SCOTTISH STATUTORY INSTRUMENTS

# 2004 No. 468

# DEBT

## DILIGENCE

# The Debt Arrangement Scheme (Scotland) Regulations 2004

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| *Made - - - -* | *1st November 2004* |
| *Coming into force - -* | *15th November 2004* |

The Scottish Ministers, in exercise of the powers conferred by sections 2(3) and (4), 4(5), 5(4), 6(1), 7 and 62(2) of the Debt Arrangement and Attachment (Scotland) Act 2002(**1**) and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with section 62(4) of that Act, been laid before and approved by resolution of the Scottish Parliament:

## PART 1

## GENERAL

### Citation and commencement

**1.** These Regulations may be cited as the Debt Arrangement Scheme (Scotland) Regulations 2004, and shall come into force on the fourteenth day after the day on which they are made.

### Interpretation: general

**2.**—(1) In these Regulations–

"the Act" means the Debt Arrangement and Attachment (Scotland) Act 2002;

"the 1985 Act" means the Bankruptcy (Scotland) Act 1985(**2**);

"the 1986 Act" means the Insolvency Act 1986(**3**);

"continuing liability" means a payment due by a debtor, other than arrears of such a payment, in respect of–

(**1**) 2002 asp 17. Section 9(1) contains a definition of "prescribed" relevant to the exercise of the statutory powers under which these Regulations are made.
(**2**) 1985 c. 66.
(**3**) 1986 c. 45.

(a) a periodic payment due under a loan agreement secured by a standard security (mortgage payment);

(b) rent;

(c) an insurance premium;

(d) a duty, local or general tax, or rate;

(e) domestic water charge or domestic sewerage charge;

(f) any aliment, periodical allowance, child maintenance or child support;

(g) the supply of electricity, gas, or fixed line telephone services;

(h) heating oil or solid fuel;

(i) a hire purchase or conditional sale agreement; and

(j) a criminal fine;

"creditor" means, unless the context requires otherwise, a creditor other than a creditor in respect of–

(a) a continuing liability;

(b) a sum secured by a standard security, other than a sum specified in regulation 3(b)(i); or

(c) a contingent liability that has not become purified;

"DAS administrator" means–

(a) the Scottish Ministers; or

(b) any person or body who may exercise the functions of the Scottish Ministers by virtue of an order made under section 8 (functions of the Scottish Ministers) of the Act;

"DAS Register" means the Debt Arrangement Scheme Register maintained under regulation 17;

"decree" and "document of debt" shall be construed in accordance with section 10(5) (attachment) of the Act;

"MATRICS" means Money Advice Training, Resources, Information and Consultancy Services, administered jointly by Citizens Advice Scotland of 1st Floor, Spectrum House, 2 Powderhall Road, Edinburgh EH7 4GB, and Money Advice Scotland of Suite 306, Pentagon Centre, 36 Washington Street, Glasgow, G3 8AZ;

"money adviser" has the same meaning as in section 9(1) (interpretation of part) of the Act;

"payments distributor" means a person or body approved by the Scottish Ministers for the purpose of performing the functions of a payments distributor under the Act;

"protected trust deed" shall be construed in accordance with paragraph 8 of Schedule 5 (voluntary trust deeds for creditors) to the 1985 Act;

"sheriff" and "sheriff principal" mean respectively the sheriff of the sheriff court district, and the sheriff principal of the sheriffdom, in which a debtor habitually resides;

"standard security" means the form of heritable security enabled under section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970(**4**); and

"trust deed" has the same meaning as in section 5(4A) of the 1985 Act(**5**).

(2) A form referred to by number in these Regulations means the form so numbered in Schedule 1, or a form of substantially the same effect with such variation as the circumstances may require.

(**4**) 1970 c. 35. Section 9 has not been relevantly amended.
(**5**) 1985 c. 66. Section 4A was amended by the Bankruptcy (Scotland) Act 1993 (c. 6), section 3.

(3) Any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(**6**), which has been recorded and is consequently capable of being reproduced.

**Interpretation: debt**

**3.** In these Regulations, "Debt"–

(a) includes any sum due by a debtor–

(i) constituted by–

(aa) decree or document of debt;

(bb) judicial or contractual interest;

(cc) charges or penalties due under a contract on any default in respect, or breach of, that contract;

(dd) lease or tenancy agreement;

(ee) enactment;

(ii) secured by a standard security, to the extent that the sum is arrears of a periodic payment due to be paid under a loan agreement so secured;

(iii) recoverable from the debtor as enforcement expenses; and

(b) excludes any sum due by a debtor–

(i) to the extent it is secured by a standard security, other than where that sum is included under paragraph (a)(ii);

(ii) as a liability for the purpose of section 17(2B) of the Legal Aid (Scotland) Act 1986(**7**).

**Dispensing power**

**4.** The DAS administrator may relieve any person from the consequences of any failure to comply with a provision of these Regulations that is shown to be due to mistake, oversight or other reasonable cause.

**Fees**

**5.**—(1) Subject to paragraph (2), the fee payable to the DAS administrator in respect of the matter specified in column 1 of Schedule 2 shall be the fee specified in relation to that matter in column 2 of that Schedule.

(2) No fee shall be paid by a money adviser for an inspection of the DAS Register under regulation 19(1).

**Consequential amendments**

**6.** Schedule 3, which contains amendments consequential upon the provisions of these Regulations, shall have effect.

(**6**) 2000 c. 7. Section 15 of the Electronic Communications Act 2000 (c. 7) contains a definition of "electronic communication".
(**7**) 1986 c. 47. Section 2B was inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 36.

# PART 2

## MONEY ADVISERS

**Debtor to have a money adviser**

**7.**—(1) A debtor shall have a money adviser during the period of operation of a debt payment programme.

(2) A debtor shall forthwith give written notice to the DAS administrator that a money adviser has ceased to act for the debtor.

(3) Where notice is given under paragraph (2), a debtor shall state the reason why the money adviser has ceased to act.

(4) A money adviser shall assist the debtor to appoint a replacement adviser where that first adviser has ceased to act by reason of the resignation, or revocation or suspension of approval, of that first adviser.

**Approval of a money adviser**

**8.**—(1) An application to the DAS administrator for approval as a money adviser shall be in form 1.

(2) The DAS administrator shall approve an application under paragraph (1) if satisfied that the applicant is a fit and proper person to be a money adviser.

(3) A person, other than a person specified in regulation 10(2), shall be a fit and proper person to be a money adviser if, but not only if, the person has–

(a) undergone training on the matters specified in Schedule 4; and

(b) a certificate issued by MATRICS stating that the person

(i) has been assessed as possessing the skills and training needed to competently advise a debtor on taking part in a debt payment programme under the debt arrangement scheme; and

(ii) is recommended for approval by the DAS administrator as a money adviser.

(4) Approval as a money adviser shall be for a period of 2 years.

**Revocation, or suspension, of approval of a money adviser**

**9.**—(1) The DAS administrator shall revoke the approval of a money adviser where MATRICS certify that the adviser is no longer recommended for approval by the DAS administrator as a money adviser.

(2) The DAS administrator may revoke the approval of a money adviser where–

(a) an adviser for a debtor fails without good cause to respond to a requirement by the DAS administrator for the adviser to provide evidence or information relating to the operation of the debt payment programme of the debtor; or

(b) in the opinion of the DAS administrator the adviser–

(i) has failed without good cause to carry out a function of an adviser under the Act or these Regulations; and

(ii) continues to fail to carry out that function, after 2 weeks from the date of written notice to the adviser of that failure.

(3) The DAS administrator shall suspend the approval of a money adviser for a period of 6 months, where MATRICS certify that the adviser is temporarily unable to carry out the functions of an adviser under the Act or these Regulations.

**Persons who may not be approved**

**10.**—(1) A person specified in paragraph (2) shall not be a money adviser.

(2) A specified person is–

(a) a sheriff officer or messenger-at-arms, or an employee of such a person;

(b) a person or body providing financial services, or financial advice other than money advice, in the course of a business or otherwise for profit, or an employee of such a person, unless the person is a–

(i) solicitor;

(ii) chartered or certified accountant;

(iii) a credit union registered under the Industrial and Provident Societies Act 1965(**8**) by virtue of section 1 (registration under the Industrial and Provident Societies Act 1965) of the Credit Unions Act 1979(**9**);

(c) a person providing debt collection services, or an employee of such a person;

(d) a person convicted of an offence involving theft, fraud or other dishonesty;

(e) a debtor whose estate has been sequestrated, and who has not been discharged under sections 54 (automatic discharge after 3 years) or 75 (amendments, repeals and transitional provisions) of the 1985 Act(**10**);

(f) a bankrupt, who has not been discharged under sections 279 (duration) or 280 (discharge by order of the court) of the 1986 Act(**11**);

(g) a person 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) of the 1986 Act(**12**);

(h) a person who has entered into a trust deed or protected trust deed for their creditors, and who has not been discharged from that deed; or

(i) a person in respect of whom a court has made a disqualification order under section 1, or who has had a disqualification undertaking accepted under section 2, of the Company Directors Disqualification Act 1986(**13**).

**Functions and duty of a money adviser**

**11.**—(1) It is a function of a money adviser to–

(a) provide money advice to a debtor;

(b) liaise with creditors on behalf of a debtor;

(c) assist a debtor with, and advise on, implementation or variation of a debt payment programme;

(**8**) 1965 c. 12. There are amendments to this Act which are not relevant to these Regulations.
(**9**) 1979 c. 34. Amended by S.I.1996/1189, 2001/2617 and 3538 and 2002/1501.
(**10**) 1985 c. 66. Section 54 was repealed in part by the Education (Student Loans) Act 1990 (c. 6), Schedule 2, paragraph 6.
(**11**) 1986 c. 45. Section 279 was substituted by section 256 of the Enterprise Act 2002 (c. 40) ("the 2002 Act").
(**12**) 1986 c. 45. Schedule 4A was inserted by section 257, of and Schedule 20 to the 2002 Act.
(**13**) 1986 c. 46. Section 1 was amended by the Insolvency Act 2000 (c. 39) ("the 2000 Act"), section 5 and Schedule 4, Part I, paragraph 2, and by the 2002 Act, sections 204 and 279. Section 2 was amended by the 2000 Act, section 8 and Schedule 4, Part 1, paragraph 3 and by the Deregulation and Contracting Out Act 1994 (c. 40), section 39 and Schedule 11, paragraph 6.