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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 225**

**The Debt Arrangement Scheme  
(Scotland) Amendment Regulations 2013**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Debt Arrangement Scheme (Scotland) Amendment Regulations 2013.

(2) They come into force on the day after the day on which the Regulations are made.

**Interpretation**

2. In these Regulations—

“DAS” means the Debt Arrangement Scheme; and

“the DAS Regulations” means the Debt Arrangement Scheme (Scotland) Regulations 2011<sup>(1)</sup>.

**Amendment to the Debt Arrangement Scheme (Interest, Fees, Penalties and Other Charges) Regulations 2011**

3.—(1) The Debt Arrangement Scheme (Interest, Fees, Penalties and Other Charges) (Scotland) Regulations 2011<sup>(2)</sup> are amended in accordance with paragraphs (2) to (5).

(2) In regulation 2 (interpretation), for the definition of “the DAS Regulations” substitute—

““the DAS Regulations” means the Debt Arrangement Scheme (Scotland) Regulations 2011;”.

(3) In regulation 4(1)(a) (moratorium on interest, fees, penalties or other charges), for “date on which a debt payment programme is approved” substitute “date on which a debtor applies for a debt payment programme (which is subsequently approved)”<sup>(3)</sup>.

(4) After regulation 4(1) insert—

“(1A) Paragraph (1) applies to a debt in respect of which an offer of composition is accepted, or deemed to be accepted, under regulation 46B(1) or (2)<sup>(4)</sup> of the DAS Regulations as it applies to a completed programme.”.

(5) For regulation 5(1) (appeal to the sheriff on point of law), substitute—

“(1) As regards any debt included in a debt payment programme the debtor for the debt payment programme or creditor may apply to the DAS Administrator for review of a determination of the DAS Administrator under regulation 4(3) in accordance with regulations 47(4) and (5), 47A and 47B<sup>(5)</sup> of the DAS Regulations on any ground which may be raised in an appeal under paragraph (1A).

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<sup>(1)</sup> [S.S.I. 2011/141](#).

<sup>(2)</sup> [S.S.I. 2011/238](#).

<sup>(3)</sup> An application is made under regulation 20 of the DAS Regulations.

<sup>(4)</sup> Regulation 46B(1) and (2) is inserted by regulation 15 of these Regulations.

<sup>(5)</sup> Regulations 47(4) and (5), 47A and 47B are inserted by regulation 17 of these Regulations.

(1A) A debtor or creditor may appeal to the sheriff on point of law against a decision of the DAS Administrator under regulation 47B of those Regulations as it applies to paragraph (1).”,

and for the heading to regulation 5 substitute “Reviews and appeals”.

#### **Amendment to the DAS Regulations**

4. The DAS Regulations are amended in accordance with regulations 5 to 18 and 19(1) and (2).

#### **Correction of accidental errors**

5. After regulation 4, insert—

##### **“Correction of accidental errors**

**4A.—**(1) The DAS Administrator may correct an accidental error in any determination, made by the DAS Administrator under these Regulations.

(2) The DAS Administrator must notify the correction in writing to any person notified of the determination.

(3) A correction has effect—

- (a) as if the determination was made in corrected form on the date on which the original determination was made; and
- (b) where a debt payment programme was revoked in error, to restore that programme as if it had not been revoked.

(4) A correction under paragraph (1) may not be made—

- (a) after 28 days from the date on which the error was made; or
- (b) where an application for review has been made under regulation 47 and a decision has not been made by the DAS Administrator.”.

#### **Money adviser fees**

- 6.—(1) In the definition of “continuing liability” in regulation 2(1) (interpretation: general)—

(a) after sub-paragraph (i) omit “and”; and

(b) after sub-paragraph (j) insert

“and;

(k) a fee charged to a debtor by a money adviser;”.

- (2) At the end of regulation 3(2)(b) (interpretation: debt), insert—

“;

(c) as a fee charged by a money adviser for the money adviser’s services in the debt payment programme in respect of which the services are provided”.

- (3) In regulation 12 (functions and duty of a money adviser), in paragraph (3)—

(i) after sub-paragraph (a) omit “and”; and

(ii) at the end of sub-paragraph (b) insert—

“; and

(c) provide, as required by the DAS Administrator, information about the amount charged as a fee to a debtor for the adviser’s services in a debt payment programme”.

### **Approval of a money adviser**

7. In regulation 9 (approval of a money adviser), for paragraph (3) substitute—
- “(3) An applicant is to be a fit and proper person if, but not only if—
    - (a) the person has undergone training on the matters specified in Schedule 3; or
    - (b) the person works for an organisation which is working towards accreditation at Type 2 level or above against the Scottish National Standards for Information and Advice Provision.”.

### **Payments distributors**

- 8.—(1) In regulation 16(1) (functions and duty of a payments distributor)—
- (a) after “payments distributor” where it first occurs, insert “on behalf of the debtor”;
  - (b) in sub-paragraph (a), for “DAS Administrator and any continuing money adviser” substitute “money adviser”; and
  - (c) in sub-paragraph (c), for “, any continuing money adviser, and to creditors”, substitute “and any continuing money adviser”.
- (2) In regulation 17(2) (charges by a payment distributor), after “fee” insert “, including any VAT incurred,”.

### **Information on the DAS Register**

9. In regulation 19(2) (information on the DAS Register)—
- (a) after sub-paragraph (h), insert—
    - “(ha) correction of an accidental error under regulation 4A;
    - (hb) variation of an approved programme under regulation 46D;
    - (hc) an application for review under regulation 47;”;
  - (b) in sub-paragraph (i), for “ 47” substitute “47C”.

### **Joint debt payment programme**

10. In regulation 22(1) (joint debt payment programme)—
- (a) for sub-paragraph (a) substitute—
    - “(a) if each of the debtors is liable for a debt which the programme would provide for the payment of; and”;
  - (b) in sub-paragraph (b), omit “and” where it appears before “they”.

### **Creditors**

- 11.—(1) In regulation 23 (consent of creditors)—
- (a) in paragraph (3), omit “, and if posted must be sent to the creditor by first class recorded delivery post”;
  - (b) at the end of paragraph (5), insert—
    - “, irrespective of any assignation of the debt by that creditor,”;
  - (c) after paragraph (7), insert—
    - “(8) Where the rights to one or more debts included in the debt payment programme are assigned, the creditor must immediately notify the DAS Administrator in writing—

- (a) that the creditor has assigned the rights; and
- (b) of the details of the assignee.”.

(2) After regulation 23 (consent of creditors), insert—

**“Creditor’s authorised representative**

**23A.** Where a creditor authorises another person to act on behalf of the creditor in relation to the debt arrangement scheme—

- (a) the authorised representative must, provide evidence of authority to act on behalf of the creditor to the DAS Administrator and any continuing money adviser; and
- (b) the creditor must notify the DAS Administrator and any continuing money adviser where the representative is no longer authorised.”.

**Standard conditions**

**12.** In regulation 27 (standard conditions), in paragraph (2)(a), for “one month” substitute “42 days”.

**Variation**

**13.—**(1) After regulation 36, insert—

**“Proposal for variation: discharge of liability on compensation**

**36A.—**(1) The DAS Administrator may propose a variation of a debt payment programme where a liability, or part of a liability, of the debtor is discharged by a creditor applying compensation between that debt, or part of that debt, and a liability owed by the creditor to the debtor.

(2) The DAS Administrator may not do so unless it has made a reasonable attempt to agree a variation between the debtor and creditor.

(3) The proposal must be intimated in writing to those mentioned in regulation 36(4)(a) to (d).”.

(2) In regulation 37 (grounds for variation)—

(a) after paragraph (1)(e), insert—

“(ea) under regulation 36A where liability of a debtor is discharged by a creditor applying compensation;”; and

(b) in paragraph (1)(h)—

(i) for “of 6 months” substitute “not exceeding 6 months”; and

(ii) for “an equal period” substitute “a period equal to the period of deferment”.

(3) In regulation 39 (notification of approval or rejection of a variation) after paragraph (1)(c), insert “(ca) where there is a payment instruction under regulation 32, to the employer;”.

**Revocation of debt payment programmes**

**14.—**(1) After regulation 40(a) (revocation on sequestration in debtor application), insert—

“(aa) on an award of sequestration of the debtor’s estate where a creditor presented, or concurred in the presentation of, the petition for sequestration before approval of the programme(6);”.

(2) After regulation 40, insert—

**“Death of a debtor**

**40A.**—(1) A debt payment programme must be revoked by the DAS Administrator on intimation to the DAS Administrator of the death of the debtor.

(2) In paragraph (1), “the debtor” in relation to a joint debt payment programme refers to either debtor.”.

(3) In regulation 42(1)(c) (grounds for revocation), for “the aggregate of two such payments” substitute “the aggregate of payments due in a period of two months, beginning after the last payment is made”.

(4) In regulation 44 (notification of revocation)—

(a) in paragraph (2)(a) omit “and”;

(b) in paragraph (2)(b) omit “to”; and

(c) at the end of paragraph (2)(b) insert—

“(c) the debtor; and

(d) the payments distributor.”.

(5) After regulation 44, insert—

**“Effect of revocation**

**44A.**—(1) The revocation of a debt payment programme is to have no effect for 14 days immediately following the date on which the programme is revoked; and

(2) Where there is an application for review of a determination of the DAS Administrator to revoke a programme under regulation 47(3)(7), the revocation of the programme is to have no effect for 28 days after the date on which the application is made.”.

**Composition**

**15.** After Part 9 insert—

**“PART 9A  
COMPOSITION**

**Offer of composition**

**46A.**—(1) The DAS Administrator or a continuing money adviser may, with the consent of the debtor, make an offer of composition to each creditor taking part in the debt payment programme—

(a) after a period of 12 years beginning with the approval of the debt payment programme; and

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(6) A debt payment programme is approved from midnight on the day immediately before that on which the notice under regulation 26 of the DAS Regulations is entered in the DAS register (see regulation 26(2)).

(7) Regulation 47(3) is substituted by regulation 17 of these Regulations.

- (b) where 70% of the total amount of debt due under the programme when the programme was approved, has been paid.
- (2) An offer under paragraph (1) must be made in form 6(8).
- (3) The period of 12 years in paragraph (1)(a) must not include any period of during which payments by the debtor were deferred under regulation 37(1)(h).

#### **Acceptance of offer by creditors**

- 46B.**—(1) Where a creditor accepts the offer of composition, in respect of a debt or debts due to that creditor and included in the debt payment programme, the liability of the debtor to repay that debt is discharged.
- (2) A creditor who is made an offer of composition under regulation 46A(1) and who does not respond to that offer within 21 days after the date of the offer is deemed to accept the offer.
  - (3) The DAS Administrator must maintain a record of acceptances by creditors.

#### **Notice of completion on composition**

- 46C.** Where every creditor accepts (or is deemed to accept) the offer in respect of all of the debts in a debt payment programme the DAS Administrator must send notice in writing of completion of the programme—
- (a) to the debtor;
  - (b) to any continuing money adviser;
  - (c) to the payments distributor; and
  - (d) to the employer where there is a payment instruction under regulation 32.

#### **Variation on composition**

- 46D.**—(1) Where regulation 46C does not apply, the debt payment programme must be varied by the DAS Administrator in accordance with the acceptances (and deemed acceptances) made under regulation 46B.
- (2) The DAS administrator must intimate in writing the effect of the variation—
    - (a) to the debtor;
    - (b) to any continuing money adviser;
    - (c) to the payments distributor;
    - (d) to all creditors continuing to take part in the programme; and
    - (e) to an employer if there is a payment instruction under regulation 32.”.

#### **Reviews and appeals**

- 16.**—(1) In regulation 2(1) (interpretation: general) after the definition of “the 1986 Act”, insert—
- ““appeal” means an appeal under regulation 47C;”.
- (2) For regulation 12(1)(c) (functions of a money adviser: assistance and advice) substitute—
    - “(c) assist a debtor with, and advise on an application—
      - (i) for approval, variation or revocation of a debt payment programme; or

(ii) for review of a determination under regulation 47.”.

(3) In regulation 30 (diligence or sequestration in the period before a debt payment programme is approved), for paragraph 2(b), substitute—

“(b) that occurring 14 days after the date on which notice of rejection of the debt payment programme, sent under regulation 29(1), is so entered;

(ba) where an application for review has been made under regulation 47(1), that occurring 28 days after the date on which the application is made; and”.

17. For Part 10, substitute—

## “PART 10 REVIEWS

### **Application for review**

47.—(1) A debtor or a money adviser acting on behalf of a debtor may, on any ground which may be raised in an appeal, apply for review of a determination of the DAS Administrator not to approve a debt payment programme.

(2) A creditor named in an application for a debt payment programme may, on any ground which may be raised in an appeal, apply for review of a determination of the DAS Administrator to—

(a) dispense with the consent of the creditor;

(b) approve a programme.

(3) A debtor or a money adviser acting on behalf of a debtor, a creditor participating in a debt payment programme or a creditor who has applied for variation of a programme on the grounds in regulation 37(1)(e) or (f) may, on any ground which may be raised in an appeal, apply for review of a determination of the DAS Administrator to—

(a) attach a condition under regulation 28;

(b) approve, or refuse to approve, a variation of a programme;

(c) revoke a programme;

(d) correct an accidental error in any determination and restore a debt payment programme under regulation 4A.

(4) An application under this regulation must be made—

(a) within 14 days after the date of intimation of the determination to the debtor or creditor; and

(b) in writing.

(5) Where an application has been made under this regulation, the DAS Administrator must intimate the application in writing to—

(a) the debtor;

(b) any creditor named in the application for a debt payment programme;

(c) the money adviser who made the application for the programme;

(d) each creditor taking part in the programme; and

(e) any continuing money adviser for the debtor.

### **Procedure at review**

**47A.** Where an application is made under regulation 47, the DAS Administrator must review the determination which is the subject of the application—

- (a) within 28 days of the application for review; and
- (b) on the basis of—
  - (i) the information provided in the application; and
  - (ii) any written representations received from the debtor, creditor or money adviser.

### **Decision**

**47B.**—(1) Following review of a determination the DAS administrator may—

- (a) confirm its determination;
- (b) amend or alter its determination; or
- (c) revoke its determination and substitute a new determination.

(2) The DAS administrator must intimate in writing the result and the effect of the decision—

- (a) to the debtor;
- (b) to any creditor named in the application for a debt payment programme;
- (c) to the money adviser who made the application for the programme;
- (d) to each creditor taking part in the programme;
- (e) to any continuing money adviser for the debtor;
- (f) to the payment distributor; and
- (g) where there is a payment instruction under regulation 32, to an employer.

## **PART 10A**

### **APPEALS**

#### **Appeals**

**47C.**—(1) A debtor or a creditor may appeal to the sheriff on a point of law against a decision of the DAS administrator under regulation 47B.

(2) An appeal to the sheriff under paragraph (1)—

- (a) is to be by summary application; and
- (b) must be lodged within 14 days after the date of intimation to the appellant of the decision appealed against.

(3) The decision of the sheriff is final.”.

#### **Forms**

**18.**—(1) In regulation 37(4) (grounds for variation), for “form 3” substitute “form 4”.

(2) In Schedule 1 (forms)—

- (a) for the following forms substitute the numbered form of the same number set out in the Schedule to these Regulations—



- (i) form 1 (application for a debt payment programme);
  - (ii) form 2 (notification of approval of a debt payment programme);
  - (iii) form 4 (application for variation of a debt payment programme); and
  - (iv) form 5 (application for revocation of a debt payment programme); and
- (b) insert form 6 after form 5.

#### Minor amendments and revocations

- 19.**—(1) In regulation 18(1) (debt arrangement scheme register), insert “public” before “register”.
- (2) In regulation 46(2) (notice of completion), for “mandate” substitute “instruction”.
- (3) In the Bankruptcy (Scotland) Act 1985(**9**)—
- (a) in section 7 (meaning of apparent insolvency) omit the subsection (1)(c)(vii) inserted by regulation 46 of the Debt Arrangement Scheme (Scotland) Regulations 2004(**10**); and
  - (b) in section 14 (registration of warrant or determination of debtor application)(**11**), omit the subsection (1)(c) inserted by paragraph 1 of Schedule 3 to those Regulations(**12**).

#### Savings

**20.**—(1) Nothing in regulation 3(3), 6, 12, 13(1) or (2), 14(3) or 18(2) affects a debt payment programme in respect of which an application for approval was made (under regulation 20 of the DAS Regulations) before the date on which these Regulations comes into force.

(2) Nothing in regulation 3(5), 5, 14(5), 16 or 17 affects a debt payment programme where the determination—

- (a) against which a review or appeal would be made; or
- (b) which would be corrected,

was made before the date on which these Regulations comes into force.

St Andrew’s House,  
Edinburgh  
1st July 2013

*FERGUS EWING*  
Authorised to sign by the Scottish Ministers

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(9) 1985 c.66. Section 7 was repealed in part by the Drug Trafficking Act 1994 (c.37) (“the 1994 Act”), Schedule 3, and the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40) (“the 1995 Act”), Schedule 5, and amended by the 1994 Act, Schedule 1, paragraph 10(2), the Criminal Justice (Scotland) Act 1995 (c.20), Schedule 6, paragraph 185(3), the 1995 Act, Schedule 4, paragraph 58(3), the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), schedule 3, paragraph 15(2), and the Proceeds of Crime Act 2002 (c.29), Schedule 11, paragraph 15(3). Subsection (1)(c) was also repealed in part, and sub-paragraph (iv) prospectively repealed, by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the 2007 Act”), schedule 6, Part 1 (see SSI 2008/115) and S.S.I. 2004/468 and 2011/141 (“the DAS Regulations”).

(10) S.S.I. 2004/468 (revoked). A section 7(1)(c)(vii) in similar terms was inserted by Schedule 2 to the DAS Regulations.

(11) Section 14 (and the heading to that section) was amended by the Bankruptcy (Scotland) Act 1993 (c.6), Schedule 1, paragraph 3, the 2007 Act, schedule 1, paragraph 12 and S.S.I. 2004/468 and the DAS Regulations.

(12) S.S.I. 2004/468 (revoked). A section 14(1)(c) in similar terms was inserted by Schedule 2 to the DAS Regulations.