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Scotland's Money Charity

17 December 2015

Nigel Don MSP
Convenor, Delegated Powers and Law Reform Committee
Chamber Office
Room T1.01
Scottish Parliament
Edinburgh
EH99 1SP

Dear Convenor,

Bankruptcy (Scotland) Bill

Following the oral evidence session held on 15 December 2015, we are writing to submit additional written evidence for the attention of the Committee.

Money Advice Scotland notes the submissions by ICAS and R3, and in particular, the comments made on the inclusion of the Debt Arrangement Scheme (DAS) within bankruptcy legislation. We would have serious concerns at the inclusion of the Debt Arrangement and Attachment (Scotland) Act 2002. The Debt Arrangement Scheme, as *debt management* scheme, was implemented to deal with people who could pay their debts over a longer period of time and in full. Subsequent changes through regulations have resulted in the freezing of interest charges and in debt forgiveness through composition of debt, for cases where the debtor has paid 70 per cent of the debt after a period of 12 years.

This is not bankruptcy. It does not require an insolvency practitioner. DAS is also a less costly option for creditors who will in most cases get a substantial return – significantly more than through bankruptcy or Protected Trust Deed. For DAS, 90 per cent of the debts are paid if the Debt Payment Programme is completed, save for those who have debt forgiveness as outlined above. The remaining 10 per cent is made up of the 2 per cent application fee – paid by creditors to the DAS Administrator – and 8 per cent in payment distribution costs. The debtor pays their debts in full ensuring 100 per cent value and the interest and charges are waived on completion.

We do not wish to see DAS form part of bankruptcy legislation. In our view, this would act as a further barrier to people who cannot access bankruptcy or Protected Trust Deed because these are *insolvency solutions* that are precluded by certain types of employment. The inclusion of DAS in the Bankruptcy (Scotland) Bill would effectively leave people in that situation with a burden of debt as it would be considered overall as a bankruptcy remedy that is unavailable to them.

In our experience, there continues to be a stigma attached to bankruptcy and Protected Trust Deeds which is not as associated with DAS, given that people are not known as

bankrupts, and they are not prohibited from actively engaging in certain aspects of society in the same way. Debtors are not faced with the same restrictions (for example, becoming an MP/MSP, or taking part in a School Board) nor does their estate vest with a Trustee. DAS is also a diligence stopper, meaning that it offers the debtor protection whilst at the same encouraging them to pay their debts on a regular basis through a structured process via a Payment Distributor.

We believe that the legislation should move forward in its current format, save for a few structural amendments. In addition to the comments already noted, we are also concerned that to include the Debt Arrangement Scheme may add further delay to the long awaited Consolidation Bill and its passage through Parliament. As mentioned in our previous submission, now is as good a time as any to move towards a consolidation Act that deals solely with bankruptcy matters.

We would urge the Committee to be mindful of these factors in its continuing scrutiny of the Bankruptcy (Scotland) Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Yvonne MacDermid', written in a cursive style.

Yvonne MacDermid OBE
Chief Executive, Money Advice Scotland