

*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.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2019 No.**

**DEBT**

**The Debt Arrangement Scheme (Scotland) Amendment  
Regulations 2019**

*Made* - - - - 2019

*Coming into force* - - 4th November 2019

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. These Regulations may be cited as the Debt Arrangement Scheme (Scotland) Amendment Regulations 2019 and come into force on 4 November 2019.

**Interpretation**

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

**Amendments to the DAS Regulations**

3. The DAS Regulations are amended in accordance with regulations 4 to 12.

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- (a) 2002 asp 17 (“the 2002 Act”). Section 5(4) was amended by the Bankruptcy and Diligence etc. (Scotland) Act 2007 asp 3 (“the 2007 Act”), section 212. Section 7 was amended by the 2007 Act, section 212 and by the Bankruptcy and Debt Advice (Scotland) Act 2014 asp 11 (“the 2014 Act”), sections 3 and 53. Section 7A was inserted by the 2007 Act, section 211. Section 9(1) of the 2002 Act contains a definition of “prescribed” relevant to the exercise of statutory powers under which these Regulations are made. Section 9(1) was amended by the 2007 Act, section 212 and by the 2014 Act, section 53.
- (b) As amended by section 211 of the 2007 Act and paragraph 38 of schedule 3 of the 2014 Act. 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, as amended by S.S.I. 2013/225, S.S.I. 2014/294, S.S.I. 2015/216 and S.S.I. 2018/297.

## Money advisers and payments distributors: approval, functions and fees

- 4.—(1) In regulation 2 (interpretation: general)—
- (a) before the definition of “the Act” insert—
    - ““AiB” has the meaning given in section 228 of the Bankruptcy (Scotland) Act 2016(a);”, and
  - (b) in the definition of “continuing money adviser” for “12(3)” substitute “12(1A)”.
- (2) In regulation 12 (functions and duty of a money adviser)—
- (a) after paragraph (1) insert—
    - “(1A) Where a money adviser—
    - (a) provides ongoing advice to the debtor and carries out administrative functions during the period of the debt payment programme; or
    - (b) advises a debtor which is a legal person, trust or unincorporated body of persons, (“a continuing money adviser”), it is also a function of that adviser to carry out the functions in paragraph (3).”,
  - (b) for paragraph (2) substitute—
    - “(2) A money adviser must not charge a fee for the adviser’s services to a debtor who is an individual.”,
  - (c) in paragraph (3) for the words from “Where a money adviser” to “of that adviser” substitute “The functions of a continuing money adviser referred to in paragraph (1A) are,”, and
  - (d) in paragraph (4), for “(3)” substitute “(1A)”.
- (3) Regulation 13 (payments distributors for a debt payment programme) is revoked.
- (4) In regulation 14 (approval of a payments distributor)—
- (a) omit paragraph (2),
  - (b) omit paragraph (3)(b) and the “and” immediately preceding it,
  - (c) in paragraph (6) omit “(or in the tendering process under paragraph (2))”, and
  - (d) at the end, insert—
    - “(7) AiB may not exercise any function of the DAS Administrator in considering and determining any application under this regulation by AiB.”.
- (5) In regulation 16 (functions and duty of a payments distributor) after paragraph (2) insert—
  - “(2A) Where the DAS Administrator specifies AiB as a substitute payments distributor under paragraph (2), AiB may at any time transfer on to an alternative payments distributor specified by the DAS Administrator the debt payment programmes for which AiB is responsible.”.
- (6) In regulation 17 (charges by a payments distributor)—
- (a) in paragraph (1)—
    - (i) omit the “and” immediately preceding sub-paragraph (b), and
    - (ii) for sub-paragraph (b) substitute—
      - “(b) in the case of a debt payment programme for an individual, must charge an administration fee to a creditor taking part in a debt payment programme in accordance with paragraph (2); and
      - (c) in the case of a debt payment programme for a legal person, trust or unincorporated body of persons, may charge an administration fee to a creditor taking part in a debt payment programme in accordance with paragraph (3).”, and

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(a) 2016 asp 21. AiB is the Accountant in Bankruptcy.

(b) for paragraph (2) substitute—

“(2) In the case of a debt payment programme for an individual, the administration fee, including any VAT incurred, is 20% of the sum due to be paid to a creditor in a distribution by the distributor.

(3) In the case of a debt payment programme for a legal person, trust or unincorporated body of persons, the administration fee, including any VAT incurred, must be no more than 8% of the sum due to be paid to a creditor in a distribution by the distributor.”.

(7) Omit regulation 20(2)(aa) (application for approval).

(8) In schedule 4 (payments distributors) in paragraph 1(1)(a) for “A person” substitute “Be a person”.

### **Approval of debt payment programme: creditor consent**

5.—(1) In regulation 23 (consent of creditors)—

(a) for paragraph (1) substitute—

“(1) Subject to paragraph (5), and regulation 25—

(a) not less than  $\frac{9}{10}$  in value of the creditors of a debtor who is an individual must consent to an application by the debtor for approval of a debt payment programme,

(b) each creditor of a debtor who is a legal person, trust or unincorporated body of persons must consent to an application by the debtor for approval of a debt payment programme.”; and

(b) in paragraph (2) for “each creditor of both debtors is required” substitute “the creditors of both debtors is relevant”.

(2) For regulation 24(1) (approval of agreed programmes) substitute—

“(1) Subject to paragraph (1A), the DAS Administrator must approve a debt payment programme for an individual where not less than  $\frac{9}{10}$  in value of the creditors have consented under regulation 23 to an application for approval.

(1ZA) The DAS Administrator must approve a debt payment programme for a legal person, trust or unincorporated body of persons where each creditor has consented under regulation 23 to an application for approval.”.

(3) In paragraph (2) after “paragraph (1)” insert “or (1ZA)”.

### **Methods of payment**

6. For regulation 31(1)(b) to (d) (methods of payment) substitute—

“or

(b) any other payment method agreed between the debtor and the payments distributor.”.

### **Application for variation: creditor statement**

7.—(1) After regulation 36(3) (application for variation) insert—

“(3A) An application by a creditor under paragraph (1)(b) for a variation under regulation 37(1)(e) which is made on a date later than 120 days after the approval of the debt payment programme must be accompanied by a statement by the creditor demonstrating—

(a) why the debt which was omitted from or wrongly assessed for the programme could not have been reasonably established at the date of approval of the programme; and

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(a) Paragraph 1 was substituted by S.I. 2013/1881, schedule 1, paragraph 43(a).

(b) why the application could not have been made on an earlier date.”

(2) In regulation 38(3)(a)(iv) (approval of variation) after “application” insert “(including, where relevant, any statement made by the creditor under regulation 36(3A))”.

### **Proposal for variation**

**8.**—(1) In regulation 36A(3) (proposal for variation: discharge of liability on compensation)(a) for “regulation 36(4)(a) to (d)” substitute “regulation 36(4)(a) to (c) and to the money adviser”.

(2) After regulation 36A insert—

#### **“Proposal for variation: administrative changes or reduction in period**

**36B.**—(1) Where the debtor is an individual, the DAS Administrator may, with the consent of the debtor, propose a variation of a debt payment programme—

(a) for administrative purposes; or

(b) which will have the effect of reducing the period of the debt payment programme.

(2) A variation may not be proposed under paragraph (1) where there has been any change in the debtor’s financial circumstances.

(3) The proposal must be intimated in writing to those mentioned in regulation 36(4)(a) to (c) and to the money adviser.”

(3) After regulation 37(1)(ea) (grounds for variation) insert—

“(eb) in the case of a debtor who is an individual, under regulation 36B for administrative purposes or to reduce the period of the debt payment programme;”.

(4) In regulation 38(1) (approval of a variation) for “or (ea)” substitute “, (ea) or (eb)”.

### **Joint debt payment programme and payment break: cohabittees**

**9.**—(1) In regulation 22(1)(b)(ii)(b) (joint debt payment programme) after “spouses” insert “or civil partners”.

(2) In regulation 37(3)(d) after “civil partner” insert “, or with whom the debtor is living together as if spouses or civil partners of each other”.

### **Deemed consent to variation and automatic variation where period reduced**

**10.** In regulation 38—

(a) after paragraph (1) insert—

“(1A) Where the debtor is an individual the DAS Administrator must approve any variation proposed under regulation 37(1)(d), (e), (f), (g), (h) or (i)—

(a) where all creditors participating in the programme have consented to the variation; or

(b) which will have the effect of reducing the period of the debt payment programme.

(1B) For the purposes of paragraph (1A)(a), a creditor who is requested to consent to an application for variation of a programme which provides for a payment of more than one debt and who does not respond to that request within 21 days after the date of the request is deemed to consent to the variation, irrespective of any assignation of the debt by that creditor.”, and

(b) at the start of paragraph (2) insert “If not approved under paragraph (1A),”.

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(a) Regulation 36A was inserted by S.S.I. 2013/225.

(b) Regulation 22(1)(b) was substituted by S.S.I. 2018/297, regulation 10.

## Short term financial crisis payment break

11.—(1) After section 39 (notification of approval or rejection of a variation) insert—

### “Short term financial crisis payment break

39A.—(1) A debtor who is an individual may make a request to the debtor’s money adviser for variation of a debt payment programme in the circumstances in paragraph (3).

(2) A request under paragraph (1) in relation to a joint debt payment programme refers to a request made by both debtors jointly.

(3) The circumstances referred to in paragraph (1) are that the debtor wishes to defer payments for a period not exceeding one month, with the period of the debt payment programme extended for a period equal to the period of deferment.

(4) The money adviser may approve the variation in the circumstances in paragraph (5).

(5) The circumstances referred to in paragraph (4) are that—

- (a) the money adviser is satisfied that the debtor has experienced or is experiencing a short term financial crisis;
- (b) the money adviser is satisfied that the debtor has resumed or will be able to resume payments following the proposed period of deferment; and
- (c) approval of the variation will not result in more than two such deferments occurring (whether consecutively or otherwise) in any period of 12 months.

(6) Where a variation request under paragraph (1) is approved, if applicable the continuing money adviser for the debtor, otherwise the DAS Administrator, must intimate in writing the approval of the variation, to—

- (a) the DAS Administrator (as appropriate);
- (b) the payments distributor;
- (c) each creditor taking part in the programme; and
- (d) where there is a payment instruction under regulation 32, to the employer.

(7) Any payment which becomes due under a debt payment programme and in respect of which a variation request under paragraph (1) is approved by the money adviser before the next payment under the programme becomes due may be disregarded by the DAS Administrator for the purposes of regulation 42(1)(a) and (c).

(8) For the avoidance of doubt, the provisions of regulations 36 (application for variation) and 37 (grounds for variation) do not apply for the purposes of requests for variation under paragraph (1).”.

(2) In regulation 47(3)(c)(a) (application for review) after “programme” insert “(or not to revoke a programme in the circumstances in regulation 39A(7))”.

## Forms

12.—(1) Schedule 1 (forms) is amended as follows.

(2) In Form 1 (application for approval of a debt payment programme: individuals)—

- (a) for section 2c(b) (is this a joint application?) substitute section 2c set out in Part 1 of schedule 1 of these Regulations,
- (b) for section 6c (payments distributor fee) substitute section 6c set out in Part 2 of schedule 1 of these Regulations,

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(a) Regulation 47 was substituted by S.S.I. 2013/225.

(b) Section 2c was substituted by S.S.I. 2018/297.

- (c) for section 6d (payment methods) substitute section 6d set out in Part 3 of schedule 1 of these Regulations, and
  - (d) omit section 6g(a) (disclosure of continuing money adviser administration fee (if applicable)).
- (3) In Form 2(b) (notification to creditor of approval of a debt payment programme)—
- (a) for section 4b (payments distributor fee) substitute section 4b set out in schedule 2 of these Regulations, and
  - (b) omit section 5b (continuing money adviser administration fee (if applicable)).
- (4) In Form 4 (application for variation of a debt payment programme)—
- (a) for section 1 (details of applicant (money adviser or creditor in DPP or creditor not in DPP)) substitute section 1 set out in Part 1 of schedule 3 of these Regulations, and
  - (b) for section 3(c) (grounds for variation) substitute section 3 set out in Part 2 of schedule 3 of these Regulations.

### Savings and transitional arrangements

**13.**—(1) Except as mentioned in paragraph (2), regulations 4 to 7 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 4 November 2019.

(2) Regulation 4(3) to (5) applies in relation to a debt payment programme in respect of which an application for approval was made before 4 November 2019 as regards any transfer to a substitute payments distributor under regulation 16(2) of the DAS Regulations made on or after 4 November 2019.

(3) Regulation 4(3) and (4) has no effect as regards an application for approval as a payments distributor under regulation 14 of the DAS Regulations (approval of a payments distributor) made before 4 November 2019.

*Name*  
Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
Date

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(a) Section 6g was inserted by S.S.I. 2018/297.  
 (b) Form 2 was substituted by S.S.I. 2018/297.  
 (c) Section 3 was substituted by S.S.I. 2018/297.

## SCHEDULE 1

Regulation 12(2)

### Amendments to Form 1 (application for approval of a Debt Payment Programme: Individuals)

#### PART 1

**2c. Is this a joint application?**

Yes  No

**If "no" go to section 3**

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

a) spouses or civil partners of each other

b) living together as if spouses or civil partners of each other

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

#### PART 2

**6c. The debtor, or the debtors in the case of a joint application, understand that the Payments Distributor will deduct 20% from the payment due to the creditors to cover administration costs, in addition to 2% application fee.**

Yes  No

#### PART 3

**6d. The debtor(s) wish to pay using the following method:**

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## SCHEDULE 2

Regulation 12(3)

### Amendments to Form 2 (notification to creditor of approval of a Debt Payment Programme)

**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 20% fee for administering the DPP.**



# SCHEDULE 3

Regulation 12(4)

## Amendments to Form 4 (application for variation of a Debt Payment Programme)

### PART 1

#### Section 1

#### Details of Applicant (Money Adviser or Creditor in DPP or Creditor not in DPP or DAS Administrator)

ID No. (Where Appropriate)

Name

Address

Contact Name (if different)

Phone No.


Capacity

- Money Adviser
- Creditor in DPP
- Creditor not in DPP
- DAS Administrator

## PART 2

### 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. (Note: If this application is being made more than 120 days after the approval of the programme please provide information as required by Regulation 36(3A)) Yes  No
- ea Proposal by DAS Administrator under Regulation 36A Yes  No
- eb Proposal by DAS Administrator under Regulation 36B 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 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;
  - Divorce, dissolution of civil partnership or separation from a person to whom the debtor is married or the civil partner, or with whom the debtor is living together as if spouses or civil partners of each other
  - Death of a person with whom the debtor shared financial responsibilities or otherwise.
  - Reduction in social security benefits or tax credits (or both)

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

Supporting Information:

## EXPLANATORY NOTE

*(This note is not part of these Regulations)*

The Debt Arrangement Scheme (Scotland) Regulations 2011 (“the DAS Regulations”) provide for a scheme for the repayment of debts in Scotland (“the DAS Scheme”). They provide for the procedure and forms in respect of a repayment arrangement under the scheme, which is described as a debt payment programme (“DPP”). The scheme is open to both individual debtors and to legal persons and other entities (where it is known as “Business DAS”).

The Regulations amend the DAS Regulations to implement changes to the way in which payments distributors (“PDs”) are approved and to the definition of continuing money advisers (“CMAs”). The Regulations also make changes to the fees which may be charged by PDs and CMAs acting in a DPP where the debtor is an individual.

The definition of CMA is amended to provide that a money adviser will be classed as a CMA where the adviser provides ongoing advice to a debtor and carries out administrative functions during the period of the DPP (regulation 4(2)(a)).

Where the debtor in the DPP is an individual, the Regulations provide that the CMA may not charge the debtor a fee for the adviser’s services (regulation 4(2)(b)), but that the PD must charge an administration fee of 20% of the sum due to be paid to a creditor in a distribution by the distributor (regulation 4(6)). The CMA is not prohibited from receiving monies from the administration fee payable to the PD. The existing fee structure is unchanged for Business DAS.

The mechanism for approval as PD is amended to remove the requirement for the DAS Administrator to appoint applicants only after a tender process (regulation 4(3) and (4)).

Under regulation 16(2) of the DAS Regulations, a PD who ceases to act must transfer the DPPs for which that distributor is responsible to a substitute distributor specified by the DAS Administrator. The Regulations provide that, where the Accountant in Bankruptcy (“AiB”), who acts as the DAS Administrator, is specified as a substitute PD under regulation 16(2), AiB may at any time transfer on to an alternative PD the DPPs for which AiB is responsible (regulation 4(5)).

The Regulations make further changes to the operation of the DAS Scheme as follows:-

Regulation 5 provides that not less than  $\frac{9}{10}$  in value of the creditors of a debtor who is an individual must consent to an application by the debtor for approval of a DPP, and provides for automatic approval by the DAS Administrator where this consent requirement is met.

Regulation 6 changes the methods by which a debtor must make a payment due under a DPP.

Regulation 7 provides that a creditor application to vary a DPP because of an omitted or wrongly assessed debt, which is made more than 120 days after the approval of the DPP, must be accompanied by a statement of reasons.

Regulation 8 provides that the DAS Administrator may propose a variation to a DPP for administrative purposes or where the period of the DPP will be reduced.

Regulation 9 updates the terminology in relation to joint debt payment programmes as regards cohabitants and extends the circumstances for a payment break to cover cohabitants separating.

Regulation 10 provides for deemed creditor consent to variation applications and for automatic approval of variations where all creditors have consented or where the period of the DPP will be reduced.

Regulation 11 provides that a debtor who is an individual may make a request to the money adviser for a short term financial crisis payment break in the circumstances set out.

Provision is also made for updated forms (regulation 12 and schedules 1 to 3).

Regulation 13 includes saving provisions so that regulations 4 to 7 do not affect DPPs applied for before 4 November 2019. Regulation 4(3) to (5) affects DPPs applied for before that date as

regards any transfer to a substitute payments distributor under regulation 16(2) of the DAS Regulations made on or after 4 November 2019. Regulation 4(3) and (4) does not affect applications for approval as a PD made before 4 November 2019.

A Business and Regulatory Impact Assessment has been prepared and is available from the Accountant in Bankruptcy at [www.aib-gov.uk](http://www.aib-gov.uk).

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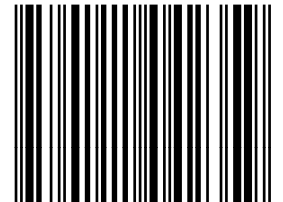


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