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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 397**

**The Bankruptcy (Scotland) Regulations 2016**

**PART 3**

**Debtor's contribution**

**116 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—

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(1) 1993 c.48.

- (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.

#### **Common financial tool: contingency allowance**

16.—(1) The amount of income which the debtor may decide to retain towards contingencies under regulation 15(3)(b) is—

- (a) up to 10% of the weekly, fortnightly or monthly (or the equivalent amount for another period) debtor’s contribution assessed under regulation 15, before any calculation is made under this regulation for the purposes of regulation 15(3)(b);
- (b) subject to a maximum amount of £4.62 per week, £9.23 per fortnight, £20 per month or the equivalent maximum for such other period, as the case may be.

(2) The amount to be retained under paragraph (1) must be treated as an item of expenditure for the purposes of the relevant form setting out the debtor’s expenditure in applying the common financial tool(4).

#### **Common financial tool: supporting statements and evidence**

17.—(1) Any debtor application, initial proposals under section 90(2) of the Act, or application for review or appeal of the debtor’s contribution under section 92 or 97 of the Act 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 such 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) Paragraphs (1) and (2) do not apply to an application for review or appeal mentioned in paragraph (1) by an interested person other than the debtor or the trustee.

(2) 1985 c.37.

(3) 1991 c.48.

(4) Form 1 in schedule 1; Form 2A in the Protected Trust Deeds (Forms) (Scotland) Regulations 2016 (S.S.I. 2016/398); and Form 1 of the Debt Arrangement Scheme (Scotland) Regulations 2011 (S.S.I. 2011/141), as amended by S.S.I. 2014/294.

(4) Any statement for the purposes of assessment by the common financial tool 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 those purposes.

#### **Money Advice Trust licence requirements: report**

**18.** Where it appears to AiB 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, AiB may notify the Trust of that matter.

#### **Debtor contribution orders**

**19.—(1)** A debtor contribution order under section 90(1)(a) of the Act must be in Form 17.

(2) A debtor contribution order under section 90(1)(b) of the Act must be in Form 18.

#### **Deduction from debtor's earnings and other income**

**20.—(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 94(2) or (4) of the Act.

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

(a) an instruction given by the debtor under section 94(2) must be in Form 19; and

(b) an instruction given by the trustee under section 94(4) must be in Form 20.

(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 of the Debtors (Scotland) Act 1987<sup>(5)</sup> (employer's fee for operating diligence against earnings) 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 91 of the Act, 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 94(2) or (4) of the Act in accordance with that change to the instruction mentioned in paragraph (2) in Form 21 to the employer or third person.

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(5) 1987 c.18. A sum was specified in S.S.I. 2006/116.

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**Status:** *This is the original version (as it was originally made).*

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