
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the method for determining an appropriate amount of a living debtor's income to be paid to a trustee after sequestration of the debtor's estate, known as the "common financial tool" in the Bankruptcy (Scotland) Act 2016 ("the 2016 Act") and make similar changes for protected trust deeds and the debt arrangement scheme ("DAS").

These Regulations change the method to be used as the common financial tool, from the Common Financial Statement ("the CFS") published by the Money Advice Trust, to the Standard Financial Statement ("the SFS"), currently published by the Money Advice Service. They also contain provision in anticipation of the replacement of the Money Advice Service with the single financial guidance body by the Financial Guidance and Claims Act 2018.

Regulation 3 amends the Bankruptcy (Scotland) Regulations 2016 ("the 2016 Regulations") to replace references to the CFS and the Money Advice Trust with references to the SFS and the Money Advice Service or single financial guidance body.

The requirement that money advisers hold a licence from the Money Advice Trust to use the CFS is replaced with a requirement to hold a licence authorising them to use the SFS (where such a licence is required); provision that the CFS is the common financial tool is replaced with the SFS, with debtor contributions determined in accordance with expenditure categories and trigger figures provided by the SFS; provision allowing a debtor to retain additional income towards contingencies is removed as savings are allowed as part of the SFS. Sections 7 and 8 of bankruptcy Form 1 (debtor application) and section Q6 of Form 23 (debtor's account of current state of affairs) are replaced with new versions to reflect the new income and expenditure categories in the SFS.

Regulation 4 amends the Protected Trust Deeds (Forms) (Scotland) Regulations 2016 to replace Form 2A (the statement of the debtor's income and expenditure to be provided to creditors) with a new version which reflects the income and expenditure categories of the SFS.

Regulation 5 amends the Debt Arrangement Scheme (Scotland) Regulations 2011 to replace a requirement that debtor applications for debt payment programmes include a statement of income and expenditure in the style and format of the CFS, with that of the SFS. Section 5a (the financial statement of the debtor) of Form 1 (application for approval of a debt payment programme: individuals) is replaced with a new version which reflects the income and expenditure categories of the SFS.

These Regulations come into force on 1st April 2019.

Regulation 6 provides that changes to the common financial tool made by these Regulations have no effect in relation to sequestrations where the petition was presented or debtor application made, or trust deeds executed, before 1st April 2019. This is subject to an exception where after that date there is an application, or a trustee is otherwise considering, to vary or quash a debtor contribution order (or income payment order or agreement). Regulation 6 clarifies that the application of the Regulations in those circumstances does not prevent the relevant decision maker from having regard to other factors, and that the adoption of the SFS does not itself constitute a change in the debtor's circumstances.

Schedule 5 modifies the Common Financial Tool etc. (Scotland) Regulations 2014 and the Bankruptcy (Money Advice and Deduction from Income etc.) (Scotland) Regulations 2014 to make provision for sequestrations initiated, or trust deeds executed, before 30th November 2016.

Draft Legislation: This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument.

Regulation 7 makes provision regarding the effect of the changes to the common financial tool for debt payment programmes in DAS where an application for approval was made before 1st April 2019, the effect of which is similar to the provision in regulation 6.

A Business and Regulatory Impact Assessment has been prepared for these Regulations. Copies can be obtained from the Accountant in Bankruptcy's website: <http://www.aib.gov.uk>.