
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 141

The Debt Arrangement Scheme (Scotland) Regulations 2011

PART 2

MONEY ADVISERS

Debtor to have an approved money adviser

7.—(1) A debtor must take the advice of a money adviser in applying for a debt payment programme.

(2) The money adviser who advises a debtor must not be an associate of the debtor within the meaning of section 74 of the 1985 Act.

(3) The DAS Administrator must assist a debtor in finding a money adviser where a money adviser resigns or the adviser's approval is suspended or revoked.

Approved categories of money advisers

8. A person, other than a person specified in regulation 10, is an approved money adviser if the person—

- (a) is qualified to act as an insolvency practitioner in accordance with section 390 of the 1986 Act⁽¹⁾;
- (b) is an individual who works for such an insolvency practitioner and has been given authority by that practitioner to act on the practitioner's behalf as a money adviser for the purposes of the debt arrangement scheme;
- (c) works as a money adviser for organisations which have been awarded accreditation at Type 2 level or above against the Scottish National Standards for Information and Advice Provision; or
- (d) works as a money adviser for a citizens advice bureau which is a full member of the Scottish Association of Citizens Advice Bureaux – Citizens Advice Scotland;
- (e) works as a money adviser for a local authority; or
- (f) is approved by the DAS Administrator under regulation 9.

Approval of a money adviser

9.—(1) An application to the DAS Administrator for approval as a money adviser by a person other than those described in regulation 8(a) to (e), must—

(1) 1986 c.45. Section 390 was amended by the Adults with Incapacity (Scotland) Act 2000 (asp 4), section 88(2), Schedule 5, paragraph 18; the Insolvency Act 2000 (c.39), section 8, Schedule 4, Part 11, paragraph 16(2); the Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), article 2, Schedule 1, paragraph 18(3); the Mental Capacity Act 2005 (c.9), section 67(1), (2), Schedule 6, paragraph 31(3), Schedule 7; and the Tribunals, Courts and Enforcement Act 2007 (c.15), section 108(3), Schedule 20, paragraph 6.

- (a) be in writing on (or if sent electronically, incorporate an image of) the headed notepaper of any relevant organisation for which the applicant works, or, if none, state the applicant's name and business address;
- (b) include a statement of the suitability of the applicant to act as money adviser for the purposes of the debt arrangement scheme;
- (c) provide evidence of any relevant training; and
- (d) be accompanied by a valid criminal record certificate under Part 5 of the Police Act 1997(2) dated less than 12 months before the date of application.

(2) The DAS Administrator may approve an application under paragraph (1) by a person, other than a person listed in regulation 10, if satisfied that the applicant is a fit and proper person to be a money adviser.

(3) An applicant is to be a fit and proper person if, but not only if, the person has undergone training on the matters specified in Schedule 3.

Persons who are not and may not be approved

10. The persons who are not money advisers, and may not be approved as such, are—

- (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(3) by virtue of section 1 (registration under the Industrial and Provident Societies Act 1965) of the Credit Unions Act 1979(4);
- (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;
- (e) 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) to the 1986 Act(5) or under section 56A or as the case may be 56F or 56G of the 1985 Act(6);
- (f) 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(7); or
- (g) a person whose approval is revoked or suspended under regulation 11.

Revocation, or suspension, of approval of a money adviser

11.—(1) The DAS Administrator may revoke the approval of any money adviser where—

(2) 1997 c.50. Part 5 was amended by the Criminal Justice Act 2008 (c.4), section 50(3).
 (3) 1965 c.12. There are amendments to this Act which are not relevant to these Regulations.
 (4) 1979 c.34. Section 1 was amended by S.I. 1996/1189, 2001/2617 and 2538 and 2002/1501.
 (5) Section 4A was inserted by the Enterprise Act 2002 (c.40), Schedule 20, paragraph 1.
 (6) Sections 56A, 56F and 56G were inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 2.
 (7) 1986 c.46, as amended by the Insolvency Act 2000 (c.39), section 5 and Schedule 4, paragraph 2, and the Enterprise Act 2002 (c.40), section 204(3).

- (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.
- (2) The DAS Administrator must provide written notice to a debtor of the suspension or revocation of the approval of the money adviser to that debtor.

Functions and duty of a money adviser

- 12.**—(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 an application for approval, variation or revocation of a debt payment programme;
 - (d) prepare and submit on behalf of a debtor an application under these Regulations;
 - (e) provide, as required by the DAS Administrator, evidence of or information about the participation of a debtor in a debt payment programme (including the debtor’s consent to any application for approval, variation or revocation in relation to which the adviser provided money advice); and
 - (f) act as a lay representative in a court, where the adviser has accepted instructions by a debtor to act.
- (2) A money adviser must not charge a fee to a debtor for the adviser’s services, 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,
- and the debtor has agreed in writing to pay a fee.

- (3) Where a money adviser charges any fee to a debtor (“a continuing money adviser”) it is also a function of that adviser following the submission of an application under these Regulations—
- (a) to review a debt payment programme in every twelfth month of operation; and
 - (b) as soon as reasonably practicable to provide written notice to the DAS Administrator of—
 - (i) any appointment or resignation of the adviser;
 - (ii) on any resignation, why the money adviser ceased to act; and
 - (iii) any change of the debtor’s address.
- (4) Where there is no continuing money adviser for a debt payment programme under paragraph (3), the DAS Administrator—

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- (a) must in every twelfth month of the operation of the programme, invite the debtor to provide a statement of the debtor's current financial circumstances; and
 - (b) may, on receipt, notify the debtor that the debtor may wish to take the advice of a money adviser on a review of the programme.
- (5) A money adviser must have regard to guidance issued by the DAS Administrator when carrying out a function of an adviser.