



RESPONSE TO  
DILIGENCE REVIEW CONSULTATION 2016

ACCOUNTANT IN BANKRUPTCY

## Introduction

- 1 The Institute of Chartered Accountants of Scotland (ICAS) is the oldest professional body of accountants and represents over 21,000 members who advise and lead business across the UK and in almost 100 countries across the world. ICAS is a Recognised Professional Body (RPB) which regulates insolvency practitioners (IPs) who can take appointments throughout the UK. We have an in-depth knowledge and expertise of insolvency law and procedure.
- 2 ICAS's Charter requires it to primarily act in the public interest, and our responses to consultations are therefore intended to place the public interest first. Our Charter also requires us to represent our members' views and protect their interests. On the rare occasion that these are at odds with the public interest, it is the public interest that must be paramount.
- 3 ICAS is interested in securing that any changes to legislation and procedure are made based on a comprehensive review of all the implications and that alleged failings within the process are supported by evidence.
- 4 ICAS is pleased to submit its views in response to the Diligence Review Consultation issued by the Accountant in Bankruptcy (AiB). We shall be pleased to discuss in further detail with the AiB any of the matters raised within this response.

## Key messages

- 5 We consider that, in general, the existing diligence available within Scotland works well for creditors and offers a balanced approach to allowing creditors to take steps towards enforcement of debt while providing appropriate safeguards for debtors. Some of the diligences could be refined to become more efficient or to make them more effective.
- 6 Several diligence provisions within the Bankruptcy and Diligence etc. (Scotland) Act 2007 (BAD Act 2007) have yet to be commenced. In principle, we consider that some of these should be commenced as they would offer more effective diligence processes than equivalent processes available at present. Consideration of commencement however requires to be taken from a holistic view and including consideration of improvements to existing diligence.
- 7 One of the more controversial provisions in the BAD Act 2007 is Land Attachment. We consider that this is suitable to replace adjudication for debt but would encourage some further amendments to address some of the concerns around the loss of a debtor's home.
- 8 We have previously made calls for the Scottish Government to carry out a full consultation on how a debtor's home is dealt with in an insolvency situation. We believe that diligence is part of a package of remedies available to creditors to recover debt and which would also include taking steps to declare the debtor bankrupt. Diligence and insolvency are therefore interlinked and we again repeat our call for the Scottish Government to carry out a full consultation on how debtor's homes are dealt with in diligence and insolvency.
- 9 We recognise that heritable property is likely to be the single largest asset that an individual has and therefore often represents the best prospect for a creditor recovering debt. An appropriate balance between the rights of creditors and debtors needs to be struck.
- 10 We suggest that as part of a package of reform in this area that, subject to safeguards to prevent reduction of equity with the onset of insolvency, a level of protected equity in a debtor's sole or main residence would be appropriate. Where the equity in a debtor's sole or main residence is below the protected level (as at the date of insolvency or diligence being executed) the property would not vest in a trustee in insolvency processes and could not have a warrant for sale being granted by the court under Land Attachment.

- 11 We would encourage some modernisation in the processes and procedures relating to inhibitions. The process of registration and renewal should be moved online to reduce the administrative and cost burden on the Registers of Scotland, solicitors, trustees and creditors. Consideration should also be given to increasing the period under which inhibitions are effective as the current 5-year period reduces the effectiveness of inhibitions as a diligence.
- 12 We would suggest that Landlord's Hypothec should be repealed. It is unclear what the rationale is for this provision and why landlords obtain a higher right and ranking in insolvency than other creditors. Landlords are provided with a greater priority than virtually all other creditors but also are protected by commercial arrangements such as deposits and rental payments in advance.
- 13 Should it be considered that Landlords Hypothec should be retained then some amendment is required to the operation of Landlords Hypothec as there are significant practical issues in its operation in insolvency situations. There requires to be greater clarity over the rights to enforce and convert the security into payment and over what is covered by the hypothec. Significant costs are being incurred by landlords and trustees negotiating a settlement position due to a lack of clarity in legislation over how this hypothec operates.
- 14 Our detailed response to the questions within the consultation are set out in [Appendix 1](#).

**29 November 2016**

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## Appendix 1 – Detailed responses to consultation questions

### 1. EXCEPTIONAL ATTACHMENT

**Question 1(a): Do you consider exceptional attachment to be an effective diligence?**

Yes  No

**Question 1(b): If you answered “No” to question 1(a), why not?**

Answer: Although our members do not have direct experience of working with this diligence, there is little evidence arising out of debt advice to individuals or out of formal insolvency appointments as a trustee that this diligence is being used. This is backed up by the annual statistical analysis which shows only around 50 exceptional attachments per annum over the last 4 years. This equates to around 1% of all diligence executed. The low take up of this diligence suggests that there is little perceived value in this diligence by creditors.

**Question 1(c): Have you identified any improvements that you consider are necessary to exceptional attachment?**

Yes  No

**Question 1(d): If you answered “Yes” to question 1(c), what improvements do you consider are needed?**

Answer: Our members do not interact sufficiently with this diligence to be able to offer any suggested improvements.

**Question 1(e): Would you use exceptional attachment in its current form to recover debt?**

Yes  No

**Question 1(f): If you answered “No” to question 1(e), why not?**

Answer: \_\_\_\_\_

**Question 1(g): Do you consider the application process and timescales involved for exceptional attachment to be reasonable?**

Yes  No

**Question 1(h): If you answered “No” to question 1(g), why do you consider the application process and timescales involved unreasonable?**

Answer: \_\_\_\_\_

### 2. ADJUDICATION FOR DEBT

**Question 2(a): Do you agree that adjudication for debt should be abolished?**

Yes  No

**Question 2(b): If you answered “No” to question 2(a), why not?**

Answer: Without reform in other areas (such as inhibitions and land attachment), adjudication for debt continues to provide a useful diligence process and provides creditors with an ultimate option to recover debt.

**Question 2(c): Would you use adjudication for debt in its current form to recover debt?**

Yes  No

**Question 2(d): If you answered “No” to question 2(c), why not?**

Answer: \_\_\_\_\_

**3. INHIBITION**

**Question 3(a): Do you consider inhibition in its current form to be an effective diligence?**

Yes  No

**Question 3(b): If you answered “No” to question 3(a), why not?**

Answer: While inhibitions may be more effective than other forms of diligence, the correlation between the period of 5 years under which the inhibition is effective and the period when heritable property is transferred (a substantial number of people will stay in the same property for much longer than 5 years) is such that we consider that inhibitions are often ineffective.

**Question 3(c): Have you identified any improvements that you consider are necessary to inhibition?**

Yes  No

**Question 3(d): If you answered “Yes” to question 3(c), what improvements do you consider are necessary?**

Answer: The process of registering (and renewing) an inhibition requires to be modernised and moved ‘online’. We would also suggest that the period for which an inhibition remains effective be reviewed/increased.

We would also suggest that a review of the period under which an inhibition is effective after bankruptcy is reviewed. Currently a trustee must renew an inhibition before the expiry of three years after registration. The inhibition is registered on a petition for sequestration being lodged in court or an award of bankruptcy where the application is by the debtor. Renewal of inhibitions is a regular feature of administering insolvent estates, adding to the cost of administration both in monitoring the timescale for renewal and in the actual renewal process. This is a burden which could be reduced through amendment of the effective period of the inhibition and improvements to the registration and renewal process.

We also suggest that where an inhibition is in place for a period pre-dating a debtor entering insolvency that the inhibition should retain a prior ranking.

**Question 3(e): Would you use inhibition in its current form to recover debt?**

Yes  No

**Question 3(f): If you answered “No” to question 3(e), why not?**

Answer: \_\_\_\_\_

**Question 3(g): An inhibition prevents the debtor from entering into any dealings with their heritable property for a period of 5 years, after which time, the inhibition has no effect. Do you agree that 5 years is an appropriate period for an inhibition?**

Yes  No

**Question 3(h): If you answered “No” to question 3(g), how long should an inhibition have effect for?**

Answer: We consider that inhibitions should be effective for a much longer period. Heritable property offers the most likely asset against which a creditor may obtain repayment where a debtor is unwilling or otherwise unable to pay. Given that moving home is not a frequent occurrence for most individuals, a 5-year period under which payment can be obtained is relatively short. For inhibitions to be more effective the period under which the inhibition can restrict the debtor’s ability to transfer or raise secured funds against the heritable property needs to be extended. We would suggest that further research is required to ascertain the percentage of inhibitions that are discharged within 5 years and the average timescale within which heritable property is transferred or additional security raised against it to inform future changes to inhibitions.

**Question 3(i): Should inhibition be a diligence option after securing a summary warrant?**

Yes  No

**Question 3(j): If you answered “No” to question 3(i), why not?**

Answer: \_\_\_\_\_

#### **4. DILIGENCE ON THE DEPENDENCE**

**Question 4(a): Do you consider diligence on the dependence to be an effective diligence, in its current form?**

Yes  No

**Question 4(b): If you answered “No” to question 4(a), why not?**

Answer: \_\_\_\_\_

**Question 4(c): Have you identified any improvements that you consider are necessary to diligence on the dependence?**

Yes  No

**Question 4(d): If you answered “Yes” to question 4(c), what improvements do you consider are necessary?**

Answer: We would agree with the observations from messengers at arms and sheriff officers contained within the consultation that the court procedure involved makes an action for diligence on dependence cumbersome and costly. Experience suggests that taking such action is often speculative in that there is no certainty that the diligence will capture funds or assets and thereby offer protection for the creditor.

We would suggest that the process is amended so that a hearing need not be automatically fixed in all cases. The courts are already under severe pressure and having to schedule hearings where no answers are being lodged is a waste of scarce public resources. We would suggest that the process could usefully be amended so that a hearing is only fixed where after service a debtor or other interested party lodges answers.

**Question 4(e): Would you use diligence on the dependence in its current form to recover debt?**

Yes  No

**Question 4(f): If you answered "No" to question 4(e), why not?**

Answer: \_\_\_\_\_

**Question 4(g): Do you agree that an additional copy of an arrestment schedule should be sent by recorded delivery when the arrestee is a bank or other financial institution?**

Yes  No

**Question 4(h): If you answered "No" to question 4(f), why not?**

Answer: \_\_\_\_\_

## 5. INTERIM ATTACHMENT

**Question 5(a): Do you consider interim attachment to be an effective diligence in its current form?**

Yes  No

**Question 5(b): If you answered "No" to question 5(a), why not?**

Answer: \_\_\_\_\_

**Question 5(c): Have you identified any improvements that you consider are necessary to interim attachment?**

Yes  No

**Question 5(d): If you answered "Yes" to question 5(c), what improvements have you identified?**

Answer: We would agree with the improvements already suggested in the consultation document made by messengers at arms and sheriff officers.

**Question 5(e): Do you agree that there should be an automatic conversion from interim attachment, to attachment?**

Yes  No

**Question 5(f): If you answered "No" to question 5(e), why not?**

Answer: \_\_\_\_\_

**6. MONEY ATTACHMENT**

**Question 6(a): Do you consider money attachment to be an effective diligence, in its current form?**

Yes  No

**Question 6(b): If you have answered “No” to question 6(a), why not?**

Answer: \_\_\_\_\_

**Question 6(c): Have you identified any improvements that you consider are necessary to money attachment?**

Yes  No

**Question 6(d): If you answered “Yes” to question 6(c), what improvements have you identified?**

Answer: We would agree with the improvements already suggested in the consultation document made by messengers at arms and sheriff officers.

**Question 6(e): Would you continue to use money attachment as a diligence in its current form?**

Yes  No

**Question 6(f): Do you agree that the timings for executing a money attachment diligence should be extended?**

Yes  No

**Question 6(g): If you answered “Yes” to question 6(f), what timings do you consider are appropriate?**

Answer: The current provisions are highly restrictive contributing to a limited effectiveness. We would suggest that money attachments should be capable of being executed at any time. As money kept in a dwellinghouse cannot be attached then there does not seem to be any reason for the current restrictions.

**Question 6(h): Would you use the money attachment diligence more if the timings for executing a money attachment were extended?**

Yes  No

**Question 6(i): Do you agree that definition of “money” for the purposes of the money attachment diligence should be extended to include the attachment of debit and credit card counterfoils?**

Yes  No

**Question 6(j): If you answered “No” to question 6(i), why not?**

Answer: \_\_\_\_\_

**Question 6(k): Would you use the money attachment diligence more if the definition of “money” was extended to include the attachment of debit and credit card counterfoils?**

Yes  No



## 7. DILIGENCE AGAINST EARNINGS

**Question 7(a): Do you consider diligence against earnings to be an effective diligence, in its current form?**

Yes  No

**Question 7(b): If you have answered “No” to question 7(a), why not?**

Answer: \_\_\_\_\_

**Question 7(c): Have you identified any improvements that you consider are necessary to diligence against earnings?**

Yes  No

**Question 7(d): If you answered “Yes” to question 7(c), what improvements have you identified?**

Answer: We would agree with the improvements already suggested in the consultation document made by messengers at arms and sheriff officers.

**Question 7(e): Would you continue to use diligence against earnings as a diligence in its current form?**

Yes  No

**Question 7(f): In relation to Conjoined Arrestment Orders, should there be a minimum amount of earnings recovered before employers are required to pay the earnings collected to the sheriff clerk? For example, where £4 is being arrested from an employee each week and a minimum threshold of £20 is in place, an employer would send payment to the sheriff clerk after 5 weekly collections.**

Yes  No

**Question 7(g): If you answered “Yes” to question 7(f), what should the threshold be?**

Answer: An appropriate balance must be struck between the costs of collection and remitting by employers, the costs of administration by the courts and the benefit to creditors. We would suggest that an appropriate threshold would be £50.

**Question 7(h): Do you agree that funds collected through payroll deduction should be batched and sent electronically?**

Yes  No

**Question 7(i): Should there be a defined timeframe for an employer to advise if an earnings arrestment has been successful?**

Yes  No

**Question 7(j): If you answered “Yes” to question 7(i), what do you consider is an appropriate timescale?**

Answer: 14 days

**8. ARRESTMENT IN EXECUTION AND ACTION OF FURTHCOMING**

**Question 8(a): Do you consider arrestments in execution and actions of furthcoming to be effective diligences, in their current form?**

Yes  No

**Question 8(b): If you answered "No" to question 8(a), why not?**

Answer: \_\_\_\_\_

**Question 8(c): Have you identified any improvements that you consider are necessary for arrestments in execution and actions of furthcoming?**

Yes  No

**Question 8(d): If you answered "Yes" to question 8(c), what improvements do you consider are necessary?**

Answer: We would agree with the improvements already suggested in the consultation document made by messengers at arms and sheriff officers.

In addition, we would also suggest that the period before which arrested funds are released should be reduced. A period of 14 weeks is exceptionally long. We would suggest a period of 4 weeks is sufficient for a debtor to lodge an objection after which the funds should be released without delay.

Requiring an action of forthcoming to be raised to obtain permission to have funds or goods released is also an unnecessary burden and should be removed. This would free up scarce court resources and make the process of arrestment more efficient.

**Question 8(e): Would you use the an arrestment in execution and action of furthcoming to recover debt?**

Yes  No

**Question 8(f): If you answered "No" to question 8(e), why not?**

Answer: \_\_\_\_\_

**Question 8(g): Should an arrestee have to respond to the arrestment where no funds are attached?**

Yes  No

**Question 8(h): If you answered "No" to question 8(g), why not?**

Answer: \_\_\_\_\_

**Question 8(i): Do you agree that an additional copy of an arrestment schedule should be sent by recorded delivery when the arrestee is a bank or other financial institution?**

Yes  No

**Question 8(j): If you answered "No" to question 8(i), why not?**

Answer: \_\_\_\_\_

## 9. LANDLORD'S HYPOTHEC

**Question 9(a): Do you consider landlord's hypothec to be effective in its current form?**

Yes  No

**Question 9(b): If you answered "No" to question 9(a), why not?**

Answer: While it is effective in terms of providing a security over moveable assets of the tenant, there are several areas where the operation of landlord's hypothec makes it ineffective. These are discussed further under 9(d) below.

**Question 9(c): Have you identified any improvements that you consider are necessary for landlord's hypothec?**

Yes  No

**Question 9(d): If you answered "Yes" to question 9(c), what improvements do you consider are necessary?**

Answer: We wonder whether it is appropriate to have landlords hypothec at all. It is unclear what the rationale or imperative is for a landlord to have a greater priority or security over any other creditor who enters an agreement on commercial terms. A landlord will in many circumstances also retain a deposit and therefore there does not appear to be any reason for them to also obtain a higher ranking.

If it is considered that landlords should retain a higher ranking than other creditors then further amendments are required in order to make it effective. Landlord's hypothec only provides a right of security. As a result, there is no effective method of enforcing that right to convert the security into payment. Following insolvency, a lack of clarity exists around the ability of the office holder to realise the assets caught under the hypothec and the subsequent distribution of funds realised. It should be clear in legislation that an officeholder has the right to realise assets caught under the hypothec and must account to the landlord based on the value of the security.

The hypothec also only covers 'rent' which is unpaid and due. Difficulties arise where the amount payable under a lease is inclusive of other service charges. It is unclear whether the total payment is covered by the hypothec or whether there requires to be an apportionment between rent and service charges, and if so how that is to be carried out.

It is not uncommon for protracted discussions to take place between a trustee and a landlord regarding a process of realisation, how costs are to be borne, what amounts are covered by the hypothec, etc. This also normally involves both parties seeking legal advice. Overall there is significant time and cost incurred by all parties negotiating a position due to a lack of clarity in the legal situation. This also affects the efficient conduct of the insolvency and can result in not only significant delay and costs but can also impact on the realisable value of assets to the detriment of the landlord and other creditors.

## 10. MAILLS AND DUTIES

**Question 10(a): Do you agree that mails and duties should be abolished?**

Yes  No

**Question 10(b): If you answered “No” to question 10(a), why not?**

Answer: \_\_\_\_\_

## **11. ADMIRALTY ACTIONS AND ARRESTMENT OF SHIPS**

**Question 11(a): Do you consider admiralty actions and arrestment of ships to be an effective diligence, in its current form?**

Yes  No

**Question 11(b): If you answered “No” to question 11(a), why not?**

Answer: \_\_\_\_\_

**Question 11(c): Have you identified any improvements to admiralty actions and arrestment of ships?**

Yes  No

**Question 11(d): If you answered “Yes” to question 11(c), what improvements do you consider are necessary?**

Answer: We would agree with the improvements already suggested in the consultation document made by messengers at arms and sheriff officers.

**Question 11(e): Would you use admiralty actions and arrestment of ships in its current form to recover debt?**

Yes  No

**Question 11(f): If you answered “No” to question 11(e), why not?**

Answer: \_\_\_\_\_

**Question 11(g): Do you agree that admiralty actions and arrestment of ships diligence should be extended to enable all types of ship arrestments to take place on a Sunday?**

Yes  No

**Question 11(h): If you answered “No” to question 11(g), why not?**

Answer: \_\_\_\_\_

## **12. ACTIONS FOR REMOVING FROM HERITABLE PROPERTY**

**Question 12(a): Do you consider actions for removing from heritable property to be an effective diligence, in its current form?**

Yes  No

**Question 12(b): If you answered “No” to question 12(a), why not?**

Answer: While ultimately the action may be effective, the process appears to be costly and lengthy to achieve a successful outcome.

**Question 12(c): Have you identified any improvements that you consider are necessary to actions for removing from heritable property?**

Yes  No

**Question 12(d): If you answered “Yes” to question 12(c), what improvements do you consider are needed?**

Answer: \_\_\_\_\_

**Question 12(e): Do you agree that regulations should prescribe how effects left at a property after an ejection are to be disposed of?**

Yes  No

**Question 12(f): If you answered “Yes” to question 12(e), how do you think the effects should be disposed of?**

Answer: Any disposal must be cost effective to carry out. We would suggest that a deminimus value be set below which any effects left be destroyed or disposed of in any way. Above the deminimus value we would suggest that it is appropriate for the effects to be disposed of by way of auction or private bargain.

**Question 12(g): Do you agree that regulations should prescribe the timescale for the disposal of effects after an ejection?**

Yes  No

**Question 12(h): If you answered “Yes” to question 12(g), what do you consider to be a reasonable timescale for disposal of effects left in a property after an ejection?**

Answer: We do not have any particular views on what would be a reasonable timescale for disposal of effects left in a property after an ejection.

### **13. SUMMARY WARRANTS (TIME TO PAY AND CHARGES TO PAY)**

**Question 13(a): Do you consider the summary warrant process to be an effective diligence?**

Yes  No

**Question 13(b): Have you identified any improvements that you consider necessary to the summary warrant process?**

Yes  No

**Question 13(c): If you answered “Yes” to question 13(b), what improvements do you consider are necessary?**

Answer: We would agree with the improvements already suggested in the consultation document made by messengers at arms and sheriff officers.

**Question 13(d): Do you agree that summary warrants should contain authority to execute an inhibition?**

Yes  No

**Question 13(e): If you answered “No” to question 13(d), why not?**

Answer: \_\_\_\_\_

**Question 13(f): Do you agree that charges to pay should contain details of multiple summary warrants incurred by the same debtor?**

Yes  No

**Question 13(g): If you answered no to question 13(f), why not?**

Answer: \_\_\_\_\_

#### **14. LAND ATTACHMENT**

**Question 14(a): Given that land attachment was intended to replace adjudication for debt, is there a need for something that operates like adjudication for debt?**

Yes  No

**Question 14(b): If you answered “Yes” to question 14(a), what do you think is needed?**

Answer: We consider that Land Attachment would be suitable to replace adjudication for debt but would encourage some further amendments to address some of the concerns around the loss of a debtor’s home.

We have for some time raised concerns about the need to fundamentally review the way in which a debtor’s home is dealt with under diligence and insolvency procedures. We believe that the Scottish Government should carry out a full consultation on this important area.

Heritable property is likely to be the single largest asset that an individual has and therefore often represents the best prospect for a creditor recovering debt. An appropriate balance between the rights of creditors and debtors needs to be struck.

We suggest, subject to appropriate safeguards to prevent reduction in equity with the onset of insolvency, the introduction of a deminimus level of equity where heritable property is the debtors sole or main residence becomes protected from realisation and excluded from vesting in insolvencies. This would provide an appropriate balance between creditors rights of recovery and the social provision of adequate housing and preventing of debtors unnecessarily losing their home. The parameters in setting the deminimus value would require to be examined further.

#### **15. DISCLOSURE OF INFORMATION**

**Question 15(a): Do you consider that there is a need for disclosure of information to facilitate diligence?**

Yes  No

**Question 15(b): If you answered “Yes” to question 15(a), when would you consider it appropriate for disclosure of information to be granted?**

Answer: We consider that it would be appropriate for disclosure of information to take place any time after a decree has been granted by the court and which could be used for the basis of undertaking diligence.

**Question 15(c): What details do you think should be disclosed?**

Answer: The disclosure of information should be restricted to information which is not otherwise publicly available. We would suggest that it be limited to matters such as whether the debtor holds accounts with the bank and the level of funds held. In relation to disclosure by employers this may be limited to confirmation of employment, information on whether the employee is working their notice or under redundancy consultation, whether any other deduction orders are in place, and an indication of pay level (this may be indicated by reference to the tables contained in Schedule 2 to the 1987 Act).

**Question 15(d): To help ensure that any disclosed information is for the correct person, is there a minimum amount of information which should be known about a debtor before disclosure of information can be requested?**

Yes  No

**Question 15(e): If you answered "Yes" to question 15(d), what minimum information should be known about the debtor?**

Answer: Name, address and date of birth.

**16. RESIDUAL ATTACHMENT**

**Question 16(a): Do you consider that there is a need for residual attachment, in its proposed form?**

Yes  No

**Question 16(b): If you answered "Yes" to question 16(a), why?**

Answer: A creditor should have the ability to access appropriate diligence for all forms of a debtor's assets.

**Question 16(c): Do you consider that there is a need for changes to residual attachment before being implemented?**

Yes  No

**Question 16(d): If you answered "Yes" to question 16(c), what changes do you consider are necessary?**

Answer: \_\_\_\_\_

**17. DILIGENCE STATISTICS**

**Question 17(a): Do you find the diligence statistics helpful in their current format?**

Yes  No

**Question 17(b): If you answered "No" to question 17(a), what improvements do you consider would be helpful?**

Answer: \_\_\_\_\_

**Question 17(c): Is there anything that you would like to see incorporated into the diligence statistics?**

Yes  No

**Question 17(d): If you answered “Yes” to question 17(c), what would you like to see?**

Answer: It would be useful to have details on the distribution of diligences both in relation to summary warrants (other than council tax) and non-summary warrants.

## **18. DEBT ADVICE AND INFORMATION PACKAGE**

**Question 18(a): Do you consider the issuing of a DAIP to debtors to be effective?**

Yes  No

**Question 18(b): If you answered “No” to question 18(a), why not?**

Answer: We are not aware of any evidence which suggests that the provision of a DAIP is directly leading to debtors taking appropriate advice.

**Question 18(c): Have you identified anything that would improve the process of issuing the DAIP, or have you identified anything that could be incorporated into the DAIP which would help debtors?**

Yes  No

**Question 18(d): If you answered “Yes” to question 18(c), what have you identified that would help?**

Answer: We would suggest that the DAIP is overly long (14 pages) and does not lend itself to being read or understood by many debtors to whom it is provided. It is well known that many debtors in severe financial distress will often tend to ignore the issue rather than seeking help. Having to read through 14 pages of information and understand the content is unlikely to be undertaken by a significant number of debtors to whom the DAIP is given. We would suggest that the DAIP would be more effective distilled down to a maximum of 2 pages comprising key messages and signposting to additional information.

## **19. ANY ADDITIONAL COMMENTS**

**Please use the box below for any other comments you may have, or anything you feel is not covered in the consultation questions.**



## RESPONDENT INFORMATION FORM

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

### 1. Name/Organisation

Organisation Name

ICAS

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

Surname

MENZIES

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David

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### 3. Sector

*Please tick as appropriate*

Sheriff Officer & Messenger at Arms

Creditor

Advice Sector

Local Authority

Solicitors/Advocates

Insolvency Practitioners

Judiciary

Debtor

Other  If other please specify: Regulatory body of Insolvency Practitioners

#### 4. Permissions - I am responding as...

<b>Individual</b> <input type="checkbox"/>	<b>/</b>	<b>Group/Organisation</b> <input checked="" type="checkbox"/>
<i>Please tick as appropriate</i>		

  

<p><b>(a)</b> Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?</p> <p><b>(b)</b> Where confidentiality is not requested, we will make your responses available to the public on the following basis</p> <p><i>Please tick ONE of the following boxes</i></p> <p>Yes, make my response, name and address all available <input type="checkbox"/></p> <p style="text-align: center;"><i>or</i></p> <p>Yes, make my response available, but not my name and address <input type="checkbox"/></p> <p style="text-align: center;"><i>or</i></p> <p>Yes, make my response and name available, but not my address <input type="checkbox"/></p>	<p><b>(c)</b> The name and address of your organisation <b>will be</b> made available to the public (in the Scottish Government library and/or on the Scottish Government web site).</p> <p>Are you content for your <b>response</b> to be made available?</p> <p style="text-align: right;"><i>Please tick as appropriate</i> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
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<p><b>(d)</b> We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?</p> <p style="text-align: center;"><i>Please tick as appropriate</i></p>	<p style="text-align: center;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
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Please return your response to [AiB\\_Policy\\_Development\\_Enquiries@gov.scot](mailto:AiB_Policy_Development_Enquiries@gov.scot) or to: Carol Kirk, AiB, 1 Pennyburn Road, Kilwinning, Ayrshire, KA13 6SA by 30 November 2016.