

Debt Arrangement Scheme

Guidance for DAS approved money advisers

Foreword

Most people want to pay what they are due, but some can only do so if they are given more time.

A modern system of court enforcement protects debtors where reasonable. If a debtor needs time to pay, then they should be protected from further enforcement methods or from bankruptcy. Diligence is the Scottish name for methods of enforcing court decrees, and so this kind of protection is known as a 'diligence stopper'.

A diligence stopper is a form of debt management, rather than debt relief. It is a way for clients to avoid the damage caused by bankruptcy or signing a trust deed for creditors.

In particular, debt management is a way for people to stay in their homes. Stopping diligence does not stop lenders and landlords recovering possessions when rent or mortgage payments are missed, but it does make re-possession much less likely.

The Debtors (Scotland) Act 1987 introduced 2 diligence stoppers. The first is a time to pay direction, which a court can make when it grants decree. The second is a time to pay order, which a court can make when a creditor attempts to enforce a decree.

Time to pay orders and time to pay directions are only available from the courts, and only apply to single debts. They are, while often used, of limited value where someone has multiple debts.

As a result, the Scottish Executive introduced the Debt Arrangement Scheme as a third 'diligence stopper', for people with 2 or more outstanding debts. The Scottish Executive decided that people should not have to apply to the courts in order to use DAS.

The Scottish Parliament approved the principle of DAS by passing the Debt Arrangement and Attachment (Scotland) Act 2002 (the 2002 Act). On 31st March 2004 it went on to approve the detailed rules set out the Debt Arrangement Scheme (Scotland) Regulations 2004 (the DAS Regulations).

The Scheme has 3 main elements. They are the money adviser, the payments distributor, and the Scottish Executive (the DAS administrator).

The money adviser applies to the DAS administrator for approval of the debt payment programme (DPP) proposed by the client. If the programme is approved, then the payments distributor selected by the money adviser divides the client's payments amongst the creditors.

DAS builds on the model of existing voluntary repayment plans. This means that a money adviser who negotiates repayment plans will work in much the same way when setting up a DPP under DAS.

The key ways in which a repayment plan and a DPP are the same are that:

- the client must wish to repay their debts.
- the money adviser works out the surplus income, and makes an offer of payment to creditors.
- the client and the creditors can reach whatever agreement suits them. If the creditors agree, then a DPP is approved by the DAS administrator.
- debts and interest can be written off in a DPP, but only by agreement.

However, a repayment plan and a DPP are different in important ways. It is these differences that make DAS a more effective tool for clients and advisers.

The key differences between a repayment plan and a DPP are:

- DAS is a statutory scheme, and has the force of law.
- that if a creditor says nothing, they are presumed to agree (deemed consent)
- DAS is flexible:
 - A DPP can be varied whether or not the creditors agree.
 - The 'fair and reasonable' test applies where there is incomplete agreement, and means that a DPP can, in principle, match any circumstances.
- Creditors cannot easily block a fair and reasonable DPP:
 - A single creditor must be owed more than half the debt.
 - A group of creditors must be owed more than 60% of the debt.
- When a DPP is approved the client is freed from the threat of:
 - arrestment, attachment, and other diligences.
 - bankruptcy.

One result of this difference is that DAS restricts creditors' rights. There is therefore a strong public interest in how DAS is used, and that is why money advisers need to be approved by the DAS administrator.

The importance of this guidance to money advisers follows from the fact that DAS has the force of law. Regulation 11(3) of the 2004 regulations says that money advisers shall have regard to official guidance such as this.

In this guidance the Executive states its views on what DAS is, and how the law in the 2002 Act and 2004 Regulations should be applied. It is intended to be a helpful guide that money advisers can use at work to inform the difficult decisions that must be made.

The Executive will take account of developments as DAS is used, and this guidance will change from time to time to reflect the Executive view of good practice. Money advisers should therefore ensure that they are using the most up to date version of the guidance.

DAS money advisers have the skills and training to use their professional judgment. An adviser may well have good reason for not following this guidance, but must be prepared to justify their decision to do so.

This guidance does not itself have the force of law. Interpretation of the law is a matter for the courts, rather than the Executive. The law comes first, and guidance follows. A money adviser should therefore remember that at times legal advice will be needed.

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Introduction

This guidance has been specifically written for money advisers whether they are in the voluntary, the statutory, or the private sectors.

The aim is threefold:

- to explain what is meant in the Act and the regulations;
- to give more guidance on what is expected of a money adviser; and
- to advise on procedures.

This guidance is constructed in such a way as to give you easy access to the information required. This means that information is sometimes duplicated. Hence, section 3: the functions and responsibilities of the money adviser provides an overview of sections 4-9 which go step-by-step through the process from the first interview with the debtor to completion or revocation of a DPP. Similarly, much of the information in section 12 on creditors, is to be found elsewhere in the guidance, but is brought together as a quick reference guide.

These notes have been written for guidance only. They provide the DAS administrator's interpretation of the legislation and processes involved in the Debt Arrangement Scheme. They are not a full or detailed statement of the law.

Introduction to the Debt Arrangement Scheme

1.1 The key roles and agencies

1.1.1 The money adviser

Money advisers are key to the Debt Arrangement Scheme (DAS). Their functions are:

- to consider and discuss with the debtor:
 - the options for dealing with their debts; and
 - the best course of action;
- to assist the debtor in maximising income;
- to advise the debtor about responsible budgeting;
- to act on behalf of the debtor in a debt payment programme (DPP);
- to provide lay representation, if suitably trained and if they accept instruction from the debtor; and
- to review the progress of a DPP.

1.1.2 The debtor

The debtor is someone who owes, or is due to pay, money to an individual or a company. For the purposes of DAS, the debtor must have multiple debts which they want to pay off.

1.1.3 The creditor

The creditor is someone or a company owed money by a debtor where the debtor is in arrears of their repayments. The creditor is the one who holds the debt and not a collection agency working on their behalf. (Note that sometimes creditors sell the debts on to collection agencies. If this happens, the collection agency becomes the creditor.)

1.1.4 The Debt Arrangement Scheme administrator (DAS administrator)

The DAS administrator (the Accountant in Bankruptcy) also has important roles in DAS.

- She approves, suspends, and revokes the approval of money advisers.
- She maintains the register of approved money advisers.
- She approves, approves variations of, and revokes DPPs.
- She maintains the public register of debt payment programmes
- She approves and revokes payments distributors.
- She maintains a register of approved payments distributors.

1.1.5 MATRICS (Money Advice Training, Resources, Information and Consultancy Services).

MATRICS is responsible for the training of money advisers for DAS.

- It offers appropriate training on advising on and administering DPPs.

- It will award a certificate to money advisers who have successfully met the required standard of advice through a practical demonstration of competence in liaising with creditors and applying for their client's inclusion in the debt arrangement scheme.
- It has devised a code of practice that all agencies who employ DAS money advisers must sign up to.

1.1.6 Payments distributors

Approved payments distributors collect money from debtors and distribute it to creditors.

2 How to become a money adviser

2.1 Who can be approved?

- 2.1.1 Access to approval covers all the possible agencies and professions that may be appropriate. These include independent financial advisers, lawyers, accountants, advisers in the voluntary and statutory sectors, as well as workers in the private debt adjustment sector.
- 2.1.2 To gain certification and approval, you must meet the minimum requirements and your agency must sign the code of practice irrespective of the sector within which you operate. The code of practice will include quality assurance measures for the agency that employs you in order to ensure the quality of advice provided.
- 2.1.3 You will need to show that your agency has adequate professional indemnity insurance and that it holds a standard or group Consumer Credit Licence from the Office of Fair Trading or be exempt from this (local authorities). This is required to ensure that you are acting lawfully and that your agency has adequate protection if wrong or inaccurate advice is provided and a claim made against you.
- 2.1.4 Regulation 10 sets out persons who may not be approved. These are:
- a sheriff officer or messenger-at-arms, or an employee of such a person;
 - 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 solicitor;
 - a chartered or certified accountant; or
 - a credit union registered under the Industrial and Provident Societies Act 1965 by virtue of section 1 (registration under the Industrial and Provident Societies Act 1965) of the Credit Unions Act 1979;
 - a person providing debt collection services, or an employee of such a person;
 - a person convicted of an offence involving theft, fraud or other dishonesty;
 - 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;
 - a bankrupt, who has not been discharged under sections 279 (duration) or 280 (discharge by order of the court) of the 1986 Act;
 - 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;
 - 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; and

- 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.

2.2 Minimum entrance requirements

2.2.1 Prior to being able to apply to become an approved money adviser, you must meet a set of minimum entry requirements. In general, you must be a casework adviser who meets the skilled level of the Wiseradviser Money Advice Standards. There are two areas of importance, and they can be broken down as:

- Attitudes. You must be able to demonstrate:
 - an ability to apply the aims, principles and policies (including equal opportunities policies) of your agency in relation to money (debt) advice;
 - a willingness to manage a debt caseload; and
 - a willingness to act as a support to generalist advisers in the voluntary sector.
- Skills and knowledge. This includes the ability to:
 - assist a client to respond to admitted money claims in the sheriff court;
 - identify the need to refer to a money adviser certificated in line with statutory requirements;
 - outline the relevance of the Prescription and Limitation (Scotland) Act 1973 and its effect on a creditor's ability to enforce a debt;
 - advise a client on the operation/execution of the diligences of arrestment of earnings, arrestment and furthcoming, attachment; exceptional attachment and auction;
 - assist a client to make the following applications under the Debtors (Scotland) Act 1987: recall of attachment, release of attached articles, recall or review of an earnings arrestment;
 - assist a client to make application for recall or restriction of an arrestment;
 - assist a client to make the following applications to the sheriff court: recall of decree, dismissal, continuation, sisting;
 - explain the appeal procedure in the sheriff court, recognise own boundaries and identify the need to refer to a specialist;
 - identify when sequestration, trust deeds, protected trust deeds and extra-judicial composition may be appropriate and explain the consequences of each;
 - negotiate with creditors on the bases of Codes of Practice to which those creditors subscribe; and
 - identify the need for referral to a specialist and know how to access specialist support within own agency or externally.

2.3 How the model operates

2.3.1 An eligible individual (someone who meets the entry requirements and is not on the list of people who cannot be approved) who wishes to obtain certification will have to meet the minimum entry requirements of being a 'skilled' adviser, using the CAS/MAS model as set out above.

2.3.2 The approval and consent of your manager or equivalent will be required to ensure that:

- you are a skilled adviser; and
- your agency is committed to its workers becoming approved money advisers who will be involved in DPPs with the work that will be involved. In addition your agency must provide enough time and support for you as an approved money adviser to enable you to deal with deadlines.

2.4 Content of initial training

2.4.1 Training is crucial to ensure that you are fully versed in all the components of DAS and are able to advise your clients on all the options that are available to them including DPPs.

2.4.2 For most advisers, in particular during the initial phase of implementation as this is a new scheme, there will be a requirement that an approved training course is attended. Money Advice Scotland and Citizens Advice Scotland members will attend MATRICS courses and other advisers can attend training courses that have been recognised by MATRICS.

2.4.3 Any course on the Debt Arrangement Scheme (for both the implementation phase and after) will need to cover the following:

- a demonstration that the training course covers skills practice (for example, through the use of role play or case studies);
- an overview of DPPs and how they fit into the 2002 Act;
- details of DPPs (as covered by the regulations) including the issue of aftercare in terms of a debtor missing a payment and the duty of the money adviser in this case;
- this guidance, which is issued to support the Act;
- the roles and responsibilities of MATRICS, the DAS administrator, and the payments distributor;
- the roles and responsibilities of the money adviser in a DPP and the requirements placed on an organisation that employs approved money advisers;
- practical examples of setting up DPPs including the use of forms. This part will be covered by a range of methods (for example, hypothetical cases, role playing);
- the initial requirements of applying for inclusion in a DPP and the ongoing requirements for the money adviser to review and possibly apply for variation of the scheme; and
- the importance of casework recording.

2.5 Delivery of Training by MATRICS

- 2.5.1 The training courses on DAS provided by MATRICS will initially be two-day courses. One day will be on checking liability, income maximisation, welfare benefits and tax credits to ensure that clients being advised by money advisers will have all the income they are entitled to. The second day will be on DAS itself.

It is anticipated that the day on income maximisation and welfare benefits will not form part of the training after the implementation phase. It is involved in the implementation phase as it was indicated by respondents to the surveys as requiring the greatest degree of improvement. An adviser who can show (for example, by experience in the provision of money advice or the holding of qualifications in this area) that they have the required knowledge and skills, would need only need to attend the one-day training on DPPs, but MATRICS would need to be convinced that this was the case.

- 2.5.2 After the implementation phase, there will be no requirement to attend a training course (unless the adviser had not passed the appropriate casework check). However, courses will be needed on DAS for new advisers and for advisers who had not passed the casework check. It is expected that knowledge of welfare benefits, tax credits and income maximisation will be covered elsewhere (MATRICS courses or other providers, for example, the Child Poverty Action Group).

2.6 Delivery of training by other agencies

- 2.6.1 Agencies that are not members of MAS and CAS and who cannot access the training provided by MATRICS, may need to develop their own courses (for example, the Law Society of Scotland). These will need to ensure that they meet the minimum criteria developed by MATRICS to ensure a good quality course is being offered.

The criteria will include the knowledge and the experience of the person delivering the training, and will ensure that they are a recognised expert in the field of money advice. If the trainer does not have the experience and knowledge of welfare benefits, then a recognised expert will need to be involved (for example, a Child Poverty Action Group trainer or an expert welfare benefit adviser). The trainer will also need to be familiar with the relevant legislation and its uses.

- 2.6.2 MATRICS will approve courses run by other agencies and the courses delivered by MATRICS must meet the same minimum criteria developed for other agencies. It is important that the approval procedure will be fast-tracked for courses that are aimed at people who cannot access MATRICS courses directly. As attendance on a course is not compulsory, MATRICS does not need to check any evaluations of the courses themselves. But

MATRICS will check cases and this will identify any weaknesses in training events.

- 2.6.3 It is anticipated that professional bodies with a requirement for continuing professional development (CPD) will wish to consider recognising any training under this scheme as counting towards any CPD.

2.7 Casework check

- 2.7.1 Attendance at training events will not by itself guarantee certification by MATRICS and approval by the DAS administrator. You will need to provide further evidence that you meet the requirements of becoming an approved adviser. This will be done by a check of cases. In the period of time up to the introduction of DAS, you will submit five cases of people you have been advising who would have benefited from a DPP and show how you would have completed the work required to apply for a DPP. These cases could be ones where voluntary debt repayment programmes have been developed or ones where other action has been followed. You will also identify one case which would not meet the requirements of a DPP and indicate why this is the case.
- 2.7.2 Cases will be required to reflect a diversity of clients to ensure that you can meet a range of differing needs. This should include clients where different benefit systems and tax credits are in place including disabled people and their carers, parents and carers of children, and pensioners. Cases should be from Scotland so that you can demonstrate awareness of the Scottish legal system. Cases submitted to MATRICS will need to be made anonymous to ensure that the confidentiality of the client is respected.
- 2.7.3 If you do not have appropriate cases, MATRICS will provide hypothetical case work examples. Once DAS has been launched, the casework check will use hypothetical cases.
- 2.7.4 If you show that you have the necessary skills and knowledge to the satisfaction of MATRICS in all six cases, then MATRICS will issue a certificate (after the code of practice has been signed by your agency– see 2.8, below) and inform the DAS administrator that you are eligible for approval.
- 2.7.5 If you do not meet the required standard in one, two or three cases, then MATRICS will ask you to produce another three examples for assessment. If MATRICS is satisfied with these, it will issue a certificate and inform the DAS administrator (after your agency has signed the code of practice) that you are eligible for approval. If you still do not satisfy MATRICS, you will be told that you do not meet the required standard and that you must attend a recognised training event before submitting further cases.
- 2.7.6 If you have failed to meet the required standard in four or more cases, MATRICS will advise you and tell you that you must attend a recognised training event before re-applying.

2.8 Code of practice

2.8.1 An agency that wishes to have its money advisers setting up DPPs must sign up to the code of practice. This will be developed by MATRICS in consultation with the money advice sector. The code will include the main quality assurance measures from the standards for money advice. It will also include the requirement in the regulations that if a money adviser charges a fee to (or requires any other payment by) a debtor for money advice, the adviser must inform the debtor that money advice is available elsewhere for free. The regulations also stipulate that any such money adviser informs the client of all advisers within a 10 km radius of the debtor's place of residence, or the nearest adviser if there are none within 10km, who provide free advice. This is to ensure that the individual has a choice about which agency to approach for assistance on their debt issue and is fully aware that free advice is available. The website www.moneyscotland.gov.uk will have details of local providers.

2.8.2 The code of practice will be the key quality assurance document until a quality assurance framework is developed for money advice.

2.9 Quality check of MATRICS workers

2.9.1 MATRICS workers are crucial to this scheme and there will be checks in place to ensure their work is of a sufficiently high standard for their role in the approval process. For this purpose, an expert panel will be established. It will comprise of the main stakeholders in this area of work including representatives of the Scottish Executive, the Law Society of Scotland, Money Advice Scotland and Citizens Advice Scotland. They will meet on a quarterly basis and scrutinise a sample of cases from each MATRICS worker who checks the cases of money advisers.

2.10 Register of approved money advisers

2.10.1 There will be a register of approved money advisers. The information on the register is detailed in appendix 4(3).

2.10.2 The register will be accessed from the website www.moneyscotland.gov.uk.

2.11 Approval of money advisers

2.11.1 To gain approval by the DAS administrator you must have a certificate from MATRICS confirming that you have successfully demonstrated your competency to work on DAS. This applies whether you are in the voluntary, public, or private sectors. If you intend to work from more than one office as an approved money adviser, you will receive a certificate for each office.

- 2.11.2 You must also register with Disclosure Scotland.
- 2.11.3 You **must** apply to the DAS administrator by post using **form 1** (application for approval as a money adviser). If you work from more than one office, you must submit a separate application in respect of each office from which you wish to work as an approved money adviser. If you have not received MATRICS training, you must show on the form what training you have received. The form must always be accompanied by:
- proof of registration with Disclosure Scotland; and
 - a signed covering letter stating that you do not fall into any of the categories of people who may not be approved specified in regulation 10 and that your organisation has signed up to the code of practice.
- All supporting documentation must be signed true copies.

Note:

- Please insert your work email address in the appropriate box.
- You do not need to send a copy of the certificate(s) issued from MATRICS to the DAS administrator. MATRICS will inform her that you have been certificated.

- 2.11.4 If you intend to charge the debtor for any service in connection with setting up and administering a DPP, you **must** indicate this in box 5 on form 1.
- 2.11.5 The DAS administrator will check that you are a fit and proper person to be an approved money adviser for DAS by:
- checking that you have been certificated by MATRICS;
 - checking the Disclosure Scotland information;
 - checking that your organisation is signed up to the code of practice;
 - checking that your employer is not one listed as prohibited; and
 - doing searches of the Register of Insolvencies, the Individual Insolvency Register, and other relevant registers.
- 2.11.5 When the DAS administrator approves you, you will be given a unique identification reference. If you work from more than one office as an approved money adviser, you will be given a unique identification number for each office. You should not disclose this reference to anyone. You should use it when filling in forms 3, 8, 8a, and 10.

2.12 Period of certification and renewal

- 2.12.1 Both the certificate and approval will last for 2 years. MATRICS will conduct spot checks on 3 cases every 6 months to ensure that the quality is consistent.
- 2.12.2 If you intend to apply for renewal of your approval for DAS, you will need to formally submit a further six cases to MATRICS prior to renewal. The certificate will have the two-year period clearly marked and you will need to submit these cases three months before the end of the 2-year period.

MATRICS will inform you whether your certificate will be continued or whether you need to submit more cases or undergo further training before the certificate is continued for a further two years.

- 2.12.3 Renewal of approval will be by the same procedure as the initial application (see section 2.11 above).
- 2.12.4 Money advisers involved in preparing applications for approval, variation, and revocation of DPPs must be approved money advisers. If demand outstrips the capacity of approved money advisers, there may be the possibility of having an approved money adviser signing off applications for DPPs prepared by other advisers. The DAS administrator or MATRICS will inform you if this change is made.
- 2.12.5 MATRICS will inform the DAS administrator of any changes to your certification status as an approved money adviser. If your certificate is not renewed, MATRICS will inform the DAS administrator and the DAS administrator will amend the register of approved money advisers and the directory of agencies that have approved money advisers accordingly.

3 The functions and responsibilities of a money adviser

3.1 General

3.1.1 This section deals with the functions and responsibilities of approved money advisers. A money adviser is defined in Section 9(1) of the 2002 Act as 'any person who has been approved by the Scottish Ministers as a person who may give advice to a debtor for the purposes of section 3(1)'. A money adviser acting for a debtor in applying for a DPP under the regulations must be an 'approved money adviser'.

3.1.2 To be approved by the DAS administrator, you will have to obtain a certificate from MATRICS (see section 2).

3.1.3 A debtor can only apply for approval or variation of a DPP if they have obtained advice from a money adviser in relation to:

- their financial circumstances;
- the effect of the proposed programme or the proposed variation; and
- the preparation of the application.

The money adviser must prepare the application on the appropriate prescribed form. The adviser must also sign the form to confirm that they have advised the applicant.

3.1.4 There are a number of important points of note.

- You must have regard to this guidance when carrying out the functions of an approved money adviser.
- A debtor who wishes to apply for a DPP must have an approved money adviser to act for them during the period of operation of the programme.
- If you as the original money adviser cease to act for the debtor because of resignation, revocation, or suspension of approved status, then you must help the debtor appoint a replacement money adviser.
- You must respond to requests from the DAS administrator for the provision of evidence or information relating to the operation of the DPP.

3.2 Applying for a debt payment programme

3.2.1 You must:

- sign a declaration in section 5 of form 3 confirming that you have given the applicant (debtor) money advice in accordance with Section 3(1) of the 2002 Act;
- provide money advice to the debtor;
- liaise with creditors on behalf of the debtor;
- send a proposal for repayment of debts to each of the debtor's creditors inviting them to consent to a DPP using form 4.
- advise on and assist with an application for a DPP as stipulated in the regulations;

- prepare and submit on behalf of a debtor an application in form 3 for a DPP as stipulated in the regulations;
- review a DPP at least every 6 months. Where the payments distributor reports that the DPP is not being complied with, you must, as soon as practicable, review the case with the debtor;
- seek revocation of a DPP where no payments have been made for 12 months;
- provide, as required by the DAS administrator, evidence of, or information about, the participation of the debtor in a DPP;
- act as lay representative in a court where you have accepted instructions from a debtor to act in that capacity (though it is recognised that some agencies do not allow their employees to perform this role). You should only do this work if you have been trained to do it;
- as soon as reasonably practicable provide written notification to the DAS administrator of the appointment or resignation of the payments distributor or a change of the payments distributor; and
- as soon as reasonably practicable provide written notification to each of the creditors of changes to the money adviser or payments distributor.

3.3 Approval or rejection of a proposed programme

- 3.3.1 On being notified of the approval of a DPP, a you must:
- notify the approval of a DPP to the debtor;
 - use form 5 to notify all creditors known to you including those whose debts are not in arrears. For the latter, only the first part of the form should be completed i.e. no details of the programme are given. In these cases, a covering letter informing that this is only for information will be appropriate.
 - Provide the debtor with a form 5(a) so that the debtor can give notice to a creditor that they are in a DPP.
 - if there is a conjoined arrestment order or an order or direction specified in regulation 26(2)(f)(ii) (time to pay direction) under Debtors (Scotland) Act 1987 and (iii) time order under the CCA 1974, notify the clerk of the court that made the order; and
 - notify the payments distributor.
- 3.3.2 If the application is rejected, you must notify the debtor, each creditor known to you, and the payments distributor.

3.4 Variation of a debt payment programme

- 3.4.1 If you request a variation of a DPP, you must:
- use form 8.
 - where a variation is approved or rejected, notify, in writing, the debtor and the payments distributor; and

- notify each creditor taking part in the programme (and the creditor who has applied for the variation if they are not already in the DPP) of the approval or rejection using form 9. The parties should be informed of the reason(s) for a rejection of an application to vary.

3.4.2 Where a creditor applies for a variation after failing to reach agreement with the money adviser, the adviser should assist that creditor to inform the other creditors of the proposal for variation, if asked.

3.5 Revocation of a debt payment programme

3.5.1 Where a DPP has been revoked, you must:

- notify the debtor, the payments distributor and (where there is a payments instruction to an employer under regulation 33) the employer; and
- use form 11 to notify all creditors known to the adviser.

3.6 Completion of a debt payment programme

3.6.1 Where a DPP has been completed you must:

- send a notice of completion of the programme to the DAS administrator using form 13. You must do this when the payments distributor sends you notification that the DPP has been completed or when the creditors in the DPP have agreed in writing to completion before the end of the period of the programme;
- inform the payments distributor of any agreement by the creditors to completion of the programme under regulation 48(1)(b);
- inform the debtor in writing that the DPP is completed;
- inform each creditor known to you, that the DPP is completed using form 15; and
- If there is a payment mandate, inform the employer in writing.

3.6.2 Although the regulations say that the money adviser or the debtor can ask the DAS administrator to confirm completion of the DPP, she will actually send you a form 14 confirming completion as a matter of course.

3.7 Fee charging money advisers

3.7.1 Regulation 11(2) states that you must not charge a fee unless you have informed the debtor that free money advice is available elsewhere.

3.7.2 If you charge a fee, you must:

- give the debtor the names and addresses of all approved money advisers providing free money advice within a 10 km radius of their usual place of residence; or
- if there is no approved money adviser providing free money advice within a 10km radius of the debtor's normal place of residence, you

must give the name and address of the nearest approved adviser providing free money advice.

This information about the location of money advisers providing a free service will be available on the website www.moneyscotland.gov.uk and in the Debt Advice and Information Pack.

- 3.7.3 The debtor must agree in writing to pay a fee for money advice. You must keep this written agreement until the DPP is completed or revoked. You must make it available to the DAS administrator on request.

4 The debt counselling process

4.1 General

4.1.1 You must:

- keep accurate, updated records showing:
 - all work undertaken;
 - all contacts with the debtor and creditors;
 - detailed records of advice, information and options provided to the debtor
 - courses of action
 - copies of correspondence, income verification, letters of authority;
 - and notes which demonstrate the debtor's involvement in the process; and
- obtain a signed authority from the debtor to act on their behalf.

4.2 At the initial and subsequent interviews

4.2.1 In your initial interviews with the debtor, you should:

- work to establish a relationship;
- establish the 'ground rules' by explaining to the debtor what your role is and what you can and cannot do;
- tell the debtor what your organisation's role is and what it can and cannot do; and
- explain in a clear manner what role the debtor has to play in the process and what you expect of the debtor. This will include:
 - full disclosure of debts;
 - full disclosure of income;
 - full disclosure of expenditure;
 - full disclosure of assets;
 - informing you of any action currently being taken by creditors to recover the debts;
 - compliance with any condition set by the DAS administrator or sheriff (standard or discretionary); and
 - informing you when any future or contingent debts come into force.

4.2.2 You must also during the initial phase:

- gather relevant information. This should include information on the debtor's personal, health and family circumstances, taking into account any religious or cultural context;
- gather financial information and verify income. It is essential that payslips or bank statements are checked and income fully verified;
- ask to see any correspondence relating to benefit or tax credit entitlement;
- ensure that assets are defined and value noted (including equity in heritable property other than the home). This information may be

needed if a debtor applies for a DPP and a discretionary condition is stipulated. However, it is recognised that money advisers are not qualified valuers. If there are receipts for any assets, or if information is available about value (for example, Glass's guide to used car prices), they should be used as a rough guide. But, it may be that you have to accept the debtor's estimate of the value of any property.

Schedule 2 of the 2002 Act gives details of non-essential assets and is reproduced in Appendix 7.

You should advise the debtor that there is a risk that the DAS administrator or sheriff might impose a condition that these assets be realised (see 5.1.7);

- identify and note any continuing liabilities as these may be needed if the debtor decides on a DPP and wishes to pay continuing liabilities through a payments distributor; and
- obtain a signed authority from the debtor to act on their behalf.

4.2.3 During this stage it is essential that you:

- provide crisis intervention, if needed;
- where possible, maximise the debtor's income; and
- advise the debtor of ways of minimising expenditure.

4.2.4 You must ensure that:

- a full list of creditors is compiled, including account numbers, addresses, and telephone numbers;
- the creditor is correctly identified and that the debtor has not supplied the name of a collection agency by mistake (unless the debts have been sold on by the creditor to the debt collection agencies);
- priority and non priority debts are identified and dealt with accordingly;
- the debtor's liability for the debt is checked (whether it is single or joint and several); and
- the creditor has complied with the Consumer Credit Act 1974 by supplying a copy of the credit agreement. You must check this to confirm the terms and whether it has been properly executed.

4.2.5 You should also discuss the issue of credit with the debtor. In particular you should draw their attention to:

- the consequences of taking out further credit;
- the possibility of surrendering credit cards; and
- the possibility of asking their bank to withdraw their overdraft facility.

4.2.6 At this stage, you should prepare and send an initial or '1st' holding letter to the creditors. This should:

- tell the creditor of the debtor's inability to meet their contractual obligations;
- ask for verification of:
 - the principal debt;
 - the interest rate;
 - the term;

- contractual payments;
- the number of payments outstanding;
- the balance outstanding;
- the amount of arrears;
- any charges that may be incurred (for example, default charges); and
- details of any existing payment protection.

This letter might also contain a request that the interest is waived and not re-applied or, at the very least, frozen.

It is of paramount importance that an original of the debtor's signed mandate giving authority for you to act on their behalf is enclosed with this correspondence.

4.2.7 You must:

- discuss expenditure with the debtor and calculate expenditure, preferably on a monthly basis or on a weekly or fortnightly basis where the debtor budgets or receives income on weekly or fortnightly. At this point the figures may only be approximate;
- ask the debtor for copies of utility bills, etc to ensure that the debtor is giving correct information. Please note that the supply of energy is a reserved matter and it is open to the energy companies to recover arrears by means of installation of a pre-payment meter. In general, however, energy companies will not do so where a DPP is agreed. Where a pre-payment meter is already installed, individual circumstances will dictate whether incurring the costs of recalibration or replacement is sensible;
- use, as a base line, the trigger figures for expenditure as detailed in the nationally agreed, BBA and MAT partner agencies income and expenditure form (Common Financial Statement). However, care must be taken to ensure that individual circumstances are taken into account and where necessary include a letter of support;
- involve the debtor who should participate in the completion of the income and expenditure form, and allow sufficient time to scrutinise the information, thus ensuring a more thorough and realistic view of their expenditure; and
- ensure, where applicable, that administration fees for payment distribution of continuing liabilities are built into the statement of income and expenditure .

4.3 After the first interviews

4.3.1 You must:

- collate and check information received from the creditors; and
- where it is apparent that the creditor has not complied with the Consumer Credit Act 1974, take appropriate advice and action as needed (for example, contacting Trading Standards Departments to investigate a possible breach of the Consumer Credit Act).

4.3.2

You must also:

- compile a list of creditors showing the debt outstanding to each individual creditor and the total outstanding debt to all creditors;
- obtain details of length of an agreement and payments if the debtor has contractual agreements with creditors (for example, HP);
- prepare a realistic detailed income and expenditure form taking into account the debtor's personal, health and, where appropriate, family circumstances;
- calculate the level of surplus income (if any) available for distribution to creditors; and
- determine all the options available to the debtor in order to assist them to decide on an appropriate course of action. These options might include:
 - advice about budgeting;
 - supporting the debtor in making informal arrangements with creditors;
 - assisting the debtor to seek agreement with creditors on composition of their debt or to waive or freeze interest charges;
 - assisting the debtor to petition for their sequestration;
 - advising the debtor to seek an insolvency practitioner who might act for them in a trust deed which they would intend to become a protected trust deed;
 - entering into a voluntary debt management plan; or
 - applying for a DPP under DAS.

4.3.3

You must:

- in advising the debtor of all of the viable options available to them, ensure that you give them enough information in a clear, easily understood form so that the debtor can make an informed decision about the appropriate course of action;
- ensure that the debtor fully understands the consequences of each option; and
- provide honest, clear and unbiased advice, information and support at this stage to the debtor about the options.

5 Applying for a debt payment programme

5.1 Preparation for an application for a DPP

- 5.1.1 If the debtor opts to apply for a DPP, you must check that the debtor is eligible. A number of criteria have to be met (see regs 20(1); 21).
- The debtor must be 'habitually resident in Scotland'. This is difficult to define exactly. However, it excludes anyone temporarily residing in the country.
 - The debtor must have more than one debt. This means that, even if a debtor has two debts to the same creditor (for example, they might have two council tax debts), they can apply for a DPP. Debt is defined in Appendix 6.
 - The debtor must not have a conjoined arrestment order. However, there is an exception to this criterion. If a debtor has a conjoined arrestment order and a creditor (it does not matter whether this creditor is involved in the conjoined arrestment order or not) has tried lawfully to enforce another debt due, then the debtor can apply for a DPP.
 - The debtor must not be 'party to a trust deed'. This means that any debtor who has signed a trust deed and has not been discharged from it is precluded from having a DPP (whether or not the trust deed has become a protected trust deed). The regulations do not specifically refer to individual voluntary arrangements (IVAs) made under the Insolvency Act 1986 in England and Wales. However, these should be treated in the same way as trust deeds in preventing a debtor from applying for a DPP.
 - The debtor must not be currently sequestrated – that is the debtor's estate has been sequestrated under the Bankruptcy (Scotland) Act 1985 and they have not yet received their discharge. Thus the debtor must not be an undischarged bankrupt in Scotland.
 - The debtor must not be subject to or bound by:
 - a bankruptcy order where the debtor has not been discharged (that is the debtor is an undischarged bankrupt in England and Wales);
 - a bankruptcy restrictions order (including an interim order); or
 - a bankruptcy restrictions undertaking.These are all formal arrangements made under the Insolvency Act 1986.
- 5.1.2 You must also:
- ensure that the debtor fully understands the implications of applying for a DPP;
 - check the viability of the offers and chosen course of action; and
 - recheck the financial information ensuring that verification of income is completed.
- 5.1.3 Before applying for a DPP, you must:
- prepare a full statement of the debtor's income and expenditure;

- negotiate with each creditor to try and waive the interest on each claim. If the creditor will not waive interest, you should negotiate for the interest to be frozen;
- see whether any of the creditors will accept an offer of composition (note that regulation 24 allows for waiver of interest and composition of the debts in a DPP, if the creditor agrees);
- calculate an offer of payment. This offer can be based on one of two payment methods:
 - a pro-rata basis. That is, that each instalment paid to a creditor will be calculated as a percentage of the payment being made to all the creditors on that instalment. This percentage will be based on the proportion of the total debt in the DPP that is owed to that creditor. If this method is used, all the creditors will be due to complete the DPP on the same date; or
 - an equal payment basis. That is each instalment is divided equally between the creditors. This method of payment will mean that smaller creditors will receive the total amount due to them earlier than the larger creditors. As the smaller creditors are paid off, the instalments made to the larger creditors will increase.

The legislation is deliberately silent on how repayments should be calculated to allow money advisers maximum flexibility.

Note that, if you choose the equal payments option, the payments distributor will need to be instructed at the outset that when a creditor receives the total amount due, the distributor must recalculate the increase in the instalments to the remaining creditors (the debtor's instalment will be divided equally among them). The payments distributor must inform you when a creditor is paid off and how much the instalment is to each of the remaining creditors. There is no need for a variation; and

- check with a payments distributor that they are able to act in the proposed DPP and to ensure that they offer the type of repayment method required (see information on payments distributors in section 11 below).

5.1.4 There will be occasions where both parties to a relationship will have debts and both wish to apply for debt payment programmes, but only one is in paid employment or where both parties are employed but one of the incomes is too small to provide a viable basis for a debt payment programme on its own. Similarly, there will be times when an unemployed partner of some-one in employment seeks a debt payment programme.

5.1.5 In these circumstances, the incomes, or income, can be regarded as joint and allocated as appropriate.

5.1.6 You should now be in a position to make a proposal to the creditors. This is done using form 4 (proposal to creditor for a debt payment programme). A form is

completed and sent to each creditor. If a debtor has more than one debt to a creditor, a separate form should be used for each debt. The form is available from the website at www.moneyscotland.gov.uk in both pdf and webform formats. (Those MAs using the webforms should begin by filling in a form 3 as much as possible. This cannot be fully filled in at this point and must not be sent. However, the form 3 will populate the form 4s for each creditor and will securely retain the information until you are ready to apply for approval.) You can print the webforms and send them to the creditors.

The form is designed to give all the information needed for the creditor to make a decision. Therefore it needs to be completed as fully as possible. It is essential that:

- the creditor's details are correct and that it is the creditor and not a collection agency acting for the creditor that receives this form;
- the 'debt due to creditor' part gives as much information as possible so that the creditor can correctly identify the debt and understand the payment proposal being offered;
- if the creditor has agreed to composition, the proposal should show the composited figure in the 'amount owed' column in 'debt due to creditor' part; and
- the form is signed and dated (with the current date) and, if the postal service is used, sent by recorded delivery [reg 22(2)]. It should be noted that other methods of intimation are acceptable as long as verification is available.

You should also make the creditor aware that the form has an attachment called form 4a which can be used by the creditor to make their response to you. This part contains boxes for the creditor's banking details. You should ask the creditor to fill this information in as it is in their interests to do so (even if they object or do not consent to the DPP). The payments distributor needs this information to correctly identify where to send the payments.

When you send the form to the creditor, you should consider giving them a full financial statement so that they can make an informed decision.

The creditor can give you their response by other written means. However the creditors respond, you should keep their responses in case a sheriff requires to see them.

5.1.7 Each creditor has 21 days (3 weeks) to respond to the proposal on the form 4. The 21 days (3 weeks) starts on the day after the date the form was signed, dated and posted.

5.1.8 There are four possible responses from each creditor:

- consent. The creditor writes back within the 21 days (3 weeks) and agrees to the proposal;
- deemed consent. The creditor does not respond to the proposal within the 21 days (3 weeks). In such a case, the creditor is deemed to have agreed to the proposal;
- non-consent. The creditor writes back within the 21 days (3 weeks) and does not agree to the proposal. Unless the creditor objects on

either of the grounds in the next bullet point below, they are considered to have not consented; and

- objection. The creditor writes back and objects on one or both of two grounds [see reg 23]:
 - the creditor considers that the debtor should be sequestrated.
 - the creditor believes that the debtor is in possession of heritable property with substantial unsecured value.

The creditor cannot object for any other reason.

5.1.9 At the end of 21 days (3 weeks), you should inform debtor of the creditors' responses and explain to the debtor the relevance of these responses and the possible consequences (for example, the DPP might need to be determined by a sheriff at a hearing). In doing this you and the debtor have to be aware of the following.

- As stated above, a failure to reply to the proposal in form 4 is taken as the creditor consenting to the DPP;
- If all the creditors consent (or are deemed to have consented) to the DPP, the DAS administrator will approve it regardless of the amount of the debt or the length of the proposed programme;
- The DAS administrator can dispense with the consent of the creditor where:
 - the debt due to a non-consenting creditor is 50% or less of the total debt included in the DPP; or
 - the amount due to all creditors who do not consent (this does not include those who object - see paragraph 5.1.6 above) does not exceed 60% of the total amount of debt included in the programme.
- 'Dispense with the consent' means that the DAS administrator can override the non-consent of creditors. In these cases, the DAS administrator will apply a 'fair and reasonable' test (see appendix 3).
- The DAS administrator will apply to a sheriff for a determination on a proposal if:
 - the debt due to a non-consenting creditor is more than 50% of the total debt included in the DPP;
 - the amount due to all creditors who do not consent is more than 60% of the total amount of debt included in the programme; or
 - the creditor objects on the grounds that the debtor should be sequestrated or has heritable property with substantial equity.In these cases the sheriff will decide on the approval or otherwise of the DPP by applying the 'fair and reasonable' test.
- In determining whether a proposal is 'fair and reasonable', the DAS administrator or the sheriff will consider a number of criteria. These are set out in appendix 3.
- If they approve a DPP, the DAS administrator or the sheriff will always impose all the standard conditions [reg 29]. These are listed in appendix 1.
- If they approve a DPP, the DAS administrator or the sheriff can impose discretionary conditions [see reg 30]. These are listed in appendix 2. Approval of any DPP can be made subject to a

discretionary condition (or discretionary conditions) whether or not the approval is automatic in that all the creditors have consented (or have been deemed to have consented), or whether the DPP has been approved because it is considered 'fair and reasonable'. However, an indication that the debtor would be willing to have one (or more) of the discretionary conditions (for example, sign a payment mandate) might influence the decision of the DAS administrator or the sheriff when they are considering whether a proposal is 'fair and reasonable'.

Normally, the DAS administrator will not impose a discretionary condition unless the debtor has agreed to it. However, in marginal cases the DAS administrator might decide on a measure of compulsion (for example, the sale of an asset) so that an application that would otherwise be rejected might still be approved.

- The debtor can agree with a creditor that:
 - interest may be waived; or
 - that the debtor's liability to fully repay a debt may be discharged by the creditor (composition).

The agreement to waive interest may or may not be subject to a condition that the period in which the debts will be paid will be less than the period of the DPP.

It is highly desirable that you try to negotiate the waiving of the interest (or at least freezing or fixing interest) with the creditors. Agreement should be obtained in writing. This might be taken into account when the DAS administrator or the sheriff apply the 'fair and reasonable' test.

(Note that there is no indication in the regulations as to when waiver of interest or composition should or may be sought. It is therefore open to you to either negotiate prior to an application for a DPP or during the term of a DPP. However, the earlier these negotiations take place, the better the chances of the success of the DPP.)

5.2 The application

- 5.2.1 You should make the debtor aware of all the relevant considerations in paragraph 5.1.7 above.
- 5.2.2 All applications for approval of DPPs must be made using form 3 (application for approval of a debt payment programme). This can be done:
- electronically from the website www.moneyscotland.gov.uk. The webform must only be sent electronically. You must not print and send a paper version of the webform to the DAS administrator;
 - by encrypted email. If you use MACS, you will be able to use this method;
 - by completing a pdf version of the form from the website, printing it, and sending it by post; or
 - by paper form. The DAS administrator will supply the forms.

Please use the electronic or email options if at all possible. Whichever method you use, you must print out a form and ensure that both you and the debtor sign and date it. You must keep this signed and dated form.

If a paper form is submitted it should be a copy. You and the debtor must sign and date the original. The 2002 Act requires you to retain this original for 5 years or for the life of the DPP, whichever is the longer [sections 2(3) and 3(2)].

- 5.2.3 The DAS administrator will acknowledge receipt of all applications for approval.
- 5.2.4 The DAS administrator will return all forms which contain errors so that the money adviser can make the necessary amendments.
- 5.2.5 On receipt of any application for a DPP, the DAS administrator will record it in the DAS register as 'an application for a programme that has yet to be approved'. If the DAS administrator then refers the application to the sheriff, the DAS register will be updated to show 'an application by the DAS administrator to the sheriff for approval of a programme'.

5.3 Approval of a DPP

- 5.3.1 Any application for a DPP in which all creditors consent will be automatically approved by the DAS administrator. They will always be subject to the standard conditions (appendix 1) and may be subject to one or more discretionary conditions (appendix 2) if you have indicated on the form 3 that these should be applied.
- 5.3.2 Any application for a DPP in which some of the creditors do not consent and where the DAS administrator can make a decision (see paragraph 5.1.7 above) will be considered as to whether it is 'fair and reasonable' (appendix 3). If the DAS administrator approves the programme, it will always be

subject to the standard conditions (appendix 1) and may be subject to one or more discretionary conditions (appendix 2).

- 5.3.3 Any application for a DPP in which some of the creditors do not consent and where the DAS administrator cannot make a decision (see paragraph 5.1.7 above) or any application where at least one creditor objects will be referred to the sheriff for a decision. The DAS administrator will inform you if a case is referred to the sheriff, who will always call a hearing.

If the sheriff approves the programme it will always be subject to the standard conditions (appendix 1) and may be subject to one or more discretionary conditions (appendix 2).

- 5.3.4 When the DAS administrator makes a decision to approve a DPP, or receives notification from a sheriff that a DPP is to be approved, the DAS register will be updated to show 'programme is to be approved'.

Approval of a DPP and the appropriate update of the register to show 'an approved programme' will take place automatically at midnight on the second day after the register is updated to show 'a notice that a programme is to be approved'. (Midnight on the second day means between 48 and 72 hours after the decision to approve is recorded.)

- 5.3.5 If a DPP is approved (either by herself or by the sheriff), the DAS administrator will always notify you. This notification will always inform you that the approval is subject to the standard conditions. It will also state which, if any, discretionary conditions apply.

- 5.3.6 On receiving notification that a DPP has been approved, you must notify all the other parties concerned. These are [reg 31(4)(a)]:
- the debtor. (You should also send the debtor a form 5(a) so that they can notify a creditor of the DPP if they need credit that is allowed on the DPP.);
 - each creditor known to the adviser including those creditors whose debts are not in arrears. For best practice money advisers should notify potential creditors on approval of a DPP. This will include relevant utility companies, banks that offer an overdraft facility and mortgage lenders. Please note that this list is not exhaustive. You must do this on form 5 (Notification of approval of a debt payment programme). When notifying those creditors not in the programme, no details of the DPP itself should be completed. A covering letter informing them that it is for information only should be issued with the form.
 - the clerk of the appropriate court if there is:
 - a conjoined arrestment order (using the notice of recall of a conjoined arrestment order form);
 - a time to pay order under either section 1 or section 5 (time to pay orders) of the Debtor's (Scotland) Act 1987; or
 - a time order under section 29 (time orders) of the Consumer Credit Act 1974.

- the debtor's employer if (and only if) there is a condition that the debtor make payments by payment mandate. This must be done on form 6 (payment instruction to employer). Note that Working Tax Credit can form no part of a mandate; and
- the payments distributor. The payments distributor will need to be given full details of the payment plan. You can also, at this stage, give instructions to the payments distributor as to what to do if there is an overpayment or an underpayment in a debtor's instalment. The options for an overpayment are:
 - to make the normal payment and hold the extra money in a suspense fund in order to meet future underpayments; or
 - to make an overpayment to all the creditors.
 The options for an underpayment are:
 - to make no payment but hold the money in a suspense fund to meet future payments; or
 - to make an underpayment to all the creditors. We would recommend this be the normal practice.

(If the payments distributor is Payplan, please see the extra guidance at appendix 9.)

5.3.7 If there is an existing attachment or arrestment of income, funds, or property at the time of the approval of the DPP, the DAS administrator will recall that arrestment [reg 35(1)(a)]. (Please notify the DAS administrator of an attachment using box 35 on form 3.) If an arrestment is subject to an action of furthcoming, you must give the DAS administrator full details in box 35.

5.4 Rejection of an application for a DPP

5.4.1 If she or the sheriff reject an application for approval, the DAS administrator will inform you in writing giving the reasons for rejection.

5.4.2 On receiving notification that a DPP has been rejected, you must notify the following [reg 31(4)(b)]:

- the debtor;
- each creditor known to the adviser; and
- the payments distributor.

5.5 Continuing liabilities [reg 34]

5.5.1 A continuing liability is a regular payment made by the debtor as part of their necessary outgoings (for example rent, mortgage, or phone bill). This is included in the 2002 Act in order to assist debtors in managing their income and expenditure responsibly. Note that a continuing liability does not include any arrears. If, for example the continuing liability is for payment of rent, and the debtor is in arrears with the rent, the arrears will go into the DPP and the scheduled rental payments will be paid as a continuing liability as they fall due. Further, a continuing liability does not need to be a payment involving

arrears. Thus, if the debtor is up-to-date with their rent, it can still be paid as a continuing liability if the parties agree.

5.5.2 'Creditor' in the case of a continuing liability means any person to whom the continuing liability is due. It may be, but does not have to be, a creditor in the DPP.

5.5.3 Regulation 34 allows for the payment of a continuing liability through a payments distributor. This option is available to the debtor where:

- the DAS administrator has approved the DPP; and
- the debtor and the creditor have agreed that a continuing liability can be paid in this way.

5.5.4 The DAS administrator or sheriff might make it a discretionary condition that the debtor seeks agreement from a creditor to pay a continuing liability [reg 30(2)(c)] (see appendix 2). Note that the debtor can only seek the agreement. If the creditor refuses the matter is outside the debtor's control. However, the debtor should be able to produce evidence, if required, that they have made the attempt.

5.5.5 The responsibility to arrange a continuing liability lies with the debtor and the creditor though you might assist in the process.

5.5.6 Not all payments distributors offer an option to pay a continuing liability. You might take this into account when you appoint a payments distributor for a DPP.

If the payments distributor for the DPP does not offer this facility, the debtor can arrange to pay the continuing liability through another payments distributor. In this situation you should assist the debtor to find another distributor who offers the required service.

5.5.7 A payments distributor is allowed to charge for paying a continuing liability for a debtor. The maximum fee is 10% of the sum due to be paid to a creditor in a distribution. The fee is levied on each instalment paid to the creditor.

The creditor may, if they so choose, ask the debtor to pay this fee as a condition of agreeing. But if this happens, the debtor must never be charged for the payments to creditors in the DPP.

You should make the debtor aware of these costs and the extra payments that they may have to pay if the creditor asks them to pay for this service.

5.5.8 If a continuing liability is set up, the debtor must pay the payments distributor:

- enough money to meet the continuing liability; and
- if, required by the creditor, the administration fee (if any) charged by the payments distributor (see 5.5.7 above). This should be built into the statement of income and expenditure before a final offer is made to creditors.

- 5.5.9 Payment must be made by an approved method [reg 32]:
- a payment mandate to an employer;
 - a direct debit or standing order;
 - a smart card or swipe card or other type of payment card or key;
 - PayPoint; or
 - any other method sanctioned by the DAS administrator.
- 5.5.10 If the debtor has insufficient funds to pay the DPP and the continuing liability, they should usually be advised to pay the continuing liability. This is to avoid getting into difficulties with payments that they have previously been making. Unless the difficulty is a one-off owing to special circumstances, you might wish to consider a variation if this happens.
- 5.5.11 The arrangements to pay a continuing liability have to be flexible. If, during the course of a DPP, a debtor paying their phone bill changes their phone supplier, the payment of that continuing liability will cease. It is between the debtor and the new supplier to set up another continuing liability payment if desired.
- 5.5.12 It is possible to set up a continuing liability payment at any time during the term of a DPP. All that is needed is the agreement of the debtor and creditor and a payments distributor willing to make the payments.
- 5.5.13 When the DPP is completed, it will still be possible for the debtor to use the payments distributor to pay their continuing liabilities as long as all parties agree. However, as it will no longer be an arrangement under the 2002 Act, the payments distributor could charge a higher fee.

5.6 Composition

- 5.6.1 Composition is dealt with in regulation 24. It is defined as the discharge of a debtor's liability to repay a sum due, or part thereof. Thus a creditor can write off the whole debt. However, it is more likely that a creditor will accept a percentage of the debt due in full payment of the debt. For example, a creditor who is owed £2500 might agree to accept 50% in full payment of the debt. The debtor will then only need to pay £1250 in full and final payment of the debt.
- 5.6.2 Composition can be agreed with a creditor either:
- whilst setting up a DPP; or
 - during a DPP.
- If composition is agreed at the beginning of the DPP, you should agree it with the creditor before the payment proposal is sent to them on form 4. You should not send the creditor a form 4 which contains an offer based on composition if you have not already agreed it.
- 5.6.3 if there is an agreement to composition at the beginning of a DPP, you must inform the DAS administrator by giving details in box 35 in form 3.

5.6.4 If the agreement of composition is made at the start of a DPP, the DAS administrator will use the full debt in calculating whether the case needs to be determined by the sheriff.

5.6.5 In completing form 3, you must give the information required at 5.6.2 above in box 35.

If there is a composition agreement, always put the actual amounts (after composition) payable in the 'total debt', the 'amount offered per instalment', the 'amount owed' and the 'payment offer per instalment' boxes in part 23.

Put the percentage based on the original debt in the 'percentage of total debt' box.

(It is vitally important that you give clear details of the composition agreement in box 35.)

5.6.6 The form 4 should state the composited agreement amount in the payment offer and give full details of the composition agreement in the box for other information.

You must ensure that the payments distributor has the correct details for the composited agreement.

5.6.7 Composition can be made subject to conditions. The regulations give two conditions [reg 24(2)(a)(b)], that:

- the sum due after discharge ... is paid in full. This means that the DPP must ensure that the composited amount is paid in full. Failure to do this will mean that at the completion of the DPP, the amount owing will not be the composited sum less the payments made during the DPP, but the original debt less the payments made during the DPP;
- payment is made over the agreed period, not being longer than the period of the programme. This means that the creditor can come to an agreement with you (acting for the debtor) that the composited amount will be paid either:
 - on completion; or
 - sometime before completion.

If it is agreed that the composited amount will be a percentage of the amount due, the creditor can ask for a condition that it be paid by a certain time. This might be the projected completion date or some time before that date.

If the creditor wishes to stipulate payment by a date before the projected completion date, they will have to come to an agreement with you. In these negotiations, you must not agree to a date that will result in payments that are above those that the creditor would have received if they had demanded the full amount.

For example, if the creditor is owed £3600, and the period of the DPP is 6 years, that creditor's share is £50 per month (£3600 ÷ 72months). However, if the creditor agrees to composition at 50%, that is they will accept £1800, the earliest date for payment of their composited debt in a condition is the third anniversary of the DPP (£50 x 36 months = £1800). The reason is that they cannot receive more than the £50 per month that they would have received if they had demanded that the full amount be paid.

- 5.6.8 If the creditor wishes to stipulate either of the conditions above [5.6.7], they must do so in writing to you. You must inform the DAS administrator by answering yes at part 29 in form 3 stating the condition in the box provided. (You must still give the full details of the composition agreement in box 35.)

The DAS administrator will automatically accept either of the conditions in regulation 24(2). The creditor could ask for other conditions and you should also put these in the box at part 29 of form 3. In such a case, the DAS administrator has discretion as to whether to impose the creditor's condition.

5.7 Interest

- 5.7.1 Waiver of interest is dealt with in regulation 24. Interest can be waived either at the start of the DPP or at any time during a DPP.

- 5.7.2 It is important to try to persuade the creditors to waive interest at the beginning of a DPP.

- 5.7.3 If a creditor will not waive interest, you should try and negotiate the fixing or freezing of interest. If you are able to do this, you should enter the total amount in the 'interest, charges and expenses' box on form 4, and add the principal and the interest and enter it in the 'amount owed box on form 3.

- 5.7.4 If the creditor agrees to fix, freeze or waive interest, they can agree to do so subject to conditions. The regulations give two conditions [reg 24(2)(a)(b)], that:

- the sum due after ... waiver is paid in full;
- payment is made over the agreed period, not being longer than the period of the programme.

If the creditor stipulates either of these two conditions, the DAS administrator will automatically accept them. If the creditor stipulates another condition, the DAS administrator will consider the condition on its merits.

If there is a condition, you should tick yes at part 29 on form 3 and give details in the box provided. You should also give details of the agreement to waive interest in box 35.

- 5.7.5 The reason for the need to waive, fix, or freeze interest is so that there is an agreed amount of debt identified for the DPP. The DPP will then be completed when that sum is paid off (unless there is composition).

5.7.6 If the creditor agrees to fix, freeze, or waive interest, they cannot change their minds and apply for a variation to add interest at a later date

5.7.7 If interest is not fixed, frozen, or waived, you have two options:

- you can leave the 'interest, charges and expenses' box on form 4 and use box 35 on form 3 (box 29 on form 8) to indicate that the creditor has not agreed to fix, freeze, or waive interest and that they will try to collect the interest due when the DPP is completed or revoked. If the DPP is approved, the creditor will not be able to collect interest during the DPP. However, the interest will accrue during the DPP and the creditor will have a right to collect it at the end of the DPP; or
- you can enter the present rate of interest in the 'interest, charges and expenses' box on form 4, and note in box 11 that interest is calculated on the basis of the present rate of x% but that the interest rate is variable and may go up or down. You will have to make similar entries in box 35 on form 3 (and 29 on form 8 if appropriate). If you do this and the DPP is approved (or the variation is approved), you will need to apply for a variation (or another variation) every time a creditor's interest rate changes.

In these circumstances, the debtor should seriously consider whether the DPP is the best option. Unless it is certain that the interest rate will remain reasonable, there is a risk that the debtor might end up in further financial difficulty. At the high interest rates some creditors charge, it is possible that the amount owing to a creditor at the end of the DPP in interest charges is greater than the principal.

5.8 Joint and several liability

- 5.8.1 Where two or more people enter into an obligation such as a guarantee together, joint and several liability means that the lender or creditor can recover the whole indebtedness from any one of them. The debtors are then left to sort out their respective contributions between themselves.
- 5.8.2 If a couple who have joint and several liability wish to pay their creditors through DAS, they must each apply for a separate DPP. As the money adviser fills in the form 3, they should only enter the proportion of the joint debt that is to be paid by that debtor. They must then make a note at box 35 to show that:
- this is a joint debt;
 - the full amount of the debtor's liability; and
 - the name and case reference of the other debtor who has joint liability.
- 5.8.3 If one of the DPPs is revoked, the money adviser must apply for a variation on the grounds of material change of circumstances. This variation will apply the full amount remaining of the joint debt to the remaining DPP.
- 5.8.4 Where there is joint and several liability and only one of the debtors is in the DPP, both debtors remain liable for the whole of the debt. It is up to the creditor how they propose to recover that debt.

6 Administering a DPP

6.1 General

- 6.1.1 During the DPP, whether it be an approved DPP or a varied DPP, the debtor will make instalments to a payments distributor who will make payments to the creditors.
- 6.1.2 If the debtor meets the agreed payments, the payments distributor should not need to contact you.
- 6.1.3 However, if the debtor fails to make an instalment to the payments distributor or underpays, the payments distributor will contact you with details of the missed payment. If this happens, you must contact the debtor as soon as possible to ascertain why the missed payment has occurred. Depending on the reasons given, you might need to consider whether a variation is appropriate. If, for example, it is a one-off missed payment (perhaps at Christmas), it is not appropriate to apply for a variation. But if the missed payment was caused by a material change in the debtor's circumstances, a variation might be appropriate.

If there are a number of missed or underpayments, you should consider whether to vary or revoke the programme.

- 6.1.4 If there is an overpayment or an underpayment, the payments distributor might ask you for advice. If it is an underpayment, the possibilities are:
- not to disburse any money to the creditors but retain it to help pay any future underpayments; or
 - to make an underpayment to all the creditors. (You should never sanction an option to pay only some of the creditors.) This is the preferred option.
- If there is an overpayment, the options are to:
- make the normal payment to creditors and retain the extra to help pay any future underpayments; or
 - make an overpayment to all the creditors. This is the preferred option.
- 6.1.5 You must review the case at least every 6 months [regulation 11(e)] whether or not you are informed of any irregularities in the running of the DPP. This review should look at whether the debtor has:
- been making regular payments. This requires information from the payments distributor. Non-payment, underpayment, and regular overpayment are all factors that might indicate a need to make changes to the DPP; and
 - had any change of circumstances.

Any significant changes to the debtor's circumstances or deviations from the agreed payment plan should lead to consideration of whether a DPP needs to be varied (see section 7) or revoked (see section 8).

- 6.1.6 The suggested method of conducting reviews is as follows.
- If the payments distributor's report indicates that the instalments are being paid as agreed, all that is necessary is that you write to (or otherwise contact) the debtor to ask if there have been any significant material changes in circumstances. If there are none, the DPP will continue with the next review being due in another 6 months.
 - If the payments distributor has sent information that the debtor is missing payments, underpaying, or significantly overpaying, the review must take a more formal nature with the debtor being contacted in order to find out why the agreed payments are not being made and to consider whether any changes to the DPP are necessary.
 - If there is an application for variation (whatever the outcome) the next review date will be 6 months from notification of the outcome.
- 6.1.7 During the review you should ascertain whether the debtor is paying their continuing liabilities. If they are not, this is a ground for revocation, though, depending on the circumstances, you may wish to consider variation first.
- 6.1.8 If you need to inform the payments distributor of any changes please use the appropriate change of circumstances form found in appendix 5.

7 Variation of a debt payment programme

7.1 Application for a variation by a money adviser

7.1.1 You can apply for a variation on behalf of a debtor. The only other person who can apply is a creditor.

7.1.2 There are a number of situations where a variation might be appropriate. These include:

- where a debtor agrees with all the creditors that the programme should be varied;
- where the debtor has had a material change of circumstances that leads to an increase in surplus income. A variation can be used to increase the instalments paid to creditors and thus pay off the DPP more quickly;
- where the debtor has had a material change of circumstances that leads to a decrease in surplus income. A variation can be used to decrease instalments paid to creditors and extend the DPP whilst still allowing the debtor to pay off their debts;
- where a debtor and a creditor agree that the debtor no longer needs to pay the creditor what is owed;
- where the debtor and the creditor agree that the creditor will waive the interest previously demanded;
- when a debt due at the approval of the programme was omitted from the DPP because it was overlooked, or someone made a mistake;
- where a future debt, which was not quantifiable when the DPP was approved, becomes due for payment. This might happen, for example, if the debtor has credit which they do not have to start paying off for some months;
- where a contingent debt, which was not quantifiable when the DPP was approved, becomes due for payment. This might happen if the debtor has been a guarantor for someone else's debt and the creditor has called up the guarantee; and
- if the debtor has an emergency and needs credit to meet an essential requirement. There are a lot of possibilities here, for example:
 - the debtor's house needs repairs to make it sound (dry rot, leaky roof, broken window, etc);
 - a car needed for business or to get to work needs repairs;
 - the washing machine breaks down;
 - there is a medical emergency that needs some payment;
 - the debtor needs the services of a plumber or electrician; or
 - the debtor needs help to pay for the funeral of an immediate family member.

If the debtor needs credit to meet an essential requirement, they should give the creditor a form 5(a) or other written confirmation that they are on a DPP [see the 2002 Act, section 4(5)].

7.1.3 When you consider a variation you must make sure that the grounds comply with those listed in regulation 38.

7.1.4 There is no statutory requirement for you to contact the creditors before applying for a variation. However it might be regarded as good practice to try and agree a variation with them as the DAS administrator is required to take their views into account. The DAS administrator will automatically approve a variation where there is agreement between the debtor and all the creditors.

7.1.5 All applications for a variation of a DPP must be made using form 8 (Application for variation of a debt payment programme). This can be done:

- electronically from the website www.moneyscotland.gov.uk. The webform must only be sent electronically. You must not print and send a paper version of the webform to the DAS administrator;
- by encrypted email. If you use MACS, you will be able to use this method;
- by completing a pdf version of the form from the website, printing it, and sending it by post; or
- by paper form. The DAS administrator will supply the forms.

Please use the electronic or email options if at all possible. Whichever method you use, you must print out a form and ensure that both you and the debtor sign and date it. You must keep this signed and dated form.

If a paper form is submitted it must be a copy. You and the debtor must sign and date the original. The 2002 Act requires you to retain this paper copy for 5 years or for the life of the DPP, whichever is the longer [sections 2(3) and 3(2)].

7.1.6 At the same time as you send the application for variation to the DAS administrator, you must inform each creditor in the DPP in writing of:

- the application for variation;
- the reasons for the application; and
- the new payment and payment frequency which that creditor will receive if the application is successful.

The creditor is not able to register either non-consent or objection to the variation, although the DAS administrator will take any views they express into account. However, if they disagree with the decision they can appeal to the court.

7.1.7 The DAS administrator will acknowledge receipt of all applications for variation.

7.1.8 On receipt of any application for a variation of a DPP, the DAS administrator will record it in the DAS register as 'an application for a variation of an approved programme'. If the DAS administrator then refers the application to the sheriff, the DAS register will be updated to show 'an application by the DAS administrator to the sheriff for variation of an approved programme'.

7.2 Application for a variation by a creditor

- 7.2.1 You need to be aware of what happens in a creditor application for variation. Before the creditor applies, they must have made a reasonable attempt to try and agree the variation with you. In considering this, money advisers should calculate what the varied DPP would be and use this as a basis for agreement or otherwise.
- 7.2.2 When a creditor applies for a variation, they should send a copy of the application to you, the debtor, and all the other creditors. As the creditor is unlikely to have the details of the other creditors, you should assist them in copying the application to the other debtors, informing them of the impact a variation would have on them. This will enable them to let the DAS administrator have their informed views.
- 7.2.3 On receipt of any application for a variation of DPP, the DAS administrator will record it in the DAS register as an 'application for a variation of an approved programme' and will notify you that the application has been received. If the DAS administrator then refers the application to the sheriff, the DAS register will be updated to show an 'application by the DAS administrator to the sheriff for variation of an approved programme'.

7.3 Approval of a variation of a DPP (money adviser application)

- 7.3.1 If the application for variation is made on agreement between the debtor and each creditor participating in the programme, the DAS administrator will automatically approve the variation.
- 7.3.2 If the application is made on any other grounds as listed in regulation 38(1)(c)-(f), the DAS administrator will determine whether the variation is 'fair and reasonable' (see appendix 3).
- 7.3.3 The DAS administrator can, if she thinks it appropriate, refer the application for variation to the sheriff for determination. The sheriff will then decide whether the variation is 'fair and reasonable'.
- 7.3.4 Approval of all variations will be made subject to the standard conditions (appendix 1).
- 7.3.5 Approval of a variation might also be made subject to a discretionary condition or conditions (appendix 2).
- 7.3.6 Approval of a variation takes immediate effect from when the DAS administrator makes the decision or when she receives notification from the sheriff and the DAS register is updated to show 'a variation of an approved programme', **except** in creditor applications (see paragraph 7.4, below).
- 7.3.7 The DAS administrator will inform you in writing that the application for variation has been approved.

- 7.3.8 When you are notified that a variation of a DPP has been approved, you must notify all the other parties concerned in writing. These are [reg 40(4)]:
- the debtor;
 - each creditor in the programme. This must be done on form 9 (Notification to creditor of determination of variation);
 - the debtor's employer if (and only if) there is a change to be made to the payments and these are being paid by a mandate. In this case, the existing payment mandate must be recalled and a new payment mandate substituted for it using form 6 (payment instruction to an employer). **Note that Working Tax Credit can form no part of a mandate;** and
 - the payments distributor. The payments distributor will need to be given full details of the new payment plan.

Further, this notification must give the reason(s) for the approval of the variation and inform the parties of the effects of the variation.

7.4 Approval of a variation of a DPP (creditor application)

- 7.4.1 When a creditor applies for variation, the grounds must be those listed in regulation 38(1)(c)-(f) and the DAS administrator will determine whether the variation is 'fair and reasonable' (see appendix 3).
- 7.4.2 The DAS administrator can, if she thinks it appropriate, refer the application for variation to the sheriff for determination. The sheriff will then decide whether the variation is 'fair and reasonable'.
- 7.4.3 If the DAS administrator or the sheriff approve the variation and the variation adds or removes a condition that does not alter the amounts being paid under the DPP (for example, a condition for the debtor to start paying by a payment mandate is agreed to by the DAS administrator), the DAS register will be immediately updated to show 'a variation of an approved programme'.
- 7.4.4 If the DAS administrator agrees that a variation should be approved but it needs the payment plan to be amended, she will not amend the DAS register at this stage.
- 7.4.5 In these cases, the DAS administrator will inform you:
- that a variation is to be approved;
 - of the reasons why the variation is to be approved; and
 - of the consequences of the variation being approved.
- 7.4.6 The DAS administrator will also require you to draw up a new payment proposal that complies with the variation. This must be sent to the DAS administrator within 28 days (4 weeks) of the notification that the variation has been agreed. It should be forwarded using form 8a (proposal for variation of a debt payment programme following a creditor's application). This can be done:

- electronically from the website www.moneyscotland.gov.uk. The webform must only be sent electronically. You must not print and send a paper version of the webform to the DAS administrator;
- by encrypted email. If you use MACS, you will be able to use this method;
- by completing a pdf version of the form from the website, printing it, and sending it by post; or
- by paper form. The DAS administrator will supply the forms.

Please use the electronic or email options if at all possible. Whichever method you use, you must print out a form and ensure that both you and the debtor sign and date it. You must keep this signed and dated form.

If a paper form is submitted it must be a copy. You and the debtor must sign and date the original. The 2002 Act requires you to retain this paper copy for 5 years or for the life of the DPP, whichever is the longer [sections 2(3) and 3(2)].

- 7.4.7 At the same time that you send the form 8a to the DAS administrator, you should inform each creditor in the DPP in writing of the new payment and payment frequency which that creditor will receive.
- 7.4.8 On receipt of the form 8a, the DAS administrator will check the new proposal and update the DAS register to show 'a variation of an approved programme'.
- 7.4.9 The DAS administrator will notify you that the variation has been approved.
- 7.4.10 When you are notified that a variation of a DPP has been approved, you must notify other parties concerned. These are [reg 40(4)]:
- the debtor;
 - each creditor in the programme;
 - the payments distributor. The payments distributor will need to be given full details of the new payment plan.

Further, this notification must give the reason(s) for the approval of the variation and inform the parties of the effects of the variation.

- 7.4.11 When you are notified that a variation on DPP has been approved which reduces the debtor's payments and there is a payments mandate in place, the existing payment mandate must be recalled and a new payment mandate substituted for it using form 6 (payment instruction to an employer).

7.5 Rejection of an application for a variation of a DPP

- 7.5.1 This section applies whoever applies for a variation.
- 7.5.2 If she or the sheriff reject an application for a variation, the DAS administrator will:

- immediately amend the DAS register so that it reverts to the DPP status that was showing immediately before the application; and
- inform you in writing giving the reason(s) for rejection.

7.5.3 On receiving notification that a variation has been rejected, you must notify other parties concerned giving the reason(s) for the rejection. These are [reg 40(4)]:

- the debtor;
- each creditor known to you; and
- the payments distributor.

Further, you must make these parties aware of the effect of the rejection of the variation.

7.6 Composition

7.6.1 Composition is dealt with in regulation 24. It is defined as the discharge of a debtor's liability to repay a sum due, or part thereof. A creditor may write off the whole debt, but it is more likely that they will accept a percentage of the debt due in full payment of the debt. For example, a creditor who is owed £2500 might agree to accept 50% in full payment of the debt. Thus the debtor only needs to pay £1250 in full and final payment of the debt.

7.6.2 Any composition should be agreed with the creditor.

If there is an agreement to composition, you must inform the DAS administrator by saying yes at part 19 and giving details in box 24 in form 8.

7.6.3 If there is a composition agreement, always put the actual amounts (after composition) payable in the 'total debt', the 'amount offered per instalment', the 'amount owed' and the 'payment offer per instalment' boxes in part 27.

Put the percentage based on the amount owed before composition in the 'percentage of total debt' box.

The same applies to part 8 of form 8a.

7.6.4 You must ensure that the payments distributor has the correct details for the composited agreement.

7.6.5 Composition can be made subject to conditions. The regulations give two conditions [reg 24(2)(a)(b)], that:

- the sum due after discharge ... is paid in full. This means that the DPP must ensure that the composited amount is paid in full. Failure to do this will mean that at the completion of the DPP, the amount owing will not be the composited sum less the payments made during the DPP, but the original debt less the payments made during the DPP;

- payment is made over the agreed period, not being longer than the period of the programme. This means that the creditor can come to an agreement with you (acting for the debtor) that the composited amount will be paid either:
 - on completion; or
 - sometime before completion.

If it is agreed that the composited amount will be a percentage of the amount due, the creditor can ask for a condition that it be paid by a certain time. This might be the projected completion date or some time before that date.

If the creditor wishes to stipulate payment by a date before the projected completion date, they will have to come to an agreement with you. In these negotiations, you must not agree to a date that will result in payments that are above those that the creditor would have received if they had demanded the full amount.

For example, if the creditor is owed £3600, and the period of the DPP is 6 years, that creditor's share is £50 per month ($£3600 \div 72\text{months}$). However, if the creditor agrees to composition at 50%, that is they will accept £1800, the earliest date for payment of their composited debt in a condition is the third anniversary of the DPP ($£50 \times 36\text{ months} = £1800$). The reason is that they cannot receive more than the £50 per month that they would have received if they had demanded that the full amount be paid.

7.6.6 You must ensure that the payments distributor has the correct details for the composited agreement.

7.6.7 If a DPP is varied and there has been a composition agreement subject to a condition that the composited amount is paid by a certain date, any new proposal must take account of this agreement. Thus if the debtor's surplus income is reduced or if the variation means that that surplus income is shared out to more creditors, you must ensure that the amount received by the creditor who has agreed to composition remains unchanged.

7.7 Interest

7.7.1 Waiver of interest is dealt with in regulation 24. Interest can be waived either at the start of the DPP or at any time during a DPP. If interest is waived during a DPP, you must apply for a variation.

7.7.2 If the creditor agrees to waive interest, they can agree to do so subject to conditions. The regulations give two conditions [reg 24(2)(a)(b)], that:

- the sum due after ... waiver is paid in full;
- payment is made over the agreed period, not being longer than the period of the programme.

If the creditor stipulates either of these two conditions, the DAS administrator will automatically accept them. If the creditor stipulates another condition, the DAS administrator will consider the condition on its merits.

If there is a condition, you should give details in the box at part 24 on form 8.

7.7.3 The creditor may wish to add a condition if they agree to fix or freeze interest.

8 Revocation of a DPP [Regs 11(1)(g), 41-46]

8.1 Automatic revocation

8.1.1 A DPP is automatically revoked if there is an award of sequestration on a debtor's petition. The DAS administrator will remove the debtor's name from the DAS register.

8.2 Application for revocation by a money adviser

8.2.1 All other revocations follow an application for revocation. An application for revocation of a DPP can only be made by:

- a money adviser on behalf of a debtor;
- a money adviser in meeting the requirement of these regulations in relation to one of the laid down functions of a money adviser. This means a money adviser taking action because the debtor has failed to meet their commitments in the DPP or has in some other way been in breach of the regulations (for example, knowingly giving false information); or
- a creditor taking part in the programme.

A creditor not taking part in a programme cannot apply for the revocation of a programme. However, such a creditor, who has not been informed of the programme, is not prohibited from executing diligence or petitioning for the debtor's sequestration (see section 4, paragraph 5(b) of the 2002 Act). If there is an award of sequestration, the money adviser **must** apply for revocation on the grounds that the debtor has not complied with a standard condition (regs 43(b) and 29(2)(d)).

8.2.2 If the debtor has not made any payments under the programme for 12 months, you must seek revocation of the DPP.

8.2.3 There are other circumstances when you might seek revocation of a DPP. These are as follows [reg 43(b)-(d)].

- If a debtor fails to satisfy any condition the DPP is subject to, without reasonable cause. These include both the standard conditions (appendix 1) and any discretionary condition applied to the DPP (appendix 2).
- A payment to be paid under the DPP becomes due and a sum due for previous payments of not less than the total of 2 payments is outstanding. This means that the debtor owes more than the sum of 2 instalments and has missed or underpaid at least 3 instalments.
- If a debtor makes a statement in an application (whether for approval or variation) which the debtor knows to be untrue.

8.2.4 Before applying for revocation in the first two situations in 8.2.3 above, you should consider whether a variation is a possible option.

8.2.5 If you are applying for revocation in a case where you are not acting on behalf of the debtor, you should inform the debtor of the course of action you are taking.

- 8.2.6 All applications for revocation must be made on form 10 (application for revocation of a debt payment programme). This can be done:
- electronically from the website www.moneyscotland.gov.uk. The webform must only be sent electronically. You must not print and send a paper version of the webform to the DAS administrator;
 - by encrypted email. If you use MACS, you will be able to use this method;
 - by completing a pdf version of the form from the website, printing it, and sending it by post; or
 - by paper form. The DAS administrator will supply the forms.

Please use the electronic or email options if at all possible. Whichever method you use, you must print out a form and ensure that both you and the debtor sign and date it. You must keep this signed and dated form.

If a paper form is submitted it must be a copy. You and the debtor must sign and date the original. The 2002 Act requires you to retain this paper copy for 5 years or for the life of the DPP, whichever is the longer [sections 2(3) and 3(2)].

8.3 Application for revocation by a creditor in a DPP

8.3.1 You need to know that a creditor can apply to have a DPP revoked. The creditor can seek revocation in the following circumstances [regulation 43(a)-(d)].

- If the debtor, without good cause, does not have a money adviser.
- If a debtor fails to satisfy any condition the DPP is subject to without reasonable cause. These include both the standard conditions (appendix 1) and any discretionary condition applied to the DPP (appendix 2).
- If a debtor makes a statement in an application (for approval or variation) which the debtor knows to be untrue.
- A payment to be paid under the DPP becomes due and a sum due for previous payments of not less than the total of 2 payments is outstanding. This means that the debtor owes more than the sum of 2 instalments and has missed or underpaid at least 3 instalments.

8.3.2 A creditor seeking revocation of a DPP is under no obligation to inform you, the debtor, or the other creditors. However, the DAS administrator will inform you and you must inform the debtor so that they have an opportunity to make a statement to the DAS administrator (see 8.4.3, below).

8.4 Determination of a revocation

- 8.4.1 Only the DAS administrator can make a determination on an application for revocation. There is no provision for referral to the sheriff.
- 8.4.2 There is no change to the DAS register when the DAS administrator receives an application for revocation.
- 8.4.3 When deciding on an application for revocation of a DPP, the DAS administrator must consider the following:
- whether the application complies with the grounds for revocation [reg 43];
 - any statement made by or on behalf of the debtor;
 - the nature of any failure or untrue statement;
 - any factor that tends to indicate whether or not the programme will be successful; and
 - anything else the DAS administrator considers appropriate.
- 8.4.4 If the DAS administrator revokes the DPP, she will:
- immediately remove the case from the DAS register; and
 - notify you in writing giving the reason(s) for the revocation.
- 8.4.5 On receiving the DAS administrator's notice of revocation, you must inform:
- the debtor;
 - each creditor known to you including creditors outwith the programme. This must be done using form 11 (notice of revocation);
 - the payments distributor. The payments distributor must be asked to stop making payments with immediate effect; and
 - the employer, where the debtor has been paying by payment mandate. The employer must be instructed to stop making payments with immediate effect.
- 8.4.6 If the DAS administrator does not uphold the application for revocation, the DAS register will not be changed. The DAS administrator will inform you that the application has been unsuccessful. You must inform the debtor. If it was a creditor that applied for revocation, you must also inform them.

8.5 Apparent Insolvency

- 8.5.1 If a DPP has been revoked, this can be used to constitute 'apparent insolvency' for the purposes of sequestration in some circumstances. The regulations amend the definition of apparent insolvency in the 1985 Act [reg 46]. For revocation to be grounds for apparent insolvency, one of the debts in the programme has to be constituted by decree or document of debt:
- 8.5.2 The 2002 Act defines a 'decree' as:
- a decree of the Court of Session, of the High Court of Justiciary or of the sheriff;
 - a decree of the Court of Teinds;

- a summary warrant;
- a civil judgment granted outside Scotland by a court, tribunal or arbiter which by virtue of any enactment or rule of law is enforceable in Scotland;
- an order or determination which by virtue of any enactment is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff;
- a warrant granted, in criminal proceedings, for enforcement by civil diligence;
- an order under section 114 of the Companies Clauses Consolidation (Scotland) Act 1845 (c.17);
- a determination under section 46 of the Harbours, Docks and Piers Clauses Act 1847 (c.27); or
- a liability order within the meaning of section 33(2) of the Child Support Act 1991 (c.48),

being a decree, warrant, judgment, order or determination which, or an extract of which, authorises attachment.

8.5.3 The 2002 Act defines a 'document of debt' as:

- a document registered for execution in the Books of Council and Session or the sheriff court books; or
- a document or settlement which by virtue of an Order in Council made under section 13 of the Civil Jurisdiction and Judgments Act 1982 (c.27) is enforceable in Scotland,

being a document, bill or settlement which, or an extract of which, authorises attachment.

8.5.4 Please note that the Scottish Ministers can add or remove types of decree or document to or, as the case may be, from those referred to in the above definitions.

The descriptions of the types of decree or document detailed above may also be subject to variation by the Scottish Ministers.

9 Completion of a DPP [Regs 47-49]

9.1 Introduction

- 9.1.1 A DPP reaches completion in the following circumstances.
- At the end of the agreed term of the DPP. If the debtor makes all the payments as they have contracted to do, completion of the DPP will be at the time specified when the DPP was first approved, or if it has been varied, at the most recent variation. In this case, the debt in the DPP will have been paid in full.
 - At the end of the agreed term of the DPP. If the debtor has missed or underpaid a few times, but this has not warranted a variation, completion will be when the debt in the DPP has been paid in full. This will be slightly later than the time specified when the DPP was first approved, or if varied, at the most recent variation.
 - If the debtor makes an offer of composition which is accepted by all the creditors remaining in the DPP.
 - If all the creditors still in the programme agree in writing to completion before the scheduled end of the programme.

When the DPP is completed in the first two cases above, you will receive notification from the payments distributor. In the third and fourth cases, you must write to the payments distributor informing them of the situation and asking them to stop making payment forthwith.

- 9.1.2 On completion of the DPP in any of the circumstances in 9.1.1 above, you must inform the DAS administrator using form 13 (notice of completion by money adviser).

9.2 Notification of completion

- 9.2.1 When the DAS administrator receives the form 13 from you, she will remove the case from the DAS register.
- 9.2.2 The DAS administrator will always send a form 14 (confirmation of completion by the DAS administrator) to you. If the debtor asks you for a form 14, you should give it to them.
- 9.2.3 If the debtor requests a form 14 from the DAS administrator, she will send them one.
- 9.2.4 You must provide written notification of the completion to:
- the debtor.
 - each creditor known to you including those outwith the programme. This must be done using form 15 (notification to creditor of completion of a debt payment programme).
 - the debtor's employer, if the debtor has been paying by payment mandate. This notification must be accompanied by an instruction that payments under the mandate cease.

10 Appeals [Reg 50]

10.1 Appeals

10.1.1 You do not make any appeals. But you need to know that the regulations make provision for various appeals so that you can properly advise, assist, or act for the debtor if necessary.

10.1.2 Appeals can be made as follows:

- to the sheriff by:
 - a debtor against the DAS administrator's decision not to approve a DPP;
 - by a creditor named in a DPP application against a decision by the DAS administrator to either dispense with their non-consent or to approve a DPP;
 - by a debtor or a creditor who has applied for a variation on the grounds in regulation 38(1)(d) or (e) against the DAS administrator's decision to:
 - attach a discretionary condition (appendix 2);
 - approve, or refuse to approve, a variation of a programme; or
 - revoke a programme; or
- to the sheriff principal with the leave of the sheriff by:
 - a debtor against a decision by the sheriff to refuse a DPP; or
 - a creditor named in a DPP application against a determination of a sheriff to approve a DPP.

10.1.3 The following rules apply to appeals.

- All appeals must be on a point of law. This is basically a mistake in the facts. However, not all factual mistakes will constitute a point of law and a debtor may wish to take legal advice before considering making an appeal. The aim of this stipulation is to prevent appeals simply on the ground that the debtor or creditor dislikes a decision.
- All appeals to the sheriff must be made by summary application. The procedure is set out in the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) Amendment (Debt Arrangement and Attachment (Scotland) Act 2002) 2004, section 3.27.6.
- All appeals to the sheriff principal must be made by note of appeal. This is despite what it says in the regulations. The procedure is set out in the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) Amendment (Debt Arrangement and Attachment (Scotland) Act 2002) 2004, section 3.27.6.
- The decision of the sheriff or the sheriff principal, as the case may be, is final. This means that there is only one appeal allowed. It is not possible to appeal to the sheriff against a decision of the DAS administrator and then appeal that sheriff's decision to the sheriff principal.

- 10.1.4 Where an appeal is made, the DAS administrator will inform you and let you know the outcome in due course.
- 10.1.5 A debtor can instruct you to act for them at an appeal hearing and you may so represent the debtor if you accept the instruction [reg 11(1)(f)]. You need not, and in some circumstances must not, accept an instruction. You can only do such court work if you are appropriately trained to do so.

11 Payments distributors

11.1 Choosing a payments distributor

11.1.1 Only payments distributors approved by the DAS administrator can be used to make payments in a DPP or to pay a continuing liability for a debtor.

11.1.2 The DAS administrator maintains a register of payments distributors. This register contains information of the services each distributor offers:

- the methods of collecting payments from a debtor (for example, standing orders, direct debit);
- the methods of distributing payments to creditors (BACS; cheque);
- whether the distributor offers a pro-rata or equal payments system of distribution or both;
- whether the distributor offers a continuing liability option;
- any other services that the distributor offers;
- any other stipulation that the distributor makes (for example, electronic communication only); and
- the level of fees charged.

The register of payments distributors can be found on the website at www.moneyscotland.gov.uk/adviser.

11.1.3 You can choose any approved distributor in any DPP. You might wish to use a distributor that offers all the services that a debtor needs, especially if the debtor is to pay a continuing liability. However, this is not essential. The debtor can employ a different distributor to pay the continuing liability.

11.1.4 If you choose Payplan as your payments distributor, you should have regard to the guidance at appendix 9.

11.2 Payments distributor ceases to act

11.2.1 A payments distributor will cease to act if:

- their period of approval finishes and they do not seek renewal.
- the DAS administrator revokes the payments distributor's approval.

11.2.2 If the payments distributor ceases to act, the DAS administrator will inform you in writing. She will also give you a complete list of the DPPs that you have allocated to that distributor.

11.2.3 You must re-allocate each of these DPPs to a new payments distributor as soon as possible (and within 28 calendar days). You must inform the DAS administrator in writing of the new payments distributor in each case using the change of circumstances form available from the website www.moneyscotland.gov.uk/adviser or from the DAS administrator.

12 Creditors

12.1 General

12.1.1 Productive liaison with creditors is an important part of your role within the Debt Arrangement Scheme and will be key to the success of any DPP.

This section details the various interventions and responses required or asked of creditors. Although there are references throughout the regulations to creditors there is no section dedicated to what is required of creditors or what they can expect from you and payments distributors.

The following has been compiled to give you an overall view of how DPPs will affect creditors and how you will interact with them.

12.2 Consent and objection

12.2.1 You must notify creditors of any proposed application for approval of a DPP. They must also be asked to consent to the application. This is formally done using form 4 (proposal to creditor for a debt payment programme).

This form also provides important information to the creditor about their rights to object or refuse consent, and the timescales laid down in the regulations.

12.2.2 Creditors must respond to the request for consent within 21 days (3 weeks) of the date of posting of form 4. Failure to respond will result in the creditor being deemed to consent to the application. (Form 4 has attached a form 4a. This is none statutory but can be used by creditors for their response. Form 4a contains boxes for the creditor's banking details. They should be encouraged to supply this information, and if they do, you should input it onto form 3.)

12.2.3 Creditors can object to the application if they believe that the debtor should be sequestrated or that the debtor has heritable property in which there is substantial equity.

12.2.4 Regulation 27 requires the DAS administrator to apply to the sheriff for a determination on the application for approval of the DPP where:

- a creditor does not consent to an application for approval or variation and the DAS administrator cannot dispense with their consent (see regulation 22(4)); or
- the creditor objects.

12.2.5 Paragraphs 5.1.3 to 5.1.7 of this guidance explain the process of notifying creditors and give more details on requesting creditors' consent.

12.3 Effects of a DPP on creditors

12.3.1 When a DPP is approved, it has the effect of recalling any attachment or arrestment of the debtor's income or property.

12.3.2 If a DPP is approved, a creditor can only provide credit to the debtor if it is:

- approved by a variation and it is to meet an essential requirement;
- further credit given as part of a cyclical loan arrangement in operation at the date of approval, where the payment by the debtor does not vary by reason of that credit being given (for example, a revolving credit agreement or a current account mortgage);
- trade credit incurred by the debtor in the normal course of business. (In this case, the debtor must tell the creditor that there is a DPP using form 5(a));
- needed for an emergency repair; or
- needed for reasonable funeral expenses for an immediate family member.

An exception to this is a Social Fund loan which can be granted and recovered outwith the scheme.

If a creditor provides any other credit to a debtor who has a DPP, it will not be competent during the term of the DPP for the creditor to:

- serve a charge for payment in respect of that debt;
- start any diligence to enforce payment of that debt; or
- found on that debt in presenting, or concurring in the presentation of, a petition for sequestration of the debtor's estate.

12.3.3 If a creditor supplies credit allowed under reg 35(1)(b)(ii), the credit will be repaid out of the debtor's surplus income. You will need to apply for a variation on the grounds of credit to meet an essential requirement.

The debtor must give the creditor a form 5(a) when applying for this credit under reg 35(1)(b)(ii) [see the 2002 Act, section 4(5)(b)]. If the debtor does so, the creditor will be in the same position as the creditors originally in the scheme as regards the breach of regulation 29(2)(a) if the debtor defaults. If the debtor fails to give the creditor a form 5(a), and the creditor has not previously been given notice of the approval of the DPP, that creditor may do diligence to enforce that debt if the debtor does not make the repayments.

If a creditor supplies credit allowed under reg 35(1)(b)(iv)-(vi), the credit will be repaid out of the debtor's surplus income. You will need to apply for a variation on the grounds of material change of circumstances or credit to meet an essential requirement (whichever is more appropriate).

The debtor must give the creditor a form 5(a) when applying for this credit under reg 35(1)(b)(iv)-(vi). If the debtor does not do so, they will be in breach of regulation 35(2). If the debtor does let the creditor have a form 5(a), the creditor will not be able to enforce payment of this credit if the debtor defaults. However, the debtor will be in breach of regulation 29(2)(g) which can be grounds for revocation. If the debtor fails to give the creditor a form 5(a), and

the creditor has not previously been given notice of the DPP, that creditor may do diligence to enforce that debt if the debtor does not make the repayments. Such a creditor can also petition for the sequestration of the debtor if the debtor is apparently insolvent (see section 4, paragraph 5(b) of the 2002 Act). If there is an award of sequestration, the money adviser **must** apply for revocation on the grounds that the debtor has not complied with a standard condition (regs 43(b) and 29(2)(d)).

If a creditor supplies credit that is not allowed, the creditor can go to court to legally constitute his debt, but will not be able to enforce payment.

- 12.3.4 The creditor must not attempt to persuade the debtor to withdraw from an approved DPP or to make any additional payments.
- 12.3.5 If you request a statement of all of the debtor's liabilities to that creditor, they must send it to you. They must also notify you of any liability where the creditor has security against a co-obligant (someone who is jointly and severally liable for a debt of the debtor).
- 12.3.6 The DPP will not affect an inhibition or a division and sale.

12.4 Composition of debts and the waiving of interest

- 12.4.1 It is anticipated that agreement between a debtor and a creditor on composition of a debt and/or the waiving interest, will increase the potential to secure completion of a DPP.
- 12.4.2 Regulation 24 gives details of agreements that can be made between a debtor and a creditor to reduce the amount owed. You are strongly encouraged to help the debtor to reach agreement with their creditors either:
 - on an offer of composition whereby a creditor accepts a percentage of the debt being paid within an agreed timescale with the remaining amount being written off; or
 - to waive all or part of any interest due on their debts; or
 - to freeze interest on their debts; or
 - to fix interest on their debts.
- 12.4.3 It is possible that creditors agreeing to composition of the debt, or the waiving, fixing, or freezing of interest, will wish to see the debtor bound by a condition to ensure compliance. The regulations say that any such agreement may be made subject to a condition that:
 - the sum due by a debtor after discharge or waiver is paid in full. This means that if the creditor agrees to discharge part of the sum due to them or to waive interest, the remaining amount must be paid in full during the DPP; and
 - payment is made over the agreed period, not being longer than the period of the programme.

If these conditions apply to the DPP, you must make sure the debtor understands the implications and that failure to keep them might result in:

- the principal debt or interest being restored to the full amount; or
- revocation of the DPP.

12.4.4 Ideally the above agreements should be sought as early as possible. However, it is possible to come to agreement at any time during a DPP.

12.5 Forms and letters to creditors

12.5.1 As a money adviser, you should familiarise yourself with all forms that you must send to creditors, including when and in what context they should be sent. They are:

- **form 4 (Proposal to creditor for a debt payment programme):** send to each creditor to notify them of a proposed application for approval of a DPP. This form will also contain a request for the creditor's consent to the proposed application;
- **form 5 (Notification of approval of a debt payment programme):** send to each creditor to notify them of the approval or rejection of an application for a DPP. If an application is rejected you must state the reason(s) why;
- **form 9 (Notification to creditor of determination of variation):** send to each creditor to notify them of the approval or rejection of an application for a variation. If an application is rejected you must state the reason(s) why;
- **form 11 (Notification of revocation):** send to each creditor to notify them of the revocation of a DPP; and
- **form 15 (Notification to creditor of completion of a debt payment programme):** send to each creditor to notify them of completion of a DPP.

12.5.2 Other communication with creditors may be necessary. For example, you must notify creditors of:

- your appointment or resignation where applicable; and
- any change of payments distributor.

12.6 Creditors and variation and revocation

12.6.1 Variation

A creditor cannot apply for a variation of a DPP unless they have first made a reasonable attempt to agree the variation with you.

If the creditor makes an application, the creditor must notify you, the debtor, and all the other creditors taking part in the DPP. You are requested to assist the creditor if they do not have the other creditors' contact details.

Creditors can apply for variation if:

- the debtor and all the other creditors agree;
- the debtor and a creditor agree that a liability of the debtor to repay a sum should be discharged;
- the debtor and a creditor agree that interest on the liability should be waived;
- there is a material change in the debtor's circumstances;
- a debt has been omitted owing to mistake, oversight, or other reasonable cause;
- a former future or contingent debt has been quantified and is now due for payment; or
- the debtor needs credit for an essential requirement.

12.6.2 Revocation

A creditor can apply to the DAS administrator for the DPP to be revoked.

If the DAS administrator informs you that the creditor's application for revocation has been successful, you must inform:

- the debtor;
- all the creditors known to you (using form 11);
- the payments distributor; and
- if there is a payment mandate, the debtor's employer.

12.7 Creditors' appeals

12.7.1 Creditors can appeal to a sheriff in a number of situations. If they are named in an application for a DPP they can, on a point of law, appeal against the decision of the DAS administrator to:

- dispense with their consent; or
- to approve an application.

12.7.2 A creditor who is participating in a DPP or a creditor who has applied for a variation of a DPP on the grounds of regulation 38(1)(d) or (e) may appeal to the sheriff, on a point of law, against the decision by the DAS administrator to:

- attach a condition under the discretionary conditions detailed in regulation 30;
- approve or refuse to approve a variation of a DPP; or
- revoke a DPP.

12.7.3 A creditor who is named in an application for approval of a DPP, can appeal to the sheriff principal, with the leave of the sheriff and on a point of law, against a decision made by a sheriff to approve a DPP. This appeal must be lodged within 14 days (2 weeks) of the date of the creditor being notified of the sheriff's decision.

12.8 Creditors and fees

- 12.8.1 You must be aware that the payments distributor may charge an administration fee for collection and distribution of funds of no more than 10% to a creditor taking part in a DPP.
- 12.8.2 However, if the payments distributor offers other services they can charge for these. For example, some payments distributors offer an aftercare service. If you intend to take up this service and the distributor charges for it, the creditors will have to pay. You must make the creditors aware of this.
- 12.8.3 If there is agreement to pay a continuing liability, the payments distributor can charge 10% for this service. Creditors can ask the debtor to pay for this as a condition for agreeing. You should make sure that the debtor knows this.

Appendix 1

A1 Standard conditions [reg 29]

A1.1 You must tell the debtor that once their debt payment programme is approved they must keep all the standard conditions laid out in regulation 29.

A1.2 These conditions state that that once a DPP is approved the debtor must:

- make all payments under a programme as they fall due;
- pay a continuing liability when due for payment;
- except for a continuing liability, make no payment to a creditor taking part in a programme other than a payment under the programme;
- not apply for or obtain credit beyond that permitted by regulation 35(1)(b), or by a variation of a programme approved under regulation 39 (that is for a recognised emergency);
- notify the money adviser for a programme of any:
 - change of address; and
 - material change of circumstances, within 7 days (1 week) of becoming aware of the change;
- within 10 (calendar) days after receipt by the debtor of a written request from the money adviser for the programme, supply the adviser with the information or evidence that the adviser has requested about their (the debtor's) income, assets, or liabilities.
- make all payments in respect of credit obtained under regulation 35(1)((b)(iv),(v) and (vi) as they fall due; and
- give all notices and intimations which require to be given by a debtor under these Regulations.

Deleted: and

A1.3 The intention is, that if the debtor adheres to these conditions, the potential to secure completion of a debt payment programme will increase.

A1.4 You must tell the debtor that if they fail, without reasonable cause, to satisfy a condition, the DAS administrator may revoke their debt payment programme.

Appendix 2

A2 Discretionary conditions [reg 30]

- A2.1 As well as the standard conditions which apply to all DPPs, discretionary conditions may be attached.
- A2.2 You must be aware of these discretionary conditions and their potential impact on parts of the debt counselling process.
- A2.3 You should indicate on the application forms for approval or variation if you think a discretionary condition should be attached to the DPP.
- A2.4 The conditions specify that a debtor must:
- realise and distribute amongst the creditors the value of, an asset of the debtor other than an asset excepted by regulation 30(3);
 - sign and deliver a payment instruction to an employer;
 - seek agreement from a creditor to pay a continuing liability under regulation 34;
 - complete and submit when due a tax or duty return or declaration;
 - maintain an emergency fund in accordance with regulation 30(4); or
 - be bound by any other reasonable condition intended to secure completion of the DPP (for example, if there is composition or waiver of interest, a condition might be set that the sum due by a debtor after discharge or waiver is paid in full, or that payment is made over the agreed period [reg 24(2)(a)&(b)]).
- A2.5 Regulation 30(3) defines an excepted asset as:
- a dwelling-house or mobile home occupied by a debtor as the debtor's home; and
 - an asset that is exempted from attachment under section 11 of the Debt Arrangement and Attachment (Scotland) Act 2002 or is not a non-essential asset under schedule 2 of the Debt Arrangement and Attachment (Scotland) Act 2002.
- These provisions are aimed at ensuring that a debtor will:
- not lose their home;
 - not be deprived of the means of working; and
 - in the home, they will be left with essential furniture and other equipment.
- A2.6 Regulation 30(4) gives instructions about an emergency fund referred to in regulation 30(2). The debtor must:
- make payments into an account designated by the DAS administrator at the rate she directs;
 - not make any payment from the fund other than a payment for an emergency repair as in regulation 30(5); and
 - only make payments essential to the debtor or an immediate member of their family who is maintained by the debtor. (So, the emergency

must relate directly to the debtor or their immediate family maintained by them.)

- A2.7 The inclusion of the emergency fund in the regulations is part of the Scottish Executive's strategy in encouraging people to manage their own finances in a responsible manner. The emergency fund will assist the debtor in budgeting for unforeseen financial demands.
- A2.8 It is intended that the emergency fund will be in an account handled by a credit union. You should seriously consider suggesting that this be made a discretionary condition when applying for approval of a DPP or a variation.
- A2.9 You should assist the debtor in opening an account for an emergency fund.
- A2.10 Payments into an emergency fund should be made by the same methods as payments in the DPP. These are:
- a payment mandate to an employer;
 - a direct debit or standing order;
 - a smart card or swipe card or other type of payment card or key; or
 - any other method sanctioned by the DAS administrator.
- A2.11 Regulation 30(5) defines an emergency repair as one that is required to maintain:
- a dwelling-house occupied by the debtor in wind and watertight condition;
 - any item that is not a non-essential asset, for the purpose of schedule 2 of the Debt Arrangement and Attachment (Scotland) Act 2002, in reasonable working order. The double negative means that this refers only too an essential asset; or
 - a vehicle required by the debtor for travelling to work or other essential purposes.

Appendix 3

A3 Fair and reasonable

A3.1 If all the creditors agree then a DPP will be approved without any further assessment, but the DAS administrator or the sheriff will only approve any other DPP or a variation of a DPP if it is considered 'fair and reasonable' [see regs 26(1); 27(1); 39(2)(4)].

A3.2 The factors that the DAS administrator or the sheriff will consider in deciding whether a proposal is fair and reasonable are set out in regulations 26(2)(3); 27(3); reg 39(4). These are:

- the total amount of debt;
- the period over which a programme will operate;
- the method, and frequency, of payments under a programme;
- an earlier proposed programme that was not approved;
- a matter specified in regulation 21(2) that would have prevented an application being made, where the matter no longer has that effect;
- the involvement of the debtor in:
 - a debt payment arrangement, including a debt payment programme under these regulations;
 - a time to pay direction under section 1 (time to pay directions) of the Debtors (Scotland) Act 1987, or time to pay order under section 5 (time to pay orders) of that Act; or
 - a time order under section 129 (time orders) of the Consumer Credit Act 1974.
- the extent to which creditors have consented (deemed or otherwise) or objected to a programme;
- any comment made by the money adviser;
- an asset of a debtor that could be realised to pay debts to be included in a programme;
- the views of a creditor taking part in the programme and of any creditor applying for variation;
- the views of the debtor; and
- any other factor considered appropriate.

A3.3 What will be considered 'fair and reasonable' will be flexible to take into account the very different circumstances applicants may be in. If you think an application is fair and reasonable, you should submit it.

In terms of the length of a programme, the DAS administrator or sheriff is likely to approve anything under 5 years in duration and refuse to approve anything over 10 years. Between these periods will be a matter of individual assessment. One of the most important factors will be the level of creditor agreement. The greater the number of non-consenting creditors, the less likely it is that a programme will be approved if it will extend for more than 5 years.

A3.4 The level of payment considered fair and reasonable is likely to be subject to what payments distributors will accept. If, for example, a payments distributor cannot make a payment to a creditor of under £1 per instalment, and a creditor was due 50p per instalment, then there would be problems in running the DPP. Information on what each payments distributor offers is available on the list of payments distributors kept by the DAS administrator on the website at www.moneyscotland.gov.uk/adviser. If there is any doubt, you should personally check with the payments distributor.

Appendix 4

A4 The registers

- A4.1 The DAS administrator will maintain the following:
- the DAS register;
 - the register of approved money advisers; and
 - a list of approved payments distributors (non-statutory).

A4.2 The DAS register

- A4.2.1 The DAS register will contain the following information:
- an application for a programme that has yet to be approved;
 - an application by the DAS administrator to the sheriff for approval of a programme;
 - a notice that a programme is to be approved;
 - an approved programme;
 - an application for variation of a approved programme;
 - an application by the DAS administrator to the sheriff for variation of an approved programme;
 - a variation of an approved programme; and
 - an appeal to the sheriff or sheriff principal.
- A4.2.2 The DAS register will also include for each debtor who has applied for approval of a debt payment programme, or who is taking part in a programme, a record of the debtor's:
- name (including former names and aliases);
 - age;
 - home address or addresses;
 - business address (if appropriate); and
 - the business name and business address of the debtor's money adviser (or the money advice body for that adviser).
- A4.2.3 An entry on the DAS register may be inspected by:
- a money adviser on behalf of the debtor;
 - a creditor (or prospective creditor) of a debtor;
 - a payments distributor; and
 - any other person who can demonstrate to the DAS administrator that they have a good reason to view the register.
- A4.2.4 No fee will be charged to an approved money adviser for an inspection of the DAS Register. All other inspections will be charged at the following rates:
- single inspection £5
 - one week £100
 - 4 weeks £250
 - one year £500

A4.3 The register of approved money advisers

A4.3.1. The register of approved money advisers will contain the following information:

- your name
- the name of your organisation (unless self-employed);
- your business address and other contact details;
- the date of your approval; and
- your status (approved or suspended. If your approval is revoked, your details will be removed from the register).

A4.4 The list of approved payments distributors

A4.1.1 The list of approved payments distributors will be on the website at www.moneyscotland.gov.uk and will also be available from the DAS administrator. Form 3 (application for approval of a debt payment programme) and form 8 (application for variation of a debt payment programme) will have a drop down menus listing all approved distributors for those completing the forms electronically.

A4.1.2 The following information will be available:

- the name and contact details of the distributor;
- the methods of collecting payments from a debtor (for example, standing orders, direct debit);
- the methods of distributing payments to creditors (BACS; cheque);
- whether the distributor offers a pro-rata or equal payments system of distribution or both;
- whether the distributor offers a continuing liability option;
- any other services that the distributor offers;
- any other stipulation that the distributor makes (for example, electronic communication only); and
- the level of fees charged.

Appendix 5

DAS Forms

Form 1	Application for approval as a money adviser*
Form 3	Application for approval of a debt payment programme*
Form 4	Proposal to creditor for a debt payment programme*
Form 5	Notification of approval of a debt payment programme*
Form 5(a)	Notification to creditor of approval of a debt payment programme*
Form 6	Payment instructions to employer*
Form 7	Notice of recall of an arrestment
Form 7(a)	Notice of recall of an attachment
Form 8	Application for variation of a debt payment programme*
Form 8a	Proposal for variation of a debt payment programme following a creditor's application (non-statutory)*
Form 9	Notification to creditor of determination of variation*
Form 10	Application for revocation of a debt payment programme*
Form 11	Notification of revocation*
Form 13	Notice of completion by money adviser*
Form 14	Confirmation of completion by DAS administrator
Form 15	Notification to creditor of completion of a debt payment programme*
Form A	Notice of recall of a conjoined arrestment order*

Change of Circumstances form – money adviser to payments distributor (see below)

* These forms and guidance for filling them in will be available from the website www.moneyscotland.gov.uk/adviser. The DAS administrator will supply paper forms if needed.

Change of circumstances form Money adviser to payments distributor

If you wish to notify changes to your details, **only** give your unique identification number

If you wish to notify of changes to a debtor's details, please give your unique identification number **and** the relevant DAS case number for the debtor

1 Unique identification number:

M	A				
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2 DAS case number:

D	A	S
---	---	---

 /

2	0	0	
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 /

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Parts 3-7 are for your details and 8-16 for the debtor's details. Part 17 is for any other information

Your details

3 Name:

4 Organisation name:

5 Organistaion address:

Postcode:

6 E-mail address:

7 Telephone number:

Debtor's details

8 First name(s):

9 Surname(s):

10 Other name(s):

11 Home address:

Postcode:

12 Business name:

13 E-mail address:

14 Telephone number:

15 Business address:

16 Postcode:

17 Any other relevant information

18 **Signature:**

Print name:

Date:

Appendix 6: definition of debt

A6.1 Debt is defined for the purposes of the Debt Arrangement Scheme in section 3 of the regulations which is reproduced here.

In these regulations, 'debt':

- (a) includes any sum due by a debtor:
 - (i) constituted by:
 - (aa) decree or document of debt (see A6.2 and A6.3 below);
 - (bb) judicial or contractual interest (see A6.4 below);
 - (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 (see A6.5 below).

A6.2 The 2002 Act defines a 'decree' as:

- a decree of the Court of Session, of the High Court of Justiciary or of the sheriff;
- a decree of the Court of Teinds;
- a summary warrant;
- a civil judgment granted outside Scotland by a court, tribunal or arbiter which by virtue of any enactment or rule of law is enforceable in Scotland;
- an order or determination which by virtue of any enactment is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff;
- a warrant granted, in criminal proceedings, for enforcement by civil diligence;
- an order under section 114 of the Companies Clauses Consolidation (Scotland) Act 1845 (c.17);
- a determination under section 46 of the Harbours, Docks and Piers Clauses Act 1847 (c.27); or
- a liability order within the meaning of section 33(2) of the Child Support Act 1991 (c.48) (but note that a Liability Order cannot form part of a DPP and must be collected by the CSA outside the DPP), being a decree, warrant, judgment, order or determination which, or an extract of which, authorises attachment.

A6.3 The 2002 Act defines a 'document of debt' as:

- a document registered for execution in the Books of Council and Session or the sheriff court books; or
- a document or settlement which by virtue of an Order in Council made under section 13 of the Civil Jurisdiction and Judgments Act 1982 (c.27) is enforceable in Scotland,

being a document, bill or settlement which, or an extract of which, authorises attachment.

A6.4 Judicial interest: any creditor raising court proceedings for the recovery of a debt is entitled to look to the defender for payment of not only the principal debt but legal costs and judicial interest. As soon as the debtor receives service of a court action judicial interest begins to accrue on the principal debt until payment.

Contractual interest is the interest that a debtor agrees to pay if they are late in making payments.

A6.5 Section 17(2B) of the Legal Aid (Scotland) Act 1986 states:
'Except in so far as the regulations under this provision otherwise provide, where, in any proceedings, there is a net liability of the [Scottish Legal Aid] Fund on account of any party, the amount of that liability shall be paid to the [Scottish Legal Aid] Board by that party, in priority of other debts, out of any property (wherever situate) which is recovered or preserved for him:

- (a) in the proceedings; or
- (b) under any settlement to avoid them or bring them to an end.'

Thus, a debtor's liability to the Scottish Legal Aid Fund is a priority debt that cannot be put into a DPP.

A6.6 A 'rule of thumb' definition in more practical terms is that if there is a continuing liability (for example mortgage, rent, school fees, hire purchase), only the arrears can go into the DPP.

If the debt is not a continuing liability, all the debt should be included in a DPP whether or not the debtor is in arrears of that debt (for example credit card loan; bank loan).

Thus if the debtor has bought a car on hire purchase, only any arrears can be put into the DPP. The debtor will have to pay the continuing liability (either personally or through the continuing liability option in DAS), and the statement of income and expenditure must reflect the need to pay this sum. But if the debtor has a bank loan to buy a car, whether or not the debtor is in arrears in this loan, the whole amount outstanding must go into the DPP.

Appendix 7: non-essential assets

Debt Arrangement and Attachment (Scotland) Act 2002

Schedule 2

Non-essential assets

- 1 For the purposes of Part 3 of this Act, 'non-essential assets' are, subject to paragraph 2 below, corporeal moveable property of the debtor's which is kept in a dwellinghouse.
- 2 None of the following is a non-essential asset for the purposes of Part 3 of this Act:
 - (a) an article specified in paragraph 3 below;
 - (b) an article described in paragraph 4 below; and
 - (c) an article the attachment of which is (by virtue of section 11(1) above or otherwise) incompetent.
- 3 The articles referred to in paragraph 2(a) above are:
 - (a) clothing reasonably required for the use of the debtor or any member of the debtor's household;
 - (b) implements, tools of trade, books or other equipment reasonably required for the use of any member of the debtor's household in the practice of such member's profession, trade or business, not exceeding in aggregate value £1,000 or such other amount as may be prescribed in regulations made by the Scottish Ministers;
 - (c) medical aids or medical equipment reasonably required for the use of the debtor or any member of the debtor's household;
 - (d) books or other articles reasonably required for the education or training of the debtor or any member of the debtor's household not exceeding in aggregate value £1,000 or such other amount as may be prescribed in regulations made by the Scottish Ministers;
 - (e) articles reasonably required for the care or upbringing of a child who is a member of the debtor's household;
 - (f) toys for the use of any child who is a member of the debtor's household.
- 4 The articles referred to in paragraph 2(b) above are the following so far as they are reasonably required, at the time of the attachment, for the use of the debtor or a member of the debtor's household:
 - (a) beds or bedding;
 - (b) household linen;
 - (c) chairs or settees;
 - (d) tables;
 - (e) food;
 - (f) lights or light fittings;
 - (g) heating appliances;
 - (h) curtains;

- (i) floor coverings;
- (j) furniture, equipment or utensils used for storing, cooking or eating food;
- (k) refrigerators;
- (l) articles used for cleaning, drying, mending, or pressing clothes;
- (m) articles used for cleaning the dwellinghouse;
- (n) furniture used for storing:
 - (i) clothing, bedding or household linen;
 - (ii) articles used for cleaning the dwellinghouse; or
 - (iii) utensils used for cooking or eating food;
- (o) articles used for safety in the dwellinghouse;
- (p) tools used for maintenance or repair of the dwellinghouse or of household articles;
- (q) computers and accessory equipment;
- (r) microwave ovens;
- (s) radios;
- (t) telephones;
- (u) televisions.

- 5 The Scottish Ministers may by regulations modify paragraph 4 above so as to:
- (a) add or remove types of articles to or, as the case may be, from those referred to in that paragraph; or
 - (b) vary any of the descriptions of the types of articles there referred to.

Appendix 8: debts which can be recovered outside DAS

A8.1 Introduction

This appendix has been provided by the Department of Work and Pensions (DWP).

A8.2 Debts recoverable from DWP benefits

A8.2.1 Certain debts can be recovered from prescribed benefits paid by the Department for Work and Pensions (DWP). This appendix provides information on these debts and how they will interact with a DPP. If the debtor is in receipt of prescribed benefits (see A8.2.2) and DWP is not deducting the appropriate debts from his benefit, they should be advised to approach their local social security office. This could reduce the number of debts available to be collected under the DPP.

A8.2.2 The prescribed benefits are:

- Bereavement Benefit
- Carer's Allowance
- Disability Living Allowance / Attendance Allowance
- Incapacity Benefit
- Income Support
- Industrial Injury Disablement Benefit
- Industrial Death Benefit
- Jobseeker's Allowance
- Maternity Allowance
- Pension Credit
- Retirement Pension
- Widowed Parent's Allowance

A8.3 Social Security and Child Support Debt

A8.3.1 The law provides specific legislative mechanisms for the recovery of social security debt, where benefits are administered by DWP, or in the case of housing benefit (HB) and council tax benefit (CTB), by a local authority. The law also provides a self contained legislative mechanism for the collection and enforcement of child support. These legislative mechanisms are not affected by the Debt Arrangement Scheme (DAS) and its 'diligence stopper'. However, where DWP or a local authority administering HB or CTB recovers debt using the usual methods of diligence, then the 'diligence stopper' will apply. In addition, there may be occasions when DWP, or a local authority administering HB or CTB is pursuing a debtor for recovery of a social security debt, may want to participate in a DPP arrangement.

You should therefore be aware that social security and child support debt is not usually the same as other debts. On receipt of applications for a DPP from those with social security or child support debt, or those in receipt of social security benefits, you must take account of the following guidelines.

A8.3.2 Child Support

Child support maintenance is a continuing liability as defined by the Debt Arrangement Scheme (Scotland) Regulations 2004 and could be paid through a payments distributor as such if CSA and the debtor agree.

All child support debts will be collected outside a DPP and take priority over any other debt owed by the debtor. Collection and enforcement of child support continuing liability and arrears is unaffected by a DPP, except where the CSA seeks to enforce a liability order by diligence in the Scottish courts. The diligence stopper will apply to such action, but the CSA's other powers to collect and enforce the sum under the liability order and any other child support debt due are unaffected by the DPP. The CSA could therefore make an arrears agreement for example.

The CSA's ability to impose a Deduction from Earnings Order for ongoing maintenance and arrears is not affected by a DPP.

If the debtor's net income available to a DPP changes (for example, because of a change in the amount of maintenance payable, or fluctuations in a Deductions from Earnings Order, or the making or variation of an arrears agreement) they should apply for variation on the grounds of a material change of circumstances.

A8.3.3 DWP debt recovered by deductions from prescribed benefits

DWP recovers debt such as benefit overpayment, social fund loans and child support current liability and arrears from prescribed benefits. If a person in receipt of a prescribed benefit makes an application for a DPP, it will be the net amount of benefit payable after these deductions which will be available for calculating ability to pay other debts.

A debtor may owe more than one debt to DWP and each will be treated separately in a DPP.

If a debtor participating in a DPP subsequently claims benefit and social security, or child support debts are outstanding, these will normally be recovered from his benefit using DWP's specific legislative mechanisms. This may have a knock-on effect on the debtor's available income and it will be for the debtor to make application to the DAS administrator for a variation of the DPP on grounds of material change of circumstance.

A8.3.4 Benefit overpayments

Recovery of overpaid benefit can be part of a DPP if there is no or insufficient prescribed benefit from which to recover. In these circumstances, DWP should be treated as any other creditor.

A8.3.5 Social fund loans

When considering a DPP, it should be noted that people with social fund debt can re-negotiate terms of social fund repayment agreements with DWP to reflect changes to their financial situation. If however, the needs of the debtor are best served by existing social fund loans being part of a DPP, those loans can be part of a DPP if there is no prescribed benefit from which to make deductions. In these circumstances, DWP should be treated as any other creditor.

A8.4 Local authorities and social security debt

Local authorities administer HB and CTB and have similar powers to DWP to recover HB and CTB overpayments from the current award of HB or CTB, or, if that is not possible, from any of the prescribed benefits listed at paragraph A8.2.2. They can also add CTB overpayments to the person's council tax bill. They may therefore choose not to be a creditor in a DPP if they can recover the debt by other means.

A8.5 Deductions of other debts from benefits administered by DWP

A8.5.1 Local Authorities and Landlords

Local authorities and other landlords can ask DWP to make deductions when there are rent arrears of more than 4 times the weekly rent accrued over eight weeks or more.

In addition, local authorities can, on obtaining a summary warrant or decree, request deductions from income support, jobseeker's allowance or pension credit to recover arrears of council tax and /or community charge.

A claimant's liability for arrears of accommodation costs may be deducted from income support, jobseeker's allowance, or pension credit if sufficient benefit is in payment. An example of this cost is a service charge not included in the housing costs. In these circumstances, a landlord can apply to DWP and deductions can be made from benefit for current accommodation costs and an amount for arrears. Only one deduction can be made to cover arrears of any housing costs.

A8.5.2 Water charges - Scotland

In Scotland, local authorities have responsibility for the billing and collection of all water charges, including sewerage. These charges are collected in the council tax charge by the local authority and any arrears are treated as a single debt. Therefore any deductions from income support, jobseeker's allowance or pension credit for council tax debt will include an amount for water.

However, when water charges are paid with or as part of rent, only one deduction can be made from income support, jobseeker's allowance or pension credit to cover the total debt.

A8.5.3 Utility Companies - gas and electric

Any debt owed to the fuel companies plus a figure to cover current consumption may, on application to DWP from the supplier or the benefit customer, be deducted from income support, jobseeker's allowance, or pension credit if sufficient benefit is in payment and it is considered to be in the interests of the family.

A8.5.4 Fines

A court may find that an offender who has defaulted in paying a fine, compensation order, or any instalment of either, is claiming income support, jobseeker's allowance, or pension credit. The court may then request deductions for payment of an offender's fines or compensation order. Any court in Scotland can make an application.

A8.5.5 Any debt being collected in A8.5.1 – A8.5.4 by means of deductions from benefit cannot be put into a DPP.

Appendix 9

A9 Using Payplan as a payments distributor

A9.1 If you are using Payplan as a payments distributor, you need to follow the procedures laid down below. This is because Payplan will only accept electronically transmitted data. These procedures do not relate to other payments distributors.

(Note, the procedures in this appendix are only a temporary arrangement.)

A9.2 All the information required to set up a DPP is contained on the form 3. If the DPP is approved, the DAS administrator will send the relevant data to Payplan. But Payplan will not begin to make arrangements for distribution at this stage. They will wait for your instruction (see A6.3 below).

A9.3 When you receive notification from the DAS administrator that the DPP has been approved, you must instruct Payplan to distribute the monies paid to them by the debtor 'pro rata to the creditors in accordance with form 3'. (Payplan will only offer pro rata payments. If you give any other instruction, Payplan will not make a distribution.)

A9.4 Payplan will give your client an account on the Paylink computer system. They are also willing to give you access to this account. All you will need is access to their website from your computer. Payplan will give you a password to view the account.

A9.5 Payplan will notify you if there are any irregular or missed payments. You are encouraged to log onto your client's account on the Paylink system to get details of these. If you do not have web access, you can request Payplan to send you a more detailed report.

A9.6 You are encouraged to log onto your client's account on the Paylink system to check the progress of the DPP when you conduct the 6-monthly review. If you do not have web access, you can request a report from Payplan.

A9.7 If there is a variation, the DAS administrator will send the information related to payments on the form 8 or 8a to Payplan. When the DAS administrator informs you that the variation is approved, you must instruct Payplan to make the distribution 'pro rata to the creditors in accordance with form 8 (or 8a)'. Payplan will not implement the varied plan until you send this.

If the variation is because there is a new creditor, there are no boxes for this creditor's banking details on the form. Please obtain the new creditor's banking details and pass these directly to Payplan.

Similarly, if the variation stipulates a new condition that the debtor is to pay by payment mandate, you should give the information relevant to the mandate to Payplan.