



# Bankruptcy and Debt Advice (Scotland) Act 2014 (repealed)

2014 asp 11

## *Payments by debtor following sequestration*

### **3 Debtor's contribution: common financial tool**

(1) After section 5C of the 1985 Act (inserted by section 1(2)), insert—

#### **“5D Assessment of debtor's contribution**

- (1) The Scottish Ministers may by regulations specify a method (the “common financial tool”) to be used to assess an appropriate amount of a living debtor's income to be paid to a trustee after the sequestration of the debtor's estate (the “debtor's contribution”).
- (2) Regulations under subsection (1) may in particular—
  - (a) prescribe a method for assessing a debtor's financial circumstances (including the debtor's assets, income, liabilities and expenditure),
  - (b) prescribe a method for determining a reasonable amount of expenditure for a debtor after the sequestration of the debtor's estate,
  - (c) prescribe the proportion of a debtor's income that is to constitute the debtor's contribution,
  - (d) prescribe that a method determined by another person is to be used (with or without modification in accordance with regulations made under subsection (1)) as the common financial tool.
- (3) The common financial tool must ensure that the amount of reasonable expenditure for a debtor is not less than the total amount of any income received by the debtor by way of guaranteed minimum pension (within the meaning of the Pension Schemes Act 1993 (c.48)).
- (4) The common financial tool must ensure that an amount is allowed for—
  - (a) aliment for the debtor,
  - (b) the debtor's relevant obligations.
- (5) The “debtor's relevant obligations” are—

*Status: Point in time view as at 01/04/2015.*

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- (a) any obligation of aliment owed by the debtor (“obligation of aliment” having the same meaning as in the Family Law (Scotland) Act 1985 (c.37)),
  - (b) any obligation of the debtor to make a periodical allowance to a former spouse or former civil partner, and
  - (c) any obligation of the debtor to pay child support maintenance under the Child Support Act 1991 (c.48).
- (6) The amount allowed for the debtor's relevant obligations referred to in paragraphs (a) and (b) of subsection (5) need not be sufficient for compliance with a subsisting order or agreement as regards the aliment or periodical allowance.”.
- (2) In section 7(2) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) (debt payment programmes: power to make further provision), after paragraph (bc) insert—
- “(bd) the method of assessing the amount of a debtor's assets, income, liabilities and expenditure in considering applications for the approval, or the variation, of a debt payment programme,”.

#### Commencement Information

**II** [S. 3](#) in force at 30.6.2014 by [S.S.I. 2014/172](#), [art. 2](#), [Sch.](#)

## 4 Debtor contribution order

After section 32 of the 1985 Act, insert—

### “32A Debtor contribution order

- (1) The Accountant in Bankruptcy must make an order fixing the debtor's contribution (a “debtor contribution order”)—
  - (a) in the case of a debtor application, at the same time as awarding sequestration of the debtor's estate,
  - (b) in the case of an award of sequestration following a petition under section 5(2)(b), after considering initial proposals for the debtor's contribution provided by the trustee.
- (2) In a case referred to in subsection (1)(b), the trustee must send initial proposals for the debtor's contribution before the end of the period of 6 weeks beginning with the date of award of sequestration.
- (3) In making a debtor contribution order, the Accountant in Bankruptcy must use the common financial tool to assess the debtor's contribution.
- (4) A debtor contribution order may fix the amount of the debtor's contribution as zero.
- (5) A debtor contribution order may be made irrespective of sections 11 and 12 of the Welfare Reform and Pensions Act 1999 (c.30).
- (6) A debtor contribution order may provide that a third person is to pay to the trustee a specified proportion of money due to the debtor by way of income.

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- (7) Where a third person pays a sum of money to the trustee in accordance with subsection (6), the third person is discharged from any liability to the debtor to the extent of the sum so paid.
- (8) The Accountant in Bankruptcy must, immediately following the making of a debtor contribution order, give written notice of the order to—
  - (a) the debtor,
  - (b) the trustee, and
  - (c) any third person mentioned in the order.
- (9) A debtor contribution order must not take effect on a date before the expiry of the period of 14 days beginning with the day of notification of the order.

### **32B Debtor contribution order: payment period and intervals**

- (1) A debtor contribution order must contain provision requiring the debtor to pay the debtor's contribution (if not zero)—
  - (a) during the payment period, and
  - (b) at regular intervals determined by the person making or varying the order.
- (2) In subsection (1)(a), “payment period” means—
  - (a) the period of 48 months beginning with the date of the first payment,
  - (b) such shorter period as is determined by the person making or varying the order, or
  - (c) such longer period as is—
    - (i) determined by the trustee where there is a period during which the debtor did not pay an amount required under the debtor contribution order, or
    - (ii) agreed by the debtor and the trustee.
- (3) The person making or varying the order may determine a shorter period under subsection (2)(b) only if, in the opinion of that person, the value of—
  - (a) the debtor's contribution during the shorter period, and
  - (b) any other estate of the debtor taken possession of by the trustee,would be sufficient to allow a distribution of the debtor's estate to meet in full all of the debts mentioned in section 51.
- (4) The Accountant in Bankruptcy must, when making an order under section 32A—
  - (a) determine the date of the first payment, or
  - (b) in a case where the debtor's contribution is fixed as zero, determine the date which is to be deemed as the date of the first payment under the order.

### **32C Debtor contribution order: review and appeal**

- (1) The debtor, the trustee or any other interested person may apply to the Accountant in Bankruptcy for a review of a debtor contribution order made by the Accountant in Bankruptcy under section 32A.

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- (2) An application under subsection (1) must be made before the expiry of the period of 14 days beginning with the day on which the debtor contribution order is made.
- (3) If an application under subsection (1) is made, the debtor contribution order is suspended until the determination of that review by the Accountant in Bankruptcy.
- (4) If an application for a review under subsection (1) is made, the Accountant in Bankruptcy must—
  - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
  - (b) confirm, amend or revoke the debtor contribution order before the expiry of the period of 28 days beginning with the day on which the application is made.
- (5) The trustee or the debtor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (4)(b) before the expiry of the period of 14 days beginning with the date of the decision.

### **32D Effect of debtor contribution order**

- (1) The debtor must pay to the trustee any debtor's contribution which is not zero as—
  - (a) fixed by the Accountant in Bankruptcy in making the debtor contribution order, or
  - (b) varied in accordance with section 32F.
- (2) The requirement to pay the debtor's contribution applies irrespective of the debtor's discharge.
- (3) If the value of the debtor's estate and income when taken possession of by the trustee is sufficient to allow a distribution of the debtor's estate to meet in full all of the debts mentioned in section 51, any debtor contribution order ceases to have effect.

### **32E Deductions from debtor's earnings and other income**

- (1) Subsections (2) to (6) apply where under a debtor contribution order—
  - (a) the debtor is required to pay to the trustee an amount from the debtor's earnings or other income, or
  - (b) in accordance with section 32A(6), a third person is required to pay to the trustee money otherwise due to the debtor by way of income.
- (2) The debtor must give the person mentioned in subsection (3) an instruction to make—
  - (a) deductions of specified amounts from the debtor's earnings or other income, and
  - (b) payments to the trustee of the amounts so deducted.
- (3) The person mentioned is—

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- (a) in the case of an amount to be paid from the debtor's earnings from employment, the person by whom the debtor is employed,
  - (b) in the case of an amount to be paid from other earnings or income of the debtor, a third person who is required to pay the earnings or income to the debtor, and
  - (c) in the case mentioned in subsection (1)(b), the third person who is required to pay the income to the trustee.
- (4) The trustee may give the person mentioned in subsection (3) an instruction of the type mentioned in subsection (2) if—
- (a) the debtor fails to comply with the requirements imposed by that subsection, and
  - (b) the debtor fails to pay the debtor's contribution in respect of 2 payment intervals applying by virtue of the debtor contribution order.
- (5) A person mentioned in subsection (3) must comply with an instruction provided in accordance with subsection (2) or (4).
- (6) Where the person by whom the debtor is employed or another third person pays a sum of money to the trustee in accordance with this section, that person is discharged from any liability to the debtor to the extent of the sum so paid.
- (7) The Scottish Ministers may by regulations make provision about instructions to be provided under this section, including in particular—
- (a) the form in which an instruction must be made,
  - (b) the manner in which an instruction provided in accordance with subsection (2) or (4) affects the recipient of that instruction, and
  - (c) the consequence of any failure of a recipient of an instruction provided in accordance with subsection (2) or (4) to comply with the duty imposed by subsection (5).

### **32F Variation and removal of debtor contribution order by trustee**

- (1) The trustee may vary or quash a debtor contribution order—
- (a) on the application of the debtor, following any change in the debtor's circumstances,
  - (b) if the trustee considers it to be appropriate, following any change in the debtor's circumstances, or
  - (c) if the trustee considers it to be appropriate when—
    - (i) sending a report to the Accountant in Bankruptcy under section 54(4), or
    - (ii) granting a discharge under section 54A(2).
- (2) In deciding whether to vary or quash a debtor contribution order, the trustee must use the common financial tool to assess the debtor's contribution.
- (3) A decision by the trustee under subsection (1)(b) must not take effect on a day before the end of the period of 14 days beginning with the day on which the decision is made.
- (4) The trustee must notify in writing the persons mentioned in subsection (5) immediately following—
- (a) any variation or quashing of a debtor contribution order,

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(b) any refusal of an application.

(5) The persons are—

- (a) the debtor,
- (b) the Accountant in Bankruptcy (if the trustee is not the Accountant in Bankruptcy),
- (c) any third person required to make a payment under the debtor contribution order or under section 32E(5), and
- (d) any other interested person.

### **32G Payment break**

- (1) The trustee may, on the application of the debtor, extend the payment period of a debtor contribution order by granting a payment break.
- (2) A “payment break” is a period not exceeding 6 months during which payments under the debtor contribution order are deferred.
- (3) A debtor may apply for a payment break if—
  - (a) there has been a reduction of at least 50% in the debtor's disposable income (as determined using the common financial tool) as a result of any of the circumstances mentioned in subsection (4) arising in relation to the debtor, and
  - (b) the debtor has not previously applied for a payment break in relation to a debtor contribution order applying after the sequestration of the debtor's estate.
- (4) The circumstances are—
  - (a) a period of unemployment or change in employment,
  - (b) a period of leave from employment because of the birth or adoption of a child or the need to care for a dependant,
  - (c) a period of illness of the debtor,
  - (d) a divorce or dissolution of civil partnership,
  - (e) a separation from a person to whom the debtor is married or is the civil partner,
  - (f) the death of a person who, along with the debtor, cared for a dependant of the debtor.
- (5) An application for a payment break must specify the period during which the debtor wishes payments to be deferred.
- (6) If, in the opinion of the trustee, a payment break is fair and reasonable, the trustee may grant a payment break on such conditions and for such period as the trustee thinks fit.
- (7) The trustee must notify in writing the grant of a payment break to—
  - (a) the debtor,
  - (b) the Accountant in Bankruptcy (if the trustee is not the Accountant in Bankruptcy), and
  - (c) any third person required to make a payment under the debtor contribution order.

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- (8) If the trustee decides not to grant a payment break, the trustee must notify the debtor of that decision and of the reasons.
- (9) The payment period in a debtor contribution order is deemed to be varied by the addition to the period of any payment break granted under this section.

### **32H Sections 32F and 32G: review and appeal**

- (1) The debtor or any other interested person may apply to the Accountant in Bankruptcy for a review of a decision by the trustee under section 32F or 32G.
- (2) An application under subsection (1) must be made before the expiry of the period of 14 days beginning with the day on which the decision is made.
- (3) If an application under subsection (1) relates to a decision by the trustee under section 32F(1)(b), the decision is suspended until the determination of that review by the Accountant in Bankruptcy.
- (4) If an application for a review under subsection (1) is made, the Accountant in Bankruptcy must—
  - (a) take into account any representations made by an interested person before the expiry of the period of 21 days beginning with the day on which the application is made, and
  - (b) confirm, amend or revoke the decision before the expiry of the period of 28 days beginning with the day on which the application is made.
- (5) The trustee or the debtor may appeal to the sheriff against any decision of the Accountant in Bankruptcy under subsection (4)(b) before the expiry of the period of 14 days beginning with the date of the decision.”.

#### **Commencement Information**

- I2** S. 4 in force at 30.6.2014 for specified purposes by S.S.I. 2014/172, art. 2, Sch.
- I3** S. 4 in force at 1.4.2015 in so far as not already in force by S.S.I. 2014/261, art. 3 (with arts. 4-7, 12) (as amended by S.S.I. 2015/54, art. 2)

**Status:**

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