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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 468**

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

**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.