

The Bankruptcy (Scotland) Amendment Regulations 2024

Child Rights and Wellbeing Impact Assessment

February 2024

Child Rights and Wellbeing Impact Assessment (CRWIA) for

The Bankruptcy (Scotland) Amendment Regulations 2024

Disclaimer

This **draft** document is an **initial assessment** of the impact of the Bankruptcy (Scotland) Amendment Regulations 2024. The Scottish Government will continue to review and update this document where required during the parliamentary decision making process. Any future iterations will reflect an increased understanding of these impacts as the amount of data and research available continues to grow.

Table of contents

CRWIA Stage 1 – Screening	1
Brief summary	1
Which aspects of the relevant proposal currently affects or will affect children and young people up to the age of 18?	1
Which groups of children and young people are currently or will be affected by the relevant proposal?	2
Declaration	2
Is a Stage 2 Children’s Rights and Wellbeing Impact Assessment required?	2
Explanation why CRWIA is not required	2
Sign and date	4

CRWIA Stage 1 – Screening

Brief summary

1. It amends the Bankruptcy (Scotland) Regulations 2016 (S.S.I. 2016/397) (the “2016 Regulations”) which prescribes the rate of interest payable on creditors’ claims in bankruptcy (sequestration) under section 129(10)(a) of the Bankruptcy (Scotland) Act 2016 (the “2016 Act”) where there are sufficient funds to settle these claims in full.

2. It amends the methodology for calculation of the rate of interest to reflect the prevailing rates of interest more accurately at the date of sequestration by linking it to the Bank of England base rate.

Start date of relevant proposal: 6 April 2024

Which aspects of the relevant proposal currently affects or will affect children and young people up to the age of 18?

3. The aim of the regulations is to amend the methodology for calculating the prescribed rate of interest which can be paid in a bankruptcy where there are sufficient funds to settle creditors’ claims in full. It will move from a fixed rate of 8% per annum to a rate linked to the Bank of England base rate at the date of sequestration to more accurately reflect the prevailing rates of interest. There could be positives or negatives for the person in the bankruptcy depending on the movement in the Bank of England base rate.

4. It is possible for a young person aged 16 or over to incur debt in certain circumstances, for example, rent arrears. However, in general it is difficult for a person under the age of 18 to obtain credit as many creditors have policies to not approve credit to anyone under the age of 18. Therefore, as it will be unlikely that a child or young person up to the age of 18 will be experiencing unsustainable debt and have any direct involvement with the statutory debt solutions it is considered very unlikely that the policies included in these regulations will directly affect them.

5. It could be that these regulations may indirectly impact a child or young person if a parent or carer were to have involvement with debt solutions, however any such impact is considered to be minimal or remote, given the low percentage of sequestrations overall where any interest is payable at all. Where there is sufficient estate to pay interest, there could be positive or negative effects for that individual depending on the movement in Bank of England base rate (meaning more or less interest would require to be paid) and in turn there could be indirect positive or negative effects on the child or young person, though again we would consider these to be minimal or remote.

Which groups of children and young people are currently or will be affected by the relevant proposal?

6. None.

Declaration

Is a Stage 2 Children's Rights and Wellbeing Impact Assessment required?

CRWIA required No explanation required, please complete questions 5 and 6

CRWIA not required Please explain why below and contact the children's rights unit to discuss this decision crwia@gov.scot

Explanation why CRWIA is not required

7. This legislation amends regulation 26 of the 2016 Regulations which sets the prescribed rate of interest which may be payable on creditors' claims in bankruptcy cases under section 129(10)(a) of the 2016 Act, where there are sufficient funds available to pay creditors' claims in full.

8. Interest is paid between the date of sequestration and the date creditors' claims are paid. It is currently the greater of the prescribed rate, which is a fixed rate of 8% per annum, and the contractual rate agreed between the person subject to the bankruptcy and individual creditors when entering into a contract before the bankruptcy.

9. These regulations will amend the prescribed rate of interest on these claims from the currently fixed rate of 8% per annum to a rate linked to the Bank of England base rate at the date of sequestration to more accurately reflect the prevailing rate of interest at the date of sequestration for each relevant case.

10. Creditors will continue to be entitled to their contractual rate of interest if this is higher than the prescribed rate.

11. The proposed changes impact on:

- those who have voluntarily sought debt relief through a bankruptcy (sequestration) or have been made bankrupt following a petition presented by a creditor, if their creditors can be paid in full,
- those creditors whose claims can be settled in full, and
- the trustees who administer the bankruptcy and who have to calculate and pay the interest.

12. The amendment to the methodology for calculating the rate of interest on creditors' claims in bankruptcy, where there are sufficient funds to settle a creditors' claims in full is unlikely to directly impact children and young people up to the age of 18.

Sign and date

Policy lead signature and date of sign off

Name: David Farr

Title: Policy Manager: Corporate Insolvency

Date: 1 February 2024

Deputy director signature and date of sign off

Name: Richard Dennis

Title: The Accountant in Bankruptcy and Agency Chief Executive

Date: 5 February 2024



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