

EXECUTIVE NOTE
THE DEBT ARRANGEMENT SCHEME (SCOTLAND) AMENDMENT
REGULATIONS 2009
SSI 2009/234

The above instrument is made in exercise of the powers conferred by sections 2(3), 4(5), 5(4), 6(1), 7 and 62(2) of the Debt Arrangement and Attachment (Scotland) Act 2002 (“the 2002 Act”). The instrument is subject to negative resolution procedure.

Policy Objectives

The Debt Arrangement Scheme

The Debt Arrangement Scheme (DAS) was introduced on 30 November 2004 to allow debtors to repay their debts in full over a reasonable period of time without the threat of legal action or diligence from their creditors. DAS allows debtors to make a single regular payment through a Debt Payment Programme (DPP) to a payments distributor who distributes the money collected to the creditors.

The functions of the DAS administrator, who administers the scheme under the Regulations, were transferred to the Accountant in Bankruptcy (AiB) on its commencement by the Debt Arrangement and Attachment (Scotland) Act 2002 (Transfer of Functions to the Accountant in Bankruptcy) Order 2004 (SSI 2004/448).

The policy objectives of DAS were to –

- enable people to resolve serious debt problems in a dignified way;
- reduce the need for creditors to take legal action to recover their debts;
- extend the benefit of money advice about debts to those people who have a particular need for it;
- improve the quality of money advice, by training and accrediting money advisers; and
- minimise the impact of bad debt on both debtors and creditors.

Section 3(1) and (2) of the 2002 Act provides that a debtor is not entitled to apply for the approval, or variation, of a DPP under the Scheme unless he or she has obtained the advice of a money adviser on a number of specified matters, and for the form of application. Section 212(3) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (“the 2007 Act”) added section 3(3) to make these provisions subject to any contrary provision in regulations made under section 7(1).

Section 7(2) of the 2002 Act contains examples of provision that may be made under section 7(1). Section 7(2)(bb), inserted by section 212(5) of the 2007 Act, includes circumstances in which a debtor is entitled to make an application for the approval, or the variation, of a debt payment programme where the debtor has not obtained money advice under section 3(1).

DAS Review

In November 2008, AiB published a review of the Debt Arrangement Scheme. (See AiB website www.aib.gov.uk/guidance/publications/consultations/DASreview). The review found that –

1. There is a market for DAS within a range of methods to deal with debt.
2. DAS is working for the people who have been able to access it.
3. Access seems to be a major problem and needs to be resolved.
4. DAS works for debtors who have available funds and it protects the family home at the same time provided payments continue to be made to secured creditors.
5. Take up of DAS is affected by factors such as money adviser engagement and availability of advisers.
6. Geographical variations show that the take up of DAS is inconsistent across Scotland and some areas show better take up than others.
7. Ethnic minorities make little use of DAS.
8. Creditor awareness and engagement in DAS is low.
9. Because of the deemed consent of creditors some excessively long DPPs have been approved which would have been unlikely to pass the “fair and reasonable” test had the DAS Administrator been able to apply the test.

Purpose of the changes to DAS made by these Regulations

The above instrument introduces a number of changes to the DAS regulations to address the issues identified in the review –

1. To widen access to DAS by allowing applications from debtors who have not obtained the advice of a money adviser.
2. To allow DPPs which consist of a single debt.
3. To provide an online application process directly to the DAS Administrator.
4. To transfer many of the administrative duties of the approved money adviser to the DAS Administrator.
5. To streamline the process.
6. To remove some of the statutory forms.

7. To restrict the period of a DPP by setting a minimum payment amount per month which will effectively preclude the proposal of exceptionally long DPPs for smaller debts.
8. Raise the profile of DAS with creditors by providing a focal contact point.
9. Remove approval by deemed consent where creditors have failed to respond to a request for consent.
10. Increase the time limit from 3 weeks to 5 weeks for creditor response to requests for consent to a DPP.
11. Modify the creditor consent criteria to provide that as long as consent is received from at least 50% in number or 50% by debt value the DAS Administrator can dispense with the consent of remaining creditors.
12. Allow the DAS Administrator to approve a debt payment programme in any case where less than 50% of creditors by number or value consent if it considered to be “fair and reasonable” in the circumstances of a particular case.
13. Provide for the issue of a Debt Advice and Information Package where a debtor seeks revocation – this would allow money advice to be sought to establish whether variation rather than revocation was viable.

Provisions in these Regulations

The Regulations amend the Debt Arrangement Scheme (Scotland) Regulations 2004 (SSI 2004/468) (“the 2004 Regulations”). The 2004 Regulations have previously been amended by the Debt Arrangement Scheme (Scotland) Amendment Regulations 2004 (SSI 2004/470), the Debt Arrangement Scheme (Scotland) Amendment Regulations 2007 (SSI 2007/262) and the Debt Arrangement Scheme (Scotland) Amendment (No. 2) Regulations 2007 (SSI 2007/187).

Regulation 3 amends regulation 2 of the 2004 Regulations to remove redundant definitions because the use of money advisers will no longer be mandatory and to insert a description of “electronic means” to facilitate online applications.

Regulation 4 substitutes a new regulation 5(2) to make searches of the DAS Register free of charge to non-profit-making bodies. Under the 2004 Regulations, searches are currently free to approved money advisers.

Regulation 5 substitutes a new regulation 7 which entitles a debtor to make an application for approval or variation without obtaining the advice of a money adviser notwithstanding section 3(1) and (2) of the Act.

Regulation 5 also removes provisions in the 2004 Regulations referring to money advisers because the money adviser will no longer be a necessary part of the DAS process. Regulations 6-7, 14-22 and 24-27 make amendments consequential on this change.

Regulation 8 amends regulation 20 of the 2004 Regulations to provide that applications for approval must be made on-line, but gives the DAS administrator a discretionary power to accept applications in other formats if it is reasonable to do so. It also continues the current rule that a debtor may intimate their intention to apply for approval of a DPP. Intimation allows a debtor to prevent creditors using diligence for a 6 week period in order to allow them time to apply for entry into DAS. In order to avoid abuse, intimation cannot be made more than once every 12 months.

Regulation 9 amends regulation 21 of the 2004 Regulations to remove the requirement that a debtor must have two or more debts before applying for approval of a debt payment programme.

Regulation 10 amends regulation 22 of the 2004 Regulations by replacing the rule that creditors who do not respond to a DAS application are deemed to consent. It provides that the DAS administrator may dispense with the consent of a creditor where more than half of creditors by number or value have consented.

Regulation 11 substitutes a new regulation 25 into the 2004 Regulations to provide that a programme will be approved where all creditors actively consent or their consent is dispensed with.

Regulation 12 amends regulation 26(2) of the 2004 Regulations, which sets out the criteria to be taken into account when considering whether it is fair and reasonable to approve applications not approved under regulation 25. It removes some criteria which are no longer relevant and allows AiB to take account of the number of debts included in a DPP.

Regulation 13 inserts a new regulation 26A into the 2004 Regulations to provide that a DPP will not be approved unless the debtor proposes to pay a minimum of either £100 each month or 1% of the debt included in the DPP, whichever is greater.

Regulations 14 to 20, 22 and 24 to 27 amend the 2004 Regulations to reflect the fact that many of the functions of the money adviser will now be carried out by AiB as the DAS administrator.

Regulation 21 amends the terminology of regulation 41 of the 2004 Regulations to reflect changes in the Bankruptcy and Diligence etc. (Scotland) Act 2007.

Regulation 23 amends regulation 43 of the 2004 Regulations to require the DAS administrator to provide a Debt Advice and Information Package to debtors who apply for revocation to encourage the access of debt advice to establish whether variation of a debt payment programme rather than revocation is a better course of action for them.

Regulation 28 amends some of the DAS forms which have been revised to take account of the changes referred to above, and removes other forms which are no longer required.

Consolidation

The 2004 Regulations have been heavily amended to date. Ongoing discussion of the Regulations with stakeholders as late as the beginning of June has meant that in order for the changes in the Regulations to be made available before the Parliamentary Recess, consolidation has not been possible. It is however intended to work on a formal consolidation of the Regulations for 2010, or the next legislative opportunity when amendments are required to the Regulations if earlier. AiB will also work towards making an informal consolidation of the Regulations available on its website (though such a consolidation cannot be relied upon).

Consultation

The views of stakeholders, including Money Advice Scotland, Citizens Advice Scotland, the Institute of Chartered Accountants Scotland and local authorities were sought and incorporated in the Review of DAS. AiB has consulted with the money advice sector in relation to the specific impact of these changes on debtors and money advisers.

Although these Regulations remove the formal role of the approved money adviser from DAS, AiB's guidance on the operation of DAS and the information provided to debtors will emphasise the importance of money advice and the availability of free advice, and will encourage debtors to seek such advice.

Regulatory Impact Assessment

No significant impact on Scottish businesses or public sector organisations has been identified, other than the potential benefit for creditors noted under Financial Effects below, and accordingly a Regulatory Impact Assessment has not been prepared.

AiB will collect ethnicity and other social data from DAS applications and monitor this for any unintended impact of the changes to the scheme.

Financial Effects

The Scottish Government funds national infrastructure for the money advice sector, including training and second tier support for advisors, provided by Money Advice Training Information and Consultancy Services (MATRICS). Part of that is for the training and certification of approved money advisers. Although the specific role of the approved money adviser in DAS is removed by these Regulations, the Scottish Government remains committed to supporting the provision of quality money advice and does not currently plan to reduce the overall level of this funding.

AiB have allocated funds for the development of the on-line gateway for DAS and additional staff to provide the administration of the scheme. These costs will be absorbed in the agency's efficiency savings and there will be no additional cost to the public purse.

DAS is intended to improve returns to creditors by encouraging debtors to make full repayment of the sum due at the time of entering their DPP. Creditors will not be able to recover interest on the debts included in a DPP provided the DPP is completed and the fee charged by a payment distributor are deducted from the money collected. However, this return is significantly better than the average return from a protected trust deed or bankruptcy.

Accountant in Bankruptcy
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