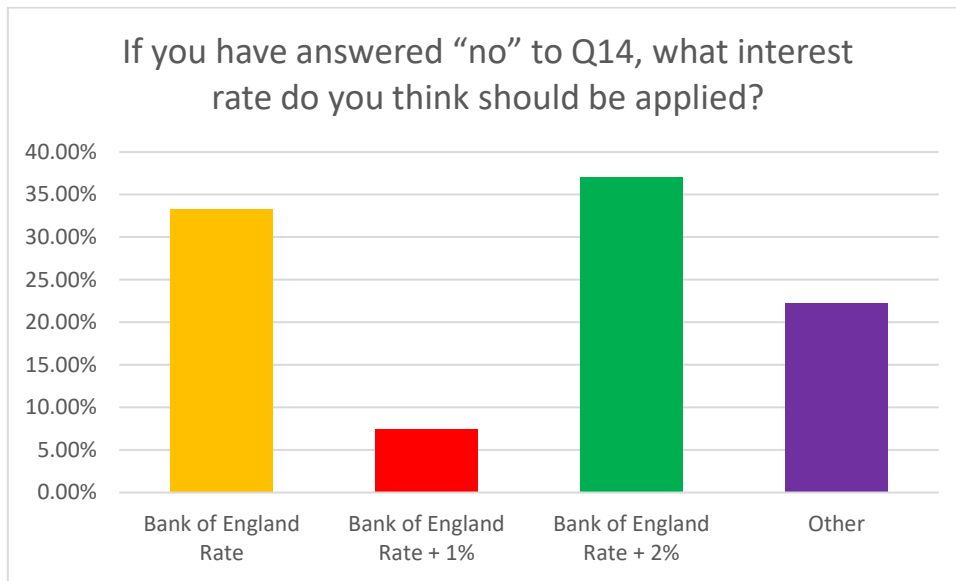
- Of the respondents who answered this question, 42% believe the rate of interest should be the Bank of England base rate plus 2%; 37% of respondents believe it should be the Bank of England base rate alone, 4% believe it should be the Bank of England base rate plus 1% and the remaining 17% believe it should be another amount not listed.

**Question 14. Do you consider that the currently prescribed 8% judicial rate of interest remains appropriate?**



- 83% of the total consultation respondents answered this particular question.
- 76% of those respondents do not believe the current judicial rate of interest is appropriate

**Question 14a. If you have answered “no” to Q14, what interest rate do you think should be applied?**



- Of the respondents who answered this question, 37% believe the rate of interest should be the Bank of England base rate plus 2%; 33% of respondents believe it should be the Bank of England base rate alone, 8% believe it should be the Bank of England base rate plus 1% and the remaining 22% believe it should be another amount not listed.

iv. Table of abbreviations

AiB	Accountant in Bankruptcy
BoE	Bank of England
CAB	Citizens Advice Bureau
CCCS	Consumer Credit Counselling Service
CFS	Common Financial Statement
CFT	Common Financial Tool
CMEC	Child Maintenance & Enforcement Commission
HMRC	Her Majesty's Revenue and Customs
ICAS	Institute of Chartered Accountants of Scotland
IP	Insolvency Practitioner
MAP	Minimal Asset Process
PTD	Protected Trust Deed
ROI	Register of Insolvencies
RPB	Recognised Professional Body
SFS	Standard Financial Statement

## v. Evaluation

A total of 41 responses were received by AiB at the close of the consultation. A list of the organisations who responded (and who gave their permission for the details to be disclosed) can be found in Annex A of this document. We have included comments from respondents throughout the report, however where a respondent did not want their details disclosed these have not been attributed to any organisation or individual.

### **Methodology**

Throughout the document we have provided tables to illustrate the responses to the questions asked in the consultation. Where a question required simply a “yes” or “no” answer, we have shown the number of responses in each category.

Where a question required respondents to choose a preferred option, including ‘Other’, the tables show the total number of respondents who expressed a preference for each option.

The responses to all questions have been further broken down into the total number of responses from each stakeholder group, rather than splitting it into responses from organisations and from individuals.

vi. Consultation Response Results

**Statutory Moratorium on Diligence**

**Question 1. Do you consider the current six week period of protection afforded by the moratorium process to be sufficient?**

	Total Responses	Organisations only
Yes	11	9
No	24	16
Not answered	6	4
Total	41	29

Of the respondents who answered the question 69% do not believe the protection period is sufficient. 17% of the total respondents to the consultation did not answer this particular question.

**Question 1a. If you answered "no" to Question 1 what do you consider the appropriate time for a moratorium in Scotland?**

	Total Responses	Organisations only
Less than 6 weeks	0	
60 days	5	5
10 weeks	4	2
12 weeks	12	6
Other	3	3
Total	34	16

Of the respondents who do not believe the 6 week moratorium period is sufficient, 50% believe 12 weeks would be a more appropriate timescale. 21% believed it should be 60 days while 17% thought it should be 10 weeks.

Of the respondents who suggested 60 days was the most appropriate timescale the reason generally provided for this approach was for consistency with England and Wales through their Breathing Space scheme.

There was also a suggestion that an adviser should be allowed to apply for an extension to the moratorium period on a case by case basis.

**Question 2. 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?**

	Total Responses	Organisations only
Yes	20	14
No	11	7
Not answered	10	8
Total	41	29

## Review of the Bankruptcy and Debt Advice (Scotland) Act 2014

Of the respondents who answered this question – two thirds believe that interest, default fees and charges should be frozen during the moratorium period.

The reasons provided for freezing the interest, default fees and charges were mainly to stabilise the debtor’s position, encourage them to engage with the process and prevent the exacerbation of their position. It is neatly encapsulated by the following comment:

*‘We would support freezing interest, default fees and charges on debts during the moratorium period. This allows a person in debt the breathing space to seek debt advice and make an informed decision as to the best debt option, without the extra stress and pressure of knowing that their debts are increasing constantly.’*

**Money Advice Trust**

It was also highlighted that freezing interest and charges will crystallise the debt allowing the adviser a better opportunity for a smoother transition for their client into the most appropriate debt solution.

The main reasons presented for not freezing interest and charges were the potential administrative burdens for creditors, particularly if an individual – on completion of the moratorium period – does not enter a statutory debt solution. It was also highlighted that most creditors will voluntarily freeze their account, therefore, there was no need to introduce a statutory freeze.

A quarter of the total consultation respondents did not answer this question.

**Question 3. 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?**

	Total Responses	Organisations only
Yes	27	18
No	7	5
Not answered	7	6
Total	41	29

Of the respondents who answered this question, 79% believe that the Scottish Government should explore provisions similar to the UK Breathing Space scheme.

91% of the respondents who believe the Scottish Government should explore those provisions believe that all provisions should be considered. Three respondents do not believe all provisions should be considered. Of those three, none believe the creditor should be stopped from enforcing action.

17% of the total respondents did not answer this question on further provisions for the moratorium.

**Question 4. 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?**

	Total Responses	Organisations only
Yes	31	23
No	4	2
Not answered	6	4
Total	41	29

Of the respondents who answered this question, 89% believe that the Scottish Government should consider separate moratorium provisions for those receiving mental health crisis care. 15% of the total respondents to the consultation did not answer this question.

**Question 4a. If you answered “yes” to Q4, which of the following principles for those receiving mental health crisis care should be given consideration?**

	Total Responses	Organisations only
Removal of restrictions within 12mths	0	0
Period of moratorium extended	4	3
Both options	24	17
Total	28	20

Of the respondents who believe the Scottish Government should consider separate provisions for those receiving mental health crisis care, 86% believe both options should be considered. The remaining 15% believe that only the extension of the protection period should be considered.

**Question 4b. If you ticked the box for extending the period of protection how long should the period of protection last?**

	Total Responses	Organisations only
Duration of mental health crisis care	19	13
Other	10	9
Total	29	21

Of the respondents who believe the moratorium period should be extended for those receiving mental health crisis care, 65% believe it should be for the duration of the care.

For those who believe the moratorium period should be extended beyond the duration of care there was not a common period of time suggested. The suggestions varied from 6 weeks to 6 months beyond the duration of care. An alternative timescale suggested was for the statutory time period for people not receiving such care being applied to the end of someone who is receiving care. Once the care had ended they should be allowed a fresh statutory moratorium period.



## Review of the Bankruptcy and Debt Advice (Scotland) Act 2014

It was also suggested that a timescale should not be fixed but should be assessed on a case by case basis as stated in the following comment:

*'West Lothian money advice practitioners consider that a follow up assessment by a mental health practitioner could be implemented to review an individual's condition and status and protection should apply until the individual is assessed as well enough to cope with the impact of the protection being lifted.'*

**West Lothian council**

### Summary

There has been a number of proposals in different areas of the moratorium process. The majority of respondents do not believe the current 6 week moratorium period is sufficient with half of those believing a 12 week period would be more appropriate. The other half of respondents believe the moratorium period should be between 6 weeks and 12 weeks. The average timescale from these figures would be a 10 week moratorium period.

Two thirds of respondents believe that interest, fees and charges should be frozen during the moratorium period. The main reason for those objecting to this was the potential administrative burden placed on those involved, particularly creditors.

The vast majority of respondents believe the Scottish Government should consider all further moratorium provisions which were presented in the consultation. A similar number also believe the Scottish Government should consider the additional protections due to be afforded to those receiving mental health crisis case in the rest of the UK.

The Scottish Government will therefore consider the extension of the moratorium period and to include a freeze on interest, fees and charges during that period.

More work will be undertaken to consider the practical application of introducing further provisions which are currently reserved and also the additional protections for those receiving mental health crisis care.

### Common Financial Tool (CFT)

**Question 5. 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?**

	Total Responses	Organisations only
Yes	30	21
No	1	0
Not answered	10	8
Total	41	29

Of the respondents who answered this question, 97% believed that the provision of a Common Financial Tool within insolvency legislation remains appropriate.

**Question 5b. If you have answered "yes" to Q5, should the CFT be an income and expenditure tool designed to assess individual circumstances?**

	Total Responses	Organisations only
Yes	28	19
No	0	0
Total	28	19

Of those who believed that the CFT remain appropriate, 100% believe the CFT should be an income and expenditure tool designed to assess individual circumstances.

**Question 5c. If you answered "yes" to Q5b, which tool should be adopted as the CFT?**

	Total Responses	Organisations only
CFS	16	10
SFS	5	4
Other	7	5
Total	28	19

Of the respondents who believe the Common Financial Tool should be an income and expenditure tool, 57% believe it should remain the Common Financial Statement; 18% believe it should be changed to the Standard Financial Statement and 25% believe it should be another tool.

The alternative tools suggested were generally to reduce the administrative work undertaken by all parties in the process which can potentially increase costs. One approach suggested would be to have a single non-essential expenditure figure allowed for each member of the household regardless of their circumstances. Another similar suggestion is to apply the model used by the Insolvency Service of Ireland with the surplus income being assessed for a contribution on an income scale.

There were also respondents who agreed with the use of an income and expenditure tool but believed there were changes which should be made to the current tool. There was a question of the flexibility of the contribution being 100% of the surplus income as this impacts on the individuals who work flexible hours or zero hour contracts as well as those working overtime.

There was also questions raised whether there should be a minimum expenditure level allowed. This was highlighted in the following comment:

*'We are concerned that the lack of a minimum floor in assessing expenditure leaves household budgets vulnerable to unsustainably low levels of expenditure.'*

**Money Advice Scotland**

The topic of reasonable living standards and how they are measured is a common theme raised by several respondents regardless of which tool they supported. There is a suggestion that further research may be required in this area before any significant changes are made as encapsulated by the following comment:

*'Whilst we answered Yes [to the Common Financial Statement], however we would encourage a more in-depth study into the cost of living when setting the allowable trigger figures to ensure they accurately reflect the cost of living across Scotland.'*

**Money Health and Money Advice**

**Summary**

The method for assessing an individual's income and expenditure for a potential contribution has been an area for great debate in the past year. It is clear from those who responded to this consultation they believe the introduction of a Common Financial Tool has been a positive step and the approach for the CFT should continue to be an income and expenditure model.

The question of which tool that should be is not quite as clear. The majority of respondents prefer the Common Financial Statement, however, there are still some reservations about the application of that particular tool. The issue of a reasonable standard of living remains a common theme with the CFT with a possible minimum expenditure level being considered as well as a maximum level.

This is clearly an area which the Scottish Government will have to consider if there is to be a change of tool or any amendments to the current approach.

**Debtor Contribution Order (DCO)**

**Question 6. 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?**

	Total Responses	Organisations only
Yes	7	6
No	20	13
Not answered	14	10
Total	41	29

Of the respondents who answered this question, 74% believe that the 6 week timescale for trustees to submit a DCO proposal is not sufficient.

The reasons provided for the timescale not being sufficient were mainly due to any delays in the trustee assessing the contribution being out with their control such as delays in receiving award of sequestration or the time required to provide the evidence required to accurately set a Debtor Contribution Order.

**Question 6a. If you answered "no" to Q6 what would be a sufficient timescale?**

	Total Responses	Organisations only
8 weeks	0	0
10 weeks	1	1
12 weeks	10	4

## Review of the Bankruptcy and Debt Advice (Scotland) Act 2014

No time limit	5	4
Other	4	4
Total	20	13

Of those who believed that the 6 week DCO proposal timescale was not sufficient, 50% believe 12 weeks is more appropriate and 25% believe there should be no time limit.

Further comments were made that the trustee should determine the appropriate time to submit their contribution proposals without the need for regular reporting to AiB.

### Summary

The majority of respondents do not believe the current timescales for trustees submitting their contribution proposals is sufficient. This is mainly due to actions out with the trustee's control which impact on their ability to meet the 6 week timescale.

A 12 week timescale is believed to be more appropriate according to half of those respondents. The remaining respondents are split between there not being a timescale and a different limit.

The Scottish Government will consider extending the time period for trustees submitting their contribution proposals to 12 weeks. Further consideration will be given to the issues raised by trustees who believe there should not be a timescale. This will not mean the removal of a timescale as this is favoured by the majority of respondents.

### Minimal Asset Process (MAP)

**Question 7. Do you believe that the minimum debt allowed for MAP application should be increased?**

	Total Responses	Organisations only
Yes	4	3
No	27	19
Not answered	10	7
Total	41	29

Of those who answered this question, 87% do not believe the minimum debt level for a MAP application should be increased. 24% of the total respondents did not answer this question.

**Question 7a. If you answered "yes" to Q7, what level should it be increased to?**

	Total Responses	Organisations only
£2,000	0	0
£2,500	1	1
£3,000	4	2
Other	1	1

## Review of the Bankruptcy and Debt Advice (Scotland) Act 2014

Total	6	4
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Of those who believe the minimum debt levels for the MAP application should be increased, two thirds believe it should be increased to £3,000.

The main reason provided for increasing the minimum debt level to this amount was for consistency with Full Administration bankruptcies.

### Question 7c. Should the debt threshold for creditor petition or full administration debtor application bankruptcy be increased (currently £3,000)?

	Total Responses	Organisations only
Yes	8	5
No	25	18
Not answered	8	6
Total	41	29

Three quarters of respondents who answered this question believe that the debt threshold for creditor petition or full administration bankruptcies should not be increased.

Of the respondents who believed it should be increased 86% believed it should be increased to £5,000 for a creditor petition.

### Question 8. Do you think that there should still be a maximum debt threshold in a MAP application?

	Total Responses	Organisations only
Yes	18	13
No	15	10
Not answered	8	6
Total	41	29

55% of respondents who answered this question believe there should still be a maximum debt threshold in a MAP application.

The main reason given for not supporting a maximum debt threshold was that MAP should be for those who are on benefits only or have no assets and cannot pay a contribution – regardless of their level of debt.

A fifth of the total respondents did not answer the question on a maximum debt threshold.

### Question 8a. If you answered "yes" to Q8, at what level should the debt ceiling be set?

	Total Responses	Organisations only
£17,000	3	1
£20,000	13	11

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£25,000	1	0
Other	3	2
Total	20	14

Of the respondents who believed a maximum debt threshold should remain, 65% believe it should be set at £20,000 with 15% believing it should remain at £17,000 and 15% believing it should be set at a different figure than the ones listed.

Having the maximum debt threshold in line with the rest of the UK was a common reason given for increasing the level to £20,000.

### **Question 9. Do you think student loan debt, that is not discharged in bankruptcy, should be excluded from the maximum debt criteria in MAP?**

	Total Responses	Organisations only
Yes	30	21
No	2	1
N/A	9	7
Total	41	29

Of the respondents who answered this question, 94% believe that student loans, not discharged in bankruptcy, should be excluded from the maximum debt criteria in MAP. Just over a fifth of the total respondents did not answer this question.

It was also suggested that consideration should be given to excluding other debts from the maximum debt criteria. Debts which – similar to student loans - are not discharged under section 145 of the Bankruptcy (Scotland) Act 2016.

The reasons provided for not excluding student loans were that the debt could still be recovered.

### **Question 10. Do you think the total asset and individual asset limits should be increased?**

	Total Responses	Organisations only
Yes	12	7
No	21	16
Not answered	8	6
Total	41	29

Of the respondents who answered this question, 64% do not believe the asset limits should be increased. Just under a fifth of the total consultation respondents did not answer this particular question.

### **Question 10a. If you have answered “yes” to Q10, what limit should be applied?**

Combined Assets	Total Responses	Organisations only
£3,000	4	2
£4,000	3	1

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Other	2	2
Total	9	5

Of the respondents who believe the combined assets should be increased, 45% believe the most appropriate limit for combined assets is £3,000.

Individual Assets	Total Responses	Organisations only
£2,000	4	1
£3,000	3	1
Other	4	4
Total	11	6

Of the respondents who believe the individual assets should be increased, just over a third believe the most appropriate limit is £2,000 while just over a third believe another amount not listed was more appropriate.

Aligning the amount to the lower capital limit for means-tested benefits was highlighted as a possible alternative to the figures listed for combined assets. This is currently £6,000. For the individual assets limit it was suggested by some that this should be in line with the minimum debt threshold for MAP (£1,500).

The possibility of reviewing the £3,000 limit for a car was also raised by some respondents in relation to the assets limits.

### **Summary**

The Minimal Asset Process bankruptcy has been roundly regarded as a successful replacement for the Low Income Low Asset process. Following on from the positive introduction of MAP it had been suggested there are certain areas which could be improved upon.

However, having asked questions on each aspect of MAP it appears there are only very specific areas which respondents to the consultation believe should be amended. The vast majority of respondents do not believe the minimum debt levels should be increased in a MAP bankruptcy, Full Administration bankruptcy or a creditor petition bankruptcy. Similarly, the majority of respondents do not believe the asset levels for MAP applications should be increased.

Equally as clear was the respondent's position on student loans being exempt from the debt threshold in MAP. The vast majority of respondents believe a student loan should not be included in the debt level of a MAP application. There were some who suggested the exemption should include other debts not discharged in bankruptcy. However, this was not a view widely expressed.

The position on having a debt ceiling in a MAP bankruptcy application was not as clear as the other questions asked. A small majority of respondents believe there should continue to be a ceiling with the majority of those believing it should be increased to £20,000.

## Financial Education

**Question 11. Do you believe that the current content of the financial education modules is sufficient to meet the policy intention of promoting financial capability?**

	Total Responses	Organisations only
Yes	13	8
No	13	11
Not answered	15	10
Total	41	29

Of the respondents who answered this question, half believe the current content of the financial education modules are sufficient to meet the policy intention while the other half do not. 36% of the total consultation respondents did not answer this particular question.

The majority of respondents who answered 'no' to this question believe the financial education modules are 'well-intentioned' but may not necessarily fulfil their purpose. Several respondents believe it would be more beneficial to expand the financial education into the school curriculum.

Others believe their clients may not consider the completion of the financial education modules to be important and therefore the modules may not be fulfilling their purpose.

*'Our experience is that the discipline of doing a detailed budget with a Money Adviser whether face to face or by phone prior to making an application for Bankruptcy or afterwards following a creditor petition is extremely useful for a debtor which would suggest that tailored advice specific to an individual's circumstances could be more useful than generic learning modules.'*

**KPMG**

*'The decision to refer an individual is left to the subjective opinion of the trustee, which inevitably leads to inconsistent application in practice. It may be helpful if the Accountant in Bankruptcy were to provide guidance or examples of factors which should be considered by trustees when considering whether it would be appropriate for the debtor to undertake financial education and they meet the other prescribed criteria.'*

**ICAS**

## Summary

The vast majority of respondents to the consultation believe that intention to address financial education is a positive step, however, there is a split on responses as to whether the current content of the financial education modules meets the policy intention.



## Discharge of Child Maintenance Debts

**Question 12. Should the remaining balance of any outstanding child maintenance arrears be discharged following the conclusion of bankruptcy and protected trust deed procedures in Scotland?**

	Total Responses	Organisations only
Yes	19	13
No	11	6
Not answered	11	10
Total	41	29

Of the respondents who answered this question, 63% believe that child maintenance arrears should continue to be discharged following the conclusion of bankruptcy or protected trust deeds.

Both respondents who agreed or disagreed with the discharge of child maintenance arrears could understand the argument both for and against the discharge. The main reason given for discharging the debt was to provide the individual with a ‘fresh start.’ It was stated that ‘the fundamental purpose of bankruptcy is to get debt relief.’ Several respondents questioned why other debts would not also be excluded if child maintenance arrears were not discharged. They believe the list of excluded debts could expand and result in fundamentally altering the reason for bankruptcy.

Respondents also questioned how the individual would be in a position to pay their ongoing liabilities if they continued to have child maintenance arrears – sometimes extremely large amounts – not discharged through bankruptcy. This was encapsulated by the following comment:

*‘Many clients are unable to continue paying their ongoing liability for Child Maintenance as they are trying to service the arrears and therefore cannot get out the vicious cycle created.’*

### **Mental Health and Money Advice**

The main reason respondents provided for not discharging child maintenance arrears was on the ‘moral obligation’ to pay the outstanding debt. It was also questioned why this is discharged where other debts are not as commented below.

*‘We would query why maintenance for a child’s living costs is treated differently to a government debt such as a student loan which is not discharged in bankruptcy.’*

### **Money Advice Trust**

27% of the total consultation respondents did not answer this particular question.

## **Summary**

The discharge of child maintenance arrears has always been an emotive and debated area of insolvency in Scotland, particularly as the position differs from that in the rest of the United Kingdom. While most respondents could appreciate both sides of the

argument a reasonable majority of those respondents believe the current approach to discharge child maintenance arrears is the correct one.

## Rate of Interest

**Question 13. Do you consider that the currently prescribed 8% rate of interest for dividends in bankruptcy is appropriate?**

	Total Responses	Organisations only
Yes	7	3
No	24	19
Not answered	10	7
Total	41	29

Of the respondents who answered this question, 77% do not consider the current prescribed rate of interest to be appropriate. Just under a quarter of the total consultation respondents did not answer this particular question.

**Question 13a. If you have answered "no" to Q13, what interest rate do you think should be applied?**

	Total Responses	Organisations only
BoE rate	9	8
BoE rate +1%	1	1
BoE rate +2%	10	6
Other	4	4
Total	24	19

Of the respondents who did not consider the current prescribed interest rate as being appropriate, 42% believe the Bank of England rate +2% to be the most appropriate interest rate. 37% of those same respondents believed the Bank of England rate alone is the most appropriate interest rate for dividends in bankruptcy.

Some respondents believe given the current economic climate it was more appropriate to link the rate to the Bank of England rate as it is 'responsive to changing circumstances and market conditions.'

It was suggested that the rate should be above the Bank of England rate as 'there should be some level of reward or compensation for a creditor having to wait for repayment.'

**Question 14. Do you consider that the currently prescribed 8% judicial rate of interest remains appropriate?**

	Total Responses	Organisations only
Yes	8	2
No	26	21
Not answered	7	6

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Total	41	29
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Of the respondents who answered this question, 76% do not believe the current judicial rate of interest is appropriate. 17% of the total respondents did not respond to this particular question.

### **Question 14a. If you have answered "no" to Q14, what interest rate do you think should be applied?**

	Total Responses	Organisations only
BoE rate	9	8
BoE rate +1%	2	1
BoE rate +2%	10	6
Other	6	6
Total	27	21

Of the respondents who believe the current judicial rate is not appropriate, 37% believe the rate should be set at the Bank of England rate +2% while a third believe it should be set the Bank of England rate alone.

It was highlighted that as this particular interest rate is applied beyond bankruptcy and, therefore, a wider consultation on this topic should be considered. Another suggestions was that the judicial interest rate should be frozen for consumer credit debts that fall under the Consumer Credit Act 1974. This is the way in which judicial interest is applied in England and Wales.

### **Summary**

Since the fall in the Bank of England base rate to record low levels, the question of whether the statutory interest rate in insolvency is appropriate has been raised multiple times. Almost all respondents do not believe the current interest rate for both dividends in bankruptcy and the judicial rate are set at the correct level. There was a relatively even split from respondents on the more appropriate rate of interest between the Bank of England base rate and the Bank of England base rate +2%.

### **Other Issues**

Respondents were asked to provide any other issues which they believe should be considered as part of this policy review. The following issues were raised.

- The extension of the contribution period from 36 months to 48 months.
- The replacement of the automatic discharge process with an approval or deferral system.
- The introduction of a 120 day timescale for creditors to submit their claims.
- The scrapping of the MAP application fee or allowing the fee bring paid in instalments up to the date of the individual's discharge.
- MAP fee being means tested, similar to court fee exemptions.

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- A facility for trustees to obtain their discharge when they have undertaken every possible action but a DCO is unable to be established.
- An individual being required to seek advice from an authorised debt adviser before applying a moratorium.
- Reviewing the name 'Minimal Asset Procedure' to ensure it is easily understood.

vii. Next Steps

As noted in the individual summaries for each question in the [Consultation Response Results Section](#) we have carefully considered all points made by stakeholders in their responses to the consultation on the changes introduced by the Bankruptcy and Debt Advice (Scotland) Act 2014, particularly in those areas where there was no clear majority or consensus, and this will be reflected in the proposals put forward to the Minister.

AiB is committed to ensuring that our statutory debt management and debt relief mechanisms are as effective as possible. In addition to the work being done to improve access to bankruptcy we are commencing work on a wider review of Scotland debt solutions.

## Annex A

### List of Organisations and individuals who responded to the consultation

As part of the consultation, all respondents were asked to indicate using the appropriate tick box whether they wished their full or partial details to be made available to the public. A mark of "Private individual" has been used to indicate respondents who either chose for their details to remain private or where no tick box was marked to indicate choice of disclosure.

In addition, where a response has been received from a representative of a group of members, their response has been categorised under the sector its members are associated i.e. Creditor, Insolvency Practitioner or Advice sector.

Below is a list of all respondents to the consultation who have given permission for their names to be known.

No.	Respondent Name
1	Banff & Buchan citizens advice bureau
2	Helen Brodie
3	Jordan
4	Private individual
5	StepChange
6	Private individual
7	Private individual
8	Private individual
9	Moray Council
10	Private individual
11	Private individual
12	Private individual
13	Mental Health and Money Advice
14	KPMG
15	City of Edinburgh Council Advice Shop
16	Chartered Institute of Credit Management
17	Sally-Anne Hunter
18	Stirling Council
19	Carrington Dean
20	Private individual
21	Scottish Legal Aid Board
22	Insolvency Practitioners Association
23	Wylie & Bisset
24	Private individual
25	HMRC
26	Glasgow City Council
27	Scottish Woman's Aid
28	Scottish Courts and Tribunals Service
29	Working Group of the Centre for Scots Law at the University of Aberdeen
30	Senators of the College of Justice
31	Private individual

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32	Money Advice Trust
33	R3 Scottish Technical Committee
34	Campbell Dallas
35	Private individual
36	Scottish Civil Justice Council
37	West Lothian Council
38	ICAS
39	Citizens Advice Scotland
40	Money Advice Scotland
41	Association of British Credit Unions Ltd