

Draft Order laid before the Scottish Parliament under section 5A of the Bankruptcy (Scotland) Act 1985, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2008 No.

BANKRUPTCY

**The Bankruptcy (Scotland) Act 1985 (Low
Income, Low Asset Debtors etc.) Regulations 2008**

Made - - - - 2008
Coming into force - - 1st April 2008

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 5A and 39A(4)(a) of the Bankruptcy (Scotland) Act 1985(1) and all other powers enabling them to do so.

In accordance with section 5A of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Bankruptcy (Scotland) Act 1985 (Low Income, Low Asset Debtors etc.) Regulations 2008 and come into force on 1st April 2008.

(2) In these Regulations, “the 1985 Act” means the Bankruptcy (Scotland) Act 1985.

Debtor’s weekly income

2.—(1) The weekly income of whatever nature received by the debtor for the purposes of section 5A(2) of the 1985 Act is hereby prescribed as the amount of the national minimum wage of £220.80 per week (40 × £5.52 per hour) as determined in regulation 11 of the National Minimum Wage Regulations 1999(2) as amended or 40 times such sum as shall be substituted as the hourly rate of the national minimum wage in regulation 11 of those Regulations.

(2) For the purposes of section 5A(2) of the 1985 Act, a person in receipt of an income related benefit, as defined in section 191 of the Social Security Administration Act 1992(3) or an income-based jobseeker’s allowance, as defined by section 1(4) of the Jobseekers Act 1995(4), or a working

(1) 1985 c. 66. Section 5A was inserted by section 15 of, and section 39A(4) by section 19(2) of the Bankruptcy and Diligence (Scotland) Act 2007 (2007 asp 3).

(2) S.I.1999/584 was amended, and the amount increased, by S.I. 2000/1989, S.I. 2001/2763, S.I. 2002/1999, S.I. 2003/1923, S.I. 2004/1930, S.I. 2005/2019, S.I. 2006/2001 and S.I. 2007/2318.

(3) 1992 c. 5.

(4) 1995 c. 18.

tax credit as defined by section 1(1)(b) of the Tax Credits Act 2002(5), shall be treated as having no income.

(3) In calculating the contribution of earned income to income for the purposes of section 5A(2) of the 1985 Act, where a debtor is paid monthly, the debtor's earned income shall be 12 times the amount of the monthly earnings divided by 52 (12/52 monthly earnings).

(4) In calculating the contribution of earned income to income for the purposes of section 5A(2) of the 1985 Act, where a debtor is paid regularly by a period other than a week or month, the debtor's earned income shall be that period times such multiplier or divider as shall convert the period into a year divided by 52.

(5) In calculating weekly income for the purposes of section 5A(2) of the 1985 Act, no account shall be taken of social security benefits or tax credits.

(6) In calculating weekly income for the purposes of section 5A(2) of the 1985 Act, no account shall be taken of any income received by any other person.

(7) In calculating weekly income for the purposes of section 5A(2) of the 1985 Act, the amount of the weekly income shall be the person's gross income.

(8) Where a person's income varies, in calculating weekly income for the purposes of section 5A(2) of the 1985 Act, the weekly income shall be one twelfth of the total income actually received in the 12 week period immediately preceding the date of application, except that where a person has worked less than 12 weeks prior to the application the earnings of the less than 12 week period shall be divided by the number of weeks worked.

Debtor's assets

3.—(1) For the purposes of section 5A(4) of the 1985 Act, the amount hereby prescribed is £10,000.

(2) It is a further condition of section 5A of the 1985 Act that the value of any single asset of the debtor must not exceed £1,000.

(3) For the purposes of section 5A(4) of the 1985 Act and paragraph (2) above, assets shall be disregarded which would not vest in a trustee under section 33(1) of the 1985 Act in a sequestration.

Amendment of the 1985 Act

4. In the 1985 Act, after section 39A(3)(f) insert—

“(g) the trustee has commenced an action under section 34 of this Act in respect of any right or interest mentioned in sub-section (1) above or the trustee has not known about the facts giving rise to a right of action under section 34 of this Act, provided the trustee commences such an action reasonably soon after the trustee becomes aware of such right.”.

St Andrew's House,
Edinburgh
2008

A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe income and asset limits and other conditions in relation to debtor applications for sequestration on the basis of “low asset, low income” grounds as provided for in section 5(2B)(c)(ia) of the Bankruptcy (Scotland) Act 1985 as inserted by section 15 of the Bankruptcy and Diligence (Scotland) Act 2007. (Section 5A of the Bankruptcy (Scotland) Act 1985 has other important restrictions on this route into bankruptcy, including a condition that the applicant must not own land, that is have any title (however heavily mortgaged) in land or buildings.)

The Regulations also amend section 39A of the Bankruptcy (Scotland) Act 1985, as inserted by section 19(2) of the Bankruptcy and Diligence (Scotland) Act 2007, to add to the circumstances which preclude a family home reinvesting in the debtor three years after sequestration.