EXECUTIVE NOTE

THE DEBT ARRANGEMENT SCHEME (SCOTLAND) REGULATIONS

SSI 2011/141

The above instrument is made in exercise of the powers conferred by sections 2(3)(d), 4(5), 5(4), 6(1), 7 and 62(2) of the Debt Arrangement and Attachment (Scotland) Act 2002 ("the 2002 Act"). The instrument is subject to negative resolution procedure.

Policy Objectives

1. This instrument is one of two intended to replace the Debt Arrangement Scheme (Scotland) Regulations 2004 (SSI 2004/468) as amended. The changes are intended to improve access to the Debt Arrangement Scheme (DAS) and encourage greater participation in the Scheme by providing access to a wider range of debtors.

2. This instrument consolidates and updates the vast majority of the 2004 Regulations. Separate Debt Arrangement Scheme (Interest, Fees, Penalties and Other Charges) (Scotland) Regulations 2011 under affirmative resolution procedure were laid on 2 February 2011 and support these Regulations. They restate the moratorium on interest and charges on approval or variation of a debt payment programme introduced by the Debt Arrangement Scheme (Scotland) Amendment Regulations 2007 (SSI 2007/262).

3. Following the DAS amendment Regulations revoked in 2009 the Minister for Community Safety gave a commitment to discuss concerns with stakeholders and to consult formally on DAS. A full public consultation followed from 22 September to 14 December 2009 (see below) and the Accountant in Bankruptcy conducted a series of focus groups with stakeholders throughout 2010. These Regulations accordingly make different changes to the DAS Scheme from the 2009 changes.

Background and purpose of the Debt Arrangement Scheme

4. The purpose of the Debt Arrangement Scheme (DAS) is to provide a facility for the orderly repayment principally of multiple debts. It complements the time to pay arrangements for single debts created by the Debtors (Scotland) Act 1987.

5. The policy objectives of the DAS are to:-

- enable people to resolve serious debt problems in a dignified way;
- reduce the need for creditors to take legal action to recover their debts;
- extend the benefit of money advice to those people who have a particular need for it;
- improve the quality of money advice, through training and accrediting money advisers; and
- minimise the impact of bad debt on both debtors and creditors.

6. DAS allows people (debtors) who are unable to pay their debts as they fall due, but who have a reasonable level of surplus income after meeting their basic needs (food, accommodation, utilities, council tax etc.), to pay those debts over a longer period.

7. Debtors can apply for approval of a DAS debt payment programme (DPP). A programme will be approved on behalf of the Scottish Ministers by the DAS Administrator, whose functions are carried out by the Accountant in Bankruptcy (AiB) by order. Approval is subject to all the creditors agreeing or where the DAS Administrator considers that the programme is otherwise fair and reasonable. The creditors are unable to petition to sequestrate the debtor or use diligence (seize and sell assets) against them once a programme is approved and this immunity remains throughout the course of the programme.

8. If the programme is approved the debtor no longer needs to make individual payments to each creditor. Instead, a single payment is made to an approved payments distributor who divides that payment between the debtor's creditors on a pro-rata basis. The costs of this are met by charging the creditors a capped administration fee deducted from that payment. The creditors benefit from reduced administrative, legal and recovery costs and increased certainty of payment. The recording of the programme and some of the administration costs are covered by the public purse.

9. DAS is a powerful tool capable of helping many people. It helps people to manage their way out of serious debt problems, giving them the potential to start over when their debts are dealt with. The debtor in a DPP is protected from the risk of losing their home provided that they continue to pay their mortgage payments, in contrast to bankruptcy or a trust deed where ownership of all land and buildings passes to the trustee for the benefit of creditors.

10. DAS is one of a range of debt tools, both formal and informal. However, not every person with debt problems either needs to use DAS or is suitable for it. For that reason anyone considering DAS must first be given advice from an approved money adviser. Thereafter, debtors can choose the best way forward in the light of that advice.

11. The adviser will look at a person's whole circumstances and may, for example, suggest ways to help them to maximise their income. In some cases the person may be able to agree an informal payment arrangement. In others, it will be clear that the debt problem is so severe that the person should either apply to become bankrupt or to grant a trust deed for their creditors. In those cases where DAS is suitable, the adviser can assist the debtor to apply for approval of a DPP.

Need for reform

12. Take up of the DAS by both money advisers and debtors has been lower than anticipated and coverage across Scotland is not uniform, with some parts of the country seeing significantly greater use of DAS than other comparable areas. Changes in 2007 to freeze interest and charges and the recent economic decline has made DAS a more suitable debt management scheme for more debtors and numbers have increased as a result. However, the Scottish Government believes that more people in Scotland can be helped using DAS if it was more accessible.

13. In November 2008, AiB published a review of the Debt Arrangement Scheme. (See AiB website www.aib.gov.uk/guidance/publications/consultations/DASreview). The review found that –

- DAS is working for the people who have been able to access it.

- Access seems to be a major problem and needs to be resolved.
- DAS works for debtors who have available funds and it protects the family home at the same time provided payments continue to be made to secured creditors.
- Geographical variations show that the take up of DAS is inconsistent across Scotland and some areas show better take up than others.
- Creditor awareness and engagement in DAS is low.

14. Responding to the results of the 2008 review and contributions from stakeholders, the Scottish Government felt that the need for change was sufficiently clear. This led to the 2009 proposals and as noted, the proposed changes to DAS have now changed following public consultation (described below).

Outline of proposed changes to DAS

15. Subject to Parliamentary approval, the Debt Arrangement Scheme (Scotland) Regulations 2011 will increase access to allow more debtors to apply for a debt payment programme under DAS.

16. These Regulations provide for more categories of money adviser to be approved for the purposes of giving advice to debtors in respect of DAS; allow single debt DPPs as well as joint DPPs for couples who have shared liability to pay a debt and removes the burden of ongoing administration of approved DPPs from free-sector money advisers, thus freeing them to assist more debtors. These Regulations also allow debtors to apply for a payment holiday of 6 months if they are experiencing short-term income shock. DAS will be the only statutory debt management or relief mechanism in the UK which provides a payment holiday whilst giving protection from creditor action to recover debts.

17. To improve creditor awareness and engagement with DAS, the Regulations simplify the process, forms and notices to and from creditors and allow (but do not require) increased use of electronic transfer of information. These Regulations also propose a change to the way that Payments Distributor is appointed. Approved Payments Distributors will be appointed by an open and transparent tender exercise, to support delivery of a better service and reduce costs to creditors. The Regulations also amend the amounts the Payments Distributor can charge the creditors for processing the payments, from a maximum of 10% to a maximum of 8% of the sum due, introducing an application fee of 2% of the sum distributed to creditors to be paid to the DAS Administrator.

18. These Regulations remove obsolete provisions which are very rarely, if ever, used by debtors. This includes the ability for a debtor to pay a continuing liability, such as rent, gas or council tax, through a payments distributor. They also remove the ability for the debtor to agree with their creditor, prior to submitting their application for approval, that part of the debt they are due is waived. If a creditor was prepared to waive part of the debt due then this could still be facilitated through a variation of the DPP.

Specific Provisions

19. The following are the specific regulations that have changed to deliver the reforms identified by consultation and stakeholders' feedback.

20. Regulation 5 reforms the fees payable for DAS, introducing consideration of an application for a DPP which is 2% of any sum due to be paid to each creditor in a distribution. This fee will off-set the DAS Administrator costs of recording a DPP, the IT system, supervision, advertising and administration, which are currently paid from the public purse, and remove the search fee in the DAS Register currently charged.

21. A debtor still requires to seek the advice of a money adviser in applying for a DPP. Regulation 8 specifies approved categories of money adviser, for the purpose of DAS. It includes insolvency practitioners and any members of their staff who have been given authority by the insolvency practitioner to act on their behalf. It also includes money advisers who work for Citizens Advice Scotland, councils, or those who work for organisations which have been awarded accreditation against the Scottish National Standards for Information and Advice Provision at Type 2 level or above. Money advisers who are currently approved for the purposes of the DAS will continue to be able to provide advice (regulation 49(1)). In addition, regulation 9 maintains an approval route for someone who falls outwith these criteria. This will widen the range, and increase the numbers of, money advisers from whom debtors can seek assistance.

22. To encourage more private sector money advisers to provide DAS, regulation 12 introduces a continuing money adviser who provides ongoing administration, reviewing the DPP every 12 months and notifies changes to the DPP on any variation or revocation. The DAS Administrator will not carry out all administrative functions for these DPPs, although it will continue to record, approve or reject and supervise the DPP. This regulation also provides for the functions and duties of a money adviser and the continuing money adviser. This regulation also maintains the condition whereby a continuing money adviser (who charges a fee for their services) cannot do so unless they have informed the debtor of the availability of free money advice within a 10 kilometre area. The money adviser must provide details of the nearest available money adviser if there is no free adviser within a 10 kilometre area.

23. Regulation 12 also provides for the DAS Administrator to undertake the ongoing administration of DPPs from "free-sector" money advisers who do not charge, including to conduct a review of the DPP every 12 months. This is welcomed by the money advice sector as it frees their time to assist and give advice to more debtors in need.

24. Part 3 of the Regulations (regulations 13 to 17) provides for who is to act as payments distributor and the method of applying for approval as, a payments distributor. It clarifies that the DAS Administrator must tender for persons or bodies to be approved as payments distributors by fair, open and transparent procurement exercise. It also outlines the conditions where approval of a payments distributor can be revoked and provides the process whereby a payments distributor resigns. It sets out the functions and duty of a payments distributor, and fixes the distribution fee at a maximum of 8% of the sum due to be paid to a creditor in a distribution. Existing payments distributors will continue to provide their service for debtors in respect of existing programmes (regulation 49).

25. As under the 2004 Regulations, regulation 20 allows an application for a DPP to be made without the requirement for the debtor to sign the application form. Money advisers can (but are not required to) send the forms electronically to the DAS Administrator with the consent of the debtor providing the money adviser declares that the debtor has been given the appropriate advice and has consented to an electronic application. This supports the e-

Government initiative and enables electronic communication with all parties in the DPP including creditors, reducing costs and the impact on the environment. Regulation 12(1)(e) allows the DAS Administrator to require the money adviser to produce the debtors' consent.

26. Regulation 21 increases access to DAS by allowing debtors with a single debt and those who have granted a trust deed for the benefit of creditors which has failed to or not yet become protected to apply for a DPP. However, an application for a single-debt DPP is not permitted as inappropriate when the debtor is paying the debt under a time to pay direction, time to pay order or a time order.

27. Regulation 22 also increases access to DAS by creating a DPP for couples with debts for which they are jointly and severally liable. Other debts of both couples will be included in the joint DPP – and the consent of all creditors of both parties is required to be requested (subject to regulation 25, as with any other DPP). The regulation specifies the type of relationship which is recognised as being eligible for couples to apply. This change is welcomed by all stakeholders.

28. Regulation 30 clarifies that it is incompetent to petition for the sequestration of a debtor in the period before a debt payment programme application is approved.

29. Regulation 31 increases the options available for a debtor by allowing electronic banking as a method of payment under the programme.

30. Regulation 34 of the 2004 Regulations (continuing liabilities, i.e. a periodic payment, excluding arrears, like rent or council tax) has been removed because it is no longer to be possible to pay continuing liabilities through the payments distributor as part of the DPP. Continuing liabilities may however still be paid, and require to be paid under the standard conditions of a DPP in regulation 27.

31. Regulation 37 introduces a new reason for a variation to a programme. It will enable the debtor to apply to defer payments for a period of six months, where the debtor's disposable income has reduced by 50% or more. Disposable income is assessed in line with the same basis of calculating disposable income as required in submitting an application (though income can have increased, then reduced, meantime). The circumstances prescribed are: where the debtor is unemployed or has changed employment; a period of leave from employment for maternity, paternity, adoption or to care for a dependant; divorce, dissolution of civil partnership or separation or the death of a person with whom the debtor shared financial responsibilities. If the debtor can provide evidence to meet the circumstances the DAS Administrator can grant a variation where fair and reasonable, and the debtor's payments for 6 months to give the debtor a breathing space. This period will be added to the end of the programme once the payments are resumed.

32. Regulation 40 provides for automatic revocation of a programme if the person is granted sequestration or a trust deed for the benefit of creditors becomes a protected trust deed. In other circumstances money advisers and creditors may apply for revocation (regulation 41) and the grounds for revocation and the factors the DAS administrator must consider are detailed in regulations 42 and 43.

33. Regulation 46 provides for the notices required to be given when a programme is completed, whether by repayment in full or agreement amongst those with an interest.

34. Part 10 provides for the circumstances in which matters of law may be appealed to the sheriff or sheriff principal, as the case may be, and for the decision on appeal to be final (regulation 47).

35. Part 11 revokes the relevant provisions of Debt Arrangement Scheme (Scotland) Regulations 2004 as amended which are replaced by these Regulations (see Schedule 5), subject to transitional arrangements (regulations 49 to 51). DPPs already approved will be dealt with under the new arrangements in future (with certain exceptions).

Consultation

36. Following the developments noted at paragraph 13 and 14 above and the DAS amendment Regulations revoked in 2009 (SSIs 2009/234 and 2009/258), the Minister for Community Safety gave a commitment to discuss concerns with stakeholders and to formally consult on DAS. The Accountant in Bankruptcy on behalf of the Scottish Government carried out a full public consultation on what changes should be introduced from 22 September to 14 December 2009. A copy of the report of the responses to the consultation was published on the Accountant in Bankruptcy website in April 2010. This is available at:-

http://www.aib.gov.uk/sites/default/files/publications/Resource/Doc/4/0000977.pdf

A full list of the parties consulted is attached to the consultation report.

37. This led to the development of the consolidation and the new proposals in the proposed changes to the DAS Scheme, including those in these Regulations. In addition, there has been a series of focus groups representing stakeholders throughout 2010. This extensive engagement included representatives from the money advice sector, including Money Advice Scotland, Citizens Advice Scotland, insolvency practitioners, creditor representatives and other interested parties, such as The British Bankers Association and local government. This also included meetings, seminars, surveys and conferences. Their feedback has been used to develop the proposed changes to the scheme in line with the views expressed by the majority of stakeholders.

Impact Assessments

38. An equality impact assessment has been completed on the detailed changes to the DAS Scheme, including those in the instrument. As DAS is currently available and the proposed changes increase access to debtors, no equality impact issues arise in respect of these legislative changes. They have been welcomed by some ethnic minority groups, who should now be able to give advice and access to a debt management solution to their communities.

Financial Effects

39. A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached.

The Accountant in Bankruptcy, on behalf of the Scottish Government
16 February 2011

Business and Regulatory Impact Assessment

Title of Proposal

The Debt Arrangement Scheme (Scotland) Regulations 2011

Objectives

1. The Debt Arrangement Scheme (Scotland) Regulations 2011 will replace the Debt Arrangement Scheme (Scotland) Regulations 2004. These Regulations will consolidate changes made by subsequent amendment Regulations and make key changes to the Debt Arrangement Scheme (DAS). The changes are intended to improve access to DAS, encourage greater participation in the Scheme and provide access to a wider range of debtors.

2. The key changes to the DAS Regulations will:

- Widen the Money Advice Gateway, allowing more individuals to be approved as DAS advisers;
- Allow the DAS Administrator to conduct the post-approval administration in cases proposed by free-sector money advisers. As a result of this, the administrative burden, currently imposed on free sector advisers will be removed;
- Introduce joint Debt Payment Programmes (DPP) for couples struggling with shared debts;
- Introduce a DPP for single debt cases;
- Introduce a payment holiday of six months for debtors experiencing a short term income shock;
- Review the payment distribution mechanism, through a fair and open tender exercise;
- Allow the DAS Administrator to recover the costs of the DPP application process;
- Modernise the DAS IT system and forms etc

Background

3. In 2004 it was reported that the number of people struggling with personal debt in Scotland was increasing to record levels. In response to this the Scottish Government, (then the Scottish Executive), resolved to take action to help Scots to deal with their increasing levels of debt. The Scottish Government introduced DAS on 30 November 2004, appointing the Accountant in Bankruptcy (AiB) as the DAS Administrator. DAS is a debt management tool which allows debtors who are able, to repay multiple debts in full over a reasonable period of time without the threat of legal action or diligence from their creditors. This means that as long as the debtor maintains payments under the Scheme, their home and other assets are protected from action by unsecured creditors.

4. DAS is usually free to debtors. However, some money advisers charge for their services. The cost of the payment distribution process is borne by the creditors with the costs associated with role of the DAS Administrator being covered by the public purse.

5. As part of the introduction of DAS, a promise was made to review the Scheme after the first year of operation to assess whether it was meeting its policy intention. The review found that the take up of DAS was not as high as expected and changes were recommended to improve access to the Scheme. The original expectation for DAS take up was 1,500-2,000

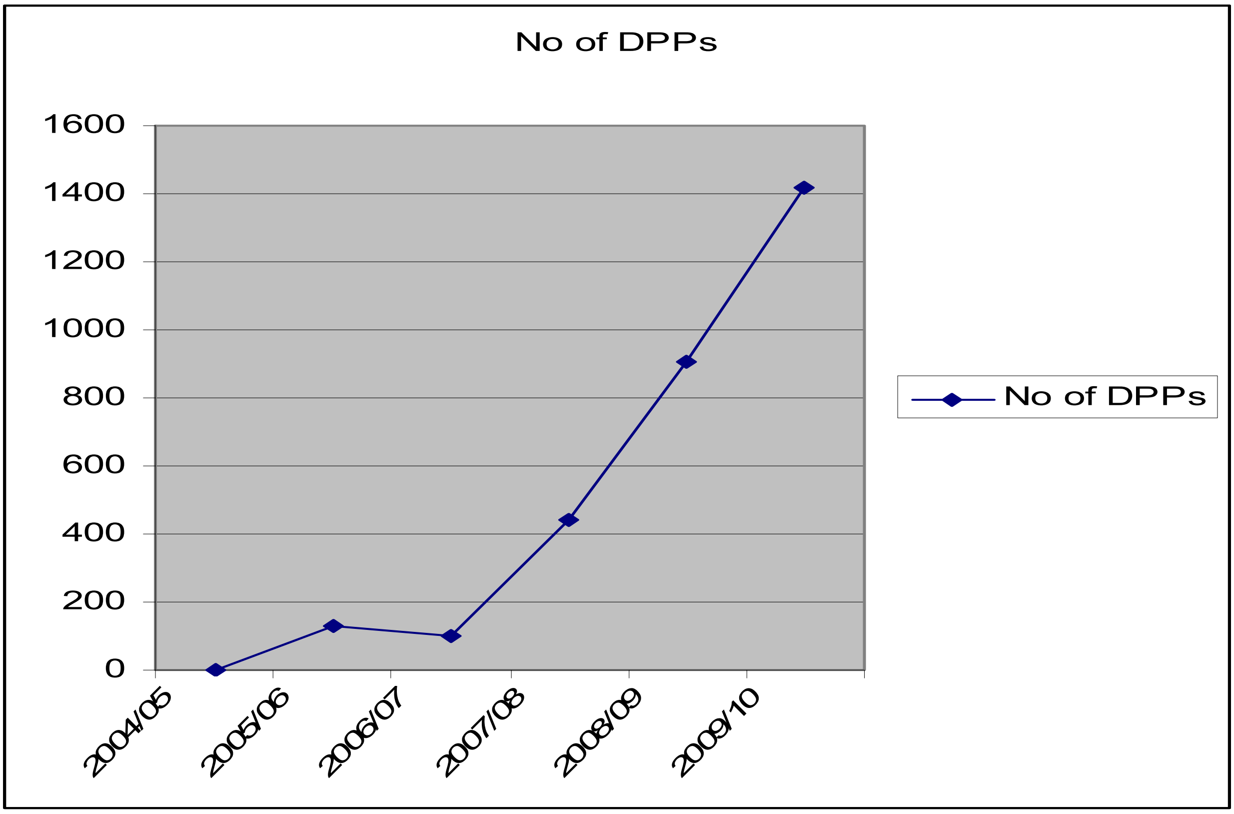
cases by March 2006. Table 1 clearly illustrates that results fall far short of these expectations.

Table 1 - Debt payment programmes by financial year

Year	**2004/05**	**2005/06**	**2006/07**
No of DPPs	1	128	99

6. In January 2007 AiB assumed responsibility for the development of DAS policy. Changes to DAS, included in the Bankruptcy and Diligence etc. (Scotland) Act 2007 and introduced in June 2007, froze interest and charges on debts included in a DPP on the date of approval. Statistics show that the take up of DAS increased as a result of these changes. There were nearly five times as many DPPs approved in the year following the changes compared to the year immediately preceding them. Chart 1 shows the increase in uptake of DAS since it's introduction.

Chart 1 – Uptake of Debt Payment Programmes by financial year



Rationale for Government intervention

7. A review of the Scheme was carried out during 2008, and the report is available on the website of the AiB at:
http://www.aib.gov.uk/sites/default/files/publications/Resource/Doc/4/0000977.pdf

8. The report identified findings about the likely impact on businesses and Government if the current rules were left unchanged. Some of the advantages were that there would be no impact on Government or advice sector staffing and creditors would continue to receive 90% of the money owed to them.

9. These were significantly outweighed by the disadvantages. Leaving the Scheme alone would not address the low uptake of DAS. This has implications for businesses as some debtors who would be considered suitable for DAS may find themselves opting for insolvency solutions to their debt problem, meaning that many creditors would see little, if any, return on the debts owed.

10. The report also found that the increase in the take up of DAS has been significant since 2007, but some stakeholders suggested that it does not reflect the number of debtors who could still benefit from the Scheme.

11. The review concluded that DAS worked well for those who were able to access the Scheme but also highlighted that access to the Scheme varied across the country. The review also found that participation in DAS by money advisers across the country also varied.

12. Findings from the 2009 consultation on DAS (see paragraph 14 below) showed that the current payment distribution process worked well, but that a tendering exercise to achieve a reduced fee and transparency as to costs would be useful. It was also found that competition in the distribution sector was essential to ensure the best returns for creditors.

Consultation

Within Government

13. Wide consultation and discussion with colleagues in the Scottish Government's Employability and Tackling Poverty Division, Her Majesty's Revenue and Customs (HMRC) and Local Authorities has taken place throughout the development of these Regulations. Comments have been sought on the Regulations themselves and the potential impact of the new Regulations on their relevant areas of business. Colleagues within the Accountant in Bankruptcy (AiB), in DAS Team, Change Management and Finance were also consulted on these Regulations.

Public Consultation

14. Responding to the results of the review and contributions from stakeholders, the Scottish Government felt that the need for change was sufficiently clear. Fergus Ewing MSP, the Minister for Community Safety, chaired three separate workshops with groups of stakeholder in July 2009.

15. The workshops brought together key representatives from across a wide range of stakeholder groups including individual Citizens Advice Bureaux money advisers, the head of Social Policy from Citizens Advice Scotland, the Chief Executives of Money Advice Scotland, Carrington Dean, the Consumer Credit Counselling Services and an insolvency academic from Aberdeen University. In addition to these, representatives of Royal Bank of Scotland, Lloyds TSB, HMRC and the Scottish Government Social and Financial Inclusion Division were also in attendance.

16. Following the workshops, it was decided that a public consultation exercise should be conducted at the end of 2009 with a report being provided early in 2010.

17. The consultation ran from 22 September 2009 to 14 December 2009 with the purpose of seeking views from the public and interested parties to help shape the future of DAS. A copy of the report of the responses to the consultation was published on the Accountant in Bankruptcy website in April 2010. The link is below: http://www.aib.gov.uk/sites/default/files/publications/Resource/Doc/4/0000977.pdf. The number of responses to the consultation by sector is shown in Table 2.

Table 2: Consultation responses by sector (A full list of respondents is contained in the ANNEX of this document)

Respondent's capacity*	***No. of Responses***
Advice Sector	26
Creditor	7
Individual	3
Insolvency Practitioner	3
Legal Body	0
Professional Body	3
Statutory Body	2
Other	7
TOTAL	***51 *****

* Where respondents have responded in more than one capacity, their primary capacity has been selected for the purpose of the above table.
** In all, 39 Organisations responded to the consultation. In some instances more than one representative from the same organisation responded.

18. Following the consultation exercise, AIB held three follow up workshops in February 2010, one in Edinburgh and two in Glasgow. Of the 51 respondents, 38 attended the workshops. Respondents were asked to provide more in depth views on their answers to the consultation questionnaire. Delegates were also asked if there was any areas they felt had not been covered and invited feedback on the Scheme in its entirety.

Business Consultation

19. As previously mentioned, AIB consulted directly with key representatives from a wide range of stakeholder groups including Citizens Advice Bureaux money advisers, the head of Social Policy from Citizens Advice Scotland, the Chief Executives of Money Advice Scotland, Carrington Dean, the Consumer Credit Counselling Services and an insolvency academic from Aberdeen University. In addition to these, representatives of Royal Bank of Scotland, Lloyds TSB, HMRC and the Scottish Government Social and Financial Inclusion Division were also consulted with. Details of these discussions can be found in the Scottish Firms Impact Test section.

Sectors and groups affected

20. The new Regulations will have an impact on debtors, the free money advice sector, private sector money advisers, insolvency practitioners, creditors and payment distributors. In creating the new legislation, the interests of each party have been considered in order to minimise any known negative impact or unintended consequences of the changes on any single group and to maximise the benefits. The impact on each group is detailed below.

Debtors

21. The key group who will benefit from the new Regulations will be the debtors themselves. The Regulations expand the advice gateway for money advisers within the Citizens Advice Bureau, Local Authorities, Insolvency Practitioners and any other organisation with the recognised standard to be able to offer DAS. By expanding the number of advisers who are able to offer this Scheme, this will resolve the disparity in the availability of DAS across Scotland. The Scheme has also been expanded to allow couples with joint debts to access DAS. In addition, the new Regulations address the needs of some debtors with a debt profile who would previously have excluded them from accessing the Scheme, for example, a debtor with a single debt.

Free sector money advisers

22. There will be a positive impact on free sector money advisers with the DAS Administrator conducting all the ongoing administration once a DPP application has been completed. This will significantly free up money advisers' time which would have previously been spent on time consuming paperwork allowing them to continue to provide quality money advice to debtors.

23. Existing approved money advisers will continue to be able to offer DAS to their clients. In addition to this anyone working in money advice within a local authority or Citizens Advice Bureau will automatically be approved to offer DAS, relieving the burden on existing approved advisers and significantly expanding the free DAS advice network. In addition, an adviser who is not a member of an organisation can still apply for approval to the DAS Administrator. This will widen the number of advisers a debtor can seek assistance from, to apply for DAS.

Insolvency practitioners and private sector money advisers

24. A qualified insolvency practitioner or any adviser for an organisation which has been awarded accreditation at Type 2 level or above against the Scottish National Standards for Information and Advice Provision will be approved to offer DAS. In addition, an adviser who is not a member of an organisation can still apply for approval to the DAS Administrator. This will have a significant impact on these sectors as they can now add DAS to their range of debt solutions without the requirement for further specialist training.

Creditors

25. The impact on creditors will be significant and positive. The modernisation of the DAS computer system will encourage creditor engagement with the DAS process. As part of the improvements, the DAS system will provide a central point of contact where the creditors will be able to view the progress of the DPP. In order to ensure best value payment distributers will be appointed through an open and fair tender process. It is envisaged that by widening access to the DAS there will be an increase in DPPs resulting in more creditors receive what they are owed.

Payments Distributors

26. There will be a impact on payment distributors which will significantly affect existing payment distributors and increase competition for potentially new payment distributors to provide distribution for DAS.

27. At present, a company wishing to be a payment distributor for the purposes of DAS must apply to the DAS Administrator. The DAS Administrator is then bound to approve the payments distributor, if that distributor meets certain suitability criteria laid out in the Regulations.

28. Under the new Scheme, AiB will also approve payments distributors under an open and transparent tender exercise. Distributors will also benefit from a formalised relationship with AiB which will increase clarity and simplify communication. In order to minimise the impact on existing cases, transitional arrangements have been made to allow existing distributors to keep the work already in hand, whilst inviting tender thought the procurement exercise for future service.

Accountant in Bankruptcy

29. The extension of the role of the DAS Administrator will require AiB to reallocate staff to the DAS team to carry out these duties. The DAS Administrator will introduce a fee for the consideration of a DPP application which is 2% of any sum due to be paid to a creditor in a distribution. This fee will off-set the DAS Administrator costs of recording a DPP, the IT system, supervision, advertising and administration, which are currently paid from the public purse, and the removal of the current fee for searching the DAS Register.

30. Extensive efforts have been made during the consultation period to take comments from stakeholders on board in order to ensure no unnecessary additional burdens are imposed.

Benefits

31. **Wealthier & Fairer -** The key benefit to the new legislation is that it will allow more money advisers working in both the free and private sectors to offer DAS. This single change will improve the geographical coverage of money advisers throughout Scotland, meaning that those debtors who are currently precluded from applying for the Scheme due to their geographical location should be able to access DAS. Therefore, with the introduction of the Regulations, more debtors in Scotland can seek a viable debt management option that offers protection from diligence.

32. The new Regulations also introduce two new types of DPPs which will address the needs of debtors with a single debt and couples with joint debts. These changes will allow debtors who previously could only access a voluntary or temporary debt repayment option to access DAS and the protection it offers. Stakeholders have welcomed these as some of the most positive and far reaching changes to the Scheme, as they introduce the only formal debt management option for these types of debtor.

33. The new Regulations will benefit individual creditors and the broader Scottish economy. As the number of DPPs increase, more creditors will receive what is due to them. In the larger economy, changes to the Scheme will aid economic recovery with obvious benefits for businesses in both the private and public sectors respectively.

34. **Smarter -** The new Regulations offer a modern and viable alternative to voluntary debt management plans. In addition, the ongoing administration of all DPPs will be conducted on a new DAS computer system. The system has been designed to allow the DAS Administrator to conduct the ongoing administration of a DPP on behalf of free sector advisers. Private sector money advisers will be able to conduct their own administration using the same computer system and processes. This new system will allow all user groups to view the progress of a DPP.

35. **Greener** - The computer system will be able to communicate with each user group electronically, reducing paper-based communication and the costs involved. Notices will be generated from the system regardless of the party conducting administration, providing more uniformity and transparency to the DAS process. The DAS Administrator will also supervise the process to ensure its efficiency.

Costs

Project costs

36. The main cost consequence of the introduction of the Regulations is that the DAS system, website and guidance needs to be updated or replaced. The existing DAS computer system is scheduled for redevelopment; therefore to mitigate costs the changes necessary to facilitate the new DAS process and the introduction of the electronic functionality have been built in to the scheduled redevelopment.

37. The DAS change project has identified redevelopment costs of £220,000 (including VAT) for the redevelopment of the DAS IT system, incorporating the increased role in administration duties for the DAS Administrator and providing a framework for the functions of the payments distributer. In addition, the DAS change project have indicated that there will be direct project costs of approximately £25,000.

38. The entire DAS system project should cost around **£250,000**.

39. The funding is already included in the AiB budget for 2010/11 and no further funds will be required for development. An additional budget has been allocated for staff training and publicity materials for DAS. The detail of the new DAS website will feature as a work stream within the project, but replacing the current website is likely to realise net annual savings in support costs of approximately £20,000.

Running costs

Table 3 shows the calculations for the annual ongoing costs of running the new system, assuming that the life of the IT system is 5 years.

Table 3: Breakdown of DAS running costs

	Year
System Depreciation (£250K over 5 years)	£50,000
Training costs for AiB staff and Money Advisers	£20,000
AiB Staff Costs (5 * A3)	£120,000
AiB Staff Costs (1* B1)	£35,000
DAS Publications	£45,000
Share of AiB Fixed Costs	£85,000
TOTAL Annual Costs	£355,000

40. These costs will be recovered by an application fee for DAS via a percentage deduction from DPP payment distribution.

41. In 2009/10 under the existing DAS arrangements there were 1,417 DPPs agreed, quarter one of 2010/11 uptake of DPP was 495. This level of uptake supports the assumed level of uptake of 2,000 used for calculation of income from DPP. Based on a sample of 1,000 DPPs already in existence we have calculated the average length of a DPP to be 8.7 years and the average value to be £27,000.

42. Using these calculations an application fee of 2% will cover the anticipated annual costs over a 5 year period.

Scottish Firms Impact Test

43. During the summer of 2010 AiB staff worked with stakeholders to recommend key changes to how DAS operates and create new draft Regulations. The key theme was to revise the DAS Regulations in order to extend access to a much wider group of people, particularly in light of the recent economic downturn.

44. 45 delegates attended a three workshops held in October 2010 with stakeholders from the money advice, payments distribution and creditor sectors. The workshops were intended to provide an overview of the proposed key changes to the Scheme and to assess initial feedback on the likely impact of the Regulations. Feedback from each of those sessions was generally supportive with some individuals providing written support for widening access and adding transparency to the payments distribution process. To ensure delegates were fully informed the notes from the three workshops were copied to all who participated. Delegates were also provided with details of a contact within Scottish Government who they could liaise with for further details or updates on progress.

45. In November 2010, 28 delegates from the same three groups attended further workshops to go through draft Regulations in order to examine proposals in detail. These workshops proved to be a very worthwhile exercise in picking out some of the finer points of

the proposed changes and exploring the impact of the new Regulations across a range of stakeholders.

46. AiB have also worked separately with senior delegates from Money Advice Scotland and Citizens Advice Scotland, representatives from the Money Advice Training, Resources, Information and Consultancy Services and Social Inclusion colleagues in smaller groups throughout the development of the new DAS Regulations.

47. AiB staff also invited representatives from all the current payments distributers to a meeting in order to discuss changes to this part of the DAS process.

48. It is hoped that these changes will help stimulate a further improved uptake of DAS and help provide recourse to effective debt management to a greater number of debtors.

49. Throughout the process, draft Regulations and new business forms have been circularised to stakeholders seeking their comments on the proposed secondary legislation and its regulatory impact. Comments received from stakeholders have resulted in numerous redrafts of the SSI in order to ensure it is fit for purpose.

Competition Assessment

50. There should be no competitive advantage to any particular individual or group as a consequence of the introduction of the Regulations.

51. Competition will be enhanced through the competitive tender for persons or bodies to be approved as payment distributors. Tendering for a provider to be appointed an approved payments distributor will support delivery of a better service and ensure best returns for creditors.

Test run of business forms

52. The number of forms for DAS have been significantly reduced in order to create a more streamlined process. The remaining forms will be mostly electronic and have been circulated amongst stakeholders for comment. It is intended that end users of the forms will be invited to test forms on the improved computer system during the IT development phase.

Legal Aid Impact Test

53. The introduction of these Regulations will have no impact on the legal aid fund.

Enforcement, sanctions and monitoring

54. The Scottish Government will review the Regulations following their first year of operation in order to assess how successful they have been in meeting their policy objective. AiB will also provide and encourage feedback with stakeholders.

55. As part of the Regulations, the AiB will provide a case review process which will allow the DAS Administrator to re-visit decisions on the request of any party in a DPP. This will provide early intervention in resolving issues with dissatisfied parties.

Implementation and delivery plan

56. AiB will prepare and publish guidance to support stakeholders when they are considering the DAS Scheme as a suitable form of debt management for their clients.

Post implementation review

57. To evaluate the impact of the new legislation the Scottish Government has given an undertaking that AiB will carry out a review after the first year of operation. This will involve the analysis of statistical data collated by AiB.

58. The Scottish Government will review the findings of this research and consider whether any changes are necessary to the legislation or associated guidance in light of its findings. Any changes identified will be brought to the attention of the Scottish Parliament and Parliamentary committees where necessary. A final report detailing the findings and conclusion of the review will be published.

Summary

59. The Scottish Government considers that the introduction of the Debt Arrangement Scheme (Scotland) Regulations 2011 commands the support of key stakeholders, and will improve access to the Debt Arrangement Scheme.

60. It is recognised that there will be costs incurred to implement the new DAS system. However, it is envisaged that by allowing the DAS Administrator to retain a part of the distribution fee, the overall cost of the new system will be cost neutral.

61. As part of the Economic Recovery Plan the Scottish Government is committed to widening access to debt solutions for the people of Scotland; thus contributing to a wealthier and fairer Scotland.

Declaration

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed……………………………………….

Date…………………………………………

Fergus Ewing
Minister for Community Safety

ANNEX – List of organisations which responded to the 2009 DAS Consultation

Aberdeenshire Council
Angus Council
Association of British Credit Unions Ltd.
British Bankers Association
Call credit Information Group
Campbell Dallas
Carrington Dean group Ltd.
CHAIR Advice Service
Citizens Advice Scotland
City of Edinburgh Council
Committee of Scottish Clearing Bankers
Consumer Credit Counselling Service
Dumfries & Galloway Citizens Advice
Dundee City Council
East Renfrewshire Council
Fife Money Advice Partnership
First Credit Ltd.
Glasgow City Council
Gregory Pennington Ltd.
Highland Council
HM Revenue & Customs
Law Society of Scotland
Lloyds Banking Group plc.
Maryhill CAB
Money Advice Scotland
Money Advice Trust
Moray Council Trading Standards
North Ayrshire Council
North Lanarkshire Council
PUFF (UK) LLP
R3 Scottish Technical Committee
Renfrewshire Council
Royal Bank of Scotland
Scottish Association of law Centres
Scottish Youth Parliament
South Ayrshire Council
South Lanarkshire Council
West Dunbartonshire Council
West of Scotland Approved Money Adviser Information Exchange