



# Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

## PART 13

### AMENDMENTS OF THE DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002

#### **211 Debt payment programmes with debt relief**

- (1) The 2002 Act is amended as follows.
- (2) In section 2 (debt payment programmes)—
  - (a) after subsection (1) insert—

“(1A) Subsection (1) above is subject to any provision in regulations made under section 7A(1) below.”; and
  - (b) in subsection (4), after “section 7(1)” insert “or 7A(1)”.
- (3) After section 7 insert—

#### **“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;

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- (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.”.

- (4) In section 62 (regulations and orders)—
  - (a) in subsection (3), for “of this Act”, where those words second occur, substitute “above or regulations made under section 7A above”; and
  - (b) in subsection (4), after “section 7 above” insert “, any regulations made under section 7A above”.

## **212 Further amendments of the Debt Arrangement and Attachment (Scotland) Act 2002**

- (1) The 2002 Act is further amended as follows.
- (2) In section 2(3) (form and content of applications for debt payment programmes), the words “shall be signed by the debtor and” are repealed.
- (3) In section 3 (application by debtor for approval of debt payment programme), after subsection (2) insert—
  - “(3) Subsections (1) and (2) above are subject to any contrary provision in regulations made under section 7(1) below.”.
- (4) In section 5(4) (form and content of applications for variation of debt payment programmes), paragraph (b) and the word “and” immediately preceding it are repealed.
- (5) In section 7(2) (examples of provision that may be made by regulations under section 7(1))—
  - (a) after paragraph (b) insert—
    - “(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

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- 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;”;
- (b) after paragraph (s) insert—
- “(sa) the class of person who may act as an approved intermediary;”;
- and
- (c) after paragraph (u) insert—
- “(ua) the functions of an approved intermediary;”.
- (6) In section 9(1) (interpretation), before the definition of “money adviser” insert—
- ““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;”.
- (7) In section 10(5) (attachment), in the definition of “debt advice and information package”, for “Scottish Ministers” substitute “Scottish Civil Enforcement Commission”.
- (8) In section 19(1) (removal and auction of attached articles), for “The officer who attached articles” substitute “An officer”.
- (9) After section 19 insert—

#### **“19A Urgent removal of attached articles**

- (1) The officer may at any time remove an attached article without notice if—
- (a) the officer considers it necessary for—
    - (i) the security; or
    - (ii) the preservation of the value,of the article; and
  - (b) there is insufficient time to obtain an order under section 20(1)(a) below.
- (2) The officer shall remove an article under subsection (1) above—
- (a) to the nearest convenient premises of the debtor or the person in possession of the articles; or
  - (b) if—
    - (i) no such premises are available; or
    - (ii) the officer considers such premises to be unsuitable,to the nearest suitable secure premises.
- (3) Subsections (2) and (6) of section 19 above shall apply to this section as they apply to that section.”.
- (10) In section 20(2)(b) (applications for orders for security etc. of articles), after “officer” insert “—

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- (i) who attached articles; or
  - (ii) who is authorised to arrange the auction”.
- (11) In section 21(7) (notice of theft of attached articles), after “officer” insert “—
- (i) who attached articles; or
  - (ii) who is authorised to arrange the auction,”.
- (12) In section 26(5)(b) (return of removed articles), for “the officer” substitute “an officer”.
- (13) In section 27(4) (notice of auction), the words “authorised to arrange the auction” are repealed.
- (14) In section 31 (disposal of proceeds of auction)—
- (a) after subsection (1), insert—
    - “(1A) Where an article is sold at the auction at a price below the value of the article, the difference between that price and that value shall, prior to the proceeds of the auction being disposed of under subsection (1) above, be credited against the sum recoverable.
    - (1B) Where—
      - (a) an article to which subsection (1A) above applies has been damaged and revalued under section 21(10)(b) above;
      - (b) the damage was not caused by the fault of the debtor; and
      - (c) no sum has been consigned into court by a third party under section 21(11) above,
 the revaluation shall be disregarded for the purposes of subsection (1A) above.”; and
  - (b) in subsection (4), after “subsections” insert “(1A),”.
- (15) After section 60 insert—

#### **“60A Electronic signatures**

- (1) This section applies where—
    - (a) a report or declaration under this Act requires to be signed; and
    - (b) provision is made by virtue of this Act or any other enactment permitting the report or declaration to be an electronic communication.
  - (2) Where the report or declaration is an electronic communication, the requirement is satisfied by a certified electronic signature.
  - (3) Subsection (2) above is to be read in accordance with section 7(2) and (3) of the Electronic Communications Act 2000 (c. 7) (electronic signatures and certification).”.
- (16) In schedule 1 (expenses)—
- (a) in paragraph 1, after sub-paragraph (o), insert—
    - “(oa) in serving notice on the debtor under section 49(1)(b) above;”;
  - (b) after that paragraph, insert—

“1A The expenses referred to in sub-paragraphs (i), (j) and (k) of paragraph 1 above shall not be chargeable against the debtor if the articles are removed under section 19A(1) above.”.