
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide a scheme for repayment of debts in Scotland. They provide for procedure and forms in respect of a repayment arrangement under the scheme, which on approval is described as a debt payment programme (“a programme”).

The scheme is the responsibility of the DAS Administrator, who exercises the functions of the Scottish Ministers under the Debt Arrangement and Attachment (Scotland) Act 2002 (“the 2002 Act”). The Accountant in Bankruptcy of 1 Pennyburn Road, Kilwinning is the DAS Administrator, by virtue of an order under section 8 of the 2002 Act ([S.S.I. 2004/448](#)).

A person whose debts are being repaid under a programme is protected in terms of section 4 of the 2002 Act from enforcement measures (diligence and sequestration proceedings) and interest, fees, penalties and other charges that are otherwise available or due to creditors.

The Regulations are divided into 11 parts, and have 5 Schedules.

Part 1 provides definitions for terms used in the Regulations and for the forms in Schedule 1 (regulations 2 and 3), a dispensing power for the DAS Administrator so that procedural irregularities can be resolved administratively (regulation 4), for fees to be charged (regulation 5), and for consequential amendments to the 2002 Act and other enactments as set out in Schedule 2 (regulation 6).

Part 2 provides that a person whose debts are being repaid under a programme must have a money adviser in making an application (regulation 7), for approved categories of money adviser (regulation 8), for the method of applying to the DAS Administrator for, and the grounds for, approval (regulation 9 and Schedule 3), a list of persons who may not be approved as an adviser (regulation 10), for the grounds on which approval as an adviser may be revoked (regulation 11), for the functions of an adviser (or the DAS Administrator), and that a fee may not be charged unless information about free advice is given to the client (regulation 12).

Part 3 provides for who is to act as payments distributor and the method of applying for approval as, a payments distributor (regulations 13 and 14 and Schedule 4), the grounds on which approval as a distributor may be revoked (regulation 15), the functions of a distributor (regulation 16), and that an administration fee for distribution services may be charged to a creditor (regulation 17).

Part 4 provides that the DAS Administrator must maintain a register of programmes (regulation 18), and for the information to be held on that register (regulation 19).

Part 5 provides that a person who is habitually resident in Scotland may apply for approval of a programme (regulation 20). That person must be an individual by virtue of section 1 of the 2002 Act. It further provides that a person may not in general apply if debts are being managed in other ways, including sequestration or bankruptcy (regulation 21), for joint debt payment programmes (regulation 22), that each creditor (as defined in regulation 2) must consent to a programme, and for the conditions in which there can be deemed consent (regulation 23), that agreed programmes must be approved (regulation 24), that the DAS Administrator must approve a programme that is fair and reasonable using specified criteria (regulation 25), for notice of approval and the date of approval (regulation 26), and that approval is always subject to certain conditions (regulation 27) and may be subject to extra conditions (regulation 28), and for methods for the DAS Administrator and money adviser to notify interested parties about approval or rejection of a programme (regulation 29). Regulation 30 clarifies that it is incompetent to commence or execute diligence or to petition the court to sequester a debtor in the period before a debt payment programme commences.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Part 6 provides for specified methods of payment where a programme is approved, and for the DAS Administrator to be able to approve other methods (regulation 31), and in respect of payment mandates to an employer for the charges an employer may make and a penalty for default on employers (regulation 32). It also makes provision further to the 2002 Act for the effect of a programme, in particular that arrestments are recalled, and that if further credit is given to a person in a programme then diligence and sequestration may not be available to enforce payment (regulation 33(1) to (4)), that the protection from enforcement action under the 2002 Act is extended so that civil imprisonment is covered, and that a creditor can complete diligences that are at an advanced stage at the time of approval (regulation 33(5)), for the diligences of land attachment and arrestment (regulation 34), and that a trust deed for a creditor under the Bankruptcy (Scotland) Act 1985 is ended (regulation 35).

Part 7 provides that debtors, money advisers and creditors may apply for variation of a programme (regulation 36) on specified grounds (regulation 37), that the DAS Administrator shall approve a programme that is fair and reasonable using the criteria in regulation 25 (regulation 38), and the methods for the DAS Administrator and money adviser to notify interested parties about approval or rejection of a variation (regulation 39).

Part 8 provides for automatic revocation of a programme if the person applies for sequestration or a protected trust deed (regulation 40), that in other circumstances money advisers and creditors may apply for revocation (regulation 41), the grounds for revocation and the factors the DAS Administrator must consider (regulations 42 and 43), and the methods for the DAS Administrator and money adviser to notify interested parties about the revocation (regulation 44). It also provides for revocation to be a ground of apparent insolvency under the Bankruptcy (Scotland) Act 1985 (regulation 45).

Part 9 provides for the notices that are required when a programme is completed, whether by repayment in full or agreement amongst those with an interest (regulation 46).

Part 10 provides for the circumstances in which matters of law may be appealed to the sheriff or sheriff principal, as the case may be, and for the decision on appeal to be final (regulation 47).

Part 11 revokes the relevant provisions of Debt Arrangement Scheme (Scotland) Regulations 2004 as amended which are replaced by these Regulations (see Schedule 5), subject to transitional arrangements (regulations 49 to 51).

Related Regulations under section 7A of the 2002 Act provide for a moratorium on interest, fees, penalties and other charges for an approved debt payment programme.

A Business and Regulatory Impact Assessment of the effect which these Regulations are likely to have on business costs has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Accountant in Bankruptcy, 1 Pennyburn Road, Kilwinning.