
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 261

**The Bankruptcy and Debt Advice (Scotland) Act 2014
(Commencement No. 2, Savings and Transitionals) Order 2014**

Savings and transitional arrangements

Common financial tool

6.—(1) This article applies to sequestrations to which article 4(1)(a) or (b) applies, unless they meet the conditions under section 5A of the 1985 Act (low income, low asset debtors)(1).

(2) Where an application is made on or after 1st April 2015 for variation of—

- (a) an income payment order, under section 32(4) of the 1985 Act; or
- (b) an income payment agreement, under section 32(4G)(b) of that Act on a change in the debtor's circumstances,

the sheriff must have regard to the common financial tool(2).

(3) Where on or after 1st April 2015 a trustee is considering entering into a written agreement to vary an income payment agreement under section 32(4G)(a) of the 1985 Act on a change in the debtor's circumstances, the trustee must have regard to the common financial tool.

(4) In so applying the common financial tool, it is modified as follows—

- (a) regulations made under section 5D of the 1985 Act (assessment of debtor's contribution)(3) apply as if for any reference to variation or removal under section 32F of the 1985 Act(4) there were substituted a reference to variation or recall under section 32(4) of the 1985 Act; and
- (b) any provision of those regulations in pursuance of section 5D(3) to (6) of the 1985 Act (assessment of debtor's contribution) does not apply(5).

(5) For the avoidance of doubt this article does not prevent a sheriff or trustee having regard to other factors, including the amount initially determined by the order or provided for in the agreement (or any extant variation of either).

(6) The introduction of the common financial tool is not itself a change in the debtor's circumstances for the purposes of this article (or section 32(4) of the 1985 Act).

(1) Section 5A was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) ("the 2007 Act"), section 15(2) and is repealed by schedule 4 to the Act.

(2) The common financial tool is made under section 5D of the 1985 Act inserted by section 3 of the Act.

(3) Inserted by section 3 of the Act.

(4) Inserted by section 4 of the Act.

(5) Equivalent provisions apply on the making or variation of an income payment order under section 32(2) of the 1985 Act, in section 32(2A) and (3) of that Act.