

POLICY NOTE

THE COMMON FINANCIAL TOOL (SCOTLAND) REGULATIONS 2018

SSI 2018/

1. The above instrument is made in exercise of the powers conferred by sections 4(2)(b), 89, 170(1)(d)(ii), 194(1) and (3), 224(1) and 225(2) of the Bankruptcy (Scotland) Act 2016 (“the 2016 Act”), sections 2(3)(d), 7(2)(bd) and 62(2)(a) of the Debt Arrangement and Attachment (Scotland) Act 2002 (“the 2002 Act”), sections 5C(2)(b), 5D, 71C, 72(1A) and paragraph 5 of schedule 5 of the Bankruptcy (Scotland) Act 1985 (“the 1985 Act”), and all other powers enabling them to do so.

Policy Objectives

2. The policy objective of the Common Financial Tool (Scotland) Regulations 2018 is to help achieve consistency and transparency in relation to any determination of the level of contribution that a debtor might pay in respect of Scottish statutory debt solutions with the rest of the UK, by specifying the Standard Financial Statement (SFS) as the Common Financial Tool (CFT).
3. The Regulations aim to continue the work started by the Bankruptcy and Debt Advice (Scotland) Act 2014. The CFT is the single method used to assess an individual’s income and expenditure and to determine an appropriate contribution from a debtor’s income.
4. The current CFT is the Common Financial Statement (CFS) published by the Money Advice Trust (MAT). However, MAT have confirmed they will cease to publish the CFS.
5. In order for the CFS to be retained as the CFT in Scotland, the Accountant in Bankruptcy (AiB) or another party would be required to operate, update and publish the CFS once MAT cease to do so.
6. Currently the SFS is widely used across the rest of the UK as the single income and expenditure assessment tool by various bodies including money advisers, larger commercial creditors and local authorities.
7. The SFS is currently owned, operated, updated and published by the Money Advice Service (MAS). The tool was developed in collaboration with various stakeholders from the advice and creditor communities such as Money Advice Scotland, Citizens Advice Scotland and the British Banking Association (UK Finance). AiB also collaborated in the development of the SFS.
8. The DWP and HMRC are engaged with MAS regarding the adoption of the SFS as the tool used to assess income and expenditure by those Government departments.
9. When the Financial Guidance and Claims Act 2018 comes into force MAS will be replaced with the single financial guidance body (SFGB). The SFGB will take on the responsibility to operate, update and publish the SFS.

10. In adopting the SFS as the CFT for Scottish statutory debt solutions, we will mirror the approach taken to income and expenditure in other UK debt solutions and help promote consistency.
11. All approved money advisers in Scotland, who are advising debtors on proposals for statutory debt solutions, will be obliged to use the SFS in making debtor applications for sequestrations. Trustees will be obliged to use it in relation to protected trust deeds and money advisers to use it in the context of the Scottish Government's Debt Arrangement Scheme (DAS).
12. The Regulations makes provision:
 - specifying the CFT as the SFS published by MAS or the SFGB;
 - in anticipation of the replacement of MAS with the SFGB;
 - allowing the money adviser to take household (as well as the individual debtor's) income and expenditure as permitted by the SFS into account when making their assessment of the debtor's income and circumstances;
 - allowing a debtor to retain income as savings in accordance with the SFS.

Background

13. The Bankruptcy and Debt Advice (Scotland) Act 2014 and The Common Financial Tool etc. (Scotland) Regulations 2014 (the CFT Regulations) introduced some important changes to the process of personal insolvency administration in Scotland. One of the primary changes was the adoption of a CFT for the purpose of assessing a debtor's contribution in all statutory debt solutions. Following a consultation, the CFS operated by MAT was adopted as the initial CFT.
14. While Scotland was the first part of the UK to introduce the concept of a CFT underpinning statutory debt solutions, further work has since been undertaken by MAS to develop a single UK tool for both statutory and non-statutory solutions. The SFS is intended to provide a single format for assessing a debtor's income and expenditure for all debt management and relief products across the whole of the UK. This will provide consistency and assurance for both the money advice sector and creditors that the debtor will be paying no more and no less than is appropriate towards their debts.
15. The basis of the contribution is the debtor's surplus income in excess of the lower of the debtor's expenditure, or the "trigger figures" (which are part of the SFS and set a reasonable level of expenditure). The debtor may be allowed an amount of reasonable expenditure that exceeds the trigger figures, and to retain some income as savings.
16. The SFS figures are based on the Living Costs and Food Survey (LCF) conducted by The Office for National Statistics. The LCF collects information on spending patterns and the cost of living that reflect household budgets across the UK. The baseline figures used for calculating the CFS and SFS are determined in broadly the same way.
17. With the advent of SFS as a single tool for use across the UK, MAT has announced their intention to withdraw the CFS as both tools are broadly similar and it would defeat the purpose of having a single consistent tool with two running in parallel.

18. The SFS was launched in the rest of the UK on 1 March 2017, and over 1,000 users have currently registered their interest in adopting it.

Instruments Amended

19. These Regulations amend the Bankruptcy (Scotland) Regulations 2016, the Protected Trust Deeds (Forms) (Scotland) Regulations 2016, the Debt Arrangement Scheme (Scotland) Regulations 2011. Modifications are also made to the Common Financial Tool etc. (Scotland) Regulations 2014 and the Bankruptcy (Money Advice and Deduction from Income etc.) (Scotland) Regulations 2014 for existing sequestrations and trust deeds. (Further changes concerning other matters are made in respect of DAS by the Debt Arrangement Scheme (Scotland) Amendment Regulations 2018 which are laid in draft alongside these Regulations.)

Effect on existing sequestrations and trust deeds

20. In general, changes to the CFT made by these Regulations will have no effect in relation to sequestrations where the petition was presented or debtor application made, or for 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). In such circumstances the changes to the CFT made by these Regulations will apply. Regulation 7 makes similar provision regarding the effect of the changes to the CFT for DAS where an application for approval was made before 1st April 2019.
21. The Common Financial Tool etc. (Scotland) Regulations 2014 and the Bankruptcy (Money Advice and Deduction from Income etc.) (Scotland) Regulations 2014 are revoked but (by virtue of savings) continue to apply to sequestrations petitioned or applied for or trust deeds executed before 30th November 2016. Those Regulations (as saved) are modified by schedule 5 so that the CFT is the SFS where there is an application, or a trustee is otherwise considering, to vary or quash a debtor contribution order (or income payment order or agreement) for sequestrations and trust deeds to which those Regulations continue to apply.

Consultation

22. In August 2017, a public consultation was undertaken to establish stakeholder's views on the SFS replacing the CFS as the tool to use in Scottish statutory debt solutions.
23. The response was mixed with the money advice sector in Scotland preferring to maintain the status quo and retain the use of the CFS. However, there was no recommendation as to who should publish the CFS beyond MAT's agreed timescale.
24. The money advice sector in England and Wales, who are currently using the SFS, were positive regarding the adoption of the tool. As were the creditor sector across the UK.
25. The main concern from the Scottish money advice sector was that the trigger figures for the SFS would be detrimental to debtors when compared to their current position using the CFS.

26. Subsequent to the consultation, the revised 2018 SFS and CFS trigger figures have been determined and made available to all licence holders.
27. AiB undertook case analysis to accompany the consultation and subsequently updated this analysis using the latest 2018 trigger figures. The analysis provided an illustrative comparison of the CFS and SFS. The high-level analysis was based on 1,511 real debtor income and expenditure details held in the CFT.
28. Using the 2018 trigger figures, the analysis showed fewer trigger figure breaches under SFS across all spending categories. Under the SFS, 75% of sampled cases did not see a trigger breach compared with 62% of cases under the CFS. More detail on the analyses undertaken by AiB and findings is available at –
<https://www.aib.gov.uk/news/releases/18181818/0303/new-common-financial-statement-and-standard-financial-statement>.
29. This additional statistical information suggests that the potential for increased debtor contributions which concerned the Scottish money advice sector has been significantly reduced, if not removed altogether.
30. The SFS Governance Group, of which AiB is a member, have provided assurances that the SFS will continue to be monitored and further amendments made if required.
31. Members of the SFS Governance Group include:
 - Lloyds Banking Group
 - Finance & Leasing Association
 - Nationwide Building Society
 - British Banking Association (UK Finance)
 - Citizens Advice Scotland
 - Money Advice Scotland

Impact Assessments

32. A Business and Regulatory Impact Assessment ("BRIA") has been completed on the effects of the implementation of the Common Financial Tool Regulations 2018 and the instrument and will be published when this instrument is laid before the Parliament. A copy of the BRIA can be found on the Accountant in Bankruptcy website at: www.aib.gov.uk
33. Consideration has been given to children's rights and interests, in particular the need to provide an adequate standard of living for child development. The SFS has specific trigger figures for children under the age of 16 and between the ages of 16 to 18. These figures consider the expenditure for children from those age groups.
34. No equality issues were raised as part of the consultation process and it is considered that a full Equality Impact Assessment (EQIA) is not required. The CFT applies to all irrespective of their age, race, gender, disability or sexual orientation.
35. AIB administers each bankruptcy on an individual basis and has appropriate measures in place to ensure that the collation and transmission of statistics and information regarding

individuals are completed sensitively. The changes set out in these Regulations will apply equally to all. AiB regularly consults with stakeholders, service users and the general public on reforms to bankruptcy law to ensure that the needs of all groups of society who require to enter bankruptcy are considered and that no particular groups are disadvantaged or excluded more than others.

36. In view of the Fairer Scotland Duty relating to inequalities of outcome caused by socio-economic disadvantage in the Equality Act 2010, the impact of these proposals on those with low wealth and low income has been considered. In general it would be expected that individuals on a lower income would not breach the expenditure trigger figures and therefore, not be impacted by the adoption of the SFS.

The Accountant in Bankruptcy on behalf of the Scottish Government
September 2018