
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2014 No.

**The Debt Arrangement Scheme
(Scotland) Amendment Regulations 2014**

Citation and commencement

1.—(1) These Regulations may be cited as the Debt Arrangement Scheme (Scotland) Amendment Regulations 2014.

(2) Subject to paragraph (3), they come into force on 11th December 2014.

(3) Regulations 8 except paragraph (3)(a) and (c), 9(1), 10, 21(5)(a), 22, Schedule 1 and Schedule 2 in respect of form 1 come into force on 1st April 2015.

Interpretation

2. In these Regulations, “the DAS Regulations” means the Debt Arrangement Scheme (Scotland) Regulations 2011(1).

Amendment to the DAS Regulations

3. The DAS Regulations are amended in accordance with regulations 4 to 22.

Interpretation: Common Financial Tool, legal persons and other entities

4. In regulation 2(1) (interpretation: general)—

(a) after the definition of “appeal”, insert—

““charity” means a body entered in the Scottish Charity Register under the Charities and Trustee Investment (Scotland) Act 2005(2);

“Common Financial Statement” means the style and format for income and expenditure categories under that title (and, where relevant, related spread sheets, budget sheets, trigger figures, guidance materials and notes) published by the Money Advice Trust(3);

“Common Financial Tool” means the method of assessing the amount of a debtor’s assets, income, liabilities and expenditure provided for under section 5D (assessment of debtor’s contribution) of the 1985 Act(4) modified in accordance with Schedule A1(5);”;

(b) for the definition of “continuing money adviser”, substitute—

““continuing money adviser” has the meaning given by regulation 12(3)(6);”;

(1) S.S.I. 2011/141, as amended by S.S.I. 2013/225.

(2) 2005 asp 10.

(3) The Money Advice Trust is a company registered in England and Wales with registered number 4741583, registered charity in England and Wales registration number 1099506. Available at www.cfs.moneyadvicetrust.org

(4) See the Common Financial Tool etc. (Scotland) Regulations 2014 (S.S.I. 2014/[]).

(5) Inserted by regulation 8(6) of and Schedule 1 to these Regulations.

(6) As amended by regulation 7(a) of these Regulations.

- (c) after the definition of “DAS Register”, insert—
- ““debtor” means—
- (a) an individual;
 - (b) a legal person;
 - (c) a trust; or
 - (d) an unincorporated body of persons;
- “declaration of viability” has the meaning given by regulation 22A(7)(c)(7);”;
- (d) after the definition of “joint debt payment programme”, insert—
- ““legal person” means—
- (a) a partnership;
 - (b) a limited partnership within the meaning of the Limited Partnerships Act 1907(8); or
 - (c) a corporate body other than a company registered under the Companies Act 2006(9);”;
- (e) after the definition of “money adviser”, insert—
- ““nominated person” means a person specified by virtue of regulation 22A(7)(b);
- “OSCR” means the Office of the Scottish Charity Regulator within the meaning of the Charities and Trustee Investment (Scotland) Act 2005(10);”;
- and
- (f) after regulation 2(1), insert—
- “(1A) Any reference in these Regulations to a debtor (however described) does not include an entity referred to in section 6(2) of the 1985 Act (companies registered under the Companies Act 2006 or entities in respect of which an enactment provides, expressly or by implication, that sequestration is incompetent)(11).”.

Approved money adviser for legal persons and other entities

- 5.—(1) For regulation 7(3) (debtor to have approved money adviser), substitute—
- “(3) The money adviser who advises a debtor and intends to resign must assist a debtor in finding a replacement money adviser before the money adviser resigns.”.
- (2) After regulation 8 (approved categories of money advisers), insert—

“Approved money advisers: legal persons and other entities

8A. Where the debtor is a legal person, trust or unincorporated body of persons, the money adviser who advises the debtor must be a money adviser in the category specified in regulation 8(a).”.

Approval of a money adviser

- 6.—(1) In regulation 9 (approval of a money adviser)(12)—

(7) Regulation 22A (debt payment programme: legal persons and other entities) is inserted by regulation 13 of these Regulations.
(8) 1907 c.24 (7 Edw.7).
(9) 2006 c.46.
(10) See section 1 of that Act.
(11) Section 6(2) is amended by paragraph 6 of schedule 3 to the 2014 Act, to add a reference to limited liability partnerships.
(12) Regulation 9(3) was substituted by S.S.I. 2013/225 to add a reference to organisations working towards Type 2 accreditation against Scottish National Standards for Information and Advice Provision.

- (a) for paragraphs (2) and (3), substitute—
 - “(2) The DAS Administrator may approve an application under paragraph (1), if satisfied that the applicant—
 - (a) has undergone training on the matters specified in Schedule 3;
 - (b) is not a person listed in regulation 10; and
 - (c) is a fit and proper person to be a money adviser.”; and
 - (b) for the cross-reference in Schedule 3 substitute “Regulation 9(2)(a)”.

(2) Regulation 7 of the Debt Arrangement Scheme (Scotland) Amendment Regulations 2013(13) is revoked.

Functions and duty of a money adviser

- 7. In regulation 12 (functions and duty of a money adviser)—
 - (a) in paragraph (3), after “to a debtor” where it first occurs insert “or advises a debtor which is a legal person, trust or unincorporated body of persons”;
 - (b) in both heads (i) and (ii) of paragraph (3)(b), after “adviser” insert “or any nominated person under regulation 22A(7)(b)”;
 - (c) after paragraph (3)(b)(ii)—
 - (i) omit “and”; and
 - (ii) insert—
 - “(iia) on any resignation, the full name and business address of the replacement money adviser or nominated person; and”;
 - (d) after regulation 12 insert—

“Additional functions and duty of a money adviser: legal persons and other entities

12A. Where the debtor is a legal person, trust or unincorporated body of persons a money adviser must—

- (a) in any review under regulation 12(3)(a) include a declaration of viability;
- (b) if unable to make such a declaration because the money adviser considers the debtor does not meet the requirements contained in regulation 22A(7)(c), apply as soon as reasonably practicable for revocation under regulation 41; and
- (c) on becoming aware of information which causes the adviser to believe that a ground for revocation under regulation 42(1) is met, apply as soon as reasonably practicable for revocation under regulation 41.”.

Common Financial Tool: consequential amendments, all debts due

- 8.—(1) In regulation 12(1) (functions and duty of a money adviser)—
 - (a) after “money adviser” insert “, using the Common Financial Tool in the case of a debt payment programme for an individual.”; and
 - (b) at the end of sub-paragraph (d) insert “, in accordance with the Common Financial Tool in the case of a debt payment programme for an individual”.

- (2) At the end of regulation 12(3)(a) insert “(in accordance with the Common Financial Tool in the case of a debt payment programme for an individual)”.
- (3) After regulation 20(2) (application for approval)—
- (a) insert—
- “2A) The debt payment programme applied for under paragraph (1) must provide for the payment of all debts due by the debtor at the time of making the application which a debt payment programme can provide for payment of, subject to regulation 22A(8)(b).”;
- (b) after paragraph (2A) so inserted, insert—
- “2B) Where the debtor is an individual the application must also contain—
- (a) the statement of income and expenditure in form 1 as at that date completed in the style and format of the Common Financial Statement; and
- (b) a statement—
- (i) that the proposed payments are in accordance with the Common Financial Tool as assessed by the money adviser; and
- (ii) any evidence or explanation required in applying that tool.”; and
- (c) after paragraph (2B) so inserted, insert—
- “2C) Where the debtor is a charity the application must also contain evidence that it has been intimated to OSCR.”.
- (4) In regulation 24 (approval of agreed programmes)—
- (a) in paragraph (1), for “The” substitute “Subject to paragraph (1A), the”; and
- (b) after regulation 24(1) insert—
- “1A) In the case of a debt payment programme for an individual, the debt payment programme may only be approved in accordance with the Common Financial Tool.”.
- (5) Before regulation 25(2)(a) (approval by the DAS Administrator) insert—
- “(za) where the debtor is an individual, the Common Financial Tool;
- (zb) where the debtor is an individual, any statement and evidence required under regulation 20(2B) to satisfy the DAS Administrator in applying the Common Financial Tool;”.
- (6) Before Schedule 1, insert Schedule A1 set out in Schedule 1 to these Regulations.

Information on the DAS Register

- 9.**—(1) In both regulation 19(2)(a) and (3) (information on the DAS Register), for “regulation 20(3)” substitute “section 4A(1) and 4B(1) of the 1985 Act(14) or regulation 20(3).”
- (2) In regulation 19(3)—
- (a) after “programme” where it last occurs insert “, and for each individual who has consented in relation to that debtor under regulation 22A(2)(a), (3), (4) or (5)”;
- (b) in sub-paragraph (c) after “business” insert “name and”.

Application for approval: intention to apply and moratorium

- 10.** For regulation 20(3) (intimation of intention to apply) substitute—
- “(3) On revocation of a joint debt payment programme on the grounds that conditions in regulations 22(1)(b) or (2) no longer apply or under regulation 40A(1), a debtor who intends

(14) Sections 4A and 4B are inserted by section 8 of the 2014 Act.

to apply may give written intimation of that intention to the DAS Administrator within 12 months of giving notice under section 4A(1) of the 1985 Act.”.

Application for approval: legal persons and other entities

11. After regulation 20(4) (intimation of withdrawal) insert—

- “(4A) Where the debtor is a legal person, trust or unincorporated body of persons—
- (a) “habitually resident in Scotland” in paragraph (1) is to be taken to mean—
 - (i) having an established place of business in Scotland; or
 - (ii) constituted or formed under Scots law, and at any time carrying on business in Scotland⁽¹⁵⁾; and
 - (b) intimation under paragraph (4) may be given by a nominated person or a money adviser on the debtor’s behalf.”.

Debtors who may apply for approval, etc.

12.—(1) For regulation 21(1) (debtors who may apply for approval) substitute—

- “(1) Subject to paragraphs (2) and (3), a debtor may apply for approval of a debt payment programme—
- (a) in the case of an individual debtor, where the programme provides for the payment of one or more debts; or
 - (b) in the case of any other debtor, where the programme provides for the payment of two or more debts.”.

(2) In regulation 22(3) (joint debt payment programme), after ““debtor”” insert “(including to a debtor who is an “individual” or “individuals”)”.

Business Debt Arrangement Scheme

13. After regulation 22 (joint debt payment programme), insert—

“Debt payment programme: legal persons and other entities

22A.—(1) This regulation applies to an application for a debt payment programme under regulation 20(1) by a debtor which is a legal person, a trust or an unincorporated body of persons.

- (2) In relation to a partnership—
 - (a) every partner must consent to the application; and
 - (b) the application may be combined with an application by any of the partners as an individual (but see paragraph (8)(b)).
- (3) In relation to a limited partnership, every general partner must consent to the application (and any limited partner in the partnership who at any time has taken part in the management of the firm).
- (4) In relation to a trust, the majority of trustees must consent to the application.
- (5) In relation to a corporate body (other than a company registered under the Companies Act 2006) or an unincorporated body of persons, a person authorised to act on behalf of the body must consent to the application.

(15) See section 9(2A) of the Bankruptcy (Scotland) Act 1985 (c.66), as inserted by the 2007 Act, section 14(7)(d).

(6) Where paragraph (2)(a), (3), (4) or (5) applies, a declaration by a money adviser under regulation 20(2)(b) must declare that consent has been given as required.

(7) Any application under this regulation must—

(a) include evidence (including any founding documents) demonstrating the legal status of the debtor;

(b) specify the full name and address of an individual who—

(i) has been nominated by the debtor;

(ii) with the agreement of the partners, trustees or authorised person mentioned in paragraph (2)(a) to (5) respectively,

to act on behalf of the legal person, trust or unincorporated body of persons; and

(c) contain a report to the DAS Administrator by the money adviser in form 7 including a declaration that the debtor is viable (a “declaration of viability”) on the basis that, in the adviser’s opinion—

(i) the programme has a reasonable prospect of being completed;

(ii) the debtor can make all payments due under the programme within a period of 5 years after the date of the application; and

(iii) the debtor is continuing to trade, where trading, as at the relevant date or otherwise operating at the relevant date.

(8) Any debt for which both an individual debtor is liable and a legal person, trust or unincorporated body of persons is liable in relation to which that individual debtor is a person specified under paragraph (2)(a), (3), (4) or (5)—

(a) must be disclosed both in any application by that individual or by that legal person, trust or unincorporated body of persons;

(b) may be included in any application by that individual or by that legal person, trust or unincorporated body of persons and subsequently approved for payment, but may not be included in both such applications; and

(c) may be taken into account by the DAS Administrator in determining whether a debt payment programme is fair and reasonable under regulation 25(1) in relation to an application by either an individual or a legal person, trust or unincorporated body of persons.

(9) For the purposes of section 4(2) to (4) of the Act and regulations 33(1)(a) and 34 (effect on diligence), debts which are being paid under an approved debt payment programme by a legal person, trust or unincorporated body of persons are treated (notwithstanding paragraph (8)(b)), as if they are also being paid under an approved debt payment programme by the individuals specified under paragraph (2)(a), (3), (4) or (5) in relation to that legal person, trust or unincorporated body of persons.

(10) Unless the context otherwise requires, where the debtor is a legal person, trust or unincorporated body of persons, notices and intimations given by or to a debtor under these Regulations may be given by or to the nominated person.

(11) In relation to a charity, notification given under regulation 29, 44 and 46 must also be given to OSCR.

(12) In paragraph (7)(c)(iii)—

“the relevant date” means—

(a) in the case of a declaration contained in an application for approval of a debt payment programme, the date of the application; and

(b) in any other case, when the declaration is required under these Regulations; and

“operating” means the debtor at the relevant time has office-holders or trustees in office or owns or holds property, and is active in fulfilling the purposes for which the legal person, trust or unincorporated body of persons was established.”.

Consent of creditors: legal persons and other entities

14. In regulation 23 (consent of creditors) after paragraph (3) insert—

“(3A) Where the debtor is a legal person, trust or unincorporated body of persons, a request to a creditor for consent must include a declaration of viability.”.

Standard conditions

15. In regulation 27 (standard conditions)—

(a) after paragraph (2)(j) omit “and”;

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

“; and

(l) in the case of a debtor which is a legal person, trust, or unincorporated body of persons—

(i) declare all assets owned by that debtor to the money adviser by the date of the 12 monthly review under regulation 12(3)(a);

(ii) not sell any non-trading asset during the period of the programme unless the money adviser has been notified of the proposed sale and expected return for the benefit of creditors and has agreed, in advance of entering into any sale agreement; and

(iii) make all payments due under the programme within 5 years after the date of the application”; and

(c) after paragraph (2) insert—

“(3) Where the debtor is a legal person, trust or unincorporated body of persons, in sub-paragraph (f)(ii) above—

(a) “material change of circumstances” includes information which materially affects the declaration of viability; and

(b) for 7 days read 14 days.

(4) In sub-paragraph (l)(ii) above, “non-trading asset” means any asset owned by the debtor, other than—

(a) current or circulating assets (for instance stock in trade, inventory);

(b) where the debtor is engaged in trade, any article acquired by the debtor—

(i) to be sold by the debtor (whether or not after adaptation), or

(ii) as a material for a process of manufacturing for sale by the debtor, in the ordinary course of that trade;

(c) any article of a perishable nature or which is likely to deteriorate substantially and rapidly in condition or value;

(d) any dwellinghouse or mobile home, unless the dwellinghouse or mobile home is used for the business or operations of the debtor;

(e) any article within a dwellinghouse or mobile home other than implements, tools of trade, books or other equipment reasonably required for the use of the debtor

or any employee of the debtor in the practice of the debtor’s profession, trade or business or for the purposes for which the debtor was established.”.

Effect on a creditor: legal persons and other entities

16. In regulation 33 (effect on a creditor)—

- (a) at the start of paragraph (1)(b)(v), insert “where the debtor is an individual,”;
- (b) at the start of paragraph (6)(a), insert “where the debtor is an individual,”; and
- (c) after paragraph (6)(a), insert—
 - “(aa) where the debtor is a legal person, trust or unincorporated body of persons, a building used only or principally for the debtor’s work;”.

Variation

17.—(1) In regulation 36 (application for variation)—

- (a) at the start of paragraph (1), for “An” substitute “Subject to paragraph (5), an”;
- (b) in paragraph (4)—
 - (i) after “under paragraph (1),”, insert “if applicable the continuing money adviser for that debtor, otherwise”; and
 - (ii) omit sub-paragraph (d) and the “and” preceding that sub-paragraph; and
- (c) for paragraph (5) substitute—
 - “(5) An application under paragraph (1)(a)—
 - (a) in relation to a joint debt payment programme refers to an application made by both debtors jointly; and
 - (b) in relation to a debtor which is a legal person, trust or unincorporated body of persons must—
 - (i) be made by a money adviser on behalf of the debtor; and
 - (ii) include a declaration of viability.”.

(2) At the start of regulation 37(1)(h) (grounds for variation) insert “in the case of a debtor who is an individual,”.

Revocation of a debt payment programme

18.—(1) In regulation 40A(2)(16) (death of a debtor), after ““the debtor”” insert “means a debtor who is an individual and”.

(2) In regulation 41 (application for revocation)—

- (a) at the start of paragraph (1), for “An” substitute “Subject to paragraph (3), an”;
- (b) in paragraph (2)(b), for “on behalf of the debtor” substitute “or a nominated person”; and
- (c) for paragraph (3) substitute—
 - “(3) An application under paragraph (1)(a)—
 - (a) in relation to a joint debt payment programme refers to an application made by both debtors jointly, except that either debtor may apply only on grounds mentioned in regulation 42(1)(d); and

- (b) in relation to a debtor which is a legal person, trust or unincorporated body of persons may only be made by—
 - (i) a money adviser or nominated person on behalf of the debtor; or
 - (ii) a money adviser under regulation 12A(b) or (c).”.
- (3) In regulation 44A (effect of revocation) for paragraph (1) substitute—
 - “(1) The revocation of a debt payment programme is to have no effect—
 - (a) in the case of revocation where regulation 40A applies, for 6 weeks; and
 - (b) in any other case, for 14 days,immediately following the date on which the programme is revoked.”.

Grounds for revocation: legal persons and other entities

- 19.**—(1) In regulation 42(1) (grounds for revocation)—
- (a) omit “or” after each of sub-paragraphs (b) and (c); and
 - (b) at the end of sub-paragraph (d) insert—
 - “; or
 - (e) in the case of a debtor which is a legal person, trust or unincorporated body of persons—
 - (i) the format of that debtor changes during the period of the debt payment programme;
 - (ii) a money adviser is unable to make a declaration of viability in accordance with regulation 12(3)(a) and 12A(a) because the money adviser considers the debtor no longer meets the requirements contained in regulation 22A(7) (c); or
 - (iii) the consent of an individual who consented under regulation 22A(2)(a), (3), (4) or (5) is withdrawn”.
- (2) After regulation 42(3) insert—
- “(4) In this regulation, “the format of that debtor changes” means—
 - (a) in the case of a partnership or limited partnership with less than 5 partners, membership of the partnership changes;
 - (b) in the case of a trust with less than 5 trustees, when one of the trustees is divested of his interest in the trust;
 - (c) in the case of a corporate body (other than a company registered under the Companies Act 2006) or an unincorporated body of persons, where there is a material change in the objects or membership of the body.”.

Composition: legal persons and other entities

- 20.** After regulation 46A(1) (offer of composition) insert—
- “(1A) No offer of composition may be made in respect of a debt payment programme for which the debtor is a legal person, trust or unincorporated body of persons.”.

Forms: legal persons and other entities

- 21.**—(1) In regulation 20(2) (application for approval)—
- (a) in sub-paragraph (a) for “form 1” substitute “form 1 or form 1B as the case may be”; and

- (b) in sub-paragraph (c) for “form 1” substitute “the form 1 or form 1B”.
- (2) In regulation 29(4)(a)(ii) (notification of approval or rejection) for “form 2” substitute “form 2 or form 2B as the case may be”.
- (3) In regulation 36(3)(b) (application for variation) for “form 4” substitute “form 4 or form 4B as the case may be”.
- (4) In regulation 41(2)(b) (application for revocation) for “form 5” substitute “form 5 or form 5B as the case may be”.
- (5) In Schedule 1 (forms) for or after the following form substitute or insert the relative form set out in Schedule 2 to these Regulations—
 - (a) for form 1 (application for approval of a debt payment programme) substitute form 1 (application for approval of a debt payment programme: individuals);
 - (b) after form 1 insert form 1B (application for approval of a debt payment programme: legal persons and other entities);
 - (c) after form 2 insert form 2B (creditor notification of approval: legal persons and other entities);
 - (d) after form 4 insert form 4B (variation of debt payment programme: legal persons and other entities);
 - (e) after form 5 insert form 5B (revocation of debt payment programme: legal persons and other entities); and
 - (f) after form 6 insert form 7 (declaration of viability).

Minor revocations in consequence of Bankruptcy and Debt Advice (Scotland) Act 2014

- 22.** Regulations 30(1)(a) and (b) and (2) and 45 are revoked⁽¹⁷⁾, subject to regulation 23(5).

Savings and transitional arrangements

23.—(1) Regulations 8 except paragraph (3)(a) and (c), 9(1), 10, 21(5)(a), 22, Schedule 1, and Schedule 2 in respect of form 1, do not affect a debt payment programme in respect of which an application for approval was made (under regulation 20 of the DAS Regulations) before 1st April 2015.

(2) Where an application is made on or after 1st April 2015 for variation of a debt payment programme on a material change in the circumstances of a debtor, the DAS Administrator must have regard to the Common Financial Tool.

- (3) In so applying the Common Financial Tool, for the avoidance of doubt—
 - (a) this regulation does not prevent the DAS Administrator having regard to other factors, including the payments initially made under the debt payment programme; and
 - (b) the Common Financial Tool is not itself a material change in the circumstances of the debtor for the purposes of this regulation.

(4) The approval of any money adviser under regulation 9(1) of the DAS Regulations who has not undergone training on the matters specified in Schedule 3 to those Regulations, is revoked on the coming into force of regulation 6.

(5) Regulation 30(1)(a) and (b) and (2) of the DAS Regulations continues to apply to the end of any period of protection which applies under regulation 30 of those Regulations following intimation under regulation 20(3) of those Regulations given before 1st April 2015.

⁽¹⁷⁾ Section 7(1)(c) inserted by regulation 45 is substituted by paragraph 7(a) of schedule 3 to the 2014 Act.

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers