



Gordon Lindhust MSP
Convenor, Economy, Jobs and Fair Work Committee
Scottish Parliament

By email only.

10 September 2019

Dear Mr Lindhurst

Debt Arrangement Scheme (Scotland) Amendment Regulations 2019 (Draft)

Thank you to the Committee for inviting me to provide evidence on the above Regulations at its meeting on 3 September 2019.

I have noted the content of the letter the Committee subsequently sent to the Minister for Business, Fair Work and Skills dated 6 September 2019 and his subsequent response dated 9 September 2019 and wished to make some additional comments.

The Minister's letter provides some additional clarity and information regarding the operation of Regulation 4 which was not previously available. While this additional clarity is most welcome, I would emphasise again the point made in the ICAS written submission to the Committee that it is unfortunate that there was not greater alignment between the conclusion of the consultation on returning funds to the free debt advice sector and the laying of these Regulations.

The Minister has provided comment regarding the lack of clarity of the split of the 20% fee provided for in Regulation 4. The fee provides for two distinct elements of service – payment distribution to creditors and continuing money advice to the debtor. As a result of the proposed changes within the Regulations and the further information provided by the Minister the operating models of how the fee would be split can broadly be represented as shown in Diagram 1 attached.

ICAS are content that Regulation 4 should not specify the split of the 20% between payment distributor and continuing money adviser generally. The new information provided in the Minister's letter regarding the mechanisms to return funds to the free debt advice sector however give us cause for concern.

In the [ICAS response](#) to the consultation on returning funds to the free debt advice sector we highlighted 3 principles that should be applied to any scheme:

- cost-effectiveness both for the awarding and recipient bodies - It is important that the funds benefit the free advice sector as intended as opposed to being used in the administration of whichever scheme is chosen to facilitate the process.
- minimises the risk of actual or perceived conflict of interest for the free debt advice sector to promote DAS over other suitable debt solutions.
- The likely impact of funding when used through the distribution channel.

While we agree with the Minister that the focus of the Regulations should not be on funding the free debt advice sector, the Regulations have introduced the AiB as a payment distributor and have therefore directly brought this issue into focus. For the purpose of these Regulations, the impact is on how the new fee structure impacts on DAS.

During my evidence to the Committee, I highlighted that ICAS broadly support the Regulations but that there needed to be further consideration of whether there would be appropriate safeguards around the Regulation 4 funding. The necessary safeguards would depend upon the operational models for the fee split, and in particular where the AiB was the payment distributor. In both the written evidence to the Committee and my oral evidence, it was highlighted that in our view this may include the need for legislative provision.

The Minister has indicated that he proposes that where the AiB is nominated as payment distributor that the AiB would retain 25% of that fee (5% of total contributions). Organisations who nominate the AiB as payment distributor would then be able to choose between the remaining 75% of the fee (15% of total contributions) being returned to organisations generating DAS cases or being included in a Scottish Government general fund for debt advice.

Setting aside at this time the question of how the 25%/75% split has been arrived at, the proposals set out by the Minister fail to meet the principals which ICAS consider are necessary. As a result of the choice and the operation of two schemes, the proposed options for returning funding to the free debt advice sector:

- increases the administrative cost of operations making the scheme inefficient to operate for both the AiB and the free debt advice sector organisations
- increases the risk of actual or perceived conflicts of interest for the free debt advice sector to promote DAS over other suitable debt solutions
- reduces the impact of the available funding by diluting the funds (estimated to be less than £100,000) across multiple benefactors

The proposal outlined by the Minister seems to be the worst possible option for all stakeholders and is likely to result in minimal, or possibly even negative, impact on DAS usage.

While the Scottish Government has not yet published it's formal response to the consultation on returning funds to the free debt advice sector, and it is too early to establish the views from across the sector to the proposals outlined in the Minister's letter to the Committee, our immediate reaction is that the proposals are unlikely to generate approval amongst stakeholders. In addition, there remains a considerable lack of detail surrounding the mechanics of the two payment options which gives rise to substantial unanswered questions.

We also note the Minister's view that separate legislative provision is not required to provide for the options to return funds to the free sector but that the issue of legislative cover could be reviewed after it is seen how the proposed changes work out in practice. We would be content with this approach.

We welcome the Minister's confirmation that funding flowing through the AiB will be subject to external audit and published in the AiB's Annual Report and Accounts.

The substantive issue for stakeholders will remain to be how Regulation 4 operates in practice. There is, in our view, a high likelihood that the proposals set out in the Minister's letter will not gain support across all stakeholders. While there is only a short time prior to the effective date of the Regulations coming into force should they be brought in, there does remain time for stakeholders to come together and gain consensus on an effective model of operation. Without an effective method of Regulation 4 operating in practice, the Regulations are unlikely to achieve the policy objectives intended.

We would therefore wish to seek a commitment from the Minister that the AiB will urgently engage with stakeholders, including ICAS, to establish a mechanism to seek agreement on how the funding mechanisms should operate, oversee the establishment of this funding route and future developments.

I trust the Committee find the above comments of assistance in its consideration of the Regulations, but should any further information or clarification be required, I shall be pleased to provide this.

Yours sincerely



David Menzies
Director of Practice

Diagram 1

