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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 141**

**The Debt Arrangement Scheme (Scotland) Regulations 2011**

**PART 1**

**GENERAL**

**Citation and commencement**

1. These Regulations may be cited as the Debt Arrangement Scheme (Scotland) Regulations 2011 and come into force on 1st July 2011.

**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;

“the 1986 Act” means the Insolvency Act 1986;

“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(1)(b); or
- (c) a contingent liability that has not become purified.

“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;

“continuing money adviser” means a money adviser who charges a fee (see regulation 12(3));

“DAS Administrator” means—

- (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<sup>(1)</sup>;
- “DAS Register” means the Debt Arrangement Scheme Register maintained under regulation 18;
- “decree” and “document of debt” are to be construed in accordance with section 10(5) (attachment) of the Act;
- “joint debt payment programme” means a debt payment programme applied for by two debtors jointly in accordance with regulation 22;
- “money adviser” has the same meaning as in section 9(1) (interpretation of Part 1) of the Act;
- “payments distributor” means a person or body approved under section 2(5) of the Act for the purpose of performing the functions of a payments distributor under the Act;
- “protected trust deed” has the meaning given by section 73(1) of the 1985 Act;
- “sheriff” means the sheriff of the sheriff court district 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; and
- “trust deed” has the same meaning as in section 5(4A) of the 1985 Act<sup>(2)</sup>.

(2) A form referred to by number in these Regulations means the form so numbered in Schedule 1.

(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<sup>(3)</sup>, which has been recorded and is consequently capable of being reproduced.

### **Interpretation: debt**

- 3.—(1) In these Regulations, “debt” includes any sum due by a debtor—
- (a) constituted by—
    - (i) decree or document of debt;
    - (ii) judicial or contractual interest;
    - (iii) charges or penalties due under a contract on any default in respect, or breach of, that contract;
    - (iv) lease or tenancy agreement;
    - (v) enactment;
  - (b) 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;
  - (c) recoverable from the debtor as enforcement expenses.
- (2) In these Regulations, “debt” excludes any sum due by a debtor—
- (a) to the extent it is secured by a standard security, other than where that sum is included under paragraph (1)(b);
  - (b) as a liability for the purpose of section 17(2B) of the Legal Aid (Scotland) Act 1986<sup>(4)</sup>.

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(1) S.S.I. 2004/448.

(2) Subsection (4A) was inserted by the Bankruptcy (Scotland) Act 1993 (c.6), section 3(4) and amended by the Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), section 10(1).

(3) Section 15 of the Electronic Communications Act 2000 (c.7) contains a definition of “electronic communication”, as amended by the Communications Act 2003 (c.21) Schedule 15, paragraph 158.

(4) Subsection (2B) was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), Schedule 8, paragraph 36.

### **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) A fee for consideration of an application for approval or variation of a debt payment programme must be paid to the DAS Administrator.

(2) That fee may not be charged to the debtor and is to be charged to all creditors taking part in the debt payment programme.

(3) The fee payable is 2% of any sum due to be paid to a creditor in a distribution made by the payments distributor, and must be paid from the sum due to be paid to each creditor.

(4) The fee must be remitted to the DAS Administrator by the payments distributor for that programme.

### **Consequential amendments**

6. Schedule 2, which contains amendments consequential on these Regulations, has effect.