
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 141

The Debt Arrangement Scheme (Scotland) Regulations 2011

PART 7

VARIATION OF DEBT PAYMENT PROGRAMMES

Application for variation

36.—(1) An application to the DAS Administrator for variation of a debt payment programme may be made by—

- (a) a debtor or a money adviser on behalf of the debtor; or
- (b) subject to paragraph (2), a creditor.

(2) A creditor may not apply for a variation unless the creditor has first made a reasonable attempt to agree the variation with the debtor.

(3) An application under paragraph (1) must be made—

- (a) by the debtor in writing; or
- (b) by a money adviser or by a creditor in form 4.

(4) Where an application has been made under paragraph (1), the DAS Administrator is to intimate the application to—

- (a) the debtor;
- (b) the payments distributor;
- (c) each creditor taking part in the programme; and
- (d) any continuing money adviser for that debtor.

(5) In paragraph (1), “an application” in relation to a joint debt payment programme refers to an application made by both debtors jointly.

Grounds for variation

37.—(1) An application for variation of a debt payment programme may be made—

- (a) on agreement between a debtor and each creditor participating in the programme;
- (b) on agreement between a debtor and a creditor that a liability of the debtor to repay a sum is to be discharged;
- (c) so interest, fees, penalties and other charges are not payable as provided for in regulations under section 7A of the Act;
- (d) on a material change in the circumstances of a debtor;
- (e) where a debt due at the date of approval of that programme was omitted from, or was wrongly assessed for the programme due to a mistake, oversight, or other reasonable cause;
- (f) where a future or contingent debt, known but not quantifiable at the date of approval of the programme, is quantified and due for payment;

- (g) where a debtor requires credit to meet an essential requirement; and
 - (h) where a debtor wishes to defer payments for a period of 6 months, with the period of the debt payment programme extended for an equal period, where circumstances specified in paragraph (3) have resulted in a reduction in the debtor's disposable income of 50% or more.
- (2) An application for variation shall not be made in respect of any other debt of a debtor.
- (3) The circumstances for the purposes of paragraph (1)(h) are—
- (a) a period of unemployment or change in employment;
 - (b) a period of leave from employment for maternity, paternity, adoption or to care for a dependant;
 - (c) a period of illness of the debtor;
 - (d) divorce, dissolution of civil partnership or separation from a person to whom the debtor is married or the civil partner;
 - (e) death of a person with whom the debtor shared care (financial responsibilities or otherwise).
- (4) In paragraph (1)(h), "disposable income" means disposable income calculated on the same basis as set out in form 1 (on the basis of equivalent details provided on form 3).

Approval of a variation

- 38.**—(1) The DAS Administrator must approve a variation proposed under regulation 37(1)(a), (b) or (c).
- (2) The DAS Administrator must approve a variation proposed under regulation 37(1)(d) to (h) if the variation is fair and reasonable.
- (3) The DAS Administrator in determining whether a variation is fair and reasonable—
- (a) must have regard to—
 - (i) the matters specified in regulation 25(2);
 - (ii) the views of the debtor;
 - (iii) the views of the other debtor in the case of a joint debt payment programme;
 - (iv) the views of a creditor taking part in the programme and of any creditor making the application; and
 - (v) the views of any money adviser who has provided advice to the debtor;
 - (vi) whether any expenditure of the debtor declared in assessing disposable income appears to be necessarily incurred by the debtor; and
 - (vii) any variation previously approved under regulation 37(1)(h); and
 - (b) may have regard to any other factor the DAS Administrator considers appropriate.
- (4) Approval of a variation may be made subject to a condition under regulation 28.

Notification of approval or rejection of a variation

- 39.**—(1) 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)—
- (a) to the debtor;
 - (b) to the money adviser who made the application on behalf of the debtor;
 - (c) to the payments distributor;

- (d) to a creditor—
 - (i) taking part in the programme;
 - (ii) who has applied for the variation; and
 - (e) to any continuing money adviser for that debtor.
- (2) A continuing money adviser notified under paragraph (1)(e) must notify an employer if there is a payment instruction under regulation 32.