
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 294

**The Debt Arrangement Scheme
(Scotland) Amendment Regulations 2014**

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.”