

Building a Better Debt Arrangement Scheme

2019 Consultation

Returning Funds to the Free Advice Sector

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1. Introduction

This Scottish Government consultation builds on two earlier consultations carried out by Accountant in Bankruptcy (AiB). The response to those earlier consultations strongly supported moving to a new model for delivering the Debt Arrangement Scheme, and the Scottish Government will be bringing forward regulations to implement those changes shortly. Amongst those changes – described in more detail below – were proposals both that all debt payment programmes under the scheme should pay the same flat rate fee, and that AiB should be able to be a payment distributor. This raises the possibility of AiB receiving fee income from plans in excess of its costs. The earlier consultations backed a proposal that any such surplus should be returned to the free advice sector to help offset the sector's costs in helping people access the scheme. This current paper considers how this might work in practice.

Background

- 1.1 AiB's "[Building a better Debt Arrangement Scheme](#)" consultation was launched on 31 October 2018 and closed on 24 January 2019. It contained proposals which were developed after careful consideration of feedback provided by the 2018 DAS Regulatory Review Working Group ('the Group') and AiB's 2018 stakeholder events. Further information on the group, including minutes of meetings and discussion papers can be found on our website [here](#).
- 1.2 That consultation paper was aimed at those familiar with the detailed working of the Debt Arrangement Scheme (DAS) – more general readers may find it helpful to refer back to "[The Way Forward](#)" before considering the areas covered by the consultation.
- 1.3 At present in DAS, AiB appoints a panel of payments distributors (PDs) who are contracted to facilitate the payment process between a debtor and their creditors. In the majority of cases, the PD organisation and the money adviser organisation are different. This can be confusing for creditors and debtors, who may in any event prefer to deal with one organisation to obtain advice, support and information about their case rather than have to discuss personal information with more than one adviser. For a more holistic approach, AiB proposed that private sector money advice organisations or free-to-client advice organisations (known as a Continuing Money Adviser – CMA) with appropriate FCA permissions will manage the entire DAS process for their clients.
- 1.4 The consultation also explored the prospect of AiB acting as a payments distributor (PD) for DAS. This would enhance the resilience of the PD process, mitigating the risk of any organisation either no longer offering DAS, or having their permissions removed, as AiB would be able to step in to discharge their payments distribution responsibilities. A significant majority of respondents to the consultation agreed that AiB should offer a payments distribution service.
- 1.5 AiB have published the [Building a Better Debt Arrangement Scheme consultation response](#), which provides a summary of the responses to the questions raised in the consultation.

- 1.6 AiB will take forward recommendations for Ministers for legislation to empower AiB to exercise the PD function and allow DAS clients to nominate their own PD (via their money adviser) where the PD holds the relevant FCA permissions. Where no PD is nominated in a case, AiB will be appointed PD by default. AiB will also offer the PD function for cases where an existing PD ceases or is unable to act.
- 1.7 As noted in the consultation paper, where AiB is nominated as PD, it will charge the statutory administration fee for this function but will only seek to recover its costs. Any excess funds will be re-invested in the free advice sector.
- 1.8 This paper is intended as a form of sub-consultation to address the practicalities of this process. It sets out options on how this might work and seeks opinion on the options, as well as suggestions for any alternatives. It also takes account of issues highlighted in the [Scottish Government's Review of Publicly-funded Advice Services in Scotland](#), published in February 2018 ('the Advice Funding Review'), and reflects comments about the proposed strategy received from respondents to the 'Building a Better Debt Arrangement Scheme' consultation.
- 1.9 The origin of the thinking behind these proposals is that the DAS administration process requires significant money adviser administrative effort in dealing with the application stage through to completion and any changes of circumstances along the way. In recognition of the effort involved supporting DAS, there is an opportunity to augment the funding available to the free advice sector by allocating any surplus funds generated by AiB's payment distribution service to them. The scheme currently provides no mechanism by which the free sector can be recompensed for the cost of their administrative effort. The revised payments distribution arrangements will allow the success of DAS to contribute to the cost of advice provision, widening access to the scheme by increasing the number of free sector advisers. There is a strong correlation between the availability of advisers in a particular area and the number of DAS applications from that area, suggesting we need to do what we can to enable more free advice to be provided if DAS is to reach all the people who need it. In theory, the costs on individual organisations will be linked to the number of clients they advise about and support through DAS, and any mechanism might aim to reflect that. On the other hand, we do not want to provide incentives for advisers to guide people towards any one particular option, and we do not want to set up a system that is costly and time-consuming to administer – since that would defeat its aim.

2. Who will we consult?

- 2.1 Although we would welcome comments from anyone in the wider DAS stakeholder community who wish to respond to this consultation, the Scottish Government will ask AiB to take forward detailed discussions on the options detailed in this paper with those most likely to be affected directly. The statistics for new DPPs from 1 January 2018 to 1 November 2018 show the following:

- 26% originated from CAB and local authority advisers, split 15% and 11% respectively.
- 26% were from private sector CMAs.
- 48% were from the free-to-client sector (also known as “independents”), the significant majority being from StepChange, with a smaller number from Christians Against Poverty and other similar bodies.

We would expect, and initial discussions support this expectation, that both the “independents” and private sector CMAs will want to handle the payments distribution function for the cases they generate.

- 2.2 As any legislative change allowing AiB to redistribute fees obtained from payments distribution will therefore most directly impact on CABx and local authority money advice provision, we intend to focus discussion on that 26%.
- 2.3 There are currently 44 individual CAB offices and 18 local authority money advice organisations registered on the DAS case management system, DASH, with a live caseload. SG will therefore ask AiB to seek advice from Citizens Advice Scotland, Money Advice Scotland (membership including Shelter and Gordon Rural Action), COSLA and IRRV as the most appropriate people with whom we should discuss these proposals beyond those organisations. This consultation will also be available to the public both through the SG’s consultation hub and via AiB’s website (which includes a tool that will notify all those registered with AiB that the document is available).
- 2.4 In addition to the proposed discussions with people in the space, AiB have already contacted the Scottish Legal Aid Board (SLAB) to seek their views on how any funding is distributed, particularly with reference to the provision of advice, and against the background of the recent Advice Funding Review. Inside the Scottish Government, those officials responsible for the distribution of the FCA Levy Funding for debt advice (previously administered by the Money Advice Service) have also been involved in shaping these proposals.

3. How much money will be generated?

- 3.1 There is a large element of uncertainty here. In particular, the proposals in the wider consultation are intended to make DAS significantly more attractive to providers. Together with the changes introduced in October 2018 which aim to increase the number of people who could benefit from the scheme, the hope and expectation is that DAS will help significantly more people in future. But as DAS is demand-driven, it is difficult to forecast accurately either the number of future DAS applications or how many of those applications will come from the public sector.
- 3.2 In addition, the SG knows that some private sector organisations have already approached public sector organisations, offering to provide support on a pro bono basis on the understanding that any potential DAS clients will be referred to them as a CMA. We can see advantages for clients and both sides in such

arrangements – but should these prove widespread, this will likely reduce the number of cases in which AiB will be nominated as PD.

- 3.3 The monies available will also depend on the level of contributions being made by debtors. In 2017/18 the average contribution made by a DAS debtor was £170 per month. However, there are considerable variances in the monthly instalment amounts. The highest monthly instalment being paid in a DPP originating from a public sector adviser in the last 4 years is £2,489 (case approved in 2015) and the lowest contribution being paid is £4.95 per month (case approved in 2017).
- 3.4 Since the new approach only applies to new cases, the funds available in the short to medium term, therefore, are likely to be small, but there is an expectation that they would increase in line with growth in DAS demand levels.
- 3.5 Working from statistical analysis of the current DAS Scheme provided by AiB, some initial estimates are set out in [Appendix A](#).
- 3.6 We appreciate the uncertainty over the level of funds available for return to money advisers will make it difficult for stakeholders to balance the individual costs and benefits of the options outlined below. However, we are keen to obtain views on the general principles around the mechanics, and thoughts on the best ways of achieving the outcomes outlined above.

4. Options

The 'how to' element of redistributing funds back to the sector was touched on during the Group discussions which preceded the Building a Better DAS consultation. Since then, AiB have held further discussions with various stakeholders on SG's behalf, and these discussions have formed the basis of the following options on how the distribution could work in practice.

In looking at options, we have attempted to balance competing priorities, and are aware that:

- If funds are allocated on the basis of cases generated by an organisation, this will have a negative impact on organisations which provide advice, including DAS advice, but whose client base is less likely to have disposable income. Those organisations are incurring costs in giving advice, but are not receiving extra funding because their client base is not suitable for DAS.
- Conversely, if funds are not allocated in this way, this will have a negative impact on those who have generated most of the cases, and therefore funds, but are getting back less than they put in.

The key benefits and risks for each option are shown below. These are not exhaustive lists, and some options will have the same, or similar, benefits and risks.

i. Funds held by AiB and allocated to free sector organisation who nominate AiB as PD

In this option, the funds would be held by AiB and would be allocated to all those money advice organisations in the free sector who have nominated AiB as PD. Funds would be allocated on a pro rata basis dependent on the number of DAS cases that organisation is responsible for.

Benefits:

- This most clearly links the funding going back to the organisations to the costs they incur in running DAS.
- The methodology is entirely objective and it will be simple to administer.

Risks:

- This may be seen as creating incentive to put clients into DAS when another solution might be better for them.
- Organisations with a handful of cases may not want to receive small sums.

ii. 'Trust fund' held by AiB

In this option, AiB would essentially ring-fence the funds available from the statutory fees after its costs have been recovered. These funds would be held by AiB in a 'trust fund' and would be available to money advice organisations in the free sector. This mirrors the way that some umbrella organisations already work.

To disburse the funds, organisations would present a business case to AiB for funds to be released. AiB would then take a decision on releasing the funds. The business cases presented would require organisations to demonstrate to AiB how they will use the funds to promote/increase their delivery of DAS.

Benefits:

- The DAS Administrator/AiB retains control over the entire process.
- As a result of the existing links between AiB and stakeholders in DAS, and the shared understanding of the Scheme, the application process could be streamlined meaning stakeholders are more likely to apply.

Risks:

- It may be administratively burdensome for organisations to complete business cases.
- It will require some limited AiB resources to manage and monitor.

iii. Funds held by AiB – decisions made by Independent Panel

In this option, the funds would be held by AiB but an independent panel would be appointed by the Scottish Government to assess bids for funding, and decide how the monies should be allocated. The panel could be drawn from the free advice

sector, and would be able to use their knowledge and expertise to identify the areas which would benefit most from the additional funding.

Benefits:

- Decisions will be made by experts in the field, through an independent decision making process, leading to best use of the available funds.
- As with Option 2, the application process could be streamlined due to the existing links between AiB and stakeholders in DAS, and the shared understanding of the Scheme.

Risks:

- The bidding process might be administratively heavy for the organisations applying for funding.
- Funding is likely to be small scale and time-limited, which may generate challenges if funding is allocated one year but not the next and the organisation cannot sustain the work previously supported by this funding.

iv. Funds held centrally by Scottish Government for DAS use only

In this option, AiB would remit all available funds to the Scottish Government (SG) on an annual basis. The funds would be ring-fenced to ensure they are allocated only to free sector advice organisations delivering DAS. This is broadly comparable to the current approach taken by Scottish Legal Aid Board (SLAB) in their funding of in-court debt advice – and on possibility would be for SLAB to manage the funding on SG’s behalf.

SLAB have been managing grant funding programmes for approximately 10 years, underpinned by legislation (Section 4 of the Legal Aid (Scotland) Act 1986).

The funds held by SLAB are allocated to a number of areas, including Debt Advice. This includes funding of some DAS posts in the third sector and in other organisations.

SLAB manages the distribution of funding in the following way:

- Bring together and co-ordinate funding from a range of Scottish Government Directorates taking note of the objectives which the funders want to achieve.
- Receive and adjudicate on applications.
- Distribute the funds in line with their intended use.
- Report the outcomes to the Scottish Government.

Benefits:

- Having a body independent of DAS distributing the funding may increase the perception of fairness, whilst the fact that SLAB are a non-departmental public body responsible to Scottish Government will provide comfort in terms of the security of funding.
- This approach will still provide assurance that funds generated by DAS advice are going back to organisations which are actively involved in giving DAS advice.

- Using an existing mechanism removes the need to create a new one, and the process will already be understood by those likely to apply

Risks:

- The lack of certainty over the likely level of funding may be harder for an organisation such as SLAB to manage.
- Dependence on an existing outside organisation is vulnerable to that organisation's future decisions on resources and priorities.

v. Funds passed to Scottish Government for general money advice support

In this option, AiB would remit the available funds to the Scottish Government to be used for general money advice support. The funds would be disbursed using the mechanisms set down by SG.

Benefits:

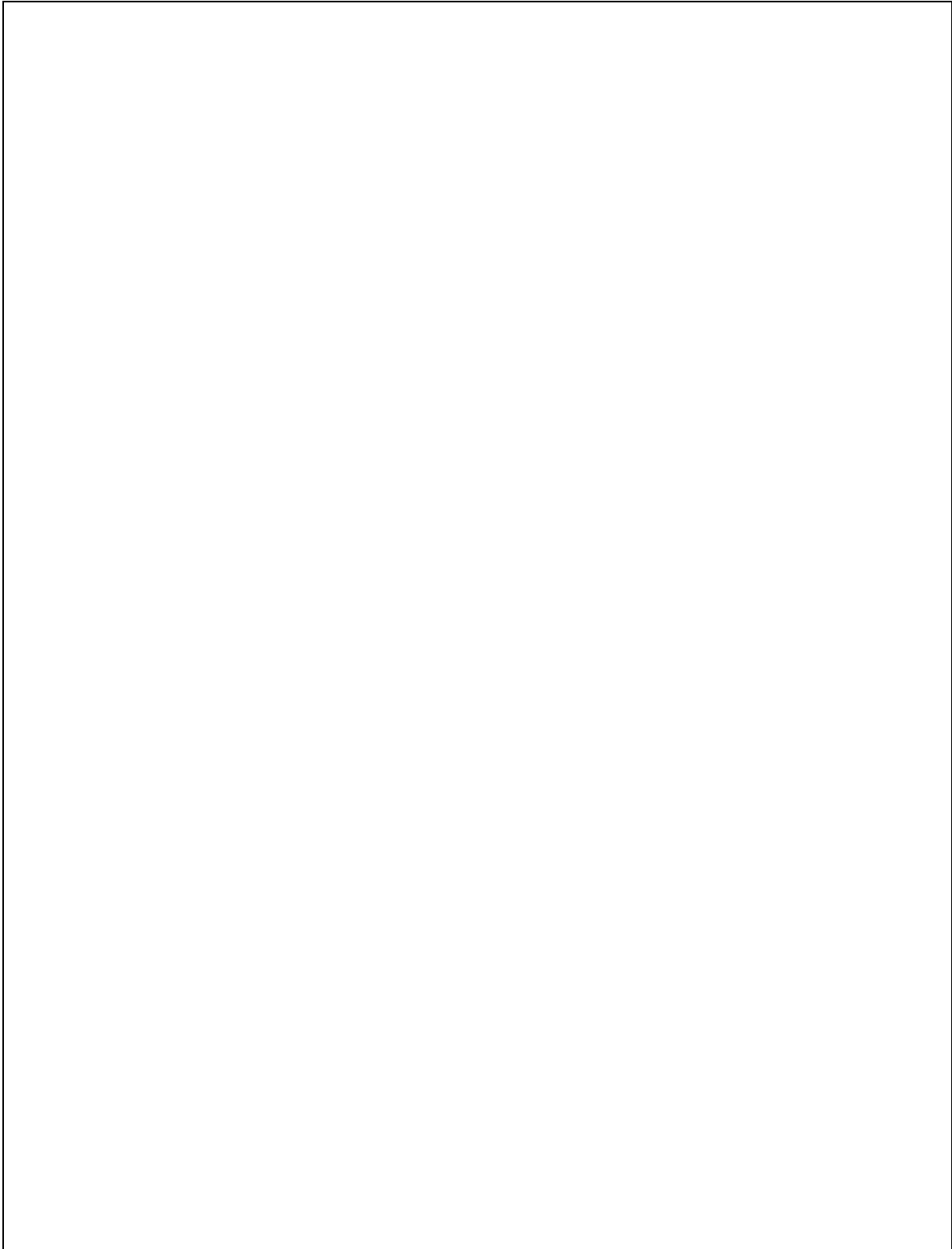
- This follows the general direction of travel to bring together disparate funding schemes to prevent third sector organisations facing multiple bidding and reporting processes.
- It will ensure that there is no additional burden on either AiB or the advice sector.

Risks:

- The ethos of the proposed legislative change is to improve the level of DAS take-up by helping the advice sector fund the provision of advice. If the funds are not ring-fenced, they may not be used to support DAS.
- If the funds generated through DAS are not going back to source this may be perceived as unfair to those advisers delivering DAS and the creditors who are de facto paying the fees generating these funds.

5. Conclusion

We would welcome your views on which of these options you think would work best and why.

A large, empty rectangular box with a thin black border, intended for the respondent to provide their views on the options mentioned in the text above.

6. Responding to this consultation

We are inviting responses to this consultation by 20 August 2019.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/accountant-in-bankruptcy/debt-arrangement-scheme/>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 20 August 2019.

If you are unable to respond using our consultation hub, please send your response with a completed Respondent Information Form to:

[Lisa Ledingham-Park](#)

DAS Team

Accountant in Bankruptcy

Scottish Government

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Kilwinning

KA13 6SA

7. Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy:

<https://beta.gov.scot/privacy/>

8. Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

9. Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or lisa.ledinghampark@aib.gov.uk

10. Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Appendix A - Statistics

DAS approvals by public sector – by calendar year

Year	Public sector approvals	Total value of monthly instalments	Average monthly instalment	Annual value if all payments made	20% admin fee (CMA & PD)	Highest instalment amount	Lowest instalment amount
2014	1741	£344,274.00	£197.00	£4,100,000.00	£820,000.00	£1,400.00	£5.90
2015	1204	£260,237.00	£216.00	£3,100,000.00	£620,000.00	£2,489.00	£6.33
2016	1162	£273,027.00	£234.00	£3,200,000.00	£640,000.00	£1,840.00	£4.95
2017	918	£229,733.00	£250.00	£2,700,000.00	£540,000.00	£2,255.00	£4.95
2018	753	£186,331.00	£247.00	£2,200,000.00	£440,000.00	£2,290.00	£6.88

Breakdown of funds generated by the current PD fees charged in Q2 2018/19:

Q2 2018/19	Total amount ingathered by PD	Fee to PD
All cases	9,231,843	534,381
Public sector	3,672,550	202,017

The current live DAS caseload includes approximately 7,000 public sector DPPs. These cases generated approximately £200,000 in fees paid to the PDs in Q2 2018/19, which extrapolates to an estimated £800,000 for 2018/19.

The average PD fee per case is therefore £115 per year (£800,000 divided by the 7,000 caseload).

Comparable breakdown of the proposed 20% administration fee for the same period, detailing funds available to redistribute to the public sector:

Q2 2018/19	Total amount ingathered by PD	Proposed 20% admin fee (CMA & PD)
All cases	9,231,843	1,846,369
Public sector	3,672,550	734,510

The Q2 2018/19 stats show that, with an established caseload of the 7,000 public sector cases at present, the proposed total administration fee of 20% would generate circa £2,938,040 per annum (the estimated figure for Q2, £734,510 multiplied by 4).

The average proposed admin fee per case is therefore £420 per year (£2,938,040 divided by the 7,000 caseload).

Assessing alongside current stats:

From 1 January 2018 until 1 December 2018 there were 753 public sector DPPs approved. With an estimated average admin fee of £420 per year, the total funds would be in the region of £316,000 per annum.

This is a top end estimate as cases are approved at various points in the year and will not have each been paying every month for the year.

There is also the matter of missed payments where each payment cannot be guaranteed by debtors.

This would suggest that in the first year, on the basis of no increase in numbers, around £100,000 would be available to distribute.



RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

Individual Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

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?

Yes No



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