

EXECUTIVE NOTE

THE PROTECTED TRUST DEED (SCOTLAND) AMENDMENT REGULATIONS 2010 SSI 2010/398

The above instrument was made in exercise of the powers conferred by section 72 of and paragraph 5(1) of Schedule 5 to the Bankruptcy (Scotland) Act 1985 (as amended) and all other powers enabling them to do so. The instrument is subject to affirmative resolution procedure.

Policy Objective

Voluntary Trust Deeds

Trust deeds are an alternative to bankruptcy. There is a long history of trust deeds as voluntary private agreements between debtors and creditors in Scotland. Trust deeds convey part or all of a debtor's assets to a trustee and provide, through realisation of those assets or contributions from the debtor's income, for the repayment of part of what is owed to creditors. Under the provisions of section 388 of the Insolvency Act 1986 (1986 c.45) the trustee under a trust deed must be an insolvency practitioner. A voluntary trust deed requires the consent of all the creditors.

The terms of voluntary trust deeds may be adapted to the debtor's circumstances and whatever is acceptable to the creditors. As such a voluntary trust deed could exclude a debtor's home or any other property. However, such a trust deed would not be binding on any creditor who did not agree to its terms.

For the purposes of the Bankruptcy (Scotland) Act 1985 (the 1985 Act) a trust deed is defined as a trust deed which conveys the whole estate of the debtor, excluding only such assets as would not vest in a trustee in bankruptcy, to the trustee of the trust deed for the benefit of their creditors. The effect of this is that a trust deed cannot become a protected trust deed unless it conveys the debtor's whole estate to the trustee, even if assets in that estate are of no interest or value to the creditors. This provision is unduly restrictive and that is particularly inappropriate where the debtor's family home has no realisable value for creditors due to limited or no equity.

The Homeowner and Debtor Protection (Scotland) Act 2010 contains provisions to amend the definition of trust deed in the 1985 Act in order to include trust deeds which exclude the debtor's dwellinghouse, this being defined as the debtor's sole or main residence over which there is a secured loan. A trust deed will be able to meet the statutory definition if it excludes secured creditors who have agreed not to claim under the trust deed. This means that the provisions of the 1985 Act would apply to a wider range of trust deeds. We consider that it is reasonable to extend the application of other parts of the 1985 Act to a wider range of trust deeds because such deeds will only extend to assets excluded with the actual consent of all creditors.

Protected Trust Deeds

Protected trust deeds were introduced by the 1985 Act to provide that a trust deed meeting specified criteria would be binding on all creditors. Until 1993, the numbers of protected trust deeds remained low. Following reforms made to the 1985 Act by the Bankruptcy (Scotland) Act 1993 (the 1993 Act), they have been increasingly popular as a form of debt relief. There were 7,633 protected trust deeds recorded in the Register of Insolvencies in the business year ending 31 March 2009.

Protected trust deeds are “protected” in the sense that creditors who do not agree to the terms of the trust deed have no higher right to recover their debts than creditors who do agree. Once protected, the trust deed is binding on all creditors who can usually take no further action to pursue the debt owed providing the debtor complies with the terms of the trust deed. Upon completion of the trust deed the remaining unpaid debt is written off although secured lenders can still rely on their security. The conditions for protection include the consent or deemed consent of a majority in number or two-thirds in value of creditors, advertisement of the trust deed in the Edinburgh Gazette, and registration of the trust deed in the Register of Insolvencies.

Under the Bankruptcy and Diligence (Scotland) Act 2007, the Accountant in Bankruptcy took responsibility for the supervision of trustees under protected trust deeds. This came into force on 1 April 2008. A review of 1,200 protected trust deeds granted since 1 April 2008 was carried out by the Accountant in Bankruptcy in November 2008 and found that 60% of protected trust deeds are based solely on debtor contributions and a further 30% include assets with a total value of less than £10,000. The full findings of the review are published in the Protected Trust Deed Report, which can be accessed on line at www.aib.gov.uk/News/releases/2009/06/23140808.

The amendment of the definition of trust deeds by the Homeowner and Debtor Protection (Scotland) Act 2010 will mean a wider range of voluntary trust deeds can become protected trust deeds. This will allow debtors to propose trust deeds in which their sole or main residence, whether a family home or the home of a single debtor, is clearly excluded. This will reduce the administration costs for these cases and provide reassurance for debtors who use protected trust deeds.

There will continue to be cases in which it is appropriate for a debtor’s home to vest in the trustee under a protected trust deed and for the equity to be realised for the benefit of creditors.

These Regulations also amend The Protected Trust Deeds (Scotland) Regulations 2008.

Specific Provision in the Instrument

Regulation 3 changes the definition of notified creditor to secured creditors who have agreed to be excluded from the trust deed.

Regulation 4 sets out the actions the trustee, debtor and secured creditor must take for the secured creditor to be excluded from the trust deed. These actions include, for the trustee, that they must provide the secured creditor and debtor with a 3rd party valuation of the dwellinghouse; for the debtor, that they must give their consent for the trustee to act on their behalf with regard to obtaining the secured creditor's permission to exclude the dwellinghouse; and for the secured creditor to give their consent to the exclusion.

Regulation 5 provides the further details required in a trust deed statement where a property is excluded, these being details of any secured creditor who has agreed not to claim in the trust deed and details of the debt in respect of which the secured creditor has agreed not to claim. It also allows any estate which the debtor acquires during the term of the trust deed to be conveyed to the trustee. This means that should a debtor's dwellinghouse be excluded from a trust deed, where property prices rise, or indeed if equity is held in the property from the outset, where the debtor sells the property during the term of the trust deed and equity is released, the money realised is used to pay creditors. This Regulation also adds to the details which must form part of the trust deed statement where a dwellinghouse is to be excluded.

Regulation 6 adds to the information which a trustee must send creditors to allow them to make an informed decision on whether to accept or vote against protection of the trust deed. Where a secured creditor has consented to the dwellinghouse being excluded, creditors must receive a current valuation and redemption amount in respect of that dwellinghouse. They must also receive information on the effect of any exclusion on the dividend they may receive from the trust deed, and details of any protected trust deed which the debtor has had within the six months previous.

A trust deed becomes protected where the conditions are met, from when it is registered as such by the Accountant in Bankruptcy (AiB). Regulation 7 gives trustees a 4 week period to send notification that the trust deed has been accepted by creditors, and allow the AiB to register it as protected. In some instances long delays have occurred between the end of the 5 week creditor voting periods and the AiB being informed of the result. This means that the trust deed has not gained protection, even although it has been acceded to. The Regulation also adds to the information which must be sent to AiB in order for the trust deed to become protected, taking into account the new legislation on secured creditor exclusion.

Regulation 8 lays down the consequences of a trust deed becoming protected for a secured creditor who has agreed to the exclusion. In these cases, the secured creditor cannot claim for any of the secured debt, cannot do diligence against the assets conveyed to the trustee, or petition for the debtor's bankruptcy during the term of the protected trust deed.

Regulation 9 allows that the trustee is allowed remuneration for work done on the debtor's request in order to have the secured creditor/s excluded from a trust deed, whether the exclusion is agreed or not.

Regulation 10 refers to the debtors discharge and allows that failure to give certain consents will not be treated as a failure to meet the debtor's obligations with regard to discharge from a trust deed. Under current legislation, if a debtor does not agree to sell their property, a trustee can decide not to grant the debtor's discharge. The Home Owner and Debtor Protection (Scotland) Act 2010 gives the debtor's home further protections in legislation. We do not want the use of these protections by the debtor being a barrier to the debtor being discharged from their trust deed. This Regulation also lays out the debtors liabilities once they are discharged.

Regulation 11 defines the date of final distribution in a trust deed as stakeholders had commented that the current legislation is not clear. A trustee cannot be discharged from office until they have made the final distribution of the estate among the creditors. The Regulation makes clear that as long as all funds have been placed out of reach of the trustee, the trustee can seek a discharge.

Regulation 12 is a minor amendment to correct the heading of the Regulations.

Regulation 13 introduces the Schedule containing new Form A1, which will be completed by the debtor when applying for their property to be excluded from a trust deed, and the secured creditor should they agree to the exclusion.

Consultation

We have consulted widely on the drafting of these Regulations. Contributors have included individual Insolvency Practitioners with whom we have met and their regulatory bodies The Institute of Chartered Accountants of Scotland (ICAS), The Insolvency Practitioners Association (IPA) and R3 who are the [Association of Business Recovery Professionals](#). We have also met with representatives of secured lenders, the Council of Mortgage Lenders and the British Bankers Association, and the Royal Bank of Scotland, ordinary creditors and interested parties, for example, Registers of Scotland. We have communicated both verbally and in writing with the Law Society of Scotland and the money advice sector. Internal stakeholders, including the Protected Trust Deed Supervision Team within the Accountant in Bankruptcy's office were also asked to contribute to discussions.

The Regulations were drafted to take into account the views of interested parties, ensuring timescales included were realistic for those involved to adhere to. Suggested enhancements to the protected trust deed process were included wherever possible.

Financial Impact

The Regulations will have a small financial impact on the Scottish Government by way of a small staffing increase to deal with inquiries and supervision regarding trust deeds. This is estimated to be 1 X B1 member of staff, at a yearly cost of £29,329.

Accountant in Bankruptcy
September 2010

BRIA - THE PROTECTED TRUST DEED (SCOTLAND) AMENDMENT REGULATIONS 2010

BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title of Proposal

The Protected Trust Deeds (Scotland) Amendment Regulations 2010

Purpose and intended effect of proposals

- **Objectives**

The Protected Trust Deeds (Scotland) Amendments Regulations 2010 will:

Amend The Protected Trust Deeds (Scotland) Regulations 2008, in accordance with the provisions of Section 10 of the Home Owner and Debtor Protection (Scotland) Act 2010, (the Act), to provide further instruction of the precise statutory requirements of the debtor, trustee and creditors in order that a trust deed which excludes the debtor's dwellinghouse, this being defined as the debtor's sole or main residence over which there is a secured loan, may be granted.

- **Background**

In January 2009, as part of the Scottish Government's ongoing commitment to help the people of Scotland obtain debt relief, Scottish Ministers invited representatives of stakeholder groups to participate in a Debt Action Forum. The membership of the Forum consisted of representatives of lenders, money advisers, insolvency practitioners, public authorities and expert groups. The Forum examined current information and initiatives on debt relief, debt advice, and repossession and considered a package of legislative and non-legislative measures to address debt problems. During the course of several months the Forum considered various options currently available to address debt problems; one of which was protected trust deeds (PTDs).

Protected trust deeds were introduced by the Bankruptcy (Scotland) Act 1985, ("the 1985 Act") as originally enacted, to provide that a trust deed meeting specified criteria would be binding on all creditors. Until 1993, the numbers of protected trust deeds remained low. Following reforms made by the Bankruptcy (Scotland) Act 1993 ("the 1993 Act") to the 1985 Act they have been increasingly popular as a form of debt relief. There were 9,188 protected trust deeds recorded in the Register of Insolvencies in the business year ending 31 March 2010.

Protected trust deeds are "protected" in the sense that creditors who do not agree to the terms of the trust deed have no higher right to recover their debts than creditors who do agree. Once protected, the trust deed is binding on all creditors who can usually take no further action to pursue the debt owed providing the debtor complies with the terms of the trust deed.

Upon completion of the trust deed the remaining unpaid debt is written off, although secured lenders can still rely on their security. The conditions for protection include the consent or deemed consent of a majority in number or more than two-thirds in value of creditors, advertisement of the trust deed in the Edinburgh Gazette, and registration of the trust deed in the Register of Insolvencies.

Under the Bankruptcy and Diligence (Scotland) Act 2007 (“the 2007 Act”), the Accountant in Bankruptcy took responsibility for the supervision of trustees under protected trust deeds. This came into force on 1 April 2008. A review of 1,200 protected trust deeds granted since 1 April 2008 was carried out by the Accountant in Bankruptcy in November 2008 and found that 60% of protected trust deeds are based solely on debtor contributions and a further 30% include assets with a total value of less than £10,000. The full findings of the review are published in the Protected Trust Deed Report, which can be accessed on line at <http://www.aib.gov.uk/News/releases/2009/06/23140808>.

The amendment of the definition of trust deeds, by the Home Owner and Debtor Protection (Scotland) Act 2010, will mean a wider range of voluntary trust deeds could become protected trust deeds.

- **Rationale for Government intervention**

The rationale for government intervention was in response to the economic downturn. The Scottish Government wished to widen the scope of debt relief for the population of Scotland who were struggling with debt and over-indebtedness. The Debt Action Forum proposed the amendment of the definition of trust deeds in the Bankruptcy (Scotland) Act 1985, to include trust deeds which exclude certain creditors or assets.

The proposed amendment, as taken forward in Part 2 of the Home Owner and Debtor Protection (Scotland) Act 2010, will enable a trust deed to meet the statutory definition if it excludes the debtor’s dwellinghouse and secured creditors who have agreed not to claim under the trust deed for any debt in respect of which the security is held. This will mean a wider range of voluntary trust deeds can become protected trust deeds. It will allow debtors to propose trust deeds in which their sole or main residence, whether a family home or the home of a single debtor, is clearly excluded and cannot be sold by a trustee. This will reduce the administration costs for these cases as there will be no fees related to considering what to do with the property, negotiating with the debtor, or costs of sale on the open market. It will provide reassurance for debtors who use protected trust deeds that they and their families can remain in their home.

The Scottish Government considers it essential that the people of Scotland are provided with debt relief options to help tackle inequalities in Scottish society, so that they may contribute to the economic recovery of a wealthier and fairer Scotland. Research has shown that the effects of homelessness can lead to unemployment and that once unemployed future employment prospects can be severely affected by homelessness. Children affected by homelessness are more likely to struggle at school; significantly reducing their future chances also. Homelessness has also been shown to cause health problems, physical and mental, in both adults and children

By helping to address this issue of homelessness, we contribute to a wealthier and fairer, and also a healthier Scotland.

Consultation

- **Within Government**

Wide consultation and discussion with colleagues in the Scottish Court Services, Registers of Scotland, Her Majesty's Revenue and Customs and Convention of Scottish Local Authorities has taken place throughout the development of these regulations, seeking their comments on the Regulations themselves, but also the regulatory impact of the new regulations on their area of business. Colleagues within the Accountant in Bankruptcy, in Case Operations Branch, Supervision and other areas were also consulted on these Regulations.

- **Public Consultation**

No public consultation was undertaken in relation to the Protected Trust Deeds (Scotland) Amendment Regulations 2010 as these regulations relate to the Home Owner and Debtor Protection (Scotland) Act 2010 which has already passed through the Scottish Parliament and gained Royal Assent. Consultation was carried out for the Home Owner and Debtor Protection (Scotland) Act, and these regulations lay down the precise statutory requirements of the debtor, trustee and creditors with regard to Section 10 of this Act.

- **Business**

Subsequent to The Home Owner and Debtor Protection (Scotland) Act 2010 passing through the Scottish Parliament, a joint seminar was held on 12 March 2010 where representatives from stakeholder groups, for both Parts 1 and 2 of the Act, were invited. The seminar offered the stakeholders the opportunity to comment on how the proposed legislation would work in practice. Those invited to attend included:

British Bankers Association
Council of Mortgage Lenders
Finance and Leasing Association
Insolvency Practitioners
Institute of Chartered Accountants Scotland
Money Advice Scotland
Citizens Advice Scotland
Consumer Credit Counselling Service
Royal Bank of Scotland
Insolvency Practitioners Association
Convention of Scottish Local Authorities
Scottish Court Services
Registers of Scotland

Following the seminar in March 2010 further consultation has taken place with stakeholders, relating to Part 2 of the Act, regarding the revised wording of the Scottish Statutory Instruments (SSIs); by email and through individual stakeholder group meetings. It was decided to adopt this approach as individual group meetings were more conducive to discussion and decision making. The groups consulted were:

Creditor Organisations

British Bankers Association
Council of Mortgage Lenders
Finance and Leasing Association
Royal Bank of Scotland
TDX
Max Recovery
Grant Thornton

Money Advice Sector

Money Advice Scotland
Citizens Advice Scotland

Insolvency Organisations

Individual Insolvency Practitioners
Institute of Chartered Accountants of Scotland
Insolvency Practitioners Association
R3 – Scottish Technical Committee (The Association of Business Recovery Professionals)

Throughout this comprehensive consultation draft SSIs have been circulated to stakeholders seeking their comments on the proposed secondary legislation and its regulatory impact. Comments received from stakeholders has resulted in numerous redrafts of the SSIs in order to ensure they are fit for purpose.

Options

As part of the Scottish Government's ongoing commitment to help the people of Scotland obtain debt relief, Scottish Ministers invited representatives of stakeholder groups to participate in a Debt Action Forum. The Forum examined current information and initiatives on debt relief. The Forum considered various options currently available to address debt problems; one of which being Protected Trust Deeds (PTDs).

- Option 1 – No change

The first option considered was to continue with the current PTD process; making no changes to the current legislation.

- Option 2 - To amend the definition of trust deeds in the Bankruptcy (Scotland) Act 1985, to include trust deeds which exclude the dwelling house.

Following discussion on PTDs the Debt Action Forum proposed the amendment of the definition of trust deeds in the Bankruptcy (Scotland) Act 1985, to include trust deeds which exclude certain assets and creditors. Through extensive consultation this has been refined so that the debtor's dwellinghouse, over which there is a secured loan, is the only asset which can be excluded. Thereby giving the debtor the option, where creditors agree and where the dwellinghouse is a family home, their family, to potentially remain in their home.

The Debt Action Forum also considered the introduction of a simplified, fixed fee, contributions only protected trust deed administered by the Accountant in Bankruptcy. However, on the basis of the views expressed by the Debt Action Forum it was decided that further work would be needed to establish whether there was genuine need for such a scheme, and the details of its administration. It was felt that it would be inappropriate to make such far-reaching changes to protected trust deeds without wider consultation with stakeholders. It is proposed to carry out a PTD consultation later on in the year.

Costs and benefits

- **Sectors and groups affected**

The proposed change in legislation will impact on debtors, creditors, Money Advice Organisations and Insolvency Practitioners. It is envisaged that the introduction of the new legislation will have no greater impact on one particular stakeholder group irrespective of the size of the group.

- **Benefits**

Option 1 – No Change

To continue with the current debt relief options would require no changes in legislation allowing stakeholders to retain the status quo. A further benefit of this option is that no costs would be incurred.

Option 2 - To amend the definition of trust deeds in the Bankruptcy (Scotland) Act 1985, to include trust deeds which exclude the debtor's dwellinghouse.

The introduction of this amendment to the legislation will help those who want to stay in their homes to do so. It is envisaged that it will only be used by those who are keen to stay in their homes, and have the means to pay their mortgage whilst also maintaining contributions to their trust deed. It is intended to stop debtors being forced from their homes for a very small gain for the trustee and ultimately the creditors. In cases where there is limited equity, by the time a trustee's fee is paid there may be little if anything passed on to ordinary creditors.

Social cost of Homelessness

Research has shown that the effects of homelessness can lead to:

Unemployment;

Once unemployed future employment prospects can be severely affected by homelessness.

Health problems, physical and mental, in both adults and children;

Children affected by homelessness are more likely to struggle at school; significantly reducing their future chances.

The new legislation offers flexibility for a debtor which does not currently exist. Given the social and personal cost of homelessness the new legislation will give debtors the chance to keep a roof over their and their family's heads.

Research by Heriot Watt university from 2007 indicated that the average cost of sustaining a household made homeless in temporary accommodation was £5,300 per year. Therefore, every episode of homelessness prevented is a potential saving to the public purse.

- **Costs**

Option 1 - No Change

Research has shown that there is a social cost to the state in maintaining destitute families. Indebtedness also prevents the debtor from servicing their ongoing liabilities, such as mortgage payments, which may lead to homelessness.

Option 2 - To amend the definition of trust deeds in the Bankruptcy (Scotland) Act 1985, to include trust deeds which exclude the debtor's dwellinghouse.

The main consequence of the amendment to the definition of trust deeds is that more trust deeds can become protected trust deeds. There are currently around 8,000 protected trust deeds annually. These are all currently administered by private insolvency practitioners. The Accountant in Bankruptcy has reported on a sample of 1000 of the 4,827 protected trust deeds registered between 1 April 2009 and 30 September 2009.

The report found that that 51% of cases were based solely on contributions. The report identified that the majority of assets were valued at less than £10,000. This report is available online at: <http://www.aib.gov.uk/About/PTDWG/ptdreview2010>

Staffing costs

The Accountant in Bankruptcy would require a small staffing increase to deal with inquiries and supervision this being 1 member of staff working at the B1 grade at an estimated annual

cost of £29,329 in 2010/11 and assuming a 3% increase annually, rising to £30,208.87 in 2011/12 and £31,155.14 in 2012/13. Further costs will be required for recruitment and training estimated at £2,000 per person, with the additional annual overhead costs of £8,000 per person.

However, through efficiencies within the supervision teams the Accountant in Bankruptcy is looking to release a member of staff to deal with inquiries and supervision of the trust deeds. This will remove the need for an additional member of staff and is included in the Accountant in Bankruptcy's budget.

IT Costs

There will be a cost for IT development of the Multifunction Insolvency Database & Administration System (MIDAS) to identify and record where a dwellinghouse has been excluded from a trust deed. This will allow for monitoring of the legislation. The cost of developing IT to accommodate the changes introduced in part 2 of the Home Owner and Debtor Protection (Scotland) Act 2010 is in the region of £60,000 in the first year with ongoing support estimated at £6,000 annually.

Training Costs

In order to familiarise themselves and their staff with the new regulations the advice sector and Insolvency Practitioners will incur a one off cost in staff training.

The Scottish Government's Social Inclusion budget currently provides funding towards training for money advisers. The additional training required by Money Advisers, in relation to the new regulations, will be minimal and provided under the existing provision.

Extensive efforts have been made during the consultation period to take on board comments from stakeholders ensuring no unnecessary additional burdens are imposed.

Scottish Firms Impact Test

Extensive consultation with stakeholder groups has taken place throughout the legislative process through face to face meetings, seminars, and by email. These regulations are an amendment to the current PTD regulations, giving the debtor the option of excluding their dwellinghouse from their trust deed and it still become protected, it is therefore envisaged that the implementation of the new regulations will have little effect on stakeholder businesses other than a one off familiarisation cost.

Competition Assessment

Following the completion of the competition filter assessment, it was established that there should be no competitive advantage to any particular individual or group as a consequence of the amendment to the definition of trust deeds and the potential for such trust deeds to become protected. It will apply equally to all creditors who hold securities over the debtor's dwellinghouse.

Test Run of business forms

Throughout this comprehensive consultation draft copies of the new business form has been circulated to stakeholders; seeking their comments on the proposed new form and its regulatory impact. A comment received from stakeholders has resulted in amendments to the business form in order to ensure it is fit for purpose.

Legal Aid Impact Test

The introduction of these regulations will have no impact on the legal aid fund.

Enforcement, sanctions and monitoring

The Accountant in Bankruptcy (AIB), an agency of the Scottish Government, will carefully monitor how the new legislation and regulations are working in practice by carrying out reviews and seeking feedback from stakeholders. Through the development of the Multifunction Insolvency Database & Administration System the AiB will collate statistical data in order to monitor the impact of the new regulations. The introduction of the new regulations will provide debtors with the option of excluding their dwellinghouse from a trust deed, and it still become protected; therefore, as this is a voluntary process we do not consider that there is a requirement to raise provisions for enforcement or sanctions as a result of non-compliance.

Implementation and delivery plan

The Accountant in Bankruptcy will prepare and publish guidance to support stakeholders when they are considering the amended trust deed as a suitable form of debt relief for their clients. Funding will be provided for training within the money advice sector through the Government's Social Inclusion budget. This training is being carried out through Money Advice Training Resources Information and Consultancy Service (MATRICS).

Post implementation review

To evaluate the impact of the new legislation the Scottish Government has given an undertaking that the Accountant in Bankruptcy will carry out a review one year after the legislation commences. This will involve the analysis of statistical data collated by the Accountant in Bankruptcy. They will be looking at the number of trust deeds granted where the dwellinghouse has been excluded, when this legislation is being used, any patterns from secured creditors or insolvency practitioners as to the use of the legislation and where creditors are agreeing or not agreeing to the exclusion.

The Scottish Government will review the findings of this research and consider whether any changes are necessary to the legislation or associated guidance in light of its findings and stakeholder comment. Any changes identified will be brought to the attention of the Scottish Parliament and Parliamentary committees where necessary. A final report detailing the findings and conclusion of the review will be published.

To establish whether the implemented regulations are having the intended effect and whether they are implementing policy objectives efficiently, the Scottish Government has given a further commitment to carry out a formal review of the new legislation within 10 years of the

regulations coming into force. This review will be carried out by the Accountant in Bankruptcy.

Summary and recommendation

The Scottish Government considers that the introduction of the Protected Trust Deeds (Scotland) Amendment Regulations 2010 commands the support of key stakeholders, and will provide protection for the dwellinghouse of individuals seeking debt relief where the debtor is in a position to repay some of what they owe and where creditors agree.

It is recognised that there will be costs incurred to implement the new process of excluding the dwelling house. As the exclusion of the asset will only be in specific circumstances, costs will be volume dependent other than specific set up costs. However, it is envisaged that the additional costs incurred in the administration of the new process will be balanced by the removal of the costs incurred in the realisation of the debtor's dwellinghouse.

As part of the Economic Recovery Plan the Scottish Government is committed to widening access to debt relief for the people of Scotland; thus contributing to a wealthier and fairer Scotland.

Option	Cost	Benefits
1	Has no direct financial implication. However, in failing to address debtors' indebtedness the state may incur social costs of maintaining a destitute family. Failure to provide financial rehabilitation through debt cancellation may prevent debtors from servicing ongoing liabilities.	To continue with the current debt relief options would require no changes in legislation allowing stakeholders to retain the status quo.
2	<p>The costs attributed to the implementation of these regulations are:</p> <p><u>Staffing Costs</u> Ongoing improvements to operational processes within the Accountant in Bankruptcy (AIB) mean that the implementation of the Protected Trust Deeds (Scotland) Amendment Regulations' 2010 will be cost neutral as they will be met from the existing AIB training budget.</p> <p><u>IT Costs</u> The cost of developing IT to accommodate the changes introduced</p>	<p>The introduction of this amendment to the legislation will help those who want to stay in their homes to do so. It is envisaged that it will only be used by those who are keen to stay in their homes, and have the means to pay their mortgage whilst also maintaining contributions to their trust deed. It is intended to stop debtors being forced from their homes for a very small gain for the trustee and ultimately the creditors. In cases where there is limited equity, by the time a trustee's fee is paid there may be little if anything passed on to ordinary creditors.</p> <p>The new legislation offers flexibility for debtors which does not currently exist. Given the social and personal cost of homelessness; the new legislation will give</p>

	<p>in part 2 of the Home Owner and Debtor Protection (Scotland) Act 2010, to which these regulations pertain, is in the region of £60,000 in the first year with ongoing support estimated at £6,000 annually.</p> <p><u>Familiarisation Costs</u> Staff familiarisation costs for stakeholders; monetary value unknown as each business area will provide their own staff training.</p> <p>Funding for any training that the money advice sector require will be funded through the Government's Social Inclusion budget.</p>	<p>debtors the chance to keep a roof over their and their family's heads.</p> <p>Remove the cost of sustaining a household made homeless in temporary accommodation at £5,300 per year in 2007. Therefore, every episode of homelessness prevented is a potential saving to the public purse.</p>
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Declaration

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed.....

Date.....

Fergus Ewing
Minister for Community Safety