

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

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2015 No.

INSOLVENCY

BANKRUPTCY

DEBT

**The Common Financial Tool etc. (Scotland) Amendment
Regulations 2015**

Made - - - - 2015

Coming into force - - 1st April 2015

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 5D, 71C and 72(1A) of and paragraph 5 of Schedule 5 to the Bankruptcy (Scotland) Act 1985(a) (“the 1985 Act”), section 7(2)(bd) of the Debt Arrangement and Attachment (Scotland) Act 2002(b) (“the 2002 Act”) and all other powers enabling them to do so.

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

Citation and commencement

1. These Regulations may be cited as the Common Financial Tool etc. (Scotland) Amendment Regulations 2015 and come into force on 1st April 2015.

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- (a) 1985 c.66 (“the 1985 Act”). Section 5D was inserted by section 3 of the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11) (“the 2014 Act”). Section 71C was inserted by section 36 of the 2014 Act. Section 72(1A) was inserted by the 2014 Act, schedule 3, paragraph 34(a). Paragraph 5 of Schedule 5 to the 1985 Act was amended by section 20 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the 2007 Act”), section 13(2) of the Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6) and schedule 4 to the 2014 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).
- (b) 2002 asp 17, as amended by 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 2014 Act, section 3(2).
- (c) Section 72(3) was amended by the 2014 Act, schedule 3, paragraph 34 and schedule 4. Section 62(4) was amended by the 2014 Act, schedule 3, paragraph 38(b). Sections 72(2) and (3)(a)(iic) and (b) and 62(4) have been modified by paragraph 5(2) of schedule 3 to 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 section 33(2) of the 2010 Act.

Amendment of the Common Financial Tool etc. (Scotland) Regulations 2014

2. The Common Financial Tool etc. (Scotland) Regulations 2014(a) are amended as follows.

Contingency allowance etc.

3.—(1) In regulation 3(1) (common financial tool), for “regulation 4” substitute “regulations 3A and 4”.

(2) For regulation 3(3) substitute—

“(3) The Accountant in Bankruptcy, the trustee on variation or removal under section 32F of the 1985 Act(b), 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 3A towards contingencies which may arise.”.

(3) In regulation 3(4) and (9), for “paragraph (3)” substitute “paragraph (3)(a)”.

(4) After regulation 3 insert—

“Common financial tool: contingency allowance

3A.—(1) The amount of income which the debtor may decide to retain towards contingencies under regulation 3(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 3, before any calculation is made under this regulation for the purposes of regulation 3(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(c).”.

Minor amendments

4.—(1) In regulation 2(1) (interpretation) omit “—(1)”.

(2) In regulation 3(2) (debtor’s expenditure and trigger figures)—

- (a) for “The” substitute “Subject to paragraphs (3) and (7), the”; and
- (b) for sub-paragraph (a) and (b) substitute—

“(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) In regulation 3(11)(c) (common financial tool guidance), for “the Act” substitute “the 1985 Act”.

(4) In regulation 4 (supporting statements and evidence)—

- (a) in paragraph (2) for “Any statement” substitute “Any such statement”;

(a) S.S.I. 2014/290.

(b) Inserted by section 4 of the 2014 Act.

(c) Form 14 in the Bankruptcy (Scotland) Regulations 2014 (S.S.I. 2014/225); Form 2A in the Protected Trust Deeds (Scotland) Regulations 2013 (S.S.I. 2013/318), as amended by S.S.I. 2014/290; and Form 1 of the Debt Arrangement Scheme (Scotland) Regulations 2011 (S.S.I. 2011/141), as amended by S.S.I. 2014/294.

(b) after paragraph (2) insert—

“(2A) 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.”; and

(c) in paragraph (3)—

(i) after “Any statement” insert “for the purposes of assessment by the common financial tool”; and

(ii) for “the purposes of this regulation” substitute “those purposes”.

(5) In regulation 7(5), for regulation 11(1)(h) of the Protected Trust Deeds (Scotland) Regulations 2013(a) (items to be sent for registration of trust deed) to be substituted, substitute—

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

(i) a statement 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) In regulation 8(1), for regulation 21(2A) of the Protected Trust Deeds (Scotland) Regulations 2013 (administration of trust: creditor objections) to be inserted, substitute—

“(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.”.

(7) In regulation 9 (remuneration for outlays before grant of trust deed) for “any specified heritable estate” substitute “any item of the debtor’s heritable estate specified or valued in such a valuation”.

(8) In the Schedule—

(a) in Note 2 to Form 3 (trust deed protection proposal and trustee’s application) after “employed” insert “or engaged”; and

(b) for Form 4 (trustee’s statement of status of a protected trust deed) substitute the Form 4 set out in the Schedule to these Regulations.

Name

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
Date

(a) S.S.I. 2013/318, as amended by S.S.I. 2014/290.

SCHEDULE

Regulation 4(8)(b)

Trustee’s statement of status of a protected trust deed – Form 4

“

Form 4

Regulation 21(2)

The Protected Trust Deeds (Scotland) Regulations 2013

TRUSTEE’S STATEMENT OF STATUS OF A PROTECTED TRUST DEED

For year_____ (insert year number) of trust deed

Statement to debtor, creditors and The Accountant in Bankruptcy (see Note 1)

AiB Reference Number:

Insert debtor’s name
Insert debtor’s address

Town
County
Post Code

On _____ (insert date) conveying *his/her estate to me

Insert insolvency practitioner’s name
Insert business address

Town
County
Post Code

as trustee for the benefit of *his/her creditors generally

* delete as appropriate

I expect this trust deed will be completed by _____ (insert date).

Statement of performance of protected trust deed (PTD):

Table with 6 columns: Row identifier, Description, Actual in Year, Total to date (Note 2), Final Expected, and empty cell. Row 1: A, Number of Contributions in-gathered, [blank], [blank], [blank], [blank]

B	Total realisation from contributions	£	£	£	
C	Total Realisation from moveable assets	£	£	£	
D	Total realisation from heritable assets	£	£	£	
E	Total realisation from assets	£	£	£	C + D
F	Bank interest	£	£	£	
G	Gross realisation	£	£	£	B + E + F + S
H	Trustee's remuneration taken (fixed administration fee)	£	£	£	See Note 3
I	Trustee's remuneration taken (% of assets and contributions realised)	£	£	£	See Note 4
J	Outlays (including statutory fees + third party fee)	£	£	£	
K	Total cost of administration	£	£	£	H + I + J
L	Net realisation	£	£	£	G - K
M	Debt due to preferred creditors				
N	Debt due to ordinary creditors	£	£	£	
O	Debt due to postponed creditors	£	£	£	
P	Total debt due	£	£	£	M + N + O
Q	Dividend paid to preferred creditors	p/£	p/£	p/£	
R	Dividend paid to ordinary creditors	p/£	p/£	p/£	Note 5
S	Other/Miscellaneous	£	£	£	Note 7

Statements:

** I state that an interim dividend has not been paid to creditors in Year __ (insert year number) for the following reason(s):

**I state that the expected final dividend is now: _____ (insert amount of new expected final dividend – Box P3) _ (p/£) and has varied from the dividend declared in my Form 3 statement dated _____ (insert date of signed Form 3 (Part 1)), for the following reason(s):

**I state that the expected final dividend is now _____ (insert amount of expected final dividend – Box P3) _ (p/£). This is less than 80% of the final dividend declared in my Form 3 statement dated _____ (insert date Form 3 (Part 1) signed).

I have attached the reason(s) for this change and detailed all the options that I have, as trustee, for finalising this trust deed, with the expected timeframe and final dividend for each option and my recommended course of action (see Note 6).

Creditors are invited to approve my recommended course of action

Unless I receive, within 21 days of the date of this Form 4, notification in writing from a majority in number, or not less than one third in value of creditors, that they object to my recommended action, it will be assumed that creditors support the recommended action and I will proceed to complete the administration of this protected trust deed in accordance with my recommendation.

** delete if not appropriate

Signed _____ (trustee)

Name _____ (trustee)

Date _____

Notes

1. Form 4 must be sent to: the debtor; all creditors who have acceded to, or are deemed to have acceded to, the protection of this trust deed and to the Accountant in Bankruptcy, no later than 6 weeks after the expiry of each one year period following the granting of the trust deed.
2. Record totals of all Form 4s submitted to date.
3. If the final expected 'fixed administration fee' has increased, a copy of the creditors', or the Accountant in Bankruptcy's, approval to increase this fee, must be submitted with the Form 4.
4. This fee must be calculated using the % figures declared in Form 3 (Rows 2, 3 and 4).

5. Record the actual amount of any interim dividend paid in the one year period, the total amount of Interim Dividends paid to date and the total expected final dividend to be paid at the end of the protected trust deed.

Interim Dividends must be paid no later than 6 weeks after month 12 of the trust deed (or an earlier interval) and every ___ months thereafter, if sufficient funds are available.

6. This information must be provided with Form 4, to all creditors who have acceded to, or who are deemed to have acceded to, the protection of this trust deed.

7. Record the details of miscellaneous funds ingathered from e.g. PPI, gratuitous alienation, unfair preference.

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend 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 provided for in the Common Financial Tool etc. (Scotland) Regulations 2014 ("the CFT Regulations"). The CFT Regulations are made under the amendments to the Bankruptcy (Scotland) Act 1985 made by the Bankruptcy and Debt Advice (Scotland) Act 2014.

Regulation 2 adds to the common financial tool that the debtor can retain up to an amount subject to certain limits from regular payments towards an allowance for the debtor to meet contingencies which may arise for the debtor.

Regulation 3 and the Schedule make minor clarifications and corrections to the CFT Regulations, including as they amend the Protected Trust Deeds (Scotland) Regulations 2013.

The regulations to be amended will apply from 1st April 2015.

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>.

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£6.00

S201502197 02/2015 19585

<http://www.legislation.gov.uk/id/sdsi/2015/9780111026533>

ISBN 978-0-11-102653-3



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