
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2016 No.

The Bankruptcy (Scotland) Regulations 2016

PART 3

Debtor's contribution

Common financial tool

15.—(1) The specified method to be used to assess the debtor's contribution in accordance with paragraphs (2) to (11) and regulations 16 and 17 ("the common financial tool") is the Common Financial Statement.

(2) Subject to paragraphs (3) and (7), 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 trigger figures for a reasonable amount of the debtor's expenditure published from time to time as part of the Common Financial Statement; or
- (b) the debtor's expenditure over that period (for each relevant Common Financial Statement category of expenditure).

(3) AiB, the trustee on variation or removal under section 95 of the Act, the court, or the trustee acting under a protected trust deed—

- (a) may allow an amount of expenditure to the debtor which exceeds those trigger figures if satisfied that the expenditure is reasonable; and
- (b) must allow the debtor to decide to retain an additional amount of income in accordance with regulation 16 towards contingencies which may arise.

(4) In determining what is reasonable under paragraph (3)(a), evidence of why the expenditure is reasonable must be provided, or supplied by the debtor on request, to satisfy AiB, the 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(1)) that income amount shall be allowed instead.

(9) The expenditure amount determined under paragraph (3)(a) 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⁽²⁾);
 - (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⁽³⁾.
- (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 AiB 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.

⁽²⁾ 1985 c.37.
⁽³⁾ 1991 c.48.