
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2004 No.

The Debt Arrangement Scheme (Scotland) Regulations 2004

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(1), 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(2);
 - (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—

(2) 1992 c. 4.

- (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(3), other than for the purposes of section 40 of the Child Support Act 1991(4), respect of,”; and
- (b) after subsection (2), insert—
 - “(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.

(3) 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.

(4) 1991 c. 48.