
EXPLANATORY NOTE

(This note is not part of these Regulations)

The Debt Arrangement Scheme (Scotland) Regulations 2011 (“the DAS Regulations”) provide for a scheme for the repayment of debts in Scotland (“the DAS Scheme”). They provide for the procedure and forms in respect of a repayment arrangement under the scheme, which is described as a debt payment programme (“DPP”). The scheme is open to both individual debtors and to legal persons and other entities (where it is known as “Business DAS”).

The Regulations amend the DAS Regulations to implement changes to the way in which payments distributors (“PDs”) are approved and to the definition of continuing money advisers (“CMAs”). The Regulations also make changes to the fees which may be charged by PDs and CMAs acting in a DPP where the debtor is an individual.

The definition of CMA is amended to provide that a money adviser will be classed as a CMA where the adviser provides ongoing advice to a debtor and carries out administrative functions during the period of the DPP (regulation 4(2)(a)).

Where the debtor in the DPP is an individual, the Regulations provide that the CMA may not charge the debtor a fee for the adviser’s services (regulation 4(2)(b)), but that the PD must charge an administration fee of 20% of the sum due to be paid to a creditor in a distribution by the distributor (regulation 4(6)). The CMA is not prohibited from receiving monies from the administration fee payable to the PD. The existing fee structure is unchanged for Business DAS.

The mechanism for approval as PD is amended to remove the requirement for the DAS Administrator to appoint applicants only after a tender process (regulation 4(3) and (4)).

Under regulation 16(2) of the DAS Regulations, a PD who ceases to act must transfer the DPPs for which that distributor is responsible to a substitute distributor specified by the DAS Administrator. The Regulations provide that, where the Accountant in Bankruptcy (“AiB”), who acts as the DAS Administrator, is specified as a substitute PD under regulation 16(2), AiB may at any time transfer on to an alternative PD the DPPs for which AiB is responsible (regulation 4(5)).

The Regulations make further changes to the operation of the DAS Scheme as follows:-

Regulation 5 provides that not less than $\frac{9}{10}$ in value of the creditors of a debtor who is an individual must consent to an application by the debtor for approval of a DPP, and provides for automatic approval by the DAS Administrator where this consent requirement is met.

Regulation 6 changes the methods by which a debtor must make a payment due under a DPP.

Regulation 7 provides that a creditor application to vary a DPP because of an omitted or wrongly assessed debt, which is made more than 120 days after the approval of the DPP, must be accompanied by a statement of reasons.

Regulation 8 provides that the DAS Administrator may propose a variation to a DPP for administrative purposes or where the period of the DPP will be reduced.

Regulation 9 updates the terminology in relation to joint debt payment programmes as regards cohabittees and extends the circumstances for a payment break to cover cohabittees separating.

Regulation 10 provides for deemed creditor consent to variation applications and for automatic approval of variations where all creditors have consented or where the period of the DPP will be reduced.

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

Regulation 11 provides that a debtor who is an individual may make a request to the money adviser for a short term financial crisis payment break in the circumstances set out.

Provision is also made for updated forms (regulation 12 and schedules 1 to 3).

Regulation 13 includes saving provisions so that regulations 4 to 7 do not affect DPPs applied for before 4 November 2019. Regulation 4(3) to (5) affects DPPs applied for before that date as regards any transfer to a substitute payments distributor under regulation 16(2) of the DAS Regulations made on or after 4 November 2019. Regulation 4(3) and (4) does not affect applications for approval as a PD made before 4 November 2019.

A Business and Regulatory Impact Assessment has been prepared and is available from the Accountant in Bankruptcy at www.aib.gov.uk.