
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 505

SHERIFF COURT

**Act of Sederunt (Debt Arrangement and Attachment
(Scotland) Act 2002) Amendment (The Debt
Arrangement Scheme (Scotland) Regulations 2004) 2004**

Made - - - - 22nd November
2004
Coming into force - - 30th November 2004

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(1) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the Sheriff Courts (Scotland) Act 1971, do hereby enact and declare:

Citation and commencement

1. This Act of Sederunt—
 - (a) may be cited as the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) Amendment (The Debt Arrangement Scheme (Scotland) Regulations 2004) 2004;
 - (b) shall come into force on 30th November 2004; and
 - (c) shall be inserted in the Books of Sederunt.

Amendment and revocation of the principal Rules

2.—(1) In the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002(2), Schedule 1 (Rules for applications in the Sheriff Court under the Debt Arrangement and Attachment (Scotland) Act 2002) is amended in accordance with the following paragraphs.

- (2) After Chapter 3 (Attachment: Articles kept within dwellinghouses) insert—

(1) 1971 c. 58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4), the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2001 (asp 4), schedule 5, paragraph 13 and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and extended by the Child Support Act 1991 (c. 48), sections 39(2) and 49.

(2) S.S.I. 2002/560.

“CHAPTER 4

THE DEBT ARRANGEMENT SCHEME (SCOTLAND) REGULATIONS 2004

Interpretation

37.—(1) In this Chapter, “the Regulations” means the Debt Arrangement Scheme (Scotland) Regulations 2004(3).

(2) Any reference in this Chapter to a “regulation” shall be a reference to a regulation of the Regulations.

Applications for approval by sheriff of debt payment programme

38.—(1) An application to the sheriff for approval of a debt payment programme under regulation 27 of the Regulations shall be in Form 29.

(2) An application to which paragraph (1) applies shall be lodged with the sheriff clerk who shall—

- (a) fix a date for the hearing of the application (which date shall be not less than 7 days from the date of intimation made under sub-paragraph (c));
- (b) obtain from the sheriff a warrant to intimate the application to the debtor and the creditors;
- (c) intimate the application and warrant to the debtor and the creditors;
- (d) intimate the warrant to the applicant; and
- (e) complete a certificate of intimation.

(3) A warrant for intimation referred to in this rule shall be in Form 30.

(4) A certificate of intimation referred to in this rule shall be in Form 31.

(5) An interlocutor granted by the sheriff determining the application for approval of a debt payment programme shall be in Form 32.

39.—(1) At a hearing fixed under rule 38(2)(a), the sheriff having heard interested parties—

- (a) shall grant the application in terms of regulation 27(1) if he is satisfied that the programme is fair and reasonable;
- (b) may require of any of the parties further information before making any determination; or
- (c) may adjourn the hearing and make the determination at the adjourned hearing.

(2) In determining whether a programme is fair and reasonable, the sheriff shall have regard to the matters referred to in regulation 26(2).

(3) An approval under rule 39(1)(a) may be made subject to a condition under regulation 30.

Applications for approval by sheriff of variation of debt payment plan

40.—(1) An application to the sheriff for approval of a variation of a debt payment programme under regulation 39(3) shall be in Form 33.

(2) An application to which paragraph (1) applies shall be lodged with the sheriff clerk who shall—

- (a) fix a date for the hearing of the application (which date shall be not less than 7 days from the date of intimation made under sub-paragraph (c));
 - (b) obtain from the sheriff a warrant to intimate the application to the debtor and the creditors;
 - (c) intimate the application and warrant to the debtor and the creditors;
 - (d) intimate the warrant to the applicant; and
 - (e) complete a certificate of intimation.
- (3) A warrant for intimation referred to in this rule shall be in Form 30.
- (4) A certificate of intimation referred to in this rule shall be in Form 31.
- (5) An interlocutor granted by the sheriff determining an application for variation shall be in Form 34.

41.—(1) At a hearing fixed under rule 40(2)(a), the sheriff having heard interested parties—

- (a) shall grant the application in terms of regulation 39(3) if, having regard to the matters referred to in regulation 39(4), he is satisfied that the programme is fair and reasonable;
- (b) may require of any of the parties further information before making any determination; or
- (c) may adjourn the hearing and make the determination at the adjourned hearing.

(2) An approval under rule 41(1)(a) may be made subject to a condition under regulation 30.”.

(3) In Appendix 1 of Schedule 1 (Forms) after Form 28 insert Forms 29 to 34 as set out in the Schedule to this Act of Sederunt.

Edinburgh
22nd November 2004

CULLEN OF WHITEKIRK
Lord President I.P.D.

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SCHEDULE

FORM 29

Rule 38(1)

Regulation 27

Debt Arrangement Scheme (Scotland) Regulations 2004

Sheriff Court 20.....
(Court Ref No)

PART A

APPLICATION BY DAS ADMINISTRATOR FOR APPROVAL OF DEBT PAYMENT PROGRAMME

DEBTOR IN RESPECT OF WHOM DEBT PAYMENT PROGRAMME IS PROPOSED

.....
.....
..... the "Debtor"

DAS Administrator Ref No.

.....

PART B

1. The applicant is the DAS Administrator to whom application has been made by *(insert details of the Debtor's money adviser)* ("the money adviser") on behalf of the Debtor for approval of a debt payment programme under regulation 20 of the Debt Arrangement Scheme (Scotland) Regulations 2004 ("the Regulations").

2. The known creditors of the debtor are: *(insert details of all known creditors or attach list thereof)*.

3. The applicant states that a request for consent to the application for approval was sent to each known creditor in terms of regulation 22 of the Regulations. In respect of the requests for consent—

- (a) the following creditor[s] [has/have] not consented and the applicant is unable to dispense with such consent under regulation 22(4) of the Regulations:
(list creditors who have not consented or attach separate list thereof);
- (b) the following creditor[s] [has/have] objected to the debt payment programme under regulation 23 of the Regulations:
(list creditors who have objected or attach separate list thereof).

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4. The applicant attaches a copy of the application made by the money adviser on behalf of the Debtor together with a copy of each response received from a creditor to whom a request for consent was sent under regulation 22 of the Regulations.

PART C

5. The applicant asks the court—

- (a) to fix a hearing;
- (b) to order the sheriff clerk to intimate this application and the date of the hearing to the applicant, the debtor and to all known creditors of the Debtor; and
- (c) to determine the application for approval of the proposed debt payment programme.

..... (Signed)
Applicant

..... 20...
(Date)

FORM 30

Regulation 27 and 39(3)

Rule 38(3) and 40(3)

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Debt Arrangement Scheme (Scotland) Regulations 2004

Court Ref. No.

WARRANT FOR INTIMATION

(Place and date)

The Sheriff grants warrant to intimate a copy of the application and this warrant to the applicant, the debtor, the debtor's money adviser and to all known creditors of the debtor as set out in the application *(specify creditors)* and to *(insert any other person the sheriff considers appropriate)*;

Fixes a hearing *(date)* at *(time)* within the Sheriff Court House *(address of court)*;

1. Requires the debtor to appear or to be represented at the hearing to show why the application should be granted;
2. Requires the debtor's money adviser to appear at the hearing if he/she intends to represent the debtor at that hearing; and
3. Requires the other persons to whom intimation is given to appear or be represented at the hearing if they intend to oppose the application or make representations about it.

Sheriff

To *(name of person receiving intimation)*

This application and warrant is intimated to you.

Sheriff Clerk/Depute

Date

Please note *(to the debtor and other persons to whom intimation is given)*

If you fail to appear or be represented at the hearing fixed the application may be determined in your absence.

IF YOU WISH FURTHER ADVICE CONTACT ANY CITIZENS ADVICE BUREAU/LOCAL ADVICE CENTRE/SHERIFF CLERK OR SOLICITOR

FORM 31

Rule 38(4) and 40(4)

Regulation 27 and 39(3)

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Debt Arrangement Scheme (Scotland) Regulations 2004

Court Ref. No.

CERTIFICATE OF INTIMATION

(Place, date) This application was intimated by me Sheriff Clerk/Depute by posting to the applicant, the debtor, the debtor's money adviser and all creditors as specified in the warrant for intimation on *(insert date)* a copy of the application (together with a copy of Form(s)) in a first class recorded delivery/registered letter addressed as follows—

..... (signed)

Sheriff Clerk/Depute

(Attach recorded delivery or registered post receipt for letter)

FORM 32

Rule 38(5)

Regulation 27

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Debt Arrangement Scheme (Scotland) Regulations 2004

Court Ref. No.

INTERLOCUTOR

..... (Debtor) (DAS Administrator RefNo.)

(Place, date) The sheriff [*having heard (insert details of parties who attended the hearing) and] having considered the application,

- *1 Approves the debt payment programme
- *2. Refuses to approve the debt payment programme on the following grounds:-

(insert reasons for refusal)

.....

- *3 Approves the debt payment programme subject to the following conditions:

That the debtor shall-

- (a) realise, and distribute amongst creditors the value of the following asset[s], being asset[s] of the Debtor other than asset[s] that are excepted by regulation 30(3) of the Debt Arrangement Scheme (Scotland) Regulations ("the Regulations):-

(insert details of assets)

.....

- (b) sign and deliver a payment instruction to an employer;
- (c) seek agreement from a creditor to pay a continuing liability under regulation 34 of the Regulations;
- (d) complete, and submit when due, a tax or duty return or declaration;
- (e) maintain an emergency fund in accordance with regulation 30(4) of the Regulations; or

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(f) be bound by the following condition(s) intended to serve completion of the programme which the sheriff considers to be reasonable.— (specify further conditions)

*delete as appropriate

..... (signed)
Sheriff

FORM 33

Regulation 39

Rule 40(1)

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Debt Arrangement Scheme (Scotland) Regulations 2004

Sheriff Court 20.....
(Court Ref No)

PART A

APPLICATION BY DAS ADMINISTRATOR FOR
VARIATION OF DEBT PAYMENT PROGRAMME

DEBTOR IN RESPECT OF WHOSE DEBT PAYMENT PLAN
A VARIATION IS BEING PROPOSED

.....
.....
..... the "Debtor"

DAS Administrator Ref. No.

.....

PART B

1. A copy of the Debtor's debt payment programme [as approved by the Applicant]/[and the interlocutor approving the debt payment programme] (*delete as appropriate*) is/are attached.

2. The Applicant is the DAS Administrator to whom application was made by [(Debtor's money adviser) on behalf of the Debtor]/[a creditor under the approved debt payment programme (insert creditor details)] for variation (under regulation 37 of the Debt Arrangement Scheme (Scotland) Regulations 2004 ("the Regulations")) of the Debtor's debt payment programme.

3. The creditors under the Debtor's debt payment programme whose debts under that programme have not, at the date of this application, been satisfied in full are. (*insert details of outstanding creditors or attach separate list thereof*).

4. The Applicant seeks a variation of the debt payment programme on the following grounds:- (*refer to regulation 38 of the Regulations as appropriate*)

-
-
-

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5. The applicant attaches a copy of—

- (a) the application for variation and all relevant supporting documentation;
- (b) any documentation received from any creditor in relation to the application for variation, and
- (c) any relevant supporting documentation.

6. The applicant considers it appropriate for the sheriff to determine this application for the following reasons [set out reasons]:

PART C

The applicant asks the court—

- 1. To fix a hearing,
- 2. To order the sheriff clerk to intimate this application and the date of the hearing to the applicant, the debtor and the outstanding creditors listed in paragraph 3 of Part B of this application, and
- 3. To approve the variation of the debt payment programme

..... (Signed)
Applicant

..... 20..
(Date)

FORM 34

Rule 40(5)

Regulation 39

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Debt Arrangement Scheme (Scotland) Regulations 2004

Court Ref. No.

INTERLOCUTOR

..... (Debtor) (DAS Administrator Ref No.)

(Place, date) The sheriff [having heard (insert details of parties who attended the hearing) and] (delete if no parties attended the hearing) having considered the application,

*1 Approves the following variation of the debt payment programme:

[insert details of variation]

.....
.....
.....

*2 Refuses to approve the variation of the debt payment programme on the following grounds:-

[insert reasons for refusal]

.....
.....
.....

*3 Approves the following variation of the debt payment programme:-

[insert details of variation]

.....
.....
.....

subject to the following conditions:-

That the debtor shall-

- (a) realise, and distribute amongst creditors the value of the following asset[s], being asset[s] of the debtor other than asset[s] that are excepted by regulation 30(3) of the Debt Arrangement Scheme (Scotland) Regulations 2004 ("the Regulations"):-

[insert details of assets]

.....
.....
.....

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- (b) sign and deliver a payment instruction to an employer;
- (c) seek agreement from a creditor to pay a continuing liability under regulation 34 of the Regulations;
- (d) complete, and submit when due, a tax or duty return or declaration;
- (e) maintain an emergency fund in accordance with regulation 30(4) of the Regulations, or
- (f) be bound by the following condition(s) intended to secure completion of the programme which the sheriff considers to be reasonable:– (specify further conditions)

* delete as appropriate

..... (signed)
Sheriff

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt amends Schedule 1 (rules for applications in the Sheriff Court under the Debt Arrangement and Attachment (Scotland) Act 2002) of the Act of Sederunt (Debt Arrangement and Attachment (Scotland) 2002) 2002 (“the 2002 Act of Sederunt”).

Article 2(2) inserts new rules 37 to 41 into Schedule 1 of the 2002 Act of Sederunt. These rules set out procedure in relation to applications for approval and applications for approval of variation of debt payment plans pursuant to the Debt Arrangement Scheme (Scotland) Regulations 2004.

In the new rules–

- (a) rule 38 provides that an application to the sheriff for approval of a debt payment programme shall be made using an application in the form specified; such applications are to be lodged with the sheriff clerk who will then fix a date for the hearing of the application, obtain from the sheriff a warrant to intimate the application to the debtor and the creditors, intimate the application and warrant to the debtors and creditors, intimate the warrant to the applicants, and complete the certifications of intimation; specific forms of warrant for intimation, certificate of intimation and interlocutor are provided for;

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- (b) rule 39 provides that the sheriff (having heard the interested parties) shall grant the application if he is satisfied that the programme is fair and reasonable; the sheriff may require further information from any of the parties before making any determination and may adjourn the hearing and make the determination at such an adjourned hearing; and
- (c) rules 40 and 41 make similar provisions in respect of applications for approval by the sheriff in variation of a debt payment plan.