
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2014 No.

The Bankruptcy (Money Advice and Deduction from Income etc.) (Scotland) Regulations 2014

Citation and commencement

1.—(1) These Regulations may be cited as the Bankruptcy (Money Advice and Deduction from Income etc.) (Scotland) Regulations 2014.

(2) They come into force on 1st April 2015.

Interpretation

2. In these Regulations—

“the Act” means the Bankruptcy (Scotland) Act 1985;

“common financial tool” has the meaning given by section 5D(1) of the 1985 Act⁽¹⁾.

Money advisers

Approved categories of money advisers

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

(a) persons who—

(i) are qualified to act as insolvency practitioners in accordance with section 390 of the Insolvency Act 1986⁽²⁾; 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⁽³⁾; 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

⁽¹⁾ See the Common Financial Tool (Scotland) Regulations 2014 (S.S.I. 2014/[]).

⁽²⁾ 1986 c.45. Section 390 was amended by the Adults with Incapacity (Scotland) Act 2000 (asp 4), section 88(2), Schedule 5, paragraph 18; the Insolvency Act 2000 (c.39), section 8, Schedule 4, part 11, paragraph 16(2); the Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005, S.S.I. 2005/465, article 2, Schedule 1, paragraph 18(3); the Mental Capacity Act 2005 (c.9), section 67(1), (2), Schedule 6, paragraph 31(3), Schedule 7; and the Tribunals, Courts and Enforcement Act 2007 (c.15), section 108(3), Schedule 20, paragraph 6.

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

- (iv) work as money advisers for councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽⁴⁾.

Persons who may not be approved money advisers

4.—(1) The following persons may not be approved money advisers—

- (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;
 - (ii) chartered or certified accountant;
 - (iii) a credit union registered under the Co-operative and Community Benefit Societies Act 2014⁽⁵⁾ or the Industrial and Provident Societies Act 1965⁽⁶⁾ by virtue of section 1 of the Credit Unions Act 1979⁽⁷⁾;
- (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) or bound by a bankruptcy restrictions undertaking, under Schedule 4A (bankruptcy restrictions order and undertaking) to the Insolvency Act 1986⁽⁸⁾ or under section 56A or as the case may be 56F or 56G of the 1985 Act⁽⁹⁾;
- (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⁽¹⁰⁾;
- (g) persons without a licence from the Money Advice Trust⁽¹¹⁾ to use the Common Financial Statement style and format for income and expenditure categories under that title (and, where relevant, related spread sheets, budget sheets, trigger figures, guidance materials and notes) published by the Money Advice Trust; or
- (h) persons whose approval is revoked or suspended under paragraph (2).

(2) The Accountant in Bankruptcy 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 the Common Financial Tool Regulations 2014; or
- (b) to comply with regulation 6.

(3) The Accountant in Bankruptcy must provide written notice to a debtor of the revocation or suspension of the approval of a money adviser to the debtor.

(4) 1994 c.39.

(5) 2014 c.14 (“the 2014 Act”).

(6) 1965 c.12. Section 1 is relevantly amended and repealed subject to savings and transitional provisions by the 2014 Act.

(7) 1979 c.34. Section 1 was amended by S.I. 1996/1189, 2001/2617 and 2538 and 2002/1501 and the 2014 Act, Schedule 4, subject to savings and transitional provisions specified in section 151 and Schedule 5 to that Act).

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

(9) Sections 56A, 56F and 56G were inserted by section 2 of the 2007 Act. Section 56G and other references to bankruptcy restrictions undertakings are repealed by section 52 of the 2014 Act, subject to transitional arrangements.

(10) 1986 c.46, as amended by the Insolvency Act 2000 (c.39), sections 5 and 6 and Schedule 4, paragraph 2, and the Enterprise Act 2002 (c.40), section 204(3).

(11) 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.

Other matters on which a debtor must obtain advice

5. The following are prescribed for the purposes of section 5C(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 referred to in section 10(5) of the Debt Arrangement and Attachment (Scotland) Act 2002⁽¹²⁾;
- (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—
 - (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

6.—(1) In advising under section 5C of the Act⁽¹³⁾ 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 the Accountant in Bankruptcy, information about a debtor’s application (including evidence obtained under paragraph (1) or the debtor’s consent to the application).

Amendment of the Bankruptcy (Certificate for Sequestration) (Scotland) Regulations 2010

7.—(1) The Bankruptcy (Certificate for Sequestration) (Scotland) Regulations 2010⁽¹⁴⁾ are amended as follows.

- (2) Omit regulation 3 (authorised persons).
- (3) Omit regulation 4 (further provisions relating to certification).
- (4) In regulation 5 (form and manner of certificate)—
 - (a) in paragraphs (1) and (2), for “an authorised person” each time it occurs substitute “a money adviser”; and
 - (b) in paragraph (3)—

⁽¹²⁾ 2002 asp 17.

⁽¹³⁾ Inserted by section 1(2) of the 2014 Act.

⁽¹⁴⁾ S.S.I. 2010/397.

- (i) omit “in the case of the authorised person referred to in regulation 3(1)”;
- (ii) for “authorised person” both times it occurs substitute “money adviser”; and
- (iii) for “authorised person’s” substitute “money adviser’s”.

(5) For the Form set out in the Schedule to those Regulations (form of certificate for sequestration), substitute the Form set out in Schedule 1 to these Regulations.

Deduction from debtor’s earnings and other income

Deduction from debtor’s earnings and other income

8.—(1) This regulation applies where an instruction to make deductions of specified amounts from the debtor’s earnings or other income and payments to the trustee of the amounts so deducted is given by a debtor or trustee under section 32E(2) or (4) of the Act⁽¹⁵⁾.

(2) Except in the case of a subsequent variation under paragraph (7)—

- (a) an instruction given by the debtor under section 32E(2) must be in Form 1; and
- (b) an instruction given by the trustee under section 32E(4) must be in Form 2.

(3) On delivery of the instruction and while the instruction is in effect, the

- (a) person by whom the debtor is employed; or
- (b) third person required to pay to the trustee money otherwise due to the debtor by way of income (“third person”),

must deduct the sum specified in the instruction on every pay day or day on which a payment is to be made to the debtor, as the case may be, and pay the sum deducted to the trustee as soon as it is reasonably practicable to do so.

(4) Where an employer or third person fails without good cause to make a payment due under an instruction, the employer or third person is—

- (a) liable to pay on demand by a trustee the amount that should have been paid; and
- (b) not entitled to recover from a debtor the amount paid to the debtor in breach of the instruction.

(5) An employer or third person may on making a payment due under an instruction charge a fee equivalent to the fee chargeable for the time being under section 71 (employer’s fee for operating diligence against earnings) of the Debtors (Scotland) Act 1987⁽¹⁶⁾ and deduct that fee from the balance due to the debtor.

(6) The trustee must, without delay after the end of the payment period for the debtor under section 32B, notify in writing any person who has received an instruction in accordance with paragraph (2) (or varied in accordance with paragraph (7)) that the instruction has been recalled.

(7) Following any change to the debtor’s contribution, the debtor or trustee may give a variation instruction under section 32(2) or (4) of the Act in accordance with that change to the instruction mentioned in paragraph (2) in Form 3 to the employer or third person.

(8) In this regulation, references to Forms are to be construed as references to the form so numbered in Schedule 2 to these Regulations or a form substantially to the same effect, with such variation as circumstances may require.

⁽¹⁵⁾ Inserted by section 4 of the 2014 Act.

⁽¹⁶⁾ 1987 c.18.

Minor and consequential amendments

Amendment of the 1985 Act: family home not to reinvest (gratuitous alienation)

9. For section 39A(3)(g) of the Act(17) substitute—

“(g) the trustee has commenced an action under section 34 of this Act in respect of any right or interest mentioned in subsection (1) above or the trustee has not known about the facts giving rise to a right of action under section 34 of this Act, provided the trustee commences such an action reasonably soon after the trustee becomes aware of such right.”.

Revocations and debtor applications before 1st April 2015

Revocation

10. The Bankruptcy (Scotland) Act 1985 (Low Income, Low Asset Debtors etc.) Regulations 2008(18) (“the 2008 Regulations”) and regulation 18 of the Welfare Reform (Consequential Amendments) (Scotland) (No. 2) Regulations 2013(19) are revoked, subject to regulation 11.

Debtor applications before 1st April 2015 (low income, low asset debtors)

11. The regulations revoked by regulation 10, except for regulation 4 of the 2008 Regulations, continue to apply to debtor applications made before 1st April 2015.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

(17) Inserted by S.S.I. 2008/81.

(18) S.S.I. 2008/81, amended by S.S.I. 2013/137.

(19) S.S.I. 2013/137.