**EXECUTIVE NOTE**

# THE DEBT ARRANGEMENT SCHEME (INTEREST, FEES, PENALTIES AND OTHER CHARGES) (SCOTLAND) REGULATIONS 2011

**SSI 2011/238**

The above instrument, if approved, will be made in exercise of the powers conferred by sections 7A and 62(2) of the Debt Arrangement and Attachment (Scotland) Act 2002 ("the 2002 Act"). The instrument is subject to affirmative resolution procedure.

## Policy Objectives

1. This instrument is one of two intended to replace the Debt Arrangement Scheme (Scotland) Regulations 2004 (SSI 2004/468) as amended. The changes are intended to improve access to the Debt Arrangement Scheme (DAS) and encourage greater participation in the Scheme by providing access to a wider range of debtors. Separate Debt Arrangement Scheme (Scotland) Regulations 2011 under negative resolution procedure to be laid shortly will consolidate and update the vast majority of the Regulations.

2. Provision about the effect a debt payment programme under the DAS Scheme has on debtors' liabilities for interest, fees, penalties and other charges requires affirmative resolution procedure. This instrument therefore restates the moratorium on approval or variation of a debt payment programme introduced by the Debt Arrangement Scheme (Scotland) Amendment Regulations 2007 (SSI 2007/262). It makes minor changes to reflect the proposed updated DAS scheme, in particular regulation 4(4) restricts the terms on which the moratorium ceases to apply where a joint debt payment programme entered into by couples is revoked.

3. Further background about DAS and the proposed changes is set out in the Annex.

## Consultation

4. Following the DAS amendment Regulations revoked in 2009 (SSIs 2009/234 and 2009/258) the Minister for Community Safety gave a commitment to discuss concerns with stakeholders and formally consult on DAS. The Accountant in Bankruptcy on behalf of the Scottish Government carried out a full public consultation on what changes should be introduced from 22 September to 14 December 2009. A copy of the report of the responses to the consultation was published on the Accountant in Bankruptcy website in April 2010, available at:-

http://www.aib.gov.uk/sites/default/files/publications/Resource/Doc/4/0000977.pdf

5. A full list of parties consulted is attached to the consultation report. This led to the development of the consolidation and the new proposals in the proposed changes to the DAS Scheme, including those in these Regulations. In addition, there has been a series of focus groups representing stakeholders throughout 2010 including representatives from the money advice sector, including Money Advice Scotland, Citizens Advice Scotland, insolvency practitioners, creditor representatives and other interested parties, such as the British Bankers

Association and local government. Their feedback has been used to develop the proposed changes to the scheme in line with the views expressed by the majority of stakeholders.

**Impact Assessments**

6. An equality impact assessment has been completed on the detailed changes to the DAS Scheme, including those in the instrument. As DAS is currently available and the proposed changes increase access to debtors, no equality impact issues arise in respect of these legislative changes. They have been welcomed by some ethnic minority groups, who should now be able to give advice and access to a debt management solution to their communities.

**Financial Effects**

7. The instrument has no effect on the costs of the Scottish Government, business or local government. A full Business and Regulatory Impact Assessment (BRIA) has been completed for the changes to the DAS Regulations.

The Accountant in Bankruptcy, on behalf of the Scottish Government
2 February 2011

**Annex – background to the DAS scheme and intended changes**

***Purpose of the Debt Arrangement Scheme***

1. The purpose of the Debt Arrangement Scheme (DAS) is to provide a facility for the orderly repayment, principally of multiple debts. It complements the time to pay arrangements for single debts created by the Debtors (Scotland) Act 1987.

2. The policy objectives of the DAS are to:-

- enable people to resolve serious debt problems in a dignified way;
- reduce the need for creditors to take legal action to recover their debts;
- extend the benefit of money advice to those people who have a particular need for it;
- improve the quality of money advice, through training and accrediting money advisers; and
- minimise the impact of bad debt on both debtors and creditors.

3. DAS allows people (debtors) who are unable to pay their debts as they fall due, but who have a reasonable level of surplus income after meeting their basic needs (food, accommodation, utilities, council tax etc.), to pay those debts over a longer period.

4. Debtors can apply for approval of a DAS debt payment programme (DPP). A programme will be approved on behalf of the Scottish Ministers by the DAS Administrator, who is the Accountant in Bankruptcy. Approval is subject to all the creditors agreeing or where the DAS Administrator considers that the programme is otherwise fair and reasonable. The creditors are unable to petition to sequestrate the debtor or use diligence (seize and sell assets) against them once a programme is approved and this immunity remains throughout the course of the programme.

5. If the programme is approved the debtor no longer needs to make individual payments to each creditor. Instead, a single payment is made to an approved payments distributor who divides that payment between the debtor's creditors on a pro-rata basis. The costs of this are met by charging the creditors a capped administration fee deducted from that payment. The creditors benefit from reduced administrative, legal and recovery costs and increased certainty of payment. The recording of the programme and some of the administration costs are covered by the public purse.

6. DAS is a powerful tool capable of helping many people. It helps people to manage their way out of serious debt problems, giving them the potential to start over when their debts are dealt with. The debtor in a DPP is protected from the risk of losing their home provided that they continue to pay their mortgage payments, in contrast to bankruptcy or a trust deed where ownership of all land and buildings passes to the trustee for the benefit of creditors.

7. DAS is one of a range of debt tools, both formal and informal. However, not every person with debt problems either needs to use DAS or is suitable for it. For that reason anyone considering DAS must first be given advice from an approved money adviser. Thereafter, debtors can choose the best way forward in the light of that advice.

8. The adviser will look at a person's whole circumstances and may, for example, suggest ways to help them to maximise their income. In some cases the person may be able to agree an informal payment arrangement. In others, it will be clear that the debt problem is so severe that the person should either apply to become bankrupt or to grant a trust deed for their creditors. In those cases where DAS is suitable, the adviser can assist the debtor to apply for approval of a DPP.

*Need for reform*

9. Take up of the DAS by both money advisers and debtors has been lower than anticipated and coverage across Scotland is not uniform, with some parts of the country seeing significantly greater use of DAS than other comparable areas. Changes in 2007 to freeze interest and charges and the recent economic decline has made DAS a more suitable debt management scheme for more debtors and numbers have increased as a result. However, the Scottish Government believes that more people in Scotland can be helped using DAS if it was more accessible.

10. In November 2008, AiB published a review of the Debt Arrangement Scheme. (See AiB website www.aib.gov.uk/guidance/publications/consultations/DASreview). The review found that –

- DAS is working for the people who have been able to access it.
- Access seems to be a major problem and needs to be resolved.
- DAS works for debtors who have available funds and it protects the family home at the same time provided payments continue to be made to secured creditors.
- Geographical variations show that the take up of DAS is inconsistent across Scotland and some areas show better take up than others.
- Creditor awareness and engagement in DAS is low.

11. Responding to the results of the 2008 review and contributions from stakeholders, the Scottish Government felt that the need for change was sufficiently clear. This led to the further consultation indicated above.

***Outline of proposed changes to DAS***

12. Subject to Parliamentary approval, the proposed Debt Arrangement Scheme (Scotland) Regulations 2011 aim to increase access to allow more debtors to apply for a debt payment programme under DAS.

13. The Regulations will provide for more categories of money adviser to be approved for the purposes of giving advice to debtors in respect of DAS; allow DPPs for single debts; allow joint DPPs for couples who have shared liability to pay a debt; and removes the burden of ongoing administration of approved DPPs from free-sector money advisers who do not charge, freeing them up to assist more debtors. The Regulations will also allow debtors to apply for a payment holiday of 6 months if they have experienced short-term income shock, deferring but not writing off the payments. DAS will be the only statutory debt management or relief mechanism in the UK which provides a payment holiday whilst giving protection from creditor action to recover debts.

14. To improve creditor awareness and engagement with DAS, the Regulations will simplify the process, forms and notices to and from creditors and allow (but do not require) increased use of electronic transfer of information. The Regulations also propose a change to the way Payments Distributors are appointed. Approved Payments Distributors will be appointed by an open and transparent procurement exercise, to support delivery of a better service and reduce costs to creditors. The Regulations would also amend the amounts the Payments Distributor can charge the creditors for processing the payments, from a maximum of 10% to a maximum of 8% of the sum due, introducing an application fee of 2% of the sum distributed to creditors to be paid to the DAS Administrator.