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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2014 No.**

**The Common Financial Tool etc. (Scotland) Regulations 2014**

*Common Financial Tool*

**Common financial tool**

3.—(1) The specified method to be used to assess the debtor’s contribution in accordance with paragraphs (2) to (11) and regulation 4 (“the common financial tool”) is the Common Financial Statement.

(2) The debtor’s contribution is to be the debtor’s whole surplus income (assessed for instance weekly, fortnightly or monthly in accordance with the Common Financial Statement) in excess of the lower of—

- (a) the debtor’s expenditure over that period; or
- (b) the trigger figures for a reasonable amount of expenditure published from time to time as part of the Common Financial Statement.

(3) The Accountant in Bankruptcy, the trustee on variation or removal under section 32F of the 1985 Act<sup>(1)</sup>, the court, or the trustee acting under a protected trust deed, may allow an amount of expenditure to the debtor which exceeds those trigger figures if satisfied that the expenditure is reasonable.

(4) In determining what is reasonable under paragraph (3), evidence of why the expenditure is reasonable must be provided, or supplied by the debtor on request, to satisfy the Accountant in Bankruptcy, trustee or court with regard to that evidence and any explanation provided.

(5) Insofar as the income and expenditure of any other person may be taken into account in the Common Financial Statement, if either income or expenditure is so taken into account, both the income and the expenditure of that person must be taken into account.

(6) In calculating the debtor’s income where she or he is paid regularly by a period other than a week, fortnight or month, the debtor’s income shall be the income for that period times such multiplier as converts the period into a year divided by 52, 26 or 12 as the case may be.

(7) If the debtor has income solely from social security benefits and tax credits, no contribution is due.

(8) If the expenditure amount so determined is 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<sup>(2)</sup>) that income amount shall be allowed instead.

- (9) The expenditure amount determined under paragraph (3) must be sufficient to allow for—
- (a) aliment for the debtor;
  - (b) any obligation of aliment owed by the debtor (“obligation of aliment” having the same meaning as in the Family Law (Scotland) Act 1985<sup>(3)</sup>);

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<sup>(1)</sup> Inserted by section 4 of the 2014 Act.

<sup>(2)</sup> 1993 c.48.

<sup>(3)</sup> 1985 c.37.

- (c) any obligation of the debtor to make a periodical allowance to a former spouse or former civil partner; and
- (d) any obligation of the debtor to pay child support maintenance under the Child Support Act 1991<sup>(4)</sup>.

(10) The amount referred to in paragraph (9)(b) and (c) need not be sufficient for compliance with a subsisting order or agreement as regards the aliment or periodical allowance.

(11) Any person applying the common financial tool must have regard to guidance issued by the Accountant in Bankruptcy on—

- (a) the treatment of types of income and expenditure under paragraph (3);
- (b) how income and expenditure are to be verified by the money adviser and the trustee; and
- (c) the conduct of money advisers in carrying out their functions under the Act in relation to the common financial tool.

#### **Common financial tool: supporting statements and evidence**

4.—(1) Any debtor application, initial proposals under section 32A(2) of the 1985 Act, application for review or appeal of the debtor's contribution under section 32C or 32H of the 1985 Act<sup>(5)</sup> must contain or be accompanied by a statement—

- (a) that the money adviser or trustee, as the case may be, assessed the debtor's expenditure against the Common Financial Statement; and
- (b) explaining any instance in which those trigger figures are exceeded.

(2) Any statement setting out expenditure in excess of the trigger figures must be accompanied by evidence of why any expenditure allowed that exceeds the trigger figures is reasonable.

(3) Any statement that there has been a change in the debtor's financial circumstances must be accompanied by evidence that the debtor's circumstances were not as they were when last assessed for the purposes of this regulation.

#### **Money Advice Trust licence requirements: report**

5. Where it appears to the Accountant in Bankruptcy that in using the Common Financial Statement to advise on completion of a debtor application a money adviser has contravened a licence requirement imposed by the Money Advice Trust, the Accountant in Bankruptcy may notify the Trust of that matter.

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(4) 1991 c.48.

(5) Sections 32A, 32F, 32C and 32H of the 1985 Act were inserted by section 4 of the 2014 Act.