
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2013 No.

The Protected Trust Deeds (Scotland) Regulations 2013

PART 3

REGISTRATION AND EFFECT OF PROTECTION

Registration of the trust deed etc.

11.—(1) As soon as reasonably practicable after the expiry of the relevant period (and in any event no later than 4 weeks after that expiry), the trustee must send to the Accountant for registration in the register of insolvencies—

- (a) a copy of the trust deed;
 - (b) either—
 - (i) a copy of every form of agreement obtained by virtue of regulation 6(c); or
 - (ii) a statement by the trustee that no such form of agreement has been obtained;
 - (c) a statement by the trustee that those creditors, if any, who have objected in writing to the trust deed during the relevant period do not constitute a majority in number, or one third or more in value, of the creditors;
 - (d) a copy of the statement referred to in regulation 7(3)(c);
 - (e) a copy of the statement referred to in regulation 10(1)(d);
 - (f) a copy of any agreement in Form 1B referred to in regulation 15(2);
 - (g) a statement in the form of Form 3; and
 - (h) where the debtor makes a contribution from income, a statement—
 - (i) that the trustee assessed the debtor's expenditure against the trigger figures for expenditure published from time to time as part of the Common Financial Statement (leaving out of account the income and expenditure of any other person); and
 - (ii) explaining any instance in which those trigger figures are exceeded.
- (2) The Accountant must register the trust deed in the register of insolvencies if—
- (a) the Accountant has received all the documents required to be sent under paragraph (1);
 - (b) the conditions set out in regulations 4 to 10 have been met; and
 - (c) unless the Accountant is not satisfied that—
 - (i) any expenditure noted under paragraph (1)(h) or which it appears to the Accountant may be excessive; or
 - (ii) any contribution from income,is appropriate having regard to any explanation provided by the trustee.

(3) The trustee must notify the debtor and every creditor known to the trustee of the registration of the trust deed in the register of insolvencies or the refusal by the Accountant to so register the trust deed by no later than 7 days after receipt of the notification of the same by the Accountant.

Effect of protected status

12.—(1) Where a trust deed has become a protected trust deed then—

- (a) subject to regulation 17, a creditor who (either or both)—
 - (i) is not a notified creditor; or
 - (ii) notified the trustee of objection to the trust deed during the relevant period, has no higher right to recover the debt than a creditor who has acceded to, or been deemed by virtue of regulation 10(2) to have acceded to, the trust deed; and
- (b) an application for sequestration of the debtor’s estate may not be made by the debtor while the trust deed subsists.

(2) A creditor ceases to be deemed to have acceded to a trust deed in terms of regulation 10(2) if the trustee refuses a request by the debtor to apply to the Accountant for discharge in terms of regulation 24(8).

(3) Where a secured creditor’s agreement has been obtained under regulation 6(c) and the trust deed becomes a protected trust deed, that creditor is not entitled—

- (a) to make a claim under the protected trust deed for any of the debt in respect of which the security is held;
- (b) to do diligence against the assets conveyed to the trustee under the protected trust deed; or
- (c) to petition for the sequestration of the debtor during the subsistence of the protected trust deed.

Effect of protected status on diligence against earnings

13.—(1) This regulation has effect where a trust deed has protected status.

(2) Any existing earnings arrestment, current maintenance arrestment or, subject to paragraph (3), conjoined arrestment order ceases to have effect on the date of protection.

(3) Any sum paid by the employer to the sheriff clerk under a conjoined arrestment order on a pay day occurring before the date of protection will be disbursed by the sheriff clerk under section 64 of the Debtors (Scotland) Act 1987(1) notwithstanding that the date of disbursement is after the date of protection.

(4) The execution of an earnings arrestment or the making of a conjoined arrestment order is not competent after the date of protection to enforce a debt in respect of which the creditor is entitled to make a claim under the trust deed.

(5) A deduction from earnings order under the Debtors (Scotland) Act 1987 is not competent after the date of protection to secure the payment of any amount due by the debtor under a maintenance calculation within the meaning of that Act in respect of which a claim could be made under the trust deed.

Deductions from debtor’s earnings

14.—(1) This regulation applies where—

- (a) a debtor is required to pay to the trustee a contribution from income for the benefit of creditors and an amount is required to be paid from the debtor’s earnings from employment; and
- (b) the debtor has failed on two consecutive occasions to pay to the trustee the required amount of the debtor’s income from the debtor’s earnings from employment.

(1) 1987 c.18.

(2) Following a request by the trustee, the debtor must give the person by whom the debtor is employed an instruction in Form 4A to make—

- (a) deductions of specified amounts from the debtor’s earnings; and
- (b) payments to the trustee of the amounts so deducted.

(3) The trustee may give the person by whom the debtor is employed an instruction of the type mentioned in paragraph (2) in Form 4B if the debtor fails to comply with the requirement imposed by that paragraph.

(4) The employer must comply with an instruction provided in accordance with paragraph (2) or (3) (or varied in accordance with paragraph (9)).

(5) On delivery of the instruction and while the instruction is in effect, the employer must deduct the sum specified in the instruction on every pay day, and pay the sum deducted to the trustee as soon as it is reasonably practicable to do so.

(6) Where an employer fails without good cause to make a payment due under an instruction, the employer is—

- (a) liable to pay on demand by a trustee the amount that should have been paid; and
- (b) not entitled to recover from a debtor the amount paid to the debtor in breach of the instruction.

(7) An employer may on making a payment due under an instruction charge a fee equivalent to the fee chargeable for the time being under section 71 (employer’s fee for operating diligence against earnings) of the Debtors (Scotland) Act 1987(2) and deduct that fee from the balance due to the debtor.

(8) The trustee must, without delay after the discharge of a debtor under regulation 24, notify in writing any person who has received an instruction in accordance with paragraph (2) or (3) (or varied in accordance with paragraph (9)) that the instruction has been recalled.

(9) Following agreement by the debtor and the trustee, the debtor may give to the person by whom the debtor is employed a variation to the instruction mentioned in paragraph (2) in Form 4C.

Agreement in respect of debtor’s heritable property

15.—(1) This regulation does not apply to the debtor’s dwellinghouse (or any 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)(i) of the Act.

(2) Subject to the conditions in paragraph (3), the trustee may agree in Form 1B at the date on which the trust deed was granted—

- (a) not to realise any specified heritable estate of the debtor which has been conveyed to the trustee;
- (b) to relinquish the trustee’s interest in respect of such heritable estate; and
- (c) to recall any notice of inhibition in respect of such heritable estate in accordance with paragraph 2(2) of Schedule 5 to the Act.

(3) The conditions are—

- (a) the debtor must—
 - (i) pay any amount determined by the trustee by the date determined by the trustee;
 - (ii) following the payment period under regulation 8(2) where there is a contribution from income, pay a monthly amount determined by the trustee for a period determined by the trustee; and

(b) the debtor must co-operate with the administration of the trust.

(4) The amount of the debtor's payments under paragraph (3)(a)(i) and (ii) must be determined in accordance with a valuation made by a chartered surveyor or other suitably qualified third party of the debtor's heritable estate as at the date of grant of the trust deed.

(5) If the debtor fails to fulfil a condition mentioned in paragraph (3), the trustee may withdraw from the agreement.

(6) The trustee must, as soon as is practicable, send a copy of the agreement mentioned in paragraph (2) in Form 1B to the Accountant and 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).

Dividend payments

16.—(1) If the funds of the debtor's estate are sufficient, the trustee must pay a dividend out of the estate to the creditors no later than 6 weeks after the end of—

- (a) a first dividend period of 24 months beginning with the date on which the trust deed was granted; and
- (b) any subsequent dividend period of 6 months beginning with the end of the previous dividend period.

(2) The funds of the debtor's estate are "sufficient" if—

- (a) after deduction of the trustee's fees and any outlays payable under these Regulations; and
- (b) after making allowance for future contingencies,

a dividend may be paid to the creditors amounting to at least 5 pence for each pound sterling of the debtor's debt under the trust deed on the date on which the trust deed was protected.

Sequestration petition by qualified creditor

17.—(1) A qualified creditor who is not a notified creditor, or who has notified the trustee of objection to the trust deed within the relevant period, may present a petition to the sheriff for sequestration of the debtor's estate—

- (a) not later than 5 weeks after the date of registration of the notice under regulation 9; or
- (b) at any time if the creditor avers that the provision for distribution of the estate is, or is likely to be, unduly prejudicial to a creditor or class of creditors.

(2) Paragraph (1)(b) is subject to section 8(1)(b) of the Act.

(3) The sheriff may award sequestration in pursuance of—

- (a) paragraph (1)(a), only if satisfied that to do so would be in the best interests of the creditors; and
- (b) paragraph (1)(b), only if satisfied that the creditor's averment is correct.

Creditor's application as respects intrusions of trustee

18.—(1) A creditor who is not sent a copy of the notice mentioned in regulation 10(1)(c) or who has notified the trustee of objection to the trust within the relevant period may apply to the sheriff under this regulation.

(2) Where on such an application the sheriff is satisfied, on grounds other than those on which a petition under regulation 17(1)(b) has been or could have been presented by the creditor, that the intrusions of the trustee with the estate of the debtor have been so unduly prejudicial to the

creditor's claim that the creditor should not be bound by the trustee's discharge, the sheriff may order that the creditor will not be so bound.

(3) On the sheriff making an order under paragraph (2), the sheriff clerk must—

(a) send a copy of the order to the trustee; and

(b) send a copy of the order to the Accountant for registration in the register of insolvencies.

(4) An application under paragraph (1) must be made no later than 28 days after the registration in the register of insolvencies of the trustee's statement of realisation and distribution of estate under the protected trust deed, as mentioned in regulation 25(7)(b).

(5) For the purposes of paragraph (2), the sheriff to whom the application may be made is the sheriff to whom a petition for sequestration would be brought in respect of the debtor by virtue of section 9(1) or (2) of the Act.