



Law Society  
of Scotland

# Consultation Response

Scotland's statutory debt solutions and diligence –  
policy review response: consultation

October 2022



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Banking, Company and Insolvency Law Sub-committee, Consumer Law sub-committee and Administrative Justice Committee, welcome the opportunity to respond to the Scottish Government's consultation: *Scotland's statutory debt solutions and diligence – policy review response*.<sup>1</sup>

We have the following comments to put forward for consideration:

## Consultation questions

### Theme 1 – protections, information, and advice prior to debt solutions

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#### Question 1a. What are your views on each of the proposals?

##### Proposal 1.1 Agree Disagree Neither agree nor disagree

Agree

##### Proposal 1.2 Agree Disagree Neither agree nor disagree

Agree

##### Proposal 1.3 Agree Disagree Neither agree nor disagree

Agree

##### Proposal 1.4 Agree Disagree Neither agree nor disagree

Agree

<sup>1</sup>[Scotland's statutory debt solutions and diligence - policy review response: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/consultations/scot20200010/consultation-scotland-statutory-debt-solutions-and-diligence-policy-review-response)

### **Question 1b. In general, what do you like about the proposals set out in theme 1?**

We support the proposals and consider that they are unobjectionable, and we support the provision of clear information to parties, however our support is subject to the full details of the proposals, which we look forward to reading in due course.

### **Question 1c. Do you have any other comments or suggestions for improvement on the proposals set out in theme 1?**

We note the suggestions at paragraphs 18 and 30 of the consultation that it would not be feasible to mandate free money advice sector involvement in advance of granting trust deeds due to a lack of resources, and we do acknowledge that requiring such advice would create additional burdens on the advice sector.

The desirability of the provision of such advice supports the need for the advice sector to be adequately resourced to meet this requirement. We believe that the Scottish Government should identify resources from the outset to make sure there are sufficient resources in place, and if there are insufficient resources, we consider that resources should be made available.

## **Theme 2 - debt solutions – entry criteria**

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### **Question 2a. What are your views on each of the proposals?**

#### **Proposal 2.1 Agree Disagree Neither agree nor disagree**

Agree

#### **Proposal 2.2 Agree Disagree Neither agree nor disagree**

Agree

#### **Proposal 2.3 Agree Disagree Neither agree nor disagree**

Agree

### **Question 2b. In general, what do you like about the proposals set out in theme 2?**

We consider that the proposals add a level of simplicity, by removing barriers and complexity for people with minimal assets to access debt relief.

### **Question 2c. Do you have any other comments or suggestions for improvement on the proposals set out in theme 2?**

We are of the opinion that the availability of money advice to access bankruptcy, particularly in relation to the free money advice sector, must be supported adequately.

Furthermore, we note and support the intention to monitor figures for monetary thresholds. Such intentions can often be overtaken by other priorities, but it is essential that there is an ongoing review of these figures, particularly in the wake of high levels of inflation.

### **Theme 3 - administration of debt solutions**

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#### **Question 3a. What are your views on each of the proposals?**

##### **Proposal 3.1 Agree Disagree Neither agree nor disagree**

Agree

##### **Proposal 3.2 Agree Disagree Neither agree nor disagree**

Agree

##### **Please add any further comments on this proposal in the box below:**

We consider this is essential.

##### **Proposal 3.3 Agree Disagree Neither agree nor disagree**

Agree

##### **Proposal 3.4 Agree Disagree Neither agree nor disagree**

Agree

##### **Proposal 3.5 Agree Disagree Neither agree nor disagree**

Agree

##### **Please add any further comments on this proposal in the box below:**

We consider that any other aids or adapters that are reasonably required by a debtor to improve their mobility or assist with a disability should also be excluded.

##### **Proposal 3.6 Agree Disagree Neither agree nor disagree**

Agree

##### **Please add any further comments on this proposal in the box below:**

We consider that the £3,000 limit should be increased, however, the particular level to which it should be raised depends upon policy factors regarding what type of vehicle the debtor should have access to and therefore what should be excluded from bankruptcy (and diligence).

### **Proposal 3.7 Agree Disagree Neither agree nor disagree**

Agree

### **Proposal 3.8 Agree Disagree Neither agree nor disagree**

Agree

### **Proposal 3.9 Agree Disagree Neither agree nor disagree**

Agree

### **Proposal 3.10 Agree Disagree Neither agree nor disagree**

Agree

### **Question 3b. In general, what do you like about the proposals set out in theme 3?**

We support these proposals in theme 3 and consider them to be very important, as they set out the new financial statement for debt solutions, and this will ensure a more consistent approach between Scotland and England.

It is also key to ensure that there is a rigorous governance system, and it needs to ensure a consistent approach to the debt management industry and for debtors, creditors, and stakeholders.

### **Question 3c. Do you have any other comments or suggestions for improvement on the proposals set out in theme 3?**

We have no further comment.

## **Theme 4 - exit from debt solutions**

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### **Question 4a. What are your views on each of the proposals?**

#### **Proposal 4.1 Agree Disagree Neither agree nor disagree**

Agree

#### **Proposal 4.2 Agree Disagree Neither agree nor disagree**

Agree

**Proposal 4.3 Agree Disagree Neither agree nor disagree**

Agree

**Proposal 4.4 Agree Disagree Neither agree nor disagree**

Agree

**Proposal 4.5 Agree Disagree Neither agree nor disagree**

Agree

**Proposal 4.6 Agree Disagree Neither agree nor disagree**

Agree

**Proposal 4.7 Agree Disagree Neither agree nor disagree**

Agree

**Proposal 4.8 Agree Disagree Neither agree nor disagree**

Agree

**Please add any further comments on this proposal in the box below:**

We think it is sensible to link the prescribed statutory rate of interest to the Bank of England base rate and the judicial rate of interest also needs to be revised accordingly and equalised with an amended statutory rate of interest. These changes should take place as soon as possible.

**Question 4b. In general, what do you like about the proposals set out in theme 4?**

We consider that the consultation sets out why the proposals are necessary, the proposals offer flexibility, and we would support the introduction of compositions for protected trust deeds. Overall, we welcome the proposals.

**Question 4c. Do you have any other comments or suggestions for improvement on the proposals set out in theme 4?**

We have no further comments.

**Theme 5 - improvements to debt recovery mechanisms (diligence)**

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**Question 5a. What are your views on each of the proposals?**

### **Proposal 5.1 Agree Disagree Neither agree nor disagree**

Agree

### **Proposal 5.2 Agree Disagree Neither agree nor disagree**

Agree

### **Please add any further comments on this proposal in the box below:**

We note the importance of giving special consideration to the family home in the context of diligence and insolvency mechanisms. However, we see merit in the decoupling of the family home from consideration of the reform of diligence more broadly. For instance, if further reviews of rules for the family home are likely to take a considerable period of time, it may be advisable to proceed with introducing an equivalent of land attachment and residual attachment for other types of property in the meantime. It is unacceptable that at present the diligence of adjudication for debt is the judicial security used for land (excluding inhibition) and intellectual property and digital assets.

In addition, we consider that the family home should be treated in the same way for diligence as it is for bankruptcy.

### **Proposal 5.3 Agree Disagree Neither agree nor disagree**

Agree

### **Please add any further comments on this proposal in the box below:**

We consider that the proposed £500 figure needs to be monitored on an ongoing basis.

### **Proposal 5.4 Agree Disagree Neither agree nor disagree**

Agree

### **Proposal 5.5 Agree Disagree Neither agree nor disagree**

Agree

### **Proposal 5.6 Agree Disagree Neither agree nor disagree**

Agree

### **Proposal 5.7 Agree Disagree Neither agree nor disagree**

Agree

### **Proposal 5.8 Agree Disagree Neither agree nor disagree**

Agree

### **Proposal 5.9 Agree Disagree Neither agree nor disagree**

Agree

### **Proposal 5.10 Agree Disagree Neither agree nor disagree**

Agree

### **Please add any further comments on this proposal in the box below:**

While we note the recommendation is for the Debt Advice and Information Package to be issued earlier in the process, there is still a need for the availability of independent money advice for debtors, and this must be available to the debtor at the point of need.

### **Proposal 5.11 Agree Disagree Neither agree nor disagree**

Agree

### **Proposal 5.12 Agree Disagree Neither agree nor disagree**

Agree

### **Proposal 5.13 Agree Disagree Neither agree nor disagree**

Agree

### **Question 5b. In general, what do you like about the proposals set out in theme 5?**

We support the proposals and think these are all sensible options. We support the Information Disclosure Order, as this will streamline the system of collecting debts.

### **Question 5c. Do you have any other comments or suggestions for improvement on the proposals set out in theme 5?**

We consider that the Scottish Government should review the law of diligence and debt solutions on an ongoing basis, perhaps annually, to ensure they are fit for purpose, continue to respond to developments and so that threshold levels remain appropriate.



**For further information, please contact:**

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