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Economy, Energy and Fair Work Committee
Comataidh Eaconamaidh, Lùth is Obair Chothromach

Common Financial Tool (Scotland) Regulations 2018 [draft]

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Economy, Energy and Fair Work Committee

Remit: To consider and report on economy and fair work matters falling within the responsibilities of the Cabinet Secretary for Finance, Economy and Fair Work; matters relating to the digital economy within the responsibilities of the Minister for Public Finance and Digital Economy, and matters relating to energy falling within the responsibilities of the Minister for Energy, Connectivity and the Islands.
(As agreed by resolution of Parliament on 6 September 2018)

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Introduction

Legislative context

1. The Bankruptcy and Debt Advice (Scotland) Act 2014 legislated for a standardised system for assessing debtors' income. It was intended to address concerns that different money advisers and insolvency practitioners had different approaches and that this could lead to different treatment of debtors in the same financial position.

2. The Act stipulated the Common Financial Tool (CFT) as the method to assess a debtor's available income to repay creditors when entering a statutory debt solution. The CFT is used in assessing income in relation to the three statutory debt solutions:

   - **Bankruptcy (Sequestration)** –The Accountant in Bankruptcy (AiB) oversees bankruptcy processes and directly administers most bankruptcies (this can also be done by an insolvency practitioner). Insolvency practitioners and money advisers have a role in assessing a debtor's suitability for bankruptcy.
   - **Protected Trust Deed** – Protected Trust Deeds (PTDs) are a form of personal insolvency. They are only administered by insolvency practitioners.
   - **Debt Arrangement Scheme** – The Debt Arrangement Scheme (DAS) is a framework for paying debts off in full over time. It is not insolvency. The Accountant in Bankruptcy oversees DAS, with money advisers providing the day to day administration.

What the regulations would do

3. Currently, the Common Financial Statement (CFS) is the method that assists creditors, advisers, and debtors to determine an individual's or household's financial situation. The draft Regulations propose to replace the Common Financial Statement with the Standard Financial Statement.

Common Financial Statement

4. The CFS was developed by the Money Advice Trust, a charity which directs funding from creditors to the money advice sector.

5. The CFS streamlines the process of negotiating informal repayments between money advisers and creditors. Creditors signed up to the scheme will not question expenditure which is below the "trigger figures". The trigger figures help identify levels of monthly household expenditure deemed reasonable. When completing the CFS, expenditure does not need to be explained if it falls below the trigger figures. The trigger figures are set using data from the Office for National Statistics' Living Costs and Food Survey . They are based on the average expenditure of the lowest 20% of survey respondents.

6. The use of the CFS is considered to have made the process of negotiating acceptable repayments between creditors and money advisers more efficient.

7. The Money Advice Trust, the charity that administers the CFS, will stop doing so at the end of March 2019, with the intention that users move to the Standard Financial Statement.

Standard Financial Statement

8. The Standard Financial Statement (SFS) has been developed by the Money Advice Service, a UK Government agency supporting advice about money.

9. The SFS uses broadly the same methodology as the CFS to set trigger figures. Expenditure categories have been re-organised which could result in lower trigger figures in certain areas, or more evidential requirements for "essential expenditure" categories.

10. The main advantage of the SFS is that it is likely to be accepted by more creditors. A number of local authority and public sector creditors have indicated that they will accept it.

Informal repayment plans

11. The majority of people in debt do not enter a statutory debt solution. Instead, they or their money advisers negotiate with creditors to agree informal repayment proposals.

12. The CFS was originally developed for the purpose of informal repayment and the SFS will be used for this purpose in England and Wales. In Scotland, use of the CFS is required by law in certain situations, meaning that most of the money advice and personal insolvency sectors have already adopted this as the standard tool for their work.

13. The statutory role played by the Common Financial Tool in Scotland has further implications. Income assessment can determine which statutory debt option a debtor can enter. For example, only those with no surplus income can enter a Minimum Assets Process bankruptcy, and a certain amount of surplus income is required to enter the Debt Arrangement Scheme. Therefore, small changes in methodology can have a considerable impact on debtors. Where a threshold is breached, further evidence must be supplied to the Accountant in Bankruptcy. To access a statutory debt solution, the debtor must convince the Accountant in Bankruptcy that they meet the relevant conditions. The level of evidence required in relation to breaches of the trigger figures can be a burden on money advisers and their clients.

Background

Economy, Energy and Fair Work Committee Consideration

14. The Regulations were originally laid on 15 June and withdrawn on 10 August 2018 following requests from the advice sector seeking a longer lead-in time ahead of commencement. The Regulations were re-laid on 19 September; the date they were to have come into force having been moved from 29 October 2018 to 1 April 2019, but with no other changes.

15. The Regulations were withdrawn a second time, on 9 November 2018, following a letter from the Committee to the Minister for Business, Fair Work and Skills on 7 November outlining members' "significant reservations".[i]

16. Those reservations specifically addressed—

- Trigger breaches
- Impact on debtors
- The rationale for switching
- Timing and consultation
- Costs and savings
- Adaptability
- Alternative options

Delegated Powers and Law Reform Committee consideration

17. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 25 September and had no issues to report.

Stakeholders' views

18. At its meeting on 26 June, the Committee had agreed to write to stakeholders requesting a copy of the responses to the Accountant in Bankruptcy's consultation. The Committee also asked for their position when the Regulations were laid.

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i Letter to Minister for Business, Fair Work and Skills, 7 November 2018

19. The Committee received responses from nine organisations; these are listed in the Annexe. A number of creditors, insolvency practitioners and money advice organisations supported the introduction of the SFS, the key advantage, as they saw it, being a standardised system operating across the UK. In an additional submission to the Committee, StepChange Debt Charity Scotland emphasised that the Standard Financial Statement would save their money advisors time and resources which will allow them to help more people.

20. However, there were stakeholders who did not support the introduction of the SFS. The main concerns were the impact on debtors of potentially stricter limits on expenditure, the administrative burden associated with dealing with trigger figure breaches in the context of statutory debt solutions, and the need to build in consideration of a reasonable standard of living to any tool used to assess income.

Issues

Switching from CFS to SFS

21. R3 Scottish Technical Committee, a UK representative debt recovery body, supported the use of the SFS on the basis that standardisation would reduce the time and effort taken negotiating over what a debtor can afford to pay—

> The Committee [R3 Scottish Technical Committee] is of the view that there is merit in the adoption and application of a single tool across the U.K. to assess a debtor's income and expenditure. This should ensure consistency of approach, while ensuring sufficient flexibility to reflect the specific geographical and domestic circumstances of the debtor.
>
> Source: R3, the Association of Business Recovery Professionals, Scottish Technical Committee, 2017[1]

22. The Money Advice Service carried out a consultation on what would be the right sector-wide initiatives for improving the quality, consistency and availability of debt advice across the UK. The need for a standard approach across the UK was the most important point. The Money Advice Service's Craig Simmons stated that—

> I would like to give some extra reassurance to the committee that the standard financial statement has been some years in the making. It looks to build on the good practice that is out there. It has taken what has worked in the common financial statement and in the StepChange approach and various other models that are used in public approaches to affordability assessments. Further, it has been tested at length with the money advice community. I am confident that it represents the current best practice that is available.
>
> Source: Economy, Energy and Fair Work Committee 30 October 2018, Craig Simmons, contrib. 208[2]

23. Craig Simmons also highlighted the Money Advice Service's intention to review the operation of the Standard Financial Statement once uptake was such that useful feedback could be collected. He said—

> However, we have a plan to evaluate the impact on the client, on the debt adviser and on the creditor when we reach a certain scale. We hope that Scotland will be on board when we do that so that you can test the impact of the new policy. We will evaluate it. We always do.
>
> Source: Economy, Energy and Fair Work Committee 30 October 2018, Craig Simmons, contrib. 214[3]

> The SFS is not static and is subjected to continuous improvement based on evidence and developments in best practice and technology. Its common format and structure also acts as a platform that other technology and improvements can be added to.[ii]

24. ICAS argued that any standard assessment tool would be administratively burdensome and not necessarily deliver consistency—

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ii Letter from Money Advice Service, 31 December 2018

> In our response to the consultation we highlighted our opposition to the CFS expressed during the progress of the Bankruptcy and Debt Advice (Scotland) Bill through the Scottish Parliament. Our concerns were around the consistency in application that could be achieved and the increased administrative burden that the use of CFS would entail.[iii]

25. One of Money Advice Scotland's key concerns was that debtors are more likely to breach the trigger figures using the SFS. This may mean that they cannot access a statutory debt solution, but it is more likely to mean that they will have less money to live on than if assessed under the Common Financial Statement—

> Even if the case for a single tool across the UK is accepted, there is an obligation to ensure that there is no detriment to people going through the debt advice process. Consistency alone does not outweigh concerns about the impact of the proposals: a single tool with more trigger breaches and tighter spending guidelines – albeit applied consistently – is still a tool with more trigger breaches and tighter spending guidelines.[iv]

26. Since Money Advice Scotland carried out its initial analysis, the methodology for calculating the trigger figures for the SFS has been changed. This has resulted in more generous trigger figures.

27. David Hilferty addressed the issue of administrative burden on the money advice sector:

> Investment from local authorities in money advice services has dropped by 45 per cent in the last two years. We need money advisers on the front line, advising clients. We do not need money advisers chasing up fuel bills and bus tickets that need to be submitted as part of an application.
>
> Source: Economy, Energy and Fair Work Committee 30 October 2018, David Hilferty, contrib. 153[4]

28. In its 7 November letter to the Minister, the Committee asked, among other things, for the rationale for switching to the SFS. The Minister replied on 9 November stating that a single approach makes it easier for the debtor to understand the process. He also suggested that running two or more systems (as would be the case for UK charities such as StepChange and Christians Against Poverty) could impose costs that impede their ability to support clients. The announcement from the Money Advice Trust that it will no longer be running the CFS was, he said, a motivating factor.

29. At its meeting on 6 November, the Committee took evidence from a panel of debt advisers and an insolvency practitioner. Witnesses were asked if there would be an impact on creditors if Scotland continued to use the CFS.

30. Alan McIntosh, a Senior Money Advisor at Inverclyde Council, was unsure what the impact would be, but said that it would be preferable if the same system was used across the UK. He did note that "they are legally obliged to accept it for statutory

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iii ICAS response to the Committee
iv Money Advice Scotland's response to the Future of the Common Financial Tool Consultation 2017

debt remedies". He stated that there would be additional layers of guidance in Scotland—

> I emphasise that, even if we have a standard financial statement across the UK, practice will not be uniform. In Scotland, there are additional layers of guidance on the way in which the current tool is implemented, which is crucial. The use of a standard financial statement across the UK will never be uniform—the key difference is how it is implemented in Scotland, and that is where money advisers have really struggled in the past three years.
>
> Source: Economy, Energy and Fair Work Committee 06 November 2018 [Draft], Alan McIntosh, contrib. 134[5]

31. At the meeting on 11 December the Minister referred to a meeting he had held with stakeholders, including some of those that had given evidence to the Committee on 6 December. At the meeting the Minister summarised the discussion—

> The discussion was enormously helpful, and it revealed to me that the concerns from the advice community are predominantly about the application of the common financial tool, either under its current guise, the CFS, or under the proposed SFS, rather than about the tools themselves. That brought into sharp focus the need for ever closer collaboration between the Accountant in Bankruptcy and the advice community in order to develop and agree guidance that affords the flexibility and pragmatism that are required.
>
> I think that everybody around the table agreed that we desire a system that serves to protect those who are in a financially vulnerable position, and one that does not create an unnecessary administrative burden for all those who are involved. That aspect is critical, and it is a priority that the work on revised and agreed guidance progresses apace.
>
> The meeting also touched on a more general debate about the other models. As I have made clear, that is open for discussion through the planned policy review of the reforms that were introduced in 2015.
>
> My next proposed steps are that we engage quickly with stakeholders. The standing working group that looks at the common financial tool will meet tomorrow to discuss the guidance that should accompany any new regulations, and the concerns about the burden of evidence that is required through either mechanism. Those whom I met last week, many of whom were already on the working group, will be involved in the process. That will ensure that we have revised clear guidance for the operation of the common financial tool when it is in place, and that we secure buy-in to the process. I am very keen for the committee to be part of the process, too.
>
> Once the guidance is in place, I plan to provide the revised guidance alongside regulations to introduce the SFS, which, at present, I plan to lay before Parliament in the new year. I look forward to discussing the issue with the committee this morning.
>
> Source: Economy, Energy and Fair Work Committee 11 December 2018 [Draft], The Minister for Business, Fair Work and Skills (Jamie Hepburn), contrib. 3[6]

32. In a response to the Committee on 20 December the Minister provided a note of the stakeholder meeting. The Scottish Government acknowledged that the guidance for

the SFS would need to reflect the flexibility required and noted that this was a problem for the existing guidance.

It is crucial that stakeholders have the opportunity to agree any guidance; and that the flexibility and pragmatism required to reduce the current administrative burden is provided.

UK-wide standard

33. One reason for adopting the SFS was that it would ensure a consistency of approach across the UK (R3 Scottish Technical Committee) and that it would create savings that would allow supporting more clients (StepChange Debt Charity Scotland). The Money Advice Service, in a written submission, stated that it would streamline the process when transferring clients between different organisations and that more creditors and public bodies will use the Standard Financial Statement.

34. Witnesses at the Committee's meeting on 6 November were asked whether UK-wide standards were important. Alan McIntosh highlighted Scotland's distinct legal system, debt solutions and debt recovery laws with creditors operating in the Scottish market accepting the need to adapt their approach at present. He also gave the example of the Debt Arrangement Scheme as something unique to Scotland.

35. East Renfrewshire Council's Nicola Birrell pointed out that the Financial Conduct Authority instructs creditors to be mindful of the different solutions in Scotland and there is no reason for this to change. She also questioned whether public sector creditors would accept the Standard Financial Statement, as they will often not accept a token payment or a period of non-payment. Instead, "they will go straight in and try to deduct money." She went on to say: "it was mentioned that the Insolvency Service of England and Wales is using the SFS, but there was no talk of Her Majesty's Revenue and Customs, the Department for Work and Pensions or local authorities that collect debts, and those are the organisations that we struggle with." Angela Kazmierczak added that the SFS would not generally be useful for council tax or rent arrears arrangements as most clients would get nowhere near the trigger figures as their income is not high enough.

36. Dr Richard Dennis, the Accountant in Bankruptcy, noted that the SFS has been adopted by more organisations and will be used in more debt solutions both statutory and non-statutory—

> We cannot tell you the exact numbers, but there are more non-statutory debt solutions—there are a lot—than there are statutory debt solutions. Increasingly, because they are run by big firms that work at UK level, they will be running off the standard financial statement.

Source: Economy, Energy and Fair Work Committee 11 December 2018 [Draft], Dr Dennis, contrib. 55[7]

The Committee remains unconvinced that the adoption of a UK wide system would be beneficial to Scottish debt advisers and their clients at this time.

Trigger figures

37. Scott Milne, WRI Associates, pointed out that the trigger figures work for a "standard individual". However, insolvency practitioners do not deal with standard individuals; they are self-employed, they are on zero-hours contracts or have multiple part-time jobs. As a result, it can take weeks to reach an agreement with the Accountant in Bankruptcy. He gave an example of someone who was self-employed being asked to provide payslips when the self-employed invariably issue invoices or operate self-billing—

> At no point are we asked to give our professional opinion or judgment on whether something is correct. I can certify an individual's insolvency by signing a bit of paper, based on my professional knowledge and years of experience and the evidence that has been presented to me. I can make somebody bankrupt, but I cannot suggest what the contribution should be. The current situation is very restrictive for the insolvency profession.
>
> Source: Economy, Energy and Fair Work Committee 06 November 2018 [Draft], Scott Milne, contrib. 157[8]

38. The importance of trust in the relationship between adviser and client, given the intrusiveness of the money advice process, was underlined by Nicola Birrell—

> We have to do a lot of work to build trust and to release the shame from the person, because what money advice clients have in common is that they blame themselves, regardless of the fact that—as I said—most people have simply experienced a change of circumstances, or they have been living on a very low income that did not provide them with enough money to buy essentials. Clients who come to see us blame themselves. It is quite common—as I am sure that my colleagues will tell you—that people miss their first, second and third appointments because their bottle goes. Most people in such a situation would say to clients, "We are going to stop dealing with you, because you have abused the terms of the system." We tend not to do that, because we understand that debt clients may need a couple of opportunities to come back to us.
>
> Source: Economy, Energy and Fair Work Committee 06 November 2018 [Draft], Nicola Birrell, contrib. 220[9]

39. Alan McIntosh pointed out that consumer creditors are usually prepared to accept the judgement of a money adviser. However—

> The biggest problem that we have is not with a creditor but with the Accountant in Bankruptcy. That is one reason why it is so important that we work to the standard that is set for us in every single case.
>
> Source: Economy, Energy and Fair Work Committee 06 November 2018, Alan McIntosh, contrib. 174[10]

40. On 5 November, Dr Dennis wrote the Committee to clarify concerns raised by witnesses at the meeting on 30 October—

> As you know, trigger figures are not allowances — they do not set a cap on the debtor's expenditure provided the higher expenditure can be justified — but a breach of a trigger figure does require the advisor to assess that case and furnish evidence to support that higher spending to AiB. A lower number of trigger breaches might therefore lead to a small reduction in advisor workload — though the advisors will still want to satisfy themselves that spending within a trigger figure is correctly accounted for.[v]

41. In a letter to the Committee, the Money Advice Service expanded on the role of trigger figures (spending guidelines). They argued that seeing the spending guidelines as a starting point, money advisers can have a meaningful discussion with their client and prepare them for any questions creditors may have—

> An adviser will seek to understand a customer's actual expenditure and work with them to establish a reasonable expenditure (or at least as reasonable as possible based on their income). The spending guidelines provide a marker of typical spend at the end of this process. Where the expenditure is above the spending guidelines then it allows the adviser to pre-empt that creditors would want additional explanation and where possible evidence. This in turn helps to streamline and simplify the process.[vi]

42. The witnesses were asked to respond to the Accountant in Bankruptcy's letter of 5 November. Alan McIntosh told the Committee that he believed the methodology for calculating the trigger figures for the 2018 Standard Financial Statement had been changed. This change has not been applied to the Common Financial Statement.

43. Richard Dennis, the Accountant in Bankruptcy, described the details of the change—

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v Dr Richard Dennis' letter to the Committee, 5 November
vi Money Advice Service's letter to the Committee, 31 December

> The 2017 trigger figures for the standard financial statement produced some surprising results when applied in practice, as they generated higher contributions than might have been expected. The methodology was looked at again, and two things were done when the figures were updated for 2018. First, when average spending was calculated for the group that is used set the trigger figures, outliers were disregarded—people who report very low expenditure and very high expenditure. That is because the methodology is based on income and not expenditure.
>
> Secondly—this is one of the most significant changes made in the SFS—rather than using people who were reporting expenditure below the level of the jobseekers allowance disregard, the methodology moved to using people who were reporting expenditure below the level of the universal credit disregard. As the minister and some members of the committee will have heard some creditors say, they were surprised at the extent to which that drove up the trigger figures in the SFS.
>
> The changes in methodology for the SFS from 2017 to 2018 were made because the 2017 figures were widely perceived as being too low. There were no such concerns about the CFS numbers, for which the methodology has rolled forward for five or six years since it was last reviewed and has not been changed.
>
> Source: Economy, Energy and Fair Work Committee 11 December 2018 [Draft], Dr Richard Dennis (Accountant in Bankruptcy), contrib. 18[11]

44. The Committee notes that the changed methodology increased the trigger figure levels for the SFS. If the same changes were made to the CFS, we would expect its trigger figures to increase too. On the face of it, there appears to be no reason why the changes would not be relevant to both tools.

45. The AiB argued that there will be fewer trigger figure breaches using the [adjusted] 2018 Standard Financial Statement compared to the [unadjusted] 2018 Common Financial Statement. In a letter to the Committee, the Minister provided a comparison between the SFS trigger figures for 2019-20 and CFS's 2018 trigger figures accounting for the Office for Budget Responsibility's inflation forecast of 1.9% to approximate uprating to 2019 levels. The Committee noted that this was not a like-for-like comparison between the CFS and the SFS.

A Comparison by the Accountant in Bankruptcy

Trigger breaches	CFS 2018, adjusted for inflation	SFS 2019
0	1,452	1,731
1	507	392
2 or more	230	66

Source: Letter from the Minister for Business, Fair Work and Skills, 20 December 2018

46. However, it is unclear to the Committee whether a similar result would be forthcoming if the methodology for calculating the CFS trigger figures were updated in the same way as it has been for the SFS.

47. The Money Advice Trust has indicated that it intends to end support for the CFS in April 2019. However, at a meeting with the Minister on 6 December 2018 (notes provided in a letter from the Minister on 20 December), the Money Advice Trust

stated that it would adopt a flexible approach to maintenance if the tool was needed after that. The Committee's understanding is that the costs of continuing to operate the CFS would not be substantial in the context of the scheme.

The Committee notes there have been changes to the methodology for calculating the trigger figures for the SFS, changes which have not been applied to the CFS. This clouds the issue of which form of statement provides better outcomes for debtors. If use of the CFS continues, we recommend the Minister gives consideration to adjusting its methodology in the same way.

Administrative burden on debt advisers

48. The AiB produced guidance on the use of the CFS in relation to statutory debt solutions. Draft guidance had been prepared for the use of the SFS.

49. This guidance set out the evidence debt advisers were expected to produce to back up financial statements used for statutory debt solutions. Some stakeholders were concerned that the SFS was likely to increase the administrative burden for two reasons: there were expected to be more breaches of the trigger figures (if the methodology for calculating these was standardised), requiring justification, and more expenditure types had been categorised as "essential" – and these always required evidence.

50. David Menzies of ICAS estimated the administrative burden of switching to the SFS being somewhere between £155,000 and £450,000, based upon additional discussions between the AiB, debt advisers (or insolvency practitioners) and debtors. Nicola Birrell provided an example of the additional work that an adviser may carry out—

> we tend to see such breaches where there is someone with a disability in the house or where someone has a particular dietary need. Another example would be where someone has joint care rather than full care of a child and therefore does not have the allowance for that child in their budget. We then have to try to evidence the breach—we show that there is definitely an overspend, but we provide evidence for the cause of that breach. As I said, that is not always an easy discussion to have with someone who is potentially already at their lowest point. We say to them that they need to go and get evidence that they spend a certain amount on petrol, and we need to write down a reason, such as a health condition, that explains why they spend more than they should. [12]

51. Angela Kazmierczak saw the burden adding weeks to the process, describing the difference between the CFS and SFS—

> If we adopt the standard financial statement, we will need to gather more information as evidence for fixed costs. The common financial statement refers to essential expenditure, which is usually fairly easy to evidence; it includes rent, council tax, gas, electric and the television licence. The standard financial statement shifts more of those areas of expenditure across to fixed costs, which we will then need to evidence. That includes travel costs. Previously, as long as those costs were within the trigger-figure amount, we could just accept them and move on. [13]

52. She also commented that she was "dealing with more onerous administration in order to implement the standard financial statement" compared to the CFS that she had been using since 2004.

53. The Minister assured the Committee that revised guidance would be developed with the working group. However, he recognised stakeholder concerns—

> I expect that the Accountant in Bankruptcy will be reasonable…To be candid, I say that there was a sense at last week's meeting that some stakeholders feel that that is not always the case. There is a disconnect there, so I have concluded that the most appropriate thing for us to do is to get everyone together to discuss the matter further so that we can produce agreed guidance that shows that the Accountant in Bankruptcy will not expect every single bus ticket to be returned, when that is unnecessary. That is because it would not be possible for everyone to do it and, more so, because it will be unnecessary, because such costs are so low. [14]

54. The Minister argued that a single approach to assessing what is affordable for the debtor has "important benefits", including making it easier for the debtor to understand the process. In relation to costs associated with continuing CFS, the Minister said that the administrative costs are likely to be higher—

> The costs of not switching to the SFS have yet to be determined. There would be a cost involved in the maintenance and uprating of the CFS as this is the mechanism currently specified as the CFT in statute. This would involve negotiation with the Money Advice Trust (MAT) who currently own and operate the tool. [vii]

As already set out in this report, the Committee considers it essential that CFT guidance be informed by flexibility and pragmatism. Stakeholders must have a meaningful input and any additional burden on debt advisers kept to a minimum. The Committee would expect the Accountant in Bankruptcy to proceed, as the Minister has encouraged, in a reasonable fashion.

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vii Minister for Business, Fair Work and Skills' letter to the Committee 9 November

Impact on debtors

55. A client's struggle to provide the information required can delay a resolution. Nicola Birrell noted a preference for the Common Financial Statement due to its "other expenditure" category. This covers expenditure such as for hobbies, children's activities and family pets. She felt it was easier to support clients to make trade-offs in these categories to reduce expenditure. Under the SFS this has been subsumed into "housekeeping" making it more difficult to have a frank discussion about a client's options. [viii]

56. Alan McIntosh spoke of the importance of working to the standard that is set for advisers "in every single case"—

> There is an impact if we do not get the figures right. Our client may apply for minimal asset bankruptcy, for which there is a £90 application fee, or for full administration bankruptcy, which costs £200; many clients struggle to get the money for that. If the AIB accepts the application and then decides that further verification is required, our client gets a letter that gives them 21 days to produce the necessary evidence. If they do not do that, the application falls, and they lose their money.
>
> Source: Economy, Energy and Fair Work Committee 06 November 2018 [Draft], Alan McIntosh, contrib. 174[15]

57. A key concern for stakeholders is that neither the CFS nor the SFS guaranteed a basic standard of living for the debtor. The figures they use are based on actual expenditure in low income households. By necessity, those households may be spending less than they need to.

58. David Hilferty argued for a socially acceptable living standard—

> When we talk about the guidelines being broadly aligned, that may look the case on paper. If a household has £15 a week less than a minimum income standard, the figures will look broadly aligned on paper but, in practice, we can think of what that household will forsake week to week for a payment agreement that might last for five, six, seven, eight, nine or 10 years. It is easy to view a financial statement as an abstract concept—in essence, it is an income and expenditure form with guidelines on spending—but it is so much more. In effect, it sets out a standard of living for a household or client over the period of repaying their debts.
>
> We have consistently said that it is a drawback of a CFS or an SFS that we do not have a way to check whether the payment agreement leaves somebody with a socially acceptable living standard. We have advocated checking that it does, but there is not a lot of support—I will rephrase that, as there is no support—from the SFS governance group. It is an example of something that we would aspire to if we had control. I do not know why a practitioner would not want to know whether the payment agreement that they have set up leaves somebody with an acceptable standard of living.
>
> Source: Economy, Energy and Fair Work Committee 30 October 2018, David Hilferty, contrib. 191[16]

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viii Economy, Energy and Fair Work Committee 06 November 2018 [Draft], Nicola Birrell

59. On 7 November the Committee wrote to the Minister raising a number of concerns about the regulations. The Minister replied on 9 November and suggested that the evidence the Committee has received "does not represent the full array of opinion on the effects of the regulations". He said—

> I continue to contend that moving to the Standard Financial Statement is the right option, and will deliver better outcomes for debtors, creditors and the advice sector. I have always been keen to establish a position founded on the most robust evidence available. The evidence sessions you took, in particular the second, suggested that these regulations would have a negative impact on debtors. In fact, the evidence clearly shows to the contrary, continuing with the use of the Common Financial Statement will have a detrimental impact on those seeking relief from unsustainable debt.[ix]

60. He argued that the continuation of the CFS will result in higher instances of trigger figure breaches—

> AiB has conducted the most robust analysis available – drawing on the income and expenditure data from 1,511 cases. Through application to both tools, the results show that trigger figure breaches occur in 195 more cases under the CFS than the SFS.[x]

61. In relation to whether or not the tools should take account of a reasonable living standard, the Minister said—

> The advantage of the tool approach is that it allows a standard basis for assessment together with an assessment of an individual's personal circumstances. All other approaches of the kind proposed in the evidence to the Committee – such as those which involve a "floor" of income below which no contribution can be taken – reduce that flexibility.[xi]

62. At the meeting on 11 December, the Minister said of recent debt advice policy reforms—

> Of course, that has been designed with the best interests of the debtor at heart, and I think that we would all agree that that is the sensible thing to do. We do not want to push people into solutions that they do not necessarily have to be pushed into. If that is the outcome that we desire, and I think that money advisers would want it, they would have to go through the evidence-gathering process anyway so that they can make sure that the person who is before them can make a fully informed decision based on their advice.
>
> Source: Economy, Energy and Fair Work Committee 11 December 2018 [Draft], Jamie Hepburn, contrib. 87[17]

63. The Minister was asked about consulting debtors and stated that they would involve them in the review process of the legislation. He also noted that AiB are in regular contact with debtors. At the meeting on 30 October David Hilferty pointed to the work of the Government's social security experience panels—

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ix Minister for Business, Fair Work and Skills' letter to the Committee 9 November
x Minister for Business, Fair Work and Skills' letter to the Committee 9 November
xi Minister for Business, Fair Work and Skills' letter to the Committee 9 November

> One of the most encouraging things that I have seen from the Scottish Government in recent years was the establishment of experience panels, which was done with the view that the best people to shape a new system are those with experience—often quite unpleasant experience—of the previous system. We need to do that in a debt advice context for the decision about whether to go ahead with the current process or review what other options might be available.
>
> Source: Economy, Energy and Fair Work Committee 30 October 2018, David Hilferty, contrib. 202[18]

64. Angela Kazmierczak also suggested the introduction of an experience panel for people who have been through the money advice service in a submission to the Committee on 7 November.

The Committee recommends that, in developing policy in relation to the Common Financial Tool, and in other reviews of debt policy, the Scottish Government and the AiB ensure that there is direct consultation with debtors with lived experience of the system.

Is there a need for a wider review?

65. The Committee has considered whether a wider review of the means for assessing debtor income is required. This would include engaging with debtors on their experiences and consideration of what constitutes a 'reasonable standard of living'.

66. The Minister did concede that a wider piece of work could be carried out to look at the principles behind the CFT policy but suggested that this would be a separate exercise—

> There is of course great benefit to be had from post legislative scrutiny, and there may well be a need to revisit the key issues underpinning the adoption of the CFT in the Bankruptcy and Debt Advice (Scotland) Act 2014. But as the Committee recognises, the relatively minor change proposed in the Regulations before the Committee has more limited scope. [xii]

Given the many issues discussed above, the Committee believes that the best approach would be to conduct a wider review of debtor income assessment before any decision is made to move away from the CFS. We therefore recommend that use of an updated CFS continues for one more year while a review of the options takes places. That review should include consideration of: a minimum income standard for debtors; reducing the administrative burden on money advisers and insolvency practitioners; and providing more scope for the exercise of professional judgement. It should also directly involve debtors with lived experience of the current income assessment processes.

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xii Minister for Business, Fair Work and Skills' letter to the Committee 9 November

Conclusion

Informed by extensive consideration of these Regulations, via written and oral evidence, and as stated in our letter to the Minister of 10 January 2019, the Committee recommends the Common Financial Statement continues for another year i.e. until the end of March 2020; and that the Scottish Government carries out an in-depth review comparing the CFS and the Standard Financial Statement (the parameters of which we have outlined above) in advance of bringing revised regulations to the Scottish Parliament and in full consultation with all stakeholders.

Annexe

Extracts from the minutes of the Economy, Energy and Fair Work Committee and associated written and supplementary evidence.

29th Meeting, 2018, Tuesday 30 October 2018

Subordinate legislation: The Committee took evidence on the Common Financial Tool (Scotland) Regulations 2018 [draft] from—

- David Hilferty, Deputy Chief Executive, Money Advice Scotland;
- Eileen Maclean, National Council Member for R3 in Scotland, R3 Scottish Technical Committee;
- David Menzies, Director of Practice, ICAS;
- Craig Simmons, Sector Co-ordination Manager, Money Advice Service.

30th Meeting, Tuesday 06 November 2018

4. Common Financial Tool (Scotland) Regulations 2018 [draft]: The Committee took evidence on the Common Financial Tool (Scotland) Regulations 2018 [draft] from—

- Alan McIntosh, Senior Money Advisor, Inverclyde Council;
- Angela Kazmierczak, Financial Inclusion Team Leader, Aberdeen City Council;
- Nicola Birrell, Senior Money Adviser, Money Advice and Rights Team, East Renfrewshire Council;
- Scott Milne, Director, WRI Associates.

6. Common Financial Tool (Scotland) Regulations 2018 [draft] (in private): The Committee considered the evidence heard at today's meeting.

34th Meeting, Tuesday 11 December 2018

2. Subordinate legislation: The Committee took evidence on the Common Financial Tool (Scotland) Regulations 2018 [draft] from—

- Jamie Hepburn, Minister for Business, Fair Work and Skills, Scottish Government;
- Richard Dennis, The Accountant in Bankruptcy and Agency Chief Executive,
- John Cook, Executive Director of Case Operations and Depute Accountant in Bankruptcy, Accountant in Bankruptcy

6. Common Financial Tool (Scotland) Regulations 2018 [draft] (in private): The Committee considered the evidence heard at today's meeting.

1st Meeting, Tuesday 08 January 2019

Common Financial Tool (Scotland) Regulations 2018 [draft] (in private): The Committee considered a response from the Minister for Business, Fair Work and Skills.

3rd Meeting, Tuesday 22 January 2019

Common Financial Tool (Scotland) Regulations 2018 [draft] (in private): The Committee considered its response to the regulations.

Written Evidence

At its meeting on 26 June, the Committee agreed to write to stakeholders requesting a copy of the responses that they made to the Accountant in Bankruptcy's consultation. The Committee also asked for their position now that the Regulations have been laid.

List of Written Evidence

- Association of Business Recovery Professionals (AiB)
- Association of Business Recovery Professionals (Committee response)
- Chartered Institute of Credit Management
- Falkirk Council
- ICAS
- Alan McIntosh
- Money Advice Scotland
- Money Advice Trust
- StepChange Scotland
- Citizens Advice Scotland
- Citizens Advice Scotland - Response to AiB's Consultation
- Money Advice Service - Briefing on adoption of the Standard Financial Statement

Supplementary Evidence

- Money Advice Service - Standard Financial Statement
- StepChange Scotland

Correspondence

Letter from the Minister for Business, Fair Work and Skills withdrawing the Regulations – 10 August 2018

Letter from Dr Richard Dennis, the Accountant in Bankruptcy – 5 November 2018

At its meeting on 6 November the Committee asked the witnesses to submit their recommendations concerning a potential review of the Common Financial Tool. We have received the following submissions:

- Nicola Birrell, East Renfrewshire Council
- Angela Kazmierczak, Aberdeen City Council
- Alan McIntosh

On 7 November, the Convener wrote to the Minister for Business, Fair Work and Skills to highlight the Committee's significant reservations about the above regulations. The Minister replied on 9 November withdrawing the instrument.

- Letter to the Minister for Business, Fair Work and Skills
- Response from the Minister for Business, Fair Work and Skills

On 8 November, the Money Advice Service responded to the evidence sessions.

- Money Advice Service - response to 29th Meeting, 30 October
- Money Advice Service - response to 30th Meeting, 6 November

On 9 November, the Minister for Business, Fair Work and Skills wrote to the Presiding Officer to withdraw the instrument. The Committee also received a response from the Accountant in Bankruptcy wrote to the Committee.

- Letter of Withdrawal
- Letter from the Accountant in Bankruptcy

On 21 November, the Committee wrote to the Minister for Business, Fair Work and Skills to request further details regarding the Minister's response of 9 November. The Minister responded on 27 November.

- Letter to Minister for Business, Fair Work and Skills
- Response from Minister for Business, Fair Work and Skills

The Committee wrote to the Minister for Business, Fair Work and Skills on 13 December 2018. The Minister responded on 20 December 2018.

- Letter to the Minister
- Minister's response

The Money Advice Service wrote to the Committee on 31 December 2018 regarding our letter to the Minister.

- Money Advice Service

The Committee wrote to the Minister for Business, Fair Work and Skills on 10 January 2019.

- Letter to the Minister

[1] R3, the Association of Business Recovery Professionals, Scottish Technical Committee. (2017, October). The Association of Business Recovery Professionals' (R3) Scottish Technical Committee Response to the Accountant in Bankruptcy Consultation on the Future of the Common Financial Tool. Retrieved from http://www.parliament.scot/S5_EconomyJobsFairWork/Inquiries/CFT-R3ScottishTechnicalCommittee-AiBResponse.pdf

[2] Economy, Energy and Fair Work Committee 30 October 2018, Craig Simmons, contrib. 208, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11744&c=2122343

[3] Economy, Energy and Fair Work Committee 30 October 2018, Craig Simmons, contrib. 214, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11744&c=2122349

[4] Economy, Energy and Fair Work Committee 30 October 2018, David Hilferty, contrib. 153, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11744&c=2122288

[5] Economy, Energy and Fair Work Committee 06 November 2018 [Draft], Alan McIntosh, contrib. 134, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11768&c=2126154

[6] Economy, Energy and Fair Work Committee 11 December 2018 [Draft], The Minister for Business, Fair Work and Skills (Jamie Hepburn), contrib. 3, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11839&c=2137438

[7] Economy, Energy and Fair Work Committee 11 December 2018 [Draft], Dr Dennis, contrib. 55, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11839&c=2137490

[8] Economy, Energy and Fair Work Committee 06 November 2018 [Draft], Scott Milne, contrib. 157, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11768&c=2126177

[9] Economy, Energy and Fair Work Committee 06 November 2018 [Draft], Nicola Birrell, contrib. 220, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11768&c=2126240

[10] Economy, Energy and Fair Work Committee 06 November 2018, Alan McIntosh, contrib. 174, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11768&c=2126194

[11] Economy, Energy and Fair Work Committee 11 December 2018 [Draft], Dr Richard Dennis (Accountant in Bankruptcy), contrib. 18, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11839&c=2137453

[12] Economy, Energy and Fair Work Committee 06 November 2018 [Draft], Nicola Birrell, contrib. 147, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11768&c=2126167

[13] Economy, Energy and Fair Work Committee 06 November 2018 [Draft], Angela Kazmierczak, contrib. 150, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11768&c=2126170

[14] Economy, Energy and Fair Work Committee 11 December 2018 [Draft], Jamie Hepburn, contrib. 52, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11839&c=2137487

[15] Economy, Energy and Fair Work Committee 06 November 2018 [Draft], Alan McIntosh, contrib. 174, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11768&c=2126194

[16] Economy, Energy and Fair Work Committee 30 October 2018, David Hilferty, contrib. 191, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11744&c=2122326

[17] Economy, Energy and Fair Work Committee 11 December 2018 [Draft], Jamie Hepburn, contrib. 87, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11839&c=2137522

[18] Economy, Energy and Fair Work Committee 30 October 2018, David Hilferty, contrib. 202, http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11744&c=2122337