

POLICY NOTE

THE DEBT ARRANGEMENT SCHEME (SCOTLAND) AMENDMENT REGULATIONS 2015

S.S.I. 2015/216

1. The above Regulations are made by the Scottish Ministers in exercise of the powers conferred by sections 7(1) and (2)(b), (bc)(ii), (c), (d) and (3) and 62(2) of the Debt Arrangement and Attachment (Scotland) Act 2002 and all other powers enabling them to do so. The Regulations are subject to the negative procedure.

Policy Objectives

2. These Regulations amend the Debt Arrangement Scheme (Scotland) Regulations 2011(a) (“the DAS Regulations”) which provide a scheme for the repayment of debts in Scotland. Once approved, a repayment arrangement under the scheme becomes known as a debt payment programme (“a programme”). A debtor whose debts are being repaid through a programme is protected from enforcement measures (diligence and sequestration proceedings) as well as interest, fees, penalties and additional charges otherwise due to creditors.

3. These Regulations amend the definition of “debt” in the DAS Regulations so that certain debts related to student loans are excluded. The Regulations further restore a debtor’s protection from diligence or sequestration in the period before a programme is approved to the same level of protection afforded prior to changes introduced by the Bankruptcy and Debt Advice (Scotland) Act 2014.

Exclusion of student loan debt

4. The Debt Arrangement Scheme (Scotland) Amendment Regulations 2014(b) made changes to the DAS Regulations, introducing the “all debt rule”. The effect of this amendment was that all debts, including student loans, must be included in a programme. There is however a concern, which has also been raised by stakeholders, regarding the practicality of including student loans within a programme as the intention would be that they are repaid from salary over an extended period. Regulation 3 therefore modifies the application of the Regulations taking account of the “all debt rule” by inserting at regulation 3(2) a new sub-paragraph (d), which completely excludes student loans from the definition of debt. The Scottish Government acknowledges that it may be impractical to include student loans in a programme as they are intended to be repaid from future earnings over an extended period, so has taken this opportunity to make this change to the treatment of student loans in the Debt Arrangement Scheme (“DAS”).

Diligence or sequestration before a programme is approved

(a) S.S.I. 2011/141, as amended by S.S.I. 2013/225 and S.S.I. 2014/294.

(b) S.S.I. 2014/294.

5. Section 8 of the 2014 Act introduced a general moratorium covering the three Scottish statutory debt solutions (DAS, protected trust deeds and sequestration). Prior to the 2014 Act the DAS Regulations offered two protections to debtors. Creditors were prevented from commencing or executing diligence for a six week period after a debtor had intimated that they would be applying to enter a programme, while a debtor was also protected for the period between receipt and approval of the application. However these protections were revoked with effect from 1 April 2015, and replaced by the general moratorium which protects a debtor for a period of six weeks. If a debtor makes an application to DAS during this period, they will receive further protection until their programme is approved. The policy behind the moratorium was the same as for the DAS Regulations; to allow a debtor breathing space to take advice and prepare an application. However stakeholders identified a potential issue with this procedure, as in practice a debtor will only be protected on application if it is made during the six week moratorium period. So where the six week moratorium period provides insufficient time for an application to be made, a debtor is not afforded the additional protection which was available under the previous provision from the DAS Regulations, which provided protection from diligence recommencing if an application was made outwith the six week moratorium period.

6. The Scottish Government's policy intention is that the protection offered to a debtor who is making an application to DAS should be maintained and should not be diminished. As such, regulation 4 amends regulation 30 of the DAS Regulations to restore the protection offered to a debtor in the period before a programme is approved, where the moratorium added by the 2014 Act does not apply. Regulation 4(a) inserts new paragraph (1)(aa) to the effect that it is not competent to serve a charge for payment, commence or execute any diligence to enforce payment of any debt, or for a creditor to petition for sequestration during the period immediately following an application by a debtor being entered in the DAS Register and ending on the earliest of the dates mentioned in paragraph (2A). Regulation 4(b) inserts new paragraph (2A) which specifies the dates as that on which a notice that the programme is approved is entered in the DAS Register; that occurring 14 days after the date on which notice of rejection of the programme is entered; that occurring 28 days after the date on which an application for review is so entered; and, that on which intimation of withdrawal of an application to approve the programme is so entered.

Consultation

7. There has been no formal consultation on the amendments in this instrument. There was, however, extensive engagement with key stakeholders during the passage of the various Regulations which are being amended.

Impact Assessments

8. Given that the nature of these Regulations is to restore certain protections against diligence in relation to DAS, and also to make minor corrections to the DAS Regulations, a Business Regulatory Impact Assessment ("BRIA") has not been carried out. The impact of the various regulations being amended was however assessed in the original BRIAs which were completed and published in connection with those Regulations.

9. Copies of these BRIAs can be found on the Accountant in Bankruptcy ("AiB") website at: www.aib.gov.uk/search/node/BRIA

10. An Equality Impact Assessment (“EQIA”) has not been carried out for these Regulations as the changes being introduced are not considered to give rise to any equality issues. The changes set out in this instrument will apply equally to all. The AiB regularly consults with stakeholders, service users and the general public on reforms to bankruptcy law to ensure that the needs of all groups of society who require to enter bankruptcy are considered, and that no particular groups are disadvantaged or excluded more than others. However, EQIAs were completed for the various regulations being amended.

11. Copies of these EQIAs can be found on the AiB website at: www.aib.gov.uk/search/node/EQIA

Financial Effects

12. These Regulations are intended to help the economy by reinstating a debtor’s protection from creditors where an application is made outwith the six week moratorium period; allowing them to enter into a programme and to repay their debts over a period of time.

13. A Financial Memorandum was published for the 2014 Act and can be found at:

[http://www.scottish.parliament.uk/S4_Bills/Bankruptcy%20and%20Debt%20Advice%20\(Scotland\)%20Bill/b34as4-stage2-supp-fm.pdf](http://www.scottish.parliament.uk/S4_Bills/Bankruptcy%20and%20Debt%20Advice%20(Scotland)%20Bill/b34as4-stage2-supp-fm.pdf)

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27 May 2015