

BANKRUPTCY AND DEBT ADVICE (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Payments by debtor following sequestration

Section 3 – Debtor’s contribution: common financial tool

8. This section inserts a new section 5D into the 1985 Act which gives the Scottish Ministers the power to provide in regulations for a common financial tool for calculating the method used to assess the debtor’s income, the amount allowed to the debtor for expenditure and the amount of the debtor’s contribution (if any). An individual debtor is required to undertake to pay the contribution determined by the common financial tool in applying for sequestration or where the debtor did not apply for sequestration in the assessment following sequestration by a creditor. The Common Financial Tool etc. (Scotland) Regulations 2014¹ make the Common Financial Statement published by the Money Advice Trust, operated in accordance with the regulations, the common financial tool to be used for the purposes of the 1985 Act. The 2002 Act is also amended by section 3(2) to allow the tool to work with the DAS scheme².

Section 4 – Debtor contribution order

9. This section inserts 8 new sections to create a ‘debtor contribution order’, a single method for fixing the payments of a debtor’s contribution. A debtor contribution will be set in each case, even if the contribution payable is assessed at nil. This will allow the trustee to make a variation to the contribution if the debtor’s circumstances change within the 48 month period. Section 32B introduces a standard period of 48 months for most contributions taken from a debtor’s income following sequestration, subject to the ability to seek a variation to reduce or increase the amount of contributions in section 32E (‘variation and removal of debtor contribution order by trustee’). As at present, contributions from income can continue past the discharge of the debtor. There is provision for the contribution period to be shortened or ended if the debtor is able to pay all creditors, fees and statutory interest or if assets are sold to add funds to the sequestration bank account.
10. Section 32C provides for direct review and appeal of a debtor contribution order, including timescales and expiry periods in relation to this process. The debtor, trustee or any interested party can request that the Accountant and Bankruptcy review their decision. If dissatisfied with the result of the review then a trustee or the debtor can appeal to the sheriff. Section 32D orders the debtor to pay to the trustee any contribution which is more than zero and has been fixed by the Accountant in Bankruptcy or varied by the trustee.

¹ S.S.I. 2014/290 as amended by the Common Financial Tool etc. (Scotland) Amendment Regulations 2015.

² See the Debt Arrangement Scheme (Scotland) Regulations 2011 (S.S.I. 2011/141, amended by S.S.I. 2013/225) as amended in particular by regulations 4 and 8 and Schedule 1 to S.S.I. 2014/294.

11. Section 32E makes provision for a mechanism as in the DAS scheme for contributions to be deducted directly from earnings by way of employers and third parties, by the debtor giving the employer or third party an instruction, or by the trustee giving a direct instruction to the employer or third party if the debtor fails to pay contributions in respect of 2 payment intervals. Under 32E(7), the Scottish Ministers may by regulations make provision for the form to be used, how that instruction affects the recipient and the consequences of failing to comply with the instruction³.
12. As at present, a review of the contribution amount can be sought, e.g. on a change in the debtor's circumstances. Under the Act this can be sought from, or made by, the trustee, with provision for review by AiB and appeal to the sheriff. Provisions on application, variation and the consequences of a debtor contribution order are set out here. The procedure in these sections replaces income payment orders under section 32(2) of the 1985 Act (and income payment agreements). As at present for income payment orders, a debtor contribution order can be made irrespective of the statutory protection on bankruptcy for pension rights under sections 11 and 12 of the Welfare Reform and Pensions Act 1999.
13. The new section 32G (payment break), introduces the possibility of a debtor paying income in sequestration to seek a payment break of up to 6 months. Regulation 37(1) (h), (3) and (4) of the DAS Regulations provide for a payment break for individual debtors who have a debt payment programme in place. The Act will provide for a similar payment break which could be for up to 6 months, with the period of the contribution extended accordingly.

³ Provision has been made in regulation 8 of the [Bankruptcy \(Money Advice and Deduction from Income etc.\) \(Scotland\) Regulations 2014 \(S.S.I. 2014/296\)](#).