
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2004 No.

The Debt Arrangement Scheme (Scotland) Regulations 2004

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(1);

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

“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—

(1) 1985 c. 66.
(2) 1986 c. 45.

- (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(3); and

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

(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(5), 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;

(3) 1970 c. 35. Section 9 has not been relevantly amended.

(4) 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 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.

(5) 2000 c. 7. Section 15 of the Electronic Communications Act 2000 (c. 7) contains a definition of “electronic communication”.

- (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(6).

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.

(6) 1986 c. 47. Section 2B was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 36.