

The Common Financial Tool etc. (Scotland) Regulations 2014

Scottish Ministers have laid The Common Financial Tool etc. (Scotland) Regulations 2014 in draft before the Scottish Parliament. The Regulations when passed will set out provisions in relation to the use of the Common Financial Tool when the Bankruptcy and Debt Advice (Scotland) Act 2014 ('BADAS Act') commences in April 2015. The Regulations also make a number of other amendments to the Protected Trust Deed (Scotland) Regulations 2013.

The Regulations specify that the Common Financial Tool to be used in assessing contributions in DAS, protected trust deeds and sequestrations will be the Common Financial Statement ("CFS"). The debtor's contribution will be the whole of the surplus assessed by the CFS. In assessing the surplus the lower of the debtor's actual expenditure or trigger figures in the CFS will be used. Amounts in excess of the trigger figures may be allowed if the Accountant in Bankruptcy is satisfied that the expenditure is reasonable. Aliment, child support maintenance and obligations to former spouses or civil partners are allowed. Evidence of why the expenditure is reasonable must be provided by the debtor.

The Regulations also specify that where the income or expenditure of another person is taken into account in the CFS then both the income and expenditure of that person must be included. No contribution is due where the debtor has income solely from social security benefits and tax credits. Contributions are also restricted by any guaranteed minimum pension payable to the debtor. Guidance issued by the AiB on how the CFT is to be operated will have statutory backing.

The AiB shall be able to report any apparent breaches of the CFS licence issued by the Money Advice Trust to the Money Advice Trust.

The Protected Trust Deed (Scotland) Regulations 2013 are amended to correct various omissions and errors. In particular:

- where within 21 days of issuing a Form 4 to creditors which indicates that the dividend is 20% lower than indicated on Form 3, if a majority in number or more than 1/3rd in value object then an application for direction must be made to the AiB;
- the AiB must approve an increase in fixed fee where a majority in value (*rather than previous majority in number*) have not objected;
- corrects provisions relating to the debtor request for discharge to correlate to the period of contributions rather than a fixed 48 month period;
- allows a single valuation of heritable property obtained prior to the signing of the trust deed to be paid as an expense of the trust deed.

A new form, Form 2A, created for PTDs will be the required statement of the debtor's income and expenditure to be sent to creditors under Regulation 10(1)(d)(ii). Forms 3, 4, 6 and 7 are also amended to correct minor errors.

[The Common Financial Tool etc. \(Scotland\) Regulations 2014](#)

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