
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2013 No.

The Protected Trust Deeds (Scotland) Regulations 2013

PART 2

CONDITIONS OF PROTECTION

The debtor

- 4.—(1) The debtor who grants the trust deed must do so for a single estate and must be—
- (a) a living individual;
 - (b) a partnership;
 - (c) a limited partnership (within the meaning of the Limited Partnerships Act 1907(1));
 - (d) a trust;
 - (e) a corporate body; or
 - (f) an unincorporated body of persons.
- (2) The debtor must not be—
- (a) a debtor whose estate has been sequestrated and the trustee in the sequestration has not been discharged under section 57 or 58A(2) of the Act; or
 - (b) an entity referred to in section 6(2) of the Act.
- (3) The total amount of the debtor's debts (including interest) at the date on which the debtor grants the trust deed must be not less than £5,000.

The trustee

5. The trustee under the trust deed must be a person who would not be disqualified under section 24(2) of the Act from acting as the replacement trustee were the debtor's estate being sequestrated.

Exclusion of a secured creditor

6. Where a secured creditor is excluded from a trust deed under section 5(4A)(b)(ii)(3) of the Act, prior to the debtor granting 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 third party, of the dwellinghouse (or part) which is to be excluded from the estate conveyed to the trustee under section 5(4A)(b)(i) of the Act;

(1) 1907 c.24.

(2) Section 58A was inserted by the Bankruptcy (Scotland) Act 1993 (c.6), Schedule 1, paragraph 16.

(3) Section 5(4A)(b) was inserted by section 10(1) of the Home Owner and Debtor Protection (Scotland) Act (asp 6).

- (b) the debtor must, in Part 1 of Form 1A, 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) the secured creditor's agreement must be set out in Part 2 of Form 1A.

Statements in relation to trust deed

7.—(1) The trust deed must state—

- (a) that, subject to any exclusion mentioned in section 5(4A)(b)(i) of the Act, all of the debtor's estate (other than property listed in section 33(1) of the Act or which would be excluded under any other provision of the Act or of any other enactment from vesting in the trustee of a sequestrated estate) is conveyed to the trustee;
- (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 a period of 4 years beginning with the date on which the trust deed is granted; and
 - (ii) would have been conveyed to the trustee under paragraph (1)(a) if it had been part of the debtor's estate on the date on which the trust deed was granted; and
- (c) that any contribution from income for the benefit of creditors is payable in accordance with regulation 8.

(2) Where the debtor's dwellinghouse, or part of the debtor's dwellinghouse, is excluded as mentioned in section 5(4A)(b)(i) of the Act 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 being refused credit, whether before or after the debtor's discharge under regulation 24;
 - (iii) subject to any exclusion mentioned in section 5(4A)(b)(i) of the Act, in the debtor not being able to remain in the debtor's current place of residence;
 - (iv) subject to any such exclusion, in the debtor being required to relinquish property which the debtor owns;
 - (v) in the debtor 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 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 referred to in section 10(5) of the Debt Arrangement and Attachment (Scotland) Act 2002(4); and
- (c) the trustee and the debtor must sign a statement to the effect that the trustee has fulfilled the duties referred to in this paragraph.

(4) asp 17. Section 10(5) is prospectively amended by the Child Maintenance and Other Payments Act 2008 (c.6), Schedule 7, paragraph 5 and S.S.I. 2012/301, Schedule 1, paragraph 2.

Payment of debtor's contribution

8.—(1) Where this regulation applies, the trust deed must state that the debtor must, during the payment period, pay the debtor's contribution from income at regular intervals.

(2) The payment period is—

- (a) a minimum period of 48 months beginning with the date on which the trust deed was granted;
- (b) such shorter period as is determined by the trustee; or
- (c) such longer period as is—
 - (i) determined by the trustee where there is a period during which the debtor did not pay the debtor's contribution; or
 - (ii) agreed by the debtor and the trustee.

(3) The trustee may determine a shorter payment period only if, in the opinion of the trustee, payment of the debtor's contributions (from income or otherwise) during the shorter period would allow distribution of the debtor's estate to meet in full the total amount of the debtor's debts (including interest) at the date on which the debtor grants the trust deed.

(4) Where the debtor is a living individual, the debtor's contributions from income must be such as to result over the payment period in the payment of a sum less than the total amount of the debtor's debts (including interest) at the date on which the debtor grants the trust deed.

(5) In calculating the debtor's contributions from income for the purposes of paragraph (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 regulation 10(1)(d)(ii) must be applied.

Notice in the register of insolvencies

9. After the trust deed has been delivered to the trustee, the trustee must without delay send a notice in Form 1 to the Accountant for publication by registration in the register of insolvencies.

Documents to be sent to creditors

10.—(1) Not later than 7 days after registration under regulation 9, the trustee must send to every creditor known to the trustee (other than any secured creditor who has under section 5(4A)(b)(ii) of the Act 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 Form 2 (to enable a creditor to make a statement of claim);
- (c) a copy of the notice mentioned in regulation 9;
- (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, in the style and format of the Common Financial Statement;
 - (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 EU Regulation applies to the trust deed;
 - (v) if the EU Regulation does apply to the trust deed, a statement as to whether the proceedings are main proceedings or territorial proceedings;

- (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 section 5(4A)(b)(i) of the Act, 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 in Form 1B referred to in regulation 15(2);
 - (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 it becoming a protected trust deed;
 - (xi) details of any protected trust deed in respect of which, in the 6 months preceding publication of the notice provided for in regulation 9, the debtor has been discharged or refused a letter of discharge in terms of regulation 24(1) or (8) (or regulation 19(1) or (5) of the 2008 Regulations);
 - (xii) where a secured creditor's agreement has been obtained under regulation 6(c), a statement containing the valuation made by virtue of paragraph (a) of that regulation and a statement of the amount owed, in respect of the security held, to that creditor; and
- (e) a statement in Part 1 of Form 3 of the trustee's anticipated realisations from the trust deed.
- (2) The trust deed must be acceded to by 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 one third in value, of the notified creditors that they object to the trust deed being granted protected status.