

**2011 No. 141**

**DEBT**

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

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

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The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 2(3)(d), 4(5), 5(4), 6(1), 7 and 62(2) of the Debt Arrangement and Attachment (Scotland) Act 2002(a) and all other powers enabling them to do so.

PART 1  
GENERAL

**Citation and commencement**

1. These Regulations may be cited as the Debt Arrangement Scheme (Scotland) Regulations 2011 and come into force on 1st July 2011.

**Interpretation: general**

2.—(1) In these Regulations—

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

“the 1985 Act” means the Bankruptcy (Scotland) Act 1985;

“the 1986 Act” means the Insolvency Act 1986;

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(a) 2002 asp 17 (“the Act”). Section 7 was amended by S.S.I. 2004/468 and 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.

“creditor” means, unless the context requires otherwise, a creditor other than a creditor in respect of—

- (a) a continuing liability
- (b) a sum secured by a standard security, other than a sum specified in regulation 3(1)(b); or
- (c) a contingent liability that has not become purified.

“continuing liability” means a payment due by a debtor, other than arrears of such a payment, in respect of—

- (a) a periodic payment due under a loan agreement secured by a standard security (mortgage payment);
- (b) rent;
- (c) an insurance premium;
- (d) a duty, local or general tax, or rate;
- (e) domestic water charge or domestic sewerage charge;
- (f) any aliment, periodical allowance, child maintenance or child support;
- (g) the supply of electricity, gas, or fixed line telephone services;
- (h) heating oil or solid fuel;
- (i) a hire purchase or conditional sale agreement; and
- (j) a criminal fine;

“continuing money adviser” means a money adviser who charges a fee (see regulation 12(3));

“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<sup>(a)</sup>;

“DAS Register” means the Debt Arrangement Scheme Register maintained under regulation 18;

“decree” and “document of debt” are to be construed in accordance with section 10(5) (attachment) of the Act;

“joint debt payment programme” means a debt payment programme applied for by two debtors jointly in accordance with regulation 22;

“money adviser” has the same meaning as in section 9(1) (interpretation of Part 1) of the Act;

“payments distributor” means a person or body approved under section 2(5) of the Act for the purpose of performing the functions of a payments distributor under the Act;

“protected trust deed” has the meaning given by section 73(1) of the 1985 Act;

“sheriff” means the sheriff of the sheriff court district in which a debtor habitually resides;

“standard security” means the form of heritable security enabled under section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970; and

“trust deed” has the same meaning as in section 5(4A) of the 1985 Act<sup>(b)</sup>.

(2) A form referred to by number in these Regulations means the form so numbered in Schedule 1.

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(a) S.S.I. 2004/448.

(b) Subsection (4A) was inserted by the Bankruptcy (Scotland) Act 1993 (c.6), section 3(4) and amended by the Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), section 10(1).

(3) Any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(a), which has been recorded and is consequently capable of being reproduced.

### **Interpretation: debt**

- 3.—(1) In these Regulations, “debt” includes any sum due by a debtor—
- (a) constituted by—
    - (i) decree or document of debt;
    - (ii) judicial or contractual interest;
    - (iii) charges or penalties due under a contract on any default in respect, or breach of, that contract;
    - (iv) lease or tenancy agreement;
    - (v) enactment;
  - (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;
  - (c) recoverable from the debtor as enforcement expenses.
- (2) In these Regulations, “debt” excludes any sum due by a debtor—
- (a) to the extent it is secured by a standard security, other than where that sum is included under paragraph (1)(b);
  - (b) as a liability for the purpose of section 17(2B) of the Legal Aid (Scotland) Act 1986(b).

### **Dispensing power**

4. The DAS Administrator may relieve any person from the consequences of any failure to comply with a provision of these Regulations that is shown to be due to mistake, oversight or other reasonable cause.

### **Fees**

5.—(1) A fee for consideration of an application for approval or variation of a debt payment programme must be paid to the DAS Administrator.

(2) That fee may not be charged to the debtor and is to be charged to all creditors taking part in the debt payment programme.

(3) The fee payable is 2% of any sum due to be paid to a creditor in a distribution made by the payments distributor, and must be paid from the sum due to be paid to each creditor.

(4) The fee must be remitted to the DAS Administrator by the payments distributor for that programme.

### **Consequential amendments**

6. Schedule 2, which contains amendments consequential on these Regulations, has effect.

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(a) Section 15 of the Electronic Communications Act 2000 (c.7) contains a definition of “electronic communication”, as amended by the Communications Act 2003 (c.21) Schedule 15, paragraph 158.

(b) Subsection (2B) was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), Schedule 8, paragraph 36.

## PART 2

### MONEY ADVISERS

#### **Debtor to have an approved money adviser**

7.—(1) A debtor must take the advice of a money adviser in applying for a debt payment programme.

(2) The money adviser who advises a debtor must not be an associate of the debtor within the meaning of section 74 of the 1985 Act.

(3) The DAS Administrator must assist a debtor in finding a money adviser where a money adviser resigns or the adviser's approval is suspended or revoked.

#### **Approved categories of money advisers**

8. A person, other than a person specified in regulation 10, is an approved money adviser if the person—

- (a) is qualified to act as an insolvency practitioner in accordance with section 390 of the 1986 Act<sup>(a)</sup>;
- (b) is an individual who works for such an insolvency practitioner and has been given authority by that practitioner to act on the practitioner's behalf as a money adviser for the purposes of the debt arrangement scheme;
- (c) works as a money adviser for organisations which have been awarded accreditation at Type 2 level or above against the Scottish National Standards for Information and Advice Provision; or
- (d) works as a money adviser for a citizens advice bureau which is a full member of the Scottish Association of Citizens Advice Bureaux – Citizens Advice Scotland;
- (e) works as a money adviser for a local authority; or
- (f) is approved by the DAS Administrator under regulation 9.

#### **Approval of a money adviser**

9.—(1) An application to the DAS Administrator for approval as a money adviser by a person other than those described in regulation 8(a) to (e), must—

- (a) be in writing on (or if sent electronically, incorporate an image of) the headed notepaper of any relevant organisation for which the applicant works, or, if none, state the applicant's name and business address;
- (b) include a statement of the suitability of the applicant to act as money adviser for the purposes of the debt arrangement scheme;
- (c) provide evidence of any relevant training; and
- (d) be accompanied by a valid criminal record certificate under Part 5 of the Police Act 1997<sup>(b)</sup> dated less than 12 months before the date of application.

(2) The DAS Administrator may approve an application under paragraph (1) by a person, other than a person listed in regulation 10, if satisfied that the applicant is a fit and proper person to be a money adviser.

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(a) 1986 c.45. Section 390 was amended by the Adults with Incapacity (Scotland) Act 2000 (asp 4), section 88(2), Schedule 5, paragraph 18; the Insolvency Act 2000 (c.39), section 8, Schedule 4, Part 11, paragraph 16(2); the Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), article 2, Schedule 1, paragraph 18(3); the Mental Capacity Act 2005 (c.9), section 67(1), (2), Schedule 6, paragraph 31(3), Schedule 7; and the Tribunals, Courts and Enforcement Act 2007 (c.15), section 108(3), Schedule 20, paragraph 6.

(b) 1997 c.50. Part 5 was amended by the Criminal Justice Act 2008 (c.4), section 50(3).

(3) An applicant is to be a fit and proper person if, but not only if, the person has undergone training on the matters specified in Schedule 3.

### **Persons who are not and may not be approved**

- 10.** The persons who are not money advisers, and may not be approved as such, are—
- (a) a sheriff officer or messenger-at-arms, or an employee of such a person;
  - (b) a person or body providing financial services, or financial advice other than money advice, in the course of a business or otherwise for profit, or an employee of such a person, unless the person is a—
    - (i) solicitor;
    - (ii) chartered or certified accountant;
    - (iii) a credit union registered under the Industrial and Provident Societies Act 1965<sup>(a)</sup> by virtue of section 1 (registration under the Industrial and Provident Societies Act 1965) of the Credit Unions Act 1979<sup>(b)</sup>;
  - (c) a person providing debt collection services, or an employee of such a person;
  - (d) a person convicted of an offence involving theft, fraud or other dishonesty;
  - (e) a person subject to a bankruptcy restrictions order (including an interim order) or bound by a bankruptcy restrictions undertaking, under Schedule 4A (bankruptcy restrictions order and undertaking) to the 1986 Act<sup>(c)</sup> or under section 56A or as the case may be 56F or 56G of the 1985 Act<sup>(d)</sup>;
  - (f) a person in respect of whom a court has made a disqualification order under section 1, or who has had a disqualification undertaking accepted under section 2, of the Company Directors Disqualification Act 1986<sup>(e)</sup>; or
  - (g) a person whose approval is revoked or suspended under regulation 11.

### **Revocation, or suspension, of approval of a money adviser**

- 11.—**(1) The DAS Administrator may revoke the approval of any money adviser where—
- (a) an adviser for a debtor fails without good cause to respond to a requirement by the DAS Administrator for the adviser to provide evidence or information relating to the operation of the debt payment programme of the debtor; or
  - (b) in the opinion of the DAS Administrator the adviser—
    - (i) has failed without good cause to carry out a function of an adviser under the Act or these Regulations; and
    - (ii) continues to fail to carry out that function, after 2 weeks from the date of written notice to the adviser of that failure.

(2) The DAS Administrator must provide written notice to a debtor of the suspension or revocation of the approval of the money adviser to that debtor.

### **Functions and duty of a money adviser**

- 12.—**(1) It is a function of a money adviser to—
- (a) provide money advice to a debtor;
  - (b) liaise with creditors on behalf of a debtor;

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(a) 1965 c.12. There are amendments to this Act which are not relevant to these Regulations.

(b) 1979 c.34. Section 1 was amended by S.I. 1996/1189, 2001/2617 and 2538 and 2002/1501.

(c) Section 4A was inserted by the Enterprise Act 2002 (c.40), Schedule 20, paragraph 1.

(d) Sections 56A, 56F and 56G were inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 2.

(e) 1986 c.46, as amended by the Insolvency Act 2000 (c.39), section 5 and Schedule 4, paragraph 2, and the Enterprise Act 2002 (c.40), section 204(3).

- (c) assist a debtor with, and advise on an application for approval, variation or revocation of a debt payment programme;
  - (d) prepare and submit on behalf of a debtor an application under these Regulations;
  - (e) provide, as required by the DAS Administrator, evidence of or information about the participation of a debtor in a debt payment programme (including the debtor's consent to any application for approval, variation or revocation in relation to which the adviser provided money advice); and
  - (f) act as a lay representative in a court, where the adviser has accepted instructions by a debtor to act.
- (2) A money adviser must not charge a fee to a debtor for the adviser's services, unless the adviser has informed the debtor—
- (a) that money advice is available without any fee or payment being due by the debtor ("free money advice");
  - (b) of the name of—
    - (i) any adviser (or all, if more than one) providing free money advice within a 10 kilometre radius of the debtor's usual place of residence; or
    - (ii) the nearest adviser providing free money advice to the debtor's place of residence, where there is no adviser within a 10 kilometre radius of the debtor's usual place of residence,
- and the debtor has agreed in writing to pay a fee.
- (3) Where a money adviser charges any fee to a debtor ("a continuing money adviser") it is also a function of that adviser following the submission of an application under these Regulations—
- (a) to review a debt payment programme in every twelfth month of operation; and
  - (b) as soon as reasonably practicable to provide written notice to the DAS Administrator of—
    - (i) any appointment or resignation of the adviser;
    - (ii) on any resignation, why the money adviser ceased to act; and
    - (iii) any change of the debtor's address.
- (4) Where there is no continuing money adviser for a debt payment programme under paragraph (3), the DAS Administrator—
- (a) must in every twelfth month of the operation of the programme, invite the debtor to provide a statement of the debtor's current financial circumstances; and
  - (b) may, on receipt, notify the debtor that the debtor may wish to take the advice of a money adviser on a review of the programme.
- (5) A money adviser must have regard to guidance issued by the DAS Administrator when carrying out a function of an adviser.

## PART 3

### PAYMENTS DISTRIBUTORS

#### **Payments distributors for a debt payment programme**

**13.—**(1) An approved payments distributor whose name and address is specified in accordance with section 2(3)(c) of the Act is to act as the payments distributor for a particular debt payment programme if the DAS Administrator consents to that appointment.

(2) If the DAS Administrator does not so consent, the DAS Administrator must arrange for another approved payments distributor to act as payments distributor.

(3) In exercising its functions under this regulation, the DAS Administrator must have regard to the outcome of the tendering process under regulation 14(2).

### **Approval of a payments distributor**

14.—(1) An application to the DAS Administrator for approval as a payments distributor must be in writing.

(2) The DAS Administrator must invite tenders for persons or bodies to be approved as payments distributors by a fair, open and transparent tendering process.

(3) The DAS Administrator must approve an application under paragraph (1) if—

- (a) satisfied that the applicant is a fit and proper person or body to be a payments distributor; and
- (b) the applicant is appointed following the tender process under paragraph (2).

(4) Without prejudice to the generality of paragraph (3)(a), an applicant is not a fit and proper person if the person or body does not satisfy the criteria specified in Schedule 4.

(5) The DAS Administrator may make approval under paragraph (3) subject to any reasonable condition.

(6) Approval is for any period stated in that approval (or in the tendering process under paragraph (2)).

### **Revocation of approval of a payments distributor**

15. The DAS Administrator may revoke the approval of a payments distributor where—

- (a) the distributor fails without good reason to comply with a condition attached to the approval;
- (b) the DAS Administrator is satisfied that the distributor is no longer a fit and proper person to be a distributor; or
- (c) in the opinion of the DAS Administrator the distributor—
  - (i) has failed without good cause to carry out a function of a distributor under the Act or under these Regulations; and
  - (ii) continues to fail to carry out that function, after 2 weeks from the date of written notice to the distributor of that failure;
- (d) in the opinion of the DAS Administrator the distributor fails to comply without good reason with any condition to which the approval is subject under regulation 14(5).

### **Functions and duty of a payments distributor**

16.—(1) It is a function of a payments distributor—

- (a) to assist the DAS Administrator and any continuing money adviser with, and advise on, payments distribution;
- (b) to distribute sums received in accordance with the debt payment programme;
- (c) to provide payment and distribution reports to the DAS Administrator, any continuing money adviser, and to creditors;
- (d) to provide information to the DAS Administrator about the exercise of a function of a payments distributor; and
- (e) to remit the fee payable in accordance with regulation 5 to the DAS Administrator.

(2) On an approval being revoked under regulation 15 or a distributor otherwise ceasing to act, the distributor whose approval is revoked, or who ceases to act, must transfer to a substitute payments distributor specified by the DAS Administrator the debt payment programmes for which that first distributor is responsible, within a reasonable period specified by the DAS Administrator.

(3) A payments distributor must have regard to guidance issued by the DAS Administrator when carrying out a function of a distributor.

### **Charges by a payments distributor**

17.—(1) In the exercise of a function under the Act or these Regulations, a payments distributor—

- (a) must make no charge of any kind to a debtor for payments distribution; and
- (b) subject to paragraph (2), may charge an administration fee to a creditor taking part in a debt payment programme.

(2) The administration fee must be no more than 8% of the sum due to be paid to a creditor in a distribution by the distributor.

## **PART 4**

### **DEBT ARRANGEMENT SCHEME REGISTER**

#### **Debt Arrangement Scheme Register**

18.—(1) There is to be a register of debt payment programmes, to be known as the Debt Arrangement Scheme Register (“the DAS Register”).

(2) The DAS Administrator must maintain the DAS Register, which may be wholly or partially in electronic form.

#### **Information on the DAS Register**

19.—(1) Information in respect of the matters relating to debt payment programmes specified in paragraph (2) is to be held on the DAS Register.

(2) The specified information is—

- (a) an intimation of intention to apply under regulation 20(3);
- (b) an application under regulation 20 for a programme that has yet to be approved;
- (c) an intimation of withdrawal of application under regulation 20(4);
- (d) the date of any request under regulation 23(3);
- (e) a programme approved under regulation 24 or 25;
- (f) a notice of approval or rejection under regulation 29(1);
- (g) an application for variation under regulation 36;
- (h) variation of an approved programme under regulation 38; and
- (i) an appeal to the sheriff under regulation 47.

(3) The DAS Register is to include for each debtor who has given intimation under regulation 20(3), who has applied for approval of a debt payment programme, or who is taking part in a programme, a record of—

- (a) the full name, including any former name;
- (b) the date of birth;
- (c) the home address or addresses, and any business address; and
- (d) the business address of any continuing money adviser.

## PART 5

### APPROVAL OF DEBT PAYMENT PROGRAMMES

#### **Application for approval**

**20.**—(1) A debtor who is habitually resident in Scotland may apply to the DAS Administrator for approval of a debt payment programme.

(2) An application under paragraph (1)—

- (a) must be made by a money adviser on behalf of the debtor in form 1;
- (b) is competent if (instead of being signed by the debtor) it contains a declaration by the money adviser that the debtor has—
  - (i) been given appropriate advice by the money adviser; and
  - (ii) consented to proceed without signing the application;
- (c) is competent notwithstanding that the consent of the creditor under section 2(4) of the Act and regulation 23 is not incorporated in form 1.

(3) A debtor who intends to apply may give written intimation of that intention to the DAS Administrator; but a debtor is not to give intimation under this paragraph on more than one occasion in any period of 12 months (except on revocation of a joint debt payment programme on the ground that conditions in regulation 22(1)(b) or (2) no longer apply).

(4) The debtor may, at any time before the application is approved or rejected, intimate to the DAS Administrator in writing that the application is withdrawn.

(5) In section 3(2)(a) (money advisor declaration) of the Act, omit “signed”.

#### **Debtors who may apply for approval**

**21.**—(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.

(2) An application for approval may not be made where—

- (a) subject to paragraph (4), payment of a debt of a debtor is being made under a conjoined arrestment order;
- (b) a debtor is a party to a protected trust deed;
- (c) a debtor’s estate has been sequestrated, and the debtor has not been discharged under section 54 (automatic discharge after a year) or 75 (amendments, repeals and transitional provisions) of the 1985 Act;
- (d) a debtor is a bankrupt, who has not been discharged under sections 279 (duration) or 280 (discharge by order of the court) of the 1986 Act; or
- (e) a debtor is subject to a bankruptcy restrictions order (including an interim order) or bound by a bankruptcy restrictions undertaking, under Schedule 4A (bankruptcy restrictions order and undertaking) to the 1986 Act<sup>(a)</sup> or under section 56A or as the case may be 56F or 56G of the 1985 Act<sup>(b)</sup>.

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<sup>(a)</sup> Section 4A was inserted by the Enterprise Act 2002 (c.40), Schedule 20, paragraph 1.

<sup>(b)</sup> Sections 56A, 56F and 56G were inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the 2007 Act”), section 2.

(3) An application for approval of a debt payment programme which provides for the payment of only one debt may not be made where, in respect of that debt, the debtor is involved in a—

- (a) time to pay direction under section 1 (time to pay directions) of the Debtors (Scotland) Act 1987, or time to pay order under section 5 (time to pay orders) of that Act(a); or
- (b) time order under section 129 (time orders) of the Consumer Credit Act 1974(b).

(4) An application may be made where a creditor, including a creditor of a debt being paid under a conjoined arrestment order in respect of another debt not so paid, has attempted to enforce a debt due by the debtor by any lawful means.

### **Joint debt payment programme**

22.—(1) Two debtors may apply together for a joint debt payment programme—

- (a) if they are joint and severally liable for a debt which the programme would provide for the payment of; and
- (b) and they are—
  - (i) husband and wife to each other;
  - (ii) civil partners of each other;
  - (iii) living together as husband and wife; or
  - (iv) living together in a relationship with the characteristics of the relationship between a husband and wife except that they are of the same sex.

(2) Both debtors must consent to any application for approval of a joint debt payment programme; and a declaration by a money adviser under regulation 20(2)(b) must declare that both debtors have consented.

(3) Unless the context otherwise requires, references in these Regulations to “debtor” in relation to a joint debt payment programme are to be taken to be references to both debtors.

### **Consent of creditors**

23.—(1) Subject to paragraph (5), and regulation 25, each creditor of a debtor must consent to an application by the debtor for approval of a debt payment programme.

(2) In the case of a joint debt payment programme, the consent of each creditor of both debtors is required under paragraph (1).

(3) A request to a creditor for consent is to be sent by the DAS Administrator, or as the case may be, a continuing money adviser, and if posted, must be sent to the creditor by first class recorded delivery post.

(4) A continuing money adviser seeking the consent of a creditor (electronically or otherwise) must use the form provided by the DAS Administrator for that purpose.

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- (a) 1987 c.18. Section 1 was repealed in part by the Social Security Act 1998 (c.14) (“the 1998 Act”), Schedule 8, and amended by the Child Support Act 1991 (c.48), Schedule 5, paragraph 8, the Local Government Finance Act 1992 (c.14) (“the 1992 Act”), Schedule 13, paragraph 53, the Local Government etc. (Scotland) Act 1994 (c.39) (“the 1994 Act”), Schedule 13, paragraph 151, the 1998 Act, Schedule 7, paragraph 12, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) (“the 1999 Act”), Schedule 9, paragraph 1, the Water Industry (Scotland) Act 2002 (asp 3) (“the 2002 Act”), Schedule 7, paragraph 17, the Commissioners for Revenue and Customs Act 2005 (c.11), (“the 2005 Act”), Schedule 4, paragraph 33, the Finance Act 2008 (c.9) (“the 2008 Act”), Schedule 43, paragraph 13(1) and the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the 2007 Act”), section 209(2) and 210(2). Section 5 was repealed in part by the 1998 Act, Schedule 8, and the Abolition of Poindings and Warrant Sales Act 2001 (asp 1), schedule, Part I, and amended by the 1992 Act, Schedule 13, paragraph 54, the 1994 Act, Schedule 13, paragraph 151, the 1999 Act, Schedule 9, paragraph 1, the 2002 Act, Schedule 7, paragraph 17, the 2005 Act, Schedule 4, paragraph 34, the 2008 Act, Schedule 43, paragraph 13(2) and the 2007 Act, section 209(3) and 210(3) and Schedule 5, paragraph 16(4).
  - (b) Section 129 was amended by the Debtors (Scotland) Act 1987 (c.18), Schedule 6, paragraph 17, and Schedule 7, paragraph 5.

(5) A creditor who is requested to consent to an application for a programme which provides for the payment of more than one debt and who does not respond to that request within 21 days after the date of request is deemed to consent.

(6) Where a creditor does not consent to an application under paragraph (1), and that consent is not deemed as given, approval of a debt payment programme under regulation 24 or 25 is not invalid by reason only of the lack of consent provided the debtor did not know, and could not reasonably have known, the identity of the creditor.

(7) The DAS Administrator is to maintain a record of creditor consents.

### **Approval of agreed programmes**

**24.—**(1) The DAS Administrator must approve a debt payment programme where each creditor has consented under regulation 23 to an application for approval.

(2) Approval under paragraph (1) may be made subject to a condition under regulation 28.

### **Approval by the DAS Administrator**

**25.—**(1) Where approval cannot be given under regulation 24, the DAS Administrator must approve a debt payment programme that is fair and reasonable.

(2) In determining whether a debt payment programme is fair and reasonable, the DAS Administrator is to have regard to—

- (a) the total amount of debt;
- (b) the period over which a programme will operate;
- (c) the amount (if any) by which it appears to the DAS Administrator, on the basis of such information as the creditors and the debtor have provided, that the value of any land owned by the debtor exceeds so much of the total amount of debt as is secured by way of a standard security over any interest in that land;
- (d) the method, and frequency, of payments under a programme;
- (e) an earlier proposed programme that was not approved;
- (f) a matter specified in regulation 21(2) that would have prevented an application being made, where the matter no longer has that effect;
- (g) the involvement of the debtor in a—
  - (i) debt payment arrangement, including a debt payment programme under these Regulations;
  - (ii) time to pay direction under section 1 (time to pay directions) of the Debtors (Scotland) Act 1987, or time to pay order under section 5 (time to pay orders) of that Act(a); or
  - (iii) time order under section 129 (time orders) of the Consumer Credit Act 1974(b);
- (h) the extent to which creditors have consented (deemed or otherwise) to a programme;
- (i) any comment made by the money adviser; and
- (j) an asset of a debtor that could be realised to pay debts to be included in a programme.

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(a) 1987 c.18. Section 1 was repealed in part by the Social Security Act 1998 (c.14) (“the 1998 Act”), Schedule 8, and amended by the Child Support Act 1991 (c.48), Schedule 5, paragraph 8, the Local Government Finance Act 1992 (c.14) (“the 1992 Act”), Schedule 13, paragraph 53, the Local Government etc. (Scotland) Act 1994 (c.39) (“the 1994 Act”), Schedule 13, paragraph 151, the 1998 Act, Schedule 7, paragraph 12, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) (“the 1999 Act”), Schedule 9, paragraph 1, and the Water industry (Scotland) Act 2002 (asp 3) (“the 2002 Act”), Schedule 7, paragraph 17. Section 5 was repealed in part by the 1998 Act, Schedule 8, and the Abolition of Poidings and Warrant Sales Act 2001 (asp 1), schedule, Part I, and amended by the 1992 Act, Schedule 13, paragraph 54, the 1994 Act, Schedule 13, paragraph 151, the 1999 Act, Schedule 9, paragraph 1, and the 2002 Act, Schedule 7, paragraph 17.

(b) Section 129 was amended by the Debtors (Scotland) Act 1987 (c.18), Schedule 6, paragraph 17, and Schedule 7, paragraph 5.

(3) In determining whether a debt payment programme is fair and reasonable, the DAS Administrator may have regard to any other factor that the DAS Administrator considers appropriate.

(4) Approval under paragraph (1) may be made subject to a condition under regulation 28.

### **Notice of intention to approve, and approval of, a programme**

**26.**—(1) The DAS Administrator must on a determination that a debt payment programme is to be approved, enter a notice to that effect in the DAS Register.

(2) A debt payment programme shall be approved from midnight on the day immediately preceding that on which the notice is so entered.

### **Standard conditions**

**27.**—(1) A debt payment programme approved under regulation 24 or 25 is to be subject to the conditions specified in paragraph (2).

(2) The specified conditions are that a debtor must—

- (a) make the first payment under a programme during the period of one month immediately following the date on which the debt payment programme is approved;
- (b) make all payments under a programme as they fall due;
- (c) pay a continuing liability when due for payment;
- (d) except for a continuing liability, make no payment to a creditor taking part in a programme other than a payment under the programme;
- (e) not apply for or obtain credit beyond that permitted by regulation 33(1)(b), or by a variation of a programme approved under regulation 38;
- (f) notify any continuing money adviser for the programme or the DAS Administrator of a—
  - (i) change of address; and
  - (ii) material change of circumstances, within 7 days of becoming aware of the change;
- (g) within 10 days after receipt by the debtor of a written request from a continuing money adviser for the programme or the DAS Administrator provide them with such information or evidence on their income, assets or liabilities as they may request;
- (h) make all payments in respect of credit obtained under regulation 33(1)(b)(iii), (iv) and (v) as they fall due;
- (i) give all notices and intimations which require to be given by a debtor under these Regulations;
- (j) complete, and submit when due, a tax or duty return or declaration; and pay the tax or duty so returned or declared; and
- (k) notify the DAS Administrator as soon as reasonably practicable of a money adviser ceasing to act for the debtor for any reason other than the resignation, or revocation or suspension of approval of, the adviser.

### **Discretionary conditions**

**28.**—(1) A debt payment programme on approval under regulation 24 or 25, or approval of a variation under regulation 38, may be made subject to one or more of the conditions specified in paragraph (2).

(2) A specified condition is that the debtor must—

- (a) realise, and distribute amongst the creditors the value of, an asset of the debtor other than an asset excepted by paragraph (3);
- (b) sign and deliver a payment instruction to an employer; or

- (c) be bound by any other reasonable condition intended to secure completion of the programme.
- (3) An excepted asset is—
  - (a) a dwellinghouse or mobile home occupied by a debtor as the debtor’s sole or main residence;
  - (b) an asset that is exempt from attachment under section 11 (articles exempt from attachment) of, or that is not a non-essential asset under schedule 2 (non essential assets) to, the Act.

**Notification of approval or rejection**

**29.—**(1) The DAS Administrator must send notice in writing to any continuing money adviser or to the debtor of the approval or rejection, on an application, of a debt payment programme.

(2) Where the programme is rejected, the DAS Administrator must specify the reason for the rejection.

- (3) Where the programme is approved—
  - (a) the DAS Administrator must intimate in writing any condition attached under regulation 28 to—
    - (i) the debtor; and
    - (ii) the money adviser who made the application for the programme; and
  - (b) the programme shall have effect in accordance with regulation 26(2).
- (4) A continuing money adviser or the DAS Administrator must notify—
  - (a) the approval of the programme—
    - (i) to the debtor;
    - (ii) in form 2, to each creditor known to the continuing money adviser or the DAS Administrator;
    - (iii) to the clerk of a court that has made—
      - (aa) a conjoined arrestment order; or
      - (bb) an order or direction specified in regulation 25(2)(g)(ii) and (iii);
    - (iv) where payments are to be made under an earnings arrestment, to the employer of the debtor; and
    - (v) to the payments distributor; or
  - (b) the rejection of the programme—
    - (i) to the debtor;
    - (ii) to the money adviser who made the application for the programme; and
    - (iii) to each creditor known to the continuing money adviser or the DAS Administrator.

**Diligence or sequestration in the period before a debt payment programme is approved**

**30.—**(1) It is not competent to serve a charge for payment in respect of, or to commence or execute any diligence to enforce payment of, any debt, or for a creditor to petition for sequestration—

- (a) during the period of 6 weeks immediately following an intimation by the debtor being entered in the DAS Register under regulation 19(2)(a);
- (b) during the period immediately following an application by the debtor being entered in that Register under regulation 19(2)(b) and ending on the earliest of the dates mentioned in paragraph (2); or
- (c) during the period of 6 weeks immediately following revocation of a joint debt payment programme on the ground that conditions in regulation 22(1)(b) or (2) no longer apply.

- (2) The dates mentioned in paragraph (1)(b) are—
- (a) that on which a notice that the debt payment programme is approved is entered in the DAS Register;
  - (b) that on which notice of rejection of the debt payment programme, sent under regulation 29(1), is so entered; and
  - (c) that on which intimation of withdrawal of the application in respect of the debt payment programme, given under regulation 20(4), is so entered.
- (3) During any period mentioned in paragraph (1), it is not competent in respect of the debt—
- (a) to make, under section 97(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007, an order granting warrant for sale of attached land; or
  - (b) to make, under section 136(2) of that Act, a satisfaction order.
- (4) If an arrestment mentioned in section 73J(1) of the Debtors (Scotland) Act 1987(a) (automatic release of arrested funds) has been granted in respect of funds due to the debtor, it is not competent, during any such period as is so mentioned, to release funds under subsection (2) of that section; but the period in question is to be disregarded for the purposes of determining whether the period mentioned in subsection (3) of that section has expired.

## PART 6

### DEBT PAYMENT PROGRAMMES

#### **Methods of payment**

**31.—**(1) Subject to paragraph (2), a debtor must make a payment due under a debt payment programme to the payments distributor by means of—

- (a) a payment mandate to an employer;
- (b) a direct debit or standing order;
- (c) a smart card, swipe card, smart key or other type of payment card or key; or
- (d) electronic banking.

(2) The DAS Administrator may approve a payment method other than a method specified in paragraph (1), if satisfied that successful completion of a programme is more likely by virtue of the use of that other payment method.

#### **Payment instruction to employer**

**32.—**(1) A payment instruction to an employer of a debtor in accordance with section 6(1) of the Act must be in form 3.

(2) On delivery of the instruction, the employer of a debtor must while the instruction is in effect deduct the sum specified in the instruction on every pay day, and pay the sum deducted to the payments distributor as soon as it is reasonably practical to do so.

(3) On delivery of an instruction, an employer must make the payments due under the instruction, until recall of the instruction by—

- (a) the debtor, where any other payment method approved under regulation 31 is substituted; or
- (b) notice from the DAS Administrator or the continuing money adviser under regulation 44 or 46(2).

(4) An employer may on making a payment due under an instruction charge a fee equivalent to the fee chargeable for the time being under section 71 (employer's fee for operating diligence

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(a) 1987 c.18. Section 73J was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 206.

against earnings) of the Debtor's (Scotland) Act 1987, and deduct that fee from the balance then due to the debtor.

(5) Subject to paragraph (7), where an employer fails without good cause to make a payment due under an instruction, the employer shall—

- (a) be liable to pay on demand by a payments distributor the amount that should have been paid; and
- (b) not be entitled to recover from a debtor the amount paid to the debtor in breach of the mandate.

(6) The obligation of an employer to make a payment due under an instruction shall be extinguished one year after the date that the liability to pay arose, unless court proceedings for payment are commenced within that period.

(7) This regulation applies to any payment instruction, whether made in accordance with a condition under regulation 28 or otherwise.

### **Effect on a creditor**

**33.**—(1) Where a debt payment programme is approved—

- (a) without prejudice to section 4(2) of the Act, approval has the effect of a recall at the time specified in regulation 26(2) of any arrestment of the debtor's income or property, and the DAS Administrator is to send notice of recall to each employer or party with possession of funds or property arrested as the case may be;
- (b) no body or person may give credit to the debtor, other than—
  - (i) credit approved by a variation under regulation 38;
  - (ii) further credit given as part of a cyclical loan arrangement in operation at the date of approval where the payment by the debtor does not vary by reason of that credit being given, for example a revolving credit agreement or a current account mortgage;
  - (iii) subject to paragraph (2), trade credit incurred by the debtor in the ordinary course of a business;
  - (iv) subject to paragraph (2), credit for an emergency repair; and
  - (v) subject to paragraph (2), credit for reasonable funeral expenses in respect of an immediate family member;
- (c) a creditor must not attempt to persuade the debtor to withdraw from the programme, or to make additional payments in respect of a debt included in the programme; and
- (d) a creditor must—
  - (i) on request by any continuing money adviser to the debtor or the DAS Administrator, provide a statement of all liabilities of the debtor; and
  - (ii) notify any continuing money adviser or the DAS Administrator of any liability where the creditor has security against a co-obligant of the debtor.

(2) The debtor must when applying for, or before obtaining, credit under paragraph (1)(b)(iii) to (v) give notice in writing of approval of the debt payment programme to any person who may give such credit.

(3) Where a creditor gives credit to a debtor in an approved debt payment programme other than credit as specified in paragraph (1)(b), it shall not be competent to—

- (a) serve a charge for payment in respect of;
- (b) commence any diligence to enforce payment of; or
- (c) found on, in presenting a petition for the sequestration of the debtor's estate,

the debt due to the creditor, as long as the programme is approved.

(4) There is to be disregarded, for the purpose of the exercise by a creditor of any rights to enforce a debt (or remedies to like effect) any period during which a debt is subject to the restriction under paragraph (3).

(5) In section 4 (effect of debt payment programmes) of the Act—

(a) in subsection (2)—

(i) in paragraph (b), at the beginning, insert “subject to subsection (2A),”; and

(ii) after paragraph (b), insert—

“(c) to commit a debtor to prison under section 4 of the Civil Imprisonment (Scotland) Act 1882(a) (except for the purposes of section 40A of the Child Support Act 1991(b) in respect of,”; and

(b) after subsection (2), insert—

“(2A) Despite subsection (2)(b), it is competent to—

(a) auction an attached article where—

(i) notice has been given to the debtor under section 27(4) below; or

(ii) an article has been removed, or notice of removal has been given, under section 53 below;

(b) implement a decree of furthcoming;

(c) implement a decree or order for sale of a ship (or a share of it) or cargo.”.

(6) In this regulation, an “emergency repair” is one required to maintain—

(a) a dwellinghouse occupied by the debtor in wind and water tight condition;

(b) in reasonable working order any item that is not a non-essential asset for the purpose of schedule 2 to the Act;

(c) a vehicle required by the debtor for travelling to work, or other essential purpose.

### **Diligence: further provision as regards effect of debt payment programme**

**34.**—(1) Where a debt payment programme is approved, it is not competent in respect of any debt—

(a) to make, under section 97(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007, an order granting warrant for sale of attached land; or

(b) to make, under section 136(2) of that Act, a satisfaction order.

(2) If an arrestment mentioned in section 73J(1) of the Debtors (Scotland) Act 1987 (automatic release of arrested funds) has been granted in respect of funds due to the debtor, it is not competent, where a debt payment programme is approved, to release funds under subsection (2) of that section; but if the debt payment programme is revoked the period between its being approved and being revoked is to be disregarded for the purposes of determining whether the period mentioned in subsection (3) of that section has expired.

### **Effect on trust deeds which are not protected**

**35.** Where a debt payment programme is approved in respect of a debtor who has granted a trust deed which is not a protected trust deed, the effect on the trust deed is as if an award of sequestration of the debtor’s estate on a debtor application had been granted as at the date of approval of the programme (but in relation to the scheme under Part 1 of the Act and these Regulations).

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(a) 1882 c.42. Section 4 was amended by the Sheriff Courts (Scotland) Act 1971 (c.58), section 4, and extended by the Child Support Act 1991 (c.48), section 40, and the Social Security Administration Act 1992 (c.5), sections 187 and 192.

(b) Section 40A of the Child Support Act 1991 (c.48) was inserted by the Child Support, Pensions and Social Security Act 2000 (c.19), section 17(2).

## 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.

## PART 8

### REVOCAION 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>(a)</sup>, after sub-paragraph (iv), insert—

“; 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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(a) 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), 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).

## PART 9

### COMPLETION OF A DEBT PAYMENT PROGRAMME

#### **Notice of completion**

**46.**—(1) On completion of a debt payment programme the payments distributor must send notice of completion in writing to—

- (a) the DAS Administrator;
- (b) any continuing money adviser;
- (c) the debtor; and
- (d) each creditor taking part in the programme.

(2) The DAS Administrator or the continuing money adviser must intimate the completion in writing to the employer where there is a payment mandate under regulation 32.

## PART 10

### APPEALS

#### **Appeals**

**47.**—(1) A debtor may, on a point of law, appeal to the sheriff against a determination of the DAS Administrator not to approve a debt payment programme.

(2) A creditor named in an application for a debt payment programme may, on a point of law, appeal to the sheriff against a determination of the DAS Administrator to—

- (a) dispense with the consent of the creditor;
- (b) approve a programme.

(3) A debtor, a creditor participating in a debt payment programme, or a creditor who has applied for variation of a programme on the grounds in regulation 37(1)(e) or (f) may, on a point of law, appeal to the sheriff against a determination of the DAS Administrator to—

- (a) attach a condition under regulation 28;
- (b) approve, or refuse to approve, a variation of a programme;
- (c) revoke a programme.

(4) An appeal—

- (a) to the sheriff under paragraph (1), (2) or (3) is to be by summary application;
- (b) must be lodged within 14 days after the date of intimation to the appellant of the determination appealed against.

(5) The decision of the sheriff is final.

## PART 11

### REVOCATIONS, SAVING AND TRANSITIONAL ARRANGEMENTS

#### **Revocation of Debt Arrangement Scheme regulations**

**48.** The Regulations (or provisions of those Regulations) specified in Schedule 5 are revoked.

## **Savings and transitional arrangements**

**49.**—(1) Any money adviser approved by the DAS Administrator immediately before 1st July 2011 continues to—

- (a) be approved as a money adviser for the purposes of these Regulations; and
- (b) act as a money adviser in respect of a debtor for any programme in effect at that date in accordance with the provisions of these Regulations (see in particular regulation 12 of these Regulations) unless the adviser resigns or otherwise ceases to act.

(2) Any payments distributor approved by the DAS Administrator immediately before 1st July 2011 continues to—

- (a) act as payments distributor in respect of any programme in effect at that date (unless the payments distributor ceases to act); and
- (b) be approved as a payments distributor in relation to those programmes, and approval to act in relation to those programmes is regulated in accordance with the provisions of the Regulations revoked by these Regulations.

**50.**—(1) Subject to regulation 49 and paragraph (2), the provisions of these Regulations apply to a debt payment programme approved before 1st July 2011 (or a programme approved under regulation 51); and an application for variation or revocation of such a programme can be made in accordance with these Regulations.

(2) Despite paragraph (1), for such a programme—

- (a) no fee is payable under regulation 5(3) of these Regulations; and
- (b) the maximum administration fee payable under regulation 17(2) of these Regulations is 10% of the sum due to be paid to a creditor in a distribution by the distributor;
- (c) any composition or continuing liability can continue to be paid in accordance with regulation 24 or 34 respectively of the Regulations revoked by these Regulations.

**51.** Debt payment programmes in respect of which a request for the consent of creditors was made before 1st July 2011 but which are not approved by that date are to be considered for approval in accordance with the provisions of the Regulations revoked by these Regulations.

*FERGUS EWING*

Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
17th February 2011

# SCHEDULE 1 FORMS

Regulation 2(2)

## The Debt Arrangement Scheme (Scotland) Regulations 2011

### FORM 1 Regulation 20(2) APPLICATION FOR APPROVAL OF A DEBT PAYMENT PROGRAMME

#### SECTION 1

##### 1 Details of Applicant (Money Adviser)

Unique ID Number	
Name	
Address	
Contact Name (if different)	
Phone No.	

#### SECTION 2

##### 2 Details of the debtor(s) applying for a Debt Payment Programme (DPP)

###### 2a. Details of the debtor

Surname										
First Name(s)										
Any other name the debtor has been known by										
Date of Birth (DD/MM/YYYY)	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px;"> </td> <td style="width: 20px;"> </td> <td style="width: 20px;">-</td> <td style="width: 20px;"> </td> <td style="width: 20px;"> </td> <td style="width: 20px;">-</td> <td style="width: 20px;"> </td> <td style="width: 20px;"> </td> <td style="width: 20px;"> </td> </tr> </table>			-			-			
		-			-					
Address										
Town										
Postcode										
Email address (if applicable)										
Telephone – Home										
Telephone – Mobile										
Business Name (if applicable)										
Business Address										
Town										
Postcode										

**2b. Is this application a result of a revoked joint application?** Yes  No

**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) husband and wife to each other
- b) civil partners of each other
- c) living together as husband and wife
- d) the same sex living together as in a husband and wife relationship

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

**2d. Do both debtors consent to a joint application?**

Yes  No

If 'yes', complete 2e. If 'no', DO NOT PROCEED with a joint DPP.

**2e. Details of the other debtor in a joint DPP**

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

**SECTION 3**

**3 Eligibility to Apply**

Debtor(s) must satisfy a number of conditions to be eligible to apply for approval of a DPP.

**3a. Is the programme for ONE debt only?**

Yes  No

If 'yes', is the debtor involved in a time to pay direction, time to pay order or time order for the debt in the DPP?

Yes  No

If 'yes', to this second question, the debtor is NOT Eligible to apply for a programme where this debt is the only debt. (Reg. 21(3))

**3b. Is the debtor, or in the case of a joint application, either of the debtors paying any debt under a conjoined arrestment order?**

Yes  No

If 'yes', has a creditor, including a creditor of a debt being paid under a conjoined arrestment order in respect of another debt, attempted to enforce a debt due by the debtor by any lawful means?

Yes  No

If 'no', the debtor is NOT Eligible for a programme. (Reg. 21(4))

**3c. Is the debtor, or in the case of a joint application, either of the debtors:**

**i) currently an undischarged bankrupt in Scotland, England or Wales?**

Yes  No

**ii) currently subject to a bankruptcy restrictions order (BRO) or bound by a bankruptcy restrictions undertaking (BRU)?**

Yes  No

If 'yes' to any i) or ii), the debtor is NOT Eligible for a programme. (Reg. 21(2))

**3d. Has the debtor, or in the case of a joint application, either of the debtors granted a trust deed that has become protected?** Yes  No

If 'yes', the debtor is NOT Eligible for a programme. (Reg. 21(2))

**SECTION 4**

**4 Debt to be included in the Debt Payment Programme**

Where this is a joint application, debts for which both debtors are jointly and severally liable should be listed separately.

**4a. The following are debts which are to be included in the programme owed by ..... (debtor's name)**

Creditor's Name, address (incl. postcode)	Creditor ref.	ID	Account number	Amount owed		Payment offer (per instalment)	
				£	p	£	p

Complete (i) and (ii) for joint applications only.

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

Creditor's Name, address (incl. postcode)	Creditor ref.	ID	Account number	Amount owed		Payment offer (per instalment)	
				£	p	£	p

**4a. ii) The following are joint and severally liable debts which are to be included in the programme.**

Creditor's Name, address (incl. postcode)	Creditor ref.	ID	Account number	Amount owed		Payment offer (per instalment)	
				£	p	£	p

**4b. Total debt to be included in the programme.**

TOTAL DEBT	£	p
------------	---	---

**4c. Is the debtor, or in the case of a joint application, either of the debtors, subject to any arrestment or arrestment of their income?** Yes  No

If 'yes', provide additional information to the DAS Administrator

**SECTION 5**

**5 Financial statement of the debtor(s)**

**5a. The following is the net income and expenditure of ..... (debtor's name) in the programme**

<b>Total salary or wages</b>	£	p
<b>Total income from benefits</b>	£	p
<b>Total pension income</b>	£	p
<b>Total other income</b>	£	p

<b>Total income</b>	£	p
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Payment frequency

Weekly

Fortnightly

Monthly

4 weekly

<b>Total household expenditure</b>	£	p
<b>Total travel expenditure</b>	£	p
<b>Total phone expenditure</b>	£	p
<b>Total other expenditure</b>	£	p

<b>Total disposable income</b>	£	p
--------------------------------	---	---

Complete for joint applications only.

**5a. i) The following is the net income and expenditure of ..... (debtor's name) in the programme**

<b>Total salary or wages</b>	£	p
<b>Total income from benefits</b>	£	p
<b>Total pension income</b>	£	p
<b>Total other income</b>	£	p

<b>Total income</b>	£	p
---------------------	---	---

Payment frequency

Weekly

Fortnightly

Monthly

4 weekly

<b>Total household expenditure</b>	£	p
<b>Total travel expenditure</b>	£	p
<b>Total phone expenditure</b>	£	p
<b>Total other expenditure</b>	£	p

<b>Total disposable income</b>	£	p
--------------------------------	---	---

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

i) Total payment offer 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) for the benefit of creditors:

**SECTION 6**

**6 Payment Details**

**6a. 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 one month immediately following the date on which the DPP is approved.** Yes  No

**6b. The debtor, or the debtors in the case of a joint application, agree to make all payments to the Payments Distributor detailed below or to any other Payments Distributor notified by the DAS Administrator:**

Payments Distributor Address

**6c. The debtor, or the debtors in the case of a joint application, understand that the Payments Distributor will deduct \_\_\_\_\_% from the payment due to the creditors to cover their costs, in addition to 2% application fee.** Yes  No

**6d. The debtor(s) wish to pay using one of the following payment methods (tick preferred method):**

- Direct Debit
- Standing Order
- Cheque
- Postal Order
- PayPoint
- E-Banking
- Payment Mandate from salary/wages
- Specify other: \_\_\_\_\_

**6e. If the debtor(s) selected Direct Debit or Standing Order, provide bank account details:**

Name of bank									
Name of account holder(s)									
Bank account number									
Sort Code				-			-		

Preferred date for the payment to be made is: \_\_\_\_\_

**6f. If the debtor(s) selected payment direct from salary or wages, provide employer's details:**

Name of Employer	
Address	
Town / City	
Postcode	
Business Fax/phone number	
Business e-mail address	
Debtor/ Employee NI number	
Debtor/ Employee payroll number	

**SECTION 7**

**7a. The debtor, or debtors in the case of a joint application, understand that if the programme is approved they must meet the following conditions:**

- (a) make all payments under a programme as they fall due; \_\_\_\_\_
- (b) pay a continuing liability when due for payment; \_\_\_\_\_
- (c) make no additional payment to a creditor for a debt that is included in the programme; \_\_\_
- (d) not apply for or obtain credit beyond that permitted by DAS Regulations; \_\_\_\_\_
- (e) notify the Accountant in Bankruptcy (1 Pennyburn Road, Kilwinning) and, if applicable, their continuing money adviser of any—
  - (i) change of address; or
  - (ii) material change of circumstances, within 7 days of becoming aware of the change; \_\_\_\_\_
- (f) within 10 days after receipt by the debtor of a written request, provide such information or evidence on their income, assets or liabilities as requested; \_\_\_\_\_
- (g) make all payments in respect of credit obtained under the Regulations as they fall due; \_\_\_\_\_
- (h) give all notices and intimations which are required to be given under the Regulations; \_\_\_\_\_
- (i) complete, and submit when due, a tax or duty return or declaration; and pay the tax or duty so returned or declared; and \_\_\_\_\_
- (j) notify the DAS Administrator as soon as reasonably practicable of a money adviser ceasing to act for them for any reason other than the resignation, or revocation or suspension of approval, of the adviser; \_\_\_\_\_

**7b. The debtor, or debtors in the case of a joint application, understand that if the programme is approved they may be bound by any other reasonable condition as specified by the DAS Administrator intended to secure completion of the programme.** Yes  No

**7c. The debtor, or debtors in the case of a joint application, understand that any personal information provided to the DAS Administrator will be used to discharge their statutory functions under the Debt Arrangement and Attachment (Scotland) Act 2002 and other relevant legislation and that personal information will not be disclosed to third parties except in special circumstances as provided by legislation.** Yes  No

**7d. The debtor, or debtors in the case of a joint application, understand that the DAS Administrator (or an agent acting on their behalf) may also contact them to discuss their experience as part of our ongoing commitment to customer service. Does the debtor agree to being contacted in this way/** Yes  No

**SECTION 8**

The DAS Administrator in determining whether to approve a programme may consider; information provided by the debtor, or debtors in the case of a joint DPP; the extent to which creditors have consented to a programme and any comment made by the money adviser who has provided advice to the debtor(s). The DAS Administrator may consider the fair and reasonable conditions set out in the regulations, including the term of the programme and may also have regard to any other factor the DAS Administrator considers appropriate.

**8. Provide any supporting information or comments below that you wish the DAS Administrator to take into consideration.**

Supporting Information:

**SECTION 9**

**9. Declaration by Money Adviser**

I declare that the debtor, or in the case of a joint application the debtors, received appropriate financial advice and information about applying for a DPP, including the conditions and that their information will be held on a DAS Register.

I declare that the debtor, or in the case of a joint application the debtors, have consented to proceed with this application without signing this declaration.

**10. Signature of Debtor(s)**

**(Where form not submitted on debtor(s) declaration in Section 9 above)**

I apply for approval of the debt payment programme(DPP) set out in this application and declare that I have received appropriate financial advice and information about applying for a DPP, including the conditions which apply. I also understand that information about my DPP will be held on a DAS Register.

Signature of Debtor \_\_\_\_\_ date \_\_\_\_\_

Signature of other debtor in a Joint DPP \_\_\_\_\_ date \_\_\_\_\_

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

**FORM 2 Regulation 29(4)(a)(ii)  
NOTIFICATION TO CREDITOR OF APPROVAL OF A DEBT PAYMENT PROGRAMME**

**SECTION 1**

**1a DAS Case Number**

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

**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


**3a 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

		-				-				



4c. ii) The following are joint and severally liable debts which are included in the programme.

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. 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"/>

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 SEQUESTRATE (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](http://www.aib.gov.uk).



**Payment Details**

8	Distributor Bank Name and Address	
	Sort Code	
	Account Number	
	Quote - Reference Number (if applicable)	

I, \_\_\_\_\_ *[employee's name]* authorise you to deduct the sum of £ \_\_\_\_\_ *[insert amount]* from my earnings on each pay day and pay it as soon as reasonably practicable to the payments distributor as detailed above, quoting the 'DAS case number' on this mandate.

Deductions should be made until otherwise advised.

It is your duty under section 6 of the Debt Arrangement and Attachment (Scotland) Act 2002 to comply with this instruction. You are entitled, by virtue of regulation 32(4) of the Debt Arrangement Scheme (Scotland) Regulations 2011 to charge a fee equivalent to the fee chargeable under section 71 of the Debtors (Scotland) Act 1987.

9     **Employee's**  
**Signature** \_\_\_\_\_ **date** \_\_\_\_\_

The Debt Arrangement Scheme (Scotland) Regulations 2011 Reg. 36(3)(b)

Form 4

Application for Variation of a Debt Payment Programme

Section 1

1 Details of Applicant (Money Adviser or Creditor in DPP or Creditor not in DPP)

ID No. (Where Appropriate)	
Name	
Address	
Contact Name (if different)	
Phone No.	
Capacity	Money Adviser <input type="checkbox"/>
	Creditor in DPP <input type="checkbox"/>
	Creditor not in DPP <input type="checkbox"/>

Section 2

2 Details of Debt Payment Programme

DAS case number	
Is this a joint DPP?	Yes <input type="checkbox"/> No <input type="checkbox"/> Not known <input type="checkbox"/>

2a Name of debtor

Surname	
First Name(s)	
Address	
Postcode	

If a joint DPP, complete 2b

2b Name of other debtor in the DPP

Surname	
First Name(s)	
Address	
Postcode	

**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  No
- b There is an agreement between the debtor and a creditor to cancel the obligation to repay an amount. Yes  No
- 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  No
- d There has been a material change in the circumstances of the debtor or, in the case of a joint DPP, the debtors. Yes  No
- e A debt has been omitted from, or was wrongly assessed for the programme due to a mistake, oversight, or other reasonable cause. Yes  No
- 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  No
- g The debtor, or the debtors in the case of a joint DPP, needs credit to meet an essential requirement. Yes  No
- 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:
- A period of unemployment or change in employment;
  - A period of leave from employment for maternity, paternity, adoption or to care for a dependant;
  - A period of illness of the debtor;
  - Divorce, dissolution of civil partnership or judicial separation; or
  - Death of a person with whom the debtor shared financial responsibilities or otherwise.

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

Supporting Information:

**Section 4**

**4 Effect of the Variation**

I wish to:

- a 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		Tick if new debt not in the programme
			£	p	

- b Arrange a payment holiday of 6 months (on the grounds at 3h above) Yes  No

If 'yes', provide details of income and expenditure at 4c below:

- c Vary the amount payable to the creditors. Yes  No

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

Total salary or wages	£	p
Total income from benefits	£	p
Total pension income	£	p
Total other income	£	p
<b>Total income</b>	<b>£</b>	<b>p</b>

Payment frequency

Weekly  Fortnightly  Monthly  4 weekly

Total household expenditure	£	p
Total travel expenditure	£	p
Total phone expenditure	£	p
Total other expenditure	£	p
<b>Total disposable income</b>	<b>£</b>	<b>p</b>

payment offer of  over  instalments

Payment frequency

Weekly  Fortnightly  Monthly  4 weekly

- d Other Yes  No

Provide full details in respect of 4a) to 4d) below.

Supporting Information:

**Section 5**

**5.1 Approval of a Variation** (Regulation 38)

The DAS Administrator in determining whether a variation is fair and reasonable will consider information provided by the debtor, or debtors in the case of a joint DPP; the views of a creditor taking part in the programme and of any creditor making the application; the views of any money adviser who has provided advice to the debtor; and may have regard to any other factor the DAS Administrator considers appropriate.

Provide any supporting information or comments below that you wish the DAS Administrator to take into consideration.

Supporting Information:

**Section 6**

**6 Declaration by Money Adviser** (where applicable)

I declare that the debtor, or in the case of a joint DPP the debtors, received appropriate financial advice and information about varying the DPP, including the implications of the variation.

I declare that the debtor, or in the case of a joint application the debtors, have consented to proceed with this application without signing this declaration.

**7 Declaration of Creditor** (where applicable)

I apply for a variation of the DPP, as set out in this application.

Signature of Creditor \_\_\_\_\_ date \_\_\_\_\_  
*(may be omitted in an electronic application)*

Position in company (if any) \_\_\_\_\_

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

**Form 5**

**Reg. 41(2)(b)**

**Application for Revocation of a Debt Payment Programme**

**Section 1**

**1 Details of Applicant (Money Adviser or Creditor in DPP)**

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"/>
Capacity	Money Adviser <input type="checkbox"/> Creditor in DPP <input type="checkbox"/>

**Section 2**

**2 Details of Debt Payment Programme**

DAS case number	<input type="text"/>
Is this a joint DPP?	Yes <input type="checkbox"/> No <input type="checkbox"/> Not known <input type="checkbox"/>

**2a Name of debtor**

Surname	<input type="text"/>
First Name(s)	<input type="text"/>
Address	<input type="text"/>
Postcode	<input type="text"/>

**2b Name of other debtor in the DPP**

Surname	<input type="text"/>
First Name(s)	<input type="text"/>
Address	<input type="text"/>
Postcode	<input type="text"/>

**Section 3**

**3 Grounds for Revocation (Regulation 42)**

**I apply for a revocation of the DPP because:**

- |    |  |                              |                             |
|----|--|------------------------------|-----------------------------|
| a) | The debtor, or in the case of a joint DPP the debtors, failed to satisfy a standard condition under regulation 27 or a discretionary condition under regulation 28.              | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| b) | The debtor, or in the case of a joint DPP the debtors, made a false statement in their application.  | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| c) | The debtor, or in the case of a joint DPP the debtors, failed to make the agreed instalment under the DPP and they are currently in arrears of an amount equal to 2 instalments. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| d) | The conditions for a joint DPP as specified in regulation 22(1) or (2) no longer apply.  | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

Provide full details in respect of 3a) to 3d) below.

Supporting Information:
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**Section 4**

**4 Determination of a Revocation**

The DAS Administrator must, under regulation 43, consider any statement made by, or on behalf of, a debtor; the nature of any failure, or untrue statement; information to indicate whether or not the programme will be successful and any representations made by the debtor or by the creditors, provided that they are received within the specified period.

The DAS Administrator may have regard to any other factor that is considered appropriate when determining whether to revoke a DPP.

Provide any supporting information or comments below that you wish the DAS Administrator to take into consideration.

Supporting Information:
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**Section 5**

**5 Declaration by Money Adviser**

I declare that the debtor, or in the case of a joint DPP the debtors, received appropriate financial advice and information about revoking the DPP, including the implications of the revocation on all interest and charges that apply to the debts.

I declare that the debtor, or in the case of a joint application the debtors, have consented to proceed with this application without signing this declaration.

**Section 6**

**6 Declaration of Creditor (where applicable)**

I apply for a revocation of the DPP, as set out in this application.

Signature of Creditor \_\_\_\_\_ date \_\_\_\_\_  
(may be omitted in an electronic application)

Position in company (if any) \_\_\_\_\_

## SCHEDULE 2

Regulation 6

### CONSEQUENTIAL AMENDMENTS

#### **Bankruptcy (Scotland) Act 1985**

1. In section 14 (registration of warrant or determination of debtor application) of the 1985 Act(a), at the end of subsection (1)(b) insert—

“; and

- (c) a copy of the order to the DAS Administrator (as defined in regulation 2(1) of the Debt Arrangement Scheme (Scotland) Regulations 2011), where the debtor is taking part in a debt payment programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002”.

2. In section 15 (further provisions relating to award of sequestration) of the 1985 Act(b), for subsection (5)(b) substitute—

“(b) forthwith send a copy of the order refusing or awarding sequestration—

- (i) to the Accountant in Bankruptcy; and
- (ii) where the debtor is taking part in a debt payment programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002, to the DAS Administrator (as defined in regulation 2(1) of the Debt Arrangement Scheme (Scotland) Regulations 2011).”.

#### **Debt Arrangement and Attachment (Scotland) Act 2002**

3. In section 47(4) (exceptional attachment order) of the Act(c)—

(a) omit “and” immediately preceding paragraph (g); and

(b) after paragraph (g), insert—

“; and

- (h) whether an application by the debtor for approval of a debt payment programme under Part 1 of this Act has been refused or approved, and if approved, whether that programme has been varied, or is revoked or completed.”.

#### **Protected Trust Deed (Scotland) Regulations 2008**

4. In regulation 4(2) of the Protected Trust Deed (Scotland) Regulations 2008(d) (debtors ineligible for protected status), omit sub-paragraph (b).

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(a) 1985 c.66. Section 14 (and the heading to that section) was amended by the Bankruptcy (Scotland) Act 1993 (c.6), Schedule 1, paragraph 3, by Schedule 3, paragraph 1 to S.S.I. 2004/468 revoked by these Regulations, and by schedule 1, paragraph 12 to the Bankruptcy and Diligence (Scotland) Act 2007 (asp 3) (“the 2007 Act”).

(b) 1985 c.66. Section 15 was amended by the 1993 Act, Schedule 1, paragraph 4 and by Schedule 3, paragraph 2 to S.S.I. 2004/468 revoked by these Regulations, and by section 16(2) of and schedule 1, paragraph 13 and schedule 6, Part 1, to the 2007 Act.

(c) 2002 asp 17. Section 47(4) was amended by Schedule 3, paragraph 4 to S.S.I. 2004/468 revoked by these Regulations.

(d) S.S.I. 2008/143, amended by S.S.I. 2010/398.

## SCHEDULE 3

Regulation 9(3)

### MONEY ADVISER TRAINING

1. The relationship between prescription or limitation, and enforcement of debt.
2. The consequences for a debtor—
  - (i) sequestration;
  - (ii) taking part in a debt payment programme;
  - (iii) signing a trust deed;
  - (iv) a trust deed becoming a protected trust deed; and
  - (v) extra-judicial composition.
3. The operation of—
  - (i) an earnings arrestment;
  - (ii) a furthcoming;
  - (iii) an attachment, exceptional attachment and auction of moveables; and
  - (iv) the debt arrangement scheme under Part 1 of the Act and prescribed by these Regulations.
4. The nature of rights of appeal from the sheriff court.
5. Assisting a client to—
  - (a) respond to admitted money claims in the sheriff courts;
  - (b) make or oppose an application in the sheriff courts for—
    - (i) recall of decree;
    - (ii) dismissal or absolvitor;
    - (iii) continuation of a cause;
    - (iv) a sist;
  - (c) apply for recall or restriction of an arrestment;
  - (d) make an application under the Debtors (Scotland) Act 1987(a);
  - (e) apply for recall of an attachment, exceptional attachment, or an order under Parts 2 and 3 of the Act; or
  - (f) make an application under these Regulations.
6. Identifying the need to refer a case to an appropriate specialist, and know how to access specialist support.

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(a) 1987 c.18.

## SCHEDULE 4

Regulation 14(3)

### PAYMENTS DISTRIBUTORS

A payments distributor must—

1. Hold a current licence under the Consumer Credit Act 1974<sup>(a)</sup>.
2. Be registered under the Data Protection Act 1998<sup>(b)</sup> as a data processor.
3. Make and maintain arrangements to ensure financial security of sums received from debtors for disbursement to creditors.
4. Make and maintain appropriate arrangements to accept and disburse payments using all methods approved under regulation 31(1).
5. Make and maintain appropriate arrangements to ensure compliance with Office of Fair Trading Codes of Practice relative to debt management and collection guidance.
6. Make and maintain appropriate arrangements for the issue of required reports.
7. Provide an information technology system to transmit reports to debtors, creditors, money advisers, DAS Administrator by the preferred medium (e.g. text and or data files).

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(a) 1974 c.39.

(b) 1998 c.29.

## SCHEDULE 5 REVOCATIONS

Regulation 48

The Debt Arrangement Scheme (Scotland) Regulations 2004 (except for regulation 38(1)(ba), the reference to that subparagraph in regulation 39(1) and regulations 49A and 50(3A) and the reference to that paragraph in regulation 50(6)(a)(a))	S.S.I. 2004/468
The Debt Arrangement Scheme (Scotland) Amendment Regulations 2004	S.S.I. 2004/470
The Debt Arrangement Scheme (Scotland) Amendment (No. 2) Regulations 2007	S.S.I. 2007/187

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(a) Regulations 38(1)(ba), 49A and 50(3A) (and the references to those provisions) were inserted by S.S.I. 2007/262 and are being revoked under section 7A of the Debt Arrangement and Attachment (Scotland) Act 2002.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide a scheme for repayment of 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”). The Accountant in Bankruptcy of 1 Pennyburn Road, Kilwinning is the DAS Administrator, by virtue of an order under section 8 of the 2002 Act (S.S.I. 2004/448).

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) and interest, fees, penalties and other charges that are otherwise available or due to creditors.

The Regulations are divided into 11 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 (regulation 5), and for consequential amendments to the 2002 Act and other enactments as set out in Schedule 2 (regulation 6).

Part 2 provides that a person whose debts are being repaid under a programme must have a money adviser in making an application (regulation 7), for approved categories of money adviser (regulation 8), for the method of applying to the DAS Administrator for, and the grounds for, approval (regulation 9 and Schedule 3), a list of persons who may not be approved as an adviser (regulation 10), for the grounds on which approval as an adviser may be revoked (regulation 11), for the functions of an adviser (or the DAS Administrator), and that a fee may not be charged unless information about free advice is given to the client (regulation 12).

Part 3 provides for who is to act as payments distributor and the method of applying for approval as, a payments distributor (regulations 13 and 14 and Schedule 4), the grounds on which approval as a distributor may be revoked (regulation 15), the functions of a distributor (regulation 16), and that an administration fee for distribution services may be charged to a creditor (regulation 17).

Part 4 provides that the DAS Administrator must maintain a register of programmes (regulation 18), and for the information to be held on that register (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), for joint debt payment programmes (regulation 22), that each creditor (as defined in regulation 2) must consent to a programme, and for the conditions in which there can be deemed consent (regulation 23), that agreed programmes must be approved (regulation 24), that the DAS Administrator must approve a programme that is fair and reasonable using specified criteria (regulation 25), for notice of approval and the date of approval (regulation 26), and that approval is always subject to certain conditions (regulation 27) and may be subject to extra conditions (regulation 28), and for methods for the DAS Administrator and money adviser to notify interested parties about approval or rejection of a programme (regulation 29). Regulation 30 clarifies that it is incompetent to commence or execute diligence or to petition the court to sequestrate a debtor in the period before a debt payment programme commences.

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 31), and in respect of payment mandates to an employer for the charges an employer may make and a penalty for default on employers (regulation 32). 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 33(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 33(5)), for the diligences of land attachment and arrestment (regulation 34), and that a trust deed for a creditor under the Bankruptcy (Scotland) Act 1985 is ended (regulation 35).

Part 7 provides that debtors, money advisers and creditors may apply for variation of a programme (regulation 36) on specified grounds (regulation 37), that the DAS Administrator shall approve a programme that is fair and reasonable using the criteria in regulation 25 (regulation 38), and the methods for the DAS Administrator and money adviser to notify interested parties about approval or rejection of a variation (regulation 39).

Part 8 provides for automatic revocation of a programme if the person applies for sequestration or a protected trust deed (regulation 40), that in other circumstances money advisers and creditors may apply for revocation (regulation 41), the grounds for revocation and the factors the DAS Administrator must consider (regulations 42 and 43), and the methods for the DAS Administrator and money adviser to notify interested parties about the revocation (regulation 44). It also provides for revocation to be a ground of apparent insolvency under the Bankruptcy (Scotland) Act 1985 (regulation 45).

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 (regulation 46).

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 47).

Part 11 revokes the relevant provisions of Debt Arrangement Scheme (Scotland) Regulations 2004 as amended which are replaced by these Regulations (see Schedule 5), subject to transitional arrangements (regulations 49 to 51).

Related Regulations under section 7A of the 2002 Act provide for a moratorium on interest, fees, penalties and other charges for an approved debt payment programme.

A Business and 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 Accountant in Bankruptcy, 1 Pennyburn Road, Kilwinning.

