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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 468**

**The Debt Arrangement Scheme (Scotland) Regulations 2004**

**PART 5**

**APPROVAL OF DEBT PAYMENT PROGRAMMES**

**Application for approval**

**20.**—(1) A debtor who is habitually resident in Scotland may apply to the DAS administrator for approval of a debt payment programme.

(2) An application under paragraph (1)—

- (a) shall be made by a money adviser on behalf of the debtor, and shall be in form 3;
- (b) may be made by electronic means, but if so the money adviser for the debtor shall retain the form 3, signed by the debtor and the money adviser in accordance with sections 2(3) and 3(2) respectively of the Act, for a period of 5 years or the period of the programme (whichever is the longer); and
- (c) shall be competent notwithstanding that the consent of the creditor under section 7(4) of the Act and regulation 22 is not incorporated in form 3.

**Debtors who may apply for approval**

**21.**—(1) Subject to paragraph (2), a debtor may apply for approval of a debt payment programme where the programme provides for the payment of two or more debts.

(2) An application for approval may not be made where—

- (a) subject to paragraph (3), payment of a debt of a debtor is being made under a conjoined arrestment order;
- (b) a debtor is a party to a trust deed;
- (c) a debtor's estate has been sequestrated, and the debtor has not been discharged under sections 54 (automatic discharge after 3 years) or 75 (amendments, repeals and transitional provisions) of the 1985 Act;
- (d) a debtor is a bankrupt, who has not been discharged under sections 279 (duration) or 280 (discharge by order of the court) of the 1986 Act; or
- (e) a debtor is 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<sup>(1)</sup>.

(3) An application may be made where a creditor, including a creditor of a debt being paid under a conjoined arrestment order in respect of another debt not so paid, has attempted to enforce a debt due by the debtor by any lawful means.

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(1) 1986 c. 45. Schedule 4A was inserted by section 257 of and Schedule 20 to the Enterprise Act 2002 (c. 40).

### **Consent of every creditor**

**22.**—(1) Subject to paragraph (3), each creditor of a debtor must consent to an application by the debtor for approval of a debt payment programme.

(2) A request to a creditor for consent shall be in form 4, and if posted shall be sent to the creditor by first class recorded delivery post.

(3) A creditor who is requested to consent to an application, and who does not respond to that request within 21 days after the date of intimation (which shall be the date of posting, if applicable) is deemed to consent.

(4) The DAS administrator may dispense with the consent of a creditor where—

(a) the amount due by a debtor to the creditor is 50% or less of the total debt included in a programme; and

(b) the amount due to all creditors who refuse to consent does not exceed 60% of the total debt included in a programme.

(5) Where a creditor does not consent to an application under paragraph (1), and that consent is not deemed as given or dispensed with, the approval of a debt payment programme under regulations 25, 26 or 27 shall not be invalid by reason only of the lack of consent provided that the debtor did not know, and could not reasonably have known, the identity of the creditor.

### **Objection by a creditor**

**23.**—(1) A creditor may object to an application by a debtor for approval of a debt payment programme where the creditor considers that the debtor—

(a) should be sequestrated; or

(b) is in possession of heritable property with substantial unsecured value.

(2) An objection under paragraph (1) must be made within 21 days after the date of intimation (which shall be the date of posting if applicable) of a request for consent under regulation 22.

### **Composition and waiver of interest**

**24.**—(1) Where agreed by a debtor and a creditor, a debt payment programme may provide that a liability of the debtor to—

(a) repay a sum due, or part thereof, shall be discharged;

(b) pay interest on a sum due, or part thereof, shall be waived.

(2) An agreement under paragraph (1) may be made subject to a condition that—

(a) the sum due after discharge or waiver is paid in full; and

(b) payment is made over the agreed period, not being longer than the period of the programme.

### **Approval of agreed programmes**

**25.**—(1) The DAS administrator shall approve a debt payment programme where each creditor has consented under regulation 22 to an application for approval.

(2) Approval under paragraph (1) may be made subject to a condition under regulation 30.

### **Approval by the DAS administrator**

**26.**—(1) Subject to regulations 25 and 27, the DAS administrator shall approve a debt payment programme that is fair and reasonable.

(2) In determining whether a debt payment programme is fair and reasonable, the DAS administrator shall have regard to—

- (a) the total amount of debt;
- (b) the period over which a programme will operate;
- (c) the method, and frequency, of payments under a programme;
- (d) an earlier proposed programme that was not approved;
- (e) a matter specified in regulation 21(2) that would have prevented an application being made, where the matter no longer has that effect;
- (f) the involvement of the debtor in a—
  - (i) debt payment arrangement, including a debt payment programme under these Regulations;
  - (ii) time to pay direction under section 1 (time to pay directions) of the Debtors (Scotland) Act 1987, or time to pay order under section 5 (time to pay orders) of that Act(2); or
  - (iii) time order under section 129 (time orders) of the Consumer Credit Act 1974(3);
- (g) the extent to which creditors have consented (deemed or otherwise) or objected to a programme;
- (h) any comment made by the money adviser; and
- (i) an asset of a debtor that could be realised to pay debts to be included in a programme.

(3) In determining whether a debt payment programme is fair and reasonable, the DAS administrator may have regard to any other factor that the administrator considers appropriate.

(4) Approval under paragraph (1) may be made subject to a condition under regulation 30.

### **Approval by the sheriff**

27.—(1) The sheriff shall approve a debt payment programme on an application under paragraph (2), if the programme is fair and reasonable.

(2) The DAS administrator shall apply to the sheriff for determination of an application for approval of a proposed programme where—

- (a) a creditor does not consent, and the DAS administrator may not dispense with consent under regulation 22(4); or
- (b) a creditor objects under regulation 23.

(3) In determining whether a programme is fair and reasonable, the sheriff shall have regard to the matters specified in regulation 26(2), and may have regard to any other factor that the sheriff considers appropriate.

(4) Approval under paragraph (1) may be made subject to a condition under regulation 30.

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(2) [1987 c. 18](#). Section 1 was repealed in part by the Social Security Act [1998 \(c. 14\)](#) (“the 1998 Act”), Schedule 8, and amended by the Child Support Act [1991 \(c. 48\)](#), Schedule 5, paragraph 8, the Local Government Finance Act [1992 \(c. 14\)](#) (“the 1992 Act”), Schedule 13, paragraph 53, the Local Government etc. (Scotland) Act [1994 \(c. 39\)](#) (“the 1994 Act”), Schedule 13, paragraph 151, the 1998 Act, Schedule 7, paragraph 12, the Social Security Contributions (Transfer of Functions, etc.) Act [1999 \(c. 2\)](#) (“the 1999 Act”), Schedule 9, paragraph 1, and the [Water Industry \(Scotland\) Act 2002 \(asp 3\)](#) (“the 2002 Act”), Schedule 7, paragraph 17. Section 5 was repealed in part by the 1998 Act, Schedule 8, and the [Abolition of POUNDINGS and Warrant Sales Act 2001 \(asp 1\)](#), schedule, Part I, and amended by the 1992 Act, Schedule 13, paragraph 54, the 1994 Act, Schedule 13, paragraph 151, the 1999 Act, Schedule 9, paragraph 1, and the 2002 Act, Schedule 7, paragraph 17.

(3) [1974 c. 39](#). Section 129 was amended by the Debtors (Scotland) Act [1987 \(c. 18\)](#), Schedule 6, paragraph 17, and Schedule 7, paragraph 5.

### **Notice of intention to approve, and approval of, a programme**

**28.**—(1) The DAS administrator shall on a determination that a debt payment programme is to be approved, enter a notice to that effect in the DAS Register.

(2) A debt payment programme shall be approved from midnight of the second day after the date of the entry under paragraph (1) in the DAS Register.

### **Standard conditions**

**29.**—(1) A debt payment programme approved under regulations 25, 26 or 27 shall be subject to the conditions specified in paragraph (2).

(2) The specified conditions are that a debtor shall—

- (a) make all payments under a programme as they fall due;
- (b) pay a continuing liability when due for payment;
- (c) except for a continuing liability, make no payment to a creditor taking part in a programme other than a payment under the programme;
- (d) not apply for or obtain credit beyond that permitted by regulation 35(1)(b), or by a variation of a programme approved under regulation 39;
- (e) notify the money adviser for a programme of a—
  - (i) change of address; and
  - (ii) material change of circumstances, within 7 days of becoming aware of the change; and
- (f) within 10 days after receipt by the debtor of a written request from the money adviser for the programme, supply the adviser with such information or evidence as the adviser may request in respect of the income, assets or liabilities of the debtor.

### **Discretionary conditions**

**30.**—(1) A debt payment programme on approval under regulations 25, 26 or 27, or approval of a variation under regulation 39, may be made subject to one or more of the conditions specified in paragraph (2).

(2) A specified condition is that the debtor shall—

- (a) realise, and distribute amongst the creditors the value of, an asset of the debtor other than an asset excepted by paragraph (3);
- (b) sign and deliver a payment instruction to an employer;
- (c) seek agreement from a creditor to pay a continuing liability under regulation 34;
- (d) complete, and submit when due, a tax or duty return or declaration;
- (e) maintain an emergency fund in accordance with paragraph (4); or
- (f) be bound by any other reasonable condition intended to secure completion of the programme.

(3) An excepted asset is—

- (a) a dwellinghouse or mobile home occupied by a debtor as the debtor's home;
- (b) an asset that is exempt from attachment under section 11 (articles exempt from attachment) of, or that is not a non-essential asset under schedule 2 (non essential assets) to, the Act.

(4) In respect of an emergency fund, the debtor shall—

- (a) make payments at the rate specified by the DAS administrator, into an account designated by the administrator for the purpose of the fund; and
- (b) make no payment from the fund other than a payment for—
  - (i) an emergency repair as specified in paragraph (5); or
  - (ii) an essential requirement of the debtor or an immediate family member who is maintained by the debtor.
- (5) An emergency repair is one required to maintain—
  - (a) a dwellinghouse occupied by the debtor in wind and water tight condition;
  - (b) in reasonable working order any item that is not a non-essential asset for the purpose of Schedule 2 of the Act;
  - (c) a vehicle required by the debtor for travelling to work, or other essential purpose.

### **Notification of approval or rejection**

**31.**—(1) The DAS administrator shall send notice in writing to the money adviser for the debtor of the approval or rejection of the application for approval of a debt payment programme.

(2) Where an application for approval of a programme is rejected, the DAS administrator shall specify the reason for the rejection.

- (3) Where an application for approval of a programme is approved—
  - (a) the DAS administrator shall intimate in writing to the money adviser any condition attached under regulation 30; and
  - (b) the approval shall have effect in accordance with regulation 28(2).
- (4) The money adviser shall intimate—
  - (a) the approval of an application—
    - (i) to the debtor;
    - (ii) in form 5, to each creditor known to the adviser;
    - (iii) the clerk of a court that has made—
      - (aa) a conjoined arrestment order; or
      - (bb) an order or direction specified in regulation 26(2)(f)(ii) and (iii);
    - (iv) where payments are to be made under an earnings arrestment, to the employer of the debtor; and
    - (v) the payments distributor; or
  - (b) the rejection of an application—
    - (i) to the debtor;
    - (ii) to each creditor known to the adviser; and
    - (iii) the payments distributor.