

This draft replaces the one laid on 22nd August 2014 and is being issued free of charge to all known recipients of those draft Regulations.

Draft Regulations laid before the Scottish Parliament under section 62(4) of the Debt Arrangement and Attachment (Scotland) Act 2002, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2014 No.

DEBT

The Debt Arrangement Scheme (Scotland) Amendment Regulations 2014

Made - - - - 2014

Coming into force

*for the purpose of
regulation 1(2)*

11th December 2014

*for the purpose of
regulation 1(3)*

1st April 2015

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 2(3)(d), 4(5), 5(4), 7 and 62(2) of the Debt Arrangement and Attachment (Scotland) Act 2002⁽¹⁾ and all other powers enabling them to do so.

A draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament in accordance with section 62(4) of that Act⁽²⁾.

Citation and commencement

1.—(1) These Regulations may be cited as the Debt Arrangement Scheme (Scotland) Amendment Regulations 2014.

(2) Subject to paragraph (3), they come into force on 11th December 2014.

(3) Regulations 8 except paragraph (3)(a) and (c), 9(1), 10, 21(5)(a), 22, Schedule 1 and Schedule 2 in respect of form 1 come into force on 1st April 2015.

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- (1) [2002 asp 17](#). Section 5(4) was amended by the Bankruptcy and Diligence etc. (Scotland) Act [2007 \(asp 3\)](#) (“the 2007 Act”), section 212. Section 7 was amended by the 2007 Act, section 212 and by the Bankruptcy and Debt Advice (Scotland) Act [2014 \(asp 11\)](#) (“the 2014 Act”), section 53. Section 9(1) contains a definition of “prescribed” relevant to the exercise of statutory powers under which these Regulations are made. Section 9(1) was amended by the 2014 Act, Section 53.
- (2) As amended by paragraph 38 of schedule 3 to the 2014 Act. The powers used in this instrument include section 7(2)(bd) of the Act, inserted by section 3(2) of the 2014 Act. The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act [2010 \(asp 10\)](#). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

Interpretation

2. In these Regulations, “the DAS Regulations” means the Debt Arrangement Scheme (Scotland) Regulations 2011⁽³⁾.

Amendment to the DAS Regulations

3. The DAS Regulations are amended in accordance with regulations 4 to 22.

Interpretation: Common Financial Tool, legal persons and other entities

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

(a) after the definition of “appeal”, insert—

““charity” means a body entered in the Scottish Charity Register under the Charities and Trustee Investment (Scotland) Act 2005⁽⁴⁾;

“Common Financial Statement” means the style and format for income and expenditure categories under that title (and, where relevant, related spread sheets, budget sheets, trigger figures, guidance materials and notes) published by the Money Advice Trust⁽⁵⁾;

“Common Financial Tool” means the method of assessing the amount of a debtor’s assets, income, liabilities and expenditure provided for under section 5D (assessment of debtor’s contribution) of the 1985 Act⁽⁶⁾ modified in accordance with Schedule A1⁽⁷⁾”;

(b) for the definition of “continuing money adviser”, substitute—

““continuing money adviser” has the meaning given by regulation 12(3)⁽⁸⁾”;

(c) after the definition of “DAS Register”, insert—

““debtor” means—

- (a) an individual;
- (b) a legal person;
- (c) a trust; or
- (d) an unincorporated body of persons;

“declaration of viability” has the meaning given by regulation 22A(7)(c)⁽⁹⁾”;

(d) after the definition of “joint debt payment programme”, insert—

““legal person” means—

- (a) a partnership;
- (b) a limited partnership within the meaning of the Limited Partnerships Act 1907⁽¹⁰⁾; or
- (c) a corporate body other than a company registered under the Companies Act 2006⁽¹¹⁾”;

⁽³⁾ S.S.I. 2011/141, as amended by S.S.I. 2013/225.

⁽⁴⁾ 2005 asp 10.

⁽⁵⁾ The Money Advice Trust is a company registered in England and Wales with registered number 4741583, registered charity in England and Wales registration number 1099506. Available at www.cfs.moneyadvicetrust.org

⁽⁶⁾ See the Common Financial Tool etc. (Scotland) Regulations 2014 (S.S.I. 2014/[]).

⁽⁷⁾ Inserted by regulation 8(6) of and Schedule 1 to these Regulations.

⁽⁸⁾ As amended by regulation 7(a) of these Regulations.

⁽⁹⁾ Regulation 22A (debt payment programme: legal persons and other entities) is inserted by regulation 13 of these Regulations.

⁽¹⁰⁾ 1907 c.24 (7 Edw.7).

⁽¹¹⁾ 2006 c.46.

- (e) after the definition of “money adviser”, insert—
- ““nominated person” means a person specified by virtue of regulation 22A(7)(b);
- “OSCR” means the Office of the Scottish Charity Regulator within the meaning of the Charities and Trustee Investment (Scotland) Act 2005(12);”; and
- (f) after regulation 2(1), insert—
- “(1A) Any reference in these Regulations to a debtor (however described) does not include an entity referred to in section 6(2) of the 1985 Act (companies registered under the Companies Act 2006 or entities in respect of which an enactment provides, expressly or by implication, that sequestration is incompetent)(13).”.

Approved money adviser for legal persons and other entities

- 5.—(1) For regulation 7(3) (debtor to have approved money adviser), substitute—
- “(3) The money adviser who advises a debtor and intends to resign must assist a debtor in finding a replacement money adviser before the money adviser resigns.”.
- (2) After regulation 8 (approved categories of money advisers), insert—

“Approved money advisers: legal persons and other entities

8A. Where the debtor is a legal person, trust or unincorporated body of persons, the money adviser who advises the debtor must be a money adviser in the category specified in regulation 8(a).”.

Approval of a money adviser

- 6.—(1) In regulation 9 (approval of a money adviser)(14)—
- (a) for paragraphs (2) and (3), substitute—
- “(2) The DAS Administrator may approve an application under paragraph (1), if satisfied that the applicant—
- (a) has undergone training on the matters specified in Schedule 3;
- (b) is not a person listed in regulation 10; and
- (c) is a fit and proper person to be a money adviser.”; and
- (b) for the cross-reference in Schedule 3 substitute “Regulation 9(2)(a)”.
- (2) Regulation 7 of the Debt Arrangement Scheme (Scotland) Amendment Regulations 2013(15) is revoked.

Functions and duty of a money adviser

7. In regulation 12 (functions and duty of a money adviser)—
- (a) in paragraph (3), after “to a debtor” where it first occurs insert “or advises a debtor which is a legal person, trust or unincorporated body of persons”;
- (b) in both heads (i) and (ii) of paragraph (3)(b), after “adviser” insert “or any nominated person under regulation 22A(7)(b)”;

(12) See section 1 of that Act.

(13) Section 6(2) is amended by paragraph 6 of schedule 3 to the 2014 Act, to add a reference to limited liability partnerships.

(14) Regulation 9(3) was substituted by [S.S.I. 2013/225](#) to add a reference to organisations working towards Type 2 accreditation against Scottish National Standards for Information and Advice Provision.

(15) [S.S.I. 2013/225](#).

- (c) after paragraph (3)(b)(ii)—
 - (i) omit “and”; and
 - (ii) insert—
 - “(iia) on any resignation, the full name and business address of the replacement money adviser or nominated person; and”; and
- (d) after regulation 12 insert—

“Additional functions and duty of a money adviser: legal persons and other entities

12A. Where the debtor is a legal person, trust or unincorporated body of persons a money adviser must—

- (a) in any review under regulation 12(3)(a) include a declaration of viability;
- (b) if unable to make such a declaration because the money adviser considers the debtor does not meet the requirements contained in regulation 22A(7)(c), apply as soon as reasonably practicable for revocation under regulation 41; and
- (c) on becoming aware of information which causes the adviser to believe that a ground for revocation under regulation 42(1) is met, apply as soon as reasonably practicable for revocation under regulation 41.”.

Common Financial Tool: consequential amendments, all debts due

- 8.—**(1) In regulation 12(1) (functions and duty of a money adviser)—
 - (a) after “money adviser” insert “, using the Common Financial Tool in the case of a debt payment programme for an individual,”; and
 - (b) at the end of sub-paragraph (d) insert “, in accordance with the Common Financial Tool in the case of a debt payment programme for an individual”.
- (2) At the end of regulation 12(3)(a) insert “(in accordance with the Common Financial Tool in the case of a debt payment programme for an individual)”.
- (3) After regulation 20(2) (application for approval)—
 - (a) insert—
 - “(2A) The debt payment programme applied for under paragraph (1) must provide for the payment of all debts due by the debtor at the time of making the application which a debt payment programme can provide for payment of, subject to regulation 22A(8)(b).”;
 - (b) after paragraph (2A) so inserted, insert—
 - “(2B) Where the debtor is an individual the application must also contain—
 - (a) the statement of income and expenditure in form 1 as at that date completed in the style and format of the Common Financial Statement; and
 - (b) a statement—
 - (i) that the proposed payments are in accordance with the Common Financial Tool as assessed by the money adviser; and
 - (ii) any evidence or explanation required in applying that tool.”; and
 - (c) after paragraph (2B) so inserted, insert—
 - “(2C) Where the debtor is a charity the application must also contain evidence that it has been intimated to OSCR.”.
 - (4) In regulation 24 (approval of agreed programmes)—

- (a) in paragraph (1), for “The” substitute “Subject to paragraph (1A), the”; and
- (b) after regulation 24(1) insert—
 - “(1A) In the case of a debt payment programme for an individual, the debt payment programme may only be approved in accordance with the Common Financial Tool.”.
- (5) Before regulation 25(2)(a) (approval by the DAS Administrator) insert—
 - “(za) where the debtor is an individual, the Common Financial Tool;
 - (zb) where the debtor is an individual, any statement and evidence required under regulation 20(2B) to satisfy the DAS Administrator in applying the Common Financial Tool;”.
- (6) Before Schedule 1, insert Schedule A1 set out in Schedule 1 to these Regulations.

Information on the DAS Register

- 9.—(1) In both regulation 19(2)(a) and (3) (information on the DAS Register), for “regulation 20(3)” substitute “section 4A(1) and 4B(1) of the 1985 Act(16) or regulation 20(3).”
- (2) In regulation 19(3)—
 - (a) after “programme” where it last occurs insert “, and for each individual who has consented in relation to that debtor under regulation 22A(2)(a), (3), (4) or (5)”; and
 - (b) in sub-paragraph (c) after “business” insert “name and”.

Application for approval: intention to apply and moratorium

- 10. For regulation 20(3) (intimation of intention to apply) substitute—
 - “(3) On revocation of a joint debt payment programme on the grounds that conditions in regulations 22(1)(b) or (2) no longer apply or under regulation 40A(1), a debtor who intends to apply may give written intimation of that intention to the DAS Administrator within 12 months of giving notice under section 4A(1) of the 1985 Act.”.

Application for approval: legal persons and other entities

- 11. After regulation 20(4) (intimation of withdrawal) insert—
 - “(4A) Where the debtor is a legal person, trust or unincorporated body of persons—
 - (a) “habitually resident in Scotland” in paragraph (1) is to be taken to mean—
 - (i) having an established place of business in Scotland; or
 - (ii) constituted or formed under Scots law, and at any time carrying on business in Scotland(17); and
 - (b) intimation under paragraph (4) may be given by a nominated person or a money adviser on the debtor’s behalf.”.

Debtors who may apply for approval, etc.

- 12.—(1) For regulation 21(1) (debtors who may apply for approval) substitute—
 - “(1) Subject to paragraphs (2) and (3), a debtor may apply for approval of a debt payment programme—

(16) Sections 4A and 4B are inserted by section 8 of the 2014 Act.

(17) See section 9(2A) of the Bankruptcy (Scotland) Act 1985 (c.66), as inserted by the 2007 Act, section 14(7)(d).

- (a) in the case of an individual debtor, where the programme provides for the payment of one or more debts; or
- (b) in the case of any other debtor, where the programme provides for the payment of two or more debts.”.

(2) In regulation 22(3) (joint debt payment programme), after ““debtor”” insert “(including to a debtor who is an “individual” or “individuals”)”.

Business Debt Arrangement Scheme

13. After regulation 22 (joint debt payment programme), insert—

“Debt payment programme: legal persons and other entities

22A.—(1) This regulation applies to an application for a debt payment programme under regulation 20(1) by a debtor which is a legal person, a trust or an unincorporated body of persons.

(2) In relation to a partnership—

- (a) every partner must consent to the application; and
- (b) the application may be combined with an application by any of the partners as an individual (but see paragraph (8)(b)).

(3) In relation to a limited partnership, every general partner must consent to the application (and any limited partner in the partnership who at any time has taken part in the management of the firm).

(4) In relation to a trust, the majority of trustees must consent to the application.

(5) In relation to a corporate body (other than a company registered under the Companies Act 2006) or an unincorporated body of persons, a person authorised to act on behalf of the body must consent to the application.

(6) Where paragraph (2)(a), (3), (4) or (5) applies, a declaration by a money adviser under regulation 20(2)(b) must declare that consent has been given as required.

(7) Any application under this regulation must—

- (a) include evidence (including any founding documents) demonstrating the legal status of the debtor;
- (b) specify the full name and address of an individual who—
 - (i) has been nominated by the debtor;
 - (ii) with the agreement of the partners, trustees or authorised person mentioned in paragraph (2)(a) to (5) respectively,

to act on behalf of the legal person, trust or unincorporated body of persons; and

- (c) contain a report to the DAS Administrator by the money adviser in form 7 including a declaration that the debtor is viable (a “declaration of viability”) on the basis that, in the adviser’s opinion—
 - (i) the programme has a reasonable prospect of being completed;
 - (ii) the debtor can make all payments due under the programme within a period of 5 years after the date of the application; and
 - (iii) the debtor is continuing to trade, where trading, as at the relevant date or otherwise operating at the relevant date.

(8) Any debt for which both an individual debtor is liable and a legal person, trust or unincorporated body of persons is liable in relation to which that individual debtor is a person specified under paragraph (2)(a), (3), (4) or (5)—

- (a) must be disclosed both in any application by that individual or by that legal person, trust or unincorporated body of persons;
- (b) may be included in any application by that individual or by that legal person, trust or unincorporated body of persons and subsequently approved for payment, but may not be included in both such applications; and
- (c) may be taken into account by the DAS Administrator in determining whether a debt payment programme is fair and reasonable under regulation 25(1) in relation to an application by either an individual or a legal person, trust or unincorporated body of persons.

(9) For the purposes of section 4(2) to (4) of the Act and regulations 33(1)(a) and 34 (effect on diligence), debts which are being paid under an approved debt payment programme by a legal person, trust or unincorporated body of persons are treated (notwithstanding paragraph (8)(b)), as if they are also being paid under an approved debt payment programme by the individuals specified under paragraph (2)(a), (3), (4) or (5) in relation to that legal person, trust or unincorporated body of persons.

(10) Unless the context otherwise requires, where the debtor is a legal person, trust or unincorporated body of persons, notices and intimations given by or to a debtor under these Regulations may be given by or to the nominated person.

(11) In relation to a charity, notification given under regulation 29, 44 and 46 must also be given to OSCR.

(12) In paragraph (7)(c)(iii)—

“the relevant date” means—

- (a) in the case of a declaration contained in an application for approval of a debt payment programme, the date of the application; and
 - (b) in any other case, when the declaration is required under these Regulations; and
- “operating” means the debtor at the relevant time has office-holders or trustees in office or owns or holds property, and is active in fulfilling the purposes for which the legal person, trust or unincorporated body of persons was established.”.

Consent of creditors: legal persons and other entities

14. In regulation 23 (consent of creditors) after paragraph (3) insert—

“(3A) Where the debtor is a legal person, trust or unincorporated body of persons, a request to a creditor for consent must include a declaration of viability.”.

Standard conditions

15. In regulation 27 (standard conditions)—

- (a) after paragraph (2)(j) omit “and”;
- (b) at the end of paragraph (2)(k) insert—
 - “; and
 - (l) in the case of a debtor which is a legal person, trust, or unincorporated body of persons—

- (i) declare all assets owned by that debtor to the money adviser by the date of the 12 monthly review under regulation 12(3)(a);
 - (ii) not sell any non-trading asset during the period of the programme unless the money adviser has been notified of the proposed sale and expected return for the benefit of creditors and has agreed, in advance of entering into any sale agreement; and
 - (iii) make all payments due under the programme within 5 years after the date of the application”; and
- (c) after paragraph (2) insert—
- “(3) Where the debtor is a legal person, trust or unincorporated body of persons, in sub-paragraph (f)(ii) above—
- (a) “material change of circumstances” includes information which materially affects the declaration of viability; and
 - (b) for 7 days read 14 days.
- (4) In sub-paragraph (l)(ii) above, “non-trading asset” means any asset owned by the debtor, other than—
- (a) current or circulating assets (for instance stock in trade, inventory);
 - (b) where the debtor is engaged in trade, any article acquired by the debtor—
 - (i) to be sold by the debtor (whether or not after adaptation), or
 - (ii) as a material for a process of manufacturing for sale by the debtor, in the ordinary course of that trade;
 - (c) any article of a perishable nature or which is likely to deteriorate substantially and rapidly in condition or value;
 - (d) any dwellinghouse or mobile home, unless the dwellinghouse or mobile home is used for the business or operations of the debtor;
 - (e) any article within a dwellinghouse or mobile home other than implements, tools of trade, books or other equipment reasonably required for the use of the debtor or any employee of the debtor in the practice of the debtor’s profession, trade or business or for the purposes for which the debtor was established.”.

Effect on a creditor: legal persons and other entities

- 16.** In regulation 33 (effect on a creditor)—
- (a) at the start of paragraph (1)(b)(v), insert “where the debtor is an individual.”;
 - (b) at the start of paragraph (6)(a), insert “where the debtor is an individual.”; and
 - (c) after paragraph (6)(a), insert—
 - “(aa) where the debtor is a legal person, trust or unincorporated body of persons, a building used only or principally for the debtor’s work.”.

Variation

- 17.—(1)** In regulation 36 (application for variation)—
- (a) at the start of paragraph (1), for “An” substitute “Subject to paragraph (5), an”;
 - (b) in paragraph (4)—

- (i) after “under paragraph (1),”, insert “if applicable the continuing money adviser for that debtor, otherwise”; and
- (ii) omit sub-paragraph (d) and the “and” preceding that sub-paragraph; and
- (c) for paragraph (5) substitute—
 - “(5) An application under paragraph (1)(a)—
 - (a) in relation to a joint debt payment programme refers to an application made by both debtors jointly; and
 - (b) in relation to a debtor which is a legal person, trust or unincorporated body of persons must—
 - (i) be made by a money adviser on behalf of the debtor; and
 - (ii) include a declaration of viability.”.
- (2) At the start of regulation 37(1)(h) (grounds for variation) insert “in the case of a debtor who is an individual,”.

Revocation of a debt payment programme

18.—(1) In regulation 40A(2)(18) (death of a debtor), after ““the debtor”” insert “means a debtor who is an individual and”.

- (2) In regulation 41 (application for revocation)—
 - (a) at the start of paragraph (1), for “An” substitute “Subject to paragraph (3), an”;
 - (b) in paragraph (2)(b), for “on behalf of the debtor” substitute “or a nominated person”; and
 - (c) for paragraph (3) substitute—
 - “(3) An application under paragraph (1)(a)—
 - (a) in relation to a joint debt payment programme refers to an application made by both debtors jointly, except that either debtor may apply only on grounds mentioned in regulation 42(1)(d); and
 - (b) in relation to a debtor which is a legal person, trust or unincorporated body of persons may only be made by—
 - (i) a money adviser or nominated person on behalf of the debtor; or
 - (ii) a money adviser under regulation 12A(b) or (c).”.
- (3) In regulation 44A (effect of revocation) for paragraph (1) substitute—
 - “(1) The revocation of a debt payment programme is to have no effect—
 - (a) in the case of revocation where regulation 40A applies, for 6 weeks; and
 - (b) in any other case, for 14 days,immediately following the date on which the programme is revoked.”.

Grounds for revocation: legal persons and other entities

- 19.**—(1) In regulation 42(1) (grounds for revocation)—
- (a) omit “or” after each of sub-paragraphs (b) and (c); and
 - (b) at the end of sub-paragraph (d) insert—
 - “; or

- (e) in the case of a debtor which is a legal person, trust or unincorporated body of persons—
 - (i) the format of that debtor changes during the period of the debt payment programme;
 - (ii) a money adviser is unable to make a declaration of viability in accordance with regulation 12(3)(a) and 12A(a) because the money adviser considers the debtor no longer meets the requirements contained in regulation 22A(7)(c); or
 - (iii) the consent of an individual who consented under regulation 22A(2)(a), (3), (4) or (5) is withdrawn”.
- (2) After regulation 42(3) insert—
 - “(4) In this regulation, “the format of that debtor changes” means—
 - (a) in the case of a partnership or limited partnership with less than 5 partners, membership of the partnership changes;
 - (b) in the case of a trust with less than 5 trustees, when one of the trustees is divested of his interest in the trust;
 - (c) in the case of a corporate body (other than a company registered under the Companies Act 2006) or an unincorporated body of persons, where there is a material change in the objects or membership of the body.”.

Composition: legal persons and other entities

- 20.** After regulation 46A(1) (offer of composition) insert—
 - “(1A) No offer of composition may be made in respect of a debt payment programme for which the debtor is a legal person, trust or unincorporated body of persons.”.

Forms: legal persons and other entities

- 21.**—(1) In regulation 20(2) (application for approval)—
 - (a) in sub-paragraph (a) for “form 1” substitute “form 1 or form 1B as the case may be”; and
 - (b) in sub-paragraph (c) for “form 1” substitute “the form 1 or form 1B”.
- (2) In regulation 29(4)(a)(ii) (notification of approval or rejection) for “form 2” substitute “form 2 or form 2B as the case may be”.
- (3) In regulation 36(3)(b) (application for variation) for “form 4” substitute “form 4 or form 4B as the case may be”.
- (4) In regulation 41(2)(b) (application for revocation) for “form 5” substitute “form 5 or form 5B as the case may be”.
- (5) In Schedule 1 (forms) for or after the following form substitute or insert the relative form set out in Schedule 2 to these Regulations—
 - (a) for form 1 (application for approval of a debt payment programme) substitute form 1 (application for approval of a debt payment programme: individuals);
 - (b) after form 1 insert form 1B (application for approval of a debt payment programme: legal persons and other entities);
 - (c) after form 2 insert form 2B (creditor notification of approval: legal persons and other entities);

- (d) after form 4 insert form 4B (variation of debt payment programme: legal persons and other entities);
- (e) after form 5 insert form 5B (revocation of debt payment programme: legal persons and other entities); and
- (f) after form 6 insert form 7 (declaration of viability).

Minor revocations in consequence of Bankruptcy and Debt Advice (Scotland) Act 2014

22. Regulations 30(1)(a) and (b) and (2) and 45 are revoked⁽¹⁹⁾, subject to regulation 23(5).

Savings and transitional arrangements

23.—(1) Regulations 8 except paragraph (3)(a) and (c), 9(1), 10, 21(5)(a), 22, Schedule 1, and Schedule 2 in respect of form 1, do not affect a debt payment programme in respect of which an application for approval was made (under regulation 20 of the DAS Regulations) before 1st April 2015.

(2) Where an application is made on or after 1st April 2015 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 Common Financial Tool.

(3) In so applying the Common Financial Tool, for the avoidance of doubt—

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

(4) The approval of any money adviser under regulation 9(1) of the DAS Regulations who has not undergone training on the matters specified in Schedule 3 to those Regulations, is revoked on the coming into force of regulation 6.

(5) Regulation 30(1)(a) and (b) and (2) of the DAS Regulations continues to apply to the end of any period of protection which applies under regulation 30 of those Regulations following intimation under regulation 20(3) of those Regulations given before 1st April 2015.

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

⁽¹⁹⁾ Section 7(1)(c) inserted by regulation 45 is substituted by paragraph 7(a) of schedule 3 to the 2014 Act.

SCHEDULE 1

Regulation 8(6)

Common Financial Tool: Debt Arrangement Scheme

“SCHEDULE A1

Regulation 2(1)

Common Financial Tool

1. Regulations 3 to 5 of the Common Financial Tool etc. (Scotland) Regulations 2014⁽²⁰⁾ apply to the approval of a debt payment programme as they apply to assessing the appropriate amount of a living debtor’s income to be paid to a trustee after the sequestration of the debtor’s estate with the modifications set out in this Schedule.
2. Those Regulations apply as if for references to the Accountant in Bankruptcy, trustee or the court there were substituted references to the DAS Administrator or the court.
3. Regulation 3(7) (deeming income solely from benefits as making no contribution) does not apply.
4. Regulation 3(8) to (10) (pensions and aliment under the Family Law (Scotland) Act 1985⁽²¹⁾) does not apply.
5. Regulation 3(11) (guidance) applies as if the guidance issued by the Accountant in Bankruptcy was guidance issued by the DAS Administrator under regulation 12(5) of these Regulations.
6. Regulation 4 (supporting statements and evidence) applies as if for references to a debtor application, initial proposals or an application for review or appeal there were substituted a reference to an application for approval or variation of a debt payment programme.”

(20) S.S.I. 2014/[].

(21) 1985 c.37.

SCHEDULE 2

Regulation 21

FORMS

Regulation 20(2) and 20(2B)

The Debt Arrangement Scheme (Scotland) Regulations 2011

FORM 1
APPLICATION FOR APPROVAL OF A DEBT PAYMENT PROGRAMME: INDIVIDUALS

SECTION 1

1 Details of Applicant (money adviser)

Unique ID Number	
Name	
Address	
Contact Name (if different)	
Phone No.	

SECTION 2

2 Details of the debtor(s) applying for a Debt Payment Programme (DPP)

2a. Details of the debtor

Surname	
First Name(s)	
Any other name the debtor has been known by	
Date of Birth (DD/MM/YYYY)	
Address	
Town	
Postcode	
Email address (if applicable)	
Telephone – Home	
Telephone - Mobile	
Business Name (if applicable)	
Business Address	
Town	
Postcode	

2b. Is this application a result of a revoked joint application? Yes No

2c. Is this a joint application? Yes No

If 'no', go to Section 3.
If 'yes', are the debtors jointly and severally liable for any debt? AND Yes No

If 'yes', do the debtors applying for a joint DPP meet the criteria in Regulation 22(1)?

- a) husband and wife to each other
- b) civil partners of each other
- c) living together as husband and wife
- d) the same sex living together as in a husband and wife relationship

If 'no', DO NOT PROCEED with a joint DPP.

2d. Do both debtors consent to a joint application? Yes No

If 'yes', complete 2e. If 'no', DO NOT PROCEED with a joint DPP.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Debt Arrangement Scheme (Scotland) Amendment Regulations 2014 No. 294

2e. Details of the other debtor in a joint DPP

Surname	
First Name(s)	
Any other name the debtor has been known by	
Date of Birth (DDMM/YYYY)	
Address	
Town	
Postcode	
Email address (if applicable)	
Telephone - Home	
Telephone - Mobile	
Business Name (if applicable)	
Business Address	
Town	
Postcode	

SECTION 3

3 Eligibility to Apply

Debtor(s) must satisfy a number of conditions to be eligible to apply for approval of a DAF

3a. Is the programme for ONE debt only? Yes No

If 'yes', is the debtor involved in a DAF to pay direct, firm to pay direct or time order for the debt in the DPP? Yes No

If 'yes', to this second question, the debtor is NOT eligible to apply for a programme where his debt is for only credit (Reg 2(2))

3b. Is the debtor, or in the case of a joint application, either of the debtors paying any debt under a conjoined arrestment order? Yes No

If 'yes', has a creditor, including a creditor of a debt being paid under a conjoined arrestment order in respect of another debt, attempted to enforce a debt due by the debtor by any lawful means? Yes No

If 'no', the debtor is NOT Eligible for a programme (Reg 2(4))

3c. Is the debtor, or in the case of a joint application, either of the debtors:

i) currently an undischarged bankrupt in Scotland, England or Wales? Yes No

ii) currently subject to a bankruptcy restrictions order (BRO) or bound by a bankruptcy restrictions undertaking (BRU)? Yes No

If 'yes' to any i) or ii), the debtor is NOT Eligible for a programme (Reg 2(5))

3d. Has the debtor, or in the case of a joint application, either of the debtors granted a trust deed that has become protected? Yes No

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If 'yes', the debtor is NOT Eligible for a programme. (Reg. 21(2))

SECTION 4

4 Debt to be included in the Debt Payment Programme

Where this is a joint application, debts for which both debtors are jointly and severally liable should be listed separately.

4a. The following are debts which are to be included in the programme owed by (debtor's name)

Creditor's Name, address (incl. postcode)	Creditor ID ref.	Account number	Amount owed		Payment offer (per instalment)	
			£	p	£	p

Complete (i) and (ii) for joint applications only.

4a. i) The following are debts which are to be included in the programme owed by (debtor's name)

Creditor's Name, address (incl. postcode)	Creditor ID ref.	Account number	Amount owed		Payment offer (per instalment)	
			£	p	£	p

4a. ii) The following are joint and severally liable debts which are to be included in the programme.

Creditor's Name, address (incl. postcode)	Creditor ID ref.	Account number	Amount owed		Payment offer (per instalment)	
			£	p	£	p

4b. Total debt to be included in the programme.

TOTAL DEBT	£	p
------------	---	---

4c. Is the debtor, or in the case of a joint application, either of the debtors, subject to any arrestment or arrestment of their income? Yes No

If 'yes', provide additional information to the DAS Administrator

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SECTION 5

5 Financial statement of the debtor(s) (the Common Financial Tool)

Salary and wages

Income	Amount (£)	Frequency
Debtor's salary/wages		
Partner's salary/wages		
Total		<input type="text"/>

Pensions

Pension(s)	Amount (£)	Frequency
State Pension(s)		
Private or work pension(s)		
Pension Credit		
Total		<input type="text"/>

Other income

Other income	Amount (£)	Frequency
Maintenance or child support		
Boarders or lodgers		
Non-dependant contribution		
Student loans or grants		
(To be completed with any other household income)		
Total		<input type="text"/>

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Benefits

Type of benefit	Amount (£)	Frequency
Jobseeker's Allowance		
Income Support		
Working Tax Credits		
Child Tax Credits		
Employment and Support Allowance		
DLA, PIP or Attendance Allowance		
Carer's Allowance		
Housing Benefit/Local Housing Allowance		
Council Tax Reduction		
Universal Credit		
(Other)		
(Other)		
(Other)		

Total

Please use the space provided below to give details of any benefit listed under "other"

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Expenditure

Essential expenditure	Amount	Frequency
Rent		
Ground rent, service charges, etc. or fees		
Mortgages		
Other Secured Loans		
Building and Content Insurance		
Pension and Life Insurance		
Council Tax		
Gas		
Electricity		
TV Licence		
Magistrates, Sheriff Court Fees		
Maintenance or Child Support		
Hire Purchase/Conditional Sales		
Other Costs		
Adult Care Costs		
Total		_____

Phone	Amount	Frequency
Home Phone		
Mobile Phone(s)		
Total		_____

Travel	Amount	Frequency
Public Transport (work, school, shopping, etc)		
Car Insurance		
Vehicle Tax		
Fuel (Petrol, Diesel, Oil, etc)		
MOT and car maintenance		
Breakdown and Recovery		
Parking Charges or Tolls		
Total		_____

Housekeeping	Amount	Frequency
Food and Milk		
Cleaning and Toiletries		
Newspapers and Magazines		
Cigarettes Tobacco and Sweets		
Alcohol		
Laundry and dry cleaning		
Clothing and Footwear		
Nappies and baby items		
Pet Food		

Total

Other expenditure	Amount	Frequency
Health (dentist, glasses, prescriptions, health insurance)		
Repairs/house maintenance (including window cleaning, maintenance contracts)		
Hairstyling/haircuts		
Cable, Satellite and Internet		
TV, video and other appliance rental		
School meals and meals at work		
Pocket money and school trips		
Lottery and Pools etc.		
Hobbies/leisure/sport (include pub outings, etc.)		
Gifts (Christmas Birthday, Charity etc.)		
Vet Bills and Pet Insurance		

Total

All other expenses not covered above	Amount	Frequency

Total

Total Income
 Total Expenditure
 Surplus Income

5b. The debtor, or the debtors in the case of a joint DPP, propose(s) the following:

i) Total payment offer of over instalments

Payment frequency
 Weekly Fortnightly Monthly 4 weekly

ii) Lump sum offer of

iii) Lump sum to be paid on the following date or dates:

iv) Realisation of the following asset(s) for the benefit of creditors:

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SECTION 6

6 Payment Details

6a. The debtor, or the debtors in the case of a joint application, agree to make the first payment under the programme during the period of 42 days immediately following the date on which the DPP is approved. Yes No

6b. The debtor, or the debtors in the case of a joint application, agree to make all payments to the Payments Distributor detailed below or to any other Payments Distributor notified by the DAS Administrator:

Payments Distributor
Address

6c. The debtor, or the debtors in the case of a joint application, understand that the Payments Distributor will deduct _____% from the payment due to the creditors to cover their costs, in addition to 2% application fee. Yes No

6d. The debtor(s) wish to pay using one of the following payment methods (tick preferred method):

- Direct Debit
- Standing Order
- Cheque
- Postal Order
- PayPoint
- E-Banking
- Payment Voucher from salary/wages
- Specify other: _____

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6e. If the debtor(s) selected Direct Debit or Standing Order, provide bank account details:

Name of bank						
Name of account holder(s)						
Bank account number						
Sort Code						
Preferred date for the payment to be made at:						

6f. If the debtor(s) selected payment direct from salary or wages, provide employer's details:

Name of Employer	
Address	
Town / City	
Postcode	
Business telephone number	
Business e-mail address	
Debtor's Employee NI number	
Debtor's employee paysheet number	

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SECTION 7

7a. The debtor, or debtors in the case of a joint application, understand that if the programme is approved they must meet the following conditions:

- (E) make all payments under a programme as they fall due _____
- (b) pay a continuing liability when due for payment; _____
- (c) make no additional payment to a creditor to a debt that is included in the programme; _____
- (d) not apply for or obtain credit beyond that permitted by DAS Regulations; _____
- (e) notify the Accountant in Bankruptcy (1 Ferryburn Road, Kilmarnock) and, if applicable, their continuing money adviser of any:
 - (i) change of address; or
 - (ii) material change of circumstances within 7 days of becoming aware of the change; _____
- (f) within 10 days after receipt by the debtor of a written request, provide such information or evidence on their financial assets or liabilities as requested; _____
- (g) make all payments in respect of credit obtained under the Regulations as they fall due; _____
- (h) give all notices and information which are required to be given under the Regulations; _____
- and
- (i) complete and submit when due a tax or duty return or declaration, and pay the tax or duty so returned, in respect of _____

7b. The debtor, or debtors in the case of a joint application, understand that if the programme is approved they may be bound by any other reasonable condition as specified by the DAS Administrator intended to secure completion of the programme. Yes

7c. The debtor, or debtors in the case of a joint application, agree that any personal information provided to the DAS Administrator will be used to discharge their statutory functions under the Debt Arrangement and Attachment (Scotland) Act 2002 and other relevant legislation (including placing their details on the DAS register) but personal information will not be disclosed to third parties except as provided by legislation. Yes

7d. The debtor, or debtors in the case of a joint application, understand that the DAS Administrator (or an agent acting on their behalf) may also contact them to discuss their experience as part of our ongoing commitment to customer service.
Does the debtor agree to being contacted in this way? Yes No

SECTION 8

The DAS Administrator in determining whether to approve a programme may consider information provided by the debtor, or declare in the case of a joint DPP, the extent to which creditors have consented to a programme and any comment made by the money adviser who has provided advice to the debtor(s). The DAS Administrator is to have regard to the Common Financial Tool and any statement or evidence required in the application of the Common Financial Tool. The DAS Administrator may consider the fair and reasonable conditions set out in the regulations, including the term of the programme and may also have regard to any other factor the DAS Administrator considers appropriate.

B. Provide any supporting information or comments below that you wish the DAS Administrator to take into consideration.

Supporting information:

SECTION 9

9. Declaration by Money Adviser

I declare that the debtor, or in the case of a joint application the debtors, received appropriate financial advice and information about applying for a DPP, including the conditions which apply and that their information will be held on a DAS Register. Yes No

I declare that the debtor, or in the case of a joint application the debtors, have consented to proceed with this application without signing this declaration. Yes No

I confirm that, in accordance with Regulation 12(1)(c) of the Debt Arrangement Scheme (Scotland) Regulations 2014 (as amended), I have assessed the debtor's contribution in accordance with Common Financial Tool (CFT) and the CFT has been used in the calculation.

I confirm that the Common Financial Statement (CFS) trigger figures have not been used in this calculation and have not been exceeded. *

The Common Financial Statement (CFS) trigger figures have been exceeded in the following category/categories and the reason(s) are: *

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* Delete as appropriate

I confirm that Common Financial Statement (CFS) allowances for dependent(s) and/or vehicle(s), that have been used in this calculation, have not to the best of my knowledge and belief been reflected in any other income and expenditure assessment carried out in respect of a household for any other individual.

10. Signature of Debtor(s)

(Where form not submitted on debtor(s) declaration in Section B above)

I apply for approval of the debt payment programme (DPP) set out in this application and declare that I have received appropriate financial advice and information about applying for a DPP including the conditions which apply. I also understand that information about my DPP will be held on the DAS Register.

Signature of Debtor _____ date _____

Signature of other debtor in a joint DPP _____ date _____

Regulation 20(2)

The Debt Arrangement Scheme (Scotland) Regulations 2011

FORM 1B

APPLICATION FOR APPROVAL OF A DEBT PAYMENT PROGRAMME: LEGAL PERSONS AND OTHER ENTITIES

SECTION 1

1 Details of money adviser (as defined at regulations 8(a) and 8A of the Debt Arrangement Scheme (Scotland) Regulations 2011 ("the Regulations"))

AiB Reference Number	
Money adviser Reference Number	
Name	
Address	
Contact Name (if different)	
Phone Number	
Email address	

SECTION 2

2 Details of the legal person/ trust/ unincorporated body of persons ("business") applying for a Debt Payment Programme (a "business DAS DPP")

2a. Details of the business

Business Name (if applicable)	
Business Address	
Town	
Postcode	
Telephone Number	
Email address	

2b. Details of the nominated person for the business (in accordance with regulation 22A(7)(b) of the Regulations)

Nominated Person

Name	
Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

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2c. Details of the individuals in the business required to consent to this application (as set out at regulation 22A(2)(a) (for a partnership), 22A(3) (for a limited partnership), 22A(4) (for a trust) or 22A(5) (for a corporate body or unincorporated body of persons))

Individual 1	
Name	
Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

Individual 2	
Name	
Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

Individual 3	
Name	
Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

Individual 4	
Name	
Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

Please attach details of any other individuals in the business required to consent to this application at the end of the form annotated with the AiB business DAS Reference Number.

2d. Is this application a result of a revoked business DAS application? Yes No

If yes, please provide the previous business DAS AIB reference number _____

If yes, please provide names of the individuals who consented to the previous Business DAS arrangement (under regulation 22A(2)(a), (3), (4) or (5))

Name _____
Name _____
Name _____
Name _____

2e. Are any members of the business listed at question 2c) of this form currently in a DPP as an individual debtor (a "personal DAS DPP")?

If yes, please provide the following details:

Name of individual _____
Personal DAS DPP reference number _____

Name of individual _____
Personal DAS DPP reference number _____

Name of individual _____
Personal DAS DPP reference number _____

Name of individual _____
Personal DAS DPP reference number _____

2f. Are any debts owed by the business currently included in a personal DAS DPP?

If yes, please provide the following details:

Name of individual _____
Personal DAS DPP reference number _____
Name of Creditor _____
Address of Creditor _____
Amount of debt outstanding _____
Creditor Reference number _____

Name of individual _____
Personal DAS DPP reference number _____
Name of Creditor _____
Address of Creditor _____
Amount of debt outstanding _____
Creditor Reference number _____

Name of individual _____
Personal DAS DPP reference number _____
Name of Creditor _____
Address of Creditor _____
Amount of debt outstanding _____
Creditor Reference number _____

Name of individual _____

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Personal DAS DTT reference number	
Name of Creditor	
Address of Creditor	
Amount of debt outstanding	
Creditor Reference number	

Please attach details of any other individuals or debts for questions 2e) and 2f) of this form at the end of the form annotated with the AIB personal DAS Reference Number.

SECTION 3

3 Eligibility to Apply

The business must satisfy a number of conditions to be eligible to apply for approval of a business DAS DPP.

3a. Is the programme for more than one debt? Yes No
If 'No', the business is NOT eligible to apply for a programme (regulation 21(1)(b)).

3b. Is the business currently an undischarged bankrupt in Scotland, England or Wales? Yes No
If 'yes', the business is NOT eligible to apply for a programme (regulation 21(2)).

3c. Has the business been granted a trust deed that has become protected? Yes No
If 'yes', the business is NOT eligible to apply for a programme (regulation 21(2)(b)).

3d. Has evidence (including any founding documents) of the legal status of the business been obtained? (regulation 22A(7)(a)) Yes No

3e. Have the required consents to the application for the programme been obtained? (regulation 22A(6)) Yes No

3f. Has a declaration of viability been issued to the business? (regulation 22A(7)(c)) Yes No

Please provide evidence with the application for questions 3d to 3f.

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SECTION 4

4. Assets and debts to be included in the business DAS DPP

4a. Assets

Non-trading assets (as defined in regulation 27(4))

Asset	Estimated/agreed value of asset

All other assets

Asset	Estimated/agreed value of asset

4b. The following are the debts to be included in the programme owed by.....(business name)

Creditor's name, address (incl. postcode)	Creditor ID reference	Account number	Amount owed	
			£	p

4c. Total debt to be included in the programme

Total Debt	£	p
-------------------	---	---

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4d. Is the business subject to any arrestment or is any income or property of the business subject to any arrestment?

Yes No

If 'yes', provide further details to the DAS Administrator

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SECTION 5

5 Financial statement of the business

5a. The following is the forecast net income and expenditure of.....(business name)

Forecast	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 8	Month 10	Month 11	Month 12	Total
Cash inflow													
Expenditure													
Surplus													

Please confirm that a full Cash Flow Statement has been attached to the application

5b. The business proposes the following:

i) Total payment offer of over instalments

Payment frequency

Weekly Fortnightly Monthly 4 weekly

ii) Lump sum offer of

iii) Lump sum to be paid on the following date or dates:

iv) Realisation of the following non-trading asset(s) for the benefit of creditors (as agreed by the business's money adviser):

v) Payment Offer to creditors:

Creditor's Name, address (incl. Postcode)	Creditor ID reference	Creditor Account Number	Amount Owed		Payment Offer (per instalment) including fee deduction		Lump sum payment offer		Total offer to creditors	
			£	p	£	p	£	p	£	p

SECTION 6

6 Payment Details

6a. The business agrees to make the first payment under the programme during the period of 42 days immediately following the date on which the business DAS DPP is approved

Yes No

6b. The business agrees to make all payments to the Payment Distributor detailed below or to any other Payment Distributor notified by the DAS Administrator:

Yes No

Payment Distributor
Address:

--

6c. The business understands that the Payment Distributor will deduct...% from the payment due to the creditors to cover their costs, which is in addition to the 2% application fee.

Yes No

6d. The business wishes to pay using one of the following payment methods
(tick preferred method)

- Direct Debit
- Standing Order
- Cheque
- Postal Order
- PayPoint
- E-Banking
- Specify other: _____

6e. If the business selected direct debit or standing order, provide bank account details:

Name of bank

Name of account holder(s)

Bank account number

Sort Code

Preferred date for the payment to be made is

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SECTION 7

7a. The business understands that if the programme is approved they must meet the following conditions:

- (a) make all payments under a programme as they fall due _____
- (b) pay a continuing liability when due for payment; _____
- (c) except for a continuing liability, make no payment to a creditor taking part in the programme other than a payment under the programme; _____
- (d) not apply for or obtain credit beyond that permitted by the Regulations _____
- (e) notify the money adviser of any—
 - (i) change of address; _____
 - (ii) material change of circumstances including information which materially affects the cessation of viability, within 14 days of becoming aware of the change; _____
- (f) within 10 days after receipt by the business of a written request, provide such information or evidence on their income, assets or liabilities as requested _____
- (g) make all payments in respect of credit obtained under the Regulations as they fall due; _____
- (h) fully cooperate with the money adviser carrying out the regular reviews of the business's circumstances during the application process and during the lifetime of the DAP; _____
- (i) give all notices and intimations which are required to be given under the Regulations _____
- (j) complete and submit when due, a tax or duty return or declaration and pay the tax or duty so returned or declared; _____
- (k) notify the DAS Administrator as soon as reasonably practicable of a money adviser ceasing to act for them for any reason other than the resignation, or revocation or suspension or approval of the adviser; _____
- (l) declare all assets owned by the business to the money adviser by the date of the annual review; _____
- (m) not sell any non-trading assets unless for the benefit of creditors and with the approval from the money adviser; _____
- (n) make all payments due under the programme within 5 years of the date of the application; _____

7b. The business understands that if the programme is approved, they may be bound by any other reasonable conditions as specified by the DAS Administrator intended to secure completion of the programme

7c. The business agrees that any personal information provided to the DAS Administrator or the money adviser will be used to discharge their statutory functions under the Debt Arrangement and Attachment (Scotland) Act 2002 and other relevant legislation (including placing both the business details and the personal details of specified individuals within the business on the DAS public register) but personal information will not be disclosed to third parties except as provided by legislation

7d. The business understands that the DAS Administrator (or agent acting on their behalf) may also contact them to discuss their experience as part of our on-going commitment to customer service.

Does the business agree to being contacted for this purpose? Yes No

SECTION 8

The DAS Administrator in determining whether to approve a programme may consider, among other things:

- Information provided by the debtor,
- The extent to which the creditors have consented to a programme, and
- Any comment made by the money adviser who has provided advice to the debtor.

The DAS Administrator may consider the fair and reasonable conditions set out in the Regulations, including the terms of the programme and may have regard to any other factor the DAS Administrator considers appropriate.

B. Provide any supporting information or comments below that you wish the DAS Administrator to take into consideration.

Supporting information:

SECTION 9

9. Declaration by money adviser

I declare that the business received appropriate financial advice and information about applying for a DPP, including the conditions that apply and that the business and the individuals in the business who have consented to the application will have their details held on a DAS Register

Yes No

If the business is a partnership:

I declare that every partner in the business has consented to proceed with this application without signing this declaration

Yes No

If the business is a limited partnership:

I declare that every general partner in the business (and any limited partner in the business who at any time has taken part in the management of the business) has consented to proceed with this application without signing this declaration

Yes No

If the business is a trust:

I declare that the majority of trustees in the business have consented to proceed with this application without signing this declaration

Yes No

If the business is a corporate body other than a company registered under the Companies Act 2006 or an unincorporated body of persons:

I declare that a person authorised to act on behalf of the business has consented to proceed with this application without signing this declaration

Yes No

If the business is a registered Scottish charity or a Scottish charitable incorporated organisation (SCIO) within the meaning of the Charities and Trustee Investment (Scotland) Act 2005:

I declare that the Office of the Scottish Charity Regulator (OSCR) has been notified of this application and I attach written confirmation of this from OSCR

Yes No

SECTION 10

10. Signature of all of the individuals listed at question 2c) of this form

(Where form not submitted on the declaration in section 9 above)

I apply on behalf of the business for approval of the DPP and declare that the business has received appropriate financial advice and information about applying for a DPP, including the conditions that apply. I declare that the business and the individuals in the business who have consented to the application understand that their details will be held on a DAS Register.

Signature on behalf of the business _____ Date _____

Regulation 29(4)(a)(ii)

The Debt Arrangement Scheme (Scotland) Regulations 2011

FORM 2B

NOTIFICATION TO CREDITOR OF APPROVAL OF A DEBT PAYMENT PROGRAMME: LEGAL PERSONS AND OTHER ENTITIES

SECTION 1

1 Case Details

1a. Business DAS Case Number

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

1b. Date the Debt Payment Programme (DPP) was approved ____/____/20____

SECTION 2

2 Creditor

Creditor Reference Number (where appropriate)	<input type="text"/>
Name of Company	<input type="text"/>
Or, if appropriate, creditor's name	<input type="text"/>
Address	<input type="text"/>
Town	<input type="text"/>
Postcode	<input type="text"/>

SECTION 3

3 Details of the debtor: a legal person/ trust/ unincorporated body of persons ("business")

3a. Details of the business

Business Name (if applicable)	<input type="text"/>
Business Address	<input type="text"/>
Town	<input type="text"/>
Postcode	<input type="text"/>
Telephone Number	<input type="text"/>
Email address	<input type="text"/>

3b. Details of the nominated person for the business (in accordance with regulation 22A(7)(b) of the Debt Arrangement Scheme (Scotland) Regulations 2011 ("the Regulations"))

Nominated person

Name	<input type="text"/>
Address	<input type="text"/>
Town	<input type="text"/>
Postcode	<input type="text"/>
Date of Birth	<input type="text"/>

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Telephone Number	
Mobile Number	
Email address	

3c. Details of the individuals in the business who consented to the application (as required under regulation 22A(2)(a) (for a partnership), 22A(3) (for a limited partnership), 22A(4) (for a trust) or 22A(5) (for a corporate body or unincorporated body of persons))

Individual 1

Name	
Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

Individual 2

Name	
Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

Individual 3

Name	
Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

Individual 4

Name	
Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

SECTION 4

4 Details of debts included in Programme

The business agrees to make the first payment under the programme during the period of 42 days immediately following the date on which the DPP is approved.

4a. The following are debts which are included in the programme owed by..... [name of business]

Creditor Reference Number	Amount owed		Account number	Payment amount (per instalment)		Net amount payable to creditor (per instalment)	
	£	p		£	p	£	p

(Continue on next available page if more than one)

4b. The business will pay the following:

i) Total payment amount of over instalments

Payment frequency

Weekly Fortnightly Monthly 4 weekly

ii) Lump sum offer of

iii) Lump sum to be paid on the following date or dates:

iv) Realisation of the following non-trading asset(s), for the benefit of creditors and with prior approval of the business's money adviser:

4c. The Payments Distributor will deduct 2% from the payment due to the creditors from each instalment to cover the fee payable to the DAS Administrator for consideration of the DPP application and an additional _____% fee for administering the payments distribution.

4d. The business agrees to make all payments to the Payments Distributor detailed below unless another Payments Distributor is notified by the DAS Administrator:

Payments Distributor address:

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SECTION 5

5 Notification by money adviser

You are notified that the business and individuals specified at question 3c) of this form are taking part in a DPP approved under the Debt Arrangement Scheme (Scotland) Regulations 2011.

5a. Name of person sending this notice _____
Date _____

5b. Details of money adviser (as defined at regulations 8(a) and 8A of the Regulations)

1) If (where appropriate) Name	_____
Company	_____
Address	_____

The DAS Administrator will use information provided to discharge their statutory functions under the Debt Arrangement and Attachment (Scotland) Act 2002 and other relevant legislation, including placing debtor's details on the DAS public register. Personal information will not be disclosed to third parties except as provided by legislation.

IMPORTANT INFORMATION FOR CREDITORS

The Debt Arrangement Scheme for legal entities (business DAS)

The Debt Arrangement Scheme is a statutory scheme that has binding legal effect. A debt payment programme for a legal person or other entity (a business DAS DPP) has effect when it is approved by the business DAS Administrator (on behalf of Scottish Ministers) – the Accountant in Bankruptcy, 1 Pennyburn Road, Kilwinning, KA13 6BA.

Business DAS helps businesses, partnerships and other legal entities (businesses) with debts to pay most of what they owe to their creditors within a period of 5 years from the date of the application. No further interest or charges can be added to the debt, whilst the DPP continues and they are written off on completion of the DPP.

This form is a notice to you that the business DAS Administrator has approved a DPP as proposed by the business. The business and the individual named at question 3(a) above are, therefore, protected from enforcement of the debts of the business.

The protection will apply until the programme is completed but will stop if the programme is revoked before completion (for example due to non-payment by the business).

IT IS UNLAWFUL TO SEQUESTER (MAKE BANKRUPT), OR TO USE DILIGENCE (ENFORCEMENT) AGAINST A BUSINESS OR INDIVIDUAL WHO IS PROTECTED FROM ENFORCEMENT.

Section 4 of this form includes a figure for the total amount of debt due to you. This figure will (unless adjusted or varied in accordance with the Debt Arrangement Scheme (Scotland) Regulations 2014) be the amount paid to you on approval and completion of the proposed programme.

It is therefore in your interests to notify the money adviser named above if you disagree with the figures shown in Section 4 of this form.

Further information about the rights and duties of businesses and creditors under business DAS is available on the DAS website at www.das.scotland.gov.uk or the Accountant in Bankruptcy website at www.aib.gov.uk.

Regulation 36(3)(b)

The Debt Arrangement Scheme (Scotland) Regulations 2011

FORM 4B

APPLICATION FOR VARIATION OF A DEBT PAYMENT PROGRAMME: LEGAL PERSONS AND OTHER ENTITIES

SECTION 1

1 Details of Applicant (money adviser (as defined at regulations 8(a) and 8A of the Debt Arrangement Scheme (Scotland) Regulations 2011 ("the Regulations")) or creditor in DPP or creditor not in DPP)

ID No (where appropriate) Name Address Contact Name (if different) Phone Number Email Address Capacity		Money Adviser <input type="checkbox"/> Creditor in DPP <input type="checkbox"/> Creditor not in DPP <input type="checkbox"/>
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SECTION 2

2 Details of Debt Payment Programme

Business DAS case number	
--------------------------	--

SECTION 3

3 Details of the debtor: a legal person/ trust/ unincorporated body of persons (business)

3a Details of the business

Business Name (if applicable) Business Address Town Postcode Telephone Number Email address	
----------------------------------------------------------------------------------------------------------------	--

3b Details of the nominated person for the business (in accordance with regulation 22A(7)(b))

Nominated person

Name	
------	--

Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

3c Details of the individuals in the business who consented to the DPP (under regulation 22A(2)(a) (for a partnership), 22A(3) (for a limited partnership), 22A(4) (for a trust) or 22A(5) (for a corporate body or unincorporated body of persons))

Individual 1

Name	
Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

Individual 2

Name	
Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

Individual 3

Name	
Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

Individual 4

Name	
Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Debt Arrangement Scheme (Scotland) Amendment Regulations 2014 No. 294

SECTION 4

4 Grounds for Variation (Regulation 37)

I apply for a variation because:

- 4a There is an agreement between the business and each creditor participating in the programme. Yes No
- 4b There is an agreement between the business and a creditor to cancel the obligation to repay an amount. Yes No
- 4c There has been a material change in the circumstances of the business. Yes No
- 4d A debt has been omitted from, or was wrongly assessed for the programme due to a mistake, oversight or other reasonable cause. Yes No
- 4e There is a debt that was future or contingent which was known but not quantifiable at the date of approval, is now quantifiable and due for payment. Yes No
- 4f The business needs credit to meet an essential requirement. Yes No

Provide full details and evidence in respect of 4a) to 4f) below.

Supporting Information

SECTION 5

5 Effect of the Variation

I wish to:

5a Change the debt included in the DPP? Yes No

If 'yes', provide details of the debt to be included or excluded below:

Creditor's Name & address	Creditor ID ref.	Account number	Amount owed (£)	Tick if new debt not in the programme

If 'yes', provide details of income and expenditure at 5b below:

5b Vary the amount payable in the offer? Yes No

If 'yes', provide details below of net income, expenditure and revised payment offer:

Forces	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12	Total
Cash inflow													
Expenditure													
Surplus													

Revised payment offer of | | over | | instalments

Payment frequency

Weekly Fortnightly Monthly

ii) Lump sum offer of

iii) Lump sum to be paid on the following date or dates:

iv) Realisation of the following non-trading asset(s) for the benefit of creditors and with prior approval of the business's money adviser:

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Debt Arrangement Scheme (Scotland) Amendment Regulations 2014 No. 294

to: Other

Yes No

Provide full details in respect of (a) to (c) below

Supporting Information:

SECTION 6

6 Approval of a variation (Regulation 38)

The DAS Administrator in determining whether a variation is fair and reasonable will consider information provided by the debtor, the views of a creditor taking part in the programme and of any creditor making the application; the views of any money adviser who has provided advice to the debtor; and may have regard to any other factor the DAS Administrator considers appropriate.

Provide any supporting information or comments below that you wish the DAS Administrator to take into consideration.

Supporting Information:

SECTION 7

7 Declaration by money adviser (where applicable)

I declare that the debtor received appropriate financial advice and information about varying the DPP, including the implications of the variation.

I declare that the debtor has consented to proceed with this application without signing this declaration.

I declare that the debtor is viable at the date of this application and I have attached a declaration of viability (in form 7)

SECTION 8

8 Declaration by creditor (where applicable)

I apply for a variation of the DPP, as set out in this application.

I confirm I have made a reasonable attempt to agree the variation with the debtor

(check to indicate Reasonable Attempt To Agree With Debtor)

Signature of Creditor _____ date _____
(may be omitted in an electronic application)

Position in company (if any) _____

Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

3c Details of the individuals in the business who consented to the DPP (under regulation 22A(2)(a) (for a partnership), 22A(3) (for a limited partnership), 22A(4) (for a trust) or 22A(5) (for a corporate body or unincorporated body of persons))

Individual 1

Name	
Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

Individual 2

Name	
Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

Individual 3

Name	
Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

Individual 4

Name	
Address	
Town	
Postcode	
Date of Birth	
Telephone Number	
Mobile Number	
Email address	

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Debt Arrangement Scheme (Scotland) Amendment Regulations 2014 No. 294

SECTION 4

4 Grounds for revocation (Regulation 42)

I apply for a revocation of the DPP because:

- 4a The business failed to satisfy a standard condition under regulation 27 or a condition of a condition under regulation 28 Yes No
- 4b The business made a false statement in the application Yes No
- 4c The business failed to make the agreed instalment under the DPP and it is currently in arrears of an amount equal to the aggregate of payments due in a period of two months beginning after the last payment is made Yes No
- 4d The manner of the business has changed within the meaning of regulation 42(4) Yes No
- 4e The money adviser is unable to make a declaration of viability as the money adviser considers the debtor no longer meets the requirements contained in regulation 22(5)(c) Yes No
- 4f The consents given under regulation 22A(2), (3), (4) or (5) have been withdrawn Yes No

Provide full details in respect of 4a to 4f below

Supporting information:

SECTION 5

5 Determination of a revocation

The DAS Administrator must, under regulation 43, consider any statement made by, or on behalf of, a business, the nature of any failure of an instalment, information to indicate whether or not the programme will be successful and any representations made by the business or by the creditors, provided that they are received within the specified period.

The DAS Administrator may have regard to any other factor that is considered appropriate when determining whether to revoke a DPP.

Provide any supporting information or comments below that you wish the DAS Administrator to take into consideration

Supporting information:

SECTION 6

6 Declaration by money adviser

I declare that the Business received appropriate financial advice and information about revoking the DPP, including the implications of the revocation on all interest and charges that apply to the debts.

Yes No

I declare that the Business has consented to proceed with this application without signing this declaration.

Yes No

SECTION 7

7 Declaration of creditor (where applicable)

I apply for a revocation of the DPP, as set out in this application.

Signature of Creditor _____ date _____
(may be omitted in an electronic application)

Position in company (if any) _____

SECTION 8

8 Declaration of nominated person (where applicable)

I apply on behalf of the Business for a revocation of the DPP, as set out in this application.

Signature of nominated person _____ date _____
(may be omitted in an electronic application)

Position in company (if any) _____

The Debt Arrangement Scheme (Scotland) Regulations 2011

Regulation 22A(7)(c)

FORM 7

DECLARATION OF VIABILITY

SECTION 1

1 Details of money adviser (as defined at regulations 8(a) and 8A of the Debt Arrangement Scheme (Scotland) Regulations 2011 ("the Regulations"))

MIP Reference Number _____
 Money adviser reference number _____
 Name _____
 Address _____
 Contact Name (if different) _____
 Phone Number _____
 Email address _____

SECTION 2

2 Details of the debtor: a legal person/ trust/ unincorporated body of persons (business)

Details of the business

Business name (if applicable)	
Business address	
Town	
Postcode	
Telephone Number	
Email address	

By signing below I confirm that:

I have reviewed both the current and past performance of the business and the financial income and expenditure the business has provided for the most 12 months. The business has demonstrated that where risks to the business have been certified, they are able to provide financial safeguards to enable them to meet the requirements of their DPP.

In my opinion, based on the information I have obtained-

- i The DPP has a reasonable prospect of being completed;
- ii The business can make payments due under the DPP within a period of 5 years of the date of the application;
- iii *(In the case of a declaration attached to an application for approval of a DPP)* The business demonstrates that it is continuing to trade, where trading, or otherwise operate (as defined in regulation 22A(12) of the Regulations) at the date of the DPP application;
- iv *(In any other case where a declaration is required)* The business demonstrates that it is continuing to trade, where trading, or otherwise operate (as defined in regulation 22A(12) of the Regulations) at the date of this declaration.

The information that I have used to assess the viability of the business is:

The reasons for my decision are as follows:

This declaration of viability is dated

(If a declaration made in respect of an application for approval of a DAP or an annual review) the financial circumstances of the business are due to be reviewed in

[12 months from date of application]

Signed:

Date:

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Debt Arrangement Scheme (Scotland) Regulations 2011 (“the DAS Regulations”) prescribe a scheme for the repayment of debts in Scotland (“the DAS scheme”). They provide for procedure and forms in respect of a repayment arrangement under the scheme, which on approval is described as a debt payment programme (“a programme”).

These Regulations amend the DAS Regulations to introduce the possibility of using the scheme in relation to legal persons and other entities, in connection in particular with businesses. The wider scheme will apply to partnerships, limited partnerships within the meaning of the Limited Partnerships Act 1907, corporate bodies other than companies registered under the Companies Act 2006, trusts, and unincorporated bodies of persons. Sole traders will continue to be covered by the DAS scheme as it applies to individuals. These changes are introduced from 11th December 2014.

The Regulations also make provision for consequential changes to implement the introduction of the Common Financial Tool under section 3(2) of, and other changes made by, the Bankruptcy and Debt Advice (Scotland) Act 2014 (“the 2014 Act”) (regulations 8 except paragraph (3)(a) and (c), 9(1), 10, 21(5)(a), 22, Schedule 1 and Schedule 2, form 1). These changes are introduced from 1st April 2015.

Amendments are also made to the DAS Regulations in respect of money advisers, including provision on who can apply to be a money adviser for a legal person or other entity (regulation 5 (2)) and in relation to the functions and duties of money advisers (regulation 5(1) and 7). Regulation 6 removes money advisers working for organisations working towards Scottish National Standards for Information and Advice Provision from those approved to act as money advisers under the DAS scheme.

Regulation 8 and Schedule 1 make provision for the application of the Common Financial Tool in relation to the DAS scheme. Regulation 8(3) also introduces a requirement for programmes to include all qualifying debts due by a debtor at the time of the application, subject to a proviso in respect of debts for which both an individual and a legal person or other entity are liable (see regulation 22A(8)(b) of the DAS Regulations, inserted by regulation 13 of these Regulations). Debts must be “due” in order to be protected under the DAS scheme, in terms of regulation 3 of the DAS Regulations.

Regulation 9 amends the information to be included on the DAS Register.

Regulations 10 to 12 make amendments to the procedural requirements of applications for approval of a programme. Legal persons or other entities can only apply for programmes providing for the payment of more than one debt (regulation 12(1)). References in the DAS Regulations to individual debtors are to be taken to include reference to debtors who have entered into a joint payment programme (regulation 12(2)).

Regulation 13 inserts regulation 22A into the DAS Regulations to make specific provision for programmes entered into by legal persons and other entities. This regulation includes provision as to who is required to consent to a programme and sets out the conditions to be met before a money adviser can issue a declaration of viability. Debts must be repaid within 5 years of the date of application. Certain individuals in relation to a business or other entity can be protected from diligence in relation to debts included in a programme for that business (regulation 22A(9) as inserted).

Regulation 14 amends regulation 23 of the DAS Regulations (consent of creditors) for the purposes of programmes entered into by legal persons and other entities.

Regulation 15 inserts additional standard conditions to be met by debtors which are legal persons or other entities, including a requirement to declare all assets, and restricting the sale of non-trading assets during the period of the programme, unless for the benefit of creditors (regulation 15(b)). Such debtors are also required to provide notification to their money advisers of any information materially affecting their declaration of viability, within 14 days of becoming aware of the change (regulation 15(c)).

Regulation 16 amends regulation 33 of the DAS Regulations (effect on creditors) in consequence of the introduction of the wider DAS scheme.

Amendments are also made in respect of the variation and revocation of a programme, including specific provision for programmes entered into by legal persons and other entities (regulations 17 to 19).

Regulation 20 excludes legal persons and other entities from the provisions relating to a composition agreement with creditors out of the DAS scheme (regulations 46A to 46D of the DAS Regulations). Provision is also made for new forms (regulation 21).

Regulation 22 makes minor revocations to the DAS Regulations in consequence of the 2014 Act.

Regulation 23 includes saving provisions so the provisions in relation to the 2014 Act do not apply to debt payment programmes approved before 1st April 2015, and in relation to the application of the Common Financial Tool to debt payment programmes approved before that date.

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>.