
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 225

DEBT

**The Debt Arrangement Scheme
(Scotland) Amendment Regulations 2013**

Made - - - - *1st July 2013*
Coming into force - - *2nd July 2013*

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(1) 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(2).

Citation and commencement

1.—(1) These Regulations may be cited as the Debt Arrangement Scheme (Scotland) Amendment Regulations 2013.

(2) They come into force on the day after the day on which the Regulations are made.

Interpretation

2. In these Regulations—

“DAS” means the Debt Arrangement Scheme; and

“the DAS Regulations” means the Debt Arrangement Scheme (Scotland) Regulations 2011(3).

(1) [2002 asp 17](#) (“the Act”). The Act was relevantly amended, and section 7A inserted, by the Bankruptcy and Diligence etc. (Scotland) Act [2007 \(asp 3\)](#), sections 173, 209(1), 211 and 212 and schedule 4, paragraph 10, schedule 5, paragraph 30 and schedule 1, Part 1. Section 9(1) contains a definition of “prescribed” relevant to the exercise of statutory powers under which these Regulations are made.

(2) 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.

(3) [S.S.I. 2011/141](#).

Amendment to the Debt Arrangement Scheme (Interest, Fees, Penalties and Other Charges) Regulations 2011

3.—(1) The Debt Arrangement Scheme (Interest, Fees, Penalties and Other Charges) (Scotland) Regulations 2011(4) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 2 (interpretation), for the definition of “the DAS Regulations” substitute—

““the DAS Regulations” means the Debt Arrangement Scheme (Scotland) Regulations 2011;”.

(3) In regulation 4(1)(a) (moratorium on interest, fees, penalties or other charges), for “date on which a debt payment programme is approved” substitute “date on which a debtor applies for a debt payment programme (which is subsequently approved)”(5).

(4) After regulation 4(1) insert—

“(1A) Paragraph (1) applies to a debt in respect of which an offer of composition is accepted, or deemed to be accepted, under regulation 46B(1) or (2)(6) of the DAS Regulations as it applies to a completed programme.”.

(5) For regulation 5(1) (appeal to the sheriff on point of law), substitute—

“(1) As regards any debt included in a debt payment programme the debtor for the debt payment programme or creditor may apply to the DAS Administrator for review of a determination of the DAS Administrator under regulation 4(3) in accordance with regulations 47(4) and (5), 47A and 47B(7) of the DAS Regulations on any ground which may be raised in an appeal under paragraph (1A).

(1A) A debtor or creditor may appeal to the sheriff on point of law against a decision of the DAS Administrator under regulation 47B of those Regulations as it applies to paragraph (1).”.

and for the heading to regulation 5 substitute “Reviews and appeals”.

Amendment to the DAS Regulations

4. The DAS Regulations are amended in accordance with regulations 5 to 18 and 19(1) and (2).

Correction of accidental errors

5. After regulation 4, insert—

“Correction of accidental errors

4A.—(1) The DAS Administrator may correct an accidental error in any determination, made by the DAS Administrator under these Regulations.

(2) The DAS Administrator must notify the correction in writing to any person notified of the determination.

(3) A correction has effect—

- (a) as if the determination was made in corrected form on the date on which the original determination was made; and
- (b) where a debt payment programme was revoked in error, to restore that programme as if it had not been revoked.

(4) A correction under paragraph (1) may not be made—

(4) [S.S.I. 2011/238](#).

(5) An application is made under regulation 20 of the DAS Regulations.

(6) Regulation 46B(1) and (2) is inserted by regulation 15 of these Regulations.

(7) Regulations 47(4) and (5), 47A and 47B are inserted by regulation 17 of these Regulations.

- (a) after 28 days from the date on which the error was made; or
- (b) where an application for review has been made under regulation 47 and a decision has not been made by the DAS Administrator.”.

Money adviser fees

6.—(1) In the definition of “continuing liability” in regulation 2(1) (interpretation: general)—

- (a) after sub-paragraph (i) omit “and”; and
- (b) after sub-paragraph (j) insert
“and;
(k) a fee charged to a debtor by a money adviser;”.

(2) At the end of regulation 3(2)(b) (interpretation: debt), insert—

“.

- (c) as a fee charged by a money adviser for the money adviser’s services in the debt payment programme in respect of which the services are provided”.

(3) In regulation 12 (functions and duty of a money adviser), in paragraph (3)—

- (i) after sub-paragraph (a) omit “and”; and
- (ii) at the end of sub-paragraph (b) insert—
“; and

- (c) provide, as required by the DAS Administrator, information about the amount charged as a fee to a debtor for the adviser’s services in a debt payment programme”.

Approval of a money adviser

7. In regulation 9 (approval of a money adviser), for paragraph (3) substitute—

- “(3) An applicant is to be a fit and proper person if, but not only if—
 - (a) the person has undergone training on the matters specified in Schedule 3; or
 - (b) the person works for an organisation which is working towards accreditation at Type 2 level or above against the Scottish National Standards for Information and Advice Provision.”.

Payments distributors

8.—(1) In regulation 16(1) (functions and duty of a payments distributor)—

- (a) after “payments distributor” where it first occurs, insert “on behalf of the debtor”;
- (b) in sub-paragraph (a), for “DAS Administrator and any continuing money adviser” substitute “money adviser”; and
- (c) in sub-paragraph (c), for “, any continuing money advisor, and to creditors”, substitute “and any continuing money advisor”.

(2) In regulation 17(2) (charges by a payment distributor), after “fee” insert “, including any VAT incurred,”.

Information on the DAS Register

9. In regulation 19(2) (information on the DAS Register)—

- (a) after sub-paragraph (h), insert—
 - “(ha) correction of an accidental error under regulation 4A;
 - (hb) variation of an approved programme under regulation 46D;
 - (hc) an application for review under regulation 47;”;
- (b) in sub-paragraph (i), for “47” substitute “47C”.

Joint debt payment programme

- 10.** In regulation 22(1) (joint debt payment programme)—
 - (a) for sub-paragraph (a) substitute—
 - “(a) if each of the debtors is liable for a debt which the programme would provide for the payment of; and”;
 - (b) in sub-paragraph (b), omit “and” where it appears before “they”.

Creditors

- 11.—**(1) In regulation 23 (consent of creditors)—
 - (a) in paragraph (3), omit “, and if posted must be sent to the creditor by first class recorded delivery post”;
 - (b) at the end of paragraph (5), insert—
 - “, irrespective of any assignation of the debt by that creditor;”;
 - (c) after paragraph (7), insert—
 - “(8) Where the rights to one or more debts included in the debt payment programme are assigned, the creditor must immediately notify the DAS Administrator in writing—
 - (a) that the creditor has assigned the rights; and
 - (b) of the details of the assignee.”.
- (2) After regulation 23 (consent of creditors), insert—

“Creditor’s authorised representative

- 23A.** Where a creditor authorises another person to act on behalf of the creditor in relation to the debt arrangement scheme—
 - (a) the authorised representative must, provide evidence of authority to act on behalf of the creditor to the DAS Administrator and any continuing money adviser; and
 - (b) the creditor must notify the DAS Administrator and any continuing money adviser where the representative is no longer authorised.”.

Standard conditions

- 12.** In regulation 27 (standard conditions), in paragraph (2)(a), for “one month” substitute “42 days”.

Variation

- 13.—**(1) After regulation 36, insert—

“Proposal for variation: discharge of liability on compensation

36A.—(1) The DAS Administrator may propose a variation of a debt payment programme where a liability, or part of a liability, of the debtor is discharged by a creditor applying compensation between that debt, or part of that debt, and a liability owed by the creditor to the debtor.

(2) The DAS Administrator may not do so unless it has made a reasonable attempt to agree a variation between the debtor and creditor.

(3) The proposal must be intimated in writing to those mentioned in regulation 36(4)(a) to (d).”.

(2) In regulation 37 (grounds for variation)—

(a) after paragraph (1)(e), insert—

“(ea) under regulation 36A where liability of a debtor is discharged by a creditor applying compensation;” and

(b) in paragraph (1)(h)—

(i) for “of 6 months” substitute “not exceeding 6 months”; and

(ii) for “an equal period” substitute “a period equal to the period of deferment”.

(3) In regulation 39 (notification of approval or rejection of a variation) after paragraph (1)(c), insert “(ca) where there is a payment instruction under regulation 32, to the employer;”.

Revocation of debt payment programmes

14.—(1) After regulation 40(a) (revocation on sequestration in debtor application), insert—

“(aa) on an award of sequestration of the debtor’s estate where a creditor presented, or concurred in the presentation of, the petition for sequestration before approval of the programme(8);”.

(2) After regulation 40, insert—

“Death of a debtor

40A.—(1) A debt payment programme must be revoked by the DAS Administrator on intimation to the DAS Administrator of the death of the debtor.

(2) In paragraph (1), “the debtor” in relation to a joint debt payment programme refers to either debtor.”.

(3) In regulation 42(1)(c) (grounds for revocation), for “the aggregate of two such payments” substitute “the aggregate of payments due in a period of two months, beginning after the last payment is made”.

(4) In regulation 44 (notification of revocation)—

(a) in paragraph (2)(a) omit “and”;

(b) in paragraph (2)(b) omit “to”; and

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

“(c) the debtor; and

(d) the payments distributor.”.

(5) After regulation 44, insert—

(8) A debt payment programme is approved from midnight on the day immediately before that on which the notice under regulation 26 of the DAS Regulations is entered in the DAS register (see regulation 26(2)).