
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 468

The Debt Arrangement Scheme (Scotland) Regulations 2004

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Debt Arrangement Scheme (Scotland) Regulations 2004, and shall come into force on the fourteenth day after the day on which they are made.

Interpretation: general

2.—(1) In these Regulations—

“the Act” means the Debt Arrangement and Attachment (Scotland) Act 2002;

“the 1985 Act” means the Bankruptcy (Scotland) Act 1985(1);

“the 1986 Act” means the Insolvency Act 1986(2);

“continuing liability” means a payment due by a debtor, other than arrears of such a payment, in respect of—

- (a) a periodic payment due under a loan agreement secured by a standard security (mortgage payment);
- (b) rent;
- (c) an insurance premium;
- (d) a duty, local or general tax, or rate;
- (e) domestic water charge or domestic sewerage charge;
- (f) any aliment, periodical allowance, child maintenance or child support;
- (g) the supply of electricity, gas, or fixed line telephone services;
- (h) heating oil or solid fuel;
- (i) a hire purchase or conditional sale agreement; and
- (j) a criminal fine;

“creditor” means, unless the context requires otherwise, a creditor other than a creditor in respect of—

- (a) a continuing liability;
- (b) a sum secured by a standard security, other than a sum specified in regulation 3(b)(i); or
- (c) a contingent liability that has not become purified;

“DAS administrator” means—

(1) 1985 c. 66.
(2) 1986 c. 45.

- (a) the Scottish Ministers; or
- (b) any person or body who may exercise the functions of the Scottish Ministers by virtue of an order made under section 8 (functions of the Scottish Ministers) of the Act;

“DAS Register” means the Debt Arrangement Scheme Register maintained under regulation 17;

“decree” and “document of debt” shall be construed in accordance with section 10(5) (attachment) of the Act;

“MATRICS” means Money Advice Training, Resources, Information and Consultancy Services, administered jointly by Citizens Advice Scotland of 1st Floor, Spectrum House, 2 Powderhall Road, Edinburgh EH7 4GB, and Money Advice Scotland of Suite 306, Pentagon Centre, 36 Washington Street, Glasgow, G3 8AZ;

“money adviser” has the same meaning as in section 9(1) (interpretation of part) of the Act;

“payments distributor” means a person or body approved by the Scottish Ministers for the purpose of performing the functions of a payments distributor under the Act;

“protected trust deed” shall be construed in accordance with paragraph 8 of Schedule 5 (voluntary trust deeds for creditors) to the 1985 Act;

“sheriff” and “sheriff principal” mean respectively the sheriff of the sheriff court district, and the sheriff principal of the sheriffdom, in which a debtor habitually resides;

“standard security” means the form of heritable security enabled under section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970(3); and

“trust deed” has the same meaning as in section 5(4A) of the 1985 Act(4).

(2) A form referred to by number in these Regulations means the form so numbered in Schedule 1, or a form of substantially the same effect with such variation as the circumstances may require.

(3) Any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(5), which has been recorded and is consequently capable of being reproduced.

Interpretation: debt

3. In these Regulations, “Debt”–

(a) includes any sum due by a debtor–

(i) constituted by–

(aa) decree or document of debt;

(bb) judicial or contractual interest;

(cc) charges or penalties due under a contract on any default in respect, or breach of, that contract;

(dd) lease or tenancy agreement;

(ee) enactment;

(ii) secured by a standard security, to the extent that the sum is arrears of a periodic payment due to be paid under a loan agreement so secured;

(iii) recoverable from the debtor as enforcement expenses; and

(b) excludes any sum due by a debtor–

(3) 1970 c. 35. Section 9 has not been relevantly amended.

(4) 1985 c. 66. Section 4A was amended by the Bankruptcy (Scotland) Act 1993 (c. 6), section 3.

(5) 2000 c. 7. Section 15 of the Electronic Communications Act 2000 (c. 7) contains a definition of “electronic communication”.

- (i) to the extent it is secured by a standard security, other than where that sum is included under paragraph (a)(ii);
- (ii) as a liability for the purpose of section 17(2B) of the Legal Aid (Scotland) Act 1986(6).

Dispensing power

4. The DAS administrator may relieve any person from the consequences of any failure to comply with a provision of these Regulations that is shown to be due to mistake, oversight or other reasonable cause.

Fees

5.—(1) Subject to paragraph (2), the fee payable to the DAS administrator in respect of the matter specified in column 1 of Schedule 2 shall be the fee specified in relation to that matter in column 2 of that Schedule.

(2) No fee shall be paid by a money adviser for an inspection of the DAS Register under regulation 19(1).

Consequential amendments

6. Schedule 3, which contains amendments consequential upon the provisions of these Regulations, shall have effect.

PART 2

MONEY ADVISERS

Debtor to have a money adviser

7.—(1) A debtor shall have a money adviser during the period of operation of a debt payment programme.

(2) A debtor shall forthwith give written notice to the DAS administrator that a money adviser has ceased to act for the debtor.

(3) Where notice is given under paragraph (2), a debtor shall state the reason why the money adviser has ceased to act.

(4) A money adviser shall assist the debtor to appoint a replacement adviser where that first adviser has ceased to act by reason of the resignation, or revocation or suspension of approval, of that first adviser.

Approval of a money adviser

8.—(1) An application to the DAS administrator for approval as a money adviser shall be in form 1.

(2) The DAS administrator shall approve an application under paragraph (1) if satisfied that the applicant is a fit and proper person to be a money adviser.

(6) 1986 c. 47. Section 2B was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 36.

- (3) A person, other than a person specified in regulation 10(2), shall be a fit and proper person to be a money adviser if, but not only if, the person has—
- (a) undergone training on the matters specified in Schedule 4; and
 - (b) a certificate issued by MATRICS stating that the person
 - (i) has been assessed as possessing the skills and training needed to competently advise a debtor on taking part in a debt payment programme under the debt arrangement scheme; and
 - (ii) is recommended for approval by the DAS administrator as a money adviser.
- (4) Approval as a money adviser shall be for a period of 2 years.

Revocation, or suspension, of approval of a money adviser

9.—(1) The DAS administrator shall revoke the approval of a money adviser where MATRICS certify that the adviser is no longer recommended for approval by the DAS administrator as a money adviser.

- (2) The DAS administrator may revoke the approval of a money adviser where—
- (a) an adviser for a debtor fails without good cause to respond to a requirement by the DAS administrator for the adviser to provide evidence or information relating to the operation of the debt payment programme of the debtor; or
 - (b) in the opinion of the DAS administrator the adviser—
 - (i) has failed without good cause to carry out a function of an adviser under the Act or these Regulations; and
 - (ii) continues to fail to carry out that function, after 2 weeks from the date of written notice to the adviser of that failure.

(3) The DAS administrator shall suspend the approval of a money adviser for a period of 6 months, where MATRICS certify that the adviser is temporarily unable to carry out the functions of an adviser under the Act or these Regulations.

Persons who may not be approved

- 10.**—(1) A person specified in paragraph (2) shall not be a money adviser.
- (2) A specified person is—
- (a) a sheriff officer or messenger-at-arms, or an employee of such a person;
 - (b) a person or body providing financial services, or financial advice other than money advice, in the course of a business or otherwise for profit, or an employee of such a person, unless the person is a—
 - (i) solicitor;
 - (ii) chartered or certified accountant;
 - (iii) a credit union registered under the Industrial and Provident Societies Act 1965(7) by virtue of section 1 (registration under the Industrial and Provident Societies Act 1965) of the Credit Unions Act 1979(8);
 - (c) a person providing debt collection services, or an employee of such a person;
 - (d) a person convicted of an offence involving theft, fraud or other dishonesty;

(7) 1965 c. 12. There are amendments to this Act which are not relevant to these Regulations.

(8) 1979 c. 34. Amended by S.I.1996/1189, 2001/2617 and 3538 and 2002/1501.

- (e) a debtor whose estate has been sequestrated, and who has not been discharged under sections 54 (automatic discharge after 3 years) or 75 (amendments, repeals and transitional provisions) of the 1985 Act⁽⁹⁾;
- (f) a bankrupt, who has not been discharged under sections 279 (duration) or 280 (discharge by order of the court) of the 1986 Act⁽¹⁰⁾;
- (g) a person subject to a bankruptcy restrictions order (including an interim order) or bound by a bankruptcy restrictions undertaking, under Schedule 4A (bankruptcy restrictions order and undertaking) of the 1986 Act⁽¹¹⁾;
- (h) a person who has entered into a trust deed or protected trust deed for their creditors, and who has not been discharged from that deed; or
- (i) a person in respect of whom a court has made a disqualification order under section 1, or who has had a disqualification undertaking accepted under section 2, of the Company Directors Disqualification Act 1986⁽¹²⁾.

Functions and duty of a money adviser

- 11.**—(1) It is a function of a money adviser to—
- (a) provide money advice to a debtor;
 - (b) liaise with creditors on behalf of a debtor;
 - (c) assist a debtor with, and advise on, implementation or variation of a debt payment programme;
 - (d) prepare and submit on behalf of a debtor an application under these Regulations;
 - (e) review a debt payment programme in every sixth month of operation;
 - (f) act as a lay representative in a court, where the adviser has accepted instructions by a debtor to act;
 - (g) seek revocation of a debt payment programme, where no payments have been made under the programme for 12 months; and
 - (h) provide, as required by the DAS administrator, evidence of or information about the participation of a debtor in a debt payment programme.
- (2) A money adviser shall not charge a fee to a debtor for money advice, unless the adviser has informed the debtor—
- (a) that money advice is available without any fee or payment being due by the debtor (“free money advice”);
 - (b) of the name of—
 - (i) any adviser (or all, if more than one) providing free money advice within a 10 kilometre radius of the debtor’s usual place of residence; or
 - (ii) the nearest adviser providing free money advice to the debtor’s place of residence, where there is no adviser within a 10 kilometre radius of the debtor’s usual place of residence, andthe debtor has agreed in writing to pay a fee.

(9) 1985 c. 66. Section 54 was repealed in part by the Education (Student Loans) Act 1990 (c. 6), Schedule 2, paragraph 6.

(10) 1986 c. 45. Section 279 was substituted by section 256 of the Enterprise Act 2002 (c. 40) (“the 2002 Act”).

(11) 1986 c. 45. Schedule 4A was inserted by section 257, of and Schedule 20 to the 2002 Act.

(12) 1986 c. 46. Section 1 was amended by the Insolvency Act 2000 (c. 39) (“the 2000 Act”), section 5 and Schedule 4, Part I, paragraph 2, and by the 2002 Act, sections 204 and 279. Section 2 was amended by the 2000 Act, section 8 and Schedule 4, Part 1, paragraph 3 and by the Deregulation and Contracting Out Act 1994 (c. 40), section 39 and Schedule 11, paragraph 6.

(3) A money adviser shall have regard to guidance issued by the DAS administrator when carrying out a function of an adviser.

Notices by a money adviser: general

12. A money adviser to a debtor in a debt payment programme shall as soon as is reasonably practicable provide written notice to—

- (a) the DAS administrator of—
 - (i) the appointment or resignation, as the case may be, of the adviser; and
 - (ii) a change of payments distributor;
- (b) the payments distributor for the programme of the matter specified in paragraph (a)(i); and
- (c) each creditor taking part in the programme of the matters specified in paragraph (a).

PART 3

PAYMENTS DISTRIBUTORS

Approval of a payments distributor

13.—(1) An application to the DAS administrator for approval as a payments distributor shall be in form 2.

(2) The DAS administrator shall approve an application under paragraph (1) if satisfied that the applicant is a fit and proper person or body to be a payments distributor.

(3) Without prejudice to the generality of paragraph (2), an applicant shall not be a fit and proper person if the person or body does not satisfy the criteria specified in Schedule 5.

(4) The DAS administrator may make approval under paragraph (2) subject to any reasonable condition.

(5) Approval as a payments distributor shall be for a period of 3 years, and may be renewed by a further application for approval made no later than 6 months before the end of an initial or a renewed period, as the case may be.

Revocation of approval of a payments distributor

14.—(1) The DAS administrator may revoke the approval of a payments distributor where—

- (a) the distributor fails without good reason to comply with a condition attached to the approval;
- (b) the administrator is satisfied that the distributor is no longer a fit and proper person to be an distributor; or
- (c) in the opinion of the DAS administrator the distributor—
 - (i) has failed without good cause to carry out a function of a distributor under the Act or under these Regulations; and
 - (ii) continues to fail to carry out that function, after 2 weeks from the date of written notice to the distributor of that failure.

(2) On an approval being revoked under paragraph (1), the distributor whose approval is revoked shall transfer to a substitute payments distributor the debt payment programmes for which that first distributor is responsible, within a reasonable period specified by the DAS administrator.

Functions and duty of a payments distributor

15.—(1) It is a function of a payments distributor—

- (a) to assist a money adviser with, and advise on, payments distribution;
- (b) to distribute sums received by the distributor in accordance with the debt payment programme, or any agreement for voluntary payment of a continuing liability;
- (c) to provide payment and distribution reports to money advisers, and to creditors;
- (d) subject to paragraph (2), to provide a facility for voluntary payment by a debtor of a continuing liability; and
- (e) to provide information to the DAS administrator about the exercise of a function of a payments distributor.

(2) Where a payments distributor is not providing the facility specified in paragraph (1)(d), the distributor may elect in respect of each period of approval under regulation 13(5), or part of a period if an election is made other than at the start of the period, whether or not to provide that facility.

(3) A payments distributor shall have regard to guidance issued by the DAS administrator when carrying out a function of a distributor.

Charges by a payments distributor

16.—(1) In the exercise of a function under the Act or these Regulations, a payments distributor—

- (a) subject to regulation 34, shall make no charge of any kind to a debtor; and
- (b) subject to paragraph (2), may charge an administration fee to a creditor taking part in a debt payment programme.

(2) An administration fee shall be no more than 5% of the sum due to be paid to a creditor in a distribution by the distributor.

PART 4

DEBT ARRANGEMENT SCHEME REGISTER

Debt Arrangement Scheme Register

17.—(1) There shall be a register of debt payment programmes, to be known as the Debt Arrangement Scheme Register (“the DAS Register”).

(2) The DAS administrator shall maintain the DAS Register, which may be wholly or partially in electronic form.

Information on the DAS Register

18.—(1) Information in respect of the matters relating to debt payment programmes specified in paragraph (2) shall be held on the DAS Register.

(2) The specified information is—

- (a) an application for a programme that has yet to be approved;
- (b) an application by the DAS administrator to the sheriff for approval of a programme;
- (c) a notice that a programme is to be approved;
- (d) an approved programme;
- (e) an application for variation of a approved programme;

- (f) an application by the DAS administrator to the sheriff for variation of an approved programme;
 - (g) a variation of an approved programme; and
 - (h) an appeal to the sheriff or sheriff principal.
- (3) The DAS Register shall include for each debtor who has applied for approval of a debt payment programme, or who is taking part in a programme, a record of—
- (a) the full name, including any former name;
 - (b) the age;
 - (c) the home address or addresses, and any business address; and
 - (d) the business address of the money adviser (or the money advice body for that adviser),
- of the debtor.

Access to, and use of, information on the DAS Register

- 19.**—(1) A money adviser may on behalf of a debtor inspect an entry in the DAS Register relating to the debtor.
- (2) An entry in the DAS Register may be inspected by or on behalf of—
- (a) a creditor, or prospective creditor, of a debtor;
 - (b) a payments distributor; and
 - (c) any other person, on reasonable cause being shown to the DAS administrator.

PART 5

APPROVAL OF DEBT PAYMENT PROGRAMMES

Application for approval

- 20.**—(1) A debtor who is habitually resident in Scotland may apply to the DAS administrator for approval of a debt payment programme.
- (2) An application under paragraph (1)—
- (a) shall be made by a money adviser on behalf of the debtor, and shall be in form 3;
 - (b) may be made by electronic means, but if so the money adviser for the debtor shall retain the form 3, signed by the debtor and the money adviser in accordance with sections 2(3) and 3(2) respectively of the Act, for a period of 5 years or the period of the programme (whichever is the longer); and
 - (c) shall be competent notwithstanding that the consent of the creditor under section 7(4) of the Act and regulation 22 is not incorporated in form 3.

Debtors who may apply for approval

- 21.**—(1) Subject to paragraph (2), a debtor may apply for approval of a debt payment programme where the programme provides for the payment of two or more debts.
- (2) An application for approval may not be made where—
- (a) subject to paragraph (3), payment of a debt of a debtor is being made under a conjoined arrestment order;
 - (b) a debtor is a party to a trust deed;

- (c) a debtor's estate has been sequestrated, and the debtor has not been discharged under sections 54 (automatic discharge after 3 years) or 75 (amendments, repeals and transitional provisions) of the 1985 Act;
- (d) a debtor is a bankrupt, who has not been discharged under sections 279 (duration) or 280 (discharge by order of the court) of the 1986 Act; or
- (e) a debtor is subject to a bankruptcy restrictions order (including an interim order) or bound by a bankruptcy restrictions undertaking, under Schedule 4A (bankruptcy restrictions order and undertaking) of the 1986 Act⁽¹³⁾.

(3) An application may be made where a creditor, including a creditor of a debt being paid under a conjoined arrestment order in respect of another debt not so paid, has attempted to enforce a debt due by the debtor by any lawful means.

Consent of every creditor

22.—(1) Subject to paragraph (3), each creditor of a debtor must consent to an application by the debtor for approval of a debt payment programme.

(2) A request to a creditor for consent shall be in form 4, and if posted shall be sent to the creditor by first class recorded delivery post.

(3) A creditor who is requested to consent to an application, and who does not respond to that request within 21 days after the date of intimation (which shall be the date of posting, if applicable) is deemed to consent.

(4) The DAS administrator may dispense with the consent of a creditor where—

- (a) the amount due by a debtor to the creditor is 50% or less of the total debt included in a programme; and
- (b) the amount due to all creditors who refuse to consent does not exceed 60% of the total debt included in a programme.

(5) Where a creditor does not consent to an application under paragraph (1), and that consent is not deemed as given or dispensed with, the approval of a debt payment programme under regulations 25, 26 or 27 shall not be invalid by reason only of the lack of consent provided that the debtor did not know, and could not reasonably have known, the identity of the creditor.

Objection by a creditor

23.—(1) A creditor may object to an application by a debtor for approval of a debt payment programme where the creditor considers that the debtor—

- (a) should be sequestrated; or
- (b) is in possession of heritable property with substantial unsecured value.

(2) An objection under paragraph (1) must be made within 21 days after the date of intimation (which shall be the date of posting if applicable) of a request for consent under regulation 22.

Composition and waiver of interest

24.—(1) Where agreed by a debtor and a creditor, a debt payment programme may provide that a liability of the debtor to—

- (a) repay a sum due, or part thereof, shall be discharged;
- (b) pay interest on a sum due, or part thereof, shall be waived.

⁽¹³⁾ 1986 c. 45. Schedule 4A was inserted by section 257 of and Schedule 20 to the Enterprise Act 2002 (c. 40).

- (2) An agreement under paragraph (1) may be made subject to a condition that—
- (a) the sum due after discharge or waiver is paid in full; and
 - (b) payment is made over the agreed period, not being longer than the period of the programme.

Approval of agreed programmes

25.—(1) The DAS administrator shall approve a debt payment programme where each creditor has consented under regulation 22 to an application for approval.

- (2) Approval under paragraph (1) may be made subject to a condition under regulation 30.

Approval by the DAS administrator

26.—(1) Subject to regulations 25 and 27, the DAS administrator shall approve a debt payment programme that is fair and reasonable.

(2) In determining whether a debt payment programme is fair and reasonable, the DAS administrator shall have regard to—

- (a) the total amount of debt;
- (b) the period over which a programme will operate;
- (c) the method, and frequency, of payments under a programme;
- (d) an earlier proposed programme that was not approved;
- (e) a matter specified in regulation 21(2) that would have prevented an application being made, where the matter no longer has that effect;
- (f) the involvement of the debtor in a—
 - (i) debt payment arrangement, including a debt payment programme under these Regulations;
 - (ii) time to pay direction under section 1 (time to pay directions) of the Debtors (Scotland) Act 1987, or time to pay order under section 5 (time to pay orders) of that Act⁽¹⁴⁾; or
 - (iii) time order under section 129 (time orders) of the Consumer Credit Act 1974⁽¹⁵⁾;
- (g) the extent to which creditors have consented (deemed or otherwise) or objected to a programme;
- (h) any comment made by the money adviser; and
- (i) an asset of a debtor that could be realised to pay debts to be included in a programme.

(3) In determining whether a debt payment programme is fair and reasonable, the DAS administrator may have regard to any other factor that the administrator considers appropriate.

- (4) Approval under paragraph (1) may be made subject to a condition under regulation 30.

(14) 1987 c. 18. Section 1 was repealed in part by the Social Security Act 1998 (c. 14) (“the 1998 Act”), Schedule 8, and amended by the Child Support Act 1991 (c. 48), Schedule 5, paragraph 8, the Local Government Finance Act 1992 (c. 14) (“the 1992 Act”), Schedule 13, paragraph 53, the Local Government etc. (Scotland) Act 1994 (c. 39) (“the 1994 Act”), Schedule 13, paragraph 151, the 1998 Act, Schedule 7, paragraph 12, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) (“the 1999 Act”), Schedule 9, paragraph 1, and the Water Industry (Scotland) Act 2002 (asp 3) (“the 2002 Act”), Schedule 7, paragraph 17. Section 5 was repealed in part by the 1998 Act, Schedule 8, and the Abolition of POUNDINGS and Warrant Sales Act 2001 (asp 1), schedule, Part I, and amended by the 1992 Act, Schedule 13, paragraph 54, the 1994 Act, Schedule 13, paragraph 151, the 1999 Act, Schedule 9, paragraph 1, and the 2002 Act, Schedule 7, paragraph 17.

(15) 1974 c. 39. Section 129 was amended by the Debtors (Scotland) Act 1987 (c. 18), Schedule 6, paragraph 17, and Schedule 7, paragraph 5.

Approval by the sheriff

27.—(1) The sheriff shall approve a debt payment programme on an application under paragraph (2), if the programme is fair and reasonable.

(2) The DAS administrator shall apply to the sheriff for determination of an application for approval of a proposed programme where—

- (a) a creditor does not consent, and the DAS administrator may not dispense with consent under regulation 22(4); or
- (b) a creditor objects under regulation 23.

(3) In determining whether a programme is fair and reasonable, the sheriff shall have regard to the matters specified in regulation 26(2), and may have regard to any other factor that the sheriff considers appropriate.

(4) Approval under paragraph (1) may be made subject to a condition under regulation 30.

Notice of intention to approve, and approval of, a programme

28.—(1) The DAS administrator shall on a determination that a debt payment programme is to be approved, enter a notice to that effect in the DAS Register.

(2) A debt payment programme shall be approved from midnight of the second day after the date of the entry under paragraph (1) in the DAS Register.

Standard conditions

29.—(1) A debt payment programme approved under regulations 25, 26 or 27 shall be subject to the conditions specified in paragraph (2).

(2) The specified conditions are that a debtor shall—

- (a) make all payments under a programme as they fall due;
- (b) pay a continuing liability when due for payment;
- (c) except for a continuing liability, make no payment to a creditor taking part in a programme other than a payment under the programme;
- (d) not apply for or obtain credit beyond that permitted by regulation 35(1)(b), or by a variation of a programme approved under regulation 39;
- (e) notify the money adviser for a programme of a—
 - (i) change of address; and
 - (ii) material change of circumstances, within 7 days of becoming aware of the change; and
- (f) within 10 days after receipt by the debtor of a written request from the money adviser for the programme, supply the adviser with such information or evidence as the adviser may request in respect of the income, assets or liabilities of the debtor.

Discretionary conditions

30.—(1) A debt payment programme on approval under regulations 25, 26 or 27, or approval of a variation under regulation 39, may be made subject to one or more of the conditions specified in paragraph (2).

(2) A specified condition is that the debtor shall—

- (a) realise, and distribute amongst the creditors the value of, an asset of the debtor other than an asset excepted by paragraph (3);

- (b) sign and deliver a payment instruction to an employer;
 - (c) seek agreement from a creditor to pay a continuing liability under regulation 34;
 - (d) complete, and submit when due, a tax or duty return or declaration;
 - (e) maintain an emergency fund in accordance with paragraph (4); or
 - (f) be bound by any other reasonable condition intended to secure completion of the programme.
- (3) An excepted asset is—
- (a) a dwellinghouse or mobile home occupied by a debtor as the debtor’s home;
 - (b) an asset that is exempt from attachment under section 11 (articles exempt from attachment) of, or that is not a non-essential asset under schedule 2 (non essential assets) to, the Act.
- (4) In respect of an emergency fund, the debtor shall—
- (a) make payments at the rate specified by the DAS administrator, into an account designated by the administrator for the purpose of the fund; and
 - (b) make no payment from the fund other than a payment for—
 - (i) an emergency repair as specified in paragraph (5); or
 - (ii) an essential requirement of the debtor or an immediate family member who is maintained by the debtor.
- (5) An emergency repair is one required to maintain—
- (a) a dwellinghouse occupied by the debtor in wind and water tight condition;
 - (b) in reasonable working order any item that is not a non-essential asset for the purpose of Schedule 2 of the Act;
 - (c) a vehicle required by the debtor for travelling to work, or other essential purpose.

Notification of approval or rejection

31.—(1) The DAS administrator shall send notice in writing to the money adviser for the debtor of the approval or rejection of the application for approval of a debt payment programme.

(2) Where an application for approval of a programme is rejected, the DAS administrator shall specify the reason for the rejection.

- (3) Where an application for approval of a programme is approved—
- (a) the DAS administrator shall intimate in writing to the money adviser any condition attached under regulation 30; and
 - (b) the approval shall have effect in accordance with regulation 28(2).
- (4) The money adviser shall intimate—
- (a) the approval of an application—
 - (i) to the debtor;
 - (ii) in form 5, to each creditor known to the adviser;
 - (iii) the clerk of a court that has made—
 - (aa) a conjoined arrestment order; or
 - (bb) an order or direction specified in regulation 26(2)(f)(ii) and (iii);
 - (iv) where payments are to be made under an earnings arrestment, to the employer of the debtor; and
 - (v) the payments distributor; or

- (b) the rejection of an application—
 - (i) to the debtor;
 - (ii) to each creditor known to the adviser; and
 - (iii) the payments distributor.

PART 6

DEBT PAYMENT PROGRAMMES

Methods of payment

32.—(1) Subject to paragraph (2), a debtor shall make a payment due under a debt payment programme to the payments distributor by means of a—

- (a) a payment mandate to an employer;
- (b) direct debit or standing order; or
- (c) smart card, swipe card, smart key or other type of payment card or key.

(2) The DAS administrator may approve a payment method other than a method specified in paragraph (1), if satisfied that successful completion of a programme is more likely by virtue of the use of that other payment method.

Payment instruction to employer

33.—(1) A payment instruction to an employer of a debtor shall be in form 6.

(2) A debtor shall deliver an instruction to the employer, and provide the money adviser for the debt payment programme with a copy of the instruction.

(3) On delivery of an instruction, the employer of a debtor shall while the instruction is in effect deduct the sum specified in the instruction on every pay day, and pay the sum deducted to the payments distributor as soon as it is reasonably practical to do so.

(4) On delivery of an instruction, an employer shall make the payments due under the instruction, until recall of the instruction by—

- (a) the debtor, where any other payment method approved under regulation 32 is substituted; or
- (b) notice from a money adviser under regulations 45(3) or 49(2).

(5) An employer may on making a payment due under an instruction charge a fee equivalent to the fee chargeable for the time being under section 71 (employer's fee for operating diligence against earnings) of the Debtor's (Scotland) Act 1987(16), and deduct that fee from the balance then due to the debtor.

(6) Subject to paragraph (7), where an employer fails without good cause to make a payment due under an instruction, the employer shall—

- (a) be liable to pay on demand by a payments distributor the amount that should have been paid; and
- (b) not be entitled to recover from a debtor the amount paid to the debtor in breach of the mandate.

(7) The obligation of an employer to make a payment due under an instruction shall be extinguished one year after the date that the liability to pay arose, unless court proceedings for payment are commenced within that period.

(8) This regulation applies to any payment instruction, whether made in accordance with a condition under regulation 30 or otherwise.

Continuing liabilities

34.—(1) Where a debt payment programme is approved, a debtor and a creditor may agree that a payments distributor shall pay a continuing liability to the creditor on behalf of the debtor.

(2) Where a continuing liability is paid under paragraph (1), the debtor shall pay to the payments distributor—

- (a) the amount needed to pay the liability; and
- (b) if required by the creditor, the administration fee (if any) that is due to be paid in respect of the liability by the creditor to the payments distributor under regulation 16(1)(b),

by a method approved under regulation 32.

(3) Where there is agreement under paragraph (1), a payments distributor shall pay the sum received under paragraph (2)(a) to the creditor, and may retain any fee paid under paragraph (2)(b).

Effect on a creditor

35.—(1) Where a debt payment programme is approved—

- (a) the approval shall have the effect of a recall at the time specified in regulation 28(2) of any arrestment of the debtor's income or property, and the DAS administrator shall send notice of recall in form 7 to each employer or party with possession of funds or property arrested as the case may be;
- (b) no body or person shall give credit to the debtor, other than—
 - (i) a social fund award repayable under section 139 (awards of social fund officers) of the Social Security Contributions and Benefits Act 1992(17);
 - (ii) credit approved by a variation under regulation 39;
 - (iii) further credit given as part of a cyclical loan arrangement in operation at the date of approval where the payment by the debtor does not vary by reason of that credit being given, for example a revolving credit agreement or a current account mortgage;
 - (iv) subject to paragraph (2), trade credit incurred by the debtor in the ordinary course of a business;
 - (v) subject to paragraph (2), credit for emergency repairs as specified in regulation 30(5); and
 - (vi) subject to paragraph (2), credit for reasonable funeral expenses in respect of an immediate family member;
- (c) a creditor shall not attempt to persuade the debtor to withdraw from the programme, or to make additional payments in respect of a debt included in the programme; and
- (d) a creditor shall—
 - (i) on request by a money adviser to the debtor, provide a statement of all liabilities of the debtor; and

(ii) notify a money adviser of any liability where the creditor has security against a co obligant of the debtor.

(2) The debtor shall when applying for, or before obtaining, credit under paragraph (1)(b)(iv) to (vi) give notice in form 5 of approval of the debt payment programme to any person who may give such credit.

(3) Where a creditor gives credit to a debtor in an approved debt payment programme other than credit as specified in paragraph (1)(b), it shall not be competent to—

- (a) serve a charge for payment in respect of;
- (b) commence any diligence to enforce payment of; or
- (c) found on in presenting, or concurring in the presentation of, a petition for the sequestration of the debtor’s estate,

the debt due to the creditor, as long as the programme is approved.

(4) There is to be disregarded, for the purpose of the exercise by a creditor of any rights to enforce a debt (or remedies to like effect) any period during which a debt is subject to the restriction under paragraph (3).

(5) In section 4 (effect of debt payment programmes) of the Act—

(a) in subsection (2)—

(i) after “(b)”, insert “other than under subsection (2A),”; and

(ii) after paragraph (b), insert—

“(c) to commit to prison under section 4 of the Civil Imprisonment (Scotland) Act 1882(18), other than for the purposes of section 40 of the Child Support Act 1991(19), respect of;”; and

(b) after subsection (2), insert—

“(2A) It is competent to—

(a) auction an attached article where—

(i) notice has been given to the debtor under section 27(4) below; or

(ii) an article has been removed, or notice of removal has been given, under section 53 below;

(b) implement a decree of furthcoming;

(c) implement a decree or order for sale of a ship (or a share of it) or cargo; and

(d) sell the effects of a debtor to satisfy a decree obtained in an action for sequestration for rent due by the debtor.”.

Effect on a debtor

36. Where a debt payment programme is approved a debtor shall not enter into a trust deed.

(18) 1882 c. 42. Section 4 was amended by the Sheriff Courts (Scotland) Act 1971 (c. 58), section 4, and extended by the Child Support Act 1991 (c. 48), section 40, and the Social Security Administration Act 1992 (c. 5), sections 187 and 192.

(19) 1991 c. 48.

PART 7

VARIATION OF DEBT PAYMENT PROGRAMMES

Application for variation

37.—(1) An application to the DAS administrator for variation of a debt payment programme may only be made—

- (a) by a money adviser on behalf of a debtor; and
- (b) subject to paragraph (2), by a creditor.

(2) A creditor may not apply for a variation unless the creditor has first made a reasonable attempt to agree the variation with the money adviser for the debtor.

(3) Where a money adviser makes an application under paragraph (1), the adviser shall intimate the application to each creditor taking part in the programme.

(4) Where a creditor makes an application under paragraph (1), the creditor shall intimate the application to—

- (a) the money adviser for the programme;
- (b) the debtor; and
- (c) to each creditor taking part in the programme.

(5) An application under paragraph (1)—

- (a) shall be in form 8;
- (b) may be made by the debtor by electronic means, but if so the money adviser for the debtor shall retain the form 8, signed by the money adviser and the debtor in accordance with sections 3(2) and 5(4) respectively of the Act, for a period of 5 years or the period of the programme (whichever is the longer).

Grounds for variation

38.—(1) An application for variation of a debt payment programme may be made—

- (a) on agreement between a debtor and each creditor participating in the programme;
- (b) on agreement between a debtor and a creditor that a liability of the debtor to—
 - (i) repay a sum due, shall be discharged; or
 - (ii) pay interest on a sum, shall be waived;
- (c) on a material change in the circumstances of a debtor;
- (d) where a debt due at the date of approval of that programme was omitted from the programme due to a mistake, oversight, or other reasonable cause;
- (e) where a future or contingent debt, known but not quantifiable at the date of approval of the programme, is quantified and due for payment; and
- (f) where a debtor requires credit to meet an essential requirement.

(2) An application for variation shall not be made in respect of any other debt of a debtor.

Approval of a variation

39.—(1) The DAS administrator shall approve a variation proposed under regulation 38(1)(a) or (b).

(2) Subject to paragraph (3), the DAS administrator shall approve a variation proposed under regulation 38(1)(c) to (f) if the variation is fair and reasonable.

(3) The DAS administrator may apply to the sheriff for a determination of an application for variation under proposed regulation 38(1)(c) to (f), where the administrator considers that appropriate in all the circumstances.

(4) The DAS administrator, or sheriff as the case may be, in determining whether a variation is fair and reasonable—

(a) shall have regard to the—

(i) matters specified in regulation 26(2);

(ii) views of the debtor;

(iii) views of a creditor taking part in the programme and of any creditor making the application; and

(b) may have regard to any other factor the administrator or sheriff considers appropriate.

(5) Approval of a variation may be made subject to a condition under regulation 30.

Notification of approval or rejection of a variation

40.—(1) The DAS administrator shall send notice in writing to the money adviser for the debtor of the approval or rejection of an application for variation of a debt payment programme.

(2) Where an application for variation of a programme is approved, the DAS administrator shall intimate in writing to the money adviser any condition attached under regulation 30.

(3) Where an application for variation is rejected, the DAS administrator shall state in writing the reason, or reasons, for the rejection.

(4) A money adviser for a programme shall intimate in writing the reasons for, and effect of, the approval or rejection of the application for variation—

(a) to the debtor;

(b) to the payments distributor;

(c) in form 9 to a creditor—

(i) taking part in the programme; and

(ii) who has applied for the variation to be approved.

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(20), 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(21) 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.”.

PART 9

COMPLETION OF A DEBT PAYMENT PROGRAMME

Report of completion

47. On completion of a debt payment programme, a payments distributor shall send a report of completion in form 12 to the money adviser for the programme.

Notices by a money adviser: completion

48.—(1) A money adviser for a debt payment programme shall send notice of completion of the programme in form 13 to the DAS administrator where—

(a) a report of completion in form 12 is sent to the money adviser; or

(b) the creditors in the programme agree in writing to completion before the end of the period of the programme.

(2) A money adviser shall intimate any agreement under paragraph (1)(b) to the payments distributor.

Notification of completion

49.—(1) The DAS administrator, when a debt payment programme has been completed, shall on request by a money adviser, or the debtor give confirmation of the completion to the adviser or debtor (as the case may be) in form 14.

(2) The money adviser shall intimate in writing the completion, whether or not confirmed by the DAS administrator under paragraph (1)—

(a) to the debtor;

(b) to each creditor known to the adviser in form 15;

(c) where there is a payment mandate under regulation 33, to the employer.

(20) 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).

(21) 2002 asp 17.

PART 10

APPEALS

Appeals

50.—(1) A debtor may, on a point of law, appeal to the sheriff against 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 a point of law, appeal to the sheriff against a determination of the DAS administrator to—

- (a) dispense with the consent of the creditor;
- (b) approve a programme.

(3) 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 38(1)(d) or (e) may, on a point of law, appeal to the sheriff against a determination of the DAS administrator to—

- (a) attach a condition under regulation 30;
- (b) approve, or refuse to approve, a variation of a programme;
- (c) revoke a programme.

(4) A debtor may, with the leave of the sheriff, and on a point of law, appeal to the sheriff principal against a determination of the sheriff to refuse to approve a debt payment programme.

(5) A creditor named in an application for a debt payment programme may, with the leave of the sheriff, and on a point of law, appeal to the sheriff principal against a determination of the sheriff to approve a programme.

(6) An appeal shall be—

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

(7) The decision of the sheriff or sheriff principal, as the case may be, is final.

St Andrew's House, Edinburgh
1st November 2004

CATHY JAMIESON
A member of the Scottish Executive