

Business and Regulatory Impact Assessment

Title of Proposal

The Debt Arrangement Scheme (Scotland) Amendment Regulations 2018.

Purpose and intended effect

The Debt Arrangement Scheme (Scotland) Amendment Regulations 2018 amend the Debt Arrangement Scheme (Scotland) Regulations 2011. The amendments will make provision to enhance the scheme by increasing accessibility and sustainability with the aim of improving the Debt Arrangement Scheme and allowing it to reach its full potential.

Background

The Debt Arrangement Scheme (“DAS”) was introduced on 30 November 2004 and provides a facility for the orderly repayment of debt. It is a formal debt repayment solution that allows people 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, to pay those debts over a longer period.

DAS is the only statutory debt management programme in the UK and brings considerable benefits to both debtors and creditors taking part in the scheme. Debtors are given breathing space to pay back their debts while being protected by legislation against creditors taking further action to recover the debts owed to them. Interest, fees and charges are also frozen and written off on completion of the programme. Creditors have the comfort of a regular payment and will see a far greater return of the debt owed to them than they would if the debtor went into insolvency, as they will receive at least 90p in the £ in repayment of debt.

Since its implementation DAS has become a great success providing an effective statutory alternative to insolvency or debt consolidation. The UK government has recognised this success and, in response to repeated lobbying, is due to consult later this year on the development of a similar solution for the rest of the UK. By the end of 2017-18, DAS had helped facilitate payments of over £200m from debtors since the process was reformed in 2011. Through DAS, debtors pay their debts in full and over 6,000 people have now successfully completed a DAS Debt Payment Programme (“DPP”).

During 2016, Accountant in Bankruptcy (“AiB”) carried out a review of amendments to the DAS legislation that were introduced by the Debt Arrangement Scheme (Scotland) Amendment Regulations 2013 (the “2013 Regulations”) and the Debt Arrangement Scheme (Scotland) Amendment Regulations 2014 (the “2014 Regulations”).

As part of the DAS review two consultations were carried out, inviting feedback on specific areas. Responses to the consultations broadly agreed that the changes

introduced in recent years had met their intended outcomes. In addition, some respondents also recommended a number of improvements to DAS to increase the accessibility and sustainability of DAS DPPs and to introduce greater flexibility where possible.

AiB has carefully considered all suggested improvements reflecting on the following key principles:

- fair and just processes of debt advice, debt relief and debt management are available to those who need them
- those debtors who can pay should pay their debts, whilst acknowledging the wide range of circumstances and events that contribute towards financial difficulty for both individuals and businesses
- the best return for creditors is secured by ensuring that the rights and needs of those in debt are balanced with the rights and needs of creditors and businesses

Objective

The Scottish Government strives to have a strong economy where growth is underpinned by long-term sustainable investment in people. These Regulations will work to enhance DAS making it more accessible to the people of Scotland and a more sustainable debt management solution for all parties involved.

In brief, the purpose of these Regulations is to:

- remove the requirement for the mandatory inclusion of housing debt in a DAS DPP
- allow the debtor to have more flexibility when calculating the payment offer they are making towards their DAS DPP
- standardise the provisions governing how a debtor can obtain further credit while in DAS, in line with the insolvency products available to the people of Scotland
- promote transparency within money advice organisations working with DAS by specifying that, where appropriate, they have the arrangements in place to ensure compliance with Financial Conduct Authority requirements
- enhance aspects of Business DAS to allow it to be more sustainable and accessible for Scottish businesses
- make provision for the debtor to be able to offer a lump sum payment to their DAS from the proceeds of the future sale or re-mortgage of their dwelling house

Rationale for Government intervention

The Scottish Government recognises the responsibility it has to take action where it can to help the people of Scotland by ensuring its debt management and debt relief solutions are fit for purpose, that is, that they support the people of Scotland and help to strengthen Scotland's 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 with the delivery of the following strategic objective and national outcomes:

Wealthier and Fairer – ensuring that DAS is designed to help people in severe financial difficulty and give them a fresh start and provide predictability and confidence for lenders.

Realising full economic potential – by ensuring DAS is available and fit for purpose for those who need it.

Providing high quality public services, continually improving, efficient and responsive to local people’s needs – by ensuring DAS is sustainable to meet the needs of the people of Scotland.

Tackling inequalities in Scottish society – by making DAS accessible to as many people as possible.

Consultation

Public Consultation

AiB carried out a review of DAS reforms introduced by the 2013 Regulations and 2014 Regulations. As part of this review AiB carried out two separate consultations for feedback on reforms introduced and for proposals for improvement to the scheme in general. The first consultation was published on the AiB website and ran from 22 March 2016 until 4 May 2016 and contained 18 questions. A total of 40 responses were received from a wide range of individuals and organisations with knowledge and experience of DAS.

Following the initial consultation the Scottish Government set out a proposed way forward on many issues, however it could be seen that in one area there was no general consensus - that area being the options around introducing additional flexibility to the level of contribution from surplus income as assessed by the Common Financial Tool.

On 29 June 2017 a document containing details of AiB’s interim response to the initial consultation was released on the AiB website with an additional consultation asking for views on the area, detailed above, where no consensus had emerged in the first consultation.

The second consultation contained two questions and ended on 18 August 2017, 38 responses were received.

The [interim response](#) to the first consultation and the [final response](#) which includes the strategic look at the future for DAS is available 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.

Summary

Responses to the consultations broadly agreed that the changes introduced in recent years had met their intended outcomes. In addition, some respondents also recommended a number of improvements to DAS to increase the accessibility and sustainability of DPPs and to introduce greater flexibility where possible.

Options

Option 1 – No Change

The first option is to 'do nothing'. That is, to make no change to the existing scheme. However, it is important that the concerns highlighted by stakeholders, around the limitations of the product, are acknowledged and that AiB takes the opportunity to improve the flexibility and increase the sustainability of the product. To ensure that there is maximum potential of DPPs being completed successfully it is essential that the views of the stakeholders, working with DAS regularly, are taken into consideration in making the product more flexible.

Benefits – There would be no need to change the legislation, processes or IT systems. Stakeholder groups would not need to change their systems, processes and there would be no training requirements.

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

Sectors and Groups affected – There would be no substantial changes to individuals, creditors and other stakeholders in DAS. However failure to broaden the access to DAS could impact on the number of Scottish individuals being able to access the scheme and therefore have the opportunity of breathing space to repay their debts over a more manageable period of time which, in turn, could also have a negative impact on the economy.

Option 2 – Debt Arrangement Scheme (Scotland) Amendment Regulations 2018

Benefits – These Regulations will bring in the improvements required to increase the accessibility and sustainability of DAS DPPs. The introduction of greater flexibility in some areas will open up access to the scheme to more individuals allowing them breathing space to repay their debts and thus have a positive impact on the economy. It will also increase the sustainability of the programme, which gives debtors the security of protection from diligence, and provides creditors with a higher return of the debt owed than they would get if the debtor had gone down the insolvency route.

Cost – There will be minimal change required to the existing DAS case management system DASH (“Debt Arrangement Scheme Hub”). Any upgrades

required will be absorbed in the on-going technical improvements to the system that are carried out within normal operational process. DASH is managed by AiB, therefore limiting costs to stakeholders. AiB do not foresee any major cost implications for stakeholder groups. Continuing Money Advisers (CMAs) will take on additional functions which fall in with line with their current administrative duties - CMA organisations were consulted on this and welcome this change.

Sectors and groups affected – Debtors, creditors, money advice service and the broader Scottish economy.

Scottish Firms Impact Test

AiB has engaged with stakeholders throughout the review through seminars, stakeholder events and consultations. Feedback from both consultations fed into the development of these proposals and both the [interim](#) and [final](#) responses have been published on the AiB website.

AiB has addressed concerns raised by stakeholders throughout the review process. For example, some creditors highlighted a concern that removing the requirement to pay all surplus income to the DPP will extend the term of the DPP. However, AiB considers there are a number of protections in place i.e. creditors will have the opportunity to reject a proposal which would then be subject to a fair and reasonable test, and there is a right of appeal. While it is recognised that the debt may be paid over a longer period of time, the policy objective is to try and ensure the DPP is sustainable for the debtor and in turn to maximise the return for creditors.

The removal of mandatory inclusion of housing debt will have a positive impact on creditors. Increasing accessibility in this area will mean that debtors who previously would not consider DAS because they had to include housing debts in a DPP will be more likely to consider DAS. This in turn could result in a higher return for creditors.

The majority of stakeholders are in favour of introducing more flexibility to the scheme, for those who have concerns AiB were able to address such issues by engaging directly with these organisations. Consequently, no significant concerns have been raised in relation to the proposals contained in the Debt Arrangement Scheme (Scotland) Amendment Regulations 2018 after the publishing of the final response.

Competition Assessment

Considering all four of the Competition and Markets Authority competition assessment questions there should be no competitive advantage to any particular individual or group as a consequence of the introduction of the Regulations. The Regulations should not :

- directly or indirectly limit the number of range of suppliers
- limit the ability of suppliers to compete

- limit suppliers' incentives to compete vigorously
- limit the choices and information available to consumers

Test run of business forms

There will be no requirement to introduce new forms only to make minor adjustment to existing statutory forms.

The Regulations are strictly modernisation of current legislation therefore in practice it will not affect the day to day delivery of the scheme.

In line with other processes AiB is enhancing the online system DASH to minimise the change adjustment to stakeholders.

Legal Aid Impact Test

The Scottish Legal Aid Board have confirmed that they do not foresee any impact on the legal aid fund as a result of the provisions in the Debt Arrangement Scheme (Scotland) Amendment Regulations 2018.

Enforcement, sanctions and monitoring

The Scottish Government will carefully monitor how the 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 Banking Association (UK Finance)
- 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 DAS will be able to engage with AiB via the Review Board. AiB, in turn, will continue to use the Board to ensure that DAS operates effectively and that stakeholder concerns are addressed. AiB will, as a matter of course, retain records on the operation of DAS, for operational, management information and performance reporting purposes.

Implementation and delivery plan

The Debt Arrangement Scheme (Scotland) Amendment Regulations 2018 will come into force on the 29 October 2018.

AiB 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. AiB 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 AiB will carry out a review of these provisions after they have been in place for an appropriate amount of time. This will involve the analysis of statistical data and feedback from stakeholders collated by AiB.

The Scottish Government will review the findings of this research and consider whether any changes are necessary to the legislation 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 continuous 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	<p>No need to change the legislation or make process or system changes.</p> <p>Stakeholder groups would not be required to make any changes to their systems, processes or be required to train staff.</p>	<p>There would be no costs in maintaining the status quo.</p>
2	<p>These Regulations will bring in the improvements required to increase the accessibility and sustainability of DAS DPPs.</p> <p>The introduction of greater flexibility in some areas will open up access to the scheme to more individuals allowing them breathing space to repay their debts and thus have a positive impact on the economy.</p>	<p>There will be minimal change required to the existing DAS case management system DASH (Debt Arrangement Scheme Hub). Any upgrades required will be absorbed in the on-going technical improvements to the system that are carried out within normal operational process. DASH is managed by AiB so stakeholders will incur no cost here. AiB do not foresee any major cost implications for</p>

	stakeholder groups.
--	---------------------

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Paul Wheelhouse

Date: 14th June 2018

Minister's name: Paul Wheelhouse

Minister's title: Minister for Business, Innovation and Energy

Scottish Government Contact point:

Fiona Wilson

Fiona.wilson@aib.gsi.gov.uk

0300 200 2784