



A creditor's guide to debt arrangement schemes

Scotland Edition



March 2024

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Introduction

A licensed insolvency practitioner (IP) has given you this because you, or your business, may be owed money by an individual in a debt payment programme (DPP) under the Debt Arrangement Scheme (DAS). The terms DPP and DAS are used interchangeably.

This guide aims to help you understand your rights as a creditor and to describe how best these rights can be exercised. It is intended to relate only to those entities who are eligible for a DAS in Scotland. It is not an exhaustive statement of the relevant law or a substitute for specific professional or legal advice.

We have made every effort to ensure the guide is accurate, but R3 cannot accept responsibility for the consequences of any action you take in reliance on its contents. If, having read the guide, you remain in any doubt about your rights, you should consult an IP or solicitor.

We hope that you will read this guide carefully and consider whether taking an active role as a creditor in this case would benefit you or your business.

R3, the insolvency and restructuring trade body, can provide you with a list of members near you, through the member search function on its website. If you're looking to speak to someone about insolvency advice, or find a local IP, insolvency lawyer, or restructuring expert and they're a member of R3, they'll be on there – and many will offer a free consultation to people who are looking for help with their (business) finances – [find a R3 Member](#).

What is DAS?

DAS is a Scottish Government-backed statutory debt management scheme available to certain categories of debtor (see below) to deal with their debts. It is intended to give these individuals who are in debt, a breathing space to allow them to repay their debts in full through a debt payment programme (DPP), over an extended but reasonable length of time.

If a debtor has applied for a DPP their details will be recorded on the DAS Register. It is worth checking this Register before taking action to recover a debt to avoid you incurring unnecessary costs.

On completion of the DPP, you will have received 78% of the money owing at the commencement of the DPP. Interest and charges are frozen on approval of the DPP. The remaining 22% is used to pay the costs of the scheme.

The main legislation for DAS is the Debt Arrangement and Attachment (Scotland) Act 2002.

Who is eligible?

Individuals and sole traders are eligible for DAS. However, if the person falls into the category of a business (for example: partnership, limited partnership or trust) they have to seek advice from a DAS approved insolvency practitioner who applies for the DPP on behalf of the debtor entity. This category of DAS is referred to as a Business DAS.

An individual can enter a DAS jointly if the debtor has joint debts with a partner (where that partner is a spouse or civil partner of each other; or the parties are living together as if spouses or civil partners of each other). In these circumstances, both parties must consent to the application being made for a DPP.

To be eligible for the DAS, the individual must have one or more debts and the following must apply:

- Be habitually resident in Scotland.
- Have sought the advice and assistance of a DAS-approved money adviser.
- Want to repay their debts without the threat of creditors taking legal action against them.
- Have had their income and expenditure assessed by the money adviser using the [Common Financial Tool \(CFT\)](#). The CFT is a statutory method of assessing what proportion of the debtor's income should be contributed by them towards their debts.
- Have been provided with a [Debt Advice and Information package](#) (this is a booklet that provides information for the person to help them deal with their creditors).

However, a debtor would not be eligible for DAS if any of the following apply:

- They are bound by a protected trust deed.
- They are bankrupt or subject to a bankruptcy restrictions order.
- Their DAS application only includes one debt and the debtor is subject to a time to pay direction under section 1 (time to pay directions) or section 5 (time to pay orders) of the Debtors (Scotland) Act 1987, in relation to that debt.
- The DAS application only includes one debt and are subject to a time order under section 129 (time orders) of the Consumer Credit Act 1974, in relation to that debt.
- They are paying a debt or debts under a conjoined arrestment order. However, if a creditor, whether the creditor is involved in the conjoined arrestment order or not, has tried lawfully to enforce another debt owed, then the debtor may be eligible to apply for DAS.

To apply for a business DAS, the debtor entity must have been formed under Scots law and have an established place of business in Scotland. A DPP under a Business DAS can only last for a maximum of five years but if approved, it works the same way as a personal

DAS in that it will freeze all interest, fees, penalties or other charges on the debt as it stands at the date of approval.

Who is involved in the process?

In addition to the debtor and creditors, the following are involved in the DAS process:

- The DAS Approved Money Adviser is a money adviser who meets the criteria to offer a DPP under DAS as a debt management option and is able to advise the debtor in respect of their financial circumstances, the effect of the proposed DPP and the preparation of the DAS application. As referred to above, where the process is for a Business DAS, it must be an approved insolvency practitioner who provides this advice and makes the application.
- The DAS Administrator overseeing the DAS process is the Accountant in Bankruptcy (AiB), a Scottish Government official. The DAS Administrator will decide whether to approve the debtor's application and is responsible for the approval of DPPs, approving money advisers, approving payments distributors and maintaining the DAS Register.
- The Continuing Money Adviser, a DAS Approved Money Adviser, who can administer a DPP after its approval.
- The Payments Distributor which is an organisation responsible for the collection of payments from the debtor and the distribution of these funds to creditors.

What is the process for approval of a DAS?

Once a debtor has received the advice from the money adviser, an application can be made for a DAS.

Using the CFT, the money adviser will calculate how much the debtor can afford weekly or monthly to pay towards their debt. All debts owed can be included in the application except a continuing liability (e.g. rent, mortgage, council tax, utilities, student loans). However, a debtor can choose to exclude rent or mortgage arrears, and in this case, the payment towards any arrears must be shown in their expenditure.

The money adviser will consult with you as creditor to confirm the information about your debt, including the outstanding balance, contractual payments and details of existing payment protection etc. They will provide you with a signed mandate authorising them to act on the debtor's behalf.

What information will I receive and what involvement do I have in the approval of a DAS?

A proposal is sent to you for consideration. This will show:

- The debtor's income and expenditure.
- The amount they will pay regularly.
- How often they will make the payments.
- The total amount owed to you.
- How long the DPP will last.
- The amount you will receive after fees are deducted.

You will be given 21 days to respond with your acceptance or rejection to the terms of the DPP. If you do not respond within 21 days, you will be treated as having accepted the DPP which is referred to as deemed consent.

The DAS Administrator will decide whether to approve the debtor's application and is responsible for the approval of the DPP. The DAS Administrator can still approve the DPP if it's fair and reasonable to do so, even if some creditors do not accept the terms.

In the case of an individual debtor, provided that not less than 9/10 in value of all of the creditors consent (or are deemed to have consented) then the DAS Administrator must approve the DPP. If the debtor is a legal person, trust or unincorporated body of persons each creditor must consent or be deemed to have consented to the Business DAS.

What happens when a DPP is rejected?

You will be able to consider whether further enforcement action to recover debts is appropriate. You may also apply interest, fees and charges as per your terms and conditions. If you are unhappy with the decision of rejection, you can ask for a review (see below). The debtor can also ask for a review and during this period you will not be able to take any enforcement action.

How is my claim agreed in the DPP?

You will be invited to advise the DAS Administrator if the amount shown as being due to you is incorrect. If you are making an application to amend the amount of a debt, or include an omitted debt, you must make it within 120 days of the date of approval of the DAS.

What is the effect of a DAS on the debtor?

The debtor commits to repaying their debts based on their disposable income following assessment using the CFT. The length of repayment will be dependent on the amount of

the debt and how much the debtor can pay, although a Business DAS can only last for a maximum of five years.

If the debtor's circumstances change, the DPP can be varied to take account of this. The debtor, a creditor or a money adviser acting on the debtor's behalf can apply to the DAS Administrator to vary the approved DPP. The debtor can also apply for a payment break of up to six months if their disposable income has reduced by 50% or more as calculated by the CFT. There is no limit to the number of payment breaks the debtor can apply for. The debtor can also request a short-term financial crisis payment break of one month and up to two in a 12-month period in certain circumstances, for example if they had to pay for car repairs. In both situations, the term of the DPP will be extended to cover any break.

If the debtor does not comply with the conditions of the DPP, it may be revoked (brought to an end), and creditors will be able to resurrect or commence legal action against the debtor. Creditors will then be able to reinstate all interest, fees, penalties and charges that would have been payable if the DAS DPP had never existed.

What are the conditions of a DPP?

Once a DAS DPP has been approved, the debtor must comply with certain conditions, specified by law. They must:

- Make the first payment under a DPP within 42 days of the DPP being approved.
- Make all payments under the DPP when they are due.
- Pay continuing liabilities/expenses (rent, council tax etc.) when due.
- Make no other payment to a creditor taking part in the DPP other than a payment due under the DPP (except for a continuing liability).
- Not apply or obtain credit over and above the allowed amount unless permitted by the DAS Administrator.
- Notify their money adviser or the DAS Administrator of a change of address or any changes to circumstances within seven days.
- Adhere to information requests by their DAS Administrator or money adviser within 10 working days.
- Make payments in respect of credit agreed and obtained under the rules of DAS when they are due.
- Give all notices and intimation as required by a debtor under the regulations.
- Complete and submit a tax / duty return or declaration on time and pay any sum due.

- Notify the DAS Administrator as soon as possible if a money adviser does not act on their behalf unless the money adviser has either resigned or been suspended or revoked.

A DPP may also be subject to further conditions by a money adviser or DAS Administrator, subject to approval. This could include a request to gain money from the sale of an asset, guarantee of extra payments such as a lump sum from any future income, or any other reasonable condition. If the debtor breaches any of the conditions, the DPP may be revoked as set out above.

There are additional standard conditions imposed on business debtors which require them to:

- Declare all assets owned by them every 12 months.
- Not to sell any non-trading assets without the consent of the money adviser.
- Make all payments due under the DPP within five years of the date of the application for a DPP.

What is the effect of the DAS on unsecured creditors?

When a DPP is approved, you must comply with the DAS Regulations. You can take no further enforcement action to pursue the debt. Interest and charges on your debt are frozen. You will receive regular payments towards the debt owed to you under the terms agreed in the DAS.

A charge is made to all creditors for the provision of the payment distribution service and application fee. The maximum fee to be charged for the DAS application is a total of 22% of funds ingathered from the debtor. 2% is paid to the DAS Administrator and 20% is split between the continuing money adviser and the payment distributor. You will therefore receive 78% of the debt owed to you if the debtor completes the DPP. A payment distributor will ensure that you are paid regularly. The money adviser will choose who to appoint as payments distributor in each DPP.

How does a DAS end?

A DAS reaches its conclusion when the debtor has either made all payments as agreed, made a lump sum payment equivalent to all outstanding payments due, or all creditors agree in writing to complete the DPP prior to the scheduled end. At this stage, the debtor cannot be held liable for any further payments towards debts included in the DPP, nor any interest or charges which would have accrued during the DAS. Once the DPP is completed, the debtor's details are removed from the DAS Register and creditors will be informed their debts have been repaid. A DAS will appear on the debtor's credit file for six years.

A DAS may also be revoked. This will happen automatically if the debtor is made bankrupt, signs a trust deed that becomes protected or if they die. An application for revocation may also be made by the creditors, debtor or the money adviser on a number of grounds, including that the debtor has failed to satisfy the conditions of the DPP.

What should I do if I'm just dissatisfied with the DAS Administrator's handling of the case?

You can ask for a review of a decision taken by the DAS Administrator to:

- Dispense with your consent and approve a DPP.
- Refuse to approve a DPP.
- Attach a discretionary condition.
- Approve or refuse a variation.
- Correct an accidental error and restore a DPP.
- Revoke a DPP.
- Refuse to revoke a DPP if the DAS Administrator has disregarded a missed payment that has been approved as a short-term crisis break by a money adviser.

If you do not agree with the decision of the review, you can, within 14 days of the date of the review decision, make an appeal to the relevant sheriff on a point of law. The sheriff's decision is final.

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R3 does not license or discipline its members; this is the responsibility of the practitioner's regulatory body. The regulatory bodies are:

The Institute of Chartered Accountants in England and Wales

Tel: 01908 248 250 www.icaew.com

The Insolvency Practitioners Association

Tel: 0330 122 5237 www.insolvency-practitioners.org.uk

The Institute of Chartered Accountants of Scotland

Tel: 0131 347 0100 www.icas.com

Chartered Accountants Ireland (CAI)

Tel: 00 353 1 637 7200 www.charteredaccountants.ie

Disclaimer: Information in this guide is intended to provide an overview only and relates to debt arrangement schemes. It is not a replacement for seeking advice specific to your circumstances.

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