Final
Business and Regulatory Impact Assessment

Title of Proposal

The Debt Arrangement Scheme (Scotland) Amendment Regulations 2014

Purpose and intended effect

These Regulations amend the Debt Arrangement Scheme (Scotland) Regulations 2011 ("the 2011 Regulations") to make provision for an extension to the Scottish Government's existing Debt Arrangement Scheme ("DAS"), to make a statutory debt management solution available to small to medium unincorporated businesses to repay their debts over five years while continuing to trade and contribute to the economy. They also make provision to implement the introduction of the Common Financial Tool for individuals using DAS.

Background

The Scottish Government has responsibility for most aspects of non-company insolvency regime. Measures which allow the debtor to write off some or all of their debts (known as debt relief) are currently available to both individuals and consumers or individuals operating a business as a sole trader. Partnerships also fall within personal insolvency, where these partnerships are non-limited liability partnerships.

The DAS is a debt management scheme whereby agree to repay the whole of their debts and receive statutory protection from diligence while they do so. However, the DAS does not currently cater for partnerships, other than where each partner can use DAS individually to repay their share of any personal liability, or other legal entities. There is a gap in the provision of statutory debt management solutions in Scotland, which the Scottish Government is now seeking to fill.

The Accountant in Bankruptcy (AiB) consulted widely on bankruptcy reform in 2012 and sought the views and opinions of stakeholders on proposed changes to debt management legislation. The consultation included a proposal to create a business specific DAS. Responses were positive and it was agreed that the proposal should be taken forward.

Amendments to the Debt Arrangement and Attachment (Scotland) Act 2002 made by section 53 of the Bankruptcy and Debt Advice (Scotland) Act 2014 (with effect for the purpose of making Regulations from 30 June 2014) allow the scope of the DAS to extend beyond natural persons (i.e. individuals). Section 62(2) of the Debt Arrangement and Attachment (Scotland) Act 2002 gives Scottish Ministers the power to make different provision for different cases and different classes of case, under that Act.

The new scheme will extend to legal persons and other entities, including partnerships, limited partnerships or corporate bodies other than companies registered under the Companies Act 2006, trusts and unincorporated associations.

Objective

The success of the Scottish economy depends on a thriving business sector. These regulations will provide an early intervention mechanism that delivers advice, guidance and debt management solutions which will play a key role in avoiding unnecessary small business insolvency. Business DAS also aims to encourage the regeneration of businesses and to help the economy by allowing partnerships and other legal entities some breathing space from creditors and to repay their debts over a period of 5 years.

- In brief, the purpose of these Regulations is to:-

  - define 'legal persons' and other entities, and 'approved money advisers' for the purposes of the Business DAS scheme;

  - provide that approved money advisers giving the debtor advice for the purposes of Business DAS must be qualified Insolvency Practitioners;

  - set out specific requirements, standard conditions and processes for a legal person or other entity entering into a debt payment programme ("DPP"). In particular, when submitting an application for approval of a DPP, the approved money adviser must include a declaration that the DPP is viable. Consequential changes are also made about variation and revocation of a DPP entered into by a business or other entity;

  - amend the DAS scheme as it applies to both individuals and legal persons or other entities, in order to require all debts to be included in a DPP;

  - amend the criteria by which a money adviser may be judged fit or otherwise to be 'approved' as a money adviser, by removing the option for the person to be a member of an organisation "working towards" Scottish National Standards accreditation. From 1 April 2015, a person will only qualify if their organization has achieved accreditation;

  - make provision for the application of the Common Financial Tool to individuals using the DAS scheme;

  - provide the necessary statutory forms; and

  - make minor and consequential amendments and repeals to the Bankruptcy (Scotland) Act 1985.

Rationale for Government intervention

In recognition of its responsibility to support the people of Scotland and strengthen Scotland's economy by ensuring that debt management products are fit for purpose, the Scottish Government is committed to providing an early intervention mechanism that will deliver advice, guidance and statutory solutions which will play a key role in preventing small business insolvency and regeneration of the economy.

These Regulations contribute to the Scottish Government Economic Strategy to make Scotland a more successful country with opportunities for all to flourish, through increasing sustainable economic growth, aligned by the delivery of the following national outcomes:

Business – A culture of entrepreneurialship, leadership, creativity and international ambition

Inequalities – We have tackled the significant inequalities in Scottish society

Employment opportunities – Realising our full economic potential with more and better employment opportunities for our people

Communities – We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others

Consultation

- **Public Consultation**

The discussion and debate on the modernisation and reform of bankruptcy, which has led to the development of these Regulations, began with the publication of a comprehensive consultation paper – the Consultation on Bankruptcy Law Reform. The consultation was a broad, inclusive and detailed consultation containing 193 questions on bankruptcy reform. The consultation was published on the Scottish Government website and ran from 24 February 2012 until 18 May 2012 inclusive.

A total of 129 responses were received. This is three times the number of responses received in previous recent bankruptcy consultations. Respondents represented a wide range of individuals and organisations with knowledge and experience of or an interest in insolvency matters. The Scottish Government's response to the consultation was published on 7 November 2012. Some of the comments received from respondents are contained in the 'Report of the Summary of Responses' held on the AiB website.

The consultation process was valuable and the Scottish Government is grateful to all who contributed their time, input and assistance in the development of debt solutions for the people of Scotland. Included in the consultation document were questions regarding the creation of a business specific DAS. A summary of the consultation responses is outlined below:-

- **Question 1** - Should a new Business DAS be developed for sole traders and non-limited liability partnerships where the business is assessed as viable?

	Total Responses	**Organisations only**
Yes	60	40
No	45	29
N/A	19	15
Comment only	5	5
Total	**129**	**89**

- **Question 2** - Should Business DAS exclude non-business debts?

	Total Responses	**Organisations only**
Yes	45	31
No	39	25
N/A	40	28
Comment only	5	5
Total	**129**	**89**

- **Question 3** - Prior to entering Business DAS, should business advice be compulsory?

	Total Responses	Organisations only
Yes	64	42
No	15	12
N/A	45	30
Comment only	5	5
Total	**129**	**89**

- **Question 3a** - If yes, who should provide that advice?

6.3 Of those respondents who answered this question, the Money Advice Service, Business Gateway, Scottish Enterprise and R3 members were suggested.

- **Question 4** - Should debt relief or composition be incorporated into the Business DAS and agreed with creditors at the proposal stage?

	Total Responses	Organisations only
Yes	49	36
No	32	21
N/A	45	29
Comment only	3	3
Total	**129**	**89**

Summary

There was support for a new Business DAS to be developed where the business was assessed as being viable.

AiB subsequently convened a Business DAS working group with stakeholders to seek their feedback on our proposals. The first meeting was held on 14 August 2013 to discuss our initial proposals. A further meeting was held on 11 July 2014 to seek feedback on draft regulations. The AiB met with the following stakeholders:-

- Her Majesty's Revenue & Customs (HMRC)
- Institute of Chartered Accountants Scotland (ICAS)
- British Bankers Association (BBA)
- Insolvency Practitioners Association (IPA)
- Wilson Andrews
- Begbies Traynor
- KPMG

AiB officials also met with the Office of the Scottish Charity Regulator (OSCR) to discuss the possible use of Business DAS by charitable organisations.

- **Within Government**

AiB officials have worked closely with policy colleagues from other areas of the Scottish Government who work closely with small to medium businesses in order to develop the initial proposals on how Business DAS might work in practice.

Options

Option 1 – No Change

The first option is to 'do nothing'. That is, to make no changed to the existing DAS scheme. However, in light of the recent economic crisis, to do nothing would leave a gap in the provision of statutory debt management solutions and would mean that there would not be an early intervention mechanism that delivers advice, guidance and debt management solutions for small businesses.

Benefits – The benefits in keeping the status quo is that there would be no need to change the legislation or make system changes. Insolvency Practitioners (IPs) would not have to train their staff in new procedures in order to provide advice or support small businesses' applications under the new scheme.

Cost – There would be no costs in maintaining the status quo.

Sectors and Groups affected – No change to individuals, creditors and the broader Scottish economy.

Option 2 – Debt Arrangement Scheme (Scotland) Amendment Regulations 2014

Benefits – an early intervention mechanism that delivers advice, guidance and debt management solutions which will play a key role in avoiding unnecessary small business insolvency. These Regulations should also encourage the regeneration of businesses and to help the economy by allowing partnerships and other legal entities some breathing space from creditors and to repay their debts over a period of 5 years.

Sectors and groups affected – Small to medium unincorporated businesses, creditors and the broader Scottish economy.

Cost – Business DAS will be delivered as an extension to the existing DAS scheme and it is expected that the administrative costs of Business DAS will be met within the current, overall costs envelope for administering DAS. There will be a systems cost, to modify the existing DASH portal which supports DAS applications and case management. £180,000 (with scope for 10% contingency) has been allocated from AiB's existing 2014/15 budget to meet this cost.

Scottish Firms Impact Test

AiB have, from the inception of the programme of bankruptcy reform in Scotland, engaged with stakeholders, including businesses, on a continuous basis through face to face meetings, seminars, workshops and stakeholder events. The foundation of these discussions were formed by the questions posed in the Consultation on Bankruptcy Law Reform. Stakeholder response to the consultation fed into the development of the proposals in the Bill for the Bankruptcy and Debt Advice (Scotland) Act 2014.

As a result of engaging with stakeholders throughout the process AiB were able to address any concerns as they arose. Consequently, no significant concerns were raised in relation to the proposals contained in the Debt Arrangement Scheme (Scotland) Amendment Regulations 2014 at the recent stakeholder events on 8 and 14 July and 11 August 2014.

Competition Assessment

Having considered the Office of Fair Trading competition filter questions – i.e. does the proposal limit suppliers either directly or indirectly and reduce ability and/or incentives to compete? – we can confirm that these changes will apply equally to all who engage with the Regulations. There should be no competitive advantage to any particular individual or group as a consequence of the introduction of the regulations.

Test run of business forms

In support of the Debt Arrangement Scheme (Scotland) Amendment Regulations 2014, AiB will carry out some modifications to their existing DASH portal, to support applications from small to medium unincorporated businesses and the registration of Business DAS Debt Payment Plans on the existing DAS Register. Prior to implementation on 11 December 2014, AiB will engage with stakeholders to seek their comments on the modifications and associated forms.

AiB will continue to monitor the use of the forms post implementation to ensure they are fit for purpose and easy to use.

Legal Aid Impact Test

The Scottish Legal Aid Board have confirmed that they do not expect there to be an impact on the legal aid fund as a result of the provisions in the Debt Arrangement Scheme (Scotland) Amendment Regulations 2014.

Enforcement, sanctions and monitoring

The Scottish Government will carefully monitor how these Regulations are working in practice by carrying out reviews and seeking feedback from stakeholders.

AiB has an existing stakeholder review group, the DAS Review Board which includes members who represent:

- Insolvency Practitioners Association
- HMRC
- Council of Mortgage Lenders
- ICAS
- British Bankers Association
- Association of Credit Unions Limited
- Debt Managers Standards Association
- Consumer Finance Association

As well as being able to feed back to AiB directly, users of Business DAS will be able to engage with AiB via the Review Board. AiB, in turn, will continue to use the Board to ensure that Business DAS operates effectively and that stakeholder concerns are addressed. AiB will, as a matter of course, retain records on the operation of Business DAS, for operational, management information and performance reporting purposes.

Implementation and delivery plan

The Debt Arrangement Scheme (Scotland) Amendment Regulations 2014 will come into force on the 11 December 2014, except for provisions relating to the introduction of the Common Financial Tool, which come into force on 1 April 2015. These amendments to the 2011 Regulations will apply to new applications to DAS received by Accountant in Bankruptcy on or after 11 December 2014, except where the savings provisions in regulation 23 applies (in relation to the introduction of the Common Financial Tool)..

The Accountant in Bankruptcy will publish the introduction of the Regulations on their website. The new Regulations will also be incorporated in the legislation published on the legislation.gov.uk website. The Accountant in Bankruptcy will, where appropriate, prepare and publish, on their website, guidance to support stakeholders when implementing the new legislation.

Post-implementation review - To evaluate the impact of the new legislation the Scottish Government has given an undertaking that the Accountant in Bankruptcy will carry out a review of these provisions a year after they come into force. This will involve the analysis of statistical data and feedback from stakeholders collated by the Accountant in Bankruptcy.

The Scottish Government will review the findings of this research and consider whether any changes are necessary to the legislation, the Business DAS scheme or the associated guidance in light of its findings. Any changes identified will be brought to the attention of the Scottish Parliament and Parliamentary committees where necessary. A final report detailing the findings and conclusion of the review will be published.

Summary and recommendation

After due consideration and consultation with those directly affected by these Regulations, it is recommended that Option 2 is implemented for the reasons given in the table below.

Summary costs and benefits table:

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	1. No need to change the legislation or make system changes. 2. IPs would not have to train their staff in new procedures in order to provide advice or support small businesses' applications under the new scheme.	1. There would be no costs in maintaining the status quo.
2	1. The introduction of an early intervention mechanism that delivers advice, guidance and debt management solutions which will play a key role in avoiding unnecessary small business insolvency. 2. The Regulations will encourage the regeneration of businesses and to help the economy by allowing partnerships and other legal entities some breathing space from creditors and to repay their debts over a period of 5 years.	1. Administrative costs of Business DAS will be met within the current, overall costs envelope for administering the existing DAS scheme. 2. There will be a systems cost, to modify the existing DASH portal which supports DAS applications and case management. £180,000 (with scope for 10% contingency) has been allocated from AiB's existing 2014/15 budget to meet this cost.

Declaration and publication
Include the relevant Ministerial declaration*

Signed:

Date:

Minster for Energy, Enterprise and Tourism, Fergus Ewing MSP.

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*Delete as appropriate/once completed