
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the method for determining an appropriate amount of a living debtor's income to be paid to a trustee after sequestration of the debtor's estate, known as the "common financial tool" in the Bankruptcy (Scotland) Act 1985 ("the 1985 Act"), as amended by the Bankruptcy and Debt Advice (Scotland) Act 2014.

The Regulations also make a number of other amendments to related legislation in the Protected Trust Deeds (Scotland) Regulations 2013 ("the PTD Regulations").

The common financial tool is to be used in making debtor contribution orders under sections 32A to 32H of the 1985 Act, which fix the contribution which a debtor must pay from income received after sequestration for the benefit of creditors. Those orders replace income payment orders under section 32(2) of the 1985 Act. The common financial tool may also be taken into account on variation of an income payment order, though the sheriff may have regard to other factors too.

Regulations 3 and 4 provide for the common financial tool, providing for how income and expenditure of the debt is established by reference principally to the Common Financial Statement published by the Money Advice Trust (the "CFS").

The debtor's surplus income in excess of the lower of the debtor's expenditure, or the "trigger figures" which are part of the CFS for a reasonable amount of expenditure is the basis of the contribution, and an amount of reasonable expenditure may be allowed to the debtor which exceeds those trigger figures. Guidance is also to be set out by the Accountant in Bankruptcy on types of income and expenditure, verifying income and expenditure and money advisers' functions.

Supporting statements, explanation and evidence is required (regulation 4). The Accountant in Bankruptcy can in some cases related to debtor applications notify the Money Advice Trust where it appears money advisers have breached licence restrictions (regulation 5).

Regulations 6 to 10 make changes to the PTD Regulations arrangements to protect debtors entering into trust deed arrangements with their creditors from other creditors. Consequential changes are made for the introduction of the common financial tool under the powers in paragraph 5 of Schedule 5 to the 1985 Act (regulation 7), building on the fact that the PTD Regulations already require users to use the Common Financial Statement.

Other miscellaneous and minor amendments are made to the PTD Regulations, including to require trustees to seek a direction from the Accountant in Bankruptcy where creditors object to a recommended course of action where a trustee proposes a lower dividend in Form 4 submitted under the PTD Regulations (regulation 8(1)). A single valuation of specified heritable estate before a trust deed was granted is allowed as an outlay of the trust deed (regulation 9).

These Regulations do not apply to trust deeds granted before 1st April 2015 (regulation 11).

A Business and Regulatory Impact Assessment has been prepared for these Regulations. Copies can be obtained from the Accountant in Bankruptcy's website: <http://www.aib.gov.uk>.