

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

2013 No.

DEBT

**The Debt Arrangement Scheme (Scotland) Amendment
Regulations 2013**

Made - - - -

Coming into force - -

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 2(3)(d), 4(5), 5(4), 7, 7A and 62(2) of the Debt Arrangement and Attachment (Scotland) Act 2002(a) and all other powers enabling them to do so.

A draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament in accordance with section 62(4) of that Act(b).

Citation and commencement

1.—(1) These Regulations may be cited as the Debt Arrangement Scheme (Scotland) Amendment Regulations 2013.

(2) They come into force on the day after the day on which the Regulations are made.

Interpretation

2. In these Regulations—

“DAS” means the Debt Arrangement Scheme; and

“the DAS Regulations” means the Debt Arrangement Scheme (Scotland) Regulations 2011(c).

(a) 2002 asp 17 (“the Act”). The Act was relevantly amended, and section 7A inserted, by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), sections 173, 209(1), 211 and 212 and schedule 4, paragraph 10, schedule 5, paragraph 30 and schedule 1, Part 1. Section 9(1) contains a definition of “prescribed” relevant to the exercise of statutory powers under which these Regulations are made.

(b) The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

(c) S.S.I. 2011/141.

Amendment to the Debt Arrangement Scheme (Interest, Fees, Penalties and Other Charges) Regulations 2011

3.—(1) The Debt Arrangement Scheme (Interest, Fees, Penalties and Other Charges) (Scotland) Regulations 2011(a) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 2 (interpretation), for the definition of “the DAS Regulations” substitute—

““the DAS Regulations” means the Debt Arrangement Scheme (Scotland) Regulations 2011;”.

(3) In regulation 4(1)(a) (moratorium on interest, fees, penalties or other charges), for “date on which a debt payment programme is approved” substitute “date on which a debtor applies for a debt payment programme (which is subsequently approved)”(b).

(4) After regulation 4(1) insert—

“(1A) Paragraph (1) applies to a debt in respect of which an offer of composition is accepted, or deemed to be accepted, under regulation 46B(1) or (2)(c) of the DAS Regulations as it applies to a completed programme.”.

(5) For regulation 5(1) (appeal to the sheriff on point of law), substitute—

“(1) As regards any debt included in a debt payment programme the debtor for the debt payment programme or creditor may apply to the DAS Administrator for review of a determination of the DAS Administrator under regulation 4(3) in accordance with regulations 47(4) and (5), 47A and 47B(d) of the DAS Regulations on any ground which may be raised in an appeal under paragraph (1A).

(1A) A debtor or creditor may appeal to the sheriff on point of law against a decision of the DAS Administrator under regulation 47B of those Regulations as it applies to paragraph (1).”.

and for the heading to regulation 5 substitute “Reviews and appeals”.

Amendment to the DAS Regulations

4. The DAS Regulations are amended in accordance with regulations 5 to 18 and 19(1) and (2).

Correction of accidental errors

5. After regulation 4, insert—

“Correction of accidental errors

4A.—(1) The DAS Administrator may correct an accidental error in any determination, made by the DAS Administrator under these Regulations.

(2) The DAS Administrator must notify the correction in writing to any person notified of the determination.

(3) A correction has effect—

(a) as if the determination was made in corrected form on the date on which the original determination was made; and

(b) where a debt payment programme was revoked in error, to restore that programme as if it had not been revoked.

(a) S.S.I. 2011/238.

(b) An application is made under regulation 20 of the DAS Regulations.

(c) Regulation 46B(1) and (2) is inserted by regulation 15 of these Regulations.

(d) Regulations 47(4) and (5), 47A and 47B are inserted by regulation 17 of these Regulations.

- (4) A correction under paragraph (1) may not be made—
- (a) after 28 days from the date on which the error was made; or
 - (b) where an application for review has been made under regulation 47 and a decision has not been made by the DAS Administrator.”.

Money adviser fees

- 6.—(1) In the definition of “continuing liability” in regulation 2(1) (interpretation: general)—
- (a) after sub-paragraph (i) omit “and”; and
 - (b) after sub-paragraph (j) insert
“and;
 - (k) a fee charged to a debtor by a money adviser;”.
- (2) At the end of regulation 3(2)(b) (interpretation: debt), insert—
- “;
- (c) as a fee charged by a money adviser for the money adviser’s services in the debt payment programme in respect of which the services are provided”.
- (3) In regulation 12 (functions and duty of a money adviser), in paragraph (3)—
- (i) after sub-paragraph (a) omit “and”; and
 - (ii) at the end of sub-paragraph (b) insert—
“; and
 - (c) provide, as required by the DAS Administrator, information about the amount charged as a fee to a debtor for the adviser’s services in a debt payment programme”.

Approval of a money adviser

7. In regulation 9 (approval of a money adviser), for paragraph (3) substitute—
- “(3) An applicant is to be a fit and proper person if, but not only if—
- (a) the person has undergone training on the matters specified in Schedule 3; or
 - (b) the person works for an organisation which is working towards accreditation at Type 2 level or above against the Scottish National Standards for Information and Advice Provision.”.

Payments distributors

- 8.—(1) In regulation 16(1) (functions and duty of a payments distributor)—
- (a) after “payments distributor” where it first occurs, insert “on behalf of the debtor”;
 - (b) in sub-paragraph (a), for “DAS Administrator and any continuing money adviser” substitute “money adviser”; and
 - (c) in sub-paragraph (c), for “, any continuing money advisor, and to creditors”, substitute “and any continuing money advisor”.
- (2) In regulation 17(2) (charges by a payment distributor), after “fee” insert “, including any VAT incurred,”.

Information on the DAS Register

9. In regulation 19(2) (information on the DAS Register)—
- (a) after sub-paragraph (h), insert—
“(ha) correction of an accidental error under regulation 4A;

- (hb) variation of an approved programme under regulation 46D;
- (hc) an application for review under regulation 47;” and
- (b) in sub-paragraph (i), for “ 47” substitute “47C”.

Joint debt payment programme

- 10.** In regulation 22(1) (joint debt payment programme)—
- (a) for sub-paragraph (a) substitute—
 - “(a) if each of the debtors is liable for a debt which the programme would provide for the payment of; and”; and
 - (b) in sub-paragraph (b), omit “and” where it appears before “they”.

Creditors

- 11.**—(1) In regulation 23 (consent of creditors)—
- (a) in paragraph (3), omit “, and if posted must be sent to the creditor by first class recorded delivery post”;
 - (b) at the end of paragraph (5), insert—
 - “, irrespective of any assignation of the debt by that creditor;”; and
 - (c) after paragraph (7), insert—
 - “(8) Where the rights to one or more debts included in the debt payment programme are assigned, the creditor must immediately notify the DAS Administrator in writing—
 - (a) that the creditor has assigned the rights; and
 - (b) of the details of the assignee.”.
- (2) After regulation 23 (consent of creditors), insert—

“Creditor’s authorised representative

- 23A.** Where a creditor authorises another person to act on behalf of the creditor in relation to the debt arrangement scheme—
- (a) the authorised representative must, provide evidence of authority to act on behalf of the creditor to the DAS Administrator and any continuing money adviser; and
 - (b) the creditor must notify the DAS Administrator and any continuing money adviser where the representative is no longer authorised.”.

Standard conditions

- 12.** In regulation 27 (standard conditions), in paragraph (2)(a), for “one month” substitute “42 days”.

Variation

- 13.**—(1) After regulation 36, insert—

“Proposal for variation: discharge of liability on compensation

36A.—(1) The DAS Administrator may propose a variation of a debt payment programme where a liability, or part of a liability, of the debtor is discharged by a creditor applying compensation between that debt, or part of that debt, and a liability owed by the creditor to the debtor.

- (2) The DAS Administrator may not do so unless it has made a reasonable attempt to agree a variation between the debtor and creditor.

(3) The proposal must be intimated in writing to those mentioned in regulation 36(4)(a) to (d).”.

(2) In regulation 37 (grounds for variation)—

(a) after paragraph (1)(e), insert—

“(ea) under regulation 36A where liability of a debtor is discharged by a creditor applying compensation;” and

(b) in paragraph (1)(h)—

(i) for “of 6 months” substitute “not exceeding 6 months”; and

(ii) for “an equal period” substitute “a period equal to the period of deferment”.

(3) In regulation 39 (notification of approval or rejection of a variation) after paragraph (1)(c), insert “(ca) where there is a payment instruction under regulation 32, to the employer;”.

Revocation of debt payment programmes

14.—(1) After regulation 40(a) (revocation on sequestration in debtor application), insert—

“(aa) on an award of sequestration of the debtor’s estate where a creditor presented, or concurred in the presentation of, the petition for sequestration before approval of the programme(a);”.

(2) After regulation 40, insert—

“Death of a debtor

40A.—(1) A debt payment programme must be revoked by the DAS Administrator on intimation to the DAS Administrator of the death of the debtor.

(2) In paragraph (1), “the debtor” in relation to a joint debt payment programme refers to either debtor.”.

(3) In regulation 42(1)(c) (grounds for revocation), for “the aggregate of two such payments” substitute “the aggregate of payments due in a period of two months, beginning after the last payment is made”.

(4) In regulation 44 (notification of revocation)—

(a) in paragraph (2)(a) omit “and”;

(b) in paragraph (2)(b) omit “to”; and

(c) at the end of paragraph (2)(b) insert—

“(c) the debtor; and

(d) the payments distributor.”.

(5) After regulation 44, insert—

“Effect of revocation

44A.—(1) The revocation of a debt payment programme is to have no effect for 14 days immediately following the date on which the programme is revoked; and

(2) Where there is an application for review of a determination of the DAS Administrator to revoke a programme under regulation 47(3)(b), the revocation of the programme is to have no effect for 28 days after the date on which the application is made.”.

(a) A debt payment programme is approved from midnight on the day immediately before that on which the notice under regulation 26 of the DAS Regulations is entered in the DAS register (see regulation 26(2)).

(b) Regulation 47(3) is substituted by regulation 17 of these Regulations.

Composition

15. After Part 9 insert—

“PART 9A COMPOSITION

Offer of composition

46A.—(1) The DAS Administrator or a continuing money adviser may, with the consent of the debtor, make an offer of composition to each creditor taking part in the debt payment programme—

- (a) after a period of 12 years beginning with the approval of the debt payment programme; and
- (b) where 70% of the total amount of debt due under the programme when the programme was approved, has been paid.

(2) An offer under paragraph (1) must be made in form 6(a).

(3) The period of 12 years in paragraph (1)(a) must not include any period of during which payments by the debtor were deferred under regulation 37(1)(h).

Acceptance of offer by creditors

46B.—(1) Where a creditor accepts the offer of composition, in respect of a debt or debts due to that creditor and included in the debt payment programme, the liability of the debtor to repay that debt is discharged.

(2) A creditor who is made an offer of composition under regulation 46A(1) and who does not respond to that offer within 21 days after the date of the offer is deemed to accept the offer.

(3) The DAS Administrator must maintain a record of acceptances by creditors.

Notice of completion on composition

46C. Where every creditor accepts (or is deemed to accept) the offer in respect of all of the debts in a debt payment programme the DAS Administrator must send notice in writing of completion of the programme—

- (a) to the debtor;
- (b) to any continuing money adviser;
- (c) to the payments distributor; and
- (d) to the employer where there is a payment instruction under regulation 32.

Variation on composition

46D.—(1) Where regulation 46C does not apply, the debt payment programme must be varied by the DAS Administrator in accordance with the acceptances (and deemed acceptances) made under regulation 46B.

(2) The DAS administrator must intimate in writing the effect of the variation—

- (a) to the debtor;
- (b) to any continuing money adviser;

(a) Inserted by regulation 18 of these Regulations.

- (c) to the payments distributor;
- (d) to all creditors continuing to take part in the programme; and
- (e) to an employer if there is a payment instruction under regulation 32.”.

Reviews and appeals

16.—(1) In regulation 2(1) (interpretation: general) after the definition of “the 1986 Act”, insert—

““appeal” means an appeal under regulation 47C;”.

(2) For regulation 12(1)(c) (functions of a money adviser: assistance and advice) substitute—

“(c) assist a debtor with, and advise on an application—

- (i) for approval, variation or revocation of a debt payment programme; or
- (ii) for review of a determination under regulation 47.”.

(3) In regulation 30 (diligence or sequestration in the period before a debt payment programme is approved), for paragraph 2(b), substitute—

“(b) that occurring 14 days after the date on which notice of rejection of the debt payment programme, sent under regulation 29(1), is so entered;

(ba) where an application for review has been made under regulation 47(1), that occurring 28 days after the date on which the application is made; and”.

17. For Part 10, substitute—

“PART 10

REVIEWS

Application for review

47.—(1) A debtor or a money adviser acting on behalf of a debtor may, on any ground which may be raised in an appeal, apply for review of 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 any ground which may be raised in an appeal, apply for review of a determination of the DAS Administrator to—

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

(3) A debtor or a money adviser acting on behalf of 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 37(1)(e) or (f) may, on any ground which may be raised in an appeal, apply for review of a determination of the DAS Administrator to—

- (a) attach a condition under regulation 28;
- (b) approve, or refuse to approve, a variation of a programme;
- (c) revoke a programme;
- (d) correct an accidental error in any determination and restore a debt payment programme under regulation 4A.

(4) An application under this regulation must be made—

- (a) within 14 days after the date of intimation of the determination to the debtor or creditor; and
- (b) in writing.

(5) Where an application has been made under this regulation, the DAS Administrator must intimate the application in writing to—

- (a) the debtor;
- (b) any creditor named in the application for a debt payment programme;
- (c) the money adviser who made the application for the programme;
- (d) each creditor taking part in the programme; and
- (e) any continuing money adviser for the debtor.

Procedure at review

47A. Where an application is made under regulation 47, the DAS Administrator must review the determination which is the subject of the application—

- (a) within 28 days of the application for review; and
- (b) on the basis of—
 - (i) the information provided in the application; and
 - (ii) any written representations received from the debtor, creditor or money adviser.

Decision

47B.—(1) Following review of a determination the DAS administrator may—

- (a) confirm its determination;
- (b) amend or alter its determination; or
- (c) revoke its determination and substitute a new determination.

(2) The DAS administrator must intimate in writing the result and the effect of the decision—

- (a) to the debtor;
- (b) to any creditor named in the application for a debt payment programme;
- (c) to the money adviser who made the application for the programme;
- (d) to each creditor taking part in the programme;
- (e) to any continuing money adviser for the debtor;
- (f) to the payment distributor; and
- (g) where there is a payment instruction under regulation 32, to an employer.

PART 10A

APPEALS

Appeals

47C.—(1) A debtor or a creditor may appeal to the sheriff on a point of law against a decision of the DAS administrator under regulation 47B.

(2) An appeal to the sheriff under paragraph (1)—

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

(3) The decision of the sheriff is final.”.

Forms

- 18.**—(1) In regulation 37(4) (grounds for variation), for “form 3” substitute “form 4”.
- (2) In Schedule 1 (forms)—
- (a) for the following forms substitute the numbered form of the same number set out in the Schedule to these Regulations—
 - (i) form 1 (application for a debt payment programme);
 - (ii) form 2 (notification of approval of a debt payment programme);
 - (iii) form 4 (application for variation of a debt payment programme); and
 - (iv) form 5 (application for revocation of a debt payment programme); and
 - (b) insert form 6 after form 5.

Minor amendments and revocations

- 19.**—(1) In regulation 18(1) (debt arrangement scheme register), insert “public” before “register”.
- (2) In regulation 46(2) (notice of completion), for “mandate” substitute “instruction”.
- (3) In the Bankruptcy (Scotland) Act 1985(a)—
- (a) in section 7 (meaning of apparent insolvency) omit the subsection (1)(c)(vii) inserted by regulation 46 of the Debt Arrangement Scheme (Scotland) Regulations 2004(b); and
 - (b) in section 14 (registration of warrant or determination of debtor application)(c), omit the subsection (1)(c) inserted by paragraph 1 of Schedule 3 to those Regulations(d).

Savings

20.—(1) Nothing in regulation 3(3), 6, 12, 13(1) or (2), 14(3) or 18(2) affects a debt payment programme in respect of which an application for approval was made (under regulation 20 of the DAS Regulations) before the date on which these Regulations comes into force.

(2) Nothing in regulation 3(5), 5, 14(5), 16 or 17 affects a debt payment programme where the determination—

- (a) against which a review or appeal would be made; or
- (b) which would be corrected,

was made before the date on which these Regulations comes into force.

Name

A member of the Scottish Government

St Andrew’s House,
Edinburgh
Date

-
- (a) 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). Subsection (1)(c) was also repealed in part, and sub-paragraph (iv) prospectively repealed, by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the 2007 Act”), schedule 6, Part 1 (see SSI 2008/115) and S.S.I. 2004/468 and 2011/141 (“the DAS Regulations”).
 - (b) S.S.I. 2004/468 (revoked). A section 7(1)(c)(vii) in similar terms was inserted by Schedule 2 to the DAS Regulations.
 - (c) Section 14 (and the heading to that section) was amended by the Bankruptcy (Scotland) Act 1993 (c.6), Schedule 1, paragraph 3, the 2007 Act, schedule 1, paragraph 12 and S.S.I. 2004/468 and the DAS Regulations.
 - (d) S.S.I. 2004/468 (revoked). A section 14(1)(c) in similar terms was inserted by Schedule 2 to the DAS Regulations.

SCHEDULE FORMS

Regulations 15 and 18(1) and (2)

The Debt Arrangement Scheme (Scotland) Regulations 2011

FORM 1 Regulation 20(2)
APPLICATION FOR APPROVAL OF A DEBT PAYMENT PROGRAMME

SECTION 1

1 Details of Applicant (Money Adviser)

| | |
|-----------------------------|--|
| Unique ID Number | |
| Name | |
| Address | |
| Contact Name (if different) | |
| Phone No. | |

SECTION 2

2 Details of the debtor(s) applying for a Debt Payment Programme (DPP)

2a. Details of the debtor

| | | | | | | | | | | | |
|---|--|---|--|---|---|--|---|--|--|--|--|
| Surname | | | | | | | | | | | |
| First Name(s) | | | | | | | | | | | |
| Any other name the debtor has been known by | | | | | | | | | | | |
| Date of Birth (DD/MM/YYYY) | <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px;"> </td> <td style="width: 20px;"> </td> <td style="width: 20px;">-</td> <td style="width: 20px;"> </td> <td style="width: 20px;"> </td> <td style="width: 20px;">-</td> <td style="width: 20px;"> </td> <td style="width: 20px;"> </td> <td style="width: 20px;"> </td> <td style="width: 20px;"> </td> </tr> </table> | | | - | | | - | | | | |
| | | - | | | - | | | | | | |
| Address | | | | | | | | | | | |
| Town | | | | | | | | | | | |
| Postcode | | | | | | | | | | | |
| Email address (if applicable) | | | | | | | | | | | |
| Telephone – Home | | | | | | | | | | | |
| Telephone - Mobile | | | | | | | | | | | |
| Business Name (if applicable) | | | | | | | | | | | |
| Business Address | | | | | | | | | | | |
| Town | | | | | | | | | | | |
| Postcode | | | | | | | | | | | |

2b. Is this application a result of a revoked joint application? Yes No

2c. Is this a joint application? Yes No

If 'yes', do the debtors applying for a joint DPP meet the criteria in Regulation 22(1)?

- a) husband and wife to each other
- b) civil partners of each other
- c) living together as husband and wife
- d) the same sex living together as in a husband and wife relationship

If 'no', DO NOT PROCEED with a joint DPP.

2d. Do both debtors consent to a joint application? Yes No

If 'yes', complete 2e. If 'no', DO NOT PROCEED with a joint DPP.

2e. Details of the other debtor in a joint DPP

| | |
|---|--|
| Surname | |
| First Name(s) | |
| Any other name the debtor has been known by | |
| Date of Birth (DD/MM/YYYY) | |
| Address | |
| Town | |
| Postcode | |
| Email address (if applicable) | |
| Telephone – Home | |
| Telephone - Mobile | |
| Business Name (if applicable) | |
| Business Address | |
| Town | |
| Postcode | |

SECTION 3

3 Eligibility to Apply

Debtor(s) must satisfy a number of conditions to be eligible to apply for approval of a DPP.

3a. Is the programme for ONE debt only? Yes No

If 'yes', is the debtor involved in a time to pay direction, time to pay order or time order for the debt in the DPP? Yes No

If 'yes', to this second question, the debtor is NOT Eligible to apply for a programme where this debt is the only debt. (Reg. 21(3))

3b. Is the debtor, or in the case of a joint application, either of the debtors paying any debt under a conjoined arrestment order? Yes No

If 'yes', has a creditor, including a creditor of a debt being paid under a conjoined arrestment order in respect of another debt, attempted to enforce a debt due by the debtor by any lawful means? Yes No

If 'no', the debtor is NOT Eligible for a programme. (Reg. 21(4))

3c. Is the debtor, or in the case of a joint application, either of the debtors:

i) currently an undischarged bankrupt in Scotland, England or Wales? Yes No

ii) currently subject to a bankruptcy restrictions order (BRO) or bound by a bankruptcy restrictions undertaking (BRU)? Yes No

If 'yes' to any i) or ii), the debtor is NOT Eligible for a programme. (Reg. 21(2))

3d. Has the debtor, or in the case of a joint application, either of the debtors granted a trust deed that has become protected? Yes No

If 'yes', the debtor is NOT Eligible for a programme. (Reg. 21(2))

SECTION 4

4 Debt to be included in the Debt Payment Programme

4a. The following are debts which are to be included in the programme owed by (debtor's name)

| Creditor's Name, address (incl. postcode) | Creditor ID ref. | Account number | Amount owed | | Payment offer (per instalment) | |
|---|------------------|----------------|-------------|---|--------------------------------|---|
| | | | £ | p | £ | p |
| | | | | | | |
| | | | | | | |

Complete (i) and (ii) for joint applications only.

4a. i) The following are debts which are to be included in the programme owed by (debtor's name)

| Creditor's Name, address (incl. postcode) | Creditor ID ref. | Account number | Amount owed | | Payment offer (per instalment) | |
|---|------------------|----------------|-------------|---|--------------------------------|---|
| | | | £ | p | £ | p |
| | | | | | | |
| | | | | | | |

4b. Total debt to be included in the programme.

| | | |
|------------|---|---|
| TOTAL DEBT | £ | p |
|------------|---|---|

4c. Is the debtor, or in the case of a joint application, either of the debtors, subject to any arrestment or arrestment of their income? Yes No

If 'yes', provide additional information to the DAS Administrator

SECTION 5

5 Financial statement of the debtor(s)

5a. The following is the net income and expenditure of (debtor's name) in the programme

| | | |
|-----------------------------------|---|---|
| Total salary or wages | £ | p |
| Total income from benefits | £ | p |
| Total pension income | £ | p |
| Total other income | £ | p |

| | | |
|---------------------|---|---|
| Total income | £ | p |
|---------------------|---|---|

Payment frequency
 Weekly Fortnightly Monthly 4 weekly

| | | |
|------------------------------------|---|---|
| Total household expenditure | £ | p |
| Total travel expenditure | £ | p |
| Total phone expenditure | £ | p |
| Total other expenditure | £ | p |

| | | |
|--------------------------------|---|---|
| Total disposable income | £ | p |
|--------------------------------|---|---|

Complete for joint applications only.
5a. i) The following is the net income and expenditure of (debtor's name) in the programme

| | | |
|-----------------------------------|---|---|
| Total salary or wages | £ | p |
| Total income from benefits | £ | p |
| Total pension income | £ | p |
| Total other income | £ | p |

| | | |
|---------------------|---|---|
| Total income | £ | p |
|---------------------|---|---|

Payment frequency
 Weekly Fortnightly Monthly 4 weekly

| | | |
|------------------------------------|---|---|
| Total household expenditure | £ | p |
| Total travel expenditure | £ | p |
| Total phone expenditure | £ | p |
| Total other expenditure | £ | p |

| | | |
|--------------------------------|---|---|
| Total disposable income | £ | p |
|--------------------------------|---|---|

5b. The debtor, or the debtors in the case of a joint DPP, propose(s) the following:

i) Total payment offer of **over** **instalments**

Payment frequency
Weekly Fortnightly Monthly 4 weekly

ii) Lump sum offer of

iii) Lump sum to be paid on the following date or dates:

iv) Realisation of the following asset(s) for the benefit of creditors:

SECTION 6

6 Payment Details

6a. The debtor, or the debtors in the case of a joint application, agree to make the first payment under the programme during the period of 42 days immediately following the date on which the DPP is approved. Yes No

6b. The debtor, or the debtors in the case of a joint application, agree to make all payments to the Payments Distributor detailed below or to any other Payments Distributor notified by the DAS Administrator:

Payments Distributor
Address

6c. The debtor, or the debtors in the case of a joint application, understand that the Payments Distributor will deduct _____% from the payment due to the creditors to cover their costs, in addition to 2% application fee. Yes No

6d. The debtor(s) wish to pay using one of the following payment methods (tick preferred method):

- Direct Debit
- Standing Order
- Cheque
- Postal Order
- PayPoint
- E-Banking
- Payment Mandate from salary/wages
- Specify other; _____

6e. If the debtor(s) selected Direct Debit or Standing Order, provide bank account details:

| | | | | | | | |
|---|--|--|--|--|--|--|--|
| Name of bank | | | | | | | |
| Name of account holder(s) | | | | | | | |
| Bank account number | | | | | | | |
| Sort Code | | | | | | | |
| Preferred date for the payment to be made is: | | | | | | | |

6f. If the debtor(s) selected payment direct from salary or wages, provide employer's details:

| | |
|---------------------------------|--|
| Name of Employer | |
| Address | |
| Town / City | |
| Postcode | |
| Business Fax/phone number | |
| Business e-mail address | |
| Debtor/ Employee NI number | |
| Debtor/ Employee payroll number | |

SECTION 7

7a. The debtor, or debtors in the case of a joint application, understand that if the programme is approved they must meet the following conditions:

- (a) make all payments under a programme as they fall due; _____
- (b) pay a continuing liability when due for payment; _____
- (c) make no additional payment to a creditor for a debt that is included in the programme; _____
- (d) not apply for or obtain credit beyond that permitted by DAS Regulations; _____
- (e) notify the Accountant in Bankruptcy (1 Pennyburn Road, Kilwinning) and, if applicable, their continuing money adviser of any—
 - (i) change of address; _____
 - (ii) material change of circumstances, within 7 days of becoming aware of the change; _____
- (f) within 10 days after receipt by the debtor of a written request, provide such information or evidence on their income, assets or liabilities as requested; _____
- (g) make all payments in respect of credit obtained under the Regulations as they fall due; _____
- (h) give all notices and intimations which are required to be given under the Regulations; _____
and
- (i) complete, and submit when due, a tax or duty return or declaration; and pay the tax or duty so returned or declared; _____
- (j) notify the DAS Administrator as soon as reasonably practicable of a money adviser ceasing to act for them for any reason other than the resignation, or revocation or suspension of approval, of the adviser; _____

7b. The debtor, or debtors in the case of a joint application, understand that if the programme is approved they may be bound by any other reasonable condition as specified by the DAS Administrator intended to secure completion of the programme. Yes

7c. The debtor, or debtors in the case of a joint application, agree that any personal information provided to the DAS Administrator will be used to discharge their statutory functions under the Debt Arrangement and Attachment (Scotland) Act 2002 and other relevant legislation (including placing their details on the DAS public register) but personal information will not be disclosed to third parties except as provided by legislation. Yes

7d. The debtor, or debtors in the case of a joint application, understand that the DAS Administrator (or an agent acting on their behalf) may also contact them to discuss their experience as part of our ongoing commitment to customer service.

Does the debtor agree to being contacted in this way?

Yes No

SECTION 8

The DAS Administrator in determining whether to approve a programme may consider: information provided by the debtor, or debtors in the case of a joint DPP; the extent to which creditors have consented to a programme, and any comment made by the money adviser who has provided advice to the debtor(s). The DAS Administrator may consider the fair and reasonable conditions set out in the regulations, including the term of the programme and may also have regard to any other factor the DAS Administrator considers appropriate.

8. Provide any supporting information or comments below that you wish the DAS Administrator to take into consideration.

Supporting Information:

SECTION 9

9. Declaration by Money Adviser

I declare that the debtor, or in the case of a joint application the debtors, received appropriate financial advice and information about applying for a DPP, including the conditions which apply and that their information will be held on a DAS public register.

I declare that the debtor, or in the case of a joint application the debtors, have consented to proceed with this application without signing this declaration. Yes No

10. Signature of Debtor(s)

(Where form not submitted on debtor(s) declaration in Section 9 above)

I apply for approval of the debt payment programme(DPP) set out in this application and declare that I have received appropriate financial advice and information about applying for a DPP, including the conditions which apply. I also understand that information about my DPP will be held on a DAS public register.

Signature of Debtor _____ date _____

Signature of other debtor in a Joint DPP _____ date _____

SECTION 4

4 Details of Debt included in Programme

The debtor, or the debtors in the case of a joint application, agree to make the first payment under the programme during the period of 42 days immediately following the date on which the DPP is approved.

4a. The debtor, or the debtors in the case of a joint application, agree to make all payments to the Payments Distributor detailed below unless another Payments Distributor is notified by the DAS Administrator:

Payments Distributor
Address

| |
|--|
| |
|--|

4b. The Payments Distributor will deduct 2% from the payment due to the creditors from each instalment to cover the fee payable to the DAS Administrator for consideration of the DPP application and an additional _____% fee for administering the payments distribution.

4c. The following are debts which are included in the programme owed by (debtor's name)

| Account number | Amount owed | | Payment amount (per instalment) | | Net amount payable to creditor (per instalment) | |
|----------------|-------------|---|---------------------------------|---|---|---|
| | £ | p | £ | p | £ | p |
| | | | | | | |

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

For joint DPPs only.

4c. i) The following are debts which are included in the programme owed by (debtor's name)

| Account number | Amount owed | | Payment amount (per instalment) | | Net amount payable to creditor (per instalment) | |
|----------------|-------------|---|---------------------------------|---|---|---|
| | £ | p | £ | p | £ | p |
| | | | | | | |

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

4d. The debtor, or the debtors in the case of a joint DPP, will pay the following:

i) Total payment amount of over instalments

Payment frequency
Weekly

Fortnightly

Monthly

4 weekly

ii) Lump sum offer of

iii) Lump sum to be paid on the following date or dates:

iv) Realisation of the following asset(s):

SECTION 5

5. Notification by Continuing Money Adviser or the DAS Administrator (where appropriate)

You are notified that the debtor, or debtors in the case of a joint programme, specified in this notice are taking part in a DPP approved under the Debt Arrangement Scheme (Scotland) Regulations 2011.

Name of person sending this notice _____ date _____

5a. Details of Continuing Money Adviser or the DAS Administrator (where appropriate)

ID No. (where appropriate)

Name

Address

Contact Name (if different)

Phone No.

| |
|--|
| |
| |
| |
| |
| |
| |

The DAS Administrator will use information provided to discharge their statutory functions under the Debt Arrangement and Attachment (Scotland) Act 2002 and other relevant legislation, including placing debtor's details on the DAS public register. Personal information will not be disclosed to third parties except as provided by legislation.

IMPORTANT INFORMATION FOR CREDITORS

The Debt Arrangement Scheme (DAS)

The Debt Arrangement Scheme is a statutory scheme that has binding legal effect. A DAS debt payment programme (DPP) has effect when it is approved by the DAS Administrator, on behalf of Scottish Ministers - the Accountant in Bankruptcy, 1 Pennyburn Road, Kilwinning, KA13 6SA.

DAS helps people with debts to pay most of what they owe to their creditors over an agreed period of time. No further interest or charges can be added to the debt whilst the DPP continues and they are written off on completion of the DPP.

This form is a notice to you that the DAS Administrator has approved a DPP as proposed by the debtor, or debtors in the case of a joint DPP, named above. The debtor(s) is, therefore, protected from enforcement.

The protection will apply until the programme is completed but will stop if the programme is revoked before completion, for example due to non-payment by the debtor(s).

IT IS UNLAWFUL TO SEQUESTER (MAKE BANKRUPT), OR TO USE DILIGENCE (ENFORCEMENT) AGAINST A DEBTOR WHO IS PROTECTED FROM ENFORCEMENT.

Further information about the rights and duties of debtors and creditors under DAS is available on the Accountant in Bankruptcy website at: www.aib.gov.uk.

Section 3

3 Grounds for Variation (Regulation 37)

I apply for a variation because:

- a There is an agreement between the debtor, or in the case of a joint DPP the debtors, and each creditor participating in the programme. Yes No
- b There is an agreement between the debtor and a creditor to cancel the obligation to repay an amount. Yes No
- c The programme is one in relation to which a request for the consent of every creditor was made before 30th June 2007 and the variation is to 'freeze' interest and charges otherwise due to these creditors. Yes No
- d There has been a material change in the circumstances of the debtor or, in the case of a joint DPP, the debtors. Yes No
- e A debt has been omitted from, or was wrongly assessed for the programme due to a mistake, oversight, or other reasonable cause. Yes No
- f There is a debt that was future or contingent which was known but not quantifiable at the date of approval, is now quantified and due for payment. Yes No
- g The debtor, or the debtors in the case of a joint DPP, needs credit to meet an essential requirement. Yes No
- h The debtor, or in the case of a joint DPP the debtors, wishes to defer payment for a period of not exceeding 6 months, with the period of the DPP to be extended accordingly, as the debtor's disposable income has reduced by 50% or more as a result of the circumstances specified below:
- A period of unemployment or change in employment;
 - A period of leave from employment for maternity, paternity, adoption or to care for a dependant;
 - A period of illness of the debtor;
 - Divorce, dissolution of civil partnership or judicial separation; or
 - Death of a person with whom the debtor shared financial responsibilities or otherwise.

Provide full details and evidence in respect of 3a) to 3h) below.

| |
|-------------------------|
| Supporting Information: |
|-------------------------|

Section 4

4 Effect of the Variation

I wish to:

- a Change the debt included in the DPP. Yes No

If 'yes', provide details of the debt to be included or excluded below:

| Creditor's Name & address | Creditor ID ref. | Account number | Amount owed £ p | Tick if new debt not in the programme |
|---------------------------|------------------|----------------|--------------------|---------------------------------------|
| | | | | |

- b Arrange a payment holiday of not exceeding 6 months (on the grounds at 3h above) Yes No

If 'yes', provide details of income and expenditure at 4c below:

- c Vary the amount payable to the creditors. Yes No

If 'yes', provide details below of income, expenditure and revised payment offer:

| | | |
|----------------------------|----------|----------|
| Total salary or wages | £ | p |
| Total income from benefits | £ | p |
| Total pension income | £ | p |
| Total other income | £ | p |
| Total income | £ | p |

Payment frequency

Weekly Fortnightly Monthly 4 weekly

| | | |
|--------------------------------|----------|----------|
| Total household expenditure | £ | p |
| Total travel expenditure | £ | p |
| Total phone expenditure | £ | p |
| Total other expenditure | £ | p |
| Total disposable income | £ | p |

payment offer of over instalments

Payment frequency

Weekly Fortnightly Monthly 4 weekly

- d. Other Yes No

Provide full details in respect of 4a) to 4d) below.

Supporting Information:

Section 5

5.1 Approval of a Variation (Regulation 38)

The DAS Administrator in determining whether a variation is fair and reasonable will consider information provided by the debtor, or debtors in the case of a joint DPP; the views of a creditor taking part in the programme and of any creditor making the application; the views of any money adviser who has provided advice to the debtor; and may have regard to any other factor the DAS Administrator considers appropriate.

Provide any supporting information or comments below that you wish the DAS Administrator to take into consideration.

Supporting Information:

Section 6

6 Declaration by Money Adviser (where applicable)

I declare that the debtor, or in the case of a joint DPP the debtors, received appropriate financial advice and information about varying the DPP, including the implications of the variation.

I declare that the debtor, or in the case of a joint application the debtors, have consented to proceed with this application without signing this declaration.

Section 7

7 Declaration of Creditor (where applicable)

I apply for a variation of the DPP, as set out in this application.

Signature of Creditor _____ date _____
(may be omitted in an electronic application)

Position in company (if any) _____

The Debt Arrangement Scheme (Scotland) Regulations 2011

Form 5

Reg. 41(2)(b)

Application for Revocation of a Debt Payment Programme

Section 1

1 Details of Applicant (Money Adviser or Creditor in DPP)

| | |
|-----------------------------|--|
| ID No. (Where Appropriate) | <input type="text"/> |
| Name | <input type="text"/> |
| Address | <input type="text"/> |
| Contact Name (if different) | <input type="text"/> |
| Phone No. | <input type="text"/> |
| Capacity | Money Adviser <input type="checkbox"/> |
| | Creditor in DPP <input type="checkbox"/> |

Section 2

2 Details of Debt Payment Programme

| | |
|----------------------|---|
| DAS case number | <input type="text"/> |
| Is this a joint DPP? | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not known |

2a Name of debtor

| | |
|---------------|----------------------|
| Surname | <input type="text"/> |
| First Name(s) | <input type="text"/> |
| Address | <input type="text"/> |
| | <input type="text"/> |
| Postcode | <input type="text"/> |

If a joint DPP, complete 2b

2b Name of other debtor in the DPP

| | |
|---------------|----------------------|
| Surname | <input type="text"/> |
| First Name(s) | <input type="text"/> |
| Address | <input type="text"/> |
| | <input type="text"/> |
| Postcode | <input type="text"/> |

Section 3

3 Grounds for Revocation (Regulation 42)

I apply for a revocation of the DPP because:

- | | | | |
|----|---|------------------------------|-----------------------------|
| a) | The debtor, or in the case of a joint DPP the debtors, failed to satisfy a standard condition under regulation 27 or a discretionary condition under regulation 28. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| b) | The debtor, or in the case of a joint DPP the debtors, made a false statement in their application. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| c) | The debtor, or in the case of a joint DPP the debtors, failed to make the agreed instalment under the DPP and they are currently in arrears of an amount equal to the aggregate of payments due in a period of two months beginning after the last payment is made. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| d) | The conditions for a joint DPP as specified in regulation 22(1) or (2) no longer apply. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| e) | The debtor, or in the case of a joint DPP one of the debtors, is deceased. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

Provide full details in respect of 3a) to 3e) below.

| |
|-------------------------|
| Supporting Information: |
|-------------------------|

Section 4

4 Determination of a Revocation

The DAS Administrator must, under regulation 43, consider any statement made by, or on behalf of, a debtor; the nature of any failure, or untrue statement; information to indicate whether or not the programme will be successful and any representations made by the debtor or by the creditors, provided that they are received within the specified period.

The DAS Administrator may have regard to any other factor that is considered appropriate when determining whether to revoke a DPP.

Provide any supporting information or comments below that you wish the DAS Administrator to take into consideration.

| |
|-------------------------|
| Supporting Information: |
|-------------------------|

Section 5

5 Declaration by Money Adviser

I declare that the debtor, or in the case of a joint DPP the debtors, received appropriate financial advice and information about revoking the DPP, including the implications of the revocation on all interest and charges that apply to the debts.

I declare that the debtor, or in the case of a joint application the debtors, have consented to proceed with this application without signing this declaration.

Section 6

6 Declaration of Creditor (where applicable)

I apply for a revocation of the DPP, as set out in this application.

Signature of Creditor _____ date _____
(may be omitted in an electronic application)

Position in company (if any) _____

SECTION 4

4 Details of the debt(s) owed to the creditor named in Section 2 included in the offer of composition.

4a. The following are debt(s) owed by (debtor's name) to the creditor named in Section 2 and are included in the offer of composition.

| Account number | Total debt owed at Date DPP was approved | | Total amount paid by the debtor to the DPP | | Total debt outstanding at date of offer of composition | |
|----------------|--|---|--|---|--|---|
| | £ | p | £ | p | £ | p |

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

For joint DPPs only.

4b. The following are debt(s) owed by (debtor's name) to the creditor named in Section 2 and are included in the offer of composition.

| Account number | Total debt owed at Date DPP was approved | | Total amount paid by the debtor to the DPP | | Total debt outstanding at date of offer of composition | |
|----------------|--|---|--|---|--|---|
| | £ | p | £ | p | £ | p |

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

SECTION 5

5. Offer of composition

An offer of composition is made to the creditor named in Section 2. The DPP has been in effect for at least 12 years (excluding any period of deferral) and 70% or more of the total amount of debt due at the date of approval has been paid.

Where a creditor accepts the offer of composition, the liability of the debtor to-

- (a) repay a debt included in the Debt Payment Programme is discharged;
- (b) pay interest, fees, penalties or other charges in relation to a debt included in the programme is waived.

A creditor who is made an offer of composition under regulation 46(A)(1) and who does not respond to that offer within 21 days after the date of the offer is deemed to accept the offer.

SECTION 6

6. Acceptance

I accept the offer of composition in respect of each of the debts due and included in the programme.

I accept the offer of composition in respect of only the following debt(s) included in the Programme.

I do not accept the offer of composition.

Signature of Creditor _____ date _____
(may be omitted in an electronic application)

Position in company (if any) _____

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Debt Arrangement Scheme (Scotland Regulations 2011 (“the DAS Regulations”) provide a scheme for the repayment of 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”).

These Regulations amend the DAS Regulations and the Debt Arrangement Scheme (Interest, Fees, Penalties and Other Charges (Scotland) Regulations 2011 (S.S.I. 2011/238) in order to make changes to the scheme.

Regulation 3 amends the last mentioned instrument to amend the date on which interest, fees, penalties and other charges are frozen on an application for a debt payment programme, to the date of application for the programme from the date of approval, and makes consequential changes for the introduction of composition and reviews by the DAS Administrator.

Regulation 5 inserts provision into the DAS Regulations to enable the DAS Administrator to correct accidental errors.

Further amendments are made to the DAS Regulations to provide that fees for the services of money advisers are not included in a programme (regulation 6) and to make further provision as to who can apply to be a money adviser (regulation 7).

Regulation 8 removes duties on payments distributors to assist the DAS Administrator and advise on payment distribution (insofar as the DAS Administrator administers ongoing cases in place of money advisers who do not charge), to provide reports to creditors, and clarifies the application of the limit to the amounts charged by payment distributors.

Amendments are made to the information to be included on the DAS Register (regulation 9).

Regulation 10 amends regulation 22 of the DAS Regulations to remove the requirement that the two debtors in a joint programme have a debt for which they are joint and severally liable. Amendments are made to regulation 23 of the DAS Regulations (consent of creditors) to remove the need to send the request for consent by first class post and to provide that the period of 21 days to respond to the request applies irrespective of assignment of a debt. A creditor has to notify the DAS Administrator of an assignment of a debt included in a programme. Further amendments are made to require a creditor’s authorised representative to provide evidence of authority to act and for notification to the DAS Administrator where a representative is no longer authorised (regulation 11).

Regulation 12 increases the time limit in which the first payment under a programme is to be made from one month to 42 days. Regulation 13 allows for variation of a debt payment programme where a creditor has applied compensation (or “set-off”) between mutual debts owed between the debtor and creditor, reducing a debtor’s debt, where debtor and creditor do not agree a resultant variation. Amendments are also made to the duration of payment breaks and notification.

Regulation 14(1) allows revocation of a debt payment programme where there have been concurrent applications to the sheriff and DAS Administrator for bankruptcy and for a debt payment programme respectively, on an award of sequestration where the petition was presented before the debt payment programme was applied for. See also section 4(3) of the Debt Arrangement and Attachment (Scotland) Act 2002 and section 12(3A)(a) of the Bankruptcy (Scotland) Act 1985. Provision is also made for revocation on the death of a debtor. New provisions are inserted into the DAS Regulations to introduce composition after the debtor has made payments in terms of the programme for a period of 12 years and 70% of the debt is paid (regulation 15). In addition, a new review and appeal procedure is introduced (regulation 16 and 17). Provision is also made in respect of the effect of determinations which are challenged.

Provision is also made for new forms (regulation 18).

Regulation 19 makes minor corrections and clarifications and implements recommendations of the Scottish Law Commission to remove technical duplication in provisions amended into the 1985 Act.

Regulation 20 includes savings provisions in relation to programmes approved and determinations made before these Regulations come into force.

A Business and 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 Accountant in Bankruptcy, 1 Pennyburn Road, Kilwinning.

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