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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2013 No.**

**The Protected Trust Deeds (Scotland) Regulations 2013**

**PART 4**

**ADMINISTRATION, ACCOUNTING AND DISCHARGE**

**Directions to trustee under protected trust deed**

**19.**—(1) The Accountant may give directions to the trustee under a protected trust deed as to how the trustee should conduct the administration of the trust.

(2) On a direction being issued to the trustee by virtue of paragraph (1) its terms are to be intimated to the debtor and to all known creditors.

(3) The direction may be issued on the initiative of the Accountant or (at the Accountant's discretion) on the request of the trustee, the debtor or any creditor.

(4) The trustee must, unless paragraph (5) applies, comply with the direction within the period of 30 days beginning with the day on which the direction is given.

(5) Where the trustee has made an appeal to the sheriff under regulation 27(1)(b) and the appeal has been dismissed by the sheriff or withdrawn by the trustee, the trustee must comply with the direction within the period of 30 days beginning with the day on which (as the case may be)—

- (a) the appeal was dismissed by the sheriff; or
- (b) the appeal was withdrawn by the trustee.

(6) If it appears to the Accountant that the trustee has failed, without reasonable excuse, to comply with the direction, the Accountant may report the matter to the sheriff who, after hearing the trustee on the matter, may—

- (a) censure the trustee; or
- (b) make such other order as the circumstances of the case require.

**Information and notification obligations of trustee under protected trust deed**

**20.**—(1) Where the trustee under a protected trust deed makes a determination to shorten or lengthen the payment period under regulation 8, the trustee must notify the debtor of the determination without delay.

(2) Whether or not still acting in the administration of the trust under a protected trust deed, the trustee must supply the Accountant with such information relating to the trust deed as the Accountant considers necessary to enable the Accountant to discharge the Accountant's functions under the Act or these Regulations.

(3) If it appears to the Accountant that the trustee has failed, without reasonable excuse, to supply information to the Accountant which is requested in accordance with paragraph (2), the Accountant may report the matter to the sheriff who, after hearing the trustee on the matter may—

- (a) censure the trustee; or

(b) make such other order as the circumstances of the case require.

(4) On the trustee under a protected trust deed being replaced with a new trustee, the new trustee must notify the Accountant accordingly without delay.

#### **Administration of trust under protected trust deed**

**21.**—(1) At intervals of not more than 12 months (the first such interval beginning with the date on which the trust deed was granted) and by no later than 6 weeks after the end of each interval, the trustee under a protected trust deed must send the trustee's accounts of the trustee's intromissions with the debtor's estate in administering the trust during the period in question—

- (a) to the debtor;
- (b) to each creditor; and
- (c) to the Accountant (unless they are sent under regulation 25).

(2) At such intervals the trustee must send to the Accountant, the debtor and each creditor a report in Form 4 on the management of the trust during the period in question.

(3) The debtor or any creditor may, within 14 days after receiving a statement by virtue of paragraph (1), require the Accountant to exercise the function mentioned in section 1A(1)(a)(iia) of the Act by carrying out an examination of the administration of the trust by the trustee.

(4) In determining the amount of any contribution from income to be made by the debtor, the trustee may take account of any social security benefit paid to the debtor but any contribution must not include an amount derived from social security benefit.

#### **Retention of documents by trustee under protected trust deed**

**22.** The trustee under a protected trust deed must retain the following documents (or copies of those documents) for a period of at least 12 months after the date of the trustee's discharge under regulation 25—

- (a) the trust deed;
- (b) the statement mentioned in regulation 7(3)(c);
- (c) the notice mentioned in regulation 9;
- (d) the statement mentioned in regulation 10(1)(d);
- (e) all statements of objection or accession received from creditors;
- (f) the statement of anticipated realisations mentioned in regulation 10(1)(e);
- (g) any written agreement relating to the debtor's heritable estate mentioned in regulation 15(2);
- (h) all reports sent under regulation 21(2);
- (i) any adjudication on a creditor's claim;
- (j) any scheme of division among creditors;
- (k) any circular sent to creditors with accounts;
- (l) the debtor's discharge from the trust deed in Form 5;
- (m) the application to creditors for the trustee's discharge;
- (n) the statement of realisation and distribution mentioned in regulation 25(7)(b);
- (o) any decree, interlocutory decree, direction or order relating to the administration of the trust which is granted by the court;

- (p) any other document relating to the administration of the trust if it is a document which the Accountant, by notice to the trustee prior to the trustee's discharge, identifies as a document the trustee should retain.

### **Remuneration payable to trustee under protected trust deed**

**23.**—(1) For work done by the trustee in administering the trust, the trustee under a protected trust deed is entitled to remuneration which may consist of—

- (a) a fixed fee which must be set out in the Form 3 (“fixed fee”);
- (b) an additional fee based upon a percentage of the total assets and contributions realised by the trustee which must be set out in the Form 3; and
- (c) outlays incurred after the date on which the trust deed was granted.

(2) In the event of unforeseen circumstances, the fixed fee may be increased by—

- (a) approval by a majority in value of the notified creditors; or
- (b) all notified creditors having first been asked to approve the increase, approval by the Accountant.

(3) The Accountant is to approve an increase in the fixed fee if satisfied—

- (a) that a majority in number of the notified creditors have not refused to approve the increase in the fixed fee; and
- (b) that the increase in the fixed fee is required for work to be completed by the trustee for the benefit of the creditors generally that was not foreseen in submitting the Form 3.

(4) In deciding whether or not to grant the approval mentioned in paragraph (2)(b), the Accountant may determine the amount of any increase in the fixed fee.

(5) The trustee is entitled to include work done in seeking to comply with regulation 6 (whether or not a secured creditor has agreed not to claim under the trust deed) in the fixed fee and any outlays incurred.

(6) Any debt due to a third party for work done before the granting of the trust deed does not rank higher than any other creditor's claim.

(7) The trustee is entitled to recover from the debtor's estate any audit fee charged by the Accountant under paragraph 1 or 1A of Schedule 5 to the Act in accordance with the rate specified in the Table of Fees in Schedule 1 to the Bankruptcy Fees etc. (Scotland) Regulations 2012(1).

(8) The Accountant may, at any time, audit the trustee's accounts and fix the outlays of the trustee in the administration of the trust.

### **Discharge of debtor**

**24.**—(1) If the conditions set out in paragraph (2) are met, subject to paragraphs (6), (9) and (11)—

- (a) the debtor will be discharged from all debts and obligations—
  - (i) in terms of the trust deed; or
  - (ii) for which the debtor was liable as at the date that deed was granted; and
- (b) the trustee under the protected trust deed must send—
  - (i) to the Accountant, an application for discharge of the debtor in Form 5; and
  - (ii) to the debtor, a copy of that application.

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(1) [S.S.I. 2012/118](#), amended by regulation 29 below.

- (2) The conditions are—
- (a) that the trustee makes a statement in the Form 5 that, to the best of the trustee’s knowledge the debtor has—
    - (i) met the debtor’s obligations in terms of the trust deed; and
    - (ii) co-operated with the administration of the trust; and
  - (b) any notice of inhibition under paragraph 2 of Schedule 5 to the Act has been recalled or has expired.
- (3) If the conditions set out in paragraph (2) are met and unless paragraph (11) applies, on receipt of the Form 5 referred to in paragraph (1)(b)(i), the Accountant must register it in the register of insolvencies and the date of discharge is the date on which it is so registered.
- (4) The Accountant must notify the trustee of the fact of registration and the date of the debtor’s discharge without delay.
- (5) The trustee must notify the debtor and every creditor known to the trustee of the information set out in the notification mentioned in paragraph (4) by no later 7 days after the date of receipt of the notification.
- (6) The letter of discharge does not—
- (a) discharge the debtor from any liability arising after the date on which the trust deed was granted;
  - (b) discharge the debtor from any liability or obligation mentioned in section 55(2) of the Act;
  - (c) discharge the debtor from any liability for a debt in respect of which a security is held if the secured creditor has agreed under section 5(4A)(b)(ii) of the Act not to claim under the trust deed for any of the debt in respect of which the security is held; or
  - (d) affect the rights of a secured creditor.
- (7) For the purposes of paragraph (2)(a)(i), it is not a failure to meet the debtor’s obligations—
- (a) for the debtor to refuse to consent to the sale of the debtor’s dwellinghouse (or of a part of that dwellinghouse) if the dwellinghouse or part is excluded from the estate conveyed to the trustee in accordance with section 5(4A)(b) of the Act;
  - (b) for the debtor to refuse to give a relevant consent in terms of section 40(1)(a) of the Act.
- (8) If on request by the debtor, or at the end of the period of 48 months beginning with the day on which the trust deed was granted, the trustee refuses to apply to the Accountant for discharge of the debtor, the trustee must—
- (a) inform the debtor in writing—
    - (i) of the fact and the reason for the refusal;
    - (ii) that the debtor is not discharged from the debtor’s debts and obligations in terms of the trust deed; and
    - (iii) of the debtor’s right to apply to the sheriff for a direction as regards the administration of the trust in accordance with regulation 28(1); and
  - (b) send a copy of this written notification to the Accountant by no later than 21 days after the date of issue of the notification.
- (9) This regulation does not affect the right to recover any debt arising from a student loan.
- (10) In paragraph (9), “student loan” means a loan made—
- (a) by virtue of regulations made under section 73(f) of the Education (Scotland) Act 1980<sup>(2)</sup>;

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(2) 1980 c.44. Section 73(f) was amended by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6), section 3(2). Section 73B was inserted by the Teaching and Higher Education Act 1998 (c.30), section 29(2).

- (b) under section 1 of the Education (Student Loans) Act 1990(3);
- (c) by virtue of regulations made under section 22 of the Teaching and Higher Education Act 1998(4); or
- (d) by virtue of regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1998(5).

(11) The Accountant may refuse to register a Form 5 in the register of insolvencies if the Accountant is not satisfied that the debtor has—

- (a) met the debtor’s obligations in terms of the trust deed; or
- (b) co-operated with the administration of the trust.

(12) If paragraph (11) applies and the Accountant refuses to register the Form 5 in the register of insolvencies, the Accountant must provide written notification of that refusal and the reason for it to the trustee and the debtor.

(13) The trustee must send a copy of the notification mentioned in paragraph (12) to every creditor known to the trustee by no later than 7 days after the date of receipt of the notification.

### Discharge of trustee

**25.**—(1) This regulation applies where a trustee under a protected trust deed has made the final distribution of the trust estate among the creditors.

(2) Not more than 28 days after the date of final distribution, the trustee must apply in Form 6 for discharge to such of those creditors as have acceded (or are deemed to have acceded) to the trust deed.

(3) The trustee must send to the Accountant by the date of application—

- (a) a copy of the Form 6; and
- (b) the accounts of the trustee’s intromissions for the last period for which accounts must be sent under regulation 21(1).

(4) For the purposes of paragraph (2), the “date of final distribution” is the date on which all of the estate distributed has been placed beyond the control of the trustee.

(5) A creditor who does not respond to the trustee’s application within 14 days after the trustee makes it is deemed to have agreed to the trustee’s discharge.

(6) If a majority of the creditors in value consent to the application, the trustee is discharged.

(7) On being discharged, the trustee must within 28 days of the date of discharge—

- (a) inform the Accountant of the discharge;
- (b) send the Accountant, for registration in the register of insolvencies, a statement of realisation and distribution of estate under the protected trust deed; and
- (c) send the Accountant, where accounts submitted under paragraph (3)(b) require to be revised, the revised accounts.

(8) A statement under paragraph (7)(b) is to be in Form 7.

(9) Where the trustee’s discharge is granted under this regulation, the discharge also applies as regards any previous trustee under the trust deed unless, under regulation 28, a person with an interest obtains an order to the contrary from the sheriff.

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(3) 1990 c.6. The Education (Student Loans) Act 1990 was repealed (subject to transitional and saving provisions) on 13th August 1998 (S.I. 1998/2004).

(4) 1998 c.30. Section 22 was amended by: the Learning and Skills Act 2000 (c.21), section 146(2(a)) and Schedule 11, paragraph 1; the Higher Education Act 2004 (c.8), sections 42(1) and 43(2) and Schedule 7, paragraph 1; the Apprenticeships, Skills, Children and Learning Act 2009 (c.22), section 257(2); the Education Act 2011 (c.21), section 76(1) and (2)(a); the Income Tax (Earnings and Pensions) Act 2003 (c.1), Schedule 6, paragraph 236; the Finance Act 2003 (c.14), section 147(3).

(5) S.I. 1998/1760 (N.I. 14).

**Electronic delivery of notices etc.**

26.—(1) Any notice or document authorised or required under these Regulations may be given, delivered or sent by electronic means, provided the intended recipient has—

- (a) consented (whether in the specific case or generally) to electronic delivery (and has not withdrawn that consent); and
- (b) provided an electronic address for delivery.

(2) In the absence of evidence to the contrary, a notice or other document is be presumed to have been delivered under these Regulations where—

- (a) the sender can produce a copy of the electronic message which—
  - (i) contained the notice or other document, or to which the notice or other document was attached; and
  - (ii) shows the time and date the message was sent; and
- (b) that electronic message was sent to the address supplied under paragraph (1)(b).

(3) This regulation does not apply where some other form of delivery is required by court rules or by order of the court.