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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 141**

**The Debt Arrangement Scheme (Scotland) Regulations 2011**

**PART 5**

**APPROVAL OF DEBT PAYMENT PROGRAMMES**

**Application for approval**

**20.**—(1) A debtor who is habitually resident in Scotland may apply to the DAS Administrator for approval of a debt payment programme.

(2) An application under paragraph (1)—

- (a) must be made by a money adviser on behalf of the debtor in form 1;
- (b) is competent if (instead of being signed by the debtor) it contains a declaration by the money adviser that the debtor has—
  - (i) been given appropriate advice by the money adviser; and
  - (ii) consented to proceed without signing the application;
- (c) is competent notwithstanding that the consent of the creditor under section 2(4) of the Act and regulation 23 is not incorporated in form 1.

(3) A debtor who intends to apply may give written intimation of that intention to the DAS Administrator; but a debtor is not to give intimation under this paragraph on more than one occasion in any period of 12 months (except on revocation of a joint debt payment programme on the ground that conditions in regulation 22(1)(b) or (2) no longer apply).

(4) The debtor may, at any time before the application is approved or rejected, intimate to the DAS Administrator in writing that the application is withdrawn.

(5) In section 3(2)(a) (money adviser declaration) of the Act, omit “signed”.

**Debtors who may apply for approval**

**21.**—(1) Subject to paragraphs (2) and (3), a debtor may apply for approval of a debt payment programme where the programme provides for the payment of one or more debts.

(2) An application for approval may not be made where—

- (a) subject to paragraph (4), payment of a debt of a debtor is being made under a conjoined arrestment order;
- (b) a debtor is a party to a protected trust deed;
- (c) a debtor’s estate has been sequestrated, and the debtor has not been discharged under section 54 (automatic discharge after a year) or 75 (amendments, repeals and transitional provisions) of the 1985 Act;
- (d) a debtor is a bankrupt, who has not been discharged under sections 279 (duration) or 280 (discharge by order of the court) of the 1986 Act; or

- (e) a debtor is subject to a bankruptcy restrictions order (including an interim order) or bound by a bankruptcy restrictions undertaking, under Schedule 4A (bankruptcy restrictions order and undertaking) to the 1986 Act<sup>(1)</sup> or under section 56A or as the case may be 56F or 56G of the 1985 Act<sup>(2)</sup>.
- (3) An application for approval of a debt payment programme which provides for the payment of only one debt may not be made where, in respect of that debt, the debtor is involved in a—
- (a) time to pay direction under section 1 (time to pay directions) of the Debtors (Scotland) Act 1987, or time to pay order under section 5 (time to pay orders) of that Act<sup>(3)</sup>; or
  - (b) time order under section 129 (time orders) of the Consumer Credit Act 1974<sup>(4)</sup>.
- (4) An application may be made where a creditor, including a creditor of a debt being paid under a conjoined arrestment order in respect of another debt not so paid, has attempted to enforce a debt due by the debtor by any lawful means.

### Joint debt payment programme

- 22.**—(1) Two debtors may apply together for a joint debt payment programme—
- (a) if they are joint and severally liable for a debt which the programme would provide for the payment of; and
  - (b) and they are—
    - (i) husband and wife to each other;
    - (ii) civil partners of each other;
    - (iii) living together as husband and wife; or
    - (iv) living together in a relationship with the characteristics of the relationship between a husband and wife except that they are of the same sex.
- (2) Both debtors must consent to any application for approval of a joint debt payment programme; and a declaration by a money adviser under regulation 20(2)(b) must declare that both debtors have consented.
- (3) Unless the context otherwise requires, references in these Regulations to “debtor” in relation to a joint debt payment programme are to be taken to be references to both debtors.

### Consent of creditors

- 23.**—(1) Subject to paragraph (5), and regulation 25, each creditor of a debtor must consent to an application by the debtor for approval of a debt payment programme.
- (2) In the case of a joint debt payment programme, the consent of each creditor of both debtors is required under paragraph (1).

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(1) Section 4A was inserted by the Enterprise Act 2002 (c.40), Schedule 20, paragraph 1.

(2) Sections 56A, 56F and 56G were inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the 2007 Act”), section 2.

(3) 1987 c.18. Section 1 was repealed in part by the Social Security Act 1998 (c.14) (“the 1998 Act”), Schedule 8, and amended by the Child Support Act 1991 (c.48), Schedule 5, paragraph 8, the Local Government Finance Act 1992 (c.14) (“the 1992 Act”), Schedule 13, paragraph 53, the Local Government etc. (Scotland) Act 1994 (c.39) (“the 1994 Act”), Schedule 13, paragraph 151, the 1998 Act, Schedule 7, paragraph 12, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) (“the 1999 Act”), Schedule 9, paragraph 1, the Water Industry (Scotland) Act 2002 (asp 3) (“the 2002 Act”), Schedule 7, paragraph 17, the Commissioners for Revenue and Customs Act 2005 (c.11), (“the 2005 Act”), Schedule 4, paragraph 33, the Finance Act 2008 (c.9) (“the 2008 Act”), Schedule 43, paragraph 13(1) and the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the 2007 Act”), section 209(2) and 210(2). Section 5 was repealed in part by the 1998 Act, Schedule 8, and the Abolition of Poindings and Warrant Sales Act 2001 (asp 1), schedule, Part I, and amended by the 1992 Act, Schedule 13, paragraph 54, the 1994 Act, Schedule 13, paragraph 151, the 1999 Act, Schedule 9, paragraph 1, the 2002 Act, Schedule 7, paragraph 17, the 2005 Act, Schedule 4, paragraph 34, the 2008 Act, Schedule 43, paragraph 13(2) and the 2007 Act, section 209(3) and 210(3) and Schedule 5, paragraph 16(4).

(4) Section 129 was amended by the Debtors (Scotland) Act 1987 (c.18), Schedule 6, paragraph 17, and Schedule 7, paragraph 5.

(3) A request to a creditor for consent is to be sent by the DAS Administrator, or as the case may be, a continuing money adviser, and if posted, must be sent to the creditor by first class recorded delivery post.

(4) A continuing money adviser seeking the consent of a creditor (electronically or otherwise) must use the form provided by the DAS Administrator for that purpose.

(5) A creditor who is requested to consent to an application for a programme which provides for the payment of more than one debt and who does not respond to that request within 21 days after the date of request is deemed to consent.

(6) Where a creditor does not consent to an application under paragraph (1), and that consent is not deemed as given, approval of a debt payment programme under regulation 24 or 25 is not invalid by reason only of the lack of consent provided the debtor did not know, and could not reasonably have known, the identity of the creditor.

(7) The DAS Administrator is to maintain a record of creditor consents.

### **Approval of agreed programmes**

**24.**—(1) The DAS Administrator must approve a debt payment programme where each creditor has consented under regulation 23 to an application for approval.

(2) Approval under paragraph (1) may be made subject to a condition under regulation 28.

### **Approval by the DAS Administrator**

**25.**—(1) Where approval cannot be given under regulation 24, the DAS Administrator must approve a debt payment programme that is fair and reasonable.

(2) In determining whether a debt payment programme is fair and reasonable, the DAS Administrator is to have regard to—

- (a) the total amount of debt;
- (b) the period over which a programme will operate;
- (c) the amount (if any) by which it appears to the DAS Administrator, on the basis of such information as the creditors and the debtor have provided, that the value of any land owned by the debtor exceeds so much of the total amount of debt as is secured by way of a standard security over any interest in that land;
- (d) the method, and frequency, of payments under a programme;
- (e) an earlier proposed programme that was not approved;
- (f) a matter specified in regulation 21(2) that would have prevented an application being made, where the matter no longer has that effect;
- (g) the involvement of the debtor in a—
  - (i) debt payment arrangement, including a debt payment programme under these Regulations;
  - (ii) time to pay direction under section 1 (time to pay directions) of the Debtors (Scotland) Act 1987, or time to pay order under section 5 (time to pay orders) of that Act<sup>(5)</sup>; or

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(5) 1987 c.18. Section 1 was repealed in part by the Social Security Act 1998 (c.14) (“the 1998 Act”), Schedule 8, and amended by the Child Support Act 1991 (c.48), Schedule 5, paragraph 8, the Local Government Finance Act 1992 (c.14) (“the 1992 Act”), Schedule 13, paragraph 53, the Local Government etc. (Scotland) Act 1994 (c.39) (“the 1994 Act”), Schedule 13, paragraph 151, the 1998 Act, Schedule 7, paragraph 12, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) (“the 1999 Act”), Schedule 9, paragraph 1, and the Water industry (Scotland) Act 2002 (asp 3) (“the 2002 Act”), Schedule 7, paragraph 17. Section 5 was repealed in part by the 1998 Act, Schedule 8, and the Abolition of Poidings and

- (iii) time order under section 129 (time orders) of the Consumer Credit Act 1974(6);
  - (h) the extent to which creditors have consented (deemed or otherwise) to a programme;
  - (i) any comment made by the money adviser; and
  - (j) an asset of a debtor that could be realised to pay debts to be included in a programme.
- (3) In determining whether a debt payment programme is fair and reasonable, the DAS Administrator may have regard to any other factor that the DAS Administrator considers appropriate.
- (4) Approval under paragraph (1) may be made subject to a condition under regulation 28.

### **Notice of intention to approve, and approval of, a programme**

26.—(1) The DAS Administrator must on a determination that a debt payment programme is to be approved, enter a notice to that effect in the DAS Register.

(2) A debt payment programme shall be approved from midnight on the day immediately preceding that on which the notice is so entered.

### **Standard conditions**

27.—(1) A debt payment programme approved under regulation 24 or 25 is to be subject to the conditions specified in paragraph (2).

- (2) The specified conditions are that a debtor must—
- (a) make the first payment under a programme during the period of one month immediately following the date on which the debt payment programme is approved;
  - (b) make all payments under a programme as they fall due;
  - (c) pay a continuing liability when due for payment;
  - (d) except for a continuing liability, make no payment to a creditor taking part in a programme other than a payment under the programme;
  - (e) not apply for or obtain credit beyond that permitted by regulation 33(1)(b), or by a variation of a programme approved under regulation 38;
  - (f) notify any continuing money adviser for the programme or the DAS Administrator of a—
    - (i) change of address; and
    - (ii) material change of circumstances, within 7 days of becoming aware of the change;
  - (g) within 10 days after receipt by the debtor of a written request from a continuing money adviser for the programme or the DAS Administrator provide them with such information or evidence on their income, assets or liabilities as they may request;
  - (h) make all payments in respect of credit obtained under regulation 33(1)(b)(iii), (iv) and (v) as they fall due;
  - (i) give all notices and intimations which require to be given by a debtor under these Regulations;
  - (j) complete, and submit when due, a tax or duty return or declaration; and pay the tax or duty so returned or declared; and
  - (k) notify the DAS Administrator as soon as reasonably practicable of a money adviser ceasing to act for the debtor for any reason other than the resignation, or revocation or suspension of approval of, the adviser.

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Warrant Sales Act 2001 (asp 1), schedule, Part I, and amended by the 1992 Act, Schedule 13, paragraph 54, the 1994 Act, Schedule 13, paragraph 151, the 1999 Act, Schedule 9, paragraph 1, and the 2002 Act, Schedule 7, paragraph 17.

(6) Section 129 was amended by the Debtors (Scotland) Act 1987 (c. 18), Schedule 6, paragraph 17, and Schedule 7, paragraph 5.

### **Discretionary conditions**

**28.**—(1) A debt payment programme on approval under regulation 24 or 25, or approval of a variation under regulation 38, may be made subject to one or more of the conditions specified in paragraph (2).

- (2) A specified condition is that the debtor must—
  - (a) realise, and distribute amongst the creditors the value of, an asset of the debtor other than an asset excepted by paragraph (3);
  - (b) sign and deliver a payment instruction to an employer; or
  - (c) be bound by any other reasonable condition intended to secure completion of the programme.
- (3) An excepted asset is—
  - (a) a dwellinghouse or mobile home occupied by a debtor as the debtor's sole or main residence;
  - (b) an asset that is exempt from attachment under section 11 (articles exempt from attachment) of, or that is not a non-essential asset under schedule 2 (non essential assets) to, the Act.

### **Notification of approval or rejection**

**29.**—(1) The DAS Administrator must send notice in writing to any continuing money adviser or to the debtor of the approval or rejection, on an application, of a debt payment programme.

(2) Where the programme is rejected, the DAS Administrator must specify the reason for the rejection.

- (3) Where the programme is approved—
  - (a) the DAS Administrator must intimate in writing any condition attached under regulation 28 to—
    - (i) the debtor; and
    - (ii) the money adviser who made the application for the programme; and
  - (b) the programme shall have effect in accordance with regulation 26(2).
- (4) A continuing money adviser or the DAS Administrator must notify—
  - (a) the approval of the programme—
    - (i) to the debtor;
    - (ii) in form 2, to each creditor known to the continuing money adviser or the DAS Administrator;
    - (iii) to the clerk of a court that has made—
      - (aa) a conjoined arrestment order; or
      - (bb) an order or direction specified in regulation 25(2)(g)(ii) and (iii);
    - (iv) where payments are to be made under an earnings arrestment, to the employer of the debtor; and
    - (v) to the payments distributor; or
  - (b) the rejection of the programme—
    - (i) to the debtor;
    - (ii) to the money adviser who made the application for the programme; and
    - (iii) to each creditor known to the continuing money adviser or the DAS Administrator.

### **Diligence or sequestration in the period before a debt payment programme is approved**

**30.**—(1) It is not competent to serve a charge for payment in respect of, or to commence or execute any diligence to enforce payment of, any debt, or for a creditor to petition for sequestration—

- (a) during the period of 6 weeks immediately following an intimation by the debtor being entered in the DAS Register under regulation 19(2)(a);
- (b) during the period immediately following an application by the debtor being entered in that Register under regulation 19(2)(b) and ending on the earliest of the dates mentioned in paragraph (2); or
- (c) during the period of 6 weeks immediately following revocation of a joint debt payment programme on the ground that conditions in regulation 22(1)(b) or (2) no longer apply.

(2) The dates mentioned in paragraph (1)(b) are—

- (a) that on which a notice that the debt payment programme is approved is entered in the DAS Register;
- (b) that on which notice of rejection of the debt payment programme, sent under regulation 29(1), is so entered; and
- (c) that on which intimation of withdrawal of the application in respect of the debt payment programme, given under regulation 20(4), is so entered.

(3) During any period mentioned in paragraph (1), it is not competent in respect of the debt—

- (a) to make, under section 97(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007, an order granting warrant for sale of attached land; or
- (b) to make, under section 136(2) of that Act, a satisfaction order.

(4) If an arrestment mentioned in section 73J(1) of the Debtors (Scotland) Act 1987(7) (automatic release of arrested funds) has been granted in respect of funds due to the debtor, it is not competent, during any such period as is so mentioned, to release funds under subsection (2) of that section; but the period in question is to be disregarded for the purposes of determining whether the period mentioned in subsection (3) of that section has expired.

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(7) 1987 c.18. Section 73J was inserted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 206.