
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2004 No.

The Debt Arrangement Scheme (Scotland) Regulations 2004

PART 2

MONEY ADVISERS

Debtor to have a money adviser

7.—(1) A debtor shall have a money adviser during the period of operation of a debt payment programme.

(2) A debtor shall forthwith give written notice to the DAS administrator that a money adviser has ceased to act for the debtor.

(3) Where notice is given under paragraph (2), a debtor shall state the reason why the money adviser has ceased to act.

(4) A money adviser shall assist the debtor to appoint a replacement adviser where that first adviser has ceased to act by reason of the resignation, or revocation or suspension of approval, of that first adviser.

Approval of a money adviser

8.—(1) An application to the DAS administrator for approval as a money adviser shall be in form 1.

(2) The DAS administrator shall approve an application under paragraph (1) if satisfied that the applicant is a fit and proper person to be a money adviser.

(3) A person, other than a person specified in regulation 10(2), shall be a fit and proper person to be a money adviser if, but not only if, the person has—

(a) undergone training on the matters specified in Schedule 4; and

(b) a certificate issued by MATRICS stating that the person

(i) has been assessed as possessing the skills and training needed to competently advise a debtor on taking part in a debt payment programme under the debt arrangement scheme; and

(ii) is recommended for approval by the DAS administrator as a money adviser.

(4) Approval as a money adviser shall be for a period of 2 years.

Revocation, or suspension, of approval of a money adviser

9.—(1) The DAS administrator shall revoke the approval of a money adviser where MATRICS certify that the adviser is no longer recommended for approval by the DAS administrator as a money adviser.

(2) The DAS administrator may revoke the approval of a money adviser where—

- (a) an adviser for a debtor fails without good cause to respond to a requirement by the DAS administrator for the adviser to provide evidence or information relating to the operation of the debt payment programme of the debtor; or
 - (b) in the opinion of the DAS administrator the adviser—
 - (i) has failed without good cause to carry out a function of an adviser under the Act or these Regulations; and
 - (ii) continues to fail to carry out that function, after 2 weeks from the date of written notice to the adviser of that failure.
- (3) The DAS administrator shall suspend the approval of a money adviser for a period of 6 months, where MATRICS certify that the adviser is temporarily unable to carry out the functions of an adviser under the Act or these Regulations.

Persons who may not be approved

- 10.**—(1) A person specified in paragraph (2) shall not be a money adviser.
- (2) A specified person is—
- (a) a sheriff officer or messenger-at-arms, or an employee of such a person;
 - (b) a person or body providing financial services, or financial advice other than money advice, in the course of a business or otherwise for profit, or an employee of such a person, unless the person is a—
 - (i) solicitor;
 - (ii) chartered or certified accountant;
 - (iii) a credit union registered under the Industrial and Provident Societies Act 1965⁽¹⁾ by virtue of section 1 (registration under the Industrial and Provident Societies Act 1965) of the Credit Unions Act 1979⁽²⁾;
 - (c) a person providing debt collection services, or an employee of such a person;
 - (d) a person convicted of an offence involving theft, fraud or other dishonesty;
 - (e) a debtor whose estate has been sequestrated, and who has not been discharged under sections 54 (automatic discharge after 3 years) or 75 (amendments, repeals and transitional provisions) of the 1985 Act⁽³⁾;
 - (f) a bankrupt, who has not been discharged under sections 279 (duration) or 280 (discharge by order of the court) of the 1986 Act⁽⁴⁾;
 - (g) a person subject to a bankruptcy restrictions order (including an interim order) or bound by a bankruptcy restrictions undertaking, under Schedule 4A (bankruptcy restrictions order and undertaking) of the 1986 Act⁽⁵⁾;
 - (h) a person who has entered into a trust deed or protected trust deed for their creditors, and who has not been discharged from that deed; or
 - (i) a person in respect of whom a court has made a disqualification order under section 1, or who has had a disqualification undertaking accepted under section 2, of the Company Directors Disqualification Act 1986⁽⁶⁾.

(1) 1965 c. 12. There are amendments to this Act which are not relevant to these Regulations.

(2) 1979 c. 34. Amended by S.I.1996/1189, 2001/2617 and 3538 and 2002/1501.

(3) 1985 c. 66. Section 54 was repealed in part by the Education (Student Loans) Act 1990 (c. 6), Schedule 2, paragraph 6.

(4) 1986 c. 45. Section 279 was substituted by section 256 of the Enterprise Act 2002 (c. 40) (“the 2002 Act”).

(5) 1986 c. 45. Schedule 4A was inserted by section 257 of the 2002 Act.

(6) 1986 c. 46. Section 1 was amended by the Insolvency Act 2000 (c. 39) (“the 2000 Act”), section 5 and Schedule 4, Part I, paragraph 2, and by the 2002 Act, sections 204 and 279. Section 2 was inserted by the 2000 Act, section 6.

Functions and duty of a money adviser

11.—(1) It is a function of a money adviser to—

- (a) provide money advice to a debtor;
- (b) liaise with creditors on behalf of a debtor;
- (c) assist a debtor with, and advise on, implementation or variation of a debt payment programme;
- (d) prepare and submit on behalf of a debtor an application under these Regulations;
- (e) review a debt payment programme in every sixth month of operation;
- (f) act as a lay representative in a court, where the adviser has accepted instructions by a debtor to act;
- (g) seek revocation of a debt payment programme, where no payments have been made under the programme for 12 months; and
- (h) provide, as required by the DAS administrator, evidence of or information about the participation of a debtor in a debt payment programme.

(2) A money adviser shall not charge a fee to a debtor for money advice, unless the adviser has informed the debtor—

- (a) that money advice is available without any fee or payment being due by the debtor (“free money advice”);
- (b) of the name of—
 - (i) any adviser (or all, if more than one) providing free money advice within a 10 kilometre radius of the debtor’s usual place of residence; or
 - (ii) the nearest adviser providing free money advice to the debtor’s place of residence, where there is no adviser within a 10 kilometre radius of the debtor’s usual place of residence, and

the debtor has agreed in writing to pay a fee.

(3) A money adviser shall have regard to guidance issued by the DAS administrator when carrying out a function of an adviser.

Notices by a money adviser: general

12. A money adviser to a debtor in a debt payment programme shall as soon as is reasonably practicable provide written notice to—

- (a) the DAS administrator of—
 - (i) the appointment or resignation, as the case may be, of the adviser; and
 - (ii) a change of payments distributor;
- (b) the payments distributor for the programme of the matter specified in paragraph (a)(i); and
- (c) each creditor taking part in the programme of the matters specified in paragraph (a).