
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 141

The Debt Arrangement Scheme (Scotland) Regulations 2011

PART 6

DEBT PAYMENT PROGRAMMES

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.

(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).