
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide a scheme for repayment of multiple debts in Scotland. 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”).

The scheme is the responsibility of the DAS administrator, who exercises the functions of the Scottish Ministers under the Debt Arrangement and Attachment (Scotland) Act 2002 (“the 2002 Act”).

In particular, the DAS administrator has the main responsibility for approval or rejection of applications for approval of a programme. The Accountant in Bankruptcy of 126 George Street, Edinburgh is the DAS administrator, by virtue of an order under section 8 of the 2002 Act.

A person whose debts are being repaid under a programme is protected in terms of section 4 of the 2002 Act from enforcement measures (diligence and sequestration proceedings) that are otherwise available to creditors.

The Regulations are divided into 10 parts, and have 5 Schedules.

Part 1 provides definitions for terms used in the Regulations and for the forms in Schedule 1 (regulations 2 and 3), a dispensing power for the DAS administrator so that procedural irregularities can be resolved administratively (regulation 4), for fees to be charged in accordance with the table in Schedule 2 (regulation 5), and for consequential amendments to the 2002 Act and other enactments as set out in Schedule 3 (regulation 6).

Part 2 provides that a person whose debts are being repaid under a programme shall at all times have a money adviser (regulation 7), for the method of applying for, and period of approval as, an adviser, and together with Schedule 4 the grounds for such approval (regulation 8), for the grounds on which approval as an adviser may be revoked (regulation 9), a list of persons who may not be approved as an adviser (regulation 10), for the functions of an adviser, and that a fee may not be charged unless information about free advice is given to the client (regulation 11), and for the notices that must be given on a change of adviser or payments distributor (regulation 12).

Part 3 provides for the method of applying for, and period of approval as, a payments distributor, and together with Schedule 5 the ground for such approval (regulation 13), the grounds on which approval as a distributor may be revoked (regulation 14), the functions of a distributor (regulation 15), and that an administration fee for distribution services may be charged to a creditor or, in limited circumstances, a debtor (regulation 16).

Part 4 provides that the DAS administrator shall maintain a register of programmes (regulation 17), for the information to be held on that register (regulation 18), and who may have access to it (regulation 19).

Part 5 provides that a person who is habitually resident in Scotland may apply for approval of a programme (regulation 20). That person must be an individual by virtue of section 1 of the 2002 Act. It further provides that a person may not in general apply if debts are being managed in other ways, including sequestration or bankruptcy (regulation 21), that each creditor (as defined in regulation 2) must consent to a programme, unless the DAS administrator may dispense with such consent (regulation 22), that a creditor may, as well as not consenting, object on the grounds that sequestration is better or that property is sold to pay debts (regulation 23), that recognition may be given to agreements to waive payment of a debt, or interest on a debt (regulation 24), that agreed programmes shall be approved (regulation 25), that the DAS administrator, or in exceptional

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circumstances the sheriff, shall approve a programme that is fair and reasonable using specified criteria (regulations 26 and 27), for notice of approval and the date of approval (regulation 28), and that approval is always subject to certain conditions (regulation 29) and may be subject to extra conditions (regulation 30), and for methods for the DAS administrator and money adviser to notify interested parties about approval or rejection of a programme (regulation 31).

Part 6 provides for specified methods of payment where a programme is approved, and for the DAS administrator to be able to approve other methods (regulation 32), and in respect of payment mandates to an employer for the charges an employer may make and a penalty for default on employers (regulation 33), for agreements to make regular payments such as utility through a payments distributor along with the regular debt repayment (regulation 34). It also makes provision further to the 2002 Act for the effect of a programme, in particular that arrestments are recalled, and that if further credit is given to a person in a programme then diligence and sequestration may not be available to enforce payment (regulation 35(1) to (4)), that the protection from enforcement action under the 2002 Act is extended so that civil imprisonment is covered, and that a creditor can complete diligences that are at an advanced stage at the time of approval (regulation 35(5)), and that a person in a programme may not enter into a trust deed for a creditor under the Bankruptcy (Scotland) Act 1985 (regulation 36).

Part 7 provides that money advisers and creditors may apply for variation of a programme (regulation 37) on specified grounds (regulation 38), that the DAS administrator, or in some circumstances the sheriff, shall approve a programme that is fair and reasonable using the criteria in regulation 27, (regulation 39), and the methods for the DAS administrator and money adviser to notify interested parties about approval or rejection of a variation (regulation 40).

Part 8 provides for automatic revocation of a programme if the person applies for sequestration (regulation 41), that in other circumstances money advisers and creditors may apply for revocation (regulation 42), the grounds for revocation and the factors the DAS administrator must consider (regulations 43 and 44), and the methods for the DAS administrator and money adviser to notify interested parties about the revocation (regulation 45). It also provides for revocation to be a ground of apparent insolvency under the Bankruptcy (Scotland) Act 1985 (regulation 46).

Part 9 provides for the notices that are required when a programme is completed, whether by repayment in full or agreement amongst those with an interest (regulations 47 to 49).

Part 10 provides for the circumstances in which matters of law may be appealed to the sheriff or sheriff principal, as the case may be, and for the decision on appeal to be final (regulation 50).

A Regulatory Impact Assessment of the effect which these Regulations are likely to have on business costs has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Executive Justice Department, Diligence Branch, St. Andrew's House, Edinburgh.