SCOTTISH STATUTORY INSTRUMENTS

2004 No. 505

SHERIFF COURT

Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) Amendment (The Debt Arrangement Scheme (Scotland) Regulations 2004) 2004

Made - - - -	*22nd November 2004*
Coming into force - -	*30th November 2004*

The Lords of Council and Session, under and by virtue of the powers conferred by section 32 of the Sheriff Courts (Scotland) Act 1971(**1**) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the Sheriff Courts (Scotland) Act 1971, do hereby enact and declare:

Citation and commencement

1. This Act of Sederunt–

(a) may be cited as the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) Amendment (The Debt Arrangement Scheme (Scotland) Regulations 2004) 2004;

(b) shall come into force on 30th November 2004; and

(c) shall be inserted in the Books of Sederunt.

Amendment and revocation of the principal Rules

2.—(1) In the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002(**2**), Schedule 1 (Rules for applications in the Sheriff Court under the Debt Arrangement and Attachment (Scotland) Act 2002) is amended in accordance with the following paragraphs.

(2) After Chapter 3 (Attachment: Articles kept within dwellinghouses) insert–

(**1**) 1971 c. 58. Section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c. 32), section 2(4), the Children (Scotland) Act 1995 (c. 36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2001 (asp 4), schedule 5, paragraph 13 and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43 and extended by the Child Support Act 1991 (c. 48), sections 39(2) and 49.

(**2**) S.S.I. 2002/560.

"CHAPTER 4

THE DEBT ARRANGEMENT SCHEME (SCOTLAND) REGULATIONS 2004

Interpretation

37.—(1) In this Chapter, "the Regulations" means the Debt Arrangement Scheme (Scotland) Regulations 2004(**3**).

(2) Any reference in this Chapter to a "regulation" shall be a reference to a regulation of the Regulations.

Applications for approval by sheriff of debt payment programme

38.—(1) An application to the sheriff for approval of a debt payment programme under regulation 27 of the Regulations shall be in Form 29.

(2) An application to which paragraph (1) applies shall be lodged with the sheriff clerk who shall–

(a) fix a date for the hearing of the application (which date shall be not less than 7 days from the date of intimation made under sub-paragraph (c));

(b) obtain from the sheriff a warrant to intimate the application to the debtor and the creditors;

(c) intimate the application and warrant to the debtor and the creditors;

(d) intimate the warrant to the applicant; and

(e) complete a certificate of intimation.

(3) A warrant for intimation referred to in this rule shall be in Form 30.

(4) A certificate of intimation referred to in this rule shall be in Form 31.

(5) An interlocutor granted by the sheriff determining the application for approval of a debt payment programme shall be in Form 32.

39.—(1) At a hearing fixed under rule 38(2)(a), the sheriff having heard interested parties–

(a) shall grant the application in terms of regulation 27(1) if he is satisfied that the programme is fair and reasonable;

(b) may require of any of the parties further information before making any determination; or

(c) may adjourn the hearing and make the determination at the adjourned hearing.

(2) In determining whether a programme is fair and reasonable, the sheriff shall have regard to the matters referred to in regulation 26(2).

(3) An approval under rule 39(1)(a) may be made subject to a condition under regulation 30.

Applications for approval by sheriff of variation of debt payment plan

40.—(1) An application to the sheriff for approval of a variation of a debt payment programme under regulation 39(3) shall be in Form 33.

(2) An application to which paragraph (1) applies shall be lodged with the sheriff clerk who shall–

(**3**) S.S.I. 2004/468; amended by S.S.I. 2004/470.

(a) fix a date for the hearing of the application (which date shall be not less than 7 days from the date of intimation made under sub-paragraph (c));

(b) obtain from the sheriff a warrant to intimate the application to the debtor and the creditors;

(c) intimate the application and warrant to the debtor and the creditors;

(d) intimate the warrant to the applicant; and

(e) complete a certificate of intimation.

(3) A warrant for intimation referred to in this rule shall be in Form 30.

(4) A certificate of intimation referred to in this rule shall be in Form 31.

(5) An interlocutor granted by the sheriff determining an application for variation shall be in Form 34.

41.—(1) At a hearing fixed under rule 40(2)(a), the sheriff having heard interested parties–

(a) shall grant the application in terms of regulation 39(3) if, having regard to the matters referred to in regulation 39(4), he is satisfied that the programme is fair and reasonable;

(b) may require of any of the parties further information before making any determination; or

(c) may adjourn the hearing and make the determination at the adjourned hearing.

(2) An approval under rule 41(1)(a) may be made subject to a condition under regulation 30.".

(3) In Appendix 1 of Schedule 1 (Forms) after Form 28 insert Forms 29 to 34 as set out in the Schedule to this Act of Sederunt.

Edinburgh
22nd November 2004

CULLEN OF WHITEKIRK
Lord President I.P.D.

SCHEDULE

FORM 29

Rule 38(1)

Regulation 27

Debt Arrangement Scheme (Scotland) Regulations 2004

Sheriff Court .... 20.....

(Court Ref No)

PART A

APPLICATION BY DAS ADMINISTRATOR FOR APPROVAL OF DEBT PAYMENT PROGRAMME

DEBTOR IN RESPECT OF WHOM DEBT PAYMENT PROGRAMME IS PROPOSED

.. ..

.. ..

.. .. the "Debtor"

DAS Administrator Ref No.

.. ..

PART B

1. The applicant is the DAS Administrator to whom application has been made by (*insert details of the Debtor's money adviser*) ("the money adviser") on behalf of the Debtor for approval of a debt payment programme under regulation 20 of the Debt Arrangement Scheme (Scotland) Regulations 2004 ("the Regulations").

2. The known creditors of the debtor are: (*insert details of all known creditors or attach list thereof*).

3. The applicant states that a request for consent to the application for approval was sent to each known creditor in terms of regulation 22 of the Regulations. In respect of the requests for consent–

(a) the following creditor[s] [has/have] not consented and the applicant is unable to dispense with such consent under regulation 22(4) of the Regulations:

(*list creditors who have not consented or attach separate list thereof*);

(b) the following creditor[s] [has/have] objected to the debt payment programme under regulation 23 of the Regulations:

(*list creditors who have objected or attach separate list thereof*).

4. The applicant attaches a copy of the application made by the money adviser on behalf of the Debtor together with a copy of each response received from a creditor to whom a request for consent was sent under regulation 22 of the Regulations.

PART C

5. The applicant asks the court–

(a) to fix a hearing;

(b) to order the sheriff clerk to intimate this application and the date of the hearing to the applicant, the debtor and to all known creditors of the Debtor; and

(c) to determine the application for approval of the proposed debt payment programme.

.....	(Signed)	..... 20...
	Applicant	(Date)

FORM 30

Rule 38(3) and 40(3)

Regulation 27 and 39(3)