

Draft Regulations laid before the Scottish Parliament under section 225(4)(a) of the Bankruptcy (Scotland) Act 2016, section 62(4) of the Debt Arrangement and Attachment (Scotland) Act 2002, and section 72(2) and (3)(a)(iib),(iic) and (b) of the Bankruptcy (Scotland) Act 1985 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2018 No.

BANKRUPTCY DEBT

The Common Financial Tool (Scotland) Regulations 2018

Made - - - - 2018

Coming into force - - 29th October 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 4(2)(b), 89, 170(1)(d)(ii), 194(1) and (3), 224(1) and 225(2) of the Bankruptcy (Scotland) Act 2016⁽¹⁾ (“the 2016 Act”), sections 2(3)(d), 7(2)(bd) and 62(2)(a) of the Debt Arrangement and Attachment (Scotland) Act 2002⁽²⁾ (“the 2002 Act”), sections 5C(2)(b), 5D, 71C, 72(1A) and paragraph 5 of schedule 5 of the Bankruptcy (Scotland) Act 1985⁽³⁾ (“the 1985 Act”), and all other powers enabling them to do so.

In accordance with section 225(4)(a) of the 2016 Act, section 62(4) of the 2002 Act⁽⁴⁾ and section 72(2) and (3)(a)(iib), (iic) and (b) of the 1985 Act⁽⁵⁾, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

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- (1) [2016 asp 21](#)
 (“the 2016 Act”). Section 228(1) of the 2016 Act contains a definition of “prescribed” relevant to the powers under which these Regulations are made.
- (2) [2002 asp 17](#)
 (“the 2002 Act”), as amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 ([asp 3](#))
 (“the 2007 Act”), sections 173, 209(1), 211 and 212 and schedule 4, paragraph 10, schedule 5, paragraph 30 and schedule 6, Part 1. Section 7(2)(bd) was inserted by the Bankruptcy and Debt Advice (Scotland) Act 2014 ([asp 11](#))
 (“the 2014 Act”), section 3(2). Section 9 of the 2002 Act contains a definition of “prescribed” relevant to the powers under which these Regulations are made.
- (3) [1985 c.66](#)
 (“the 1985 Act”). The 1985 Act is repealed by the 2016 Act, schedule 9, Part 1; by virtue of section 234(3)(a) and (b) of the 2016 Act the powers to make amendments under which these Regulations are made are not affected by that repeal in so far as they relate to the operation of the 1985 Act in relation to sequestrations initiated or trust deeds executed before 30th November 2016. Sections 5C, 5D, 71C and 72(1A) were inserted by sections 1(2), 3(1), 36 and paragraph 34 of schedule 3 of the 2014 Act. Paragraph 5 of Schedule 5 was amended by section 20 of the 2007 Act. Section 73(1) of the 1985 Act contains a definition of “prescribed” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 ([c.46](#)).
- (4) Section 62(4) was amended by the 2014 Act, schedule 3, paragraph 38(b) and has been modified by paragraph 5(2) of schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010 ([asp 10](#)).

Citation and commencement

1. These Regulations may be cited as the Common Financial Tool (Scotland) Regulations 2018 and come into force on 29th October 2018.

Interpretation

2. In these Regulations –

“the 1985 Act” means the Bankruptcy (Scotland) Act 1985;

“the 2016 Act” means the Bankruptcy (Scotland) Act 2016;

“the 2011 DAS Regulations” means the Debt Arrangement Scheme (Scotland) Regulations 2011(6); and

“AiB” means the Accountant in Bankruptcy (within the meaning given by section 199 of the 2016 Act).

Amendment of the Bankruptcy (Scotland) Regulations 2016

3.—(1) The Bankruptcy (Scotland) Regulations 2016(7) are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) omit the definition of “Common Financial Statement”;

(b) after the definition of “debtor’s contribution” omit “and”; and

(c) after the definition of “the Keeper” insert—

““single financial guidance body” means the body established under section 1 (the single financial guidance body) of the Financial Guidance and Claims Act 2018(8) (irrespective of any changes to the name of that body); and

“Standard Financial Statement” means the style and format for income and expenditure categories under that title (and, where relevant, related spreadsheets, budget sheets, trigger figures, guidance materials and notes) published by the Money Advice Service(9) or by the single financial guidance body.”.

(5) Sections 72(2) and (3) were inserted by section 35(c) of the 2007 Act and amended by paragraph 34 of schedule 3 of the 2014 Act and have been modified by paragraph 5(2) of schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (“the 2010 Act”). The powers to make these Regulations are exercised together by virtue of sections 33(2) and (3) of the 2010 Act.

(6) S.S.I. 2011/141
, relevantly amended by
S.S.I. 2013/225
and
S.S.I. 2014/294

(7) S.S.I. 2016/397

(8) 2018 c.10

(9) “The Money Advice Service” is a limited company registered in England and Wales with registered number is 07172704. Its registered office is at 120 Holborn, London, England EC1N 2TD. The Money Advice Service is the consumer financial education body originally established by the Financial Services Authority under section 6A of the Financial Services and Markets Act 2000 (c.8) (“the 2000 Act”). Section 6A was inserted by section 2(5) of the Financial Services Act 2010 (c.28) and repealed by the Financial Services Act 2012 (c.21)

(3) In regulation 5(1)(g) (persons who may not be approved money advisers) for “from the Money Advice Trust to use the Common Financial Statement” substitute “authorising their use of the Standard Financial Statement, where such a licence is required”.

(4) In regulation 15 (common financial tool)—

- (a) in paragraph (1) for “Common Financial Statement” substitute “Standard Financial Statement”;
- (b) in paragraph (2) for “Common Financial Statement” each time it occurs substitute “Standard Financial Statement”;
- (c) in paragraph (3)(b) for “in accordance with regulation 16 towards contingencies which may arise” substitute “as savings in accordance with and up to the maximum permitted by the Standard Financial Statement”; and
- (d) in paragraph (5) for “Common Financial Statement” substitute “Standard Financial Statement”.

(5) In regulation 16 (common financial tool: contingency allowance)—

- (a) paragraph (1) is revoked; and
- (b) in paragraph (2), for “under paragraph (1)” substitute “as savings as mentioned in regulation 15(3)(b)”.

(6) In regulation 17(1)(a) (common financial tool: supporting statements and evidence) for “Common Financial Statement” substitute “Standard Financial Statement”.

(7) In regulation 18 (Money Advice Trust licence requirements: report)—

- (a) for “Common Financial Statement” substitute “Standard Financial Statement”;
- (b) for “Money Advice Trust” substitute “Money Advice Service or single financial guidance body”; and
- (c) for “the Trust” substitute “the body that imposed the licence requirement”.

(8) In the title to regulation 18, for “Money Advice Trust” substitute “Standard Financial Statement”.

(9) In schedule 1 (forms)—

- (a) in Form 1 (debtor application), for section 7 (income) and section 8 (expenditure) substitute sections 7 and 8 set out in schedule 1 of these Regulations; and
- (b) in Form 23 (debtor’s account of current state of affairs) for section Q6 (income and expenditure) substitute section Q6 set out in schedule 2 of these Regulations.

Amendment of the Protected Trust Deeds (Forms) (Scotland) Regulations 2016

4. In the schedule of the Protected Trust Deeds (Forms) (Scotland) Regulations 2016⁽¹⁰⁾, for Form 2A (income and expenditure) substitute Form 2A set out in schedule 3 of these Regulations.

Amendment of the Debt Arrangement Scheme (Scotland) Regulations 2011

5.—(1) The 2011 DAS Regulations are amended as follows.

(2) In regulation 2(1) (interpretation: general)—

- (a) omit the definition of “Common Financial Statement”; and

, which substituted for Part 1 of the 2000 Act a new Part 1A, section 3S of which makes provision relating to the functions of the consumer financial guidance body.

(10) S.S.I. 2016/398

(b) after the definition of “sheriff”, insert—

““the single financial guidance body” means the body established under section 1 (the single financial guidance body) of the Financial Guidance and Claims Act 2018 (irrespective of any changes to the name of that body);

“Standard Financial Statement” means the style and format for income and expenditure categories under that title (and, where relevant, related spreadsheets, budget sheets, trigger figures, guidance materials and notes) published by the Money Advice Service or by the single financial guidance body;”.

(3) In regulation 20(2B)(a) (application for approval) for “Common Financial Statement” substitute “Standard Financial Statement”.

(4) In schedule 1 (forms), in Form 1 (application for approval of a debt payment programme: individuals), in section 5 (financial statement of the debtor) for the material from the heading “5. Financial statement of the debtor(s) (the Common Financial Tool)” to the end of the material before section 5b substitute section 5a set out in schedule 4 of these Regulations.

Sequestrations and trust deeds before 29th October 2018

6.—(1) Except as mentioned in paragraphs (2) to (4) and (7), these Regulations have no effect in relation to—

- (a) sequestrations for which the petition was presented or the debtor application was made before, or
- (b) trust deeds executed before,

29th October 2018.

(2) These Regulations have effect where—

- (a) an application is made on or after 29th October 2018 under section 95 of the 2016 Act to vary or quash a debtor contribution order; or
- (b) a trustee is considering on or after that date under that section whether to vary or quash a debtor contribution order.

(3) These Regulations have effect where—

- (a) an application is made on or after 29th October 2018 under section 32F of the 1985 Act⁽¹¹⁾ to vary or quash a debtor contribution order; or
- (b) a trustee is considering on or after that date under that section whether to vary or quash a debtor contribution order.

(4) These Regulations have effect where—

- (a) an application is made on or after 29th October 2018 under section 32(4) of the 1985 Act⁽¹²⁾ for variation of an income payment order,
- (b) an application is made on or after that date under section 32(4G)(b) of the 1985 Act⁽¹³⁾ for variation of an income payment agreement, or

⁽¹¹⁾ Section 32F was inserted by section 4 of the 2014 Act and subsequently repealed by schedule 9 of the 2016 Act, subject to saving provision in section 234(3) of that Act, under which it continues to apply in relation to sequestrations petitioned or applied for or trust deeds executed before 30th November 2016.

⁽¹²⁾ Section 32(4), relevantly amended by paragraph 1 of Part 1 of schedule 6 of the 2007 Act, was repealed by paragraph 1 of schedule 4 of the 2014 Act, subject to transitional provisions and savings specified in articles 4(1), (2) and 12 of [S.S.I. 2014/261](#)

which provide that the 1985 Act as in force immediately before 1st April 2015 continues to apply and have effect in relation to sequestrations petitioned or applied for and trust deeds executed before 1st April 2015.

⁽¹³⁾ Section 32(4G) was inserted by section 18(4) of the 2007 Act and subsequently repealed on the same basis as section 32(4) (described above).

(c) 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.

(5) For the avoidance of doubt paragraphs (2) to (4) do not prevent a trustee, AiB or a sheriff having regard to other factors, including the amount initially determined by the order or provided for in an income payment agreement (or any extant variation of either).

(6) The adoption of the Standard Financial Statement as the common financial tool is not itself a change in the debtor's circumstances for the purposes of section 95 of the 2016 Act or sections 32(4) or 32F of the 1985 Act.

(7) Schedule 5 (which modifies saved regulations for sequestration and trust deeds before 30th November 2016) has effect subject to paragraphs (1) to (6).

Debt payment programmes before 29th October 2018

7.—(1) Except as mentioned in paragraphs (2) and (3), these Regulations have no effect in relation to debt payment programmes in respect of which an application for approval was made under the 2011 DAS Regulations before 29th October 2018.

(2) Where an application is made on or after 29th October 2018 for variation of a debt payment programme on a material change in the circumstances of a debtor, the DAS Administrator must have regard to the Standard Financial Statement.

(3) In so applying the Standard Financial Statement, for the avoidance of doubt—

- (a) this regulation does not prevent the DAS Administrator having regard to other factors, including the payments previously made under the debt payment programme; and
- (b) the Standard Financial Statement is not itself a material change in the circumstances of the debtor for the purposes of regulation 37(1) of the 2011 DAS Regulations.

(4) In this regulation, “the DAS Administrator” has the following meaning given in the 2011 DAS Regulations—

- (a) the Scottish Ministers; or
- (b) any person or body who may exercise the functions of the Scottish Ministers by virtue of an order made under section 8 (functions of the Scottish Ministers) of the Debt Arrangement and Attachment (Scotland) Act 2002(14).

St Andrew's House, Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

(14) 2017 asp 17

. See

S.S.I. 2004/448

, by virtue of which the Accountant in Bankruptcy may act as DAS Administrator.