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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 290**

**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.

Protected Trust Deeds

#### **Amendments to Protected Trust Deeds (Scotland) Regulations 2013**

6. The Protected Trust Deeds (Scotland) Regulations 2013<sup>(6)</sup> are amended in accordance with regulations 7 to 10.

#### **Common Financial Tool: consequential amendments**

7.—(1) After the definition of “Common Financial Statement” in regulation 2 (interpretation), insert—

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

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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.

(6) S.S.I. 2013/318.

(2) In regulation 7(1)(c) (statements in relation to trust deed) after “benefit of creditors” insert “, including any contribution required by the common financial tool where the debtor is a living individual.”

(3) In regulation 8 (payment of debtor’s contribution)—

(a) at the end of paragraph (1), insert “, as required by the common financial tool where the debtor is a living individual”; and

(b) in paragraph (5), for “paragraph (4)” substitute “paragraphs (1) and (4)”.

(4) In regulation 10(1)(d)(ii) (documents to be sent to creditors), for “in the style and format of the Common Financial Statement” substitute “, in Form 2A where the debtor is a living individual”.

(5) For regulation 11(1)(h) (registration of the trust deed etc.) substitute—

“(h) where a debtor who is a living individual makes a contribution from income, a statement—

(i) that the amount of that contribution is in accordance with the common financial tool as assessed by the trustee; and

(ii) any evidence or explanation required in applying the common financial tool;”

(6) For regulation 11(2)(c) substitute—

“(c) the Accountant is satisfied in accordance with the common financial tool with the amount of the contribution determined.”.

### **Administration**

**8.—**(1) After regulation 21(2) (administration of trust), insert—

“(2A) If the trustee receives within 21 days after the date on which the Form 4 was sent notification in writing from—

(a) a majority in number; or

(b) not less than one third in value, of creditors that they object to the recommended course of action in the Form 4 where the expected final dividend to ordinary creditors is 20% lower than the expected dividend to ordinary creditors set out in the Form 3, the trustee must request a direction under regulation 19(3) as to how the trust must be administered.”.

(2) In regulation 23(3)(a) (approval of increase in fixed fee), for “majority in number” substitute “majority in value”.

(3) In regulation 24(8) (refusal of trustee to apply for debtor’s discharge), for “at the end of the period of 48 months beginning with the day on which the trust deed was granted” substitute “as soon as reasonably practicable after the end of the period for which payments are required under the trust deed”.

### **Remuneration for outlays before grant of trust deed**

**9.** At the end of regulation 23(1)(c) (remuneration to which trustee entitled), insert “or before that date on a single valuation of any specified heritable estate”.

### **Minor amendments**

**10.—**(1) In regulation 19(5) (directions to trustee under protected trust deed: period of compliance), for “regulation 27(1)(b)” substitute “regulation 27(1)(c)”.

(2) In regulation 23(1) (remuneration to which trustee entitled) after “consist” insert “only”.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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(3) In regulation 23(7) (remuneration: audit fee) for “Bankruptcy Fees etc. (Scotland) Regulations 2012” substitute “Bankruptcy Fees (Scotland) Regulations 2014(7)”.

(4) In regulation 24(5) (discharge of debtor), after “later” insert “than”.

(5) In the Schedule (forms to be used in connection with protected trust deeds)—

(a) in the table of forms, after the entry for Form 2, insert—

“2A	Income and expenditure	Regulation 10(1)(d)(ii)”;
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(b) after Form 2 insert Form 2A set out in the Schedule to these Regulations; and

(c) for—

(i) Form 3 (trust deed protection proposal);

(ii) Form 4 (trustee’s statement of status of a protected trust deed);

(iii) Form 6 (application to creditors for discharge of trustee); and

(iv) Form 7 (trustee statement of realisation and distribution),

substitute respectively Forms 3, 4, 6 and 7 set out in the Schedule to these Regulations.

#### **Trust deeds granted before 1st April 2015**

**11.** These Regulations do not apply to trust deeds granted before 1st April 2015; and the Protected Trust Deeds (Scotland) Regulations 2013 as in force immediately before that date continue to apply to those trust deeds.