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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 141**

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

**PART 6**

**DEBT PAYMENT PROGRAMMES**

**Methods of payment**

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

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

(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**

**32.**—(1) A payment instruction to an employer of a debtor in accordance with section 6(1) of the Act must be in form 3.

(2) On delivery of the instruction, the employer of a debtor must 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.

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

- (a) the debtor, where any other payment method approved under regulation 31 is substituted; or
- (b) notice from the DAS Administrator or the continuing money adviser under regulation 44 or 46(2).

(4) 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, and deduct that fee from the balance then due to the debtor.

(5) 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.

(6) 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.

(7) This regulation applies to any payment instruction, whether made in accordance with a condition under regulation 28 or otherwise.

### **Effect on a creditor**

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

(a) without prejudice to section 4(2) of the Act, approval has the effect of a recall at the time specified in regulation 26(2) of any arrestment of the debtor's income or property, and the DAS Administrator is to send notice of recall to each employer or party with possession of funds or property arrested as the case may be;

(b) no body or person may give credit to the debtor, other than—

(i) credit approved by a variation under regulation 38;

(ii) 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;

(iii) subject to paragraph (2), trade credit incurred by the debtor in the ordinary course of a business;

(iv) subject to paragraph (2), credit for an emergency repair; and

(v) subject to paragraph (2), credit for reasonable funeral expenses in respect of an immediate family member;

(c) a creditor must 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 must—

(i) on request by any continuing money adviser to the debtor or the DAS Administrator, provide a statement of all liabilities of the debtor; and

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

(2) The debtor must when applying for, or before obtaining, credit under paragraph (1)(b)(iii) to (v) give notice in writing 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 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) in paragraph (b), at the beginning, insert “subject to subsection (2A),”; and
- (ii) after paragraph (b), insert—
  - “(c) to commit a debtor to prison under section 4 of the Civil Imprisonment (Scotland) Act 1882(1) (except for the purposes of section 40A of the Child Support Act 1991(2)) in respect of,”; and
- (b) after subsection (2), insert—
  - “(2A) Despite subsection (2)(b), 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.”.
- (6) In this regulation, 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 to the Act;
  - (c) a vehicle required by the debtor for travelling to work, or other essential purpose.

#### **Diligence: further provision as regards effect of debt payment programme**

**34.**—(1) Where a debt payment programme is approved, it is not competent in respect of any debt—

- (a) to make, under section 97(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007, an order granting warrant for sale of attached land; or
- (b) to make, under section 136(2) of that Act, a satisfaction order.

(2) If an arrestment mentioned in section 73J(1) of the Debtors (Scotland) Act 1987 (automatic release of arrested funds) has been granted in respect of funds due to the debtor, it is not competent, where a debt payment programme is approved, to release funds under subsection (2) of that section; but if the debt payment programme is revoked the period between its being approved and being revoked is to be disregarded for the purposes of determining whether the period mentioned in subsection (3) of that section has expired.

#### **Effect on trust deeds which are not protected**

**35.** Where a debt payment programme is approved in respect of a debtor who has granted a trust deed which is not a protected trust deed, the effect on the trust deed is as if an award of sequestration of the debtor’s estate on a debtor application had been granted as at the date of approval of the programme (but in relation to the scheme under Part 1 of the Act and these Regulations).

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(1) 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.

(2) Section 40A of the Child Support Act 1991 (c.48) was inserted by the Child Support, Pensions and Social Security Act 2000 (c.19), section 17(2).