


CONSULTATION QUESTIONNAIRE (Page One)
Low Income, Low Assets – a new route into Bankruptcy

The deadline for responses is **25 June 2007**

Your details

Name	<i>Mrs Anne Bryce</i>
Job title (if applicable)	<i>Director of Insolvency</i>
Organisation (if applicable)	<i>Institute of Chartered Accountants of Scotland</i>
Address	<i>21 Haymarket Yards Edinburgh</i>
Postcode	<i>EH12 5BH</i>
e-mail address	

For the purpose of analysing responses, it would be helpful if you would also indicate the capacity in which you are completing this questionnaire, please tick as appropriate.

Advice Sector	<input type="checkbox"/>	Legal Body	<input type="checkbox"/>
Business	<input type="checkbox"/>	Professional Body	<input checked="" type="checkbox"/>
Individual	<input type="checkbox"/>	Statutory Body	<input type="checkbox"/>
Insolvency Practitioner	<input type="checkbox"/>	Other (Please Specify) _____	<input type="checkbox"/>

Questions for Consultation

1a Do you agree with the proposal to treat someone in receipt of an income based Social Security benefit as having no income for the LILA scheme?

Yes No A debtor needs to have some income on which to live.

1b Do you think £100 (gross) is the appropriate level for the purposes of calculating low income?

Yes No

1c If not, please state what you would consider to be the appropriate level e.g. £150, £200 and why?

Should be linked to the National Minimum Wage. i.e. Gross Income at the date of application based on the national minimum wage for a 35 hr week.

1d How should the level determined be calculated, e.g. gross income at date of application or gross weekly income averaged over 6 month or 12 month period?

Use the average earnings for the previous 2 months.

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1e Should Child Tax Credit be disregarded in the calculation of income?

Yes No Child Tax Credits are in theory monies held in trust for a child.

1f Should any other benefits or tax credits be disregarded in the calculation of income?

Yes No

1g If so which benefits or tax credits should be disregarded?

Any benefits which are not in respect of the debtors themselves e.g. benefits for caring for elderly parents.

2a Do you think £1,000 is the appropriate level for the purposes of calculating assets?

Yes No

2b If not, please state what you would consider to be the appropriate level, and why (for example, linking to other limits in use in diligence).

N/A

2c Should excluded assets only be those which would be excluded from bankruptcy?

Yes No Maintain consistency.

2d If not, which other types of assets should be included or excluded?

2e Do you agree that anyone who owns their own house or other property should be excluded from the LILA scheme?

Yes No

2f If not, why?

A debtor may have a house or other property but also have a low income (perhaps as a result of a change of circumstances) and therefore not be able to pay debts as they fall due. Also a debtor could, (although unusual in the current market), have a house with negative equity. Such debtors might equally be stuck in a debt trap even though they own property.

There may be benefit in excluding such debtors from the scheme for the sake of simplicity and it is arguable that such debtors have other options such as realising property themselves to pay off their debts or granting a trust deed for creditors. (These options may of course be limited in the future by reforms to trust deed legislation). However, provided that any non-exempt property of the debtors is realised and made available to the creditors in the sequestration, there is arguably no reason in principle why such debtors should continue to be excluded from sequestration simply because they cannot establish apparent insolvency to allow them to be sequestrated.

The proposed changes are just giving debtors who could not previously be sequestrated a new route into bankruptcy and it is understood that once bankrupt the same provisions will apply.

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3a Should there be a different debt threshold for LILA applications?

Yes No There should be consistency throughout all insolvency processes.

3b If so, at what level should it be set?

4a Do you agree that a simple on-line process should be the usual means of applying for bankruptcy through the LILA scheme?

Yes No As long as the information is verified and vouched for by AiB staff before sequestration is granted to avoid abuse. A paper application form will have to be made available to debtors with no access to IT.

4b If not, what forms of applications should be allowed and why?

4c Do you think that the proposed £50 fee is reasonable?

Yes No However how will this be paid?

4d If not, what kind of fee structure would be appropriate? (please consider issues such as deterrence, consistency with other applications, waivers for specific groups of debtors, higher costs of administering hard copy applications)

4e Do you agree that a Statutory Declaration by a debtor should be sufficient for a debtor's application?

Yes No As long as the information submitted on line is verified by AiB staff. (see 4a)

4f If not, what else should be required and why?

4g Do you have any other suggestions for the LILA process which you would like us to consider?

There should be penalties if false declarations are made.

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5a Do you agree that there should be a delay between the date of application and an award of bankruptcy?

Yes No

5b If no, why not?

At present, where a debtor presents a petition for sequestration to the court, unless a caveat has been lodged, and provided the provisions of the legislation have been satisfied, sequestration is granted forthwith without any delay. This should continue to be the case when applications are made to the Accountancy in Bankruptcy in non-LILA cases. It is unclear why debtors in LILA cases should be treated any differently. If creditors are to be able to object, some form of publicity of the application would have to take place and this would of course add to the cost for the debtor or the AiB.

5c If yes, is 5 weeks a reasonable period of delay?

Yes No

5d If you do not agree that 5 weeks is a reasonable period, what alternative would you suggest and why?

14 days

5e Should the debtor be able to withdraw their application during this period?

Yes No

5f Should the creditor be entitled to object to an application during this period?

Yes No

As already mentioned a creditor would not normally have an opportunity to object to a debtor petition for sequestration at present, (unless the creditor had lodged a caveat) and it is suggested that LILA cases are dealt with in the same way as consistency is important.

5g If so, should grounds for objection be restricted to the accuracy/honesty of the debtor's averment of low income and low assets?

Yes No

5h If not, what other grounds for objection be considered?

6 Do you have any other comments?

If a debtor has made a false declaration on his form or his asset position improves, e.g. lottery win, inheritance, the AiB should be able to use the normal sequestration process to deal with these.