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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 397**

**The Bankruptcy (Scotland) Regulations 2016**

**PART 1**

**Money advisers**

**Approved categories of money advisers**

**4.** Subject to regulation 5, the following classes of persons are prescribed for the purposes of section 4(2)(b) of the Act as money advisers—

- (a) persons who—
  - (i) are qualified to act as insolvency practitioners in accordance with sections 390 of the Insolvency Act 1986<sup>(1)</sup> who are fully authorised, or partially authorised so to act in relation to individuals, within the meaning of 390A of that Act<sup>(2)</sup>; or
  - (ii) work for such an insolvency practitioner, who have been given authority by that insolvency practitioner to act on his or her behalf in providing money advice under the Act; and
- (b) persons who—
  - (i) work as money advisers for organisations which have been awarded accreditation at Type 2 level or above against the Scottish National Standards for Information and Advice Provision; or
  - (ii) are approved for the purposes of the Debt Arrangement Scheme<sup>(3)</sup>; or
  - (iii) work as money advisers for a citizens advice bureau which is a full member of the Scottish Association of Citizens Advice Bureaux – Citizens Advice Scotland; or
  - (iv) work as money advisers for a local authority.

**Persons who may not be approved money advisers**

**5.—(1)** The following persons may not be a money adviser—

- (a) a sheriff officer or messenger-at-arms, or an employee of such a person;
- (b) a person or body providing financial services, or financial advice other than money advice, in the course of a business or otherwise for profit, or an employee of such a person, unless the person is a—
  - (i) solicitor;

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(1) 1986 c.45. Section 390 was amended by the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 18; the Insolvency Act 2000 (c.39), schedule 4, paragraph 16(2); the Enterprise Act 2002 (c.22), schedule 21, paragraph 4; S.S.I. 2005/465, schedule 1, paragraph 18(3); the Mental Capacity Act 2005 (c.9), schedule 6, paragraph 31(3), schedule 7; the Tribunals, Courts and Enforcement Act 2007 (c.15), schedule 20, paragraph 6; S.I. 2009/1941, schedule 1, paragraph 78(4); the Deregulation Act 2015 (c.20) (“the 2015 Act”), section 17(2) and the Small Business, Enterprise and Employment Act 2015 (c.26), section 115.

(2) Section 390A was inserted by the 2015 Act, section 17(3).

(3) Under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17).

- (ii) chartered or certified accountant;
- (iii) a credit union registered under the Co-operative and Community Benefit Societies Act 2014<sup>(4)</sup> or the Industrial and Provident Societies Act 1965<sup>(5)</sup> by virtue of section 1 of the Credit Unions Act 1979<sup>(6)</sup>;
- (c) a person providing debt collection services, or an employee of such a person;
- (d) a person convicted of an offence involving theft, fraud or other dishonesty;
- (e) a person subject to a bankruptcy restrictions order (including an interim order) under section 155 or 160 of the Act<sup>(7)</sup> or subject to a bankruptcy restrictions order, or bound by a bankruptcy restrictions undertaking, under schedule 4A of the Insolvency Act 1986<sup>(8)</sup>;
- (f) a person in respect of whom a court has made a disqualification order under section 1, or who has had a disqualification undertaking accepted under section 1A, of the Company Directors Disqualification Act 1986<sup>(9)</sup>;
- (g) persons without a licence from the Money Advice Trust<sup>(10)</sup> to use the Common Financial Statement; or
- (h) persons whose approval is revoked or suspended under paragraph (2).
- (2) AiB may revoke or suspend the approval of a money adviser who fails without good cause—
  - (a) to apply the common financial tool in accordance with Part 3; or
  - (b) to comply with regulation 7.
- (3) AiB must provide written notice of the revocation or suspension to the money adviser (together with reasons for the decision to revoke or suspend).
- (4) AiB must provide written notice of the revocation or suspension to any debtor where it is known to AiB that the money adviser is acting as money adviser to that debtor.

### Other matters on which a debtor must obtain advice

6. The following are prescribed for the purposes of section 4(1)(d) of the Act as matters on which the debtor must obtain advice from a money adviser—

- (a) the income and expenditure of the debtor in accordance with the common financial tool;
- (b) the evidence required to confirm the debts of the debtor in making the debtor application;
- (c) the debt advice and information package<sup>(11)</sup>;
- (d) the options of a voluntary repayment plan, debt payment programme under the Debt Arrangement Scheme or a trust deed;
- (e) the consequences of sequestration and that an award of sequestration, if granted, is recorded in a public register and may result in one or more of—

(4) 2014 c.14.

(5) 1965 c.12. Section 1 is relevantly amended and repealed subject to savings and transitional provisions by the Co-operative and Community Benefit Societies Act 2014 (c.14).

(6) 1979 c.34. Section 1 was amended by S.I. 1996/1189, 2001/2617 and 2538 and 2002/1501 and the Co-operative and Community Benefit Societies Act 2014 (c.14), schedule 4, subject to savings and transitional provisions specified in section 151 and schedule 5 of that Act.

(7) Bankruptcy restrictions undertakings for Scotland were repealed by section 52 of the 2014 Act, subject to transitional arrangements (see article 4(4) of S.S.I. 2014/261, amended by S.S.I. 2015/54).

(8) 1986 c.45. Schedule 4A was inserted by the Enterprise Act 2002 (c.40), schedule 20, paragraph 1.

(9) 1986 c.46, amended by the Insolvency Act 2000 (c.39), sections 5 and 6 and schedule 4, paragraph 2; the Enterprise Act 2002 (c.40), section 204(3) and the Small Business, Enterprise and Employment Act 2015 (c.26), schedule 7, paragraph 2.

(10) The Money Advice Trust is a company registered in England and Wales with registered number 4741583, registered charity in England and Wales registration number 1099506.

(11) Referred to in section 3(2) of the Act and section 10(5) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17).

- (i) the debtor being refused credit, or being offered credit at a higher rate, whether before or after the date of the debtor being discharged;
- (ii) the debtor not being able to remain in his or her current place of residence;
- (iii) the debtor being required to relinquish property which the debtor owns;
- (iv) the debtor requiring to make contributions from income for the benefit of creditors;
- (v) damage to the debtor's business interests and employment prospects;
- (vi) the debtor still being liable for some debts;
- (vii) the debtor's past financial transactions being investigated; and
- (viii) other restrictions or requirements imposed on the debtor as a result of the debtor's own circumstances and actions.

#### **Money advice on debtor applications: procedure on evidence and information**

7.—(1) In advising under section 4 of the Act on a debtor application, a money adviser must obtain evidence of the debtor's income and expenditure.

(2) A money adviser must retain records in relation to the advice given to the debtor (including the evidence obtained under paragraph (1)) in making a debtor application, for 2 years from the date on which the advice was given.

(3) A money adviser must provide as required by AiB, information about a debtor's application (including evidence obtained under paragraph (1) or the debtor's consent to the application).

#### **Certificate for sequestration: form and manner**

8.—(1) A certificate for sequestration granted in accordance with section 9 of the Act must be in Form 2.

(2) The certificate must be signed and dated to the effect provided in that form—

- (a) by the money adviser; and
- (b) by the debtor.

(3) The certificate must be printed on the headed notepaper—

- (a) where the money adviser belongs to an organisation, of the organisation to which the money adviser belongs, or
- (b) in other cases, of the money adviser.

#### **Certificate for sequestration: fee**

9. No fee is chargeable for granting a certificate for sequestration.

#### **Certificate for sequestration: prescribed period**

10. The time period prescribed for a granted certificate for sequestration for the purposes of section 2(2)(f) or (8)(e)(ii) of the Act is 30 days.