



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 14

VOLUNTARY TRUST DEEDS FOR CREDITORS

Administration, accounting and discharge

179 Directions to trustee under protected trust deed

- (1) AiB 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 by virtue of subsection (1) its terms must be intimated to the debtor and to all known creditors.
- (3) The direction may be issued on the initiative of AiB or (at AiB's discretion) on the request of the trustee, the debtor or any creditor.
- (4) The trustee must, unless subsection (5) applies, comply with the direction within 30 days beginning with the day on which the direction is given.
- (5) Where the trustee has appealed under section 188(1)(c) and the appeal has been dismissed by the sheriff or withdrawn by the trustee, the trustee must comply with the direction within 30 days beginning with the day of dismissal or withdrawal.
- (6) If it appears to AiB that the trustee has failed, without reasonable excuse, to comply with the direction, AiB 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.

180 Information and notification obligations of trustee under protected trust deed

- (1) Where the trustee under a protected trust deed makes a determination to shorten or lengthen the payment period by virtue of section 168, the trustee must without delay notify the debtor accordingly.

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- (2) Whether or not still acting in the administration of the trust under a protected trust deed, the trustee must supply AiB with such information relating to the trust deed as AiB considers necessary to enable AiB to discharge AiB's functions under this Act.
- (3) If it appears to AiB that the trustee has failed, without reasonable excuse, to supply information to AiB which is requested in accordance with subsection (2), AiB 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 without delay notify AiB accordingly.

181 Administration of trust under protected trust deed

- (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 within 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) (unless they are sent under section 186) to AiB.
- (2) At such intervals the trustee must send to AiB, the debtor and each creditor a report, in such form as may be prescribed for the purposes of this subsection, on the management of the trust during the period in question.
- (3) Subsection (4) applies where—
 - (a) within 21 days after the date on which the report is sent, the trustee receives notification in writing from—
 - (i) a majority in number, or
 - (ii) no fewer than $\frac{1}{3}$ in value,
 of the creditors that they object to a course of action recommended in the report, and
 - (b) the expected final dividend to ordinary creditors set out in the report is at least 20% lower than the expected dividend to ordinary creditors set out in the form prescribed for the purposes of section 170(1)(e).
- (4) The trustee must request under section 179(3) a direction as to the administration of the trust.
- (5) The debtor or any creditor may, within 14 days after receiving a statement by virtue of subsection (1), require AiB to exercise the function mentioned in section 200(1)
 - (a) (in so far as relating to trustees under protected trust deeds) by carrying out an examination of the administration of the trust by the trustee.
- (6) In determining the amount of any contribution from income to be made by the debtor—
 - (a) the trustee may take account of any social security benefit paid to the debtor, but
 - (b) any contribution must not include an amount derived from social security benefit.

182 Retention of documents by trustee under protected trust deed

The trustee under a protected trust deed must retain the following documents (or copies of those documents) for at least 12 months after the date of the trustee's discharge by the creditors under section 186—

- (a) the trust deed,
- (b) the statement mentioned in section 167(3)(c),
- (c) the notice mentioned in section 169,
- (d) the statement mentioned in section 170(1)(d),
- (e) all statements of objection or accession received from creditors,
- (f) the statement of anticipated realisations provided for in section 170(1)(e),
- (g) any written agreement relating to the debtor's heritable estate and mentioned in section 175(1),
- (h) all reports sent under section 181(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,
- (m) the application to creditors for the trustee's discharge,
- (n) the statement of realisation and distribution provided for in section 186(8)(b),
- (o) any decree, interlocutory decree, direction or order granted by the court and relating to the administration of the trust, and
- (p) any other document relating to the administration of the trust if it is a document which AiB, by notice to the trustee prior to the trustee's discharge, identifies as a document the trustee should retain.

183 Remuneration payable to trustee under protected trust deed

- (1) For work done by the trustee in administering the trust, the trustee under a protected trust deed is entitled to remuneration consisting only of—
 - (a) a fixed fee which must be set out in a form prescribed for the purposes of this paragraph,
 - (b) an additional fee based on a percentage of the total assets and contributions realised by the trustee, being a fee set out in a form so prescribed, and
 - (c) outlays incurred—
 - (i) after the date on which the trust deed is granted, or
 - (ii) before that date on a single valuation of any item of the debtor's heritable estate specified or valued in such a valuation.
- (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) approval by AiB (all notified creditors having first been asked to approve the increase).
- (3) AiB must approve an increase in the fixed fee if satisfied—
 - (a) that a majority in value of the notified creditors have not refused to approve the increase, and

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- (b) that the increase is required for work to be completed by the trustee for the benefit of the creditors generally, being work which was not foreseen in submitting a form by virtue of section 170(1)(e).
- (4) In deciding whether or not to grant the approval mentioned in subsection (2)(b), AiB 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 section 166(2) (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 AiB under paragraph 1 or 2 of schedule 4 in accordance with such rate as may be prescribed under section 205.
- (8) AiB may, at any time, audit the trustee's accounts and fix the outlays of the trustee in the administration of the trust.

184 Protected trust deed: discharge of debtor

- (1) If the conditions set out in subsection (2) are met then, subject to subsections (6) and (9) and to section 185(1)—
 - (a) the debtor falls to be discharged from all debts and obligations —
 - (i) in terms of the protected 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 AiB, an application for discharge of the debtor from the trust deed (being an application in such form as may be prescribed for the purposes of this paragraph), and
 - (ii) to the debtor, a copy of that application.
- (2) The conditions are—
 - (a) that the trustee makes a statement (being a statement in such form as may be prescribed for the purposes of this paragraph) 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 3 of schedule 4 has been recalled or has expired.
- (3) Subject to subsection (9), on receipt of the application referred to in subsection (1)(b)
 - (i), AiB must register it in the register of insolvencies and the date of discharge is the date on which it is so registered.
- (4) AiB must without delay notify the trustee of—
 - (a) the fact of registration, and
 - (b) the date of the debtor's discharge.

- (5) The trustee must, within 7 days after receipt of the notification mentioned in subsection (4), notify the debtor and every creditor known to the trustee of the information set out in that notification.
- (6) The letter of discharge does not—
 - (a) discharge the debtor from—
 - (i) any liability arising after the date on which the protected trust deed was granted,
 - (ii) any liability or obligation mentioned in section 145(3),
 - (iii) any liability for a debt in respect of which a security is held if the secured creditor has, as mentioned in paragraph (b)(ii) of the trust deed definition, agreed not to claim under the trust deed for any of the debt in respect of which the security is held, or
 - (b) affect the rights of a secured creditor.
- (7) For the purposes of subsection (2)(a)(i), it is not a failure to meet the debtor's obligations for the debtor to refuse to —
 - (a) consent to the sale of the debtor's dwellinghouse (or of a part of that dwellinghouse) if the dwellinghouse or part is excluded, as mentioned in paragraph (b)(i) of the trust deed definition, from the estate conveyed to the trustee,
 - (b) give a relevant consent in terms of section 113(1)(a).
- (8) If, on request by the debtor or as soon as reasonably practicable after the end of the period for which payments are required under the trust deed, the trustee refuses to apply to AiB for discharge of the debtor, the trustee must—
 - (a) inform the debtor by notice 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 under section 189(1), and
 - (b) send a copy of the notice to AiB within 21 days after the date of issue of the notice.
- (9) AiB may refuse to register under subsection (3) an application sent under subsection (1)(b)(i) if 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.
- (10) If AiB does so refuse, AiB must provide written notification of the refusal and of the reason for it to the trustee and the debtor.
- (11) Within 7 days after the date on which the trustee receives any such notification as is mentioned in subsection (10), the trustee must send a copy of it to every creditor known to the trustee.

185 Student loans

- (1) Section 184 does not affect the right to recover any debt arising from a student loan.
- (2) In subsection (1), “student loan” means a loan made by virtue of—

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- (a) section 73(f) of the Education (Scotland) Act 1980,
- (b) section 1 of the Education (Student Loans) Act 1990,
- (c) section 22 of the Teaching and Higher Education Act 1998, or
- (d) Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 (S.I. 1998/1760).

186 Protected trust deed: discharge of trustee

- (1) This section applies where a trustee under a protected trust deed has made the final distribution of the trust estate among the creditors.
- (2) Within 28 days after the date of final distribution, the trustee must apply for discharge to such of those creditors as have acceded (or are deemed to have acceded) to the trust deed.
- (3) Any application under subsection (2) must be in such form as may be prescribed for the purposes of that subsection.
- (4) The trustee must send AiB by the date of application—
 - (a) a copy of the application, and
 - (b) the accounts of the trustee's intromissions for the last period for which accounts must be sent under section 181(1).
- (5) For the purposes of subsection (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.
- (6) A creditor who does not respond to the application within 14 days after it is made is deemed to have agreed to the trustee's discharge.
- (7) If a majority of the creditors in value consent to the application the trustee is discharged.
- (8) On being discharged, the trustee must within 28 days of the discharge—
 - (a) inform AiB of the discharge,
 - (b) send AiB, for registration in the register of insolvencies, a statement of realisation and distribution of estate under the protected trust deed, and
 - (c) send AiB, where accounts submitted under subsection (4)(b) require to be revised, a copy of the revised accounts.
- (9) A statement under subsection (8)(b) must be in such form as may be prescribed for the purposes of that subsection.
- (10) Where the trustee's discharge is granted under this section, the discharge also applies as regards any previous trustee under the trust deed unless, under section 189, a person with an interest obtains an order to the contrary from the sheriff.

187 Electronic delivery of notices etc. under this Part

- (1) Any notice or document authorised or required under this Part may be given, delivered or sent by electronic means, provided the intended recipient—
 - (a) has consented (whether in the specific case or generally) to electronic delivery and has not withdrawn that consent, and
 - (b) has supplied an electronic address for delivery.

- (2) In the absence of evidence to the contrary, a notice or other document is presumed to have been delivered under this Part where—
 - (a) the sender can produce a copy of the electronic message—
 - (i) which contained the notice or other document or to which the notice or other document was attached, and
 - (ii) which shows the time and date the message was sent, and
 - (b) that electronic message was sent to the address supplied under subsection (1)(b).
- (3) This section does not apply where some other form of delivery is required by rules of court or by order of the court.