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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 297**

**The Debt Arrangement Scheme  
(Scotland) Amendment Regulations 2018**

**Citation and commencement**

1. These Regulations may be cited as the Debt Arrangement Scheme (Scotland) Amendment Regulations 2018 and come into force on 29th October 2018.

**Interpretation**

2. In these Regulations, “the DAS Regulations” means the Debt Arrangement Scheme (Scotland) Regulations 2011(1).

**Amendments to the DAS Regulations**

3. The DAS Regulations are amended in accordance with regulations 4 to 18.

**Correction of accidental errors**

4. In regulation 4A (correction of accidental errors)—

(a) after paragraph (1) insert—

“(1A) In paragraph (1), “accidental error” includes an accidental error in any determination made by the DAS Administrator arising from the provision of incorrect information to the DAS Administrator by any third party.”; and

(b) at the end of paragraph (4)(b), insert “, except with the agreement of the debtor (or of the money adviser acting on behalf of the debtor) or creditor who applied for the review”.

**Approved money adviser: Financial Conduct Authority compliance**

5.—(1) In regulation 9 (approval of a money adviser)—

(a) after paragraph (2)(b) omit “and”; and

(b) after paragraph (2)(c) insert—

“and;

(d) has put in place appropriate arrangements (where applicable) to ensure compliance with rules made by the Financial Conduct Authority and to ensure that appropriate regard is had to guidance issued by the Financial Conduct Authority.”.

(2) In regulation 11 (revocation, or suspension, of approval of a money adviser) after paragraph (1) insert—

“(1A) The DAS Administrator may revoke the approval of any money adviser where the adviser fails to maintain appropriate arrangements (where applicable) to ensure compliance

with rules made by the Financial Conduct Authority and to ensure that appropriate regard is had to guidance issued by the Financial Conduct Authority.”.

**DAS Register: information which need not be included**

6. After regulation 19(3) (Information on the DAS Register) insert—

“(4) Information need not be included on the DAS Register where the DAS Administrator is of the opinion that inclusion of the information would be likely to put any person at risk of violence or otherwise jeopardise the safety or welfare of any person.”.

**Continuing money adviser’s fee: disclosure**

7. After regulation 20(2)(a) (application for approval) insert—

“(aa) where the debtor is an individual, must include details of any fee charged by a continuing money adviser for the adviser’s services;”.

**Common financial tool: exclusion of rent and mortgage arrears, debtor’s contribution**

8.—(1) In regulation 20—

(a) in paragraph (2A), after “subject to” insert “paragraph (2AA) and”; and

(b) after paragraph (2A), insert—

“(2AA) Where the debtor is an individual, despite paragraph (2A) debts which are—

(a) constituted by a lease or tenancy agreement; or

(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),

may be excluded from the debt payment programme, to the extent that such debts relate to the debtor’s sole or main residence.”.

(2) For schedule A1 (common financial tool) substitute the schedule A1 set out in schedule 1 of these Regulations.

**Business Debt Arrangement Scheme: application for approval**

9. For regulation 21(1) (debtors who may apply for approval) substitute—

“(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.”.

**Joint debt payment programme: terminology**

10. In regulation 22(1) (joint debt payment programme), for sub-paragraph (b) substitute—

“(b) they are—

(i) spouses or civil partners of each other; or

(ii) living together as if spouses of each other.”.

**Discretionary conditions: sole or main residence**

11. In regulation 28(3) (discretionary conditions)—

(a) at the beginning of sub-paragraph (a), for “a” substitute “subject to paragraph (4), a”; and

(b) after paragraph (3) insert—

“(4) Where the debtor is an individual and at the option of the debtor a debt payment programme referred to in paragraph (1) may be made subject to a condition that the debtor must realise and distribute amongst the creditors the value of a dwellinghouse or mobile home occupied by the debtor as the debtor’s sole or main residence.”.

### **Business Debt Arrangement Scheme: protection from diligence or sequestration**

**12.** After regulation 30(1) (diligence or sequestration in the period before a debt payment programme is approved) insert—

“(1A) Where the debtor is a legal person, trust or unincorporated body of persons, for the purposes of paragraph (1)(ba) the restrictions in paragraph (1) apply to any debt for which both an individual debtor is liable and the legal person, trust or unincorporated body of persons is liable, in relation to which that individual debtor is a person specified under regulation 22A(2)(a), (3), (4) or (5).”.

### **Notification by continuing money adviser: recall of arrestment, approval or rejection of variation**

**13.**—(1) In regulation 33(1)(a) (effect on a creditor) before “the DAS Administrator” insert “the continuing money adviser for the debtor, or where there is no continuing money adviser”.

(2) In regulation 39 (notification of approval or rejection of a variation)—

(a) before paragraph (1) insert—

“(A1) 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) to any continuing money adviser for the debtor.”;

(b) in paragraph (1)—

(i) For “The DAS Administrator” substitute “The continuing money adviser for the debtor, or where there is no continuing money adviser the DAS Administrator,”;

(ii) after sub-paragraph (ca)(2), insert “and”;

(iii) omit paragraph (e) and the “and” preceding that sub-paragraph; and

(c) omit paragraph (2).

### **Accessing further credit**

**14.**—(1) In regulation 33(1)(b) after sub-paragraph (i) insert—

“(ia) where the debtor is an individual, credit (given either to the debtor alone, or jointly to the debtor and another person) up to an amount of £2,000 (except where, at the time the credit is obtained, the debtor has debts amounting to £1,000 or more, other than debts the payment of which is provided for by the debt payment programme and any debts excluded from the debt payment programme under regulation 20(2AA));”.

(2) In regulation 27(2)(h), after “33(1)(b)” insert “(ia),”.

### **Business Debt Arrangement Scheme: payment break**

**15.**—(1) In regulation 36 (application for variation)—

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(2) Sub-paragraph (ca) was inserted by the Debt Arrangement Scheme (Scotland) Amendment Regulations 2013/225, regulation 13(3).

- (a) at the end of paragraph (5)(b)(ii), insert “, or if made on the grounds of regulation 37(1)(i), instead a declaration under paragraph (6)”;
- (b) at the end, insert—
  - “(6) A declaration under this paragraph is a declaration by the money adviser that in the money adviser’s opinion the debtor would still be viable despite the payment break applied for on the basis that—
    - (a) the programme still has a reasonable prospect of being completed;
    - (b) the debtor can make all payments due under the programme within the period of the programme (as extended); and
    - (c) the debtor is continuing to trade, where trading, as at the date of applying for the variation, or otherwise operating at that date.”.
- (2) In regulation 37(1) (grounds for variation)—
  - (a) after sub-paragraph (g) omit “and”; and
  - (b) after sub-paragraph (h), insert—
    - “and;
    - (i) in the case of a debtor which is a legal person, trust or unincorporated body of persons, where a debtor wishes to defer payments for a period not exceeding 6 months, with the period of the debt payment programme extended (subject to regulation 27(2)(l)(iii)) for a period equal to the period of deferment.”.

#### **Grounds for variation: change in household circumstances, reduction in benefits**

- 16.—(1) In regulation 37(3)(c) (grounds for variation) omit the words “of the debtor”.
- (2) After regulation 37(3)(e) insert—
  - “(f) a reduction in social security benefits or tax credits (or both).”

#### **Approval of variation: discharge of liability on compensation**

- 17. In regulation 38 (approval of variation)—
  - (a) in paragraph (1)—
    - (i) omit “or”; and
    - (ii) at the end, insert “or (ea)”;
  - (b) in paragraph (2), for “(d) to (h)” substitute “(d), (e), (f), (g), (h) and (i)”.

#### **Forms**

- 18.—(1) Schedule 1 (forms) is amended as follows.
- (2) In Form 1 (application for approval of a debt payment programme: individuals)—
  - (a) for section 2c (is this a joint application?), substitute section 2c set out in Part 1 of schedule 2 of these Regulations;
  - (b) after section 2e (details of the other debtor in a joint DPP), insert section 2f (sensitivity obligation) set out in Part 2 of schedule 2 of these Regulations;
  - (c) at the end of section 4 (debt to be included in the Debt Payment Programme), insert section 4A (if applicable, debts not to be included in the programme under Regulation 20(2AA)) set out in Part 3 of schedule 2 of these Regulations;

- (d) for section 5b (the debtor, or the debtors in the case of a joint DPP, propose(s) the following), substitute section 5b set out in Part 4 of schedule 2 of these Regulations; and
- (e) after section 6f (if the debtor(s) selected payment direct from salary or wages, provide employer's details), insert section 6g (disclosure of Continuing Money Adviser administration fee (if applicable) (regulation 20(2)(aa))) set out in Part 5 of schedule 2 of these Regulations.

(3) In Form 1B (application for approval of a Debt Payment Programme: legal persons and other entities) for section 3 (eligibility to apply) substitute section 3 set out in schedule 3 of these Regulations.

(4) For Form 2 (notification to creditor of approval of a debt payment programme) substitute Form 2 set out in schedule 4 of these Regulations.

(5) In Form 4 (application for variation of a Debt Payment Programme) for section 3 (grounds for variation) substitute section 3 set out in schedule 5 of these Regulations.

(6) In Form 4B (application for variation of a Debt Payment Programme: legal persons and other entities)—

- (a) for sections 4 (grounds for variation) and 5 (effect of the variation) substitute sections 4 and 5 set out in Part 1 of schedule 6 of these Regulations; and
- (b) for section 7 (declaration by Money Adviser) substitute section 7 set out in Part 2 of schedule 6 of these Regulations.

### **Savings and transitional arrangements**

19.—(1) Except as mentioned in paragraph (2), regulations 7, 8, 9, 11 and 12 do not affect a debt payment programme in respect of which an application for approval was made (under regulation 20 of the DAS Regulations) before 29th October 2018.

(2) Regulation 8(2) applies in relation to debt payment programmes to which paragraph (1) applies where, on or after 29th October 2018, an application for variation of the debt payment programme is made under regulation 37(1)(d) of the DAS Regulations (material change in the circumstances of a debtor).

(3) For the avoidance of doubt, the amendment introduced by regulation 8(2) is not in itself a material change in the circumstances of the debtor for the purposes of this regulation.

(4) Regulation 5(1) has no effect as regards an application for approval as a money adviser under regulation 9 of the DAS Regulations (approval of a money adviser) made before 29th October 2018.

(5) Regulation 4 has no effect as regards a debt payment programme where the determination which would be corrected was made before 29th October 2018.

St Andrew's House,  
Edinburgh  
2nd October 2018

*JAMIE HEPBURN*  
Authorised to sign by the Scottish Ministers