



# Debt Arrangement and Attachment (Scotland) Act 2002

## 2002 asp 17

### PART 1

#### THE DEBT ARRANGEMENT SCHEME

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#### Modifications etc. (not altering text)

- C1** Pt. 1 modified (30.11.2004) by [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(Transfer of Functions to the Accountant in Bankruptcy\) Order 2004 \(S.S.I. 2004/448\)](#), arts. 1, 3

### 1 Debt arrangement scheme

This Part of this Act constitutes a scheme (to be known as the “debt arrangement scheme”) under which individuals may arrange for their debts to be paid under debt payment programmes.

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#### Commencement Information

- II** S. 1 in force at 30.11.2004 by [S.S.I. 2004/416](#), art. 2(2)

### 2 Debt payment programmes

- (1) A debt payment programme is a programme which provides for the payment of money owed by a debtor.

[<sup>F1</sup>(1A) Subsection (1) above is subject to any provision in regulations made under section 7A(1) below.]

- (2) The Scottish Ministers may, on an application by a debtor, approve any debt payment programme set out in the application.

- (3) Such an application <sup>F2</sup>... shall—

*Status: Point in time view as at 01/07/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Debt Arrangement and Attachment (Scotland) Act 2002, Part 1. (See end of Document for details)*

- (a) specify, to the best of the debtor’s knowledge and belief, in relation to each debt which the debtor is proposing to be paid under the debt payment programme—
    - (i) the amount outstanding;
    - (ii) the creditor to whom the debt is due; and
    - (iii) the period for which the debt has been due;
  - (b) set out the arrangements under which those debts are, in accordance with the provisions of the programme, to be paid, in particular specifying—
    - (i) the amounts which the debtor proposes to pay under the programme;
    - (ii) the proposed regularity of those payments;
    - (iii) the manner in which those payments are to be made; and
    - (iv) the manner in which, and period over which, each of the debts included in the programme is to be paid;
  - (c) specify the name and address of the person (the “payments distributor”) who is to—
    - (i) receive payments from the debtor; and
    - (ii) pay, on behalf of the debtor, the debts included in the programme, in accordance with the provisions of the programme; and
  - (d) contain such other information (including information relating to the debtor’s financial circumstances), and be in such form, as may be prescribed.
- (4) Such an application shall, subject to any contrary provision in regulations made under section 7(1) [<sup>F3</sup> or 7A(1)] below, incorporate the consent, indicated in the prescribed form, of all the debtor’s creditors.
- (5) A person’s name and address shall not be specified in an application for approval of a debt payment programme as a payments distributor unless that person has been approved by the Scottish Ministers as a person suitable to carry out the functions of a payments distributor.

#### Textual Amendments

- F1** S. 2(1A) inserted (8.3.2007) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 211(2)(a), 227(3)** (with [s. 223](#)); [S.S.I. 2007/82](#), art. 3(a)
- F2** Words in s. 2(3) repealed (8.3.2007) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 212(2), 227(3)** (with [s. 223](#)); [S.S.I. 2007/82](#), art. 3(b)
- F3** Words in s. 2(4) inserted (8.3.2007) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 211(2)(b), 227(3)** (with [s. 223](#)); [S.S.I. 2007/82](#), art. 3(a)

#### Commencement Information

- I2** S. 2(1)(2)(5) in force at 30.11.2004 by [S.S.I. 2004/416](#), **art. 2(2)**
- I3** S. 2(3)(4) in force at 24.9.2004 for specified purposes by [S.S.I. 2004/416](#), **art. 2(1)(a)**
- I4** S. 2(3)(4) in force at 30.11.2004 in so far as not already in force by [S.S.I. 2004/416](#), **art. 2(2)**

### 3 Money advice

- (1) A debtor is not entitled to make an application for the approval, or the variation, of a debt payment programme unless the debtor has obtained the advice of a money adviser in relation to—
- (a) the debtor’s financial circumstances;

*Status: Point in time view as at 01/07/2011.*

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- (b) the effect of the proposed programme or, as the case may be, the proposed variation of the programme; and
  - (c) the preparation of the application.
- (2) Such an application shall—
- (a) contain a <sup>F4</sup>... declaration by the money adviser who provided the advice referred to in subsection (1) above that such advice has been given; and
  - (b) specify the name and address of the money adviser.
- <sup>F5</sup>(3) Subsections (1) and (2) above are subject to any contrary provision in regulations made under section 7(1) below.]

#### Textual Amendments

- F4** Word in s. 3(2)(a) omitted (1.7.2011) by virtue of [The Debt Arrangement Scheme \(Scotland\) Regulations 2011 \(S.S.I. 2011/141\)](#), **reg. 20(5)** (with regs. 49-51)
- F5** S. 3(3) inserted (8.3.2007) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 212(3), 227(3)** (with s. 223); S.S.I. 2007/82, art. 3(b)

#### Commencement Information

- I5** S. 3 in force at 30.11.2004 by [S.S.I. 2004/416](#), **art. 2(2)**

## 4 Effect of debt payment programmes

- (1) Where a debt payment programme has been approved or varied, the debts specified in the application for the approval or, as the case may be, the variation shall be paid in accordance with the programme.
- (2) It is not competent—
- (a) to serve a charge for payment in respect of; or
  - (b) [<sup>F6</sup>subject to subsection (2A),][<sup>F7</sup>other than under subsection (2A),] to commence or execute any diligence to enforce payment of,
  - <sup>F8</sup>(c) to commit to prison under section 4 of the Civil Imprisonment (Scotland) Act 1882, other than for the purposes of section 40A of the Child Support Act 1991, in respect of,]
  - <sup>F9</sup>(c) to commit a debtor to prison under section 4 of the Civil Imprisonment (Scotland) Act 1882 (except for the purposes of section 40A of the Child Support Act 1991) in respect of, ]
- any debt owed by a debtor who has debts which are being paid under an approved debt payment programme.
- <sup>F10</sup>(2A) It is competent to—
- (a) auction an attached article where—
    - (i) notice has been given to the debtor under section 27(4) below; or
    - (ii) an article has been removed, or notice of removal has been given, under section 53 below;
  - (b) implement a decree of furthcoming;
  - (c) implement a decree or order for sale of a ship (or a share of it) or cargo; and
  - <sup>F11</sup>(d) .....]
- <sup>F12</sup>(2A) Despite subsection (2)(b), it is competent to—

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- (a) auction an attached article where—
    - (i) notice has been given to the debtor under section 27(4) below; or
    - (ii) an article has been removed, or notice of removal has been given, under section 53 below;
  - (b) implement a decree of furthcoming;
  - (c) implement a decree or order for sale of a ship (or a share of it) or cargo.]
- (3) A creditor is not entitled to found on any debt owed by such a debtor in presenting, or concurring in the presentation of, a petition for the sequestration of the debtor's estate.
- (4) There is to be disregarded, for the purposes of the exercise by a creditor of any rights to enforce a debt or remedies to like effect, any period during which the debtor's debts were subject to an approved debt payment programme.
- (5) The debts referred to in subsections (2) to (4) above are restricted to—
- (a) those to which the debtor's debt payment programme relates; and
  - (b) any other debts owed to creditors who have been given notice, in the prescribed form, of the approval of the debt payment programme.

#### Textual Amendments

- F6** Words in s. 4(2)(b) inserted (1.7.2011) by [The Debt Arrangement Scheme \(Scotland\) Regulations 2011 \(S.S.I. 2011/141\)](#), [reg. 33\(5\)\(a\)\(i\)](#) (with regs. 49-51)
- F7** Words in s. 4(2) inserted (30.11.2004) by [Debt Arrangement Scheme \(Scotland\) Regulations 2004 \(S.S.I. 2004/468\)](#), [regs. 1, 35\(5\)\(a\)\(i\)](#) (as amended by S.S.I. 2004/470, reg. 3)
- F8** S. 4(2)(c) inserted (30.11.2004) by [Debt Arrangement Scheme \(Scotland\) Regulations 2004 \(S.S.I. 2004/468\)](#), [regs. 1, 35\(5\)\(a\)\(ii\)](#) (as amended by S.S.I. 2004/470, regs. 3, 11(d))
- F9** S. 4(2)(c) inserted (1.7.2011) by [The Debt Arrangement Scheme \(Scotland\) Regulations 2011 \(S.S.I. 2011/141\)](#), [reg. 33\(5\)\(a\)\(ii\)](#) (with regs. 49-51)
- F10** S. 4(2A) inserted (30.11.2004) by [Debt Arrangement Scheme \(Scotland\) Regulations 2004 \(S.S.I. 2004/468\)](#), [regs. 1, 35\(5\)\(b\)](#) (as amended by S.S.I. 2004/470, reg. 3)
- F11** S. 4(2A)(d) repealed (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), s. 227(3), [Sch. 6 Pt. 1](#) (with s. 223); S.S.I. 2008/115, art. 3(2)(3), [Sch. 2](#) (with arts. 4-6, 9, 10, 15) (as amended: (23.2.2009) by S.S.I. 2009/67, art. 7; (31.1.2011) by S.S.I. 2011/31, art. 5(a); and (4.10.2014) by S.S.I. 2014/173, arts. 1(2), 3)
- F12** S. 4(2A) inserted (1.7.2011) by [The Debt Arrangement Scheme \(Scotland\) Regulations 2011 \(S.S.I. 2011/141\)](#), [reg. 33\(5\)\(b\)](#) (with regs. 49-51)

#### Modifications etc. (not altering text)

- C2** S. 4(2) amendment to earlier affecting provision SSI 2004/468 reg. 35(5)(a)(i) (14.11.2004) by [Debt Arrangement Scheme \(Scotland\) Amendment Regulations 2004 \(S.S.I. 2004/470\)](#), [regs. 1, 3](#)

#### Commencement Information

- I6** S. 4(1)-(4) in force at 30.11.2004 by [S.S.I. 2004/416](#), [art. 2\(2\)](#)
- I7** S. 4(5) in force at 24.9.2004 for specified purposes by [S.S.I. 2004/416](#), [art. 2\(1\)\(a\)](#)
- I8** S. 4(5) in force at 30.11.2004 in so far as not already in force by [S.S.I. 2004/416](#), [art. 2\(2\)](#)

## 5 Variation of debt payment programmes

- (1) The Scottish Ministers may, on an application by the debtor or by any creditor, approve the variation of a debt payment programme.

*Status: Point in time view as at 01/07/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Debt Arrangement and Attachment (Scotland) Act 2002, Part 1. (See end of Document for details)*

- (2) The Scottish Ministers may not consider an application for approval of a variation under subsection (1) above unless—
  - (a) where the application is made by the debtor, a copy of the application has been given to each creditor who is owed a debt which is being paid under the debt payment programme; or
  - (b) where the application is made by a creditor, a copy of the application has been given to the debtor and to each other creditor who is owed such a debt.
- (3) Such an application may seek the variation of any condition which is attached to the approval of the programme or, as the case may be, a previous variation of the programme.
- (4) An application for the variation of a debt payment programme shall—
  - (a) contain such information, and be in such form, as may be prescribed; <sup>F13</sup>...
  - <sup>F13</sup>(b) .....

#### Textual Amendments

**F13** S. 5(4)(b) and word repealed (8.3.2007) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), [ss. 212\(4\), 227\(3\)](#) (with [s. 223](#)); [S.S.I. 2007/82](#), [art. 3\(b\)](#)

#### Commencement Information

**I9** S. 5(4) in force at 24.9.2004 for specified purposes by [S.S.I. 2004/416](#), [art. 2\(1\)\(a\)](#)

## 6 Deduction from earnings

- (1) Where an approved debt payment programme requires sums to be paid to the payments distributor by way of deduction of the debtor's earnings from employment, the debtor shall provide an instruction, in the prescribed form, to the person by whom the debtor is employed to make—
  - (a) deductions from the debtor's earnings; and
  - (b) payments of the amounts deducted to the payments distributor, in accordance with the provisions of the debt payment programme.
- (2) It is the duty of the employer to comply with any instruction so provided.

#### Commencement Information

**I10** S. 6(1) in force at 24.9.2004 for specified purposes by [S.S.I. 2004/416](#), [art. 2\(1\)\(a\)](#)

**I11** S. 6(1) in force at 30.11.2004 in so far as not already in force by [S.S.I. 2004/416](#), [art. 2\(2\)](#)

**I12** S. 6(2) in force at 30.11.2004 by [S.S.I. 2004/416](#), [art. 2\(2\)](#)

## 7 Debt payment programmes: power to make further provision

- (1) The Scottish Ministers may, by regulations, make such further provision as they think fit in connection with—
  - (a) applications for the approval, or for the variation, of debt payment programmes;

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- (b) the manner in which such programmes are to operate, including conditions with which debtors, creditors, payments distributors or money advisers must comply;
  - (c) the effect of such programmes; and
  - (d) the effect of the failure of an employer to comply with the duty under section 6(2) above.
- (2) The regulations may, in particular, make provision about—
- (a) the class of person who may or may not make an application for the approval, or the variation, of a debt payment programme;
  - (b) the class of debt in respect of which such an application may or may not be made;
  - [<sup>F14</sup>(ba) circumstances in which some or all of the functions of a money adviser under section 3 above may instead be carried out by an approved intermediary;
  - (bb) circumstances in which a debtor is entitled to make an application for the approval, or the variation, of a debt payment programme where the debtor has not obtained advice under section 3(1) above;
  - (bc) the manner in which—
    - (i) the seeking of the consent of creditors to applications for approval of debt payment programmes; or
    - (ii) the making of such applications,
 affects the rights and remedies of creditors or other third parties;]
  - (c) the matters to which the Scottish Ministers are to have regard in determining whether to approve such an application;
  - (d) the conditions which may or may not be attached to an approval of such an application;
  - (e) circumstances in which such an application will not be approved;
  - (f) appeals against determinations by the Scottish Ministers on such applications;
  - (g) circumstances in which the consent for the purposes of section 2(4) above of a creditor or creditors generally may be dispensed with;
  - (h) circumstances in which a creditor may object to—
    - (i) the dispensation of the creditor's consent; or
    - (ii) the approval of such an application,
 and the manner in which such objection may be made;
  - (i) the remitting of any such application in respect of which a creditor has made an objection to the sheriff for determination;
  - (j) the manner in which a debt payment programme may be varied;
  - (k) the priority in which debts are to be paid under a debt payment programme;
  - (l) the ingathering and sale or other disposal of assets and the distribution to creditors of amounts so realised;
  - (m) the period for which a debt payment programme is to remain in operation;
  - (n) circumstances in which, and the procedure under which, any such period can, in relation to a particular debt payment programme, be shortened or extended;
  - (o) circumstances in which a debt payment programme is to cease to have effect;
  - (p) subject to section 4 above, the manner in which a debt payment programme affects the rights or remedies of a creditor or other third party;
  - (q) circumstances in which creditors are to notify debtors of the right to make such an application and the effect of the failure of a creditor to provide that notice;

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- (r) the class of person who may act as a payments distributor;
  - (s) the class of person who may act as a money adviser;
  - [<sup>F15</sup>(sa) the class of person who may act as an approved intermediary;]
  - (t) the functions of a payments distributor;
  - (u) the functions of a money adviser;
  - [<sup>F16</sup>(ua) the functions of an approved intermediary;]
  - (v) the establishment and maintenance by the Scottish Ministers of a register of debt payment programmes and applications for the approval, and variation, of such programmes;
  - (w) the information which is to be kept in such a register;
  - (x) the manner in which that information is to be kept and in which it, or any part of it, is to be made available to the public; and
  - (y) the determination, and charging, by the Scottish Ministers of fees in respect of—
    - (i) the consideration of applications for the approval, or the variation, of a debt payment programme; and
    - (ii) the provision of information recorded in the register of debt payment programmes.
- (3) The regulations may also—
- (a) make different provision in relation to such different types of debtors, debts or other matters as may be described by the Scottish Ministers;
  - (b) provide that such different provision is to have effect only for such period as is specified by the Scottish Ministers; and
  - (c) provide that, on the expiry of that period, the Scottish Ministers may determine that the different provision to which they relate is to—
    - (i) continue to have effect without limit of time;
    - (ii) continue to have effect for such further period as may be determined by the Scottish Ministers; or
    - (iii) cease to have effect.
- (4) The regulations may also modify any enactment (including this Act), instrument or document for the purposes of making such further provision as is mentioned in subsection (1) above.

#### Textual Amendments

- F14** S. 7(2)(ba)-(bc) inserted (8.3.2007) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. [212\(5\)\(a\)](#), [227\(3\)](#) (with s. 223); S.S.I. 2007/82, art. 3(b)
- F15** S. 7(2)(sa) inserted (8.3.2007) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. [212\(5\)\(b\)](#), [227\(3\)](#) (with s. 223); S.S.I. 2007/82, art. 3(b)
- F16** S. 7(2)(ua) inserted (8.3.2007) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. [212\(5\)\(c\)](#), [227\(3\)](#) (with s. 223); S.S.I. 2007/82, art. 3(b)

#### Commencement Information

- I13** S. 7 in force at 24.9.2004 by [S.S.I. 2004/416](#), art. [2\(1\)\(b\)](#)

*Status: Point in time view as at 01/07/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Debt Arrangement and Attachment (Scotland) Act 2002, Part 1. (See end of Document for details)*

## **[<sup>F17</sup>7A Debt payment programmes: power to make provision about debt relief**

- (1) The Scottish Ministers may, by regulations, make such further provision as they think fit in connection with debt payment programmes for the purposes of—
- (a) enabling such programmes to provide for the payment of part only of money owed by debtors; and
  - (b) on the completion of such programmes or otherwise, enabling any liability of debtors to pay any part of such money owed as is outstanding to be discharged.
- (2) The regulations may, in particular, make provision about—
- (a) the minimum proportion or percentage of debts which shall be paid under such debt payment programmes;
  - (b) without prejudice to section 7(2)(h) to (j) above, the consent of creditors for the purposes of section 2(4) above (including the circumstances in which consent by a majority by number or in value shall be sufficient);
  - (c) the effect of such programmes on debtors' liabilities for interest, fees, penalties and other charges in relation to debts being paid under such programmes;
  - (d) the effect of such programmes on the rights of creditors to charge interest, fees, penalties or other charges in relation to debts being paid under such programmes;
  - (e) circumstances in which, on completion of such programmes or otherwise, any liability of debtors to pay—
    - (i) part of any debts as are outstanding; or
    - (ii) any interest, fees, penalties or other charges in relation to such debts, is to be discharged.
- (3) Subsections (3) and (4) of section 7 above apply for the purposes of regulations under this section as they apply for the purposes of regulations under subsection (1) of that section.]

### **Textual Amendments**

**F17** S. 7A inserted (8.3.2007) by *Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)*, ss. 211(3), 227(3) (with s. 223); S.S.I. 2007/82, art. 3(a)

## **8 Functions of the Scottish Ministers**

- (1) The Scottish Ministers may by order provide that their functions under this Part of this Act may be performed on their behalf by such other person as may be specified in the order.
- (2) Such an order does not allow regulations under this Part of this Act or any further order under this section to be made by any person other than the Scottish Ministers.
- (3) Such an order may make different provision for different functions.

### **Commencement Information**

**I14** S. 8 in force at 24.9.2004 by S.S.I. 2004/416, art. 2(1)(b)



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*Status: Point in time view as at 01/07/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Debt Arrangement and Attachment (Scotland) Act 2002, Part 1. (See end of Document for details)*

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## 9 Interpretation of Part

(1) In this Part of this Act—

[<sup>F18</sup>“approved intermediary” means any person, not being a money adviser, who has been approved by the Scottish Ministers as a person who may give advice to a debtor for the purposes of section 3(1) above; ]

“money adviser” means any person who has been approved by the Scottish Ministers as a person who may give advice to a debtor for the purposes of section 3(1) above; and

“prescribed” means prescribed by regulations made by the Scottish Ministers.

(2) The references in this Part of this Act to a debtor are references to a debtor who is a natural person.

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### Textual Amendments

**F18** Definition of “approved intermediary” in s. 9(1) inserted (8.3.2007) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), **ss. 212(6), 227(3)** (with s. 223); S.S.I. 2007/82, art. 3(b)

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### Commencement Information

**I15** S. 9(1) in force at 24.9.2004 for specified purposes by [S.S.I. 2004/416](#), **art. 2(1)(a)**

**I16** S. 9(1) in force at 30.11.2004 in so far as not already in force by [S.S.I. 2004/416](#), **art. 2(2)**

**I17** S. 9(2) in force at 30.11.2004 by [S.S.I. 2004/416](#), **art. 2(2)**

**Status:**

Point in time view as at 01/07/2011.

**Changes to legislation:**

There are currently no known outstanding effects for the Debt Arrangement and Attachment (Scotland) Act 2002, Part 1.