



Debt Arrangement and Attachment (Scotland) Act 2002

2002 asp 17

PART 1

THE DEBT ARRANGEMENT SCHEME

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.

2 Debt payment programmes

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

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;
 - (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 signed 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.

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) to commence or execute any diligence to enforce payment of,
- any debt owed by a debtor who has debts which are being paid under an approved debt payment programme.
- (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.

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.
- (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; and
 - (b) be signed by the debtor or, as the case may be, the creditor.

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.

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;
 - (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—

Status: This is the original version (as it was originally enacted).

- (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;
- (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;
- (r) the class of person who may act as a payments distributor;
- (s) the class of person who may act as a money adviser;
- (t) the functions of a payments distributor;
- (u) the functions of a money adviser;
- (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.

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.

9 Interpretation of Part

- (1) In this Part of this Act—
 - “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.