POLICY NOTE

THE DEBT ARRANGEMENT SCHEME (SCOTLAND) AMENDMENT REGULATIONS 2019

S.S.I. 2019/XXX

1. The above instrument is made by the Scottish Ministers 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 and all other powers enabling them to do so. It is subject to the affirmative procedure.

Purpose of the instrument. To enhance the Debt Arrangement Scheme by streamlining processes for increased flexibility and sustainability, and making it more accessible to the people of Scotland where it is the best solution to meet their specific needs.

Policy Objectives

2. The policy aim of the Debt Arrangement Scheme (Scotland) Amendment Regulations 2019 is to introduce improvements to the Debt Arrangement Scheme (DAS) to increase the accessibility and sustainability of Debt Payment Programmes (DPPs) and to offer greater flexibility. It also aims to ensure that there is an adequate supply of organisations facilitating entry to DAS where it is the appropriate solution, with the aim of allowing the scheme to reach its full potential. The amendments will make provision to enhance the scheme and make it more accessible to the people of Scotland to help ensure people have access to the best debt management product to meet their specific needs.

3. In brief, these Regulations amend the Debt Arrangement Scheme (Scotland) Regulations 2011 to:

- remove the requirement for a tender process for appointing payments distributors, thereby allowing other entities such as continuing money adviser organisations or AiB to take on payments distribution responsibility (the existing requirement for payments distributors to have the appropriate Financial Conduct Authority authorisations will be retained)
- set a standard fee to be retained by payments distributors out of the distribution to creditors, and to remove the ability for continuing money advisers to charge debtor fees
- introduce automatic approval of DPPs where the debt due to objecting creditors is less than 10% of the total DPP debt
- introduce deemed consent to variation applications
- introduce automatic approval of variation applications that will lead to a reduction in the duration of a case or where all creditors consent
- allow the DAS Administrator to propose a variation on behalf of a debtor in certain circumstances
- introduce the facility for the debtor to request a short term financial crisis payment break in certain circumstances

- extend the circumstances in which a debtor may apply for a payment break to include where the debtor separates from a cohabiting partner, and to modernise the terminology relating to joint debt payment programmes
- introduce a requirement for a statement of reasons where a creditor applies to vary a DPP because of an omitted debt more than 120 days after the approval of the DPP

Background

4. DAS was introduced on 30 November 2004 and provides a facility for the orderly repayment of debt. It is a formal debt solution that allows people who are unable to pay their debts as they fall due, but who have a reasonable level of surplus income, to pay those debts over a longer period. This is achieved through a DPP, helping those with debt problems manage their way out of debt and offering them the potential to start over when their debts are cleared. DAS provides protection from the threat of any action to enforce payment of the debt. All interest, fees and charges are frozen from the date of application and written off at the end of the DPP provided that the programme is completed.

Consultation

5. In 2016, Accountant in Bankruptcy (AiB) began a review of the DAS reforms introduced by the Debt Arrangement Scheme (Scotland) Amendment Regulations 2013 and the Debt Arrangement Scheme (Scotland) Amendment Regulations 2014. As part of the DAS review, two consultations were carried out, inviting feedback on specific areas.

6. Responses to the consultations broadly agreed that the changes introduced in recent years had met their intended outcomes. Some respondents also recommended a number of improvements to DAS to increase the accessibility and sustainability of DPPs, and to introduce greater flexibility where possible. The response document "The Debt Arrangement Scheme – The Way forward" was published on 27 March 2018.

7. After the publication of the response document AiB set up an expert working group with key stakeholders to develop proposals which formed the basis of a further consultation "Building a better Debtor Arrangement Scheme" which was issued on 31 October 2018 and closed on 24 January 2019.

8. On 18 April 2019 AiB published a full response to that further consultation detailing the responses received and the proposals that AiB would take forward to make changes to the legislation.

9. AiB has carefully considered all suggested improvements reflecting on the following key principles:-

    - fair and just processes of debt advice, debt relief and debt management are available to those who need them;

- those debtors who can pay should pay their debts, whilst acknowledging the wide range of circumstances and events that contribute towards financial difficulty for both individuals and businesses; and

- securing the best return for creditors while ensuring that the rights and needs of those in debt are balanced with the rights and needs of those creditors and businesses.

Impact Assessments

10. A Business and Regulatory Impact Assessment ("BRIA") has been completed on the effects of the instrument and has been published when this instrument was laid before the Parliament. A copy can be found on the AiB website.

11. An Equality Impact Assessment ("EQIA") has been completed on the changes to DAS introduced by the Regulations. AiB administers each DAS application on an individual basis and has appropriate measures in place to ensure that the collation and transmission of statistics and information regarding individuals are completed sensitively. AiB regularly consults with stakeholders, service users and the general public on reforms to DAS to ensure that the needs of all groups of society who may seek to access DPPs are considered and that no particular groups are disadvantaged or excluded more than others. A copy of the EQIA in relation to the 2019 Regulations can be found on the Scottish Government website.

12. In view of the Fairer Scotland Duty regarding socio-economic inequalities which exists under the Equality Act 2010, the impact of these proposals on those with low wealth and low income has been considered. The proposed changes will make DAS more flexible and will therefore allow more individuals struggling with debt to consider an alternative to insolvency.

Financial Effects

13. A BRIA has been prepared. The changes introduced by this instrument are not expected to have any significant financial impact on the Scottish Government or Scottish businesses. AiB has developed a new case management system, EDEN, to manage DAS Debt Payment Programmes which will be implemented on 1 July 2019. The development work has incorporated the proposed legislative changes. EDEN is managed by AIB so stakeholders will incur no cost here. It is expected that organisations wishing to undertake the payments distribution function may incur some cost if they do not hold appropriate authorisations with the Financial Conduct Authority (FCA). FCA authorisation is considered necessary to ensure best practice in the sector.

14. Voluntary entry to all existing statutory debt solutions in Scotland must follow advice from an approved money adviser. It is essential that these important decisions are made having taken account of the financial circumstances of the individual and the implications of embarking on the selected mechanism. DAS will not be the appropriate solution for all – the requirement for the full debt to be repaid over an extended period may not be feasible and it is clear that for many people an insolvency option providing debt relief will be the only practical solution.

15. For DAS, currently advice can be obtained from either a free to client money advice organisation or a fee charging commercial organisation. Where a fee charging money adviser is employed, the individual with debt will generally have to pay a separate fee for ongoing advice provision over and above the regular payments towards the DAS DPP.

16. There are several financial implications arising from the changes which will be introduced by the Regulations. Primarily, the Regulations remove the additional financial burden of paying for money advice from those already seeking solutions to problem debt. This means that there will be equal access to DAS for debtors irrespective of whether advice is sought from free to client or fee charging organisations. The expected outcome is that there will greater capacity across the entire advice sector to deal with all clients and this may remove some of the existing financial barriers to accessing DAS.

17. The regulations also introduce a fixed fee structure that will involve 20% of the funds paid during the DAS DPP being retained by the payment distributor to cover the costs of both advice provision and payment distribution services. The 2% fee levied by the DAS Administrator for the costs of dealing with DAS applications and variation requests is retained. The financial effect of this change will see a reduced return to creditors through a completed DAS programme. Currently creditors will receive at least 90% of the original debt through a completed programme and this will now be 78%. The consultation responses highlighted that creditor organisations are broadly supportive of the revised structures. The expected returns would remain significantly higher than those expected in an insolvency solution and the increased capacity within the fee charging and free to client advice sector to deliver DAS to clients on an equal footing is welcomed. For those entering DAS via the fee charging sector, the removal of separate payment for advice provision will enable either debts to be paid over a shorter timeframe or increased scope to maintain a more sustainable financial position during the period of the DPP.

18. The regulations remove the requirement for a tender process for appointing payments distributors, thereby allowing other organisations such as a continuing money adviser organisation or AIB to take on payments distribution responsibility. The aim is to improve the service available to debtors enabling them to continue their relationship with an adviser if they wish to do so, and to make DAS more commercially attractive for advice organisations. AiB currently manage the ongoing administration work of public sector cases and providing the payments distribution function will be an extension of this to streamline and simplify the process. The changes will allow AiB to act as payments distributor where they are chosen by the debtor or where the existing payments distributor can no longer undertake these functions and an alternative payment distributor has not been identified, providing greater resilience within the system.

19. Where AiB is appointed the payments distributor it will charge the statutory administration fee for this function but will only seek to recover its costs.

The Accountant in Bankruptcy on behalf of the Scottish Government
June 2019

Annex

Specific Provisions

1. **Regulation 4:**
    - removes the requirement for a tender process for appointing payments distributors, thereby allowing other entities such as continuing money adviser organisations or AiB to take on payments distribution responsibility. As is currently the case, the debtor will nominate their own PD (via their money adviser) and the existing requirement for PDs to have the appropriate FCA authorisations will be retained;
    - sets the statutory administration fee for PDs at 20% to cover the costs of both money advice provision and payment distribution services, and provides that the CMA may not charge the debtor a fee for the adviser's services.

2. **Regulation 5:** introduces automatic approval for DPP applications where the debt due to objecting creditors is less than 10%.

3. **Regulation 6:** provides for a debtor to make payments via new payment methods with the agreement of the payments distributor. This will help to take account of technological advances.

4. **Regulation 7:** provides that a variation application made by a creditor to include an omitted or wrongly assessed debt, which is made more than 120 days after the approval of the DPP, must be accompanied by a statement by the creditor demonstrating why the debt was omitted or wrongly assessed and why the application could not have been made on an earlier date.

5. **Regulation 8:** allows AiB to propose a variation on behalf of a debtor where the variation is for administrative purposes or will reduce the term of the DPP. A variation may not be proposed under this provision where there has been any change in the debtor's financial circumstances.

6. **Regulation 9:** extends the circumstances in which a debtor may apply for a payment break to include where the debtor separates from a cohabiting partner, and modernises the terminology relating to joint debt payment programmes.

7. **Regulation 10:** introduces deemed creditor consent to variation. This regulation provides that where creditors do not respond to a variation proposal within 21 days they will be deemed to have consented, bringing this into line with the initial DPP approval process. Where all creditors consent, or where a variation proposal will lead to a reduction in the duration of a DPP, it will be automatically approved by the DAS administrator.

8. **Regulation 11:** introduces short term payment breaks to address periods of financial crisis. They will be authorised by the money adviser without having to consult creditors. There will be no more than two breaks, each lasting one month. This can be comprised of two separate months or two consecutive months in any rolling one-year period, and requests may be submitted retrospectively, as long as the request is made before the next payment is due.