COMMON FINANCIAL TOOL (SCOTLAND) REGULATIONS 2018 - draft

RESPONSE TO THE ECONOMY, JOBS AND FAIR WORK COMMITTEE FROM THE ASSOCIATION OF BUSINESS RECOVERY PROFESSIONALS’ (R3) SCOTTISH TECHNICAL COMMITTEE

July 2018
Introduction

1. R3, the Association of Business Recovery Professionals, is the leading professional association for insolvency, business recovery and turnaround specialists in the UK. It promotes best practice for professionals working with financially troubled individuals and businesses. It has UK-wide representation and debates key issues facing the profession. Most insolvency practitioners (IPs) operating in Scotland are members.

2. The Association’s Scottish Technical Committee (“STC”) welcomes the opportunity to respond to the invitation for views on the draft Common Financial Tool (Scotland) Regulations 2018. We note that much of what we recommended in our consultation response has been recognised in the draft Regulations.

3. The STC has previously commented on the need for flexibility and the ability to use discretion in determining a contribution, notwithstanding the application of a standard format for calculation.

4. The Scottish Government’s policy for the introduction of the Common Financial Tool (CFT) was to ensure equal treatment of all debtors across all debt solution procedures. The adoption in Scotland of the Standard Financial Statement (SFS) which is used widely by stakeholders irrespective of the availability of other guidelines in the rest of the U.K., will ensure a degree of consistency across the U.K.

Comments

5. In our response to the AiB’s consultation the Committee recognised that there is merit in the application across the UK of a single tool to assess a debtor’s income and expenditure. Adopting the SFS as the CFT in Scotland should ensure a consistency of approach and offer transparency which will be welcomed by stakeholders.

6. The ability to use professional judgement and discretion when assessing individual income and expenditure to allow geographical and specific circumstances to be taken into account is welcomed. The SFS offers this flexibility however at the same time this flexibility also allows for variations in the approach taken by individual advisers to determine a contribution. There are anecdotal reports of debtors ‘shopping around’ for the lowest contribution order. Any guidance which may be issued to accompany the CFT Regulations should seek to ensure there is consistency by providing clarity on how to determine income and expenditure in the various categories.

7. At the time of the consultation there were anecdotal reports that CFS based cases re-assessed under the SFS resulted in increased contributions. It is our understanding the SFS figures were revised and this is now less of an issue. The Committee may however wish to confirm this is indeed the case and that the viability of trust deeds and DAS will not be negatively impacted.

8. The announcement to introduce the SFS as the CFT in Scotland was made earlier in the year. It is assumed this has allowed stakeholders to make the necessary changes to their administrative processes in time for the Regulations coming into effect on 29 October 2018.

9. It is our understanding that the AiB has worked closely with Money Advice Trust in the review of the trigger figures. As such we anticipate the Scottish perspective has been taken into consideration.

10. Under the forthcoming changes to the DAS Regulations the requirement to apply the whole of a debtor’s surplus income to calculate a contribution has been removed. To date no revised Protected Trust Deed regulations have been announced. We hope that whenever these are issued the same will apply so that there is an integrated approach across both voluntary solutions.

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Chair
R3 Scottish Technical Committee