



# Bankruptcy (Scotland) Act 2016

## 2016 asp 21

### PART 6

#### DEBTOR'S CONTRIBUTION

##### *Common financial tool*

#### **89 Assessment of debtor's contribution**

- (1) The Scottish Ministers may by regulations specify a method (the “common financial tool”) to be used to assess an appropriate amount of a living debtor's income (the “debtor's contribution”) to be paid to a trustee after the sequestration of the debtor's estate.
- (2) Regulations under subsection (1) may in particular prescribe—
  - (a) a method for assessing a debtor's financial circumstances (including the debtor's assets, income, liabilities and expenditure),
  - (b) a method for determining a reasonable amount of expenditure for a debtor after the sequestration of the debtor's estate,
  - (c) the proportion of a debtor's income that is to constitute the debtor's contribution,
  - (d) that a method determined by another person must be used (with or without modification in accordance with regulations made under subsection (1)) as the common financial tool.
- (3) The common financial tool must ensure that the amount of reasonable expenditure for a debtor is not 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).
- (4) The common financial tool must ensure that an amount is allowed for—
  - (a) aliment for the debtor, and
  - (b) the debtor's relevant obligations.
- (5) The “debtor's relevant obligations” are any obligation of—

*Status: Point in time view as at 30/11/2016.*

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- (a) aliment owed by the debtor (“obligation of aliment” having the meaning given by section 1(2) of the Family Law (Scotland) Act 1985),
  - (b) the debtor to make a periodical allowance to a former spouse or former civil partner, and
  - (c) the debtor to pay child support maintenance under the Child Support Act 1991.
- (6) The amount allowed for the debtor's relevant obligations referred to in paragraphs (a) and (b) of subsection (5) need not be sufficient for compliance with a subsisting order or agreement as regards the aliment or periodical allowance.

#### Commencement Information

**II** S. 89 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### *Payments by debtor following sequestration*

#### **90 Debtor contribution order: general**

- (1) AiB must make an order fixing the debtor's contribution (a “debtor contribution order”)—
  - (a) in the case of a debtor application, at the same time as awarding sequestration of the debtor's estate,
  - (b) in the case of an award of sequestration following a petition under section 2(1)(b), after considering initial proposals for the debtor's contribution provided by the trustee.
- (2) In a case referred to in subsection (1)(b), the trustee must send initial proposals for the debtor's contribution within 6 weeks beginning with the date of the award of sequestration.
- (3) In making a debtor contribution order, AiB must use the common financial tool to assess the debtor's contribution.
- (4) A debtor contribution order may fix the amount of the debtor's contribution as zero.
- (5) A debtor contribution order may be made irrespective of sections 11 and 12 of the Welfare Reform and Pensions Act 1999.
- (6) A debtor contribution order may provide that a third person must pay to the trustee a specified proportion of money due to the debtor by way of income.
- (7) Where a third person pays a sum of money to the trustee in accordance with subsection (6), the third person is discharged from any liability to the debtor to the extent of the sum so paid.
- (8) AiB must, immediately following the making of a debtor contribution order, give written notice of the order to—
  - (a) the debtor,
  - (b) the trustee, and
  - (c) any third person mentioned in the order.
- (9) A debtor contribution order must not take effect on a date before the expiry of 14 days beginning with the day of notification of the order.

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#### Commencement Information

**I2** S. 90 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 91 Debtor contribution order: payment period and intervals

- (1) A debtor contribution order must contain provision requiring the debtor to pay the debtor's contribution (if not zero)—
  - (a) during the payment period, and
  - (b) at regular intervals determined by the person making or varying the order.
- (2) In subsection (1)(a), “payment period” means—
  - (a) the 48 months beginning with the date of the first payment,
  - (b) such shorter period as is determined by the person making or varying the order, or
  - (c) such longer period as is—
    - (i) determined by the trustee where there is a period during which the debtor did not pay an amount required under the debtor contribution order, or
    - (ii) agreed by the debtor and the trustee.
- (3) The person making or varying the order may determine a shorter period under subsection (2)(b) only if, in the opinion of that person, the value of—
  - (a) the debtor's contribution during the shorter period, and
  - (b) any other estate of the debtor taken possession of by the trustee,would be sufficient to allow a distribution of the debtor's estate to meet in full all of the debts mentioned in section 129.
- (4) AiB must, when making a debtor contribution order—
  - (a) determine the date of the first payment, or
  - (b) in a case where the debtor's contribution is fixed as zero, determine the date which is to be deemed the date of the first payment under the order.

#### Commencement Information

**I3** S. 91 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 92 Debtor contribution order: review and appeal

- (1) The debtor, the trustee or any other interested person may apply to AiB for a review of a debtor contribution order.
- (2) An application under subsection (1) must be made within 14 days beginning with the day on which the order is made.
- (3) If an application under subsection (1) is made, the order is suspended until the determination of that review by AiB.
- (4) If an application under subsection (1) is made, AiB must—

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- (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
  - (b) confirm, amend or revoke the order within 28 days beginning with that day.
- (5) The trustee or the debtor may, within 14 days beginning with the date of any decision of AiB under subsection (4)(b), appeal to the sheriff against that decision.

#### Commencement Information

**I4** S. 92 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 93 Effect of debtor contribution order

- (1) The debtor must pay to the trustee any debtor's contribution (if not zero)—
  - (a) as fixed by AiB in making the debtor contribution order, or
  - (b) as varied in accordance with section 95.
- (2) The requirement to pay the debtor's contribution applies irrespective of the debtor's discharge.
- (3) If the value of the debtor's estate and income when taken possession of by the trustee is sufficient to allow a distribution of the debtor's estate to meet in full all of the debts mentioned in section 129, any debtor contribution order ceases to have effect.

#### Commencement Information

**I5** S. 93 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

### 94 Deductions from debtor's earnings and other income

- (1) Subsections (2) to (6) apply where, under a debtor contribution order—
  - (a) the debtor is required to pay to the trustee an amount from the debtor's earnings or other income, or
  - (b) in accordance with section 90(6), a third person is required to pay to the trustee money otherwise due to the debtor by way of income.
- (2) The debtor must give the person mentioned in subsection (3) an instruction to make—
  - (a) deductions of specified amounts from the debtor's earnings or other income, and
  - (b) payments to the trustee of the amounts so deducted.
- (3) The person—
  - (a) in the case of an amount to be paid from the debtor's earnings from employment, is the person by whom the debtor is employed,
  - (b) in the case of an amount to be paid from other earnings or income of the debtor, is a third person who is required to pay the earnings or income to the debtor, and
  - (c) in the case mentioned in subsection (1)(b), is the third person who is required to pay the income to the trustee.

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- (4) The trustee may give the person mentioned in subsection (3) an instruction of the type mentioned in subsection (2) if the debtor fails—
  - (a) to comply with the requirements imposed by that subsection, and
  - (b) to pay the debtor's contribution in respect of 2 payment intervals applying by virtue of the debtor contribution order.
- (5) A person mentioned in subsection (3) must comply with an instruction provided in accordance with subsection (2) or (4).
- (6) Where the person by whom the debtor is employed or another third person pays a sum of money to the trustee in accordance with this section, that person is discharged from any liability to the debtor to the extent of the sum so paid.
- (7) The Scottish Ministers may by regulations make provision about instructions to be provided under this section, including in particular—
  - (a) the form in which an instruction must be made,
  - (b) the manner in which an instruction provided in accordance with subsection (2) or (4) affects the recipient of that instruction, and
  - (c) the consequence of any failure of a recipient of an instruction provided in accordance with subsection (2) or (4) to comply with the duty imposed by subsection (5).

#### Commencement Information

16 S. 94 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

## 95 Variation and removal of debtor contribution order by trustee

- (1) The trustee may vary or quash a debtor contribution order—
  - (a) on the application of the debtor, following any change in the debtor's circumstances,
  - (b) if the trustee considers it to be appropriate, following any such change, or
  - (c) if the trustee considers it to be appropriate when—
    - (i) sending a report to AiB under section 137(4), or
    - (ii) granting a discharge under section 138(2).
- (2) In deciding whether to vary or quash a debtor contribution order, the trustee must use the common financial tool to assess the debtor's contribution.
- (3) A decision by the trustee under subsection (1)(b) must not take effect before the expiry of 14 days beginning with the day on which the decision is made.
- (4) The trustee must notify in writing the persons mentioned in subsection (5) immediately following—
  - (a) any variation or quashing of a debtor contribution order, or
  - (b) any refusal of an application as respects such an order.
- (5) The persons are—
  - (a) the debtor,
  - (b) AiB (if the trustee is not AiB),

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- (c) any third person required to make a payment under the debtor contribution order or under section 94(5), and
- (d) any other interested person.

#### Commencement Information

I7 S. 95 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

## 96 Payment break

- (1) The trustee may, on the application of the debtor, extend the payment period of a debtor contribution order by granting a payment break.
- (2) A “payment break” is a period not exceeding 6 months during which payments under the debtor contribution order are deferred.
- (3) A debtor may apply for a payment break if—
  - (a) there has been a reduction of at least 50% in the debtor's disposable income (as determined using the common financial tool) as a result of any of the circumstances mentioned in subsection (4) arising in relation to the debtor, and
  - (b) the debtor has not previously applied for a payment break in relation to a debtor contribution order applying after the sequestration of the debtor's estate.
- (4) The circumstances are—
  - (a) a period of unemployment or a change in employment,
  - (b) a period of leave from employment because of—
    - (i) the birth or adoption of a child, or
    - (ii) the need to care for a dependant,
  - (c) a period of illness of the debtor,
  - (d) a divorce,
  - (e) a dissolution of civil partnership,
  - (f) a separation from a person to whom the debtor is married or with whom the debtor is in civil partnership, and
  - (g) the death of a person who, along with the debtor, cared for a dependant of the debtor.
- (5) An application for a payment break must specify the period during which the debtor wishes payments to be deferred.
- (6) If, in the opinion of the trustee, a payment break is fair and reasonable, the trustee may grant it on such conditions and for such period as the trustee thinks fit.
- (7) The trustee must notify in writing the grant of a payment break to—
  - (a) the debtor,
  - (b) AiB (if the trustee is not AiB), and
  - (c) any third person required to make a payment under the debtor contribution order.
- (8) If the trustee decides not to grant a payment break, the trustee must notify the debtor of that decision and of the reasons for that decision.

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- (9) The payment period in a debtor contribution order is deemed to be varied by the addition to the period of any payment break granted under this section.

**Commencement Information**

**18** [S. 96](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

**97 Sections 95 and 96: review and appeal**

- (1) The debtor or any other interested person may apply to AiB for a review of a decision by the trustee under section 95 or 96.
- (2) Any application under subsection (1) must be made within 14 days beginning with the day on which the decision is made.
- (3) If an application under subsection (1) relates to a decision by the trustee under section 95(1)(b), the decision is suspended until the determination of that review by AiB.
- (4) If an application under subsection (1) is made, AiB must—
- (a) take into account any representations made by an interested person within 21 days beginning with the day on which the application is made, and
  - (b) confirm, amend or revoke the decision within 28 days beginning with that day.
- (5) The trustee or the debtor may, within 14 days beginning with the date of any decision of AiB under subsection (4)(b), appeal to the sheriff against that decision.

**Commencement Information**

**19** [S. 97](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

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