



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 14

VOLUNTARY TRUST DEEDS FOR CREDITORS

Conditions for protected status

164 Protected status: the debtor

- (1) The debtor must be—
 - (a) a living individual who,
 - (b) a partnership which,
 - (c) a limited partnership (within the meaning of the Limited Partnerships Act 1907) which,
 - (d) a trust which,
 - (e) a corporate body which, or
 - (f) an unincorporated body which,grants a trust deed for a single estate.
- (2) The debtor must not be—
 - (a) a debtor whose estate has been sequestrated if the trustee in the sequestration has not been discharged under section 148 or 151, or
 - (b) an entity referred to in section 6(2).
- (3) The total amount of the debtor's debts (including interest) as at the date on which the debtor grants the trust deed must be not less than £5,000.

Commencement Information

II S. 164 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Changes to legislation: Bankruptcy (Scotland) Act 2016, Cross Heading: Conditions for protected status is up to date with all changes known to be in force on or before 14 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

165 Protected status: the trustee

The trustee under the trust deed must be a person who would not be disqualified under section 49(3) to (5) from acting as the replacement trustee were the debtor's estate being sequestrated.

Commencement Information

I2 [S. 165](#) in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

166 Exclusion of a secured creditor from trust deed

- (1) The conditions set out in subsection (2) apply where a secured creditor is, by virtue of an agreement such as is mentioned in paragraph (b)(ii) of the definition of “trust deed” in section 228(1) (in this Part referred to as “the trust deed definition”), excluded from a trust deed.
- (2) Before the debtor grants the trust deed—
 - (a) the trustee must provide the debtor and the secured creditor with a valuation, made by a chartered surveyor or other suitably qualified person, of the dwellinghouse (or part) which is to be excluded from the estate conveyed as mentioned in paragraph (b)(i) of the trust deed definition,
 - (b) the debtor must, in such form as may be prescribed for the purposes of this paragraph, request obtaining the secured creditor's agreement not to claim under the trust deed for any of the debt in respect of which the security is held, and
 - (c) any agreement so obtained must be set out in such form as may be prescribed for the purposes of this paragraph.

Commencement Information

I3 [S. 166](#) in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

167 Statements in and advice regarding trust deed

- (1) The trust deed must state—
 - (a) that, subject to any exclusion mentioned in paragraph (b)(i) of the trust deed definition, all of the debtor's estate (other than property listed in section 88(1) or which would be excluded under any other provision of this Act or of any other enactment from vesting in the trustee of a sequestrated estate) is conveyed to the trustee, and
 - (b) that the debtor agrees to convey to the trustee, for the benefit of creditors generally, any estate (wherever situated) which—
 - (i) is acquired by the debtor during the 4 years beginning with the date on which the trust deed is granted, and
 - (ii) would have been conveyed to the trustee by virtue of paragraph (a) had it been part of the debtor's estate on the date on which the trust deed was granted.

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- (2) Where the debtor's dwellinghouse, or part of the debtor's dwellinghouse, is excluded as mentioned in paragraph (b)(i) of the trust deed definition from the estate conveyed to the trustee, the trust deed must also include details—
- (a) of any secured creditor who has agreed not to claim under the trust deed for any of the debt in respect of which the security is held, and
 - (b) of that debt.
- (3) Before the debtor grants the trust deed—
- (a) the trustee must advise the debtor that granting the deed may result—
 - (i) in the debtor's estate being sequestrated,
 - (ii) in the debtor's being refused credit, whether before or after the debtor's discharge under section 184,
 - (iii) subject to any exclusion mentioned in paragraph (b)(i) of the trust deed definition, in the debtor's not being able to remain in the debtor's current place of residence,
 - (iv) subject to any such exclusion, in the debtor's being required to relinquish property which the debtor owns,
 - (v) in the debtor's being required to make contributions from income for the benefit of creditors,
 - (vi) in damage to the debtor's business interests and employment prospects, and
 - (vii) in the fact of the debtor's having granted a trust deed becoming public information,
 - (b) the trustee must provide the debtor with a copy of a debt advice and information package, and
 - (c) the trustee and the debtor must both sign a statement to the effect that the trustee has fulfilled the duties referred to in this subsection.

Commencement Information

I4 [S. 167](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

168 Payment of debtor's contribution

- (1) The trust deed must state that the debtor is, during the payment period mentioned in subsection (2), to pay any contributions from income for the benefit of creditors (including, where the debtor is an individual, any contribution required by the common financial tool) at regular intervals.
- (2) The payment period is—
- (a) a period of 48 months beginning with the date on which the trust deed is granted,
 - (b) such period shorter than 48 months as is determined by the trustee, or
 - (c) such period longer than 48 months as is—
 - (i) determined by the trustee where there has been a period during which the debtor has not paid those contributions, or
 - (ii) agreed between the debtor and the trustee.

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- (3) The trustee may, under subsection (2)(b), determine a shorter payment period only if, in the trustee's opinion, payment of those contributions (from income or otherwise) during that period would allow distribution of the debtor's estate to meet in full the total amount, as at the date on which the debtor grants the trust deed, of the debtor's debts (including interest).
- (4) Where the debtor is an individual, those contributions must be such as to result, over the payment period, in the payment of a sum less than the total amount, as at the date on which the debtor grants the trust deed, of the debtor's debts (including interest).
- (5) In calculating those contributions for the purposes of subsections (1) and (4), the whole of the debtor's surplus income over the amount allowed for expenditure in the statement of the debtor's income and expenditure supplied under section 170(1)(d)(ii) must be applied.

Commencement Information

I5 S. 168 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

169 Notice in register of insolvencies

After the trust deed has been delivered to the trustee, the trustee must without delay send a notice in such form as may be prescribed for the purposes of this section to AiB for publication by registration in the register of insolvencies.

Commencement Information

I6 S. 169 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

170 Documents to be sent to creditors

- (1) Not later than 7 days after the date of registration under section 169, the trustee must send to every creditor known to the trustee (other than any secured creditor who has, as mentioned in paragraph (b)(ii) of the trust deed definition, agreed not to claim under the trust deed for any of the debt in respect of which the security is held)—
 - (a) a copy of the trust deed,
 - (b) a copy of such form as may be prescribed for the purposes of a creditor making a statement of claim,
 - (c) a copy of the notice mentioned in section 169,
 - (d) a statement of the debtor's affairs, prepared by the trustee, containing—
 - (i) a list of the debtor's assets and liabilities,
 - (ii) a statement of the debtor's income and expenditure as at the date on which the trust deed was granted (being, where the debtor is a living individual, a statement in the [F¹ form prescribed for that purpose by the Protected Trust Deeds (Forms) (Scotland) Regulations 2016]),
 - (iii) a statement as to the extent to which those assets and that income will not vest in the trustee,
 - (iv) a statement as to whether, and if so on what basis, the [F²EU] insolvency proceedings regulation applies to the trust deed,

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- ^{F3}(v)
- (vi) a statement as to whether the creditors are likely to be paid a dividend and the amount of the dividend that is expected to be paid,
 - (vii) if the case is one in which there is an exclusion such as is mentioned in paragraph (b)(i) of the trust deed definition, a statement by the trustee, on the basis of the information for the time being available to the trustee, as to what the effect of that exclusion is likely to be on any such dividend,
 - (viii) a statement that the trustee on request must provide a copy of any valuation held by the trustee which has been made by a third party and which relates to an asset of the debtor, any statement showing the amount due by the debtor under a security and any document showing the income for the time being of the debtor,
 - (ix) a copy of any agreement referred to in section 175(1),
 - (x) a statement explaining the conditions which require to be fulfilled before the trust deed will become a protected trust deed and the consequences of its so becoming,
 - (xi) details of any protected trust deed in respect of which, in the 6 months preceding publication of the notice provided for in section 169, the debtor has been discharged in terms of section 184(1) (or regulation 24(1) of the Protected Trust Deeds (Scotland) Regulations 2013 (S.S.I. 2013/318)) or been refused a letter of discharge under section 184(8) (or regulation 24(8) of those regulations), and
 - (xii) where a secured creditor's agreement has been obtained by virtue of paragraph (b) of section 166(2), a statement containing the valuation made by virtue of paragraph (a) of that section and a statement of the amount owed, in respect of the security held, to that creditor, and
- (e) a statement, in such form as may be prescribed for the purposes of this paragraph, of the trustee's anticipated realisations from the trust deed.

- (2) The trust deed must be acceded to by the creditors to whom the trustee is required by subsection (1) to send documents (those creditors being in this Part referred to as “the notified creditors”) but is deemed to have been acceded to by them unless, within the relevant period, the trustee receives notification in writing from a majority in number, or no fewer than $\frac{1}{3}$ in value, of them that they object to the trust deed being granted protected status.

Textual Amendments

- F1** Words in s. 170(1)(d)(ii) substituted (30.11.2016) by [S.S.I. 2016/398, reg. 2\(2\)](#)
- F2** Word in s. 170(1)(d)(iv) substituted (26.6.2017) by [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/210\), regs. 1, 4\(12\)](#) (with [reg. 9](#))
- F3** [S. 170\(1\)\(d\)\(v\)](#) omitted (31.12.2020) by virtue of [The Insolvency \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/94\), regs. 1, 4\(14\)](#) (with [reg. 9](#)) (as amended by [S.S.I. 2020/337, regs. 1, 2](#)); [2020 c. 1, Sch. 5 para. 1\(1\)](#)

Commencement Information

- I7** S. 170 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 78(2)(a) words in s. 78(2) renumbered as s. 78(2)(a) by [2019 asp 4 s. 7\(2\)\(a\)](#)
- s. 78(2)(b) and word inserted by [2019 asp 4 s. 7\(2\)\(b\)](#)