POLICY NOTE

THE DEBT ARRANGEMENT SCHEME (SCOTLAND) AMENDMENT REGULATIONS 2018

SSI 2018/297

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 2(3)(d), 4(5)(b), 5(4), 7 and 62(2) of the Debt Arrangement and Attachment (Scotland) Act 2002 and all other powers enabling them to do so. It is subject to the affirmative procedure.

Policy Objectives

2. The policy aim of the Debt Arrangement Scheme (Scotland) Amendment Regulations 2018 is to introduce improvements to the Debt Arrangement Scheme (DAS) to increase the accessibility and sustainability of Debt Payment Programmes (DPPs) and to offer greater flexibility. This move towards greater flexibility in DAS is echoed in the changes proposed by the Common Financial Tool (Scotland) Regulations 2018 (the CFT Regulations), which are laid in draft alongside these Regulations. The CFT Regulations aim to ensure consistency and transparency in assessing the amount of surplus income available to repay debts in respect of Scottish statutory debt solutions (including DAS), and to ensure that this is consistent with the rest of the UK.

3. In brief, these Regulations amend the Debt Arrangement Scheme (Scotland) Regulations 2011 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 when a debtor may obtain further credit while in DAS, in line with other 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; and
- make provision for the debtor to be able to offer a lump sum payment to their DPP from the proceeds of the future sale or re-mortgage of their dwelling house.

The Regulations also make further minor and technical changes to the operation of DAS, as detailed in the Annex below.

Background

4. DAS was introduced on 30 November 2004 and provides a facility for the orderly repayment of debt. It is a formal debt 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. This is achieved through a DPP, helping those with debt problems manage their way out of debt and offering them the potential to start over when their debts are cleared. DAS provides protection from the threat of any action to enforce payment of the debt. All interest, fees and charges are frozen from the date of application and written off at the end of the DPP provided that the programme is completed.

Consultation

5. In 2016, Accountant in Bankruptcy (AiB) began a review of the DAS reforms introduced by the Debt Arrangement Scheme (Scotland) (Amendment) Regulations 2013 and the Debt Arrangement Scheme (Scotland) (Amendment) Regulations 2014. As part of the DAS review, two consultations were carried out, inviting feedback on specific areas. The initial consultation was published on 23 March 2016 and remained open until 4 May 2016; and the second consultation was published on 30 June 2017 and remained open until 18 August 2017. The responses were published on 29 June 2017 and 27 March 2018 respectively.

6. 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. The Response 'Debt Arrangement Scheme (DAS) The Way Forward' was published on 27 March 2018.

7. 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; and
- 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.

Impact Assessments

8. A Business and Regulatory Impact Assessment ("BRIA") has been completed on the effects of the instrument and has been published when this instrument was laid before the Parliament. A copy can be found on the AiB website.

9. An Equality Impact Assessment ("EQIA") has been completed on the changes to DAS introduced by the Regulations. AiB administers each DAS application on an individual basis and has appropriate measures in place to ensure that the collation and transmission of statistics and information regarding individuals are completed sensitively. AiB regularly consults with stakeholders, service users and the general public on reforms to DAS to ensure that the needs of all groups of society who may seek to access DPPs are considered and that no particular groups are disadvantaged or excluded more than others. A copy of the EQIA in relation to the 2018 Regulations can be found on the Scottish Government website at www.scotland.gov.uk.

10. In view of the Fairer Scotland Duty regarding socio-economic inequalities which exists under the Equality Act 2010, the impact of these proposals on those with low wealth and low income has been considered. The proposed changes will make DAS more flexible and will therefore allow more individuals struggling with debt to consider an alternative to insolvency. In addition, removing the requirement to pay all surplus income as a contribution to the DPP will help to ensure the repayment of debt is more sustainable. The decision to make these changes has been taken to help promote the interests of the most vulnerable in society whilst still enabling them to repay their debt.

Financial Effect

11. A BRIA has been prepared. The changes introduced by this instrument are not expected to have any significant financial impact on the Scottish Government or Scottish businesses. 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 stakeholder groups.

12. These Regulations are designed to help people in severe financial difficulty and give them a fresh start. They also provide predictability and confidence for lenders.

The Accountant in Bankruptcy on behalf of the Scottish Government
June 2018

Annex

Specific Provisions

1. **Regulation 4:** extends the provision allowing for the correction of accidental errors in determinations made by the DAS Administrator, to include accidental errors arising from the provision of incorrect information by any third party, subject to regulations and to allow for those errors to be rectified immediately without going through the review process (where the debtor or creditor who applied for the review agrees).

2. **Regulation 5:** updates legislation to reflect the growing regulatory role that the Financial Conduct Authority (FCA) exercises in relation to debt advice. Money advice organisations working with DAS need to have appropriate arrangements in place (where applicable) to ensure compliance with FCA requirements.

3. **Regulation 6:** equalises the conditions regarding information which may be withheld from the DAS Register, on grounds of sensitivity, with the approach taken in bankruptcy. It provides that vulnerable applicants are allowed, where appropriate, to have their information withheld from the DAS register.

4. **Regulation 7:** provides that where the debtor is an individual, a continuing money adviser (CMA) must include details of any fee charged for the CMA's services.

5. **Regulation 8(1)**: provides that debts constituted by a lease or tenancy agreement or mortgage arrears can be excluded from the DPP. This recognises that enforcing the inclusion of rent or mortgage arrears could increase the risk of homelessness for individuals looking to go into DAS. Although there will be the facility to exclude these two types of debts, there will still be a requirement to declare all debts to creditors. Creditors will be able to reject the proposal on the grounds that they do not accept the conditions presented, as they do at the moment. Objections will result in the proposal being subject to a "fair and reasonable" test by AiB as happens now if a creditor objects to a proposed DPP.

6. **Regulation 8(2) and new schedule A1, paragraph 2A**: removes the requirement for all surplus income, as calculated by the Common Financial Tool (CFT), to be used as the contribution in a DAS DPP. There will still be the requirement for the debtor to complete the CFT with the money adviser and this will be circulated to creditors as part of the DPP proposal. Creditors will be able to reject the proposal on the ground that they do not accept the payment offered and, if they do, the application will be subject to the fair and reasonable test by the DAS Administrator.

7. **Regulation 9:** amends the requirement for Business DAS applications to have two or more debts. This brings it into line with individuals in DAS who may apply for approval with one or more debt.

8. **Regulation 10:** modernises the terminology relating to eligibility to enter a joint DPP to take account of legislative changes in relation to same sex marriage.

9. **Regulation 11:** provides that, at the option of the debtor**,** a condition to 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 may be included as a discretionary condition of the DPP.

10. **Regulation 12:** amends the current regulations to offer protection from diligence and sequestration to individuals in Business DAS from the date of their application. Currently these protections apply from the date of approval of the DPP by the DAS Administrator.

11. **Regulation 13(1):** provides for CMAs to send notice of recall of arrestment to each employer following approval of a DPP where a CMA is engaged.

12. **Regulation 13(2):** provides for CMAs to issue the notification of approval or rejection of a variation in DPPs where a CMA is engaged.

13. **Regulation 14:** extends the existing provisions governing when the debtor may obtain credit during the term of their DPP. This Regulation provides that a debtor, when in a DPP, may obtain credit of up to £2,000 (except where the debtor has existing debts of £1000 or more) without notifying the potential new creditor about the DPP. Approval of any new credit will be at the creditor's discretion and it will not be possible to allow a variation to reduce existing payments to allow for servicing the new debt. There will be grounds for revocation if the debtor fails to repay the new debt.

14. **Regulation 15:** provides that a payment break of up to six months is made available to those in Business DAS, in line with the current payment break option which is open to individuals in DAS. Where a payment break is utilised it will be possible to extend the DPP for the same period, i.e. up to 6 months, providing the length of the DPP remains within the five year maximum period. A request for a payment break must be supported by a declaration of viability from the money adviser.

15. **Regulation 16(1):** extends the existing payment break criteria in relation to individual DAS to include where there has been a 50% reduction in the debtor's disposable income due to illness within the household (rather than illness which only affects the debtor).

16. **Regulation 16(2):** extends the existing payment break criteria in relation to individual DAS, to include where there has been a 50% reduction in the debtor's disposable income due to a reduction in benefit payments.

17. **Regulation 17:** introduces automatic approval for variations arising from debt discharged by a creditor applying compensation.