



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 14

VOLUNTARY TRUST DEEDS FOR CREDITORS

Effect of protected status etc.

172 Effect of protected status: general

- (1) Where a trust deed has protected status then—
 - (a) subject to section 177, a creditor who (either or both)—
 - (i) is not a notified creditor, or
 - (ii) notified the trustee, during the relevant period, of objection to the trust deed,
has no higher right to recover the debt than a creditor who has acceded to, or been deemed by virtue of section 170(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 (by virtue of section 170(2)) to have acceded to a trust deed if the trustee refuses a request by the debtor to apply to AiB for discharge in terms of section 184(8).
- (3) Where a secured creditor's agreement has been obtained by virtue of section 166(2) (b) 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.

173 Effect of protected status on diligence against earnings

- (1) This section applies where a trust deed has protected status.

- (2) On the date of protection, any current earnings arrestment, maintenance arrestment, or, subject to subsection (3), conjoined arrestment order ceases to have effect.
- (3) Any sum paid, before the date of protection, by the employer to the sheriff clerk under a conjoined arrestment order must be disbursed by the sheriff clerk under section 64 of the Debtors (Scotland) Act 1987 even if the date of disbursement is after the date of protection.
- (4) A deduction from earnings order under that Act of 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.
- (5) 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.

174 Deductions by virtue of protected trust deed from debtor's earnings

- (1) This section applies where—
 - (a) a debtor is required to pay to the trustee, by virtue of a protected trust deed, a contribution from income for the benefit of creditors,
 - (b) in respect of that contribution, an amount is required to be paid from the debtor's earnings from employment, and
 - (c) the debtor has failed on two consecutive occasions to pay that amount to the trustee.
- (2) Following a request by the trustee, the debtor must give the debtor's employer an instruction, in such form as may be prescribed for the purposes of this section, 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 debtor's employer an instruction, in such form as may be prescribed for the purposes of this section (being a form to the same effect as is mentioned in subsection (2)), if the debtor fails to comply with the requirement imposed by that subsection.
- (4) If agreed between the debtor and the trustee, the debtor may give the debtor's employer a variation to an instruction mentioned in subsection (2).
- (5) The employer must comply with any instruction given in accordance with subsection (2) or (3) (or, if an instruction under subsection (2) is varied in accordance with subsection (4), with that instruction as so varied).
- (6) The instruction having been delivered, the employer must, while it is in effect—
 - (a) deduct the sum specified in it on every pay day, and
 - (b) pay the sum deducted to the trustee as soon as it is reasonable to do so.
- (7) 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.
- (8) An employer may, on making a payment due under an instruction—
 - (a) 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, and
 - (b) deduct that fee from the balance due to the debtor.
- (9) The trustee must, without delay after the discharge of a debtor under section 184, notify in writing any person who has received an instruction under subsection (2) or (3) (or an instruction under subsection (2) varied in accordance with subsection (4)) that the instruction is recalled.

175 Agreement in respect of debtor’s heritable property

- (1) Subject to the conditions in subsection (2), the trustee may, in such form as may be prescribed for the purposes of this section as at the date on which the trust deed is granted, agree—
 - (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 3(3) of schedule 4.
- (2) The conditions are that the debtor must—
 - (a) pay any amount determined by the trustee by a date so determined,
 - (b) pay a monthly amount so determined for a period so determined (being, in a case where there is a contribution from income, a period following the payment period applicable by virtue of section 168(2)), and
 - (c) co-operate with the administration of the trust.
- (3) The amount of the debtor’s payments under paragraphs (a) and (b) of subsection (2) must be determined in accordance with a valuation made by a chartered surveyor, or other qualified third party, of the debtor’s heritable estate as at the date of grant of the trust deed.
- (4) If the debtor fails to fulfil a condition mentioned in subsection (2), the trustee may withdraw from the agreement.
- (5) The trustee must, as soon as is practicable, send a copy of the agreement (in the form mentioned in subsection (1)) to AiB and to every creditor known to the trustee other than any secured creditor who 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.
- (6) This section does not apply to the debtor’s dwellinghouse (or any part of that dwellinghouse) if the dwellinghouse or part is, by virtue of an exclusion such as is mentioned in paragraph (b)(i) of the trust deed definition, excluded from the estate conveyed to the trustee.

176 Dividend payments

- (1) If the funds of the debtor's estate are sufficient, the trustee must pay a dividend out of it 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 is 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, after—
 - (a) deduction of the trustee's fees and of any outlays payable under this Part, and
 - (b) 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, as at the date of protection, under the trust deed.

177 Sequestration petition by qualified creditor

- (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—
 - (a) not later than 5 weeks after the date of registration under section 169 of the notice mentioned in that section, 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,present a petition to the sheriff for sequestration of the debtor's estate.
- (2) Subsection (1)(b) is subject to section 13(2)(a).
- (3) The sheriff may award sequestration in pursuance of—
 - (a) subsection (1)(a), only if satisfied that to do so would be in the best interests of the creditors, and
 - (b) subsection (1)(b), only if satisfied that the creditor's averment is correct.

178 Creditor's application as respects intrusions of trustee

- (1) A creditor who is not sent a copy of the notice mentioned in section 169 or who has notified the trustee of objection to the trust deed within the relevant period may apply to the sheriff under this section.
- (2) Where on such an application the sheriff is satisfied, on grounds other than those on which a petition under section 177(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 is not to be so bound.
- (3) On the sheriff making an order under subsection (2), the sheriff clerk must—
 - (a) send a copy of the order to the trustee, and
 - (b) send a copy of the order to AiB for registration in the register of insolvencies.
- (4) Any application under subsection (1) must be made within 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 section 186(8)(b).

Status: This is the original version (as it was originally enacted).

- (5) 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 15(1) or (3).