

Final  
Business and Regulatory Impact Assessment

**Title of Proposal**

THE DEBT ARRANGEMENT SCHEME (SCOTLAND) AMENDMENT REGULATIONS 2013

**Purpose and intended effect**

**Background**

The purpose of the Debt Arrangement Scheme (DAS) is to provide a facility for the orderly repayment principally of multiple debts.

The policy objectives of the DAS are to:

- Provide a facility for the orderly repayment principally of multiple debts.
- The policy objectives of the DAS are to:-
- Enable people to resolve debt problems in a dignified way;
- Reduce the need for creditors to take legal action to recover their debts;
- Minimise the impact of bad debt on both debtors and creditors.

DAS is a powerful tool capable of helping many people. It allows people who are unable to pay their debts as they fall due, who have a reasonable level of surplus income after meeting their basic needs, to pay those debts over a longer period. It helps them to manage their way out of debt problems, removing the stress that can be associated with debt, giving them the opportunity to start over.

DAS is one of a range of debt solutions and may not be the best option for everyone with debt problems. For that reason, anyone considering DAS must first be given advice from an approved money adviser. In those cases where DAS is suitable the adviser, on behalf of the debtor, will apply to the DAS administrator for the approval of a Debt Payment Programme (DPP).

The Accountant in Bankruptcy (AiB) carries out the functions of the DAS administrator on behalf of Scottish Ministers. Approval of a DPP is subject to all the creditors agreeing or deemed consent from creditors where creditors fail to respond. Should the latter be the case the DAS Administrator will carry out a fair and reasonable test before making a decision on whether or not to grant approval of the DPP. The debtor's creditors are unable to petition to sequestrate the debtor or use diligence (seize and sell assets) against them where the debtor has intimated their intention to apply for a DPP and the intimation is recorded on the Debt Arrangement Scheme Hub (DASH) register and once a DPP is approved, this immunity remains throughout the course of the DPP.

Once the DPP is approved the debtor no longer needs to make individual payments to each creditor. Instead, a single payment is made to an approved payments distributor who divides that payment between the debtor's creditors on a pro-rata basis. The costs of this are met by charging the creditors a capped administration fee deducted from that payment. The creditors benefit from reduced administrative, legal and recovery costs and increased certainty of payment. The recording of the programme and some of the administration costs are covered by the public purse.

The debtor in a DPP is protected from the risk of losing their home provided that they continue to pay their mortgage payments, in contrast to bankruptcy or a trust deed where ownership of all land and buildings passes to the trustee for the benefit of creditors.

Changes to DAS were introduced in June 2007 as part of the Bankruptcy and Diligence etc. (Scotland) Act 2007. These froze interest and charges on debts included in a DPP on the date of approval. The take up of DAS increased as a direct result of these changes.

Following a public consultation on DAS in 2009, it was found that while the uptake of DAS had increased, barriers still remained preventing debtors from accessing the Scheme. To address this and other issues further changes to the Scheme were introduced on 1 July 2011, via The Debt Arrangement Scheme (Scotland) Regulations 2011. These changes can be summarised as follows:-

- Widening the money advice gateway so that more people and organisations can be approved to offer DAS, ensuring that people across Scotland are able to benefit from the Scheme;
- Removing the administrative burden from free sector money advisers – Accountant in Bankruptcy (AiB), the DAS Administrator, is now responsible for the ongoing administration, in cases proposed by free sector money advisers, following an application for a DPP;
- The ability for people with a single debt to apply;
- The ability for couples who are jointly and severally liable for a debt to apply for a joint DPP;
- The ability for debtors to apply for a payment holiday of 6 months for debtors to adapt to temporary income shocks;
- The creation of a panel of 4 approved payments distributors who are responsible for collecting and distributing payments to creditors; and
- A 2% fee collected from each DPP, payable to AiB, to cover the application cost

Table 1 shows the uptake of DAS year on year since its first full financial year in 2005/06.

<b>Table 1: Number of DPPs approved by financial year. DPPs by financial year</b>							
Year	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
No of DPPs	149	134	442	386	1,417	1,910	3,319

#### 2012 DAS Review

In November 2012, AiB published a review of the Debt Arrangement Scheme:-

<http://www.aib.gov.uk/publications/debt-arrangement-scheme-review-2012>).

The review found that :-

- The market for DAS continued to grow at a rapid rate, and represented a significant fraction of the market when compared with numbers of bankruptcies and protected trust deeds;
- DAS remained a flexible solution for a broad range of debtors due to its lack of restrictions on the duration, value of debt or repayment amounts in any DPP;
- The trend over the review period was largely (but not exclusively) towards younger debtors taking out shorter duration DPPs in order to repay smaller amounts of total

debt;

- Take up of joint application DPPs had proven strong, making up almost a fifth of DPPs in the review period and more than a quarter of the total debt. Joint application DPPs tended to be significantly longer, for a larger total debt, for on average slightly older debtors;
- Take up of single debt DPPs had been limited;
- Analysis of the geographic spread of DAS take-up showed that, at sheriffdom level, take up was broadly similar across most areas;
- At the smaller and more specific level of Local Authority areas, however, it was clear that there were still disparities in the rate of take up that may not have been seen at sheriffdom level. Factors such as money adviser engagement and availability of advisers may have helped to explain this, although differing microeconomic factors and debtor demographics would also have played a role; and
- Private sector led DPPs dominated the market, accounting for the majority of DPPs.

### **Objective**

Based on the outcomes of the consultation and feedback from DAS workshops held during 2012, AiB have developed DAS policy in several key areas and, in addition to other more minor amendments, the instrument makes provision for the following principal changes:-

- To freeze the amount of debt owed, on the date at which the DPP is applied for by a debtor;
- To allow the DAS Administrator to correct accidental errors;
- To make it clear that the continuing money adviser's fee for setting up and administering the DPP is excluded from the DPP;
- To make it clear that Payment Distributors provide a service on behalf of the debtor;
- To clarify that the maximum amount which can be charged by payments distributors as an administration fee is inclusive of any chargeable VAT. :
- To remove the requirement that the two debtors in a joint DPP have a joint and severally liable debt included in the programme;
- To make it clear that where a creditor has sold on the debt that is incorporated in the DPP, that they must immediately notify the DAS Administrator that they have assigned the rights and details of the assignee;
- To re-introduce a composition element into DAS. Where a debtor has been making payments to their DPP for a period of 12 years (excluding any payment breaks) and has repaid at least 70% of the total debt outstanding when the DPP was approved, they would be eligible;
- To introduce a review process within AiB which will enable the DAS Administrator to consider decisions; and
- To amend the regulations to allow for a flexible payment break of up to six months rather than a fixed period of six months.

### **Rationale for Government intervention**

The Scottish Government recognises the responsibility it has to take action where it can to help the people of Scotland by ensuring that debt relief products are fit for purpose, support the people of Scotland and strengthen Scotland's economy. The Scottish Government has therefore decided to make changes to the Debt Arrangement Scheme legislation which it believes will serve better the interests of the people of Scotland.

The amendment regulations, if passed, will contribute to the Scottish Government Economic

Strategy to make Scotland a more successful country, with opportunities for all to flourish, through increasing sustainable economic growth, aligned by the delivery of the following national outcomes:

**Business** - A culture of entrepreneurship, leadership, creativity and international Ambition;

**Inequalities** - We have tackled the significant inequalities in Scottish society;

**Employment opportunities** - Realising our full economic potential with more and better employment opportunities for our people;

**Communities** - We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.

### **Consultation**

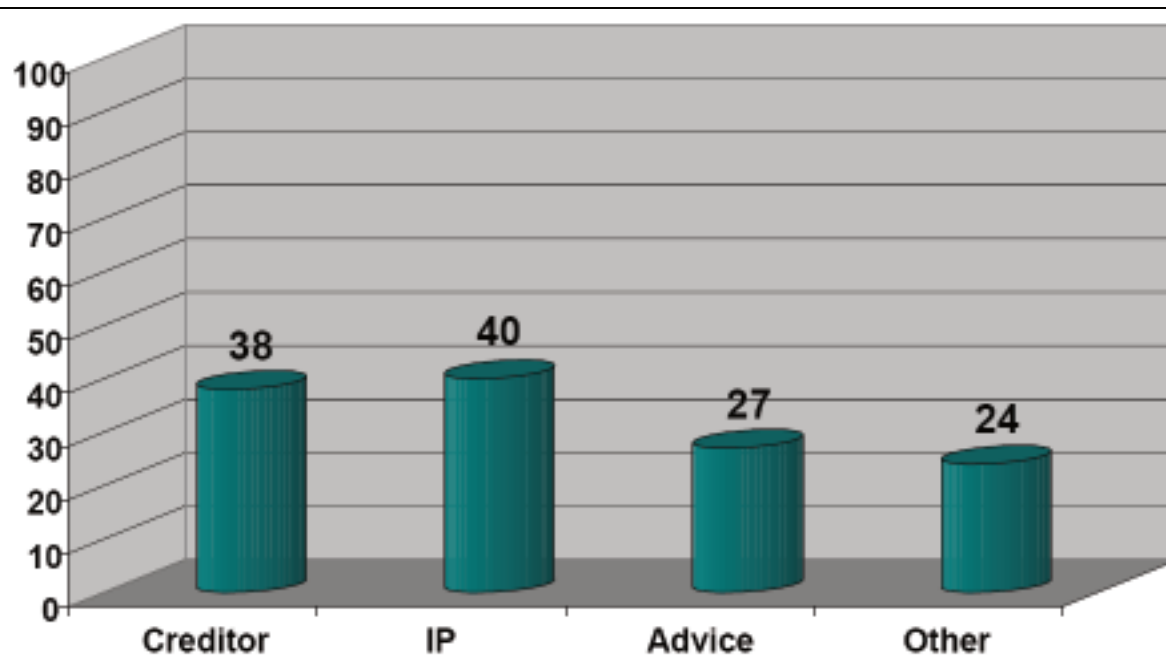
- **Within Government**

Wide consultation and discussion with colleagues in the Scottish Government has taken place throughout the development of these Regulations. Comments have been sought on the Regulations themselves and the potential impact of the new Regulations on their relevant areas of business. Colleagues within the Accountant in Bankruptcy (AiB), in DAS Team, Change Management and Finance were also consulted on these Regulations.

- **Public Consultation**

The proposed changes to DAS were consulted on as part of the wider "Bankruptcy Law Reform" consultation which launched in February of 2012. The consultation closed on 18 May 2012 and a report summarising the responses was published on the Scottish Government's web pages on 28 August 2012.

A total of 129 responses were received by AiB at the close of the consultation. A list of the organisations who responded (and who gave their permission for the details to be disclosed) can be found in Annex A of this document. The breakdown of respondents was as follows.



The Scottish Government response to the consultation was published on 1 November 2012, and an update on Bankruptcy Law Reform was published on 28 February 2013. These consultation documents are available on the AiB website, here: <http://www.aib.gov.uk/guidance/publications/consultations-and-reviews/bankruptcy-law-reform/bankruptcy-law-reform>.

In addition to the above events which were generally related to the Bankruptcy Law Reform a number of DAS specific events were held in Glasgow, Inverness and Edinburgh in Autumn of 2012 and further events in Glasgow, Dundee and Edinburgh in March/April 2013. These DAS specific events featured key representatives from a wide range of stakeholder groups, including those from the money advice, payments distribution and creditor sectors.

The workshops were intended to provide an overview of the proposed key changes to the Scheme and to assess initial feedback on the likely impact of the Regulations. Feedback from each of those sessions was generally supportive with some individuals providing written support for widening access and adding transparency to the payments distribution process. Delegates were also provided with details of a contact within Scottish Government who they could liaise with for further details or updates on progress.

AiB have also worked separately with senior delegates from Money Advice Scotland and Citizens Advice Scotland, representatives from the Money Advice Training, Resources, Information and Consultancy Services and Social Inclusion colleagues in smaller groups throughout the development of the new DAS Regulations.

AiB staff also invited representatives from all the current payments distributors to a meeting in order to discuss changes to this part of the DAS process.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website.

- **Business**

As previously mentioned, AiB consulted directly with key representatives from a wide range

of stakeholder groups. Detail of these discussions can be found in the Scottish Firms Impact Test section.

### **Options**

#### **Option 1 – No change**

Benefits – Status quo maintained

Cost – No cost incurred other than that already spent on the consultation process

Sectors and groups affected – No change to individuals, creditors and the broader Scottish economy.

#### **Option 2 - THE DEBT ARRANGEMENT SCHEME (SCOTLAND) AMENDMENT REGULATIONS 2013**

Benefits – The new Regulations will benefit individuals, creditors and the broader Scottish economy. As the number of DPPs increase, more creditors will receive what is due to them. In the larger economy, changes to the Scheme will aid economic recovery with obvious benefits for businesses in both the private and public sectors respectively.

Costs - Changes to the Debt Arrangement Scheme Hub (DASH) system to accommodate the changes being introduced this summer. The development proposal (fixed price) is £52,363. This cost has been budgeted for and will require no additional funding.

Sectors and groups affected - The new Regulations will benefit individuals, creditors and the broader Scottish economy, as described above.

### **Scottish Firms Impact Test**

During the consultations process AiB staff worked with stakeholders to recommend key changes on how DAS operates and create new draft Regulations. The key theme was to improve the 2011 regulations and to help AiB's overall aim to provide better returns to creditors.

48 delegates attended three workshops held in March/April 2013 with stakeholders from the money advice, payments distribution and creditor sectors. The workshops were intended to provide an overview of the proposed key changes to the Scheme and to assess initial feedback on the likely impact of the Regulations. Feedback from each of those sessions was generally supportive with some individuals providing written support for widening access and adding transparency to the payments distribution process. Delegates were also provided with details of a contact within Scottish Government who they could liaise with for further details or updates on progress.

AiB have also worked separately with senior delegates from Money Advice Scotland and Citizens Advice Scotland, representatives from the Money Advice Training, Resources, Information and Consultancy Services and Social Inclusion colleagues in smaller groups throughout the development of the new DAS Regulations.

AiB staff also invited representatives from all the current payments distributors to attend a quarterly payment distributor's panel in order to discuss changes to this part of the DAS process.

It is hoped that these changes will help stimulate a further improved uptake of DAS and help

provide recourse to effective debt management to a greater number of debtors.

### **Competition Assessment**

There should be no competitive advantage to any particular individual or group as a consequence of the introduction of the Regulations.

Competition will be enhanced through the competitive tender for persons or bodies to be approved as payment distributors. Tendering for a provider to be appointed an approved payments distributor will support delivery of a better service and ensure best returns for creditors many of which are Small and Medium Enterprises (SMEs).

### **Test run of business forms**

The changes to the forms are minor and amended forms will be tested internally. In addition to this we hold ongoing training sessions with the users of the forms.

### **Legal Aid Impact Test**

The introduction of these Regulations will have no impact on the legal aid fund. The Scottish Legal Aid Board has confirmed this assessment.

### **Enforcement, sanctions and monitoring**

The Scottish Government will review the Regulations following their first year of operation in order to assess how successful they have been in meeting their policy objective. AiB will also provide and encourage feedback with stakeholders.

### **Implementation and delivery plan**

The published guidance to support stakeholders when they are considering the DAS Scheme as a suitable form of debt management for their clients will be updated to reflect these changes.

### **Post-implementation review**

To evaluate the impact of the new legislation the Scottish Government has given an undertaking that AiB will carry out a review after the first year of operation. This will involve the analysis of statistical data collated by AiB.

The Scottish Government will review the findings of this research and consider whether any changes are necessary to the legislation or associated guidance in light of its findings. Any changes identified will be brought to the attention of the Scottish Parliament and Parliamentary committees where necessary. A final report detailing the findings and conclusion of the review will be published

### **Summary and recommendation**

Option	Costs	Benefits
1 - No change	No additional costs other than those already incurred in the consultation process	Status quo maintained
2 - THE DEBT ARRANGEMENT SCHEME (SCOTLAND) AMENDMENT REGULATIONS 2013	Changes to the Debt Arrangement Scheme Hub (DASH) system to accommodate the changes	The new Regulations will benefit individuals, creditors and the broader Scottish economy. As the number of



	being introduced this summer. The development proposal (fixed price) is £52,363. This cost has been budgeted for and will require no additional funding.	DPPs increase, more creditors will receive what is due to them. In the larger economy, changes to the Scheme will aid economic recovery with obvious benefits for businesses in both the private and public sectors respectively.
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Option 2 is recommended. The Scottish Government considers that the THE DEBT ARRANGEMENT SCHEME (SCOTLAND) AMENDMENT REGULATIONS 2013 command the support of key stakeholders, and will improve access to the Debt Arrangement Scheme.

- **Summary costs and benefits table**

<b>Option</b>	<b>Total benefit per annum: - economic, environmental, social</b>	<b>Total cost per annum: - economic, environmental, social - policy and administrative</b>
<b>1</b>	No Change	No Change
<b>2</b>	Actual pre annum monetary benefit is unknown. As the number of DPPs increase, more creditors will receive what is due to them. In the larger economy, changes to the Scheme will aid economic recovery with obvious benefits for businesses in both the private and public sectors respectively.	£52,363 which will come from the 13/14 budget -this amount covers the system build process, software release testing phase, the User acceptance phase, the implementation and the warranty period.



**Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**

**Date:**

**Minister's name, title etc\***

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