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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2004 No.**

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

**PART 8**

**REVOCATION OF DEBT PAYMENT PROGRAMMES**

**Revocation on sequestration**

**41.** Approval of a debt payment programme shall be revoked by the DAS administrator on an award of sequestration under a petition by a debtor for the sequestration of the debtor's estate.

**Application for revocation**

**42.—(1)** An application to the DAS administrator for revocation of the approval of a debt payment programme, shall only be made by—

- (a) a money adviser—
  - (i) on behalf of a debtor; or
  - (ii) in exercise of a function under these Regulations; or
- (b) a creditor taking part in the programme.

(2) An application under paragraph (1) shall be in form 10.

**Grounds for revocation**

**43.** Approval of a debt payment programme may be revoked by the DAS administrator on application under regulation 42 where a debtor—

- (a) without good cause, does not have a money adviser;
- (b) fails without reasonable cause to satisfy a condition under regulations 29 or 30;
- (c) makes a statement in an application under these Regulations which the debtor knows to be untrue; or
- (d) a payment to be paid under the programme becomes due, and there remains unpaid a sum, due in respect of previous payments so due, of not less than the aggregate of two such payments.

**Determination of a revocation**

**44.—(1)** The DAS administrator in determining whether to revoke an approval of a debt payment programme shall have regard to—

- (a) any statement made by, or on behalf of a debtor;
- (b) the nature of any failure, or untrue statement;
- (c) any factor that tends to indicate whether or not the programme will be successful; and

(2) The DAS administrator in determining whether to revoke an approval of a debt payment programme may have regard to any other factor that the administrator considers appropriate in all the circumstances.

### Notification of revocation

**45.**—(1) The DAS administrator shall give written notice to the money adviser for a debt payment programme of a revocation of the programme.

(2) The DAS administrator shall specify the reason for the revocation.

(3) Subject to paragraph (4), the money adviser shall intimate in writing the revocation by the DAS administrator, and the reasons—

- (a) to the debtor;
- (b) to each creditor known to the adviser in form 11;
- (c) the payments distributor;
- (d) where there is a payment instruction under regulation 33, to the employer.

(4) Where there is no money adviser, the DAS administrator shall intimate the revocation to—

- (a) the persons specified in paragraph (3)(a) to (d); and
- (b) in form 11, to each creditor taking part in the programme.

### Apparent insolvency

**46.** In section 7(1) (meaning of apparent insolvency) of the 1985 Act<sup>(1)</sup>, at the end of paragraph—

- (a) (c)(v), omit “or”; and
- (b) (c)(vi), insert—
  - “; or
  - (vii) a debt payment programme under the Debt Arrangement and Attachment (Scotland) Act 2002<sup>(2)</sup> is revoked, where any debt being paid under the programme is constituted by a decree or document of debt as defined in section 10 (attachment) of that Act.”

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(1) 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).

(2) 2002 asp 17.