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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 141**

**The Debt Arrangement Scheme (Scotland) Regulations 2011**

**PART 8**

**REVOCATION OF DEBT PAYMENT PROGRAMMES**

**Revocation on sequestration or protected trust deed**

- 40.** A debt payment programme must be revoked by the DAS Administrator—
- (a) on an award of sequestration of the debtor's estate on a debtor application within the meaning of the 1985 Act;
  - (b) from when a protected trust deed by the debtor obtains that status.

**Application for revocation**

- 41.—**(1) An application to the DAS Administrator for revocation of a debt payment programme, may only be made by—
- (a) a debtor or a money adviser on behalf of the debtor;
  - (b) a creditor taking part in the programme.
- (2) An application under paragraph (1)—
- (a) by a debtor, must be in writing;
  - (b) by a money adviser on behalf of the debtor, or by a creditor, must be in form 5.
- (3) In paragraph (1), “an application” in relation to a joint debt payment programme refers to an application made by both debtors jointly, except that either debtor may apply only on grounds mentioned in regulation 42(1)(d).

**Grounds for revocation**

- 42.—**(1) A debt payment programme may be revoked by the DAS Administrator (whether or not on an application under regulation 41) where—
- (a) a debtor fails without reasonable cause to satisfy a condition under regulation 27 or 28;
  - (b) a debtor makes a statement in an application under these Regulations which the debtor knows to be untrue; or
  - (c) a payment to be paid under the programme becomes due, and there remains unpaid a sum, due in respect of previous payments so due, of not less than the aggregate of two such payments; or
  - (d) in the case of a joint debt payment programme, conditions in regulation 22(1)(b) or (2) no longer apply.
- (2) If the DAS Administrator proposes to revoke a debt payment programme it must give written notice of that proposal to—

- (a) the debtor;
- (b) each creditor who is taking part in the programme;
- (c) any creditor who has made an application for variation of the programme; and
- (d) any continuing money adviser or money adviser who has made an application for revocation on behalf of the debtor,

and is not to implement the proposal until the expiry of a period of at least 4 weeks after the date on which notice is given.

(3) A continuing money adviser given notice under paragraph (2) must notify all creditors taking part in the debt payment programme of the proposal to revoke the programme.

### **Determination of a revocation**

**43.**—(1) The DAS Administrator in determining whether to revoke a debt payment programme is to have regard to—

- (a) any statement made by, or on behalf of, a debtor;
- (b) the nature of any failure, or untrue statement;
- (c) any factor that tends to indicate whether or not the programme will be successful; and
- (d) where notice of proposed revocation is given under regulation 42(2), any representations made by the debtor or by the creditors, as regards the proposal, during the period mentioned in that paragraph.

(2) The DAS Administrator in determining whether to revoke a debt payment programme may have regard to any other factor that the DAS Administrator considers appropriate in all the circumstances.

### **Notification of revocation**

**44.**—(1) The DAS Administrator must intimate in writing the revocation of the programme and the reasons to—

- (a) the debtor;
- (b) a money adviser who made the application on behalf of the debtor;
- (c) any continuing money adviser;
- (d) the payments distributor;
- (e) where there is a payment instruction under regulation 32, to the employer;
- (f) a creditor taking part in the programme; and
- (g) a creditor who applied for revocation.

(2) A continuing money adviser notified under paragraph (1) must notify—

- (a) all creditors taking part in the programme; and
- (b) where there is a payment instruction under regulation 32, to the employer.

### **Apparent insolvency**

**45.** In section 7(1)(c) (meaning of apparent insolvency) of the 1985 Act<sup>(1)</sup>, after subparagraph (iv), insert—

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(1) 1985 c.66. Section 7 was repealed in part by the Drug Trafficking Act 1994 (c.37) (“the 1994 Act”), Schedule 3, and the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40) (“the 1995 Act”), Schedule 5, and amended by the 1994 Act, Schedule 1, paragraph 10(2), the Criminal Justice (Scotland) Act 1995 (c.20), Schedule 6, paragraph 185(3),

“; or

- (vii) where any debt being paid under a debt payment programme under the Debt Arrangement and Attachment (Scotland) Act 2002 is constituted by a decree or document of debt as defined in section 10 (attachment) of that Act and the programme is revoked,”.

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the 1995 Act, Schedule 4, paragraph 58(3), the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), schedule 3, paragraph 15(2), and the Proceeds of Crime Act 2002 (c.29), Schedule 11, paragraph 15(3). Subsection (1)(c) was also repealed in part, and sub-paragraph (iv) prospectively repealed, by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), schedule 6, Part 1 (see [S.S.I. 2008/115](#)).