HM Treasury

Statutory Debt Repayment Plan

Consultation response

November 2022

HM Treasury

Statutory Debt Repayment Plan

Consultation response

November 2022

This publication is available at: www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at public.enquiries@hmtreasury.gov.uk

ISBN: 978-1-915596-14-7

PU: 3235

Contents

Chapter 1
Introduction

1.1 On 13 May 2022, the government published a consultation seeking views on the implementation of a Statutory Debt Repayment Plan (SDRP).[1]

1.2 The SDRP would be a new statutory debt solution. Debt advisers would devise a plan for repayment of a person's debts over a period of up to ten years, with similar legal protections from creditor action as in the government's existing breathing space scheme.[2]

1.3 For those who can afford to repay their debts in full, the SDRP could offer a more sustainable route out of problem debt than other existing statutory and voluntary debt solutions, while improving returns to creditors.

1.4 The consultation sought views from respondents on several detailed questions, based on drafts of the implementing regulations and an impact assessment.

1.5 The consultation closed on 5 August 2022. The government received over 80 responses from a wide range of stakeholders including debt advice providers, consumer groups, charities, creditors, debt management companies, trade bodies, local authorities, and academics.

1.6 The government is grateful to respondents for the time and effort taken to respond.

Next steps

1.7 The government recognises the significant challenges and concerns raised by respondents, relating to both the design of the scheme and the timing of its implementation. These are summarised in the remaining chapters of this document.

1.8 The government has reflected on this feedback and determined that it will not proceed to lay regulations implementing the SDRP this year.

---

[1] *Statutory Debt Repayment Plan: Consultation*, HM Treasury, May 2022. www.gov.uk/government/consultations/statutory-debt-repayment-plan-consultation

[2] Launched in England and Wales in May 2021, breathing space pauses enforcement action and most interest, fees, and charges for 60 days while a debtor engages with debt advice, giving them time to consider an appropriate debt solution. The scheme also offers these protections to people receiving mental health crisis treatment for as long as their mental health crisis treatment lasts, plus 30 days. Guidance on the scheme is available at www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance

1.9 Instead, the government will base further decisions on the future of the SDRP on the outcomes of the government's review of the personal insolvency framework, led by the Insolvency Service.[3]

1.10 This important, wide-ranging review began with a call for evidence in July 2022. The review asks whether the existing statutory processes for debt relief are fit for purpose and, if not, what reforms are needed.

1.11 At this stage of the review, no decision on reform has been made. However, the government is mindful that any significant reforms to the personal insolvency framework may affect both the need for, and design of, a new debt solution based on full repayment of debts. The government's intent is to ensure that the overall framework for helping people in debt is coherent and well-considered.

1.12 In the current economic context, the government is also mindful of the need to allow debt advice providers, creditors, and other stakeholders to conserve and concentrate their resources where they can have the greatest impact.

Breathing space

1.13 The government's consultation also proposed minor improvements to breathing space. The government is grateful for the thoughtful proposals received from respondents.

1.14 The government is considering these proposals and will provide a further update in due course.

[3] *Call for evidence: Review of the personal insolvency framework*, Insolvency Service, July 2022. www.gov.uk/government/consultations/call-for-evidence-review-of-the-personal-insolvency-framework

Chapter 2
Summary of responses

2.1 This chapter summarises respondents' overall views on the government's proposals.

2.2 Chapters 3-6 provide more detail on specific policy responses.

Scheme design

2.3 Most stakeholders agreed there is a need for a debt solution that provides statutory protections to people who can afford to repay their debt. SDRP would provide an alternative to bankruptcy, which can have negative impacts on a person's employment, housing, and business, and would be particularly helpful where debts are owed to creditors with strong enforcement powers or less well-developed forbearance practices.

2.4 However, the majority of respondents also agreed that the current SDRP proposal would require significant changes to improve on existing debt solutions.

2.5 Universally, debt advice providers wanted more flexibility to deal with changes in debtors' circumstances over long periods, and to minimise the burden on their limited resources.

2.6 Many debt advice stakeholders suggested that the government's draft impact assessment overstated likely case numbers, as a lack of flexibility would restrict scenarios where they would recommend SDRP. A majority felt that managing and making difficult decisions on SDRPs would disrupt supportive relationships with their clients.

2.7 Many debt advice providers were concerned that the funding model proposed would not cover the cost to them of operating the scheme. Several debt advice providers suggested that they were unlikely to offer SDRPs at all.

2.8 Creditors were concerned about the impact of SDRP on their businesses, and the weight of other new consumer protection regulation that would be implemented in the same period. They questioned the additional benefit of SDRP given other rules requiring forbearance and existing debt solutions.

2.9 In contrast with debt advice stakeholders, two-thirds of creditors who gave a view thought the SDRP's protections were too generous.

2.10 Some creditors continue to object to the payments they receive being reduced to fund the scheme, despite this having been a feature of the scheme in earlier consultations, and Parliament having conferred a specific power on government in the Financial Guidance and Claims

Act 2018 to provide for this. Creditors also generally disagreed that the scheme would increase debt recovery.

Timing

2.11 Many respondents questioned whether SDRP is the right intervention to prioritise now. Several noted that starting SDRP in 2024 requires scarce debt advice resource to be deployed in 2023 on a scheme for clients with surplus income, who will be among the more affluent users of debt advice.

2.12 Some respondents suggested that while that increases in the cost of living may bring people with higher incomes into debt advice and increase demand for SDRP in the medium to long term, in the short to medium term, the number of people able to repay their debts in full over ten years is likely to fall.

2.13 Fewer SDRPs would reduce the benefits of the policy and may mean that the funding of the scheme would not operate as anticipated.

2.14 Over half of respondents who expressed a view felt that, without total clarity on how the Insolvency Service's electronic service would work, an 18-month implementation period between laying regulations and the scheme commencing would be too short for them to comply.

2.15 A number of respondents from both debt advice provider and creditor organisations suggested that there should instead be a 24-month implementation period.

2.16 Over half of respondents who expressed a view – including both debt advice stakeholders and creditors – suggested the scheme should be paused or delivered over a longer period.

2.17 Some debt advice stakeholders recommended that government defers the SDRP until cost-of-living pressures have subsided and the outcome of the government's Personal Insolvency Review is known.

Chapter 3

Eligibility and protections

3.1 The consultation invited stakeholder views on eligibility for the scheme, and its protections.

Eligibility

3.2 The majority of respondents agreed that an individual should access professional debt advice and be assessed as being in problem debt to qualify for a SDRP.

3.3 Some respondents asked for more clarity on how joint SDRPs would work, particularly with respect to joint and several liability and for individuals who shared debts but lived in different households.

Qualifying debt

3.4 The majority of respondents who expressed a view agreed that the SDRP should include as broad a range of debts and liabilities as possible to support people in problem debt.

3.5 Some debt advice providers wanted to expand the definition of qualifying debt to include criminal fines and student loans, arguing that the protections of the scheme would increase the likelihood of repayment.

3.6 Several debt advice providers disagreed with the exclusion of Universal Credit (UC) advances.

3.7 Several creditor organisations disagreed with mortgage arrears being a discretionary non-eligible debt and argued for other types of lending to be added to the definition of non-eligible debt.

3.8 A number of creditor organisations sought further clarity on the meaning of future and contingent debt in the draft regulations.

Priority debt

3.9 A majority of respondents agreed with the government's categorisation of priority debts.

3.10 Some suggested that priority status should only be given where the debt related to a product or service that debtors were currently receiving. For instance, electricity arrears for a current supplier, rather than those of a previous supplier.

3.11 Some respondents also queried how priority debts would be treated where other services or lending were provided in a single contract or package (such as sports or music subscriptions or a mobile phone handset).

3.12 Although some expressed concerns about the complexity of the proposals, just over two thirds of respondents, including the majority of creditor organisations, were content with the proposed approach to allocating payments to priority debts.

3.13 A small number of respondents, including some creditor organisations and debt advice stakeholders, thought that a higher proportion of each repayment could be allocated to priority debts, to allow them to be repaid more quickly.

Small debts

3.14 Over half of respondents, mostly from debt advice providers and some creditor organisations agreed with the consultation's proposal that all debts should be included in a plan, regardless of their size.

3.15 A slightly smaller group of respondents, the majority of these being creditor organisations and local authorities, saw a case for small debts being excluded from a plan, or for debt advisers having discretion to amend plans to allow these debts to be repaid more quickly.

Protections

3.16 Most stakeholders agreed with the need for SDRPs to provide strong statutory protections. Debt advice providers and consumer groups, however, universally agreed that the government's proposed protections did not go far enough.

3.17 Many respondents with this view suggested that statutory protections should apply before the start of a SDRP, at the 'intention to initiate' stage, to prevent the acceleration of creditor enforcement action. Some respondents also asked for stronger measures to prevent creditor non-compliance, such as withholding payments to non-compliant creditors.

3.18 In contrast, over two thirds of creditor organisations thought that the scheme's protections were too generous.

3.19 A majority of debt advice providers and consumer groups also argued that SDRPs should be able to last 10 years as standard, rather than in exceptional circumstances, and several argued for the ability to propose longer plans. However, some debt advice providers felt that SDRPs would be too long and that measures to reduce plan length (e.g. writing off some debt) would be required.

3.20 All creditor organisations that expressed a view disagreed with longer plans, arguing the government's proposals on plan length were either acceptable or too generous.

Flexibility

3.21 The majority of stakeholders agreed that SDRPs would need to offer flexibility to ensure plans could accommodate changes in a debtor's circumstances.

3.22 All debt advice stakeholders that expressed a view thought that more flexibility was required. Suggestions included increasing the number of payment breaks permitted; allowing payment breaks to be applied retrospectively; allowing payment breaks to be applied for with shorter or longer notice; temporarily allowing reduced payments; and giving vulnerable groups additional flexibilities.

3.23 However, over two thirds of creditor organisations and local authorities that expressed a view thought that the proposed flexibilities were too generous. Some suggested that payment breaks should be limited to one month in a 12-month period and should only be granted where there were significant changes in a debtor's circumstances. One suggested removing the provisions for payment breaks entirely. These respondents felt that payment breaks were an additional burden for creditors to manage and would further increase the time it would take them to receive their repayments.

Chapter 4
Processes and reporting

4.1 The consultation set out how a SDRP would work, from beginning to end, and the mechanisms for managing the plan during that period.

Starting a plan

Personal details and payments

4.2 Most respondents agreed with the approach to providing personal details set out in the consultation.

4.3 Some respondents from creditor organisations and local authorities thought that debtors should be required to include all their previous residential addresses to make it easier to identify the debtor and all their outstanding debts.

4.4 Respondents did not agree on whether to give debtors greater control over the size of their monthly repayments, but a majority did agree that debtors should be allowed to make voluntary additional payments into their plans if the debt adviser deemed it affordable.

Creditor objections

4.5 Respondents' views also diverged on the grounds for creditors to object to plans before they start. Creditor organisations felt they would require more information about a debtor's income and expenditure, and some also objected to the requirement to provide evidence in order to place an objection.

4.6 Some debt advice stakeholders, on the other hand, thought that the grounds for objection were too lenient and would allow creditor organisations to bring frivolous and unsubstantiated claims where plans were calculated in accordance with the regulations.

4.7 Many respondents asked that guidance should set out in detail how objections and subsequent Fair and Reasonable Assessments would work.

During a plan

Reviews

4.8 Respondents had differing views on the mechanisms for reviewing SDRPs once they had started, either via a regular annual review or at the debt adviser or creditor's instigation (an in-year review). Many creditor organisations felt that the proposals were overly bureaucratic, would incur additional costs to them to comply, and some disagreed with the requirement to provide evidence when requesting a review.

4.9 Over half of debt advice stakeholders felt that the proposals created excessive administrative burdens for advice providers and clients. They also suggested it created more scope for creditors to disrupt plans than in Debt Management Plans, and were concerned that it exposed debt advice providers to legal risk. Some debt advice stakeholders asked to narrow the criteria for creditors to seek reviews.

Additional credit

4.10 The government's proposals on additional credit during SDRPs attracted significant challenge.

4.11 A number of debt advice stakeholders felt that the rules regarding additional credit were too restrictive and should be removed. Respondents argued that clients need to have access to additional credit, either at short notice for emergencies (such as a boiler or a car breaking down) or because it is part of how a service is often offered (e.g. insurance or mobile phone contracts paid by monthly instalments). Limiting this access would make it harder for debtors to deal with income or expenditure shocks and could make SDRPs less attractive and durable over time. These respondents also felt that credit would be more important during a period in which many incomes are not expected to rise in line with the rate of inflation.

4.12 Many debt advice stakeholders also suggested that they were not prepared to 'police' a client's use of additional credit. They felt this conflicted with their role and could damage a relationship of trust between a debt adviser and their clients.

4.13 Two thirds of creditor organisations and local authorities either thought that the rules regarding additional credit were sufficient or that the use of additional credit should only ever be permitted in emergencies. This group of respondents saw the rules on additional credit as fundamental to protecting the stability and viability of plans. Even limited to £2000, additional borrowing was seen as having the potential to impact the stability of plans if debtors were no longer able to keep up with repayments for these new debts.

Reporting

4.14 Over half of respondents who expressed a view agreed that a register of SDRPs should be private, and that a debtor should disclose whether they are in a SDRP to prospective lenders.

4.15 A minority of respondents, mostly creditor organisations, wanted the scheme's register to be public. They felt this would align with other statutory debt solutions and the Scottish Debt Arrangement Scheme, and help creditors to make responsible lending decisions for those in SDRPs.

4.16 There was also a divergence of views amongst respondents on how SDRP should be recorded on credit files. Most respondents agreed that clear and early guidance would be necessary to establish how SDRPs should be treated.

4.17 Most debt advice and consumer stakeholders argued that SDRP should not be recorded as a form of insolvency, meeting payments should have a positive impact, and that any flag or record of a SDRP on a credit file should be removed after a plan has ended.

4.18 Credit Reference Agencies suggested that SDRPs should be marked with a flag so that lenders could make responsible decisions regarding additional credit. Creditor organisations suggested following existing reporting arrangements for Debt Management Plans and Individual Voluntary Agreements.

4.19 Some creditor organisations also sought clarity on the interaction with Consumer Credit Act requirements, arguing that the government's approach would increase administrative burden and legal risk for credit providers.

4.20 A small number of respondents suggested that SDRPs should allow debtors who made repayments to write off some of their debt.

Ending a plan

Revocation

4.21 Many stakeholders who expressed a view disagreed with the proposed grounds for revoking a plan.

4.22 Debt advice stakeholders questioned revoking a plan where payments were missed, or where a debtor had failed to respond to previous notices to comply with the scheme, as there may be legitimate reasons for the debtor's conduct. They asked for the government to give clear guidance on these points.

4.23 Some debt advice stakeholders disagreed with debt advice providers playing any role in revoking plans. In particular, they expressed concern that using their discretion to end plans could damage the relationship of trust that they have with their clients.

4.24 Some creditors and local authorities felt that giving debt advisers responsibility for revocation decisions would be a conflict of interest.

Reapplication

4.25 There was a divergence of views amongst respondents regarding the 12-month limit on making a new application for a SDRP.

4.26 The majority of debt advice stakeholders who expressed an opinion asked to remove the 12-month limit. They argued the limit was unduly restrictive in scenarios where a plan has failed due to circumstances outside of a debtor's control.

4.27 Most creditor organisations felt that the 12-month limit on new applications was sufficient.

Chapter 5
Funding and administration

5.1 The consultation offered more information on how the SDRP would be funded and administered.

Funding

5.2 Most respondents disagreed with the proposed approach to the funding of the scheme.

5.3 Debt advice stakeholders universally objected to the funding model. They argued it would not cover the ongoing costs to them of operating the scheme.

5.4 A majority of creditor organisations also objected to their repayments being reduced to fund the scheme. Some creditor organisations suggested that instead, debtors should repay 100% of what they owe through the scheme, with debt advice providers invoicing creditors for administrating SDRPs in a similar manner to the existing 'Fair Share' funding model used in Debt Management Plans.

Electronic service

5.5 Many respondents noted that early sight of the electronic service and its requirements (including the detail of relevant Application Programming Interfaces) was imperative to allow for their own systems to be developed efficiently.

5.6 Many respondents also asked for the electronic service to allow free two-way communication between the key parties in a plan to reduce the administrative burden and friction involved in other methods of communication outside the service.

5.7 Some stakeholders called for the SDRP electronic service to be fully integrated with the existing breathing space electronic service, to facilitate transitions for those debtors already in a breathing space and reduce administrative burden.

Fair and Reasonable Assessment

5.8 Stakeholders in general noted that they would appreciate early sight of the Insolvency Service's Fair and Reasonable Assessment guidance. This would give them an opportunity to test the guidance, give feedback, and make sure it is fit for purpose before becoming operational.

Payment distribution

5.9 The majority of respondents were content with the approach to payment distribution set out in the consultation document.

5.10 A small number of creditor organisations disagreed with debt advice providers also acting as a payment distributors for their clients' plans, due to potential conflicts of interest.

5.11 There were several views on when and how creditor payment details should be obtained by payment distributors. Some respondents proposed that creditor details could be held centrally as part of the Insolvency Service's electronic service, and made available to payment distributors, to minimise unnecessary requests.

Chapter 6
Impact assessment

6.1 The consultation asked respondents for detailed views on a draft impact assessment (IA) to ensure the government had a clear view of the SDRP's costs and benefits.

6.2 Debt advice stakeholders who responded to questions on the IA suggested that it overstated expected short term SDRP caseload growth. They observed that increased numbers of clients were presenting with reduced disposable incomes or deficit budgets, which would limit those eligible to apply for a SDRP. Some providers also expressed concern that the Money and Pensions Service's recommissioning of debt advice services would impact on debt advice supply, a key element of the SDRP caseload forecast. They also suggested that aspects of the SDRP scheme design would negatively affect debtor eligibility and reduce debt advisers' willingness to recommend it to clients who were eligible.

6.3 Creditor organisations also agreed with the view that caseload projections are overstated and rejected the IA's assumption that SDRP would lead to a higher rate of repayment compared to Debt Management Plans. Their view was SDRP would not increase the amount of disposable income available to debtors and so therefore repayments would be unlikely to rise.

6.4 Although some limited new data was provided, many respondents felt they were unable to estimate the costs to their organisations based on draft regulations alone. In general, creditor organisations and debt advice stakeholders who responded agreed that the costs they would incur to implement SDRP would likely be significant.

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk