
EXPLANATORY NOTE

(This note is not part of the Regulations)

The Debt Arrangement Scheme (Scotland) Regulations 2011 (“the DAS Regulations”) prescribe a scheme for the repayment of debts in Scotland (“the DAS scheme”). 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”).

These Regulations amend the DAS Regulations to introduce the possibility of using the scheme in relation to legal persons and other entities, in connection in particular with businesses. The wider scheme will apply to partnerships, limited partnerships within the meaning of the Limited Partnerships Act 1907, corporate bodies other than companies registered under the Companies Act 2006, trusts, and unincorporated bodies of persons. Sole traders will continue to be covered by the DAS scheme as it applies to individuals. These changes are introduced from 11th December 2014.

The Regulations also make provision for consequential changes to implement the introduction of the Common Financial Tool under section 3(2) of, and other changes made by, the Bankruptcy and Debt Advice (Scotland) Act 2014 (“the 2014 Act”) (regulations 8 except paragraph (3)(a) and (c), 9(1), 10, 21(5)(a), 22, Schedule 1 and Schedule 2, form 1). These changes are introduced from 1st April 2015.

Amendments are also made to the DAS Regulations in respect of money advisers, including provision on who can apply to be a money adviser for a legal person or other entity (regulation 5(2)) and in relation to the functions and duties of money advisers (regulation 5(1) and 7). Regulation 6 removes money advisers working for organisations working towards Scottish National Standards for Information and Advice Provision from those approved to act as money advisers under the DAS scheme.

Regulation 8 and Schedule 1 make provision for the application of the Common Financial Tool in relation to the DAS scheme. Regulation 8(3) also introduces a requirement for programmes to include all qualifying debts due by a debtor at the time of the application, subject to a proviso in respect of debts for which both an individual and a legal person or other entity are liable (see regulation 22A(8)(b) of the DAS Regulations, inserted by regulation 13 of these Regulations). Debts must be “due” in order to be protected under the DAS scheme, in terms of regulation 3 of the DAS Regulations.

Regulation 9 amends the information to be included on the DAS Register.

Regulations 10 to 12 make amendments to the procedural requirements of applications for approval of a programme. Legal persons or other entities can only apply for programmes providing for the payment of more than one debt (regulation 12(1)). References in the DAS Regulations to individual debtors are to be taken to include reference to debtors who have entered into a joint payment programme (regulation 12(2)).

Regulation 13 inserts regulation 22A into the DAS Regulations to make specific provision for programmes entered into by legal persons and other entities. This regulation includes provision as to who is required to consent to a programme and sets out the conditions to be met before a money adviser can issue a declaration of viability. Debts must be repaid within 5 years of the date of application. Certain individuals in relation to a business or other entity can be protected from diligence in relation to debts included in a programme for that business (regulation 22A(9) as inserted).

Regulation 14 amends regulation 23 of the DAS Regulations (consent of creditors) for the purposes of programmes entered into by legal persons and other entities.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Regulation 15 inserts additional standard conditions to be met by debtors which are legal persons or other entities, including a requirement to declare all assets, and restricting the sale of non-trading assets during the period of the programme, unless for the benefit of creditors (regulation 15(b)). Such debtors are also required to provide notification to their money advisers of any information materially affecting their declaration of viability, within 14 days of becoming aware of the change (regulation 15(c)).

Regulation 16 amends regulation 33 of the DAS Regulations (effect on creditors) in consequence of the introduction of the wider DAS scheme.

Amendments are also made in respect of the variation and revocation of a programme, including specific provision for programmes entered into by legal persons and other entities (regulations 17 to 19).

Regulation 20 excludes legal persons and other entities from the provisions relating to a composition agreement with creditors out of the DAS scheme (regulations 46A to 46D of the DAS Regulations). Provision is also made for new forms (regulation 21).

Regulation 22 makes minor revocations to the DAS Regulations in consequence of the 2014 Act.

Regulation 23 includes saving provisions so the provisions in relation to the 2014 Act do not apply to debt payment programmes approved before 1st April 2015, and in relation to the application of the Common Financial Tool to debt payment programmes approved before that date.

A Business and Regulatory Impact Assessment has been prepared for these Regulations. Copies can be obtained from the Accountant in Bankruptcy's website: <http://www.aib.gov.uk>.