
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

**The Public Services Reform (Corporate Insolvency
and Bankruptcy) (Scotland) Order 2017**

New section 173A of the 2016 Act: effect of protected status on essential supplies

6. After section 173 of the 2016 Act insert—

“173A Effect of protected status on essential supplies

(1) An insolvency-related term of a contract for the supply of essential goods or services to a debtor ceases to have effect if—

- (a) a trust deed granted by the debtor is granted protected status, and
- (b) the supply is for the purpose of a business which is or has been carried on by or on behalf of the debtor.

(2) An insolvency-related term of a contract does not cease to have effect by virtue of subsection (1) to the extent that—

- (a) it provides for the contract or the supply to terminate, or any other thing to take place, because the individual becomes subject to an insolvency procedure other than a trust deed,
- (b) it entitles a supplier to terminate the contract or the supply, or do any other thing, because the individual becomes subject to an insolvency procedure other than a trust deed, or
- (c) it entitles a supplier to terminate the contract or the supply because of an event that occurs, or may occur, after a trust deed granted by the debtor is granted protected status.

(3) Where an insolvency-related term of a contract ceases to have effect under this section the supplier may—

- (a) terminate the contract, if the condition in subsection (4) is met,
- (b) terminate the supply, if the condition in subsection (7) is met.

(4) The condition in this subsection is that—

- (a) the trustee under the trust deed consents to the termination of the contract,
- (b) on application by the supplier the court grants permission for the termination of the contract, or
- (c) any charges in respect of the supply that are incurred after the date of protection of the trust deed are not paid within the period of 28 days beginning with the day on which payment is due.

(5) An application by the supplier under subsection (4)(b) is to be made to the sheriff who, had a petition for sequestration of the estate been presented at the date the trust deed was granted, would have had jurisdiction to hear that petition in terms of section 15(1) or (3).

(6) The court may grant permission under subsection (4)(b) only if satisfied that the continuation of the contract would cause the supplier hardship.

(7) The condition in this subsection is that—

- (a) the supplier gives written notice to the trustee under the trust deed that the supply will be terminated unless the trustee personally guarantees the payment of any charges in respect of the continuation of the supply after the date of protection of the trust deed, and
- (b) the trustee does not give that guarantee within the period of 14 days beginning with the day the notice is received.

(8) For the purposes of securing that the interests of suppliers are protected, where—

- (a) an insolvency-related term of a contract (the “original term”) ceases to have effect by virtue of subsection (1), and
- (b) a subsequent trust deed granted by the debtor is granted protected status,

the contract is treated for the purposes of subsections (1) to (7) as if, immediately before the subsequent trust deed granted by the debtor is granted protected status, it included an insolvency-related term identical to the original term.

(9) A contract for the supply of essential goods or services is a contract for a supply mentioned in section 222(4).

(10) An insolvency-related term of a contract for the supply of essential goods or services to a debtor is a provision of the contract under which—

- (a) the contract or the supply would terminate, or any other thing would take place, because a trust deed granted by the debtor is granted protected status,
- (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because a trust deed granted by the debtor is granted protected status, or
- (c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before a trust deed granted by the debtor is granted protected status.

(11) Subsection (1) does not have effect in relation to a contract entered into before 1st August 2017.”.