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## EXPLANATORY NOTE

*(This note is not part of the 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. The scheme as it relates to legal persons and other entities is known as “Business DAS”.

The Regulations amend the DAS Regulations to implement changes to the operation of the DAS Scheme as it applies to individual debtors. They introduce the option for the debtor to exclude from the DPP arrears of rent or mortgage payments in relation to the debtor’s sole or main residence (regulation 8(1)); and modify the application of the Common Financial Tool to the DAS Scheme, to introduce the option for the debtor to propose to pay a proportion of the debtor’s surplus income into the DPP (regulation 8(2) and schedule 1).

The Regulations also introduce the option for an individual debtor to include within the DPP an offer of a lump sum payment using the proceeds of a future sale or re-mortgage of the debtor’s sole or main residence (regulation 11); and allow individual debtors to access further credit up to a limit of £2000 (except where the debtor has existing debts outside the DPP of £1000 or more) (regulation 14).

The Regulations also implement changes to the operation of Business DAS. They remove the requirement that the DPP applied for must provide for the payment of two or more debts (regulation 9); and extend the existing protection from diligence and sequestration to cover related individuals in Business DAS from the date on which the application for the DPP is entered in the DAS Register (regulation 12). They introduce provision allowing the debtor in Business DAS to apply for a payment break of no longer than 6 months, with the term of the DPP extended accordingly (up to a maximum term of 5 years from the date of application) (regulation 15).

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

Regulation 4 inserts provision into the DAS Regulations to enable the correction of accidental errors in determinations made by the DAS Administrator arising from the provision of incorrect information by a third party.

Regulation 5 introduces a requirement that those applying for approval as money advisers must have in place appropriate arrangements to ensure Financial Conduct Authority compliance, and provides that approval may be revoked where such arrangements are not maintained.

Regulation 6 makes provision for excluding from the DAS Register information which would be likely to jeopardise the safety or welfare of any person.

Regulation 7 provides for the disclosure of any fee charged by a continuing money adviser.

Regulation 10 updates the terminology in relation to joint debt payment programmes to reflect the introduction of same sex marriage.

Regulation 13 provides that, where there is a continuing money adviser, that adviser must send any notice of recall to an employer and must notify the parties of any approval or rejection of a variation of the DPP.

Regulation 16 extends the circumstances in which an individual debtor may apply for a payment break, to reflect that changes in household circumstances may lead to reduction in the debtor’s income. The circumstances which may lead to a reduction in the debtor’s income now include a

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

period of illness of any person (not only of the debtor) and a reduction in social security benefits or tax credits.

Regulation 17 provides that the DAS Administrator must approve a variation of a DPP arising from debt discharged by a creditor applying compensation (i.e. setting off one debt against another).

Provision is also made for new or updated forms (regulation 18 and schedules 2 to 6).

Regulation 19 includes saving provisions so that regulations 7, 8, 9, 11 and 12 do not affect DPPs applied for before 29th October 2018 (other than regulation 8(2), which applies to an application to vary a DPP applied for before that date, on a material change in the circumstances of the debtor). Regulation 5(1) does not affect applications for approval as a money adviser made before 29th October 2018; and regulation 4 does not apply to determinations made before that date.

Schedule 1 amends schedule A1 of the DAS Regulations, in light of the consolidation of the Common Financial Tool (etc.) (Scotland) Regulations 2014 into the Bankruptcy (Scotland) Regulations 2016 (as amended), and modifies the application of the Common Financial Tool to the DAS Scheme.

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/)