

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

2018 No.

DEBT

**The Debt Arrangement Scheme (Scotland) Amendment
Regulations 2018**

Made - - - - 2018

Coming into force - - 29th October 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 2(3)(d), 4(5)(b), 5(4), 7 and 62(2) of the Debt Arrangement and Attachment (Scotland) Act 2002(a) 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(b).

Citation and commencement

1. These Regulations may be cited as the Debt Arrangement Scheme (Scotland) Amendment Regulations 2018 and come into force on 29th October 2018.

Interpretation

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

Amendments to the DAS Regulations

3. The DAS Regulations are amended in accordance with regulations 4 to 18.

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- (a) 2002 asp 17 (“the 2002 Act”). 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”), sections 3 and 53. Section 9(1) of the 2002 Act 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 2007 Act, section 212 and by the 2014 Act, section 53.
- (b) As amended by paragraph 38 of schedule 3 of the 2014 Act. The powers used in this instrument include section 7(2)(bd) of the 2002 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.
- (c) S.S.I. 2011/141, as amended by S.S.I. 2013/225, S.S.I. 2014/294 and S.S.I. 2015/216.

Correction of accidental errors

4. In regulation 4A (correction of accidental errors)—

(a) after paragraph (1) insert—

“(1A) In paragraph (1), “accidental error” includes an accidental error in any determination made by the DAS Administrator arising from the provision of incorrect information to the DAS Administrator by any third party.”; and

(b) at the end of paragraph (4)(b), insert “, except with the agreement of the debtor (or of the money adviser acting on behalf of the debtor) or creditor who applied for the review”.

Approved money adviser: Financial Conduct Authority compliance

5.—(1) In regulation 9 (approval of a money adviser)—

(a) after paragraph (2)(b) omit “and”; and

(b) after paragraph (2)(c) insert—

“and;

(d) has put in place appropriate arrangements (where applicable) to ensure compliance with rules made by the Financial Conduct Authority and to ensure that appropriate regard is had to guidance issued by the Financial Conduct Authority.”.

(2) In regulation 11 (revocation, or suspension, of approval of a money adviser) after paragraph (1) insert—

“(1A) The DAS Administrator may revoke the approval of any money adviser where the adviser fails to maintain appropriate arrangements (where applicable) to ensure compliance with rules made by the Financial Conduct Authority and to ensure that appropriate regard is had to guidance issued by the Financial Conduct Authority.”.

DAS Register: information which need not be included

6. After regulation 19(3) (Information on the DAS Register) insert—

“(4) Information need not be included on the DAS Register where the DAS Administrator is of the opinion that inclusion of the information would be likely to put any person at risk of violence or otherwise jeopardise the safety or welfare of any person.”.

Continuing money adviser’s fee: disclosure

7. After regulation 20(2)(a) (application for approval) insert—

“(aa) where the debtor is an individual, must include details of any fee charged by a continuing money adviser for the adviser’s services;”.

Common financial tool: exclusion of rent and mortgage arrears, debtor’s contribution

8.—(1) In regulation 20—

(a) in paragraph (2A), after “subject to” insert “paragraph (2AA) and”; and

(b) after paragraph (2A), insert—

“(2AA) Where the debtor is an individual, despite paragraph (2A) debts which are—

(a) constituted by a lease or tenancy agreement; or

(b) secured by a standard security (to the extent that the sum is arrears of a periodic payment due to be paid under a loan agreement so secured),

may be excluded from the debt payment programme, to the extent that such debts relate to the debtor’s sole or main residence.”.

(2) For schedule A1 (common financial tool) substitute the schedule A1 set out in schedule 1 of these Regulations.

Business Debt Arrangement Scheme: application for approval

9. 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 where the programme provides for the payment of one or more debts.”.

Joint debt payment programme: terminology

10. In regulation 22(1) (joint debt payment programme), for sub-paragraph (b) substitute—

“(b) they are—

- (i) spouses or civil partners of each other; or
- (ii) living together as if spouses of each other.”.

Discretionary conditions: sole or main residence

11. In regulation 28(3) (discretionary conditions)—

- (a) at the beginning of sub-paragraph (a), for “a” substitute “subject to paragraph (4), a”; and
- (b) after paragraph (3) insert—

“(4) Where the debtor is an individual and at the option of the debtor a debt payment programme referred to in paragraph (1) may be made subject to a condition that the debtor must realise and distribute amongst the creditors the value of a dwellinghouse or mobile home occupied by the debtor as the debtor’s sole or main residence.”.

Business Debt Arrangement Scheme: protection from diligence or sequestration

12. After regulation 30(1) (diligence or sequestration in the period before a debt payment programme is approved) insert—

“(1A) Where the debtor is a legal person, trust or unincorporated body of persons, for the purposes of paragraph (1)(ba) the restrictions in paragraph (1) apply to any debt for which both an individual debtor is liable and the legal person, trust or unincorporated body of persons is liable, in relation to which that individual debtor is a person specified under regulation 22A(2)(a), (3), (4) or (5).”.

Notification by continuing money adviser: recall of arrestment, approval or rejection of variation

13.—(1) In regulation 33(1)(a) (effect on a creditor) before “the DAS Administrator” insert “the continuing money adviser for the debtor, or where there is no continuing money adviser”.

(2) In regulation 39 (notification of approval or rejection of a variation)—

- (a) before paragraph (1) insert—

“(A1) The DAS Administrator must intimate in writing the reasons for, and effect of, the approval or rejection of a variation (including any condition attached under regulation 28) to any continuing money adviser for the debtor.”;

- (b) in paragraph (1)—

- (i) For “The DAS Administrator” substitute “The continuing money adviser for the debtor, or where there is no continuing money adviser the DAS Administrator,”;
- (ii) after sub-paragraph (ca)(a), insert “and”; and
- (iii) omit paragraph (e) and the “and” preceding that sub-paragraph; and

- (c) omit paragraph (2).

(a) Sub-paragraph (ca) was inserted by the Debt Arrangement Scheme (Scotland) Amendment Regulations 2013/225, regulation 13(3).

Accessing further credit

14.—(1) In regulation 33(1)(b) after sub-paragraph (i) insert—

“(ia) where the debtor is an individual, credit (given either to the debtor alone, or jointly to the debtor and another person) up to an amount of £2,000 (except where, at the time the credit is obtained, the debtor has debts amounting to £1,000 or more, other than debts the payment of which is provided for by the debt payment programme and any debts excluded from the debt payment programme under regulation 20(2AA));”.

(2) In regulation 27(2)(h), after “33(1)(b)” insert “(ia),”.

Business Debt Arrangement Scheme: payment break

15.—(1) In regulation 36 (application for variation)—

(a) at the end of paragraph (5)(b)(ii), insert “, or if made on the grounds of regulation 37(1)(i), instead a declaration under paragraph (6)”;

(b) at the end, insert—

“(6) A declaration under this paragraph is a declaration by the money adviser that in the money adviser’s opinion the debtor would still be viable despite the payment break applied for on the basis that—

- (a) the programme still has a reasonable prospect of being completed;
- (b) the debtor can make all payments due under the programme within the period of the programme (as extended); and
- (c) the debtor is continuing to trade, where trading, as at the date of applying for the variation, or otherwise operating at that date.”.

(2) In regulation 37(1) (grounds for variation)—

(a) after sub-paragraph (g) omit “and”; and

(b) after sub-paragraph (h), insert—

“and;

- (i) in the case of a debtor which is a legal person, trust or unincorporated body of persons, where a debtor wishes to defer payments for a period not exceeding 6 months, with the period of the debt payment programme extended (subject to regulation 27(2)(l)(iii)) for a period equal to the period of deferment.”.

Grounds for variation: change in household circumstances, reduction in benefits

16.—(1) In regulation 37(3)(c) (grounds for variation) omit the words “of the debtor”.

(2) After regulation 37(3)(e) insert—

“(f) a reduction in social security benefits or tax credits (or both).”

Approval of variation: discharge of liability on compensation

17. In regulation 38 (approval of variation)—

(a) in paragraph (1)—

(i) omit “or”; and

(ii) at the end, insert “or (ea)”; and

(b) in paragraph (2), for “(d) to (h)” substitute “(d), (e), (f), (g), (h) and (i)”.

Forms

18.—(1) Schedule 1 (forms) is amended as follows.

- (2) In Form 1 (application for approval of a debt payment programme: individuals)—
- (a) for section 2c (is this a joint application?), substitute section 2c set out in Part 1 of schedule 2 of these Regulations;
 - (b) after section 2e (details of the other debtor in a joint DPP), insert section 2f (sensitivity obligation) set out in Part 2 of schedule 2 of these Regulations;
 - (c) at the end of section 4 (debt to be included in the Debt Payment Programme), insert section 4A (if applicable, debts not to be included in the programme under Regulation 20(2AA)) set out in Part 3 of schedule 2 of these Regulations;
 - (d) for section 5b (the debtor, or the debtors in the case of a joint DPP, propose(s) the following), substitute section 5b set out in Part 4 of schedule 2 of these Regulations; and
 - (e) after section 6f (if the debtor(s) selected payment direct from salary or wages, provide employer's details), insert section 6g (disclosure of Continuing Money Adviser administration fee (if applicable) (regulation 20(2)(aa))) set out in Part 5 of schedule 2 of these Regulations.
- (3) In Form 1B (application for approval of a Debt Payment Programme: legal persons and other entities) for section 3 (eligibility to apply) substitute section 3 set out in schedule 3 of these Regulations.
- (4) For Form 2 (notification to creditor of approval of a debt payment programme) substitute Form 2 set out in schedule 4 of these Regulations.
- (5) In Form 4 (application for variation of a Debt Payment Programme) for section 3 (grounds for variation) substitute section 3 set out in schedule 5 of these Regulations.
- (6) In Form 4B (application for variation of a Debt Payment Programme: legal persons and other entities)—
- (a) for sections 4 (grounds for variation) and 5 (effect of the variation) substitute sections 4 and 5 set out in Part 1 of schedule 6 of these Regulations; and
 - (b) for section 7 (declaration by Money Adviser) substitute section 7 set out in Part 2 of schedule 6 of these Regulations.

Savings and transitional arrangements

19.—(1) Except as mentioned in paragraph (2), regulations 7, 8, 9, 11 and 12 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 29th October 2018.

(2) Regulation 8(2) applies in relation to debt payment programmes to which paragraph (1) applies where, on or after 29th October 2018, an application for variation of the debt payment programme is made under regulation 37(1)(d) of the DAS Regulations (material change in the circumstances of a debtor).

(3) For the avoidance of doubt, the amendment introduced by regulation 8(2) is not in itself a material change in the circumstances of the debtor for the purposes of this regulation.

(4) Regulation 5(1) has no effect as regards an application for approval as a money adviser under regulation 9 of the DAS Regulations (approval of a money adviser) made before 29th October 2018.

(5) Regulation 4 has no effect as regards a debt payment programme where the determination which would be corrected was made before 29th October 2018.

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

SCHEDULE 1

Regulation 8(2)

Common Financial Tool: Debt Arrangement Scheme

“SCHEDULE A1

Regulation 2(1)

Common Financial Tool

1. Regulations 15 to 18 of the Bankruptcy (Scotland) Regulations 2016^(a) (“the 2016 Regulations”) 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 AiB^(b), trustee or the court there were substituted references to the DAS Administrator or the court.

2A. Regulation 15(2) (debtor’s contribution to be whole surplus income) of the 2016 Regulations applies as if the debtor may propose a contribution which is a proportion of the debtor’s whole surplus income.

3. Regulation 15(7) (deeming income solely from benefits as making no contribution) does not apply.

4. Regulation 15(8) to (10) (pensions and aliment under the Family Law (Scotland) Act 1985^(c)) does not apply.

5. Regulation 15(11) (guidance) applies as if the guidance issued by AiB was guidance issued by the DAS Administrator under regulation 12(5) of these Regulations.

6. Regulation 17 (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.

7. Regulation 18 (report on contravention of licence requirements)^(d) applies as if for references to a debtor application there were substituted a reference to an application for approval of a debt payment programme.”

^(a) S.S.I. 2016/397, as amended by S.S.I. 2018/[]

^(b) AiB means the Accountant in Bankruptcy (within the meaning given by section 199 of the Bankruptcy (Scotland) Act 2016).

^(c) 1985 c.37.

^(d) Regulation 18 is renamed by S.S.I. 2018/[].

SCHEDULE 2

Regulation 18(2)

Amendments to Form 1 (application for approval of a Debt Payment Programme: Individuals)

PART 1

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) spouses or civil partners of each other

☐

b) living together as if spouses of each other

☐

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

PART 2

2f. Sensitivity obligation

In terms of the Debt Arrangement Scheme (Scotland) Regulations 2011 all DPP applications must be included in the DAS Register which is an on-line public record of all DPPs in Scotland. This information includes the applicant(s) name, address, date of birth and principal place of business (if any).

However, where the DAS Administrator is of the opinion that inclusion of the information in the DAS Register would be likely to jeopardise the safety or welfare of any person (e.g. where a person may be at risk of violence) information about a DPP application need not be included in the DAS Register.

If you consider that inclusion of information about your DPP application in the DAS Register would be likely to jeopardise your safety or welfare, or that of any other person, you should set out details below and provide supporting evidence (e.g. from the police) with this form. The DAS Administrator will then consider whether information about your DPP application should be included in the DAS Register.

I confirm that I have a legitimate reason for certain details being withheld or treated sensitively for the purpose of the DAS Register.

☐

(only tick if applicable)

PLEASE GIVE DETAILS BELOW

--

PART 3

SECTION 4A

If applicable, debts not to be included in the programme under Regulation 20(2AA)

Type of Debt	Amount Owed	Monthly Contribution towards Debt

PART 4

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

i) Proposed contribution **Frequency**

ii) Total payment offer of **over** **instalments**

Payment frequency

Weekly ☐

Fortnightly ☐

Monthly ☐

4 weekly ☐

iii) Lump sum offer of

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

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

PART 5

6g. Disclosure of Continuing Money Adviser administration fee (if applicable) (Regulation 20(2)(aa))

Setup fee

Administration fee (if not included in setup fee)

Frequency of administration fee (if applicable)

SCHEDULE 3

Regulation 18(3)

Amendments to Form 1B (Application for approval of a Debt Payment Programme: legal persons and other entities)

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 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)).

3b. 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)).

3c. Has evidence (including any founding documents) of the legal status of the business been obtained? (regulation 22A(7)(a))

Yes ☐ No ☐

3d. Have the required consents to the application for the programme been obtained? (regulation 22A(6))

Yes ☐ No ☐

3e. Has a declaration of viability been issued to the business? (regulation 22A(7)(c))

Yes ☐ No ☐

Please provide evidence with the application for questions 3c to 3e

Regulation 18(4)

The Debt Arrangement Scheme (Scotland) Regulations 2011

FORM 2

Regulation 29(4)(a)(ii)

FORM 2 Regulation 29
NOTIFICATION TO CREDITOR OF APPROVAL OF A DEBT PAYMENT PROGRAMME

SECTION 1

1a DAS Case Number

[illegible]

1b Date the Debt payment Programme (DPP) was approved _____ / _____ / 20_____

SECTION 2

2 Creditor

ID No. (where appropriate)
Name of Company
Or, if appropriate, creditor's name
Address

Town
Postcode

SECTION 3

3 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
Business Name (if applicable)
Business Address
Town
Postcode

[illegible]

3 a Details of second debtor in joint DPP

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

			-			-					
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SECTION 4

4 Details of Debt included in Programme

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.

4a. The debtor, or the debtors in the case of a joint application, agree to make all payments to the Payments Distributor detailed below unless another Payments Distributor is notified by the DAS Administrator:

Payments Distributor
Address

--

4b. 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.

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

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

(Continue to list all debts, if more than one)

For joint DPPs only.

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

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

(Continue to list all debts, if more than one)

4d If applicable, debts not to be included in the programme under Regulation 20(2AA)

Type of Debt	Amount Owed	Monthly Contribution Towards Debt

4e. The debtor, or the debtors in the case of a joint DPP, 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 asset(s):

SECTION 5

5. Notification by Continuing Money Adviser or the DAS Administrator (where appropriate)

You are notified that the debtor, or debtors in the case of a joint programme, specified in this notice are taking part in a DPP approved under the Debt Arrangement Scheme (Scotland) Regulations 2011.

Name of person sending this notice _____ date _____

5a. Details of Continuing Money Adviser or the DAS Administrator (where appropriate)

ID No. (where appropriate)	<input type="text"/>
Name	<input type="text"/>
Address	<input type="text"/>
Contact Name (if different)	<input type="text"/>
Phone No.	<input type="text"/>

5b. Continuing Money Adviser administration fee (if applicable)

Setup fee

Administration fee (if not included in setup fee)

Frequency of administration fee (if applicable)

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 register. Personal information will not be disclosed to third parties except as provided by legislation.

IMPORTANT INFORMATION FOR CREDITORS

The Debt Arrangement Scheme (DAS)

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

DAS helps people with debts to pay most of what they owe to their creditors over an agreed period of time. 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 DAS Administrator has approved a DPP as proposed by the debtor, or debtors in the case of a joint DPP, named above. The debtor(s) is, therefore, protected from enforcement.

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 debtor(s).

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

Further information about the rights and duties of debtors and creditors under DAS is available on the Accountant in Bankruptcy website at: www.aib.gov.uk.

SCHEDULE 5

Regulation 18(5)

Amendments to Form 4 (Application for variation of a Debt Payment Programme)

Section 3

3 Grounds for Variation (Regulation 37)

I apply for a variation because:

- | | | | |
|--------------------------|--|------------------------------|-----------------------------|
| a | There is an agreement between the debtor, or in the case of a joint DPP the debtors, and each creditor participating in the programme. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| b | There is an agreement between the debtor and a creditor to cancel the obligation to repay an amount. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| c | The programme is one in relation to which a request for the consent of every creditor was made before 30th June 2007 and the variation is to 'freeze' interest and charges otherwise due to these creditors. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| d | There has been a material change in the circumstances of the debtor or, in the case of a joint DPP, the debtors. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| e | A debt has been omitted from, or was wrongly assessed for the programme due to a mistake, oversight, or other reasonable cause. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| f | There is a debt that was future or contingent which was known but not quantifiable at the date of approval, is now quantified and due for payment. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| g | The debtor, or the debtors in the case of a joint DPP, needs credit to meet an essential requirement. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| h | The debtor, or in the case of a joint DPP the debtors, wishes to defer payment for a period of 6 months, with the period of the DPP to be extended accordingly, as the debtor's disposable income has reduced by 50% or more as a result of the circumstances specified below: | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| <input type="checkbox"/> | A period of unemployment or change in employment; | | |
| <input type="checkbox"/> | A period of leave from employment for maternity, paternity, adoption or to care for a dependant; | | |
| <input type="checkbox"/> | A period of illness; | | |
| <input type="checkbox"/> | Divorce, dissolution of civil partnership or judicial separation; or | | |
| <input type="checkbox"/> | Death of a person with whom the debtor shared financial responsibilities or otherwise. | | |
| <input type="checkbox"/> | Reduction in social security benefits or tax credits (or both) | | |

Provide full details and evidence in respect of 3a) to 3h) below.

Supporting Information:

SCHEDULE 6

Regulation 18(6)

Amendments to Form 4B (Application for variation of a Debt Payment Programme: legal persons and other entities)

PART 1

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 | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 4b | There is an agreement between the business and a creditor to cancel the obligation to repay an amount. | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 4c | There has been a material change in the circumstances of the business. | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 4d | A debt has been omitted from, or was wrongly assessed for the programme due to a mistake, oversight, or other reasonable cause. | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 4e | There is a debt that was future or contingent which was known but not quantifiable at the date of approval, is now quantified and due for payment. | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 4f | The business needs credit to meet an essential requirement. | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 4g | The business needs to defer payments for a period not exceeding 6 months, with the period of the DPP to be extended accordingly (subject to regulation 27(2)(l)(iii)). | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |

Provide full details and evidence in respect of 4a) to 4g) 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 £ p	Tick if new debt not in the programme

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

5b Arrange for a payment break not exceeding 6 months on the grounds at 4g above

Yes ☐ No ☐

If 'yes' term of payment break,

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

5c Vary the amount payable to the creditors.

Yes ☐ No ☐

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

Forecast	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 ☐
4 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:

5d

Other

Yes ☐ No ☐

Provide full details in respect of 5a) to 5d) below.

Supporting Information:

PART 2

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)

☐

(Where this application is to defer payment for a period not exceeding 6 months)
I declare that in my opinion the debtor would still be viable despite the payment break applied for (Regulation 36(6))

☐

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Debt Arrangement Scheme (Scotland) Regulations 2011 (“the DAS Regulations”) provide for a scheme for the repayment of debts in Scotland (“the DAS Scheme”). They provide for the procedure and forms in respect of a repayment arrangement under the scheme, which is described as a debt payment programme (“DPP”). The scheme is open to both individual debtors and to legal persons and other entities. The scheme as it relates to legal persons and other entities is known as “Business DAS”.

The Regulations amend the DAS Regulations to implement changes to the operation of the DAS Scheme as it applies to individual debtors. They introduce the option for the debtor to exclude from the DPP arrears of rent or mortgage payments in relation to the debtor’s sole or main residence (regulation 8(1)); and modify the application of the Common Financial Tool to the DAS Scheme, to introduce the option for the debtor to propose to pay a proportion of the debtor’s surplus income into the DPP (regulation 8(2) and schedule 1).

The Regulations also introduce the option for an individual debtor to include within the DPP an offer of a lump sum payment using the proceeds of a future sale or re-mortgage of the debtor’s sole or main residence (regulation 11); and allow individual debtors to access further credit up to a limit of £2000 (except where the debtor has existing debts outside the DPP of £1000 or more) (regulation 14).

The Regulations also implement changes to the operation of Business DAS. They remove the requirement that the DPP applied for must provide for the payment of two or more debts (regulation 9); and extend the existing protection from diligence and sequestration to cover related individuals in Business DAS from the date on which the application for the DPP is entered in the DAS Register (regulation 12). They introduce provision allowing the debtor in Business DAS to apply for a payment break of no longer than 6 months, with the term of the DPP extended accordingly (up to a maximum term of 5 years from the date of application) (regulation 15).

The Regulations make further changes to the operation of the DAS Scheme as follows:-

Regulation 4 inserts provision into the DAS Regulations to enable the correction of accidental errors in determinations made by the DAS Administrator arising from the provision of incorrect information by a third party.

Regulation 5 introduces a requirement that those applying for approval as money advisers must have in place appropriate arrangements to ensure Financial Conduct Authority compliance, and provides that approval may be revoked where such arrangements are not maintained.

Regulation 6 makes provision for excluding from the DAS Register information which would be likely to jeopardise the safety or welfare of any person.

Regulation 7 provides for the disclosure of any fee charged by a continuing money adviser.

Regulation 10 updates the terminology in relation to joint debt payment programmes to reflect the introduction of same sex marriage.

Regulation 13 provides that, where there is a continuing money adviser, that adviser must send any notice of recall to an employer and must notify the parties of any approval or rejection of a variation of the DPP.

Regulation 16 extends the circumstances in which an individual debtor may apply for a payment break, to reflect that changes in household circumstances may lead to reduction in the debtor’s income. The circumstances which may lead to a reduction in the debtor’s income now include a period of illness of any person (not only of the debtor) and a reduction in social security benefits or tax credits.

Regulation 17 provides that the DAS Administrator must approve a variation of a DPP arising from debt discharged by a creditor applying compensation (i.e. setting off one debt against another).

Provision is also made for new or updated forms (regulation 18 and schedules 2 to 6).

Regulation 19 includes saving provisions so that regulations 7, 8, 9, 11 and 12 do not affect DPPs applied for before 29th October 2018 (other than regulation 8(2), which applies to an application to vary a DPP applied for before that date, on a material change in the circumstances of the debtor). Regulation 5(1) does not affect applications for approval as a money adviser made before 29th October 2018; and regulation 4 does not apply to determinations made before that date.

Schedule 1 amends schedule A1 of the DAS Regulations, in light of the consolidation of the Common Financial Tool (etc.) (Scotland) Regulations 2014 into the Bankruptcy (Scotland) Regulations 2016 (as amended), and modifies the application of the Common Financial Tool to the DAS Scheme.

A Business and Regulatory Impact Assessment has been prepared and is available from the Accountant in Bankruptcy at www.aib.gov.uk/

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