

DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) ACT 2002

EXPLANATORY NOTES

THE ACT

Part 1 – the Debt Arrangement Scheme

5. **Part 1** provides the framework within which the debt arrangement scheme will operate. Further detailed provision will be made following Ministerial consideration of the analysed responses to the consultation about proposals for the operational arrangements and legal effect of the scheme.

Section 1 – Debt arrangement scheme

6. **Section 1** creates a scheme, named the “debt arrangement scheme”, to enable individuals to arrange for their debts to be paid under debt payment programmes.

Section 2 – Debt payment programmes

7. **Section 2** defines what a debt payment programme under the scheme is and specifies how an application for approval of a debt payment programme may be made.
8. **Section 2(1)** defines a debt payment programme as a programme which provides for the payment of money owed by a debtor.
9. The Scottish Ministers are given the power in section 2(2) to approve a debt payment programme upon submission of an application by a debtor. It is intended that this approval function of the Scottish Ministers will be delegated by them to another body by virtue of the power contained in section 8.
10. Details of what must be included in an application are set out in section 2(3). The programme is to specify arrangements proposed for payment of debts giving details of the amounts, periods and manner in which debts are to be paid, these details to be specified by the debtor according to the debtor's knowledge and belief.
11. **Section 2(4)** provides that the application form is to incorporate the consent of all the debtor's creditors.
12. The debt payment programme will specify the person (the “payments distributor”) to whom the debtor proposes to make instalment payments for distribution amongst creditors. Section 2(5) provides that a person appointed to carry out the payment distribution function has to be approved for that purpose by the Scottish Ministers.

Section 3 – Money advice

13. **Section 3** requires the debtor to take certain steps before submitting an application for approval, or variation, of a debt payment programme.

14. **Section 3(1)** requires the debtor to seek the assistance of a money adviser before applying for approval of a debt payment programme, or its variation. **Section 3(2)** provides that the debtors' application to enter into a debt payment programme must contain a signed declaration by the money adviser that money advice has been given.

Section 4 – Effect of debt payment programmes

15. **Section 4** details the effects of an approved debt payment programme under the scheme.
16. **Section 4(2)** and **(3)** prohibit all creditors from executing any form of diligence against or seeking to sequester a person who has debts which are being paid by way of an approved debt payment programme under the scheme.
17. **Section 4(4)** provides that any period during which a debtor's debts were subject to an approved debt payment programme under the scheme is to be disregarded for the purpose of creditors' rights and remedies for enforcing a debt. The effect of this provision is, in particular, to suspend prescription during the relevant period. Thus debts for which creditors had not obtained decree which are included in a debt payment programme which ceases before payment is made in full, will not prescribe during the period of the programme.
18. **Section 4(5)** provides that the prohibition on creditors from executing diligence or seeking to sequester a debtor whilst their debts are being paid under an approved debt payment programme is restricted to not only those debts owed that are included in the debt payment programme but also to any other debts owed to creditors who have been given notice of the approval of the debt payment programme.

Section 5 – Variation of debt payment programmes

19. **Section 5** deals with the variation of an existing debt payment programme and any conditions attached. It is anticipated that, once a programme is approved, variation will be infrequent. Circumstances in which variation should be allowed have been consulted upon and will be provided for in regulations to be made under **section 7(1)** (see **section 7(2)(k)** in particular).
20. **Section 5(1)** allows both creditors and debtors to apply for a variation of a debt payment programme. **Section 5(2)** provides that a copy of the application is to be provided by the party applying for the variation to all other participants in the programme. **Section 5(4)** specifies that an application for variation will be made in a standard form which will be prescribed.

Section 6 – Deduction from earnings

21. **Section 6** provides for deduction from earnings under the terms of a debt payment programme. It is anticipated that, subject to consultation, the regular payments to be made for distribution amongst creditors could be made by deduction from a debtor's earnings.
22. **Section 6(1)** and **(2)** require the debtor to instruct an employer to make the approved payments to the person distributing the payments to the creditors and for the employer to comply with the instruction.

Section 7 – Debt payment programmes: power to make further provision

23. **Section 7** gives the Scottish Ministers further powers to regulate the content, operation and effect of debt payment programmes approved under the scheme. This will enable the detail to reflect views expressed in the consultation.
24. **Section 7(1)** gives the Scottish Ministers a general power to make further provision in this respect by way of regulations. It enables regulations to be made concerning applications for the approval, or variation, of debt payment programmes, the manner

in which they are to operate, the conditions to be complied with and the effects which they will have.

25. **Section 7(2)** sets out particular matters in respect of which the general power in section 7(1) may be exercised. It lists many of the arrangements for which it will be necessary to make provision in order to enable the scheme to operate and which have been anticipated in the consultation. For example, section 7(2)(n) provides for regulation of the period over which a debt payment programme may run. This is intended to enable settlement of the debts within a reasonable period (to be determined from the outcome of the consultation).
26. **Section 7(3)** allows the regulations to make different provisions and Section 7(4) allows legislation, which may have to be modified as a consequence of the scheme in order to make it operate effectively, to be modified by the regulations. For example, it may be necessary to modify existing legislation concerning diligence and sequestration to ensure that their operation is suspended during participation in the scheme in accordance with provisions of the Act in section 4 and the regulations which can be made under section 7(1)(c) and (2).

Section 8 – Functions of the Scottish Ministers

27. The Scottish Ministers may wish to nominate a body or bodies outwith the Scottish Executive to perform functions in relation to the debt arrangement scheme currently provided for in Part 1 of the Act as a function of the Scottish Ministers. Section 8 gives them the power to do so by order.

Section 9 – Interpretation of Part

28. **Section 9** defines terms used in Part 1. Money advisers, for the purposes of the scheme, will be approved by the Scottish Ministers to give advice to a debtor who applies for approval or variation of a debt payment programme. Debtors, for the purposes of the scheme, must be natural persons (i.e. companies, partnerships, associations etc. may not apply).