

HOME OWNER AND DEBTOR PROTECTION (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 2 – Sequestration and Trust Deeds

Section 10 – trust deeds

61. [Section 10](#) amends the definition of trust deed in section 5(4A) of the 1985 Act (originally inserted by section 3(4) of the Bankruptcy (Scotland) Act 1993).
62. The current definition is restricted to trust deeds which convey the whole of the debtor's estate to their trustee, except for assets which would not vest in a trustee in sequestration under section 33(1) of the 1985 Act.
63. The new definition is extended to include trust deeds which exclude whole or part of the debtor's dwellinghouse from being conveyed to the trustee, where a secured creditor holds a security over it and has agreed not to claim under the trust deed.
64. The debtor's 'dwellinghouse' is defined as a dwellinghouse including any yard, garden, outbuilding or other pertinents, which, on the day immediately preceding the date the trust deed was granted, is the sole or main residence of the debtor, and either owned by the debtor (whether alone or in common) or let under a long lease (a lease exceeding 20 years). This is irrespective of whether it is used to any extent by the debtor for the purposes of any profession, trade or business.
65. The extended definition of trust deed will apply to those provisions in the 1985 Act which apply to trust deeds generally, that is sections 34 (gratuitous alienations), 36 (unfair preferences) and 70 (supply of utilities) and Schedule 1 (determination of creditors' claims) under Schedule 5, paragraph 4.
66. The extended definition will also apply to protected trust deeds. Discharge of debts under a protected trust deed which excludes a secured creditor or an asset which is subject to a security will not affect the rights of the secured creditor – see regulation 19(2) of the [Protected Trust Deeds \(Scotland\) Regulations 2008 \(S.S.I. 2008/143\)](#).