

Scotland's statutory debt solutions and diligence: policy review

Summary of responses

January 2023

Table of contents

i. Ministerial Foreword	3
ii. Background	4
iii. Summary of Responses	5
iv. Table of abbreviations	33
v. Evaluation	34
vi. Consultation Response Results.....	35
vii. Next Steps.....	70
Annex A - List of organisations and individuals who responded to the consultation	71

i. Ministerial Foreword



The Scottish Government has made a commitment to identify and take forward improvements in our debt management solutions to ensure they remain fair and fit for purpose. I believe we have an excellent system with solutions that provide fair and effective remedies for people trying to deal with problem debt and those seeking to recover money that is owed. But the need to continually review the detail of our mechanisms has been brought into sharp focus through the economic uncertainty resulting from the pandemic, coupled with the extreme cost pressures placed on households across Scotland that have followed.

The Scottish Government has already acted quickly to introduce important reforms to help those most vulnerable facing the difficulty of dealing with problem debt. A further stakeholder led policy review of existing statutory debt solutions concluded earlier this year. This work involved many specialists, and I am extremely grateful for the time and effort devoted to this important work. The review culminated in a report of recommendations being presented to the Scottish Government and after consideration of these the Scottish Government issued a consultation outlining its response and proposals for action. This report summarises the responses to that consultation.

I would like to thank everyone that has taken the time to respond. The Scottish Government is committed to continuous improvement and all feedback is carefully considered while we develop firm policy proposals.

Tom Arthur MSP

Minister for Public Finance, Planning and Community Wealth

ii. Background

The Scottish Government committed to a policy review of both formal debt recovery mechanisms (known as diligence) and the statutory debt solutions (moratorium protection, bankruptcy, Protected Trust Deeds (PTDs) and the Debt Arrangement Scheme (DAS)) with the aim of further enhancing and improving our system.

The second stage of this review brought together many stakeholders with vast experience in diligence and the statutory debt solutions to review the existing debt solutions and determine where improvements could be made. This culminated in the stakeholders involved presenting a report of recommendations to the Scottish Government for consideration.

On 12 August 2022 the Scottish Government published a consultation in response to these recommendations setting out proposals for future action. The consultation asked for feedback on the Scottish Government proposals before they were progressed further either through legislation, guidance or working with stakeholders.

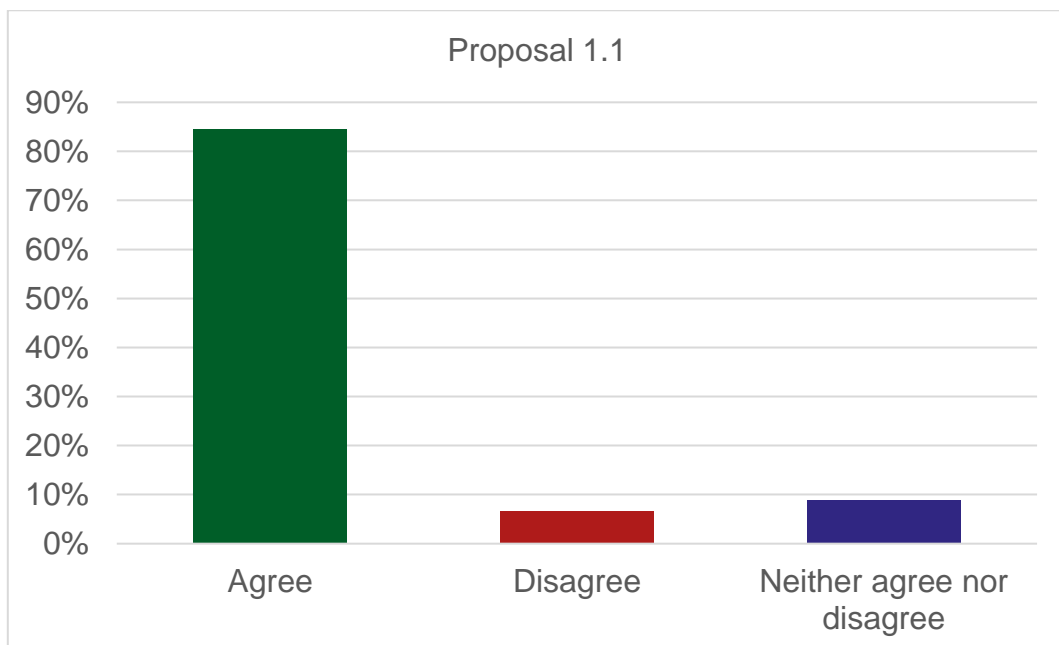
This report summarises the responses received to the consultation which will be considered fully by the Scottish Government in taking forward improvements to debt recovery mechanisms and statutory debt solutions.

iii. Summary of Responses

The following is an executive summary of the responses to the proposals in the consultation:

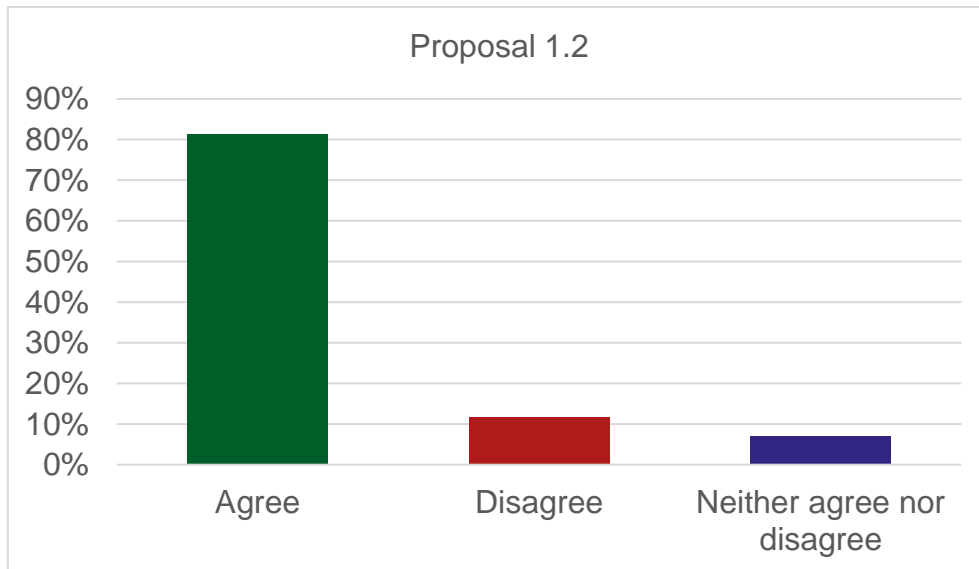
Theme 1 – protections, information and advice prior to debt solutions

Proposal 1.1. Design detailed proposals for the introduction of a specific mental health process as part of the statutory moratorium – in collaboration with mental health and debt specialists.



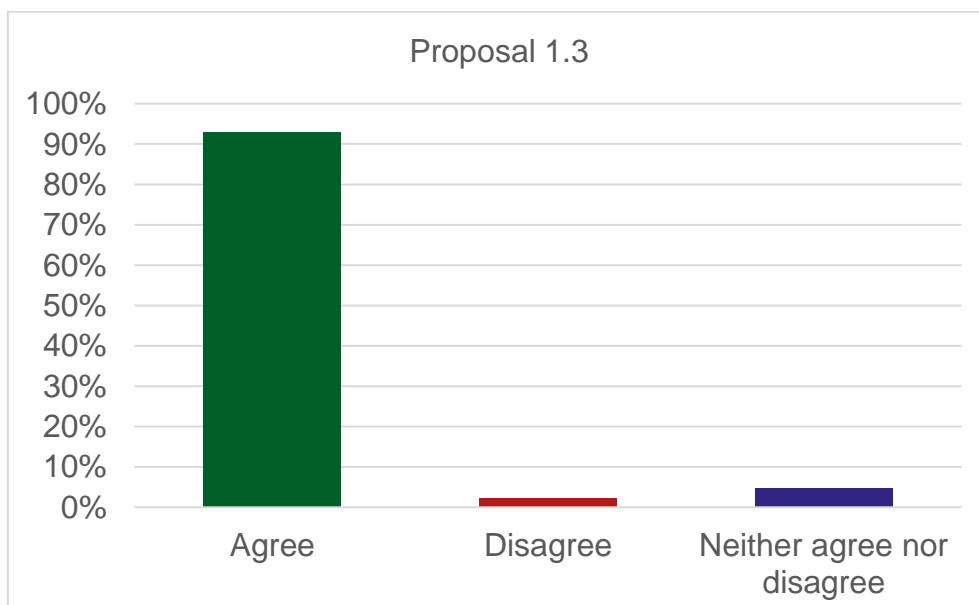
- 93% of respondents to the consultation answered this particular question.
- 84% of those respondents agreed with the proposal.

Proposal 1.2. Introduce a new requirement to provide an individual with a clear and succinct information leaflet for those considering a trust deed. This should form part of the process required for a trust deed to gain protection.



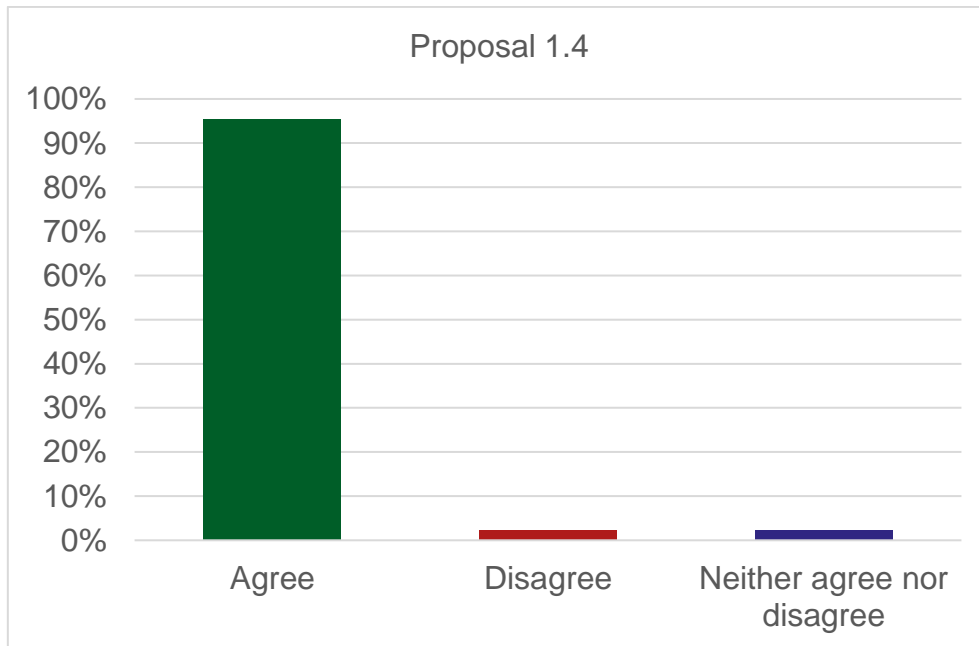
- 93% of respondents to the consultation answered this particular question.
- 81% of those respondents agreed with the proposal.

Proposal 1.3. Take action to streamline the Debt Advice and Information Package to ensure key messages are clear and available to the person with debt at the earliest stage prior to formal debt recovery action.



- 93% of respondents to the consultation answered this particular question.
- 93% of those respondents agreed with the proposal.

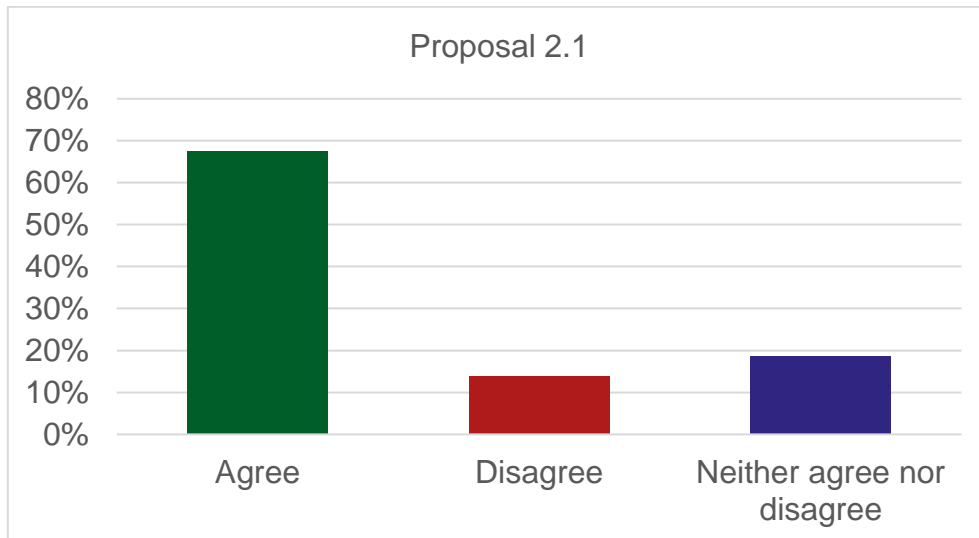
Proposal 1.4. Simplify the language and terminology used in relation to diligence on our websites and publications wherever possible.



- 93% of respondents to the consultation answered this particular question.
- 95% of those respondents agreed with the proposal.

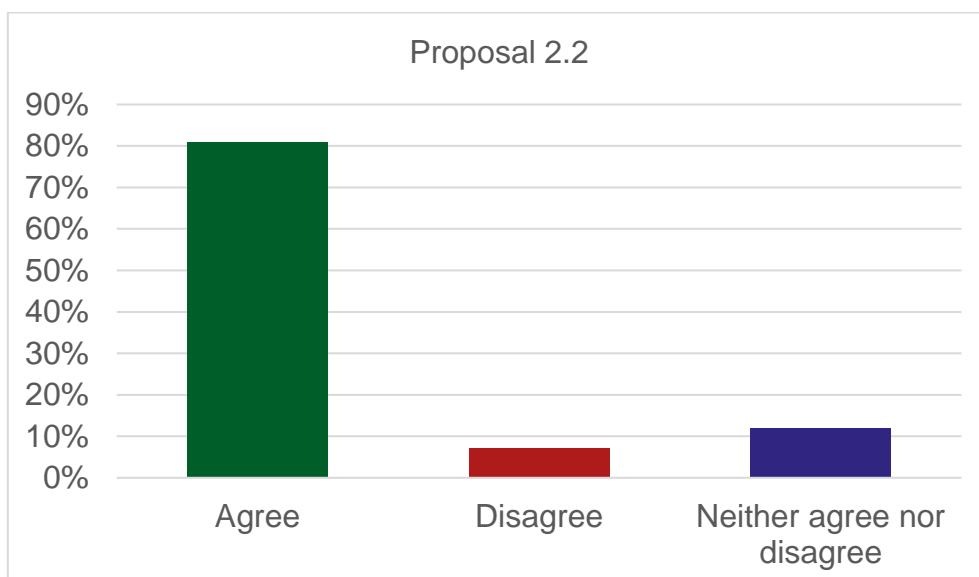
Theme 2 – debt solutions – entry criteria

Proposal 2.1. Remove the minimum debt threshold for Minimal Asset Process bankruptcy.



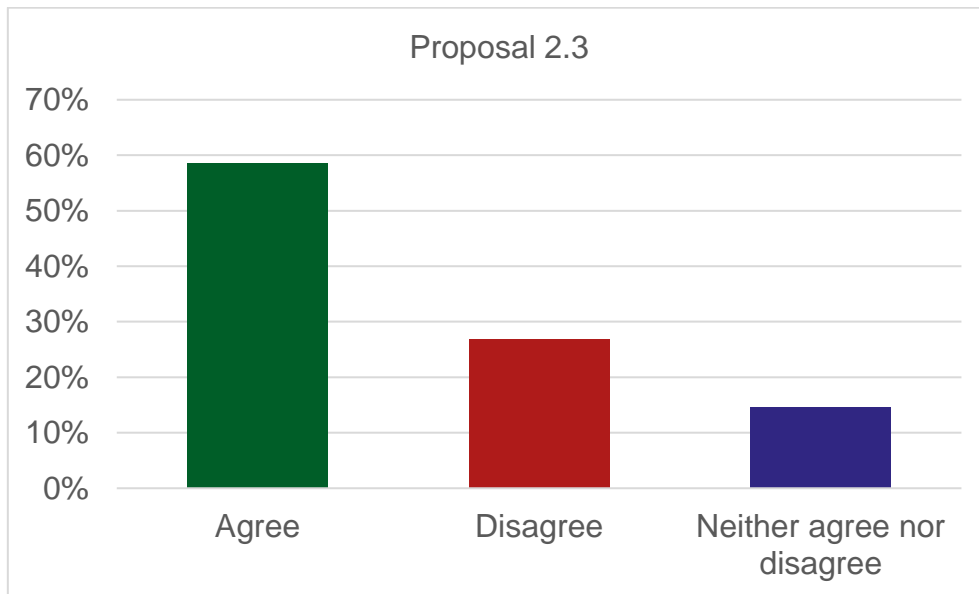
- 93% of respondents to the consultation answered this particular question.
- 67% of those respondents agreed with the proposal. 14% disagreed with the proposal and 19% neither agreed nor disagreed.

Proposal 2.2. Remove the single value asset threshold when applying for a Minimal Asset Process bankruptcy and review and uprate the current total assets threshold.



- 91% of respondents to the consultation answered this particular question.
- 81% of those respondents agreed with the proposal.

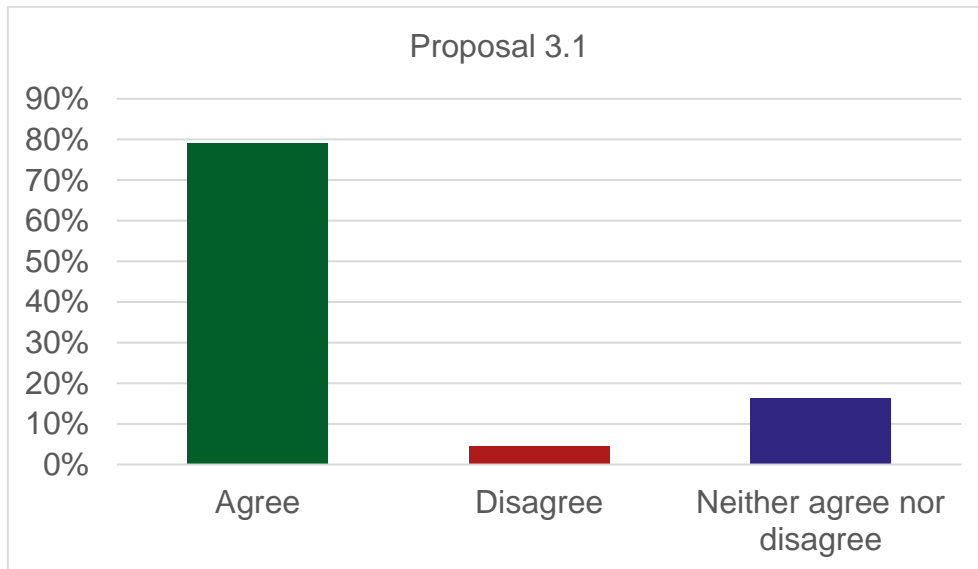
Proposal 2.3. Retain the £5,000 minimum debt level for accessing PTDs.



- 91% of respondents to the consultation answered this particular question.
- 59% of those respondents agreed with the proposal. 27% disagreed with the proposal and 14% neither agreed nor disagreed.

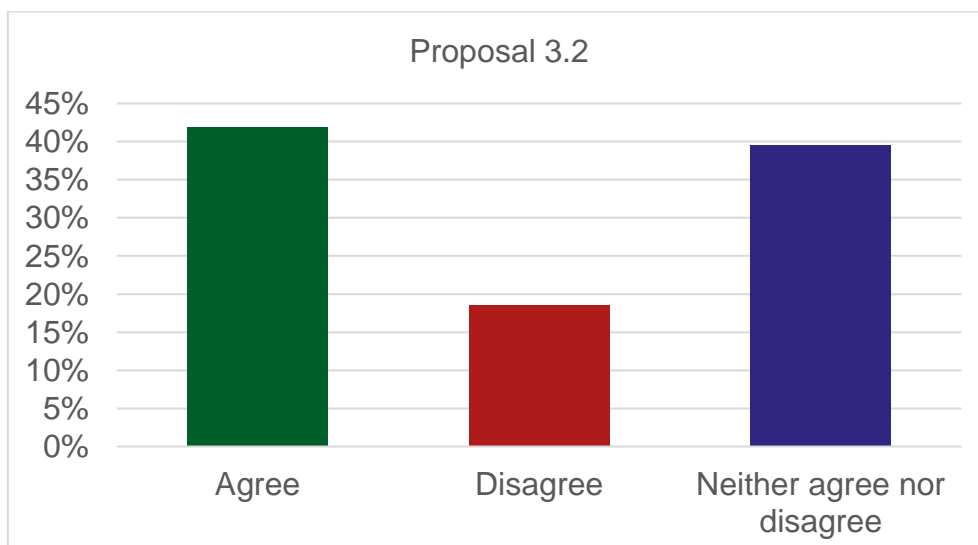
Theme 3 – administration of debt solutions

Proposal 3.1. The income and expenditure methodology remains as the framework for the Common Financial Tool.



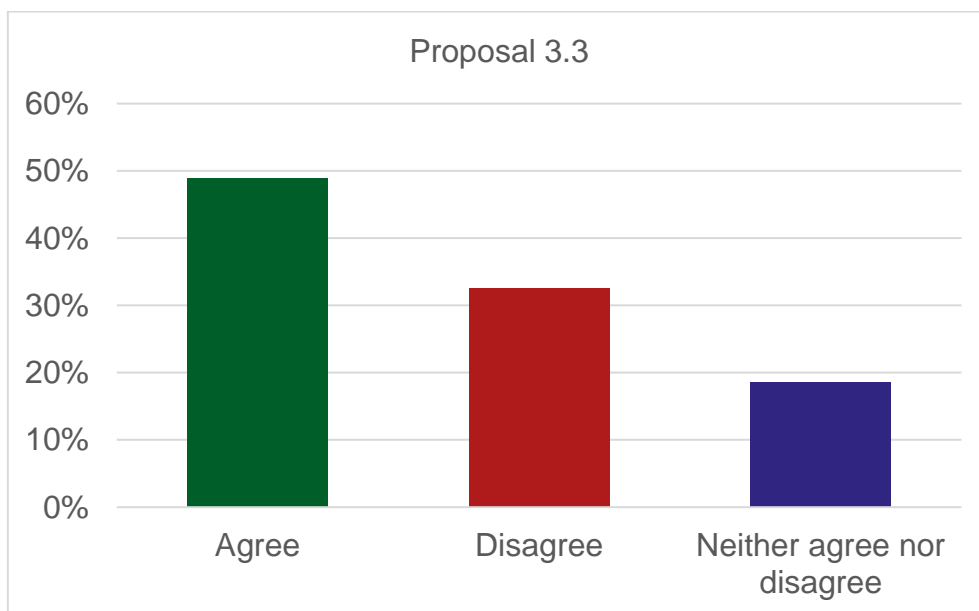
- 93% of respondents to the consultation answered this particular question.
- 79% of those respondents agreed with the proposal. 5% disagreed with the proposal and 16% neither agreed nor disagreed.

Proposal 3.2. The Standard Financial Statement replaces the Common Financial Statement as the statutory Common Financial Tool for Scottish debt solutions.



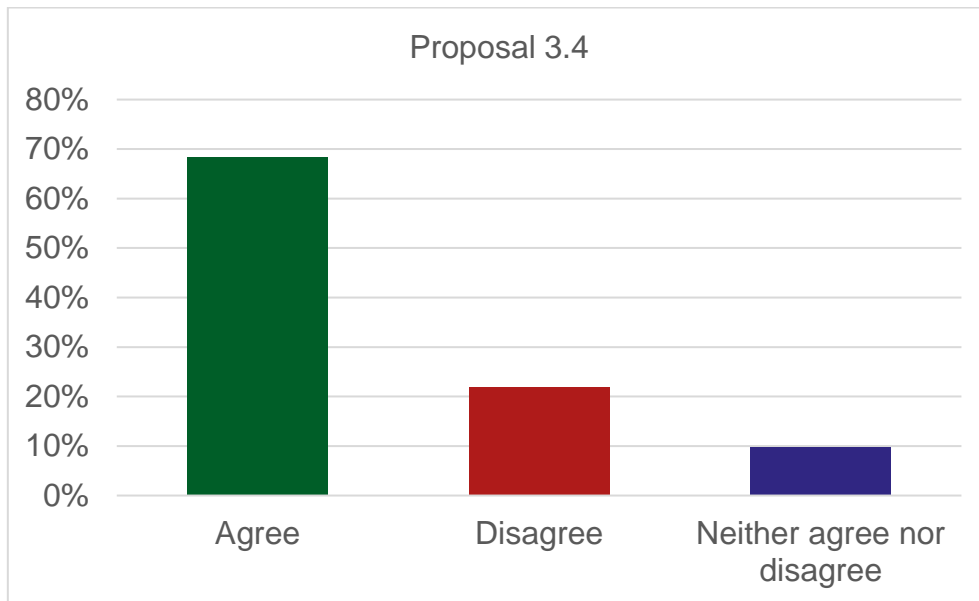
- 93% of respondents to the consultation answered this particular question.
- 42% of those respondents agreed with the proposal. 18% disagreed with the proposal and 40% neither agreed nor disagreed.

Proposal 3.3. Retain the current process of taking the full surplus income for contributions in bankruptcy and to insert a provision to enable the necessary flexibility to deal with one-off support payments issued by government to help people through a cost of living crisis or similar.



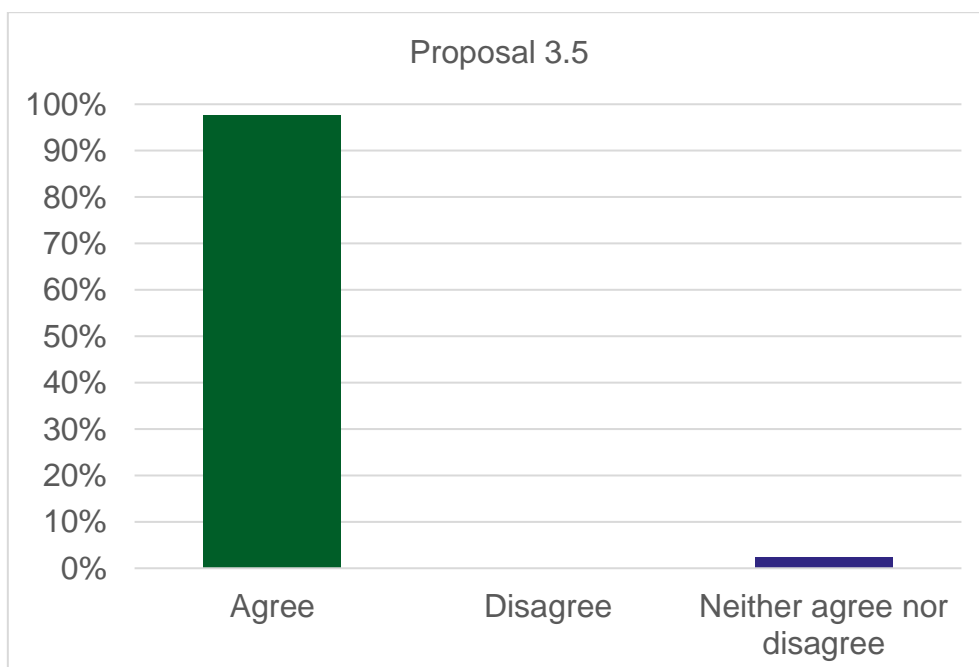
- 93% of respondents to the consultation answered this particular question.
- 49% of those respondents agreed with the proposal. 33% disagreed with the proposal and 18% neither agreed nor disagreed.

Proposal 3.4. Retain the current repayment periods in debt solutions.



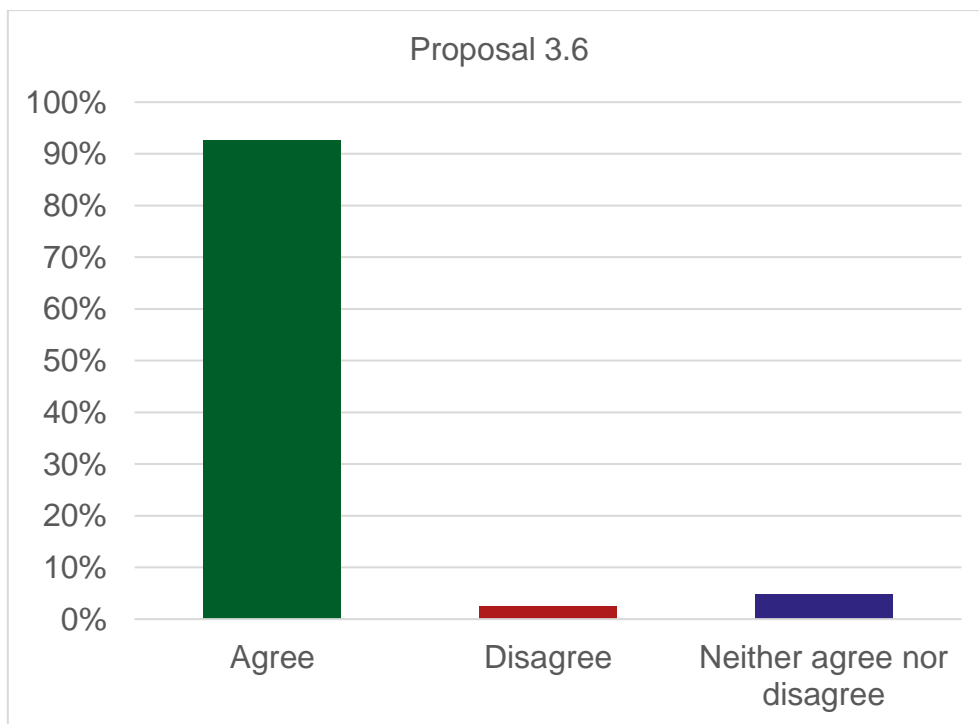
- 89% of respondents to the consultation answered this particular question.
- 68% of those respondents agreed with the proposal. 22% disagreed with the proposal and 10% neither agreed nor disagreed.

Proposal 3.5. Ensure mobility scooters are excluded from asset criteria for entry into bankruptcy and from vesting with the trustee.



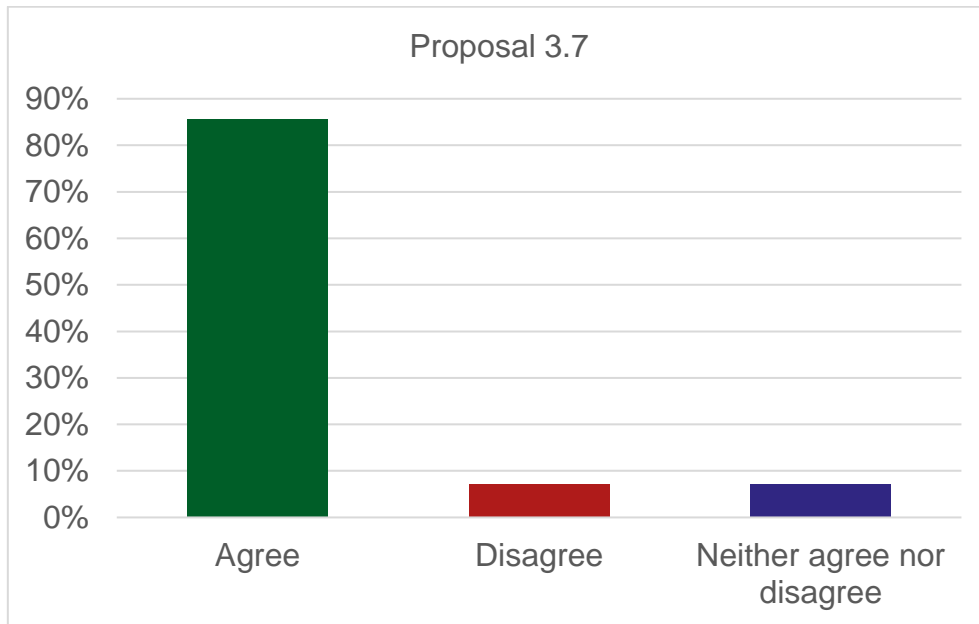
- 93% of respondents to the consultation answered this particular question.
- 98% of those respondents agreed with the proposal.

Proposal 3.6. Commission further work to help inform Stage 3 of the review where further consideration can be given to how to treat vehicles in bankruptcy in the future. AiB will also review the guidance to provide further clarity for trustees.



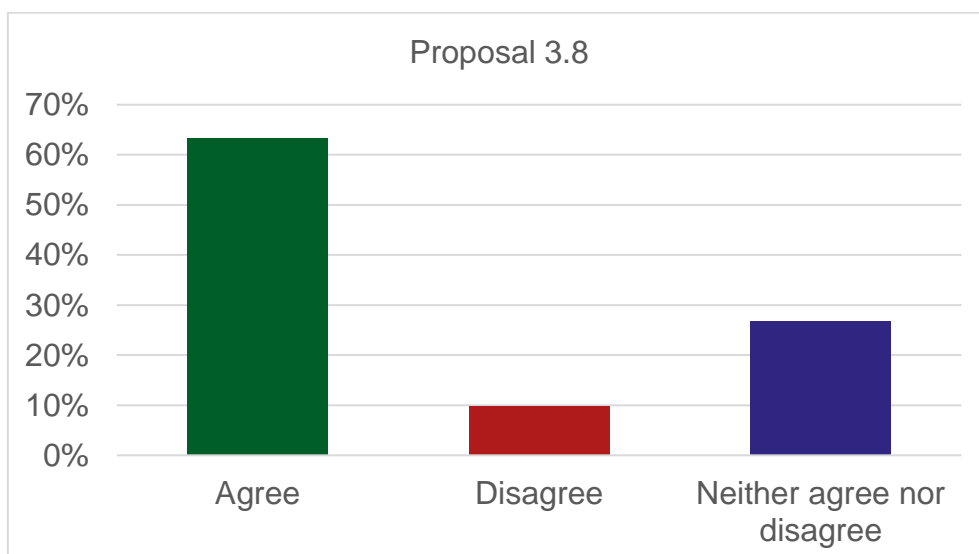
- 89% of respondents to the consultation answered this particular question.
- 93% of those respondents agreed with the proposal.

Proposal 3.7. Review and uprate the existing vehicle threshold while consideration is given to whether a more fundamental change is necessary.



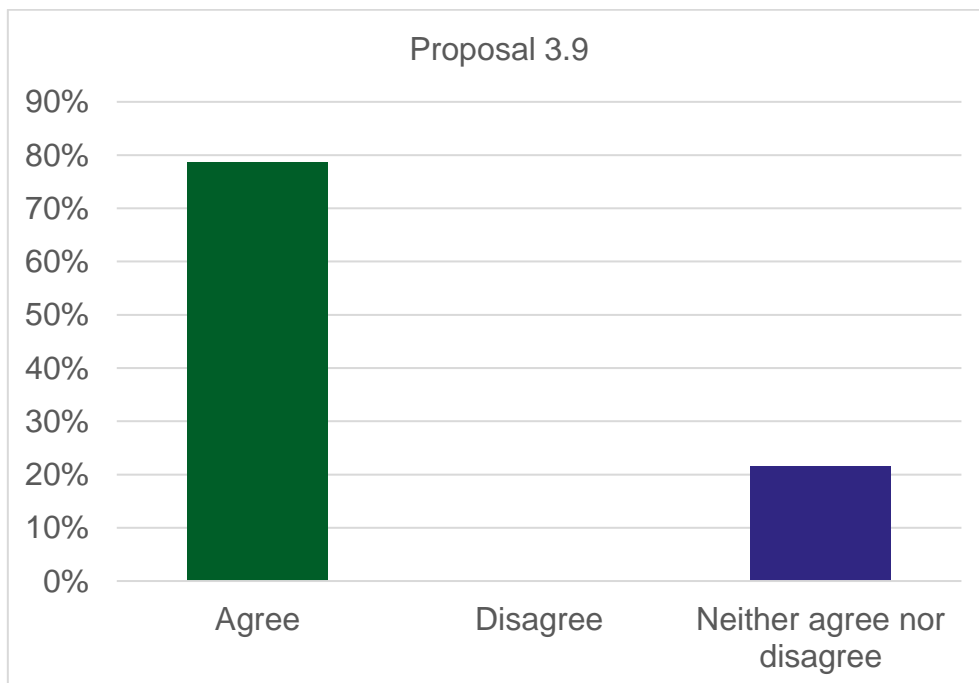
- 91% of respondents to the consultation answered this particular question.
- 86% of those respondents agreed with the proposal.

Proposal 3.8. Take forward legislation to provide for the best practice processes laid out in the Protected Trust Deed Protocol. This will include debtor discharge and payment of a dividend at 12 months - including a requirement to report on the position annually.



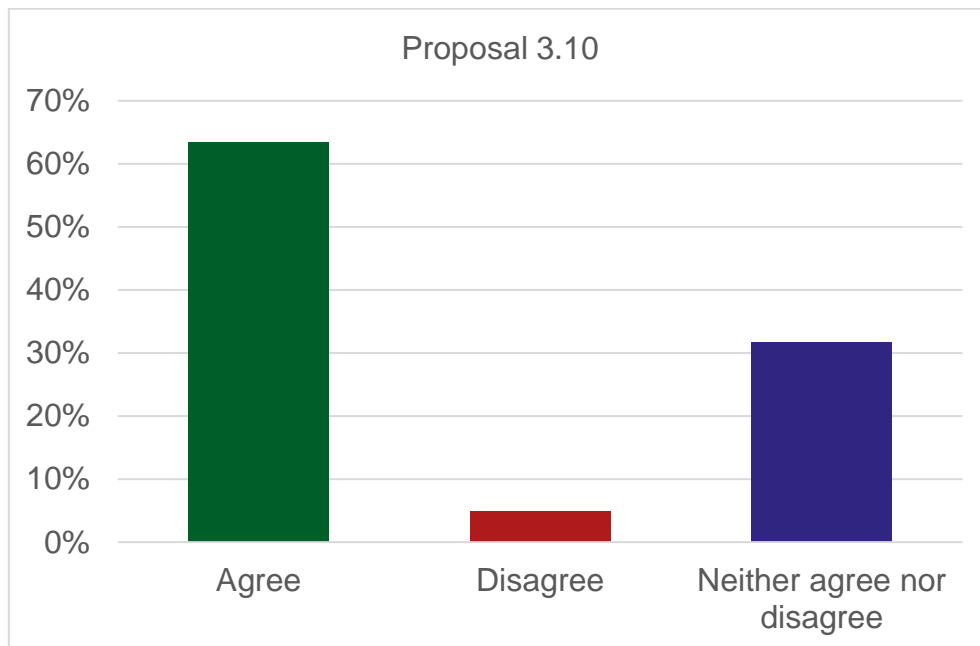
- 89% of respondents to the consultation answered this particular question.
- 63% of those respondents agreed with the proposal. 10% disagreed with the proposal and 27% neither agreed nor disagreed.

Proposal 3.9. To take forward a dedicated technical review through a short-life working group comprising of insolvency specialists to identify efficiency measures that have capacity to reduce administration costs (and resultant increase in creditor returns) with no detriment identified for any parties involved. No change is proposed to the existing timescales for setting out proposals for contributions in bankruptcy.



- 91% of respondents to the consultation answered this particular question.
- 79% of those respondents agreed with the proposal. No one disagreed with the proposal and 21% neither agreed nor disagreed.

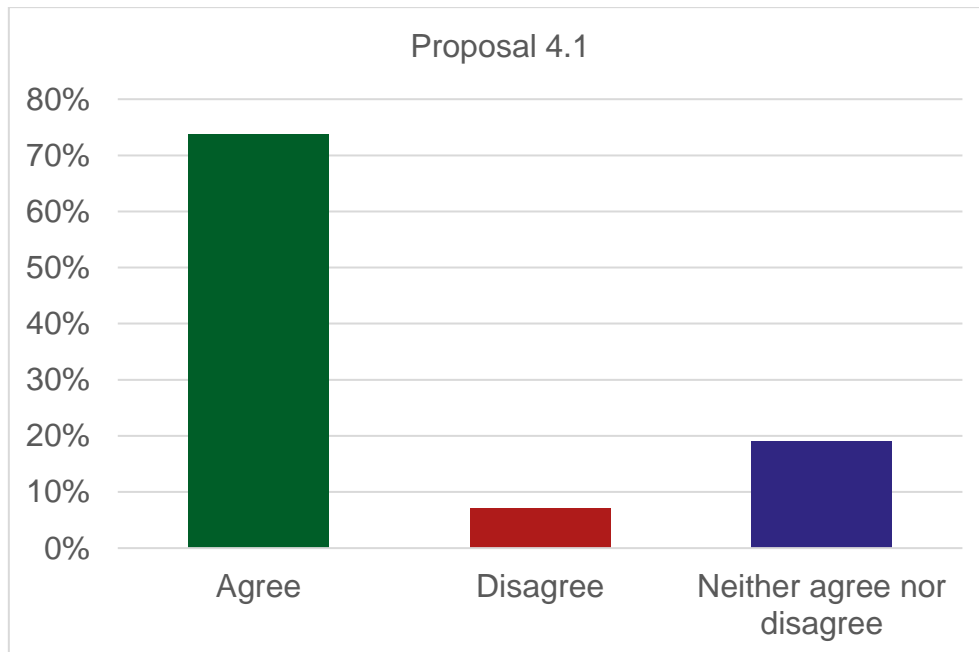
Proposal 3.10. To retain the existing arrangements where an individual dies while in a Protected Trust Deed.



- 89% of respondents to the consultation answered this particular question.
- 63% of those respondents agreed with the proposal. 5% disagreed with the proposal and 32% neither agreed nor disagreed.

Theme 4 – exit from debt solutions¹

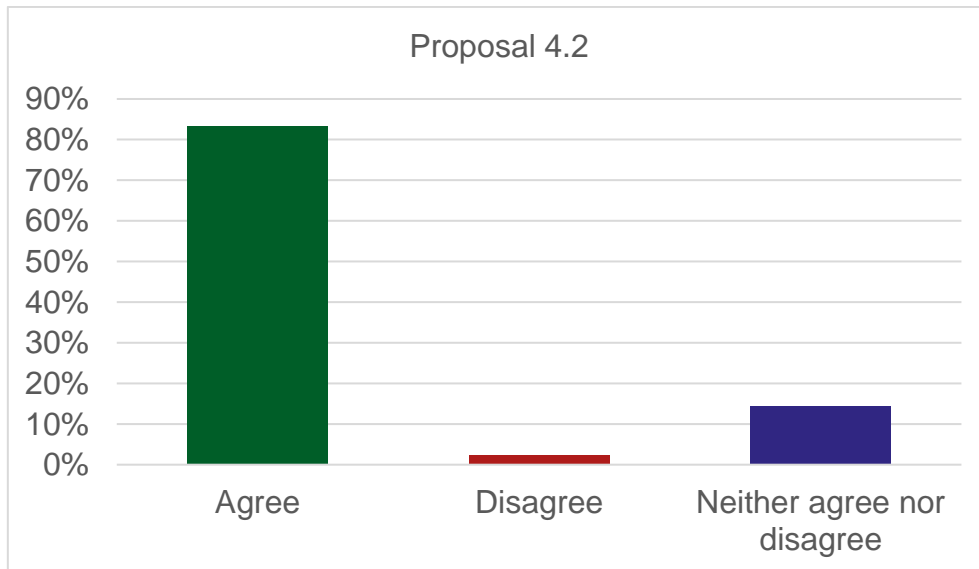
Proposal 4.1. Composition process to be investigated for Protected Trust Deeds.



- 91% of respondents to the consultation answered this particular question.
- 74% of those respondents agreed with the proposal. 7% disagreed with the proposal and 19% neither agreed nor disagreed.

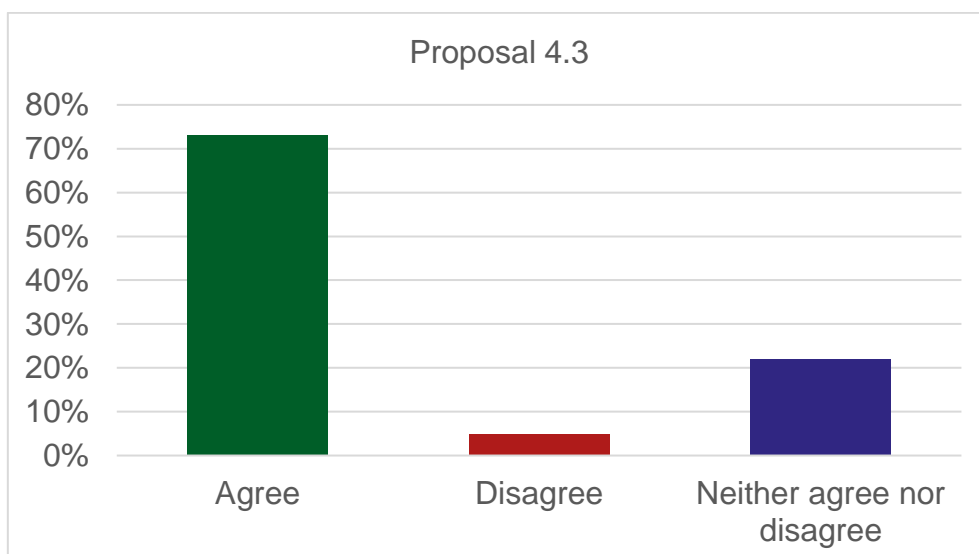
¹ The proposals detailed under Theme 4 adhere to the numbering sequence of the online version of the consultation document.

Proposal 4.2. Explore options for greater flexibility to deliver early discharge from a Protected Trust Deed in specific circumstances – including the appropriate consent criteria.



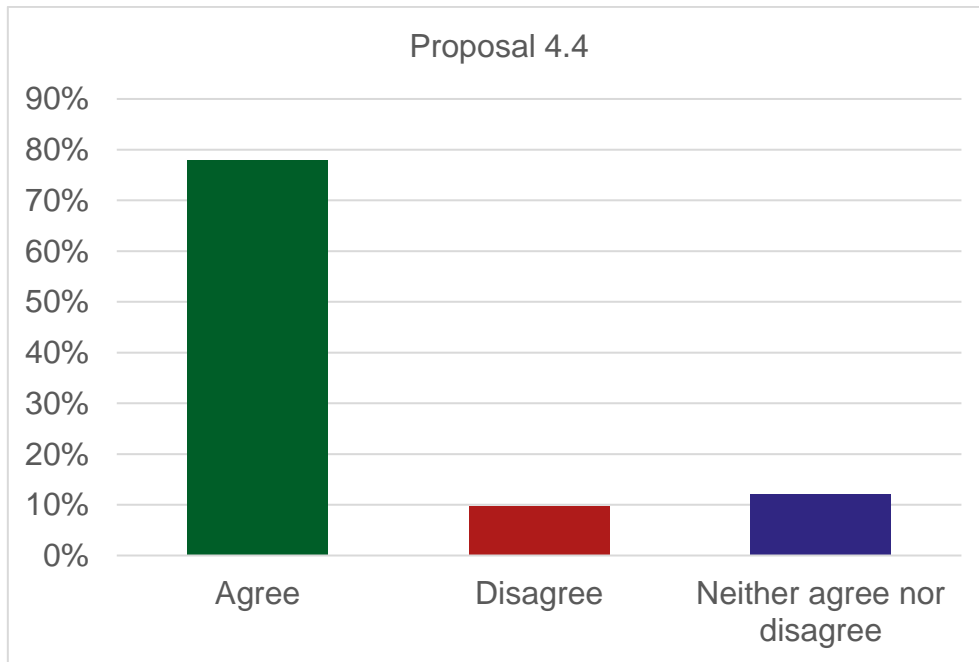
- 91% of respondents to the consultation answered this particular question.
- 83% of those respondents agreed with the proposal. 2% disagreed with the proposal and 15% neither agreed nor disagreed.

Proposal 4.3. Removal of the current time limitations on the refusal of discharge process in a Protected Trust Deed in certain circumstances - meaning a trustee can investigate this process prior to the completion of the contribution period.



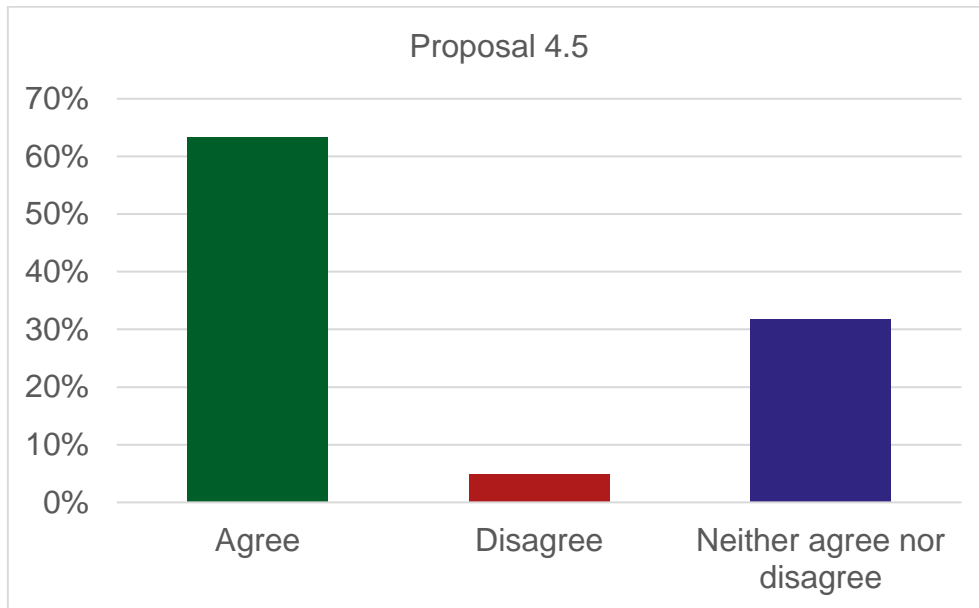
- 89% of respondents to the consultation answered this particular question.
- 73% of those respondents agreed with the proposal. 5% disagreed with the proposal and 22% neither agreed nor disagreed.

Proposal 4.4. Composition process to be investigated for bankruptcy.



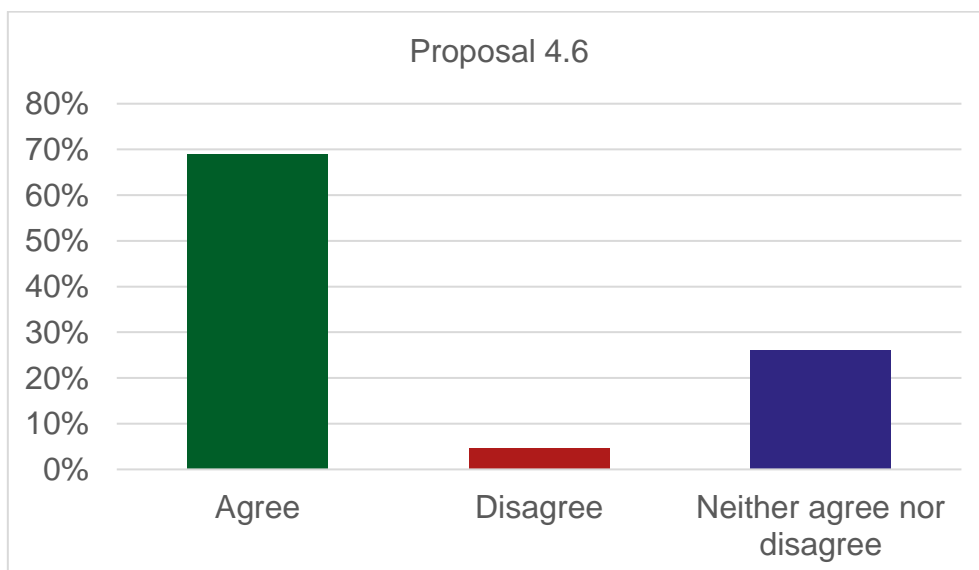
- 89% of respondents to the consultation answered this particular question.
- 78% of those respondents agreed with the proposal. 10% disagreed with the proposal and 12% neither agreed nor disagreed.

Proposal 4.5. Retention of the current trustee report and discharge process in bankruptcy.



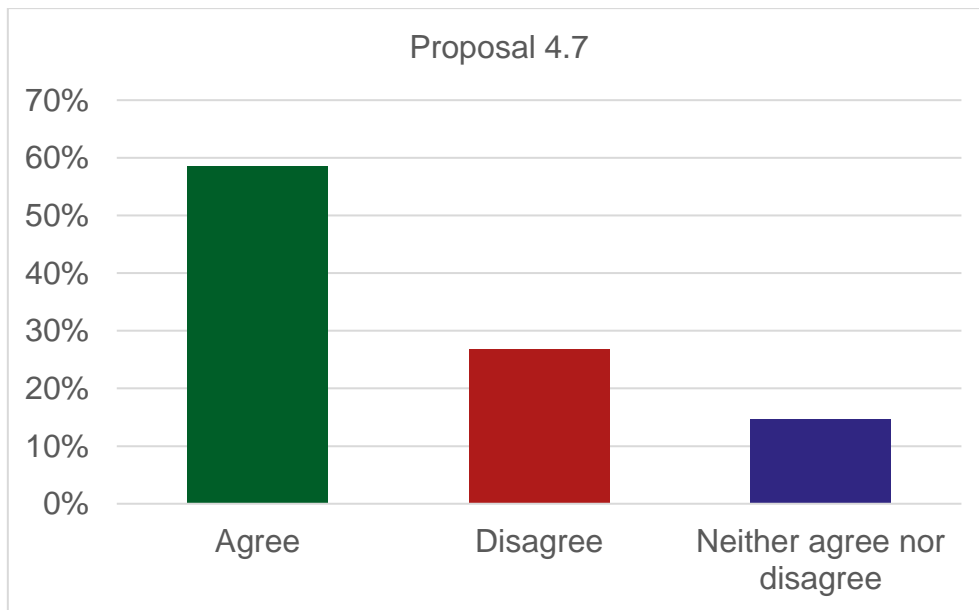
- 89% of respondents to the consultation answered this particular question.
- 63% of those respondents agreed with the proposal. 5% disagreed with the proposal and 32% neither agreed nor disagreed.

Proposal 4.6. Consideration of limited reform that would enable appointment of trustee of last resort (AiB) in those instances of continued debtor non-cooperation or at an earlier stage than currently available where the debtor cannot be traced.



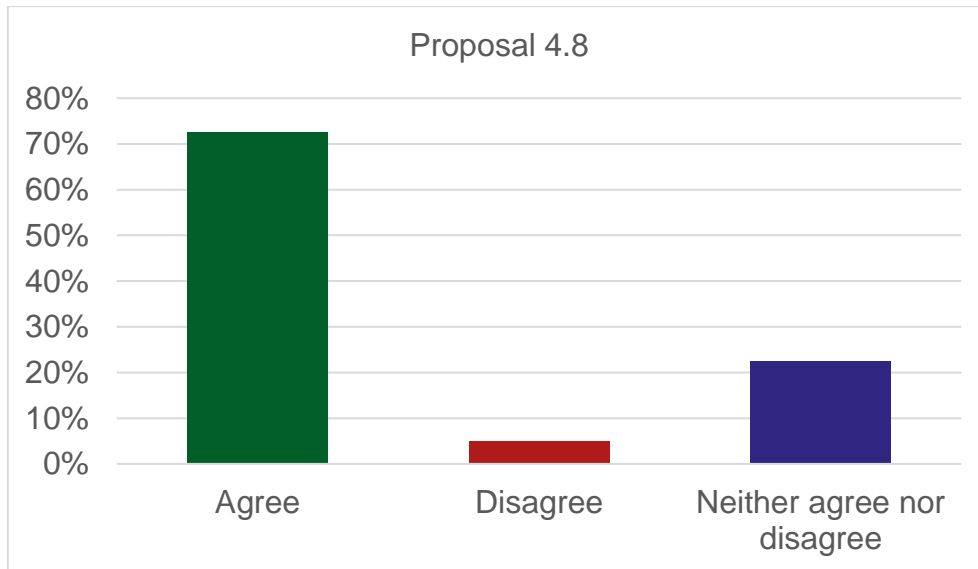
- 91% of respondents to the consultation answered this particular question.
- 69% of those respondents agreed with the proposal. 5% disagreed with the proposal and 26% neither agreed nor disagreed.

Proposal 4.7. No changes made to the existing Debt Arrangement Scheme composition process.



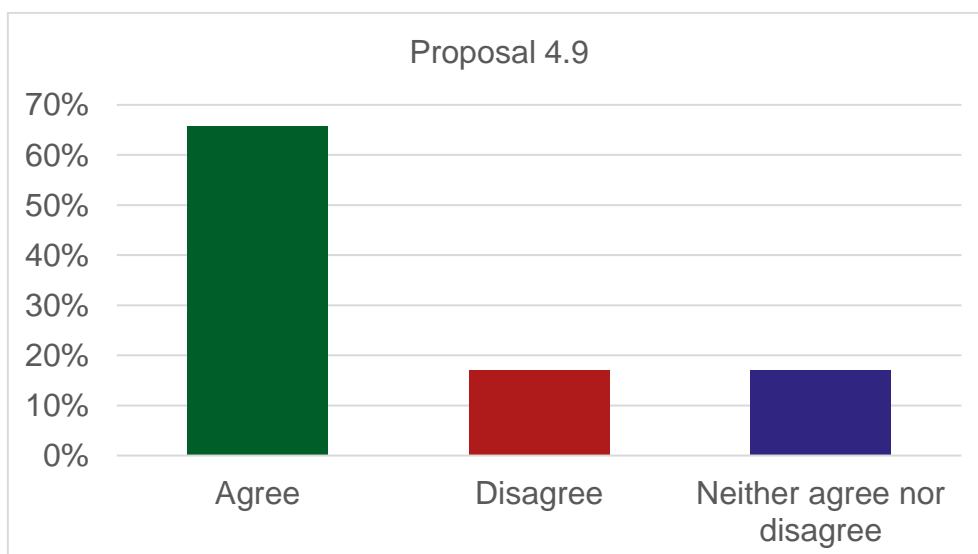
- 89% of respondents to the consultation answered this particular question.
- 59% of those respondents agreed with the proposal. 27% disagreed with the proposal and 14% neither agreed nor disagreed.

Proposal 4.8. Investigate the need to distinguish between the normal Debt Arrangement Scheme revocation process and the procedure that applies when an individual dies while the programme is ongoing, with a view to removing retrospective application of interest and charges in these circumstances.



- 87% of respondents to the consultation answered this particular question.
- 73% of those respondents agreed with the proposal. 5% disagreed with the proposal and 22% neither agreed nor disagreed.

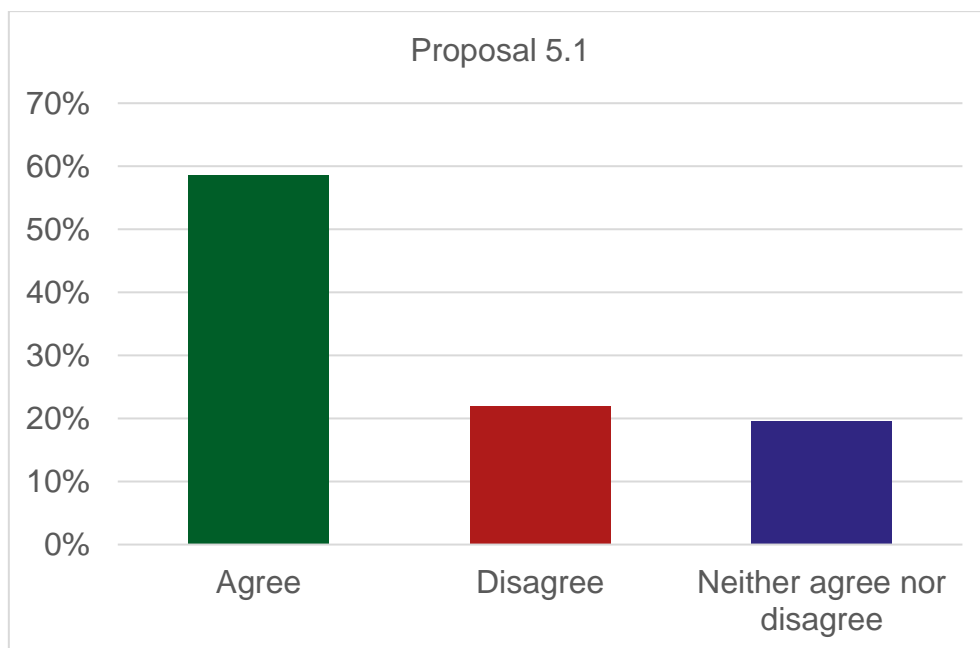
Proposal 4.9. Reform the basis for the prescribed rate of statutory interest and link this to the Bank of England base rate plus 2% - fixed at the date of bankruptcy.



- 89% of respondents to the consultation answered this particular question.
- 66% of those respondents agreed with the proposal. 17% disagreed with the proposal and 17% neither agreed nor disagreed.

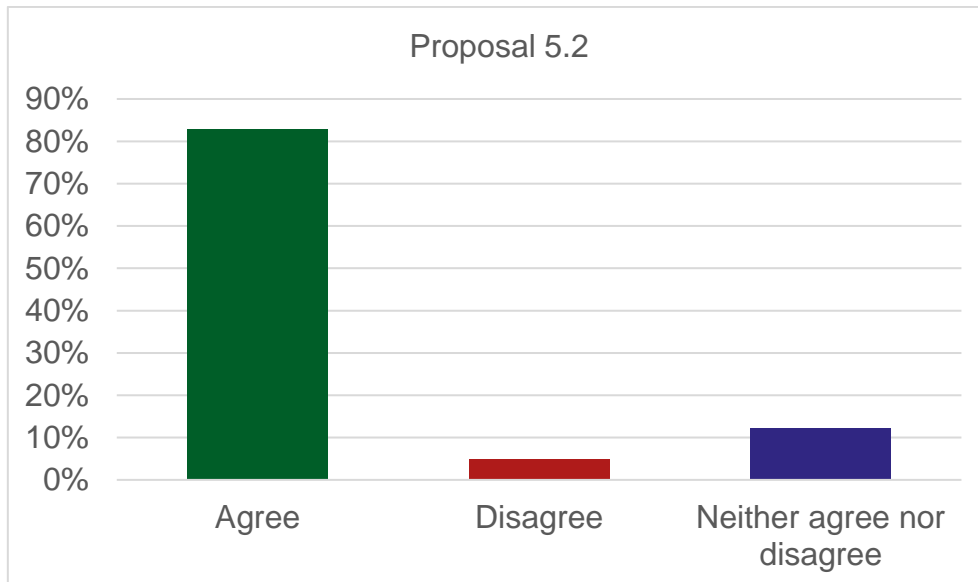
Theme 5 – improvements to debt recovery mechanisms (diligence)

Proposal 5.1. Proceed with the introduction of Information Disclosure Orders – initially involving non-government organisations.



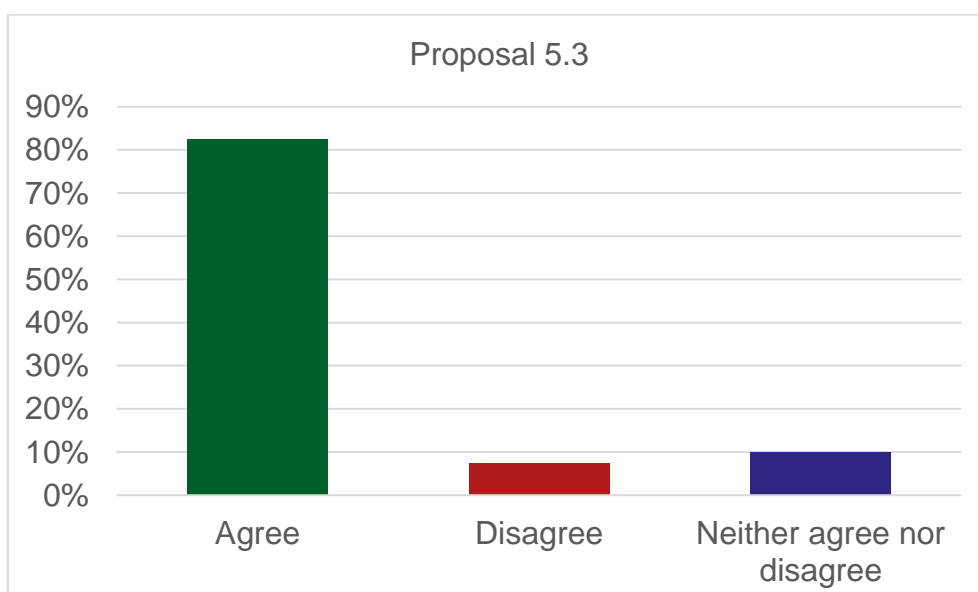
- 89% of respondents to the consultation answered this particular question.
- 59% of those respondents agreed with the proposal. 22% disagreed with the proposal and 19% neither agreed nor disagreed.

Proposal 5.2. Consideration of the family home and treatment in diligence and insolvency mechanisms to be further reviewed in the future review of Scotland's debt solution and recovery landscape.



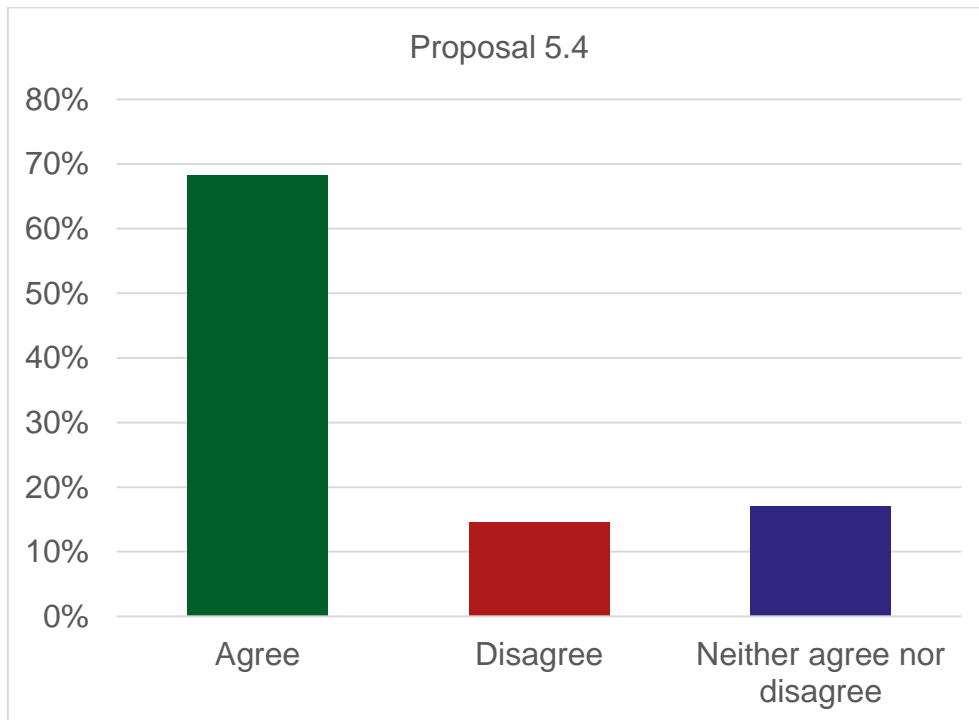
- 89% of respondents to the consultation answered this particular question.
- 83% of those respondents agreed with the proposal.

Proposal 5.3. Exceptional Attachment - increasing the value of sentimental items which cannot be attached from £150 to £500; and extending the redemption period from seven days to 14 days where assets are not removed from the premises.



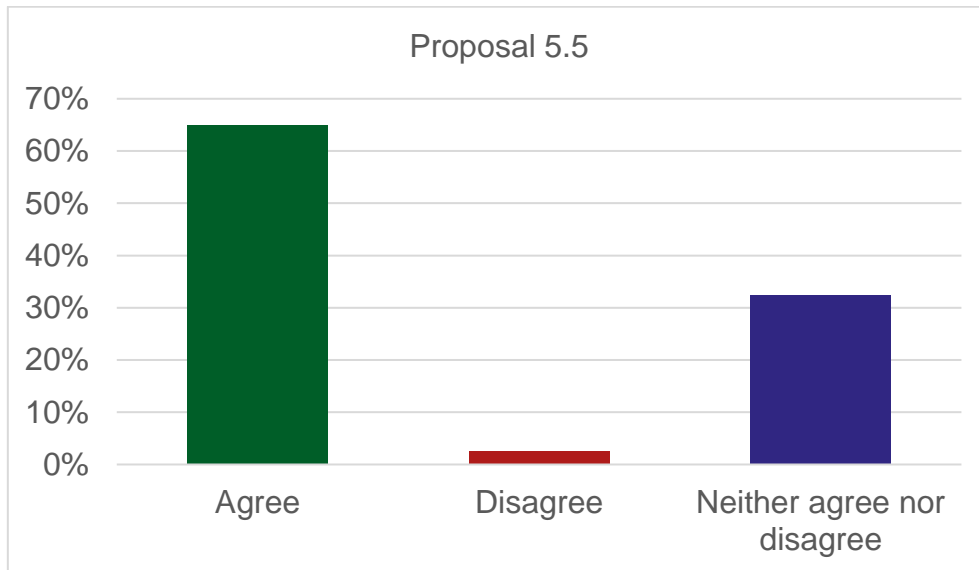
- 87% of respondents to the consultation answered this particular question.
- 82.5% of those respondents agreed with the proposal.

Proposal 5.4. Inhibition process - amending statutory forms to allow inhibition forms to include "process server" to ensure they can be submitted to Registers of Scotland by both sheriff officers and messengers at arms. The length of an inhibition will be retained at five years.



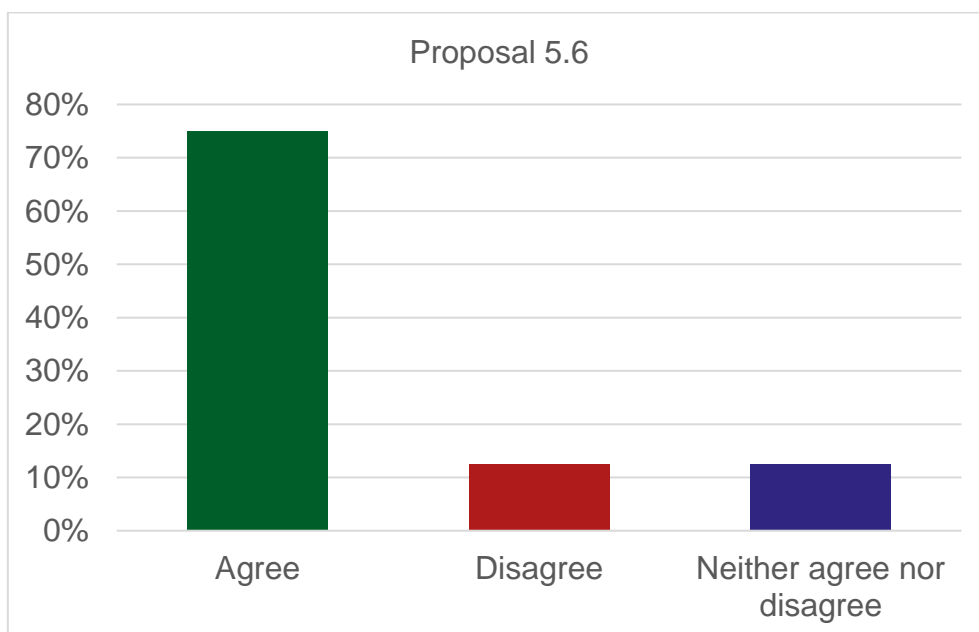
- 89% of respondents to the consultation answered this particular question.
- 68% of those respondents agreed with the proposal. 15% disagreed with the proposal and 17% neither agreed nor disagreed.

Proposal 5.5. Interim Attachment – maintain the current arrangements for interim attachment.



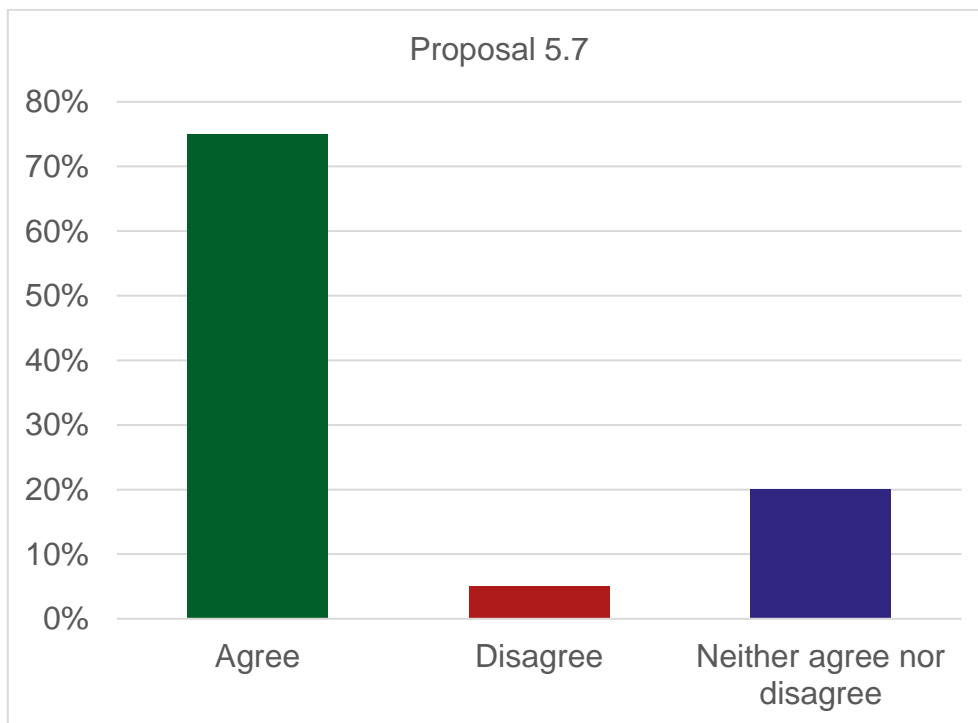
- 87% of respondents to the consultation answered this particular question.
- 65% of those respondents agreed with the proposal. 2.5% disagreed with the proposal and 32.5% neither agreed nor disagreed.

Proposal 5.6. Diligence on the dependence - ensuring the DAIP is issued when a diligence on the dependence application is submitted.



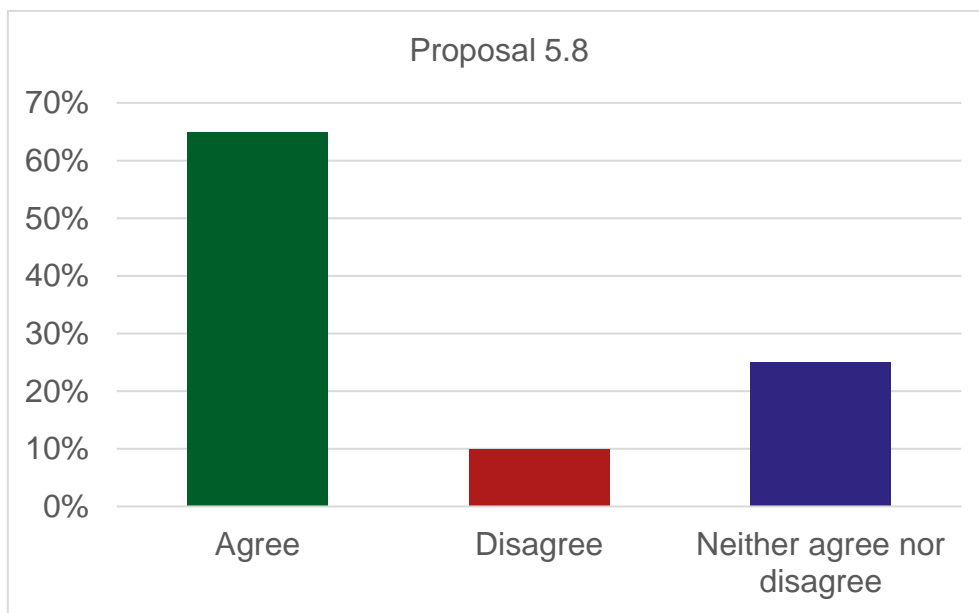
- 85% of respondents to the consultation answered this particular question.
- 75% of those respondents agreed with the proposal. 12.5% disagreed with the proposal and 12.5% neither agreed nor disagreed.

Proposal 5.7. Money Attachment - to remove restrictions on when a money attachment can be executed and greater flexibility by allowing this to be determined by a business's business hours. Carry out work to determine how equivalent provisions operate in other countries to establish if further changes would help to improve the effectiveness of this diligence.



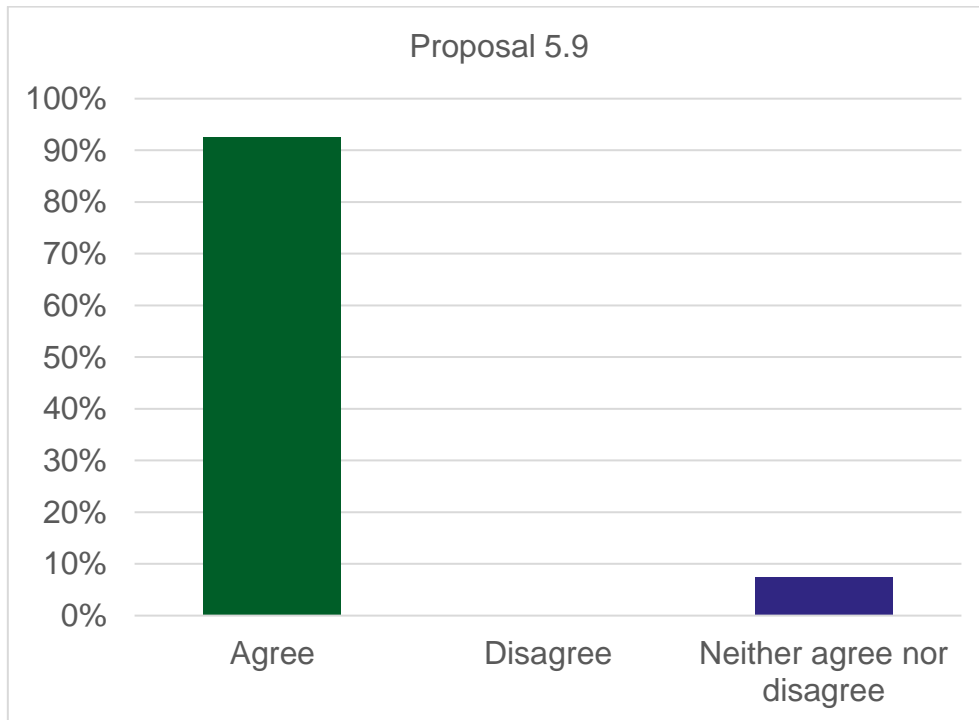
- 87% of respondents to the consultation answered this particular question.
- 75% of those respondents agreed with the proposal. 5% disagreed with the proposal and 20% neither agreed nor disagreed.

Proposal 5.8. Diligence against Earnings – look at options for introducing a 21 day timescale for employers to confirm that an earnings arrestment has been successful; determine if there is scope for introducing flexibility to enable employers to forward funds recovered quarterly, rather than monthly; explore the possibility of transferring the court role in the collection and distribution of conjoined arrestments to AiB; and investigate the need and impact of introducing the ability to vary an earnings arrestment.



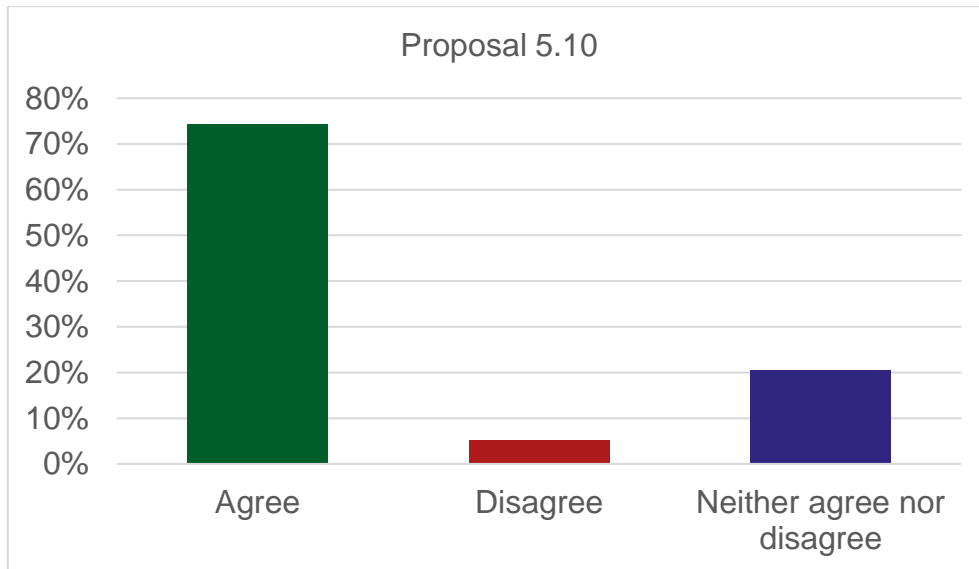
- 87% of respondents to the consultation answered this particular question.
- 65% of those respondents agreed with the proposal. 10% disagreed with the proposal and 25% neither agreed nor disagreed.

Proposal 5.9. Arrestment in Execution – consider introducing a requirement for banks to report where a bank arrestment is unsuccessful within 21 days; enable better use of technology; reduce duplication where arrestment schedules are sent recorded delivery; and carry out further work to determine what further changes should be made, including exploring the possibility of transferring functions from the courts to AiB.



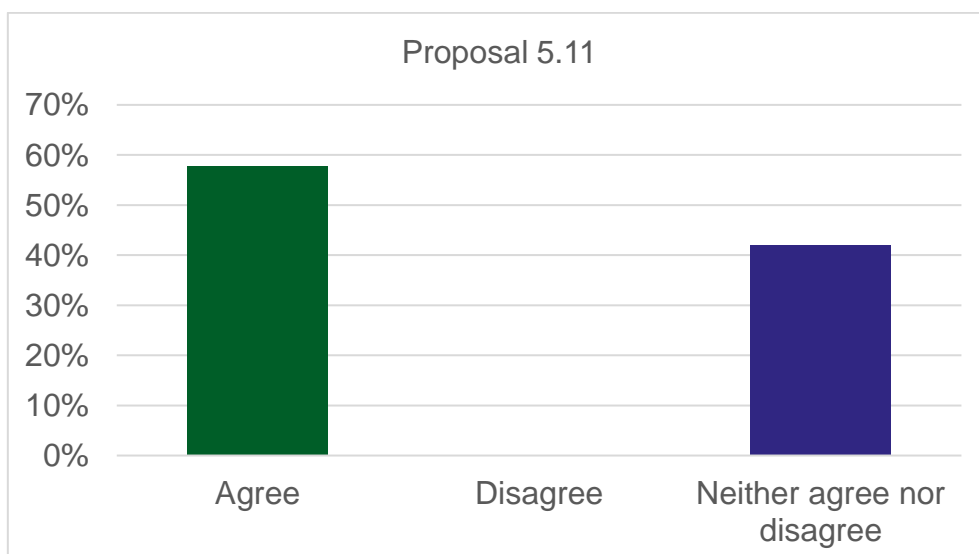
- 87% of respondents to the consultation answered this particular question.
- 92.5% of those respondents agreed with the proposal.

Proposal 5.10. Summary warrant process - extend the summary warrant process to Inhibitions, ensuring existing recall provisions for inhibition apply to summary warrants, and ensure the Debt Advice and Information Package is issued earlier in the process.



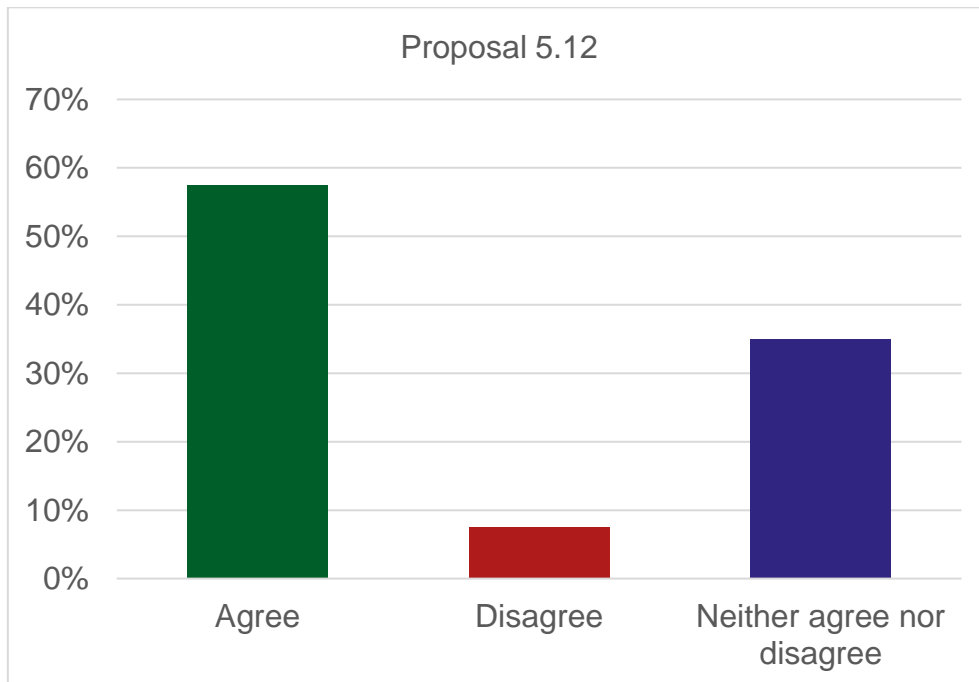
- 85% of respondents to the consultation answered this particular question.
- 74% of those respondents agreed with the proposal. 5% disagreed with the proposal and 21% neither agreed nor disagreed.

Proposal 5.11. Arrestment of ships – investigate the position with the arrestment to found jurisdiction to enable arrestment of ships to take place on a Sunday.



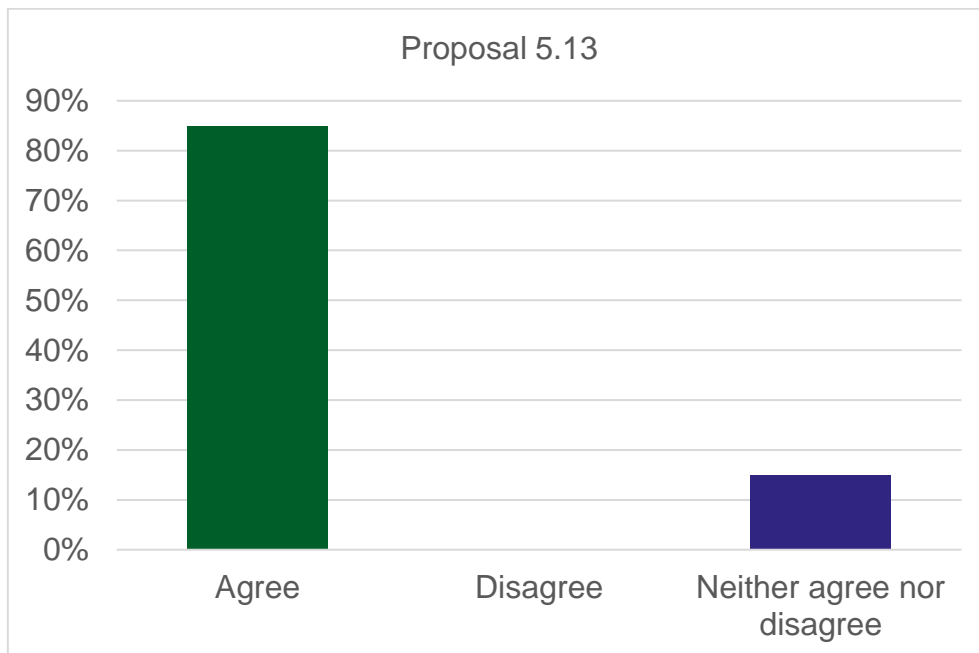
- 83% of respondents to the consultation answered this particular question.
- 58% of those respondents agreed with the proposal. No one disagreed with the proposal and 42% neither agreed nor disagreed.

Proposal 5.12. Residual Attachment – to be taken forward once a suitable alternative to adjudication of debt and land attachment is found which will be considered at Stage 3 of the review.



- 87% of respondents to the consultation answered this particular question.
- 57.5% of those respondents agreed with the proposal. 7.5% disagreed with the proposal and 35% neither agreed nor disagreed.

Proposal 5.13. Collection of statistical information – capture additional information to include the outcome of diligence to help inform future reviews.



- 87% of respondents to the consultation answered this particular question.
- 85% of those respondents agreed with the proposal.

iv. Table of abbreviations

Abbreviation	Full Title
ABCUL	Association of British Credit Unions Limited
AiB	Accountant in Bankruptcy
CFS	Common Financial Statement
DAS	Debt Arrangement Scheme
ICAS	Institute of Chartered Accountants of Scotland
IP	Insolvency Practitioner
MAP	Minimal Asset Process
PTD	Protected Trust Deed
SFS	Standard Financial Statement
SMASO	Scottish Messenger of Arms and Sheriff Officers

v. Evaluation

A total of 46 responses were received by AiB at the close of the consultation. A list of the organisations who responded (and who gave their permission for their details to be disclosed) can be found in [Annex A](#) of this document. We have included comments from respondents throughout the report, however, where a respondent did not want their details disclosed these have not been attributed to any organisation or individual.

Methodology

Throughout the document we have provided tables to illustrate the responses to the questions asked in the consultation. Where a question required simply an “agree,” “disagree” or “neither agree nor disagree” answer, we have shown the number of responses in each category.

The responses to all questions have been further broken down into the total number of responses from each stakeholder group, rather than splitting it into responses from organisations and from individuals.

vi. Consultation Response Results

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

Proposal 1.1. Design detailed proposals for the introduction of a specific mental health process as part of the statutory moratorium – in collaboration with mental health and debt specialists.

Response type	Total responses	Organisations only
Agree	38	29
Disagree	3	2
Neither agree nor disagree	4	1
Not answered	1	1
Total	46	33

93% of respondents to the consultation answered this particular question. 84% of those respondents agreed with this proposal.

‘As the Scottish Government sets about developing these proposals, we welcome its commitment to bring together specialists in the provision of debt counselling, mental health care provision and other key stakeholders. Working to design Scotland’s scheme in collaboration with those who will be involved in its delivery, will help promote awareness of it, in turn supporting increased take-up upon implementation.’ **The Money and Mental Health Policy Institute**

Proposal 1.2. Introduce a new requirement to provide an individual with a clear and succinct information leaflet for those considering a trust deed. This should form part of the process required for a trust deed to gain protection.

Response type	Total responses	Organisations only
Agree	35	23
Disagree	5	4
Neither agree nor disagree	3	3
Not answered	3	3
Total	46	33

Of the respondents who answered the question 81% agreed with this proposal. 7% of the total respondents to the consultation did not answer this particular question.

‘I really support this as it helps vulnerable people dealing with problem debt, to better understand information if it is presented in a transparent and simple way.’ **Scotwest Credit Union**

Proposal 1.3. Take action to streamline the Debt Advice and Information Package to ensure key messages are clear and available to the person with debt at the earliest stage prior to formal debt recovery action.

Response type	Total responses	Organisations only
Agree	40	29
Disagree	1	1
Neither agree nor disagree	2	0
Not answered	3	3
Total	46	33

Of the respondents who answered this question 93% agreed with the proposal presented. 7% of the total respondents to the consultation did not answer this particular question.

‘Making the process/language consumable for people living with problem debt is key to debt resolution.’ **Anonymous**

Proposal 1.4. Simplify the language and terminology used in relation to diligence on our websites and publications wherever possible.

Response type	Total responses	Organisations only
Agree	41	28
Disagree	1	1
Neither agree nor disagree	1	1
Not answered	3	3
Total	46	33

Of the respondents who answered this question 95% agreed that the language on our websites and publications should be simplified. 7% of the total respondents to the consultation did not answer this particular question.

‘Any move to simplify language and make it more accessible and easily understood by all stakeholders is welcomed. It will be vital however in doing so that care is taken to ensure that the information supplied remains technically accurate.’ **Institute of Chartered Accountants of Scotland (ICAS)**

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

‘These are all positive steps helping better inform and protect individuals.’
Citizens Advice and Rights Fife

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

‘Whilst undertaking the proposal suggested in 1.4, this review should encompass review of the necessity for sheriff officers to send post copies

of documents following deposited hand service.’ **Scottish Messenger of Arms and Sheriff Officers (SMASO)**

Summary

All proposals under theme 1 received over 80% agreement from those who responded, and the majority of comments were positive.

However, there were suggestions which could further improve the proposals such as balancing the approach for simplify language and terminology under Proposals 1.2, 1.3 and 1.4. The importance of ensuring important information is not removed has also been emphasised.

For Proposal 1.1, 84% of respondents agreed with the introduction of a specific mental health process as part of the statutory moratorium. Respondents were particularly keen on the Scottish Government’s proposal to collaborate with mental health and debt specialists.

Theme 2 – debt solutions – entry criteria

Proposal 2.1. Remove the minimum debt threshold for Minimal Asset Process bankruptcy.

Response type	Total responses	Organisations only
Agree	29	20
Disagree	6	4
Neither agree nor disagree	8	6
Not answered	3	3
Total	46	33

Of the respondents who answered this question 67% agreed with the removal of the minimum debt threshold for a MAP bankruptcy whilst 14% disagreed. 7% of the total respondents to the consultation did not answer this question.

‘All bankruptcy applications now have to go through a money adviser so removing the minimum debt threshold makes sense. The value of the debt is relative to the individual. So someone with little or no income will feel that £500 of debt is totally unmanageable. They should not be disadvantaged and they should have access to bankruptcy (if that is the correct solution for them) in the same way as someone has with £1,500 (or more) of debt.’ **StepChange Debt Charity Scotland**

Proposal 2.2. Remove the single value asset threshold when applying for a Minimal Asset Process bankruptcy and review and update the current total assets threshold.

Response type	Total responses	Organisations only
Agree	34	25
Disagree	3	2
Neither agree nor disagree	5	2
Not answered	4	4
Total	46	33

Of the respondents who answered this question 81% agreed with the removal of the single value asset threshold when applying for a MAP bankruptcy whilst 7% disagreed. 9% of the total respondents to the consultation did not answer this question.

‘This change is a sensible approach because it helps simplify the asset requirements for establishing eligibility for MAPs. We recognise from a consumer point of view how the single and combine asset rules may be confusing to understand. By introducing a single and total value of assets combined, this will clearly assist debtors in understanding the eligibility criteria regarding assets more effectively.’ **Advice Direct Scotland**

Proposal 2.3. Retain the £5,000 minimum debt level for accessing PTDs.

Response type	Total responses	Organisations only
Agree	24	18
Disagree	11	7
Neither agree nor disagree	6	3
Not answered	5	5
Total	46	33

Of the respondents who answered this question 59% agreed that the PTD minimum debt level should remain at £5,000 whilst 27% disagreed. 11% of the total respondents to the consultation did not answer this question.

‘Access to PTDs should not be limited, this is especially true as the cost of living crisis gathers pace.’ **Carrington Dean**

‘We believe that this minimum level needs to increase to be more reflective of the clients who use PTDs. Whilst increasing the minimum level will potentially increase the numbers applying for bankruptcy there may also be an increase in DAS applications too.’ **StepChange Debt Charity Scotland**

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.’ **Law Society of Scotland**

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

‘The theme is to make debt solutions available to more people, however increasing the PTD debt level removes this as an option to some and may

encourage people to take additional debt to meet the criteria - not everyone wants to apply for bankruptcy.’ **Azets**

Summary

The majority of respondents agreed with each of the proposals under theme 2 with Proposal 2.1 - the removal of the single asset threshold - receiving over 80% support. Proposal 2.2 - to remove the debt threshold for MAP bankruptcy applications also received strong support with respondents stating this was a ‘sensible approach.’

While Proposal 2.3 received majority support, there was no consensus here, with a significant minority of respondents continuing to believe the minimum debt level in PTDs should be increased.

Theme 3 – administration of debt solutions

Proposal 3.1. The income and expenditure methodology remains as the framework for the Common Financial Tool.

Response type	Total responses	Organisations only
Agree	34	25
Disagree	2	1
Neither agree nor disagree	7	4
Not answered	3	3
Total	46	33

Of the respondents who answered this question 79% agreed with the proposal presented and 5% disagreed. 7% of the total respondents to the consultation did not answer this particular question.

‘We appreciate that there are other models of assessment but support the retention of an income and expenditure model. We consider that this

allows for a detailed assessment of the individual’s specific circumstances and any change in circumstances to be viewed in that individual’s particular context. We also support the consistency of assessment that an income and expenditure model provides across the different solutions regardless of the party from whom a debtor seeks advice.’ **Insolvency Practitioners Association**

Proposal 3.2. The Standard Financial Statement replaces the Common Financial Statement as the statutory Common Financial Tool for Scottish debt solutions.

Response type	Total responses	Organisations only
Agree	18	15
Disagree	8	2
Neither agree nor disagree	17	13
Not answered	5	3
Total	46	33

Of the respondents who answered this question, 42% agreed with the proposal presented. 40% of those who responded neither agreed nor disagreed with the proposal. The remaining 18% disagreed with the proposal to adopt the Standard Financial Statement. 7% of the total respondents to the consultation did not answer this particular question.

‘This is a good step forward as it means advisors, creditors and debtors will all use the same approach across the UK, which would streamline the process.’ **Equifax Ltd**

‘As long as CFS maintained then I would suggest we stick with it.’

Anonymous

‘Whilst we have long advocated for the CFS, we recognise that there have been many improvements to the SFS, particularly apparent with the uprating due to the cost of living crisis, that has resulted in the gap in

overall outcomes when comparing both tools reducing. During assessment of cases, we have noted that clients are closer to breaching the SFS than they are to the CFS, particularly in relation to the housekeeping figures. We would like to see further uprating to the figures across the board to enable individuals and families to have a healthy budget, not an unmanageable one. We recognise the benefits to advisers and the creditors of utilising a single tool across the UK.’ **Citizens Advice and Rights Fife**

Proposal 3.3. Retain the current process of taking the full surplus income for contributions in bankruptcy and to insert a provision to enable the necessary flexibility to deal with one-off support payments issued by government to help people through a cost of living crisis or similar.

Response type	Total responses	Organisations only
Agree	21	14
Disagree	14	9
Neither agree nor disagree	8	7
Not answered	3	3
Total	46	33

Of the respondents who answered this question 49% agreed with the proposal presented, 33% disagreed and the remaining 18% neither agreed nor disagreed. 7% of the total respondents to the consultation did not answer this particular question.

‘We strongly agree with the proposal to retain the current method of using full surplus income. Due to the nature of insolvency, at the point of entering into a solution it is often the case that the amount of surplus is minimal at this point and it is unlikely full debt values are ever recovered by creditors. It is appropriate that all available surplus is pledged to existing commitments until the end of the insolvency term. With the addition of payment breaks and one-off payments in emergency circumstances, this seems a fair proposal to maintain the existing practice.’ **Association of British Credit Unions Limited (ABCUL)**

‘Leaving someone with no surplus income does not allow them any flexibility for changing circumstances or managing emergencies and impacts on their standard of living. We would recommend that a minimum amount of disposable income of £75 should be set, which is the level in English Debt Relief Orders at which contributions are not taken below. The AiB/trustees having to administer a low DCO has no positive impact on the creditor, trustee, or public purse.’ **Money Advice Scotland**

Proposal 3.4. Retain the current repayment periods in debt solutions.

Response type	Total responses	Organisations only
Agree	28	22
Disagree	9	4
Neither agree nor disagree	4	3
Not answered	5	4
Total	46	33

Of the respondents who answered this question 68% agreed with the proposal presented, 22% disagreed and the remaining 10% neither agreed nor disagreed. 11% of the total respondents to the consultation did not answer this particular question.

‘We agree with keeping bankruptcy at four years. Dividend increases can be small in the final year but they remain significant and improve outcomes for creditors.’ **Equifax Ltd**

‘We believe the repayment period in bankruptcy should be reduced to 36 months as this would create consistency with England and Wales, where the repayment period is 36 months. The impact of an extra 12 months on the sequestrated individual is significant as it postpones complete recovery from debt. PTDs could also be reduced to 3 years to align with bankruptcy as consistency across debt solutions is desirable.’ **Citizens Advice Scotland**

Proposal 3.5. Ensure mobility scooters are excluded from asset criteria for entry into bankruptcy and from vesting with the trustee.

Response type	Total responses	Organisations only
Agree	42	29
Disagree	0	0
Neither agree nor disagree	1	1
Not answered	3	3
Total	46	33

Of the respondents who answered this question 98% agreed with the proposal presented, no one disagreed and the remaining 2% neither agreed nor disagreed. 7% of the total respondents to the consultation did not answer this particular question.

‘We are very pleased that the Scottish Government will legislate to ensure that mobility scooters are disregarded as assets in bankruptcy’. **Money Advice Trust**

Proposal 3.6. Commission further work to help inform Stage 3 of the review where further consideration can be given to how to treat vehicles in bankruptcy in the future. AiB will also review the guidance to provide further clarity for trustees.

Response type	Total responses	Organisations only
Agree	38	26
Disagree	1	1
Neither agree nor disagree	2	2
Not answered	5	4
Total	46	33

Of the respondents who answered this question 93% agreed with the proposal presented. 11% of the total respondents to the consultation did not answer this particular question.

‘We are strongly in support of the decision to review how to treat vehicles in bankruptcy in the future. It is important to consider whether a domestic vehicle should be exempt from being considered as an asset at all. Alternatively, the level could be increased so substantially as to only capture "luxury" cars.’ **Money Advice Trust**

Proposal 3.7. Review and uprate the existing vehicle threshold while consideration is given to whether a more fundamental change is necessary.

Response type	Total responses	Organisations only
Agree	36	25
Disagree	3	3
Neither agree nor disagree	3	2
Not answered	4	3
Total	46	33

Of the respondents who answered this question 86% agreed with the proposal presented. 9% of the total respondents to the consultation did not answer this particular question.

‘CAS agree and welcome a review and revision of the threshold especially in light of the increase in the 2nd hand car market prices since the pandemic.’ **Citizens Advice Scotland**

Proposal 3.8. Take forward legislation to provide for the best practice processes laid out in the Protected Trust Deed Protocol. This will include debtor discharge and payment of a dividend at 12 months - including a requirement to report on the position annually.

Response type	Total responses	Organisations only
Agree	26	18
Disagree	4	3
Neither agree nor disagree	11	8
Not answered	5	4
Total	46	33

Of the respondents who answered this question 63% agreed with the proposal presented, 10% disagreed and the remaining 27% neither agreed nor disagreed. 11% of the total respondents to the consultation did not answer this particular question.

‘We would recommend that the processes in the protocol are moved into statute. If 92% of trust deed providers have adopted the protocol then containing it within legislation should not cause issues for providers, while ensuring that everyone in a trust deed has the same level of protection. We would note that while legislating for creditors to be paid a dividend after 12 months of the trust deed is a positive move away from situations where trust deeds are front-loaded with trustee fees (which can be detrimental for a client if the trust deed fails before they have made a contribution towards their debts), we would like to see clients making a contribution towards their debts from the outset of the trust deed and would support the introduction of a staged payment structure whereby clients are making payments to creditors consistently and from the start.’

Money Advice Scotland

Proposal 3.9. To take forward a dedicated technical review through a short-life working group comprising of insolvency specialists to identify efficiency measures that have capacity to reduce administration costs (and resultant increase in creditor returns) with no detriment identified for any parties involved. No change is proposed to the existing timescales for setting out proposals for contributions in bankruptcy.

Response type	Total responses	Organisations only
Agree	33	25
Disagree	0	0
Neither agree nor disagree	9	5
Not answered	4	3
Total	46	33

Of the respondents who answered this question 79% agreed with the proposal presented, no one disagreed and the remaining 21% neither agreed nor disagreed. 9% of the total respondents to the consultation did not answer this particular question.

‘We agree with the government proposal to set up a working group to explore efficiency savings across debt-solutions. Any changes should aim to cut costs and therefore increase creditor returns but without damaging the consumer protections in place.’ **Equifax Ltd**

Proposal 3.10. To retain the existing arrangements where an individual dies while in a Protected Trust Deed.

Response type	Total responses	Organisations only
Agree	26	20
Disagree	2	2
Neither agree nor disagree	13	7
Not answered	5	4
Total	46	33

Of the respondents who answered this question 63% agreed with the proposal presented, 5% disagreed and the remaining 32% neither agreed nor disagreed. 11% of the total respondents to the consultation did not answer this particular question.

‘While we understand that under succession law, debts and liabilities are to be paid before beneficiaries, funeral expenses are included in this category and are the first thing to be paid before any other debt. This should be done in a reasonable time frame to not make a difficult situation harder on the client’s family.’ **Money Advice Scotland**

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

‘The proposals look to be a fair balance between creditor and consumer outcomes whilst reducing administration and improving transparency.’

Anonymous

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

‘The short-life working group should review legislation to allow a Trustee to be discharged in a sequestration where the debtor is not co-operating.’

Azets

Summary

The questions under theme 3 had a high response rate with a minimum of 89% of those who responded to the consultation choosing to answer the questions.

In general, there was broad support for most of the proposals under this section. Out of the ten proposals presented five had the support of over 75% of those who had responded and three had support of over 60% of those who had responded. There were however two areas that had a lower percentage of support with less than 50% of respondents agreeing with these proposals.

There are three proposals in particular where no strong consensus has been reached.

Proposal 3.2 had 42% of respondents in agreement, 19% in disagreement and 39% neither agreeing nor disagreeing. Opposition to this proposal centres on concerns that the SFS could potentially leave clients worse off than the CFS. It was highlighted that there had been problems with the SFS methodology when it was first introduced – and whilst these had been corrected some years back, many people’s perceptions of the tool were still based on those initial figures. More work needed to be done to demonstrate the improvements that had been made to the tool since. Others raised concerns on the evidence requirements and highlighted that adequate guidance should be provided if the transition were to take place. However some considered that the SFS expenditure categories are logical and more compatible with emerging financial technology systems which could bring benefit to the free advice sector. Those agreeing with the proposal highlighted that the move to the SFS would bring uniformity and clarity for advice agencies and creditors by having one tool in use across the UK.

Proposal 3.3 was supported by 49% of respondents with 32% of respondents disagreeing and 19% neither agreeing nor disagreeing. There was general support for the flexibility to deal with one-off support payments. The proposal to continue to take the full surplus income for contributions in bankruptcy attracted most negative comment. Concerns were raised on how this is restrictive and reduces the incentive for individuals to increase their earnings through overtime, or promotion - with potential detriment to their career and future earnings. Some expressed that there should be an allowance for a minimum amount of disposable income retained to help build financial resilience, with a suggestion that this be set at £75 to mirror the UK Government approach in determining eligibility for the Debt Relief Order mechanism.

Proposal 3.4 had 68% of respondents agreeing with the proposal, 22% disagreeing and 10% neither agreeing nor disagreeing. Those raising concerns supported bankruptcy repayment periods reverting to 36 months which would mirror the position elsewhere in the UK while allowing the individual quicker debt relief. Those

agreeing with the proposal considered that the 48 month period struck a fair balance between all parties.

Theme 4 – exit from debt solutions

Proposal 4.1. Composition process to be investigated for Protected Trust Deeds.

Response type	Total responses	Organisations only
Agree	31	22
Disagree	3	3
Neither agree nor disagree	8	5
Not answered	4	3
Total	46	33

Of the respondents who answered this question 74% agreed with the proposal presented, 7% disagreed and the remaining 19% neither agreed nor disagreed. 9% of the total respondents to the consultation did not answer this particular question.

'Welcome investigation into the possibility of adding composition into PTD.' **Aberdeen City Council Financial Inclusion Team**

Proposal 4.2. Explore options for greater flexibility to deliver early discharge from a Protected Trust Deed in specific circumstances – including the appropriate consent criteria.

Response type	Total responses	Organisations only
Agree	35	23
Disagree	1	1
Neither agree nor disagree	6	6
Not answered	4	3
Total	46	33

Of the respondents who answered this question 83% agreed with the proposal presented, 2% disagreed and the remaining 15% neither agreed nor disagreed. 9% of the total respondents to the consultation did not answer this particular question.

‘We welcome the introduction of greater flexibility in discharge from a
PTD.’ **Money Advice Scotland**

Proposal 4.3. Removal of the current time limitations on the refusal of discharge process in a Protected Trust Deed in certain circumstances - meaning a trustee can investigate this process prior to the completion of the contribution period.

Response type	Total responses	Organisations only
Agree	30	21
Disagree	2	2
Neither agree nor disagree	9	6
Not answered	5	4
Total	46	33

Of the respondents who answered this question 73% agreed with the proposal presented, 5% disagreed and the remaining 22% neither agreed nor disagreed. 11% of the total respondents to the consultation did not answer this particular question.

‘The wording of the legislation creates an unnecessary problem currently, which is actually being circumvented in practice it seems anyway. This should definitely be fixed.’ **Anonymous**

Proposal 4.4. Composition process to be investigated for bankruptcy.

Response type	Total responses	Organisations only
Agree	32	22
Disagree	4	3
Neither agree nor disagree	5	4
Not answered	5	4
Total	46	33

Of the respondents who answered this question 78% agreed with the proposal presented, 10% disagreed and the remaining 12% neither agreed nor disagreed. 11% of the total respondents to the consultation did not answer this particular question.

‘We agree that there should be a further examination of options to allow people to exit bankruptcy where appropriate through a revised composition process.’ **Money Advice Trust**

Proposal 4.5. Retention of the current trustee report and discharge process in bankruptcy.

Response type	Total responses	Organisations only
Agree	26	18
Disagree	2	1
Neither agree nor disagree	13	10
Not answered	5	4
Total	46	33

Of the respondents who answered this question 63% agreed with the proposal presented, 5% disagreed and the remaining 32% neither agreed nor disagreed. 11% of the total respondents to the consultation did not answer this particular question.

‘The trustee should only have to report on non-cooperating debtors who will be refused discharge, this will cut down on unnecessary admin.’ **Azets**

Proposal 4.6. Consideration of limited reform that would enable appointment of trustee of last resort (AiB) in those instances of continued debtor non-cooperation or at an earlier stage than currently available where the debtor cannot be traced.

Response type	Total responses	Organisations only
Agree	29	22
Disagree	2	2
Neither agree nor disagree	11	6
Not answered	4	3
Total	46	33

Of the respondents who answered this question 69% agreed with the proposal presented, 5% disagreed and the remaining 26% neither agreed nor disagreed. 9% of the total respondents to the consultation did not answer this particular question.

‘We agree that the legislative amendment should be brought forward as a matter of urgency and prior to the wider Stage 3 review to address the issue of trustees being unable to obtain their discharge where a debtor is unable to be traced or in circumstances where a debtor is non-cooperative long term and avenues to obtain cooperation have been exhausted or impractical to pursue further.’ **ICAS**

Proposal 4.7. No changes made to the existing Debt Arrangement Scheme composition process.

Response type	Total responses	Organisations only
Agree	24	17
Disagree	11	7
Neither agree nor disagree	6	5
Not answered	5	4
Total	46	33

Of the respondents who answered this question 59% agreed with the proposal presented, 27% disagreed and the remaining 14% neither agreed nor disagreed. 11% of the total respondents to the consultation did not answer this particular question.

‘We believe that maintaining the existing processes for DAS is very important in protecting a debt solution that is accessible and protective of the debtors’ assets. For these reasons, it has been successful in helping those in problem debt. We are concerned that radical reforms may undo the success enjoyed by the solution and create more administrative burdens that will reduce the effectiveness of the DAS process.’ **Advice Direct Scotland**

‘We do not agree with the Scottish Government's conclusions. We believe that there is a strong case to reduce the composition period from twelve years which we believe is too long. A reduction in the cap will help ensure people are not stuck in long-term debt solutions. Very lengthy repayment plans are less likely to be sustainable, due to changes in circumstances, unexpected outgoings etc. The mental health and stress impact should also be considered. We think that the composition period should be shorter and that along with the working group, the parameters should be reviewed. We have also made these points in relation to the SDRP proposals in England.’ **Money Advice Trust**

Proposal 4.8. Investigate the need to distinguish between the normal Debt Arrangement Scheme revocation process and the procedure that applies when an individual dies while the programme is ongoing, with a view to removing retrospective application of interest and charges in these circumstances.

Response type	Total responses	Organisations only
Agree	29	20
Disagree	2	2
Neither agree nor disagree	9	6
Not answered	6	5
Total	46	33

Of the respondents who answered this question 73% agreed with the proposal presented, 5% disagreed and the remaining 22% neither agreed nor disagreed. 13% of the total respondents to the consultation did not answer this particular question.

‘It seems erroneous that interest and charges are added to debts in a DAS yet not a bankruptcy when someone dies. When someone in a DPP dies their debts should be frozen until the executor sorts out the estate. Particular care should be taken when this involves an individual who is party to a joint DPP.’ **StepChange Debt Charity Scotland**

Proposal 4.9. Reform the basis for the prescribed rate of statutory interest and link this to the Bank of England base rate plus 2% - fixed at the date of bankruptcy.

Response type	Total responses	Organisations only
Agree	27	19
Disagree	7	6
Neither agree nor disagree	7	4
Not answered	5	4
Total	46	33

Of the respondents who answered this question 66% agreed with the proposal presented, 17% disagreed and the remaining 17% neither agreed nor disagreed.

11% of the total respondents to the consultation did not answer this particular question.

‘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.’ **Law Society of Scotland**

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.’ **Law Society of Scotland**

‘Adding provisions to allow people to be discharged from their formal debt options and receive debt relief at an earlier stage is welcomed.’ **Aberdeen City Council Financial Inclusion Team**

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

‘More creditor engagement work in general needs to be done on DAS, generally speaking creditors tend to be unaware of how to navigate DAS. This is particularly true when a DAS is successfully completed. There is often issues updating credit records etc.’ **Carrington Dean**

Summary

The questions under theme 4 generated a high response rate with a minimum of 87% of those who responded choosing to answer the questions.

There was broad support for the majority of the proposals under this section. From the nine proposals presented, five resulted in support of over 70% of those who had responded and three had the support of at least 60% of respondents. There was one proposal that had 59% of respondents in agreement with the proposal

There are two proposals in particular where the responses highlight mixed views.

Proposal 4.7 had 59% of respondents in agreement, 27% in disagreement and 15% neither agreeing nor disagreeing. Opposition to this proposal centred on the current process being too long and inflexible – particularly in the context of the current financial climate. Those not agreeing highlighted concerns that significant reforms may undo the success of DAS by creating administrative burdens and reduce the scheme’s effectiveness.

Proposal 4.9 had 66% of respondents in agreement, 17% in disagreement and 17% neither agreeing nor disagreeing. Those disagreeing with the proposal argued that the current process strikes a fair balance between all parties or that that the proposal was too complex. It was also highlighted that the base rate may fluctuate in the current financial climate and it was suggested that a cap be introduced.

Theme 5 – improvements to debt recovery mechanisms (diligence)

Proposal 5.1. Proceed with the introduction of Information Disclosure Orders – initially involving non-government organisations.

Response type	Total responses	Organisations only
Agree	24	19
Disagree	9	8
Neither agree nor disagree	8	3
Not answered	5	3
Total	46	33

Of the respondents who answered this question 59% agreed with the proposal presented, 22% disagreed and the remaining 19% neither agreed nor disagreed. 11% of the total respondents to the consultation did not answer this particular question.

‘We agree with the recommendation to introduce Information Disclosure Orders (IDOs) to help improve legitimate debt recovery practices if this doesn’t needlessly intrude on the privacy of debtors.’ **Advice Direct Scotland**

‘We would be concerned not just about the whether any proposed system was GDPR compliant but was consistent with the European Convention on Human Rights, particularly the rights to a private life and a fair trial. There is not just the privacy of the client to consider, but also connected third parties.’ **Citizens Advice Scotland**

Proposal 5.2. Consideration of the family home and treatment in diligence and insolvency mechanisms to be further reviewed in the future review of Scotland’s debt solution and recovery landscape.

Response type	Total responses	Organisations only
Agree	34	24
Disagree	2	2
Neither agree nor disagree	5	4
Not answered	5	3
Total	46	33

Of the respondents who answered this question 83% agreed with the proposal presented, 5% disagreed and the remaining 12% neither agreed nor disagreed. 11% of the total respondents to the consultation did not answer this particular question.

‘We strongly agree with, and have long advocated for, a full review of how a debtor’s heritable property, specifically a family home, should be dealt with across all debt payment and debt relief solutions. This issue is at the

heart of all personal insolvency procedures and should be a priority of the Scottish Government.’ **ICAS**

Proposal 5.3. Exceptional Attachment - increasing the value of sentimental items which cannot be attached from £150 to £500; and extending the redemption period from seven days to 14 days where assets are not removed from the premises.

Response type	Total responses	Organisations only
Agree	33	23
Disagree	3	3
Neither agree nor disagree	4	3
Not answered	6	4
Total	46	33

Of the respondents who answered this question 82.5% agreed with the proposal presented, 7.5% disagreed and the remaining 10% neither agreed nor disagreed. 13% of the total respondents to the consultation did not answer this particular question.

‘We agree that a review of the value of sentimental assets is needed, the figures are outdated and welcome a detailed look into this area. We also agree with the findings of the working group in relation to the processes around timeline.’ **ABCUL**

Proposal 5.4. Inhibition process - amending statutory forms to allow inhibition forms to include "process server" to ensure they can be submitted to Registers of Scotland by both sheriff officers and messengers at arms. The length of an inhibition will be retained at five years.

Response type	Total responses	Organisations only
Agree	28	21
Disagree	6	6
Neither agree nor disagree	7	3
Not answered	5	3
Total	46	33

Of the respondents who answered this question – 68% agreed with the proposal presented, 15% disagreed and the remaining 17% neither agreed nor disagreed. 11% of the total respondents to the consultation did not answer this particular question.

‘We believe that changes recommended for inhibition are fair and we have no immediate concerns over their implementation. The change should reduce unreasonable delay and ensure that proper records are maintained.’ **Advice Direct Scotland**

Proposal 5.5. Interim Attachment – maintain the current arrangements for interim attachment.

Response type	Total responses	Organisations only
Agree	26	20
Disagree	1	1
Neither agree nor disagree	13	8
Not answered	6	4
Total	46	33

Of the respondents who answered this question 65% agreed with the proposal presented, 2.5% disagreed and the remaining 32.5% neither agreed nor disagreed.

11% of the total respondents to the consultation did not answer this particular question.

‘This diligence is rarely used. The lack of conversion to Attachment in Execution post decree being granted provides inconsistency of approach when compared to Arrestments and Inhibitions used on the Dependence of an action. This requires further review and update.’ **Scott & Co (Scotland) LLP**

Proposal 5.6. Diligence on the dependence - ensuring the DAIP is issued when a diligence on the dependence application is submitted.

Response type	Total responses	Organisations only
Agree	30	23
Disagree	5	4
Neither agree nor disagree	5	2
Not answered	6	4
Total	46	33

Of the respondents who answered this question 75% agreed with the proposal presented, 12.5% disagreed and the remaining 12.5% neither agreed nor disagreed. 13% of the total respondents to the consultation did not answer this particular question.

‘We agree with the proposal and although a DAIP has likely already been issued, the further issue of this at the point of application for diligence seems reasonable, responsible and is ensuring all the relevant information around options for the debtor is available at the time it is most needed.’ **ABCUL**

Proposal 5.7. Money Attachment - to remove restrictions on when a money attachment can be executed and greater flexibility by allowing this to be determined by a business's business hours. Carry out work to determine how equivalent

provisions operate in other countries to establish if further changes would help to improve the effectiveness of this diligence.

Response type	Total responses	Organisations only
Agree	30	24
Disagree	2	1
Neither agree nor disagree	8	4
Not answered	6	4
Total	46	33

Of the respondents who answered this question 75% agreed with the proposal presented, 5% disagreed and the remaining 20% neither agreed nor disagreed. 11% of the total respondents to the consultation did not answer this particular question.

‘The proposed amendment to remove restrictions on business hours is long overdue and requires swift implementation for this diligence to retain any form of effectiveness.’ **Scott & Co (Scotland) LLP**

Proposal 5.8. Diligence against Earnings – look at options for introducing a 21 day timescale for employers to confirm that an earnings arrestment has been successful; determine if there is scope for introducing flexibility to enable employers to forward funds recovered quarterly, rather than monthly; explore the possibility of transferring the court role in the collection and distribution of conjoined arrestments to AiB; and investigate the need and impact of introducing the ability to vary an earnings arrestment.

Response type	Total responses	Organisations only
Agree	26	20
Disagree	4	3
Neither agree nor disagree	10	6
Not answered	6	4
Total	46	33

Of the respondents who answered this question 65% agreed with the proposal presented, 10% disagreed and the remaining 25% neither agreed nor disagreed. 13% of the total respondents to the consultation did not answer this particular question.

‘There should not be an automatic option to remit quarterly. Quarterly remittance will have a serious impact on creditors’ cashflow. Any ability to vary the sums recovered by earnings arrestment again should be with the consent of creditors and should be dealt with by voluntary deductions outwith the scope of an earnings arrestment. Having deduction by earnings arrestment of sums other than stated in the earnings arrestment tables will cause inconsistencies and potentially be problematic for those operating automated salary processing, as programmes are written encompassing the statutory deduction.’ **SMASO**

Proposal 5.9. Arrestment in Execution – consider introducing a requirement for banks to report where a bank arrestment is unsuccessful within 21 days; enable better use of technology; reduce duplication where arrestment schedules are sent recorded delivery; and carry out further work to determine what further changes should be made, including exploring the possibility of transferring functions from the courts to AiB.

Response type	Total responses	Organisations only
Agree	37	27
Disagree	0	0
Neither agree nor disagree	3	2
Not answered	6	4
Total	46	33

Of the respondents who answered this question 92.5% agreed with the proposal presented, no one disagreed and the remaining 7.5% neither agreed nor disagreed. 13% of the total respondents to the consultation did not answer this particular question.

‘The removal of duplication of arrestments is long overdue and there is no reason this cannot be implemented immediately from an environmental impact as much as causing continuing unnecessary confusion. The Banks are very receptive to modernisation to assist with volume arrestments.’

Scott & Co (Scotland) LLP

Proposal 5.10. Summary warrant process - extend the summary warrant process to Inhibitions, ensuring existing recall provisions for inhibition apply to summary warrants, and ensure the Debt Advice and Information Package is issued earlier in the process.

Response type	Total responses	Organisations only
Agree	29	21
Disagree	2	1
Neither agree nor disagree	8	6
Not answered	7	5
Total	46	33

Of the respondents who answered this question 74% agreed with the proposal presented, 5% disagreed and the remaining 21% neither agreed nor disagreed. 15% of the total respondents to the consultation did not answer this particular question.

‘This is a most welcome proposal in the principle of striking a balance between creditor and debtor.’ **Scott & Co (Scotland) LLP**

Proposal 5.11. Arrestment of ships – investigate the position with the arrestment to found jurisdiction to enable arrestment of ships to take place on a Sunday.

Response type	Total responses	Organisations only
Agree	22	17
Disagree	0	0
Neither agree nor disagree	16	11
Not answered	8	5
Total	46	33

Of the respondents who answered this question 58% agreed with the proposal presented, no one disagreed and the remaining 42% neither agreed nor disagreed. 17% of the total respondents to the consultation did not answer this particular question.

‘We agree that the restriction against arrestment of a ship on a Sunday appears to be an anomaly and is an unnecessary impediment. We therefore agree with the proposal to remove this restriction.’ **ICAS**

Proposal 5.12. Residual Attachment – to be taken forward once a suitable alternative to adjudication of debt and land attachment is found which will be considered at Stage 3 of the review.

Response type	Total responses	Organisations only
Agree	23	18
Disagree	3	3
Neither agree nor disagree	14	8
Not answered	6	4
Total	46	33

Of the respondents who answered this question 57.5% agreed with the proposal presented, 7.5% disagreed and the remaining 35% neither agreed nor disagreed. 13% of the total respondents to the consultation did not answer this particular question.

‘We agree that residual attachment should be considered once other alternative options have been exhausted. It would be beneficial to collect statistical information because it would gather valuable feedback and insight to help make further improvements.’ **Advice Direct Scotland**

Proposal 5.13. Collection of statistical information – capture additional information to include the outcome of diligence to help inform future reviews.

Response type	Total responses	Organisations only
Agree	34	26
Disagree	0	0
Neither agree nor disagree	6	3
Not answered	6	4
Total	46	33

Of the respondents who answered this question 85% agreed with the proposal presented, no one disagreed and the remaining 15% neither agreed nor disagreed. 13% of the total respondents to the consultation did not answer this particular question.

‘Currently statistical information is taken from Sheriff Officers. There is however another source of information and that is the reports and returns required by the court. For example, Officers are required to report on attachments and subsequent auctions to the court. The details of these combined with the outcome of the attachment application should give an official track of these and possibly other diligences. The issue is one of modernising the systems so that the data is collectable from the forms, in the long run however it would save duplication of the same information. And ensure consistency across the system.’ **Citizens Advice Scotland**

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

‘The majority are welcomed, overdue and will help to modernise the law of diligence.’ **Scott & Co (Scotland) LLP**

‘We appreciate the fact that the proposals outlined are made in a clear manner and that they satisfy the overall approach of maintaining consistency.’ **Advice Direct Scotland**

‘We support the proposals and think these are all sensible options.’ **Law Society of Scotland**

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.’ **Law Society of Scotland**

Summary

The questions under theme 5 generated a high response rate with a minimum of 83% of those who responded to the consultation choosing to answer the questions.

There was broad support for the majority of the proposals under this section. Out of the thirteen proposals presented, ten had the support of 65% or over of those who had responded.

Two of the proposals had 58% of the respondents in agreement – there were, however, very few or no noted disagreements with other respondents electing to neither agree nor disagree. This would indicate that there is generally no major disagreement with either of the proposals.

Proposal 5.1 had 59% of respondents in agreement, 22% in disagreement and 19% neither agreeing nor disagreeing. Those disagreeing raised concerns that the process could be open to abuse and there were concerns that the process would need to ensure compatibility with GDPR regulations. It was also highlighted that by exempting government bodies the process would not allow IDOs to work as effectively as intended.

vii. Next Steps

We will shortly publish a 'We asked, You said, We did' document which will set out Ministers' proposals for action. This will take account of all feedback provided in response to the consultation, particularly in those areas where there was no clear majority or consensus.

The Scottish Government continues to review its statutory debt management and debt relief mechanisms in response to economic circumstances. The Bankruptcy and Debt Arrangement Scheme (Miscellaneous Amendment) (Scotland) Regulations 2023 were laid in Parliament on 24 November 2022 to help improve access to debt relief and includes removing the minimum debt threshold for the Minimal Asset Process bankruptcy as set out in Proposal 2.1. The regulations also provide additional protections for those participating in a debt payment programme under the Debt Arrangement Scheme, where increased living costs impact on the ability to meet payments.

Annex A - List of Organisations and individuals who responded to the consultation

As part of the consultation, all respondents were asked to indicate using the appropriate tick box whether they wished their full or partial details to be made available to the public. A mark of "Private individual" has been used to indicate respondents who either chose for their details to remain private or where no tick box was marked to indicate choice of disclosure.

Below is a list of all respondents to the consultation who have given permission for their names to be known.

Number	Respondent Name
1	Kevin Mackay
2	Private individual
3	Derek Paterson
4	Private individual
5	Private individual
6	Yuill + Kyle
7	Aberdeen City Council – Financial Inclusion Team
8	Citizens Advice & Rights Fife
9	Private individual
10	Bellwether Green
11	Private individual
12	Stirling Council
13	Moray Council
14	Stirling Park LLP
15	Private individual
16	Private individual
17	Private individual
18	North Lanarkshire Council
19	Money Advice Trust

Number	Respondent Name
20	Advice Direct Scotland
21	Chartered Institute of Credit Management
22	Carrington Dean
23	StepChange Debt Charity Scotland
24	Nolans Solicitors
25	Interpath Advisory
26	Private individual
27	The Money and Mental Health Policy Institute
28	Citizens Advice Scotland
29	Scott & Co (Scotland) LLP
30	Private individual
31	Private individual
32	IVA Watch Limited t/a Watch Portfolio Management
33	HM Revenue and Customs
34	Money Advice Scotland
35	Azets
36	Equifax Ltd
37	TCH Law Solicitors
38	ABCUL
39	Scotwest Credit Union
40	Law Society of Scotland
41	Insolvency Practitioners Association
42	The Money and Pensions Service
43	ICAS
44	The Society of Messengers-at-Arms and Sheriff Officers
45	R3 – The Association of Business Recovery Professionals
46	Christians Against Poverty (CAP)



© Crown copyright 2023



This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80525-430-0 (web only)

Published by The Scottish Government, January 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1214342 (01/23)

W W W . g o v . s c o t