

Draft Regulations laid before the Scottish Parliament under section 62(4) of the Debt Arrangement and Attachment (Scotland) Act 2002, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2004 No.

DEBT

DILIGENCE

The Debt Arrangement Scheme (Scotland) Regulations 2004

Made - - - - 2004
Coming into force - - 2004

The Scottish Ministers, in exercise of the powers conferred by sections 2(3) and (4), 4(5), 5(4), 6(1), 7 and 62(2) of the Debt Arrangement and Attachment (Scotland) Act 2002⁽¹⁾ and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with section 62(4) of that Act, been laid before and approved by resolution of the Scottish Parliament:

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Debt Arrangement Scheme (Scotland) Regulations 2004, and shall come into force on the fourteenth day after the day on which they are made.

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⁽²⁾;
- “the 1986 Act” means the Insolvency Act 1986⁽³⁾;

(1) 2002 asp 17. Section 9(1) contains a definition of “prescribed” relevant to the exercise of the statutory powers under which these Regulations are made.
(2) 1985 c. 66.
(3) 1986 c. 45.

“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;

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

“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;

“DAS Register” means the Debt Arrangement Scheme Register maintained under regulation 17;

“decree” and “document of debt” shall be construed in accordance with section 10(5) (attachment) of the Act;

“MATRICS” means Money Advice Training, Resources, Information and Consultancy Services, administered jointly by Citizens Advice Scotland of 1st Floor, Spectrum House, 2 Powderhall Road, Edinburgh EH7 4GB, and Money Advice Scotland of Suite 306, Pentagon Centre, 36 Washington Street, Glasgow, G3 8AZ;

“money adviser” has the same meaning as in section 9(1) (interpretation of part) of the Act;

“payments distributor” means a person or body approved by the Scottish Ministers for the purpose of performing the functions of a payments distributor under the Act;

“protected trust deed” shall be construed in accordance with paragraph 8 of Schedule 5 (voluntary trust deeds for creditors) to the 1985 Act;

“sheriff” and “sheriff principal” mean respectively the sheriff of the sheriff court district, and the sheriff principal of the sheriffdom, 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(4); and

“trust deed” has the same meaning as in section 5(4A) of the 1985 Act(5).

(4) 1970 c. 35. Section 9 has not been relevantly amended.

(5) 1985 c. 66. Section 5 was repealed in part by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40) (“the 1995 Act”), Schedule 5, and amended by the Bankruptcy (Scotland) Act 1993 (c. 6), section 3, the Drug Trafficking

(2) A form referred to by number in these Regulations means the form so numbered in Schedule 1, or a form of substantially the same effect with such variation as the circumstances may require.

(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(6), which has been recorded and is consequently capable of being reproduced.

Interpretation: debt

3. In these Regulations, “Debt”–

(a) includes any sum due by a debtor–

(i) constituted by–

(aa) decree or document of debt;

(bb) judicial or contractual interest;

(cc) charges or penalties due under a contract on any default in respect, or breach of, that contract;

(dd) lease or tenancy agreement;

(ee) enactment;

(ii) 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;

(iii) recoverable from the debtor as enforcement expenses; and

(b) excludes any sum due by a debtor–

(i) to the extent it is secured by a standard security, other than where that sum is included under paragraph (a)(ii);

(ii) as a liability for the purpose of section 17(2B) of the Legal Aid (Scotland) Act 1986(7).

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) Subject to paragraph (2), the fee payable to the DAS administrator in respect of the matter specified in column 1 of Schedule 2 shall be the fee specified in relation to that matter in column 2 of that Schedule.

(2) No fee shall be paid by a money adviser for an inspection of the DAS Register under regulation 19(1).

Consequential amendments

6. Schedule 3, which contains amendments consequential upon the provisions of these Regulations, shall have effect.

Act 1994 (c. 37), Schedule 1, paragraph 10, the Criminal Justice (Scotland) Act 1995 (c. 20), Schedule 6, paragraph 185, and the 1995 Act, Schedule 4, paragraph 58.

(6) 2000 c. 7. Section 15 of the Electronic Communications Act 2000 (c. 7) contains a definition of “electronic communication”.

(7) 1986 c. 47. Section 2B was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 36.

PART 2

MONEY ADVISERS

Debtor to have a money adviser

7.—(1) A debtor shall have a money adviser during the period of operation of a debt payment programme.

(2) A debtor shall forthwith give written notice to the DAS administrator that a money adviser has ceased to act for the debtor.

(3) Where notice is given under paragraph (2), a debtor shall state the reason why the money adviser has ceased to act.

(4) A money adviser shall assist the debtor to appoint a replacement adviser where that first adviser has ceased to act by reason of the resignation, or revocation or suspension of approval, of that first adviser.

Approval of a money adviser

8.—(1) An application to the DAS administrator for approval as a money adviser shall be in form 1.

(2) The DAS administrator shall approve an application under paragraph (1) if satisfied that the applicant is a fit and proper person to be a money adviser.

(3) A person, other than a person specified in regulation 10(2), shall be a fit and proper person to be a money adviser if, but not only if, the person has—

- (a) undergone training on the matters specified in Schedule 4; and
- (b) a certificate issued by MATRICS stating that the person
 - (i) has been assessed as possessing the skills and training needed to competently advise a debtor on taking part in a debt payment programme under the debt arrangement scheme; and
 - (ii) is recommended for approval by the DAS administrator as a money adviser.

(4) Approval as a money adviser shall be for a period of 2 years.

Revocation, or suspension, of approval of a money adviser

9.—(1) The DAS administrator shall revoke the approval of a money adviser where MATRICS certify that the adviser is no longer recommended for approval by the DAS administrator as a money adviser.

(2) The DAS administrator may revoke the approval of a money adviser where—

- (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.

(3) The DAS administrator shall suspend the approval of a money adviser for a period of 6 months, where MATRICS certify that the adviser is temporarily unable to carry out the functions of an adviser under the Act or these Regulations.

Persons who may not be approved

- 10.**—(1) A person specified in paragraph (2) shall not be a money adviser.
- (2) A specified person is—
- (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⁽⁸⁾ by virtue of section 1 (registration under the Industrial and Provident Societies Act 1965) of the Credit Unions Act 1979⁽⁹⁾;
 - (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 debtor whose estate has been sequestrated, and who has not been discharged under sections 54 (automatic discharge after 3 years) or 75 (amendments, repeals and transitional provisions) of the 1985 Act⁽¹⁰⁾;
 - (f) a bankrupt, who has not been discharged under sections 279 (duration) or 280 (discharge by order of the court) of the 1986 Act⁽¹¹⁾;
 - (g) 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) of the 1986 Act⁽¹²⁾;
 - (h) a person who has entered into a trust deed or protected trust deed for their creditors, and who has not been discharged from that deed; or
 - (i) 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⁽¹³⁾.

Functions and duty of a money adviser

- 11.**—(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, implementation or variation of a debt payment programme;
 - (d) prepare and submit on behalf of a debtor an application under these Regulations;

⁽⁸⁾ 1965 c. 12. There are amendments to this Act which are not relevant to these Regulations.

⁽⁹⁾ 1979 c. 34. Amended by S.I.1996/1189, 2001/2617 and 3538 and 2002/1501.

⁽¹⁰⁾ 1985 c. 66. Section 54 was repealed in part by the Education (Student Loans) Act 1990 (c. 6), Schedule 2, paragraph 6.

⁽¹¹⁾ 1986 c. 45. Section 279 was substituted by section 256 of the Enterprise Act 2002 (c. 40) (“the 2002 Act”).

⁽¹²⁾ 1986 c. 45. Schedule 4A was inserted by section 257 of the 2002 Act.

⁽¹³⁾ 1986 c. 46. Section 1 was amended by the Insolvency Act 2000 (c. 39) (“the 2000 Act”), section 5 and Schedule 4, Part I, paragraph 2, and by the 2002 Act, sections 204 and 279. Section 2 was inserted by the 2000 Act, section 6.

- (e) review a debt payment programme in every sixth month of operation;
 - (f) act as a lay representative in a court, where the adviser has accepted instructions by a debtor to act;
 - (g) seek revocation of a debt payment programme, where no payments have been made under the programme for 12 months; and
 - (h) provide, as required by the DAS administrator, evidence of or information about the participation of a debtor in a debt payment programme.
- (2) A money adviser shall not charge a fee to a debtor for money advice, 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, andthe debtor has agreed in writing to pay a fee.
- (3) A money adviser shall have regard to guidance issued by the DAS administrator when carrying out a function of an adviser.

Notices by a money adviser: general

- 12.** A money adviser to a debtor in a debt payment programme shall as soon as is reasonably practicable provide written notice to—
- (a) the DAS administrator of—
 - (i) the appointment or resignation, as the case may be, of the adviser; and
 - (ii) a change of payments distributor;
 - (b) the payments distributor for the programme of the matter specified in paragraph (a)(i); and
 - (c) each creditor taking part in the programme of the matters specified in paragraph (a).

PART 3

PAYMENTS DISTRIBUTORS

Approval of a payments distributor

- 13.—**(1) An application to the DAS administrator for approval as a payments distributor shall be in form 2.
- (2) The DAS administrator shall approve an application under paragraph (1) if satisfied that the applicant is a fit and proper person or body to be a payments distributor.
- (3) Without prejudice to the generality of paragraph (2), an applicant shall not be a fit and proper person if the person or body does not satisfy the criteria specified in Schedule 5.
- (4) The DAS administrator may make approval under paragraph (2) subject to any reasonable condition.

(5) Approval as a payments distributor shall be for a period of 3 years, and may be renewed by a further application for approval made no later than 6 months before the end of an initial or a renewed period, as the case may be.

Revocation of approval of a payments distributor

14.—(1) The DAS administrator may revoke the approval of a payments distributor where—

- (a) the distributor fails without good reason to comply with a condition attached to the approval;
- (b) the administrator is satisfied that the distributor is no longer a fit and proper person to be an distributor; or
- (c) in the opinion of the DAS administrator the distributor—
 - (i) has failed without good cause to carry out a function of a distributor under the Act or under these Regulations; and
 - (ii) continues to fail to carry out that function, after 2 weeks from the date of written notice to the distributor of that failure.

(2) On an approval being revoked under paragraph (1), the distributor whose approval is revoked shall transfer to a substitute payments distributor the debt payment programmes for which that first distributor is responsible, within a reasonable period specified by the DAS administrator.

Functions and duty of a payments distributor

15.—(1) It is a function of a payments distributor—

- (a) to assist a money adviser with, and advise on, payments distribution;
- (b) to distribute sums received by the distributor in accordance with the debt payment programme, or any agreement for voluntary payment of a continuing liability;
- (c) to provide payment and distribution reports to money advisers, and to creditors;
- (d) subject to paragraph (2), to provide a facility for voluntary payment by a debtor of a continuing liability; and
- (e) to provide information to the DAS administrator about the exercise of a function of a payments distributor.

(2) Where a payments distributor is not providing the facility specified in paragraph (1)(d), the distributor may elect in respect of each period of approval under regulation 13(5), or part of a period if an election is made other than at the start of the period, whether or not to provide that facility.

(3) A payments distributor shall have regard to guidance issued by the DAS administrator when carrying out a function of a distributor.

Charges by a payments distributor

16.—(1) In the exercise of a function under the Act or these Regulations, a payments distributor—

- (a) subject to regulation 34, shall make no charge of any kind to a debtor; and
- (b) subject to paragraph (2), may charge an administration fee to a creditor taking part in a debt payment programme.

(2) An administration fee shall be no more than 5% of the sum due to be paid to a creditor in a distribution by the distributor.

PART 4

DEBT ARRANGEMENT SCHEME REGISTER

Debt Arrangement Scheme Register

17.—(1) There shall be a register of debt payment programmes, to be known as the Debt Arrangement Scheme Register (“the DAS Register”).

(2) The DAS administrator shall maintain the DAS Register, which may be wholly or partially in electronic form.

Information on the DAS Register

18.—(1) Information in respect of the matters relating to debt payment programmes specified in paragraph (2) shall be held on the DAS Register.

(2) The specified information is—

- (a) an application for a programme that has yet to be approved;
- (b) an application by the DAS administrator to the sheriff for approval of a programme;
- (c) a notice that a programme is to be approved;
- (d) an approved programme;
- (e) an application for variation of a approved programme;
- (f) an application by the DAS administrator to the sheriff for variation of an approved programme;
- (g) a variation of an approved programme; and
- (h) an appeal to the sheriff or sheriff principal.

(3) The DAS Register shall include for each debtor who has applied for approval of a debt payment programme, or who is taking part in a programme, a record of—

- (a) the full name, including any former name;
- (b) the age;
- (c) the home address or addresses, and any business address; and
- (d) the business address of the money adviser (or the money advice body for that adviser), of the debtor.

Access to, and use of, information on the DAS Register

19.—(1) A money adviser may on behalf of a debtor inspect an entry in the DAS Register relating to the debtor.

(2) An entry in the DAS Register may be inspected by or on behalf of—

- (a) a creditor, or prospective creditor, of a debtor;
- (b) a payments distributor; and
- (c) any other person, on reasonable cause being shown to the DAS administrator.

PART 5

APPROVAL OF DEBT PAYMENT PROGRAMMES

Application for approval

20.—(1) A debtor who is habitually resident in Scotland may apply to the DAS administrator for approval of a debt payment programme.

(2) An application under paragraph (1)—

- (a) shall be made by a money adviser on behalf of the debtor, and shall be in form 3;
- (b) may be made by electronic means, but if so the money adviser for the debtor shall retain the form 3, signed by the debtor and the money adviser in accordance with sections 2(3) and 3(2) respectively of the Act, for a period of 5 years or the period of the programme (whichever is the longer); and
- (c) shall be competent notwithstanding that the consent of the creditor under section 7(4) of the Act and regulation 22 is not incorporated in form 3.

Debtors who may apply for approval

21.—(1) Subject to paragraph (2), a debtor may apply for approval of a debt payment programme where the programme provides for the payment of two or more debts.

(2) An application for approval may not be made where—

- (a) subject to paragraph (3), payment of a debt of a debtor is being made under a conjoined arrestment order;
- (b) a debtor is a party to a trust deed;
- (c) a debtor's estate has been sequestrated, and the debtor has not been discharged under sections 54 (automatic discharge after 3 years) or 75 (amendments, repeals and transitional provisions) of the 1985 Act;
- (d) a debtor is a bankrupt, who has not been discharged under sections 279 (duration) or 280 (discharge by order of the court) of the 1986 Act; or
- (e) a debtor is 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) of the 1986 Act⁽¹⁴⁾.

(3) An application may be made where a creditor, including a creditor of a debt being paid under a conjoined arrestment order in respect of another debt not so paid, has attempted to enforce a debt due by the debtor by any lawful means.

Consent of every creditor

22.—(1) Subject to paragraph (3), each creditor of a debtor must consent to an application by the debtor for approval of a debt payment programme.

(2) A request to a creditor for consent shall be in form 4, and if posted shall be sent to the creditor by first class recorded delivery post.

(3) A creditor who is requested to consent to an application, and who does not respond to that request within 21 days after the date of intimation (which shall be the date of posting, if applicable) is deemed to consent.

(4) The DAS administrator may dispense with the consent of a creditor where—

⁽¹⁴⁾ 1986 c. 45. Schedule 4A was inserted by section 257 of the Enterprise Act 2002 (c. 40).

- (a) the amount due by a debtor to the creditor is 50% or less of the total debt included in a programme; and
- (b) the amount due to all creditors who refuse to consent does not exceed 60% of the total debt included in a programme.

(5) Where a creditor does not consent to an application under paragraph (1), and that consent is not deemed as given or dispensed with, the approval of a debt payment programme under regulations 25, 26 or 27 shall not be invalid by reason only of the lack of consent provided that the debtor did not know, and could not reasonably have known, the identity of the creditor.

Objection by a creditor

23.—(1) A creditor may object to an application by a debtor for approval of a debt payment programme where the creditor considers that the debtor—

- (a) should be sequestrated; or
- (b) is in possession of heritable property with substantial unsecured value.

(2) An objection under paragraph (1) must be made within 21 days after the date of intimation (which shall be the date of posting if applicable) of a request for consent under regulation 22.

Composition and waiver of interest

24.—(1) Where agreed by a debtor and a creditor, a debt payment programme may provide that a liability of the debtor to—

- (a) repay a sum due, or part thereof, shall be discharged;
- (b) pay interest on a sum due, or part thereof, shall be waived.

(2) An agreement under paragraph (1) may be made subject to a condition that—

- (a) the sum due after discharge or waiver is paid in full; and
- (b) payment is made over the agreed period, not being longer than the period of the programme.

Approval of agreed programmes

25.—(1) The DAS administrator shall approve a debt payment programme where each creditor has consented under regulation 22 to an application for approval.

(2) Approval under paragraph (1) may be made subject to a condition under regulation 30.

Approval by the DAS administrator

26.—(1) Subject to regulations 25 and 27, the DAS administrator shall approve a debt payment programme that is fair and reasonable.

(2) In determining whether a debt payment programme is fair and reasonable, the DAS administrator shall have regard to—

- (a) the total amount of debt;
- (b) the period over which a programme will operate;
- (c) the method, and frequency, of payments under a programme;
- (d) an earlier proposed programme that was not approved;
- (e) a matter specified in regulation 21(2) that would have prevented an application being made, where the matter no longer has that effect;

- (f) the involvement of the debtor in a—
 - (i) debt payment arrangement, including a debt payment programme under these Regulations;
 - (ii) time to pay direction under section 1 (time to pay directions) of the Debtors (Scotland) Act 1987, or time to pay order under section 5 (time to pay orders) of that Act⁽¹⁵⁾; or
 - (iii) time order under section 129 (time orders) of the Consumer Credit Act 1974⁽¹⁶⁾;
 - (g) the extent to which creditors have consented (deemed or otherwise) or objected to a programme;
 - (h) any comment made by the money adviser; and
 - (i) an asset of a debtor that could be realised to pay debts to be included in a programme.
- (3) In determining whether a debt payment programme is fair and reasonable, the DAS administrator may have regard to any other factor that the administrator considers appropriate.
- (4) Approval under paragraph (1) may be made subject to a condition under regulation 30.

Approval by the sheriff

- 27.—(1) The sheriff shall approve a debt payment programme on an application under paragraph (2), if the programme is fair and reasonable.
- (2) The DAS administrator shall apply to the sheriff for determination of an application for approval of a proposed programme where—
- (a) a creditor does not consent, and the DAS administrator may not dispense with consent under regulation 22(4); or
 - (b) a creditor objects under regulation 23.
- (3) In determining whether a programme is fair and reasonable, the sheriff shall have regard to the matters specified in regulation 26(2), and may have regard to any other factor that the sheriff considers appropriate.
- (4) Approval under paragraph (1) may be made subject to a condition under regulation 30.

Notice of intention to approve, and approval of, a programme

- 28.—(1) The DAS administrator shall on a determination that a debt payment programme is to be approved, enter a notice to that effect in the DAS Register.
- (2) A debt payment programme shall be approved from midnight of the second day after the date of the entry under paragraph (1) in the DAS Register.

Standard conditions

- 29.—(1) A debt payment programme approved under regulations 25, 26 or 27 shall be subject to the conditions specified in paragraph (2).

(15) 1987 c. 18. Section 1 was repealed in part by the Social Security Act 1998 (c. 14) (“the 1998 Act”), Schedule 8, and amended by the Child Support Act 1991 (c. 48), Schedule 5, paragraph 8, the Local Government Finance Act 1992 (c. 14) (“the 1992 Act”), Schedule 13, paragraph 53, the Local Government etc. (Scotland) Act 1994 (c. 39) (“the 1994 Act”), Schedule 13, paragraph 151, the 1998 Act, Schedule 7, paragraph 12, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) (“the 1999 Act”), Schedule 9, paragraph 1, and the Water Industry (Scotland) Act 2002 (asp 3) (“the 2002 Act”), Schedule 7, paragraph 17. Section 5 was repealed in part by the 1998 Act, Schedule 8, and the Abolition of Poidings and Warrant Sales Act 2001 (asp 1), schedule, Part I, and amended by the 1992 Act, Schedule 13, paragraph 53, the 1994 Act, Schedule 13, paragraph 151, the 1999 Act, Schedule 9, paragraph 1, and the 2002 Act, Schedule 7, paragraph 17.

(16) 1974 c. 39. Section 129 was amended by the Debtors (Scotland) Act 1987 (c. 18), Schedule 6, paragraph 17, and Schedule 7, paragraph 5.

- (2) The specified conditions are that a debtor shall—
- (a) make all payments under a programme as they fall due;
 - (b) pay a continuing liability when due for payment;
 - (c) except for a continuing liability, make no payment to a creditor taking part in a programme other than a payment under the programme;
 - (d) not apply for or obtain credit beyond that permitted by regulation 35(1)(b), or by a variation of a programme approved under regulation 39;
 - (e) notify the money adviser for a programme of a—
 - (i) change of address; and
 - (ii) material change of circumstances, within 7 days of becoming aware of the change; and
 - (f) within 10 days after receipt by the debtor of a written request from the money adviser for the programme, supply the adviser with such information or evidence as the adviser may request in respect of the income, assets or liabilities of the debtor.

Discretionary conditions

30.—(1) A debt payment programme on approval under regulations 25, 26 or 27, or approval of a variation under regulation 39, may be made subject to one or more of the conditions specified in paragraph (2).

- (2) A specified condition is that the debtor shall—
- (a) realise, and distribute amongst the creditors the value of, an asset of the debtor other than an asset excepted by paragraph (3);
 - (b) sign and deliver a payment instruction to an employer;
 - (c) seek agreement from a creditor to pay a continuing liability under regulation 34;
 - (d) complete, and submit when due, a tax or duty return or declaration;
 - (e) maintain an emergency fund in accordance with paragraph (4); or
 - (f) be bound by any other reasonable condition intended to secure completion of the programme.
- (3) An excepted asset is—
- (a) a dwellinghouse or mobile home occupied by a debtor as the debtor's home;
 - (b) an asset that is exempt from attachment under section 11 (articles exempt from attachment) of, or that is not a non-essential asset under schedule 2 (non essential assets) to, the Act.
- (4) In respect of an emergency fund, the debtor shall—
- (a) make payments at the rate specified by the DAS administrator, into an account designated by the administrator for the purpose of the fund; and
 - (b) make no payment from the fund other than a payment for—
 - (i) an emergency repair as specified in paragraph (5); or
 - (ii) an essential requirement of the debtor or an immediate family member who is maintained by the debtor.
- (5) 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 of the Act;

- (c) a vehicle required by the debtor for travelling to work, or other essential purpose.

Notification of approval or rejection

31.—(1) The DAS administrator shall send notice in writing to the money adviser for the debtor of the approval or rejection of the application for approval of a debt payment programme.

(2) Where an application for approval of a programme is rejected, the DAS administrator shall specify the reason for the rejection.

(3) Where an application for approval of a programme is approved—

- (a) the DAS administrator shall intimate in writing to the money adviser any condition attached under regulation 30; and
- (b) the approval shall have effect in accordance with regulation 28(2).

(4) The money adviser shall intimate—

- (a) the approval of an application—
 - (i) to the debtor;
 - (ii) in form 5, to each creditor known to the adviser;
 - (iii) the clerk of a court that has made—
 - (aa) a conjoined arrestment order; or
 - (bb) an order or direction specified in regulation 26(2)(f)(ii) and (iii);
 - (iv) where payments are to be made under an earnings arrestment, to the employer of the debtor; and
 - (v) the payments distributor; or
- (b) the rejection of an application—
 - (i) to the debtor;
 - (ii) to each creditor known to the adviser; and
 - (iii) the payments distributor.

PART 6

DEBT PAYMENT PROGRAMMES

Methods of payment

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

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

(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

33.—(1) A payment instruction to an employer of a debtor shall be in form 6.

(2) A debtor shall deliver an instruction to the employer, and provide the money adviser for the debt payment programme with a copy of the instruction.

(3) On delivery of an instruction, the employer of a debtor shall 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.

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

- (a) the debtor, where any other payment method approved under regulation 32 is substituted; or
- (b) notice from a money adviser under regulations 45(3) or 49(2).

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

(6) 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.

(7) 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.

(8) This regulation applies to any payment instruction, whether made in accordance with a condition under regulation 30 or otherwise.

Continuing liabilities

34.—(1) Where a debt payment programme is approved, a debtor and a creditor may agree that a payments distributor shall pay a continuing liability to the creditor on behalf of the debtor.

(2) Where a continuing liability is paid under paragraph (1), the debtor shall pay to the payments distributor—

- (a) the amount needed to pay the liability; and
- (b) if required by the creditor, the administration fee (if any) that is due to be paid in respect of the liability by the creditor to the payments distributor under regulation 16(1)(b),

by a method approved under regulation 32.

(3) Where there is agreement under paragraph (1), a payments distributor shall pay the sum received under paragraph (2)(a) to the creditor, and may retain any fee paid under paragraph (2)(b).

Effect on a creditor

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

- (a) the approval shall have the effect of a recall at the time specified in regulation 28(2) of any arrestment of the debtor's income or property, and the DAS administrator shall send notice of recall in form 7 to each employer or party with possession of funds or property arrested as the case may be;

- (b) no body or person shall give credit to the debtor, other than—
 - (i) a social fund award repayable under section 139 (awards of social fund officers) of the Social Security Contributions and Benefits Act 1992⁽¹⁸⁾;
 - (ii) credit approved by a variation under regulation 39;
 - (iii) 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;
 - (iv) subject to paragraph (2), trade credit incurred by the debtor in the ordinary course of a business;
 - (v) subject to paragraph (2), credit for emergency repairs as specified in regulation 30(5); and
 - (vi) subject to paragraph (2), credit for reasonable funeral expenses in respect of an immediate family member;
- (c) a creditor shall 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 shall—
 - (i) on request by a money adviser to the debtor, provide a statement of all liabilities of the debtor; and
 - (ii) notify a money adviser of any liability where the creditor has security against a co obligant of the debtor.

(2) The debtor shall when applying for, or before obtaining, credit under paragraph (1)(b)(iv) to (vi) give notice in form 5 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, or concurring in the presentation of, 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) after “(b)”, insert “other than under subsection (2A),”; and
 - (ii) after paragraph (b), insert—
 - “(c) to commit to prison under section 4 of the Civil Imprisonment (Scotland) Act 1882⁽¹⁹⁾, other than for the purposes of section 40 of the Child Support Act 1991⁽²⁰⁾, respect of,”; and
- (b) after subsection (2), insert—

⁽¹⁸⁾ 1992 c. 4.

⁽¹⁹⁾ 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.

⁽²⁰⁾ 1991 c. 48.

- “(2A) 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; and
 - (d) sell the effects of a debtor to satisfy a decree obtained in an action for sequestration for rent due by the debtor.”.

Effect on a debtor

36. Where a debt payment programme is approved a debtor shall not enter into a trust deed.

PART 7

VARIATION OF DEBT PAYMENT PROGRAMMES

Application for variation

37.—(1) An application to the DAS administrator for variation of a debt payment programme may only be made—

- (a) by a money adviser on behalf of a debtor; and
- (b) subject to paragraph (2), by a creditor.

(2) A creditor may not apply for a variation unless the creditor has first made a reasonable attempt to agree the variation with the money adviser for the debtor.

(3) Where a money adviser makes an application under paragraph (1), the adviser shall intimate the application to each creditor taking part in the programme.

(4) Where a creditor makes an application under paragraph (1), the creditor shall intimate the application to—

- (a) the money adviser for the programme;
- (b) the debtor; and
- (c) to each creditor taking part in the programme.

(5) An application under paragraph (1)—

- (a) shall be in form 8;
- (b) may be made by the debtor by electronic means, but if so the money adviser for the debtor shall retain the form 8, signed by the money adviser and the debtor in accordance with sections 3(2) and 5(4) respectively of the Act, for a period of 5 years or the period of the programme (whichever is the longer).

Grounds for variation

38.—(1) An application for variation of a debt payment programme may be made—

- (a) on agreement between a debtor and each creditor participating in the programme;
- (b) on agreement between a debtor and a creditor that a liability of the debtor to—

- (i) repay a sum due, shall be discharged; or
 - (ii) pay interest on a sum, shall be waived;
 - (c) on a material change in the circumstances of a debtor;
 - (d) where a debt due at the date of approval of that programme was omitted from the programme due to a mistake, oversight, or other reasonable cause;
 - (e) where a future or contingent debt, known but not quantifiable at the date of approval of the programme, is quantified and due for payment; and
 - (f) where a debtor requires credit to meet an essential requirement.
- (2) An application for variation shall not be made in respect of any other debt of a debtor.

Approval of a variation

39.—(1) The DAS administrator shall approve a variation proposed under regulation 38(1)(a) or (b).

(2) Subject to paragraph (3), the DAS administrator shall approve a variation proposed under regulation 38(1)(c) to (f) if the variation is fair and reasonable.

(3) The DAS administrator may apply to the sheriff for a determination of an application for variation under proposed regulation 38(1)(c) to (f), where the administrator considers that appropriate in all the circumstances.

(4) The DAS administrator, or sheriff as the case may be, in determining whether a variation is fair and reasonable—

- (a) shall have regard to the—
 - (i) matters specified in regulation 26(2);
 - (ii) views of the debtor;
 - (iii) views of a creditor taking part in the programme and of any creditor making the application; and
 - (b) may have regard to any other factor the administrator or sheriff considers appropriate.
- (5) Approval of a variation may be made subject to a condition under regulation 30.

Notification of approval or rejection of a variation

40.—(1) The DAS administrator shall send notice in writing to the money adviser for the debtor of the approval or rejection of an application for variation of a debt payment programme.

(2) Where an application for variation of a programme is approved, the DAS administrator shall intimate in writing to the money adviser any condition attached under regulation 30.

(3) Where an application for variation is rejected, the DAS administrator shall state in writing the reason, or reasons, for the rejection.

(4) A money adviser for a programme shall intimate in writing the reasons for, and effect of, the approval or rejection of the application for variation—

- (a) to the debtor;
- (b) to the payments distributor;
- (c) in form 9 to a creditor—
 - (i) taking part in the programme; and
 - (ii) who has applied for the variation to be approved.

PART 8

REVOCATION OF DEBT PAYMENT PROGRAMMES

Revocation on sequestration

41. Approval of a debt payment programme shall be revoked by the DAS administrator on an award of sequestration under a petition by a debtor for the sequestration of the debtor's estate.

Application for revocation

42.—(1) An application to the DAS administrator for revocation of the approval of a debt payment programme, shall only be made by—

- (a) a money adviser—
 - (i) on behalf of a debtor; or
 - (ii) in exercise of a function under these Regulations; or
- (b) a creditor taking part in the programme.

(2) An application under paragraph (1) shall be in form 10.

Grounds for revocation

43. Approval of a debt payment programme may be revoked by the DAS administrator on application under regulation 42 where a debtor—

- (a) without good cause, does not have a money adviser;
- (b) fails without reasonable cause to satisfy a condition under regulations 29 or 30;
- (c) makes a statement in an application under these Regulations which the debtor knows to be untrue; or
- (d) a payment to be paid under the programme becomes due, and there remains unpaid a sum, due in respect of previous payments so due, of not less than the aggregate of two such payments.

Determination of a revocation

44.—(1) The DAS administrator in determining whether to revoke an approval of a debt payment programme shall have regard to—

- (a) any statement made by, or on behalf of a debtor;
- (b) the nature of any failure, or untrue statement;
- (c) any factor that tends to indicate whether or not the programme will be successful; and

(2) The DAS administrator in determining whether to revoke an approval of a debt payment programme may have regard to any other factor that the administrator considers appropriate in all the circumstances.

Notification of revocation

45.—(1) The DAS administrator shall give written notice to the money adviser for a debt payment programme of a revocation of the programme.

(2) The DAS administrator shall specify the reason for the revocation.

(3) Subject to paragraph (4), the money adviser shall intimate in writing the revocation by the DAS administrator, and the reasons—

- (a) to the debtor;
 - (b) to each creditor known to the adviser in form 11;
 - (c) the payments distributor;
 - (d) where there is a payment instruction under regulation 33, to the employer.
- (4) Where there is no money adviser, the DAS administrator shall intimate the revocation to—
- (a) the persons specified in paragraph (3)(a) to (d); and
 - (b) in form 11, to each creditor taking part in the programme.

Apparent insolvency

- 46.** In section 7(1) (meaning of apparent insolvency) of the 1985 Act⁽²¹⁾, at the end of paragraph—
- (a) (c)(v), omit “or”; and
 - (b) (c)(vi), insert—
 - “; or
 - (vii) a debt payment programme under the Debt Arrangement and Attachment (Scotland) Act 2002⁽²²⁾ is revoked, where any debt being paid under the programme is constituted by a decree or document of debt as defined in section 10 (attachment) of that Act.”.

PART 9

COMPLETION OF A DEBT PAYMENT PROGRAMME

Report of completion

47. On completion of a debt payment programme, a payments distributor shall send a report of completion in form 12 to the money adviser for the programme.

Notices by a money adviser: completion

- 48.—**(1) A money adviser for a debt payment programme shall send notice of completion of the programme in form 13 to the DAS administrator where—
- (a) a report of completion in form 12 is sent to the money adviser; or
 - (b) the creditors in the programme agree in writing to completion before the end of the period of the programme.
- (2) A money adviser shall intimate any agreement under paragraph (1)(b) to the payments distributor.

(21) 1985 c. 66. Section 7 was repealed in part by the Drug Trafficking Act 1994 (c. 37) (“the 1994 Act”), Schedule 3, and the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40) (“the 1995 Act”), Schedule 5, and amended by the 1994 Act, Schedule 1, paragraph 10(2), the Criminal Justice (Scotland) Act 1995 (c. 20), Schedule 6, paragraph 185(3), the 1995 Act, Schedule 4, paragraph 58(3), the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), schedule 3, paragraph 15(2), and the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraph 15(3).

(22) 2002 asp 17.

Notification of completion

49.—(1) The DAS administrator, when a debt payment programme has been completed, shall on request by a money adviser, or the debtor give confirmation of the completion to the adviser or debtor (as the case may be) in form 14.

(2) The money adviser shall intimate in writing the completion, whether or not confirmed by the DAS administrator under paragraph (1)—

- (a) to the debtor;
- (b) to each creditor known to the adviser in form 15;
- (c) where there is a payment mandate under regulation 33, to the employer.

PART 10

APPEALS

Appeals

50.—(1) A debtor may, on a point of law, appeal to the sheriff against a determination of the DAS administrator not to approve a debt payment programme.

(2) A creditor named in an application for a debt payment programme may, on a point of law, appeal to the sheriff against a determination of the DAS administrator to—

- (a) dispense with the consent of the creditor;
- (b) approve a programme.

(3) A debtor, a creditor participating in a debt payment programme, or a creditor who has applied for variation of a programme on the grounds in regulation 38(1)(d) or (e) may, on a point of law, appeal to the sheriff against a determination of the DAS administrator to—

- (a) attach a condition under regulation 30;
- (b) approve, or refuse to approve, a variation of a programme;
- (c) revoke a programme.

(4) A debtor may, with the leave of the sheriff, and on a point of law, appeal to the sheriff principal against a determination of the sheriff to refuse to approve a debt payment programme.

(5) A creditor named in an application for a debt payment programme may, with the leave of the sheriff, and on a point of law, appeal to the sheriff principal against a determination of the sheriff to approve a programme.

(6) An appeal shall be—

- (a) by summary application; and
- (b) lodged within 14 days after the date of intimation to the appellant of the determination appealed against.

(7) The decision of the sheriff or sheriff principal, as the case may be, is final.

St Andrew's House,
Edinburgh
2004

Authorised to sign by the Scottish Ministers

SCHEDULE 1

Regulation 2(2)

ARRANGEMENT OF FORMS

1. Application for approval as a money adviser
 2. Application for approval as a payments distributor
 3. Application for approval of a debt payment programme
 4. Notification to creditor of application for approval of a debt payment programme
 5. Notification of approval of a debt payment programme
 6. Payment instruction to employer
 7. Notice of recall of an arrestment
 8. Application for variation of a debt payment programme
 9. Notification to creditor of determination of variation
 10. Application for revocation of a debt payment programme
 11. Notification of revocation
 12. Report of completion by a payments distributor
 13. Notice of completion by money adviser
 14. Confirmation of completion by DAS administrator
 15. Notification to creditor of completion of a debt payment programme
- Signature
Explanatory Note

Regulation 8(1)

The Debt Arrangement Scheme (Scotland) Regulations 2004
FORM 1 **APPLICATION FOR APPROVAL AS MONEY ADVISER**

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Debt Arrangement Scheme (Scotland) Regulations 2004 No. 468

1	Date of Application (dd/mm/yyyy)	<table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>								
2	Details of Money Adviser									
	Surname	<table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>								
	First Name	<table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>								
	Other Names	<table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>								
3	Name of Organisation	<table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>								
	Business Address	<table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>								
	Postcode	<table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>								
	Business phone number	<table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>								
	E mail address	<table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>								
4	MATRICS Certificate Number	<table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>								
5.	Details of money adviser training (if no MATRICS certificate)	<table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>								

Regulation 13(1)

The Debt Arrangement Scheme (Scotland) Regulations 2004
FORM 2 APPLICATION FOR APPROVAL AS PAYMENTS DISTRIBUTOR

1 Date of Application (dd/mm/yyyy)

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2 Details of Payment Distributor

Name of Organisation									
Business Address									
Business phone number	<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 25px; height: 25px;"></td><td style="width: 25px; height: 25px;"></td><td style="width: 25px; height: 25px;"></td><td style="width: 25px; height: 25px;"></td><td style="width: 25px; height: 25px;"></td><td style="width: 25px; height: 25px;"></td><td style="width: 25px; height: 25px;"></td><td style="width: 25px; height: 25px;"></td></tr></table>								
E-mail address	<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 25px; height: 25px;"></td><td style="width: 25px; height: 25px;"></td><td style="width: 25px; height: 25px;"></td><td style="width: 25px; height: 25px;"></td><td style="width: 25px; height: 25px;"></td><td style="width: 25px; height: 25px;"></td><td style="width: 25px; height: 25px;"></td><td style="width: 25px; height: 25px;"></td></tr></table>								

6 Declaration

I certify that this organisation meets the requirements of Schedule 5 of the Debt Arrangement Scheme (Scotland) Regulations 2004 and attach the necessary supporting documentation

Signature

Name

Position held

Date

Regulation 20(2)

The Debt Arrangement Scheme (Scotland) Regulations 2004
FORM 3 APPLICATION FOR APPROVAL OF A DEBT PAYMENT PROGRAMME

SECTION 1

1 **Date of Application**
(dd/mm/yyyy)

2 **Money Adviser Case Number**

3 **Details of Applicant**

Gender Female Male

Surname

First Name

Other Names

4 **Date of Birth**

5 Home Address

--

Postcode

--

6 Business Address (if applicable)

--

Postcode

7 **Details of Money Adviser**

Surname

--

First Name

--

Other Names

--

DAS Approval Number

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

8 Name of Organisation

--

Business Address

--

Postcode

--

Business phone number

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

E mail address

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Questions 9 to 18 must be completed

- 9 Has the applicant 2 or more debts? Yes No
- 10 Is the applicant party to any trust deed? Yes No
- 11 Has the applicant's estate been sequestrated and the applicant not been discharged under Section 54 (automatic discharge after 3 years) or 75 (amendments, repeals and transitional provisions) of the 1985 Act? Yes No
- 12 Is payment of any of the applicant's debts being made under a pre-existing conjoined arrestment order? Yes No
- 13 Has a creditor attempted to enforce a debt due by the applicant that is not included in a pre-existing conjoined arrestment order? Yes No
- 14 Has the applicant agreed in writing that a debt not legally constituted is due for payment? Yes No

SECTION 2

15 Details of debts

Description of debt	Name and address of creditor (including postcode)	Amount owed	Period for which debt due	Percentage of total debt
1.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
2.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

3.
(Continue to list all applicable debts)

Total amount owed £

Payment offer £
(specify amount offered in respect of each creditor in the proposed programme)

Payment frequency
(select as appropriate)

Weekly

Fortnightly

Monthly

4 Weekly

Period in which debts will be paid under proposed programme

16 Nominated Payment Distributor Details

Name of Distributor
(Must be approved for the purpose of the Debt Arrangement Scheme)

17 Payment method (Select appropriate box with a X)

Direct debit

Standing order

Cheque

Postal order

Other (e.g. smart card etc.)

18 Has every creditor of the applicant consented to this application? Yes No

(If the answer to Q is Yes move to Q19, and if no to Q21)

19 Is the amount owed by the applicant to any one non-consenting creditor 50% or more than the total debt included in the programme? Yes No

20 Is the amount due to all creditors refusing to consent 60% of the total debt included in the programme? Yes No

21 Have objections been received from a creditor/creditors? Yes No

(If the answer is yes, then go to Q22, if no then to go to end of form)

22 Grounds of objection are

(a) The creditor considers that the applicant should be sequestrated Yes No

(b) The creditor considers that the applicant is in possession of heritable property with substantial unsecured value Yes No

SECTION 3

23 Are any earnings subject to an earnings arrestment? Yes No

24 Has any sum due to, or property held on behalf of, the applicant been arrested? Yes No

- 25 Is there any conjoined arrestment order? Yes No
- 26 Is there any other deduction from income order or agreement (e.g. a student loan deduction from earnings order)? Yes No

(If the answer to any of Q23 to 26 is yes, then provide full details)

SECTION 4

- 27 Use this section to provide any further information considered relevant to the application for approval.

Signature of applicant

- 28 I apply for approval of the debt payment programme set out in this application Signature

Declaration by Money Adviser

- 29 I confirm that I have given the applicant money advice in accordance with section 3 (1) of the Debt Arrangement and Attachment Act 2002 Signature

Regulation 22(2)

The Debt Arrangement Scheme (Scotland) Regulations 2004
FORM 4NOTIFICATION TO CREDITOR OF APPLICATION FOR APPROVAL OF A
DEBT PAYMENT PROGRAMME

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Debt Arrangement Scheme (Scotland) Regulations 2004 No. 468

1 Details of creditor

Name of company or firm	
(or, if appropriate) Surname	
First Name	
Other Names	

2 Address

Postcode	

3 Details of Applicant for approval of debt payment programme

Surname	
First Name	
Other Names	

4 Date of Birth

--	--	--	--	--	--	--	--

5 Home Address

Postcode	

6 Business Address (if applicable)

--

	Postcode	
7	Date of application for approval of the programme <i>(dd/mm/yyyy)</i>	
8	Details of Money Adviser for applicant	
	Surname	
	First Name	
	Other Names	
9	Money adviser case reference	
10	Name of Organisation	
	Business Address	
	Postcode	
	Business phone number	
	E mail address	

11 Debt due to creditor

Description of debt <i>(include creditor account or reference number)</i>	Amount owed	Interest, charges and expenses	Total amount due	Period for which debt due
--	-------------	--------------------------------	------------------	---------------------------

(Continue to list all debts due to the creditor, if more than one)

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Debt Arrangement Scheme (Scotland) Regulations 2004 No. 468

Payment offer £

(Specify amount offered in respect of each debt, if more than one)

Payment frequency
(select as appropriate)

Weekly

Fortnightly

Monthly

4 Weekly

Period in which debt(s) will be paid under proposed programme

12 Payment distributor details

Name of payments distributor

Declaration by Money Adviser

13 You are requested to consent to payment of the debt(s) due to you set out in section 10 as stated in that section

Signature, or name of person intimating this form

Date

IMPORTANT INFORMATION FOR CREDITORS

A fair and reasonable debt payment programme will be approved under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002, and the Debt Arrangement Scheme (Scotland) Regulations 2004. If approved, the debt payment programme will protect the applicant from enforcement action, or from sequestration, by you. You should seek legal advice before responding to this Notification.

You do not need to consent to the payment offer by the applicant. You are also entitled to object to the debt payment programme. The grounds of objection are that you consider that the applicant should be sequestrated, or is in possession of heritable property with a substantial unsecured value.

If you wish to refuse consent, or to object, then you must contact the money adviser stated in this Notification within 21 days of the date of this Notification. If you do not contact the money adviser then you will be deemed to consent to the proposed debt payment programme.

Regulations 31(4) and 35(2)

The Debt Arrangement Scheme (Scotland) Regulations 2004
FORM 5 NOTIFICATION OF APPROVAL OF A DEBT PAYMENT PROGRAMME

1 CREDITOR

Name of company or firm

(or, if appropriate)

Surname

First Name

Other Names

Address

Postcode

2 DEBTOR

Surname

First Name

Other Names

Date of Birth

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
----------------------	----------------------	----------------------	----------------------	----------------------	----------------------

Home Address

Postcode

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Debt Arrangement Scheme (Scotland) Regulations 2004 No. 468

5 DEBT

(Complete where, and as, appropriate)

Description of debt (include any creditor account or reference number)	Amount owed	Interest, charges and expenses	Total amount due
---	-------------	--------------------------------	------------------

(Continue to list all debts due to the creditor, if more than one)

Approved Payment £

(Specify amount approved in respect of each debt, if more than one)

Payment frequency
(select as appropriate)

- Weekly
- Fortnightly
- Monthly
- 4 Weekly

Period in which debt(s) will be paid under proposed programme

Discretionary conditions attached to the programme (if any)

6 PAYMENTS DISTRIBUTOR

Name of payments distributor

7 NOTIFICATION

You are notified that the debtor specified in this notice is taking part in a debt payment programme approved under the Debt Arrangement Scheme (Scotland) Regulations 2004

Signature, or name of person sending this notice

Date

IMPORTANT INFORMATION FOR CREDITORS

The debt arrangement scheme is constituted under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002. The Debt Arrangement Scheme (Scotland) Regulations 2004 specify the circumstances in which a debt payment programme may be approved under that scheme. An approved debt payment programme protects the applicant from enforcement action, or from sequestration, by most creditors. You may wish to obtain legal advice about the effect of such approval in general, and of this notice in particular.

Regulation 33(1)

The Debt Arrangement Scheme (Scotland) Regulations 2004

FORM 6 PAYMENT INSTRUCTION TO EMPLOYER

1	Date of Instruction <i>(Dd/mm/yyyy)</i>	<table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>																																																																																
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3	Payment amount	£ <table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>																																																																																
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	Pay reference <i>(If known)</i>	<table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>																																																																																
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Surname	<input type="text"/>
First Name	<input type="text"/>
Business address	<input type="text"/>
Daytime Telephone No	<input type="text"/>
6 Money Adviser	
Surname	<input type="text"/>
First Name(s)	<input type="text"/>
Organisation name and business address	<input type="text"/>
7 Payment Distributor	
Name	<input type="text"/>
Business address	<input type="text"/>

The employee/debtor specified in section 4 instructs you to deduct the sum specified in section 3 from the net earnings of the employee/debtor from the next payday and at each payday thereafter, and pay it as soon as reasonably practicable to the payment distributor specified in section 7, quoting the Unique Reference Number on this mandate.

Deductions should be made until the total sum of £(insert amount) has been paid, or until notice of recall of this instruction if earlier.

It is your duty under section 6 of the Debt Arrangement and Attachment (Scotland) Act 2002 to comply with this instruction. You are entitled, by virtue of regulation 33 of the Debt Arrangement Scheme (Scotland) Regulations 2004 to charge a fee equivalent to the fee chargeable under section 71 of the Debtors (Scotland) Act 1987.

Signature, or name of person giving this notice

Date

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish
Statutory Instrument: The Debt Arrangement Scheme (Scotland) Regulations 2004 No. 468

Regulation 35(1)

The Debt Arrangement Scheme (Scotland) Regulations 2004

FORM 7 NOTICE OF RECALL OF AN ARRESTMENT

1 Date
(Dd/mm/yyyy)

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2 Unique CMS Identifier

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

3 Debtor

Surname

--

First Name

--

Other Names

--

Home Address
(include business address, if applicable)

--

4 Money Adviser

Surname

--

First Name(s)

--

Organisation name and business address

--

5 Party in possession of the funds or property

Surname, or name of firm and company

--

First Name(s)
(if applicable)

--

Organisation name and business address

--

6 Details of funds or property arrested

--

Account No, if any

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

7 Date of Arrestment
(Dd/mm/yyyy)

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

A debt payment programme has been approved for the above named debtor in terms of the Debt Arrangement Scheme (Scotland) Regulations 2004. The arrestment specified in this notice has been RECALLED in terms of regulation 35(1)(a) of those Regulations.

Signature, or name of person giving this notice

Date

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish
Statutory Instrument: The Debt Arrangement Scheme (Scotland) Regulations 2004 No. 468

The Debt Arrangement Scheme (Scotland) Regulations 2004
FORM 8 APPLICATION FOR VARIATION OF A DEBT PAYMENT PROGRAMME

SECTION 1

1 **Date of Application**
(Dd/mm/yyyy)

--	--	--	--	--	--	--	--

2 **Unique CMS Identifier**

--	--	--	--	--	--	--	--	--	--	--

3 **Debtor**

Surname

--

First Name

--

Other Names

--

Date of Birth

--	--	--	--	--	--	--	--

Home Address

--

Business Address
(if applicable)

--

4 **Money Adviser**

Surname	<input type="text"/>
First Name(s)	<input type="text"/>

Organisation name and business address	<input type="text"/>
--	----------------------

Daytime Telephone No	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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SECTION 2

Grounds of variation

- | | | | | | |
|---|--|-----|--------------------------|----|--------------------------|
| 5 | There is agreement between the debtor and each creditor taking part in the programme | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 6 | There is agreement between the debtor and any creditor to discharge or waive any sum or interest | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 7 | There is a material change in the circumstances of the debtor | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 8 | A debt has been omitted from the programme due to mistake, oversight or other reasonable cause | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
| 9 | A former future or contingent debt is now quantified and due for payment | Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Debt Arrangement Scheme (Scotland) Regulations 2004 No. 468

10 The debtor requires credit for an essential requirement

Yes No

11 Provide full details in respect of each of Q 5 to 10 where the answer is yes, including details of proposed changes to the payment or period of the programme

SECTION 3

12 Use this section to provide any further information considered relevant to the application for variation

SECTION 4

13 In a debtor application, a copy of this form has been given to each creditor taking part in the debt payment programme

Yes No

14 In a creditor application, a copy of this form has been given to the debtor, and to each creditor taking part in the programme

Yes No

(An application for variation may not be considered by the DAS administrator unless you answer yes to both Q 13 and 14)

SECTION 5

Declaration by money adviser

(Only applies where the debtor is applying for variation)

15 I confirm that I have given the debtor money advice in respect of the variation sought, in accordance with section 3(1) of the Debt Arrangement and Attachment (Scotland) Act 2002

Signature

Signature of applicant

16 I/we apply for approval of the variation of the debt payment programme, as set out in this application

Signature

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Debt Arrangement Scheme (Scotland) Regulations 2004 No. 468

Home and (if applicable)
Business Address

Postcode

--	--	--	--	--	--	--	--

3 The DAS Administrator has

Approved the variation to the debt payment programme

The varied programme will commence with effect from

--	--	--	--	--	--	--	--

Expected completion date of debt payment programme

--	--	--	--	--	--	--	--

The amended payment rate (If applicable)

--	--	--	--	--	--	--	--

Conditions attached to the debt payment programme (If any)

Rejected the variation to the debt payment programme.

Reason(s) for the rejection is/are

4 Money Adviser

Surname

--	--	--	--	--	--	--	--

First Name

--	--	--	--	--	--	--	--

Organisation name and business address

Postcode

--	--	--	--	--	--	--	--

5 Date notification issued by Money adviser

--	--	--	--	--	--	--	--

Regulation 42(2)

The Debt Arrangement Scheme (Scotland) Regulations 2004
FORM 10 APPLICATION FOR REVOCATION OF A DEBT PAYMENT PROGRAMME

1 **Date of Application**
(Dd/mm/yyyy)

--	--	--	--	--	--	--	--

2 **Unique CMS Identifier**

--	--	--	--	--	--	--	--	--	--

3 **Debtor**

Surname

--

First Name

--

Other Names

--

Date of Birth

--	--	--	--	--	--	--	--

Home Address

--

Business Address
(If applicable)

--

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Debt Arrangement Scheme (Scotland) Regulations 2004 No. 468

4 Money Adviser

Surname	
First Name(s)	

Home Address	
--------------	--

Organisation name and business address	
--	--

Daytime Telephone No																				
----------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

5 Date of approval of debt payment programme (Dd/mm/yyyy)

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

6 Applicant

Surname	
First Name	
Other Names	

Address	
---------	--

The applicant is the debtor	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
The applicant is a creditor	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
The Debtor has a money adviser	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

7 Grounds for revocation

(References are to regulations of the Debt Arrangement Scheme (Scotland) Regulations 2004)

- A The debtor has failed without reasonable cause to satisfy a condition under regulation 29
- | | | | |
|-----|--------------------------|----|--------------------------|
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|
- (a) To make all payments under a programme as they fall due
- | | | | |
|-----|--------------------------|----|--------------------------|
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|
- (b) To pay a continuing liability when due for payment
- | | | | |
|-----|--------------------------|----|--------------------------|
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|
- (c) Except for a continuing liability, to make no additional payment to a Creditor taking part in a programme
- | | | | |
|-----|--------------------------|----|--------------------------|
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|
- (d) To not seek or obtain credit beyond that permitted by regulation 35(1)(b) or by a variation of a programme under regulation 39
- | | | | |
|-----|--------------------------|----|--------------------------|
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|
- (e) To notify the Money Adviser for a programme of any
- | | | | |
|-----|--------------------------|----|--------------------------|
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|
- (i) Change of address; and
- (ii) Material change of circumstances
- (f) To supply the Money Adviser for a programme with any information or documentation
- | | | | |
|-----|--------------------------|----|--------------------------|
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|
- B The debtor has failed without reasonable cause to satisfy a condition under regulation 30
- | | | | |
|-----|--------------------------|----|--------------------------|
| Yes | <input type="checkbox"/> | No | <input type="checkbox"/> |
|-----|--------------------------|----|--------------------------|

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Debt Arrangement Scheme (Scotland) Regulations 2004 No. 468

- (a) That the debtor shall realise and distribute amongst the creditors the value of any asset
Yes No

- (b) That the debtor shall sign and deliver a payment instruction to an employer
Yes No

- (c) That the debtor shall seek agreement from a creditor to pay a continuing liability under regulation 34
Yes No

- (d) That the debtor shall complete and return when due a tax or duty return or declaration
Yes No

- (e) That the debtor shall maintain an emergency fund
Yes No

- (f) That the debtor is in breach of any other condition of the programme
Yes No

- C The debtor has made a statement in an application under the Regulations which the debtor knows to be untrue
Yes No

- D An instalment due under the programme is due, and there remains unpaid a sum, due under previous instalments, of not less than the aggregate of two instalments
Yes No

Use this space to provide any further information considered relevant to the application for revocation

Application

I/we apply for revocation of the debt payment programme, as set out in this application

Signature, or name and designation of person making this application

Regulation 45(3) and (4)

The Debt Arrangement Scheme (Scotland) Regulations 2004
FORM 11 NOTICE OF REVOCATION

1 **Date**
(Dd/mm/yyyy)

--	--	--	--	--	--	--	--	--	--

2 **Unique CMS Identifier**

--	--	--	--	--	--	--	--	--	--	--

3 **Debtor**

Surname

--

First Name

--

Other Names

--

Home Address

--

Business Address
(If applicable)

--

4 **Creditor**

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Debt Arrangement Scheme (Scotland) Regulations 2004 No. 468

Surname	
First Name	
Other Names	
Organisation name and business address	
5 Date of approval of programme (Dd/mm/yyyy)	
6 Date programme revoked (Dd/mm/yyyy)	
7 Reason(s) programme revoked	
8 Date notice of revocation issued by money adviser or DAS administrator (Dd/mm/yyyy)	

IMPORTANT INFORMATION

The debt arrangement scheme is constituted under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002. The Debt Arrangement Scheme (Scotland) Regulations 2004 specify the circumstances in which a debt payment programme may be revoked under that scheme. An approved debt payment programme protects the applicant from enforcement action, or from sequestration, by most creditors. On revocation, those protections cease to apply. You may wish to obtain legal advice about the effect of such revocation in general, and of this notice in particular.

Regulation 47

The Debt Arrangement Scheme (Scotland) Regulations 2004
FORM 12REPORT OF COMPLETION BY PAYMENTS DISTRIBUTOR

1	Date of Report <i>(Dd/mm/yyyy)</i>	<table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>										
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5	Payments Distributor											
	Name of firm or company	<table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>										
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6	Date of approval of Debt Payment Programme <i>(Dd/mm/yyyy)</i>	<table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>										
7	Date Debt Payment Programme completed <i>(Dd/mm/yyyy)</i>	<table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>										

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Statutory Instrument: The Debt Arrangement Scheme (Scotland) Regulations 2004 No. 468

Regulation 49

The Debt Arrangement Scheme (Scotland) Regulations 2004
FORM 13 NOTICE OF COMPLETION BY MONEY ADVISER

1 **Date of Notice**
(Dd/mm/yyyy)

--	--	--	--	--	--	--	--	--	--

2 **Unique CMS Identifier**

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3 **Debtor**

Surname

--

First Name

--

Other Names

--

Home Address

--

Business Address
(If applicable)

--

4 Money Adviser

Surname

First Name(s)

Organisation name and business address

Daytime Telephone No

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Debt payment programme

5 Date of approval of programme

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

6 Amount of debt included in programme

7 A report has been received from the payment distributor advising that the Debt Approval programme was completed

Yes No

8 The creditors in the Debt Approval programme have agreed in writing to completion before the end of the period of the programme

Yes No

9 Use this space to provide any other information relevant to the completion of the programme

Regulation 49(1)

The Debt Arrangement Scheme (Scotland) Regulations 2004
FORM 14CONFIRMATION OF COMPLETION BY DAS ADMINISTRATOR

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Debt Arrangement Scheme (Scotland) Regulations 2004 No. 468

1	Date <i>(Dd/mm/yyyy)</i>	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> </tr> </table>										
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5	Date of approval of programme <i>(dd/mm/yyyy)</i>	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> </tr> </table>										
6	Date of completion of programme <i>(dd/mm/yyyy)</i>	<table border="1" style="width: 100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> <td style="width: 12.5%;"></td> </tr> </table>										

The Debt Arrangement Scheme (Scotland) Regulations 2004 provide for repayment of debts under debt payment programmes approved by the DAS administrator. The debt payment programme specified in this notice has been completed on payment of the debts in the programme

Regulation 49 (2)

The Debt Arrangement Scheme (Scotland) Regulations 2004
FORM 15 NOTIFICATION TO CREDITOR OF COMPLETION OF A DEBT PAYMENT PROGRAMME

1 Unique CMS Identifier

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

2 Debtor

Surname

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

First Name

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Other Names

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Home Address

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Postcode

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Business address
(if appropriate)

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Debt Arrangement Scheme (Scotland) Regulations 2004 No. 468

Postcode

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

3 Creditor

Surname, or name of firm or company

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Business address

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Postcode

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Account or other reference number

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

4 Money adviser

Surname

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

First Name(s)

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Organisation name and business address

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Postcode

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

5 Date of approval of programme

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

6 Sum repaid under programme

£

--

7 Date of completion of programme

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Date
(Dd/mm/yyyy)

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

SCHEDULE 2

Regulation 5

FEES

<i>Column 1</i> <i>Matters</i>	<i>Column 2</i> <i>Fees payable</i>
Single inspection of the Debt Arrangement Scheme Register (“DAS Register”)	£5
Multiple inspections of the DAS Register, for–	
(a) (a) one week	(a) (a) £100
(b) (b) 4 weeks	(b) (b) £250
(c) (c) one year	(c) (c) £500

Note: inspection fees payable in advance

SCHEDULE 3

Regulation 5

CONSEQUENTIAL AMENDMENTS

Bankruptcy (Scotland) Act 1985

1. In section 14 (registration of court order) of the 1985 Act(**23**), after sub section (1)(b) insert–
 - “(c) a copy of the order to the DAS administrator (as defined in regulation 2(1) of the Debt Arrangement Scheme (Scotland) Regulations 2004), where the debtor is taking part in a debt payment programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002”.
2. In section 15 (further provisions relating to sequestration) of the 1985 Act(**24**), for subsection (5)(b) substitute–
 - “(b) forthwith send a copy of the order refusing or awarding sequestration to–
 - (i) the Accountant in Bankruptcy;
 - (ii) the DAS administrator (as defined in regulation 2(1) of the Debt Arrangement Scheme (Scotland) Regulations 2004), where the debtor is taking part in a debt payment programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002”.

Mortgage Rights (Scotland) Act 2001

3. In section 2(2)(b) (disposal of application) of the Mortgage Rights (Scotland) Act 2001(**25**), after “default” insert–

“and where appropriate to participation by the debtor in a debt payment programme approved under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002”.

(23) 1985 c. 66. Section 14 was amended by the Bankruptcy (Scotland) Act 1993 (c. 6) (“the 1993 Act”), Schedule 1, paragraph 3.

(24) 1985 c. 66. Section 15 was amended by the 1993 Act, Schedule 1, paragraph 4.

(25) 2001 asp 11.

Debt Arrangement and Attachment (Scotland) Act 2002

4. In section 47(4) (exceptional attachment order) of the Act, at the end of paragraph—
- (a) (f), omit “and”; and
 - (b) (g), insert—
 - “; and
 - (h) whether an application by the debtor for approval of a debt payment programme under Part 1 of this Act has been refused or approved, and if approved, whether that programme has been varied, or is revoked or completed.”.

SCHEDULE 4

Regulation 8(3)

MONEY ADVISER TRAINING

1. The relationship between prescription or limitation, and enforcement of debt.
2. The consequences for a debtor—
 - (i) sequestration;
 - (ii) taking part in a debt payment programme;
 - (iii) signing a trust deed;
 - (iv) a trust deed becoming a protected trust deed; and
 - (v) extra-judicial composition.
3. The operation of—
 - (i) an earnings arrestment;
 - (ii) a furthcoming;
 - (iii) an attachment, exceptional attachment and auction of moveables; and
 - (iv) the debt arrangement scheme under Part 1 of the Act and prescribed by these Regulations.
4. The nature of rights of appeal from the sheriff court.
5. Assisting a client to—
 - (a) respond to admitted money claims in the sheriff courts;
 - (b) make or oppose an application in the sheriff courts for—
 - (i) recall of decree;
 - (ii) dismissal or absolvitor;
 - (iii) continuation of a cause;
 - (iv) a sist;
 - (c) apply for recall or restriction of an arrestment;
 - (d) make an application under the Debtors (Scotland) Act 1987(26);
 - (e) apply for recall of an attachment, exceptional attachment, or an order under Parts 2 and 3 of the Act; or
 - (f) make an application under these Regulations.

(26) 1987 c. 18.

6. Identifying the need to refer a case to an appropriate specialist, and know how to access specialist support.

SCHEDULE 5

Regulation 13(3)

PAYMENTS DISTRIBUTORS

A payments distributor shall:–

1. Hold a current licence under the Consumer Credit Act 1974.
2. Be registered under the Data Protection Act 1998 as a data processor.
3. Make and maintain arrangements to ensure financial security of sums received from debtors for disbursement to creditors.
4. Make and maintain appropriate arrangements to accept and disburse payments using all methods approved under regulation 32(1).
5. Make and maintain appropriate arrangements to ensure compliance with Office of Fair Trading Codes of Practice relative to debt management and collection guidance.
6. Make and maintain appropriate arrangements for customer services.
7. Make and maintain appropriate arrangements for the issue of required reports.
8. Provide an information technology system to transmit reports to debtors, creditors, money advisers, DAS administrator by the preferred medium (e.g. text and or data files).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide a scheme for repayment of multiple debts in Scotland. They provide for procedure and forms in respect of a repayment arrangement under the scheme, which on approval is described as a debt payment programme (“a programme”).

The scheme is the responsibility of the DAS administrator, who exercises the functions of the Scottish Ministers under the Debt Arrangement and Attachment (Scotland) Act 2002 (“the 2002 Act”).

In particular, the DAS administrator has the main responsibility for approval or rejection of applications for approval of a programme. The Accountant in Bankruptcy of 126 George Street, Edinburgh is the DAS administrator, by virtue of an order under section 8 of the 2002 Act.

A person whose debts are being repaid under a programme is protected in terms of section 4 of the 2002 Act from enforcement measures (diligence and sequestration proceedings) that are otherwise available to creditors.

The Regulations are divided into 10 parts, and have 5 Schedules.

Part 1 provides definitions for terms used in the Regulations and for the forms in Schedule 1 (regulations 2 and 3), a dispensing power for the DAS administrator so that procedural irregularities

can be resolved administratively (regulation 4), for fees to be charged in accordance with the table in Schedule 2 (regulation 5), and for consequential amendments to the 2002 Act and other enactments as set out in Schedule 3 (regulation 6).

Part 2 provides that a person whose debts are being repaid under a programme shall at all times have a money adviser (regulation 7), for the method of applying for, and period of approval as, an adviser, and together with Schedule 4 the grounds for such approval (regulation 8), for the grounds on which approval as an adviser may be revoked (regulation 9), a list of persons who may not be approved as an adviser (regulation 10), for the functions of an adviser, and that a fee may not be charged unless information about free advice is given to the client (regulation 11), and for the notices that must be given on a change of adviser or payments distributor (regulation 12).

Part 3 provides for the method of applying for, and period of approval as, a payments distributor, and together with Schedule 5 the ground for such approval (regulation 13), the grounds on which approval as a distributor may be revoked (regulation 14), the functions of a distributor (regulation 15), and that an administration fee for distribution services may be charged to a creditor or, in limited circumstances, a debtor (regulation 16).

Part 4 provides that the DAS administrator shall maintain a register of programmes (regulation 17), for the information to be held on that register (regulation 18), and who may have access to it (regulation 19).

Part 5 provides that a person who is habitually resident in Scotland may apply for approval of a programme (regulation 20). That person must be an individual by virtue of section 1 of the 2002 Act. It further provides that a person may not in general apply if debts are being managed in other ways, including sequestration or bankruptcy (regulation 21), that each creditor (as defined in regulation 2) must consent to a programme, unless the DAS administrator may dispense with such consent (regulation 22), that a creditor may, as well as not consenting, object on the grounds that sequestration is better or that property is sold to pay debts (regulation 23), that recognition may be given to agreements to waive payment of a debt, or interest on a debt (regulation 24), that agreed programmes shall be approved (regulation 25), that the DAS administrator, or in exceptional circumstances the sheriff, shall approve a programme that is fair and reasonable using specified criteria (regulations 26 and 27), for notice of approval and the date of approval (regulation 28), and that approval is always subject to certain conditions (regulation 29) and may be subject to extra conditions (regulation 30), and for methods for the DAS administrator and money adviser to notify interested parties about approval or rejection of a programme (regulation 31).

Part 6 provides for specified methods of payment where a programme is approved, and for the DAS administrator to be able to approve other methods (regulation 32), and in respect of payment mandates to an employer for the charges an employer may make and a penalty for default on employers (regulation 33), for agreements to make regular payments such as utility through a payments distributor along with the regular debt repayment (regulation 34). It also makes provision further to the 2002 Act for the effect of a programme, in particular that arrestments are recalled, and that if further credit is given to a person in a programme then diligence and sequestration may not be available to enforce payment (regulation 35(1) to (4)), that the protection from enforcement action under the 2002 Act is extended so that civil imprisonment is covered, and that a creditor can complete diligences that are at an advanced stage at the time of approval (regulation 35(5)), and that a person in a programme may not enter into a trust deed for a creditor under the Bankruptcy (Scotland) Act 1985 (regulation 36).

Part 7 provides that money advisers and creditors may apply for variation of a programme (regulation 37) on specified grounds (regulation 38), that the DAS administrator, or in some circumstances the sheriff, shall approve a programme that is fair and reasonable using the criteria in regulation 27, (regulation 39), and the methods for the DAS administrator and money adviser to notify interested parties about approval or rejection of a variation (regulation 40).

Part 8 provides for automatic revocation of a programme if the person applies for sequestration (regulation 41), that in other circumstances money advisers and creditors may apply for revocation (regulation 42), the grounds for revocation and the factors the DAS administrator must consider (regulations 43 and 44), and the methods for the DAS administrator and money adviser to notify interested parties about the revocation (regulation 45). It also provides for revocation to be a ground of apparent insolvency under the Bankruptcy (Scotland) Act 1985 (regulation 46).

Part 9 provides for the notices that are required when a programme is completed, whether by repayment in full or agreement amongst those with an interest (regulations 47 to 49).

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 50).

A Regulatory Impact Assessment of the effect which these Regulations are likely to have on business costs has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Executive Justice Department, Diligence Branch, St. Andrew's House, Edinburgh.