

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

2011 No.

DEBT

**The Debt Arrangement Scheme (Interest, Fees, Penalties
and Other Charges) (Scotland) Regulations 2011**

Made - - - - 2011
Coming into force - - 1st July 2011

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 7A 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 approved by resolution of the Scottish Parliament in accordance with section 62(4) of that Act.

Citation and commencement

1. These Regulations may be cited as the Debt Arrangement Scheme (Interest, Fees, Penalties and Other Charges) (Scotland) Regulations 2011 and come into force on 1st July 2011.

Interpretation

2. In these Regulations—

“the Act” means the Debt Arrangement and Attachment (Scotland) Act 2002;

“the DAS Regulations” means regulations to be made under section 7 of the Act providing for the Debt Arrangement Scheme under Part 1 of the Act;

“DAS Administrator” means—

(a) the Scottish Ministers; or

(b) any person or body who may exercise the functions of the Scottish Ministers by virtue of an order made under section 8 (functions of the Scottish Ministers) of the Act;

(1) 2002 asp 17 (“the Act”). The Act was relevantly amended, and section 7A inserted, by the Bankruptcy and Diligence etc. (Scotland) Act 2007 asp 3 (“the 2007 Act”), sections 173, 209(1), 211 and 212 and schedule 4, paragraph 10, schedule 5, paragraph 30 and schedule 6, Part 1. Section 9(1) contains a definition of “prescribed” relevant to the exercise of statutory powers under which these Regulations are made.

“debt payment programme” means a programme approved under section 2 of the Act in accordance with the DAS Regulations; and

“joint debt payment programme” means a debt payment programme applied for by two debtors jointly in accordance with the DAS Regulations, and references to a “debtor” are to be construed accordingly.

Variation of debt payment programme - interest, fees, penalties and other charges

3. The DAS Administrator must, in accordance with the DAS Regulations, approve an application for variation of a debt payment programme under section 5 of the Act which is mentioned in regulation 4(2) (if the debt payment programme is one in relation to which regulation 4(1) does not already apply).

Effect of completion of a debt payment programme on a debtor’s liability to pay interest, fees, penalties and other charges

4.—(1) Any interest, fees, penalties or other charges—

- (a) which are not owed as at the date on which a debt payment programme is approved; and
- (b) which (but for this paragraph) would, in relation to a debt included in the programme, become payable after that date,

are not payable unless and until the debt payment programme is revoked and cease to be owed or payable if and when the debt payment programme is completed.

(2) Any interest, fees, penalties or other charges—

- (a) which are not owed as at the date of an application for variation of a debt payment programme by a debtor so that any interest, fees, penalties or other charges are not payable; and
- (b) which (but for any such variation) would, in relation to a debt included in the debt payment programme in question, become payable after that date,

are not payable unless and until the debt payment programme is revoked and cease to be owed or payable if and when the debt payment programme is completed.

(3) The amount of any such debt as is mentioned in paragraph (1)(b) or (2)(b) is the amount as detailed in the application submitted in respect of the debt payment programme unless the debtor or creditor instead requires the DAS Administrator to determine the amount of the debt (in which case it is the amount so determined).

(4) The reference to revocation in paragraph (1) does not include revocation of a joint debt payment programme in respect of a debtor in such a programme on the grounds that the conditions for eligibility for a joint payment programme no longer apply, if that debtor applies for another debt payment programme within 21 days after the date of intimation to that debtor of that revocation.

Appeals

5.—(1) As regards any debt included in a debt payment programme, the debtor for the debt payment programme or creditor may, on a point of law, appeal to the sheriff against a determination of the DAS Administrator under regulation 4(3).

(2) Such an appeal—

- (a) is to be by summary application; and
- (b) must be lodged within 14 days after the date of intimation to the appellant of that determination.

(3) In this regulation, “sheriff” means the sheriff of the sheriff court district in which a debtor habitually resides.

(4) The decision of the sheriff is final.

Revocation

6. These provisions are revoked—

(a) in the Debt Arrangement Scheme (Scotland) Regulations 2004⁽²⁾—

(i) regulation 38(1)(ba) and the reference to that sub-paragraph in regulation 39(1);

(ii) regulation 49A; and

(iii) regulation 50(3A) and the reference to that paragraph in regulation 50(6)(a); and

(b) the Debt Arrangement Scheme (Scotland) Amendment Regulations 2007⁽³⁾.

Saving

7. Except in so far as these Regulations provide for or relate to an application for variation as mentioned in regulation 4(2), nothing in these Regulations affects a debt payment programme in respect of which a request for the consent of creditors was made (under regulation 22(2) of the Debt Arrangement Scheme (Scotland) Regulations 2004) before the date on which these Regulations came into force.

St Andrew's House,
Edinburgh

Authorised to sign by the Scottish Ministers

(2) S.S.I. 2004/468, as amended by S.S.I. 2004/470, S.S.I. 2007/262 and S.S.I. 2007/187.

(3) S.S.I. 2007/262.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are part of the revised Debt Arrangement Scheme for the repayment of debts in Scotland under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002.

They operate together with regulations to be made under section 7 of the Debt Arrangement and Attachment (Scotland) Act 2002 to replace the Debt Arrangement Scheme (Scotland) Regulations 2004 (“the 2004 Regulations”). These Regulations make provision for the effect of debt payments programmes approved or varied under the scheme to render non-payable interest, fees, penalties and other charges which would otherwise become payable in relation to debts included in such programmes.

The Regulations restate provisions contained in the 2004 Regulations inserted by the Debt Arrangement Scheme (Scotland) Amendment Regulations 2007, add a limited exception in respect of joint debt payment programmes made by two debtors under the revised regulations to be made, revoke the provisions replaced by these Regulations, and make saving provision for existing cases.