



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 14

VOLUNTARY TRUST DEEDS FOR CREDITORS

General

162 Voluntary trust deeds for creditors

Sections 163 to 193 and schedule 4 have effect in relation to voluntary trust deeds executed on or after the date on which this Part comes into force.

Commencement Information

II [S. 162](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

Protected trust deeds: protected status

163 Protected status: general

- (1) A trust deed has protected status (and is to be known as a “protected trust deed”) where—
 - (a) the conditions set out in sections 164, 165, 166(2) (where it applies) and 167 to 170 are met, and
 - (b) the deed is registered under section 171(2) in the register of insolvencies.
- (2) And it has that status from the date on which it is so registered (that date being, in this Part, referred to as the “date of protection”).

Commencement Information

I2 [S. 163](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

Changes to legislation: Bankruptcy (Scotland) Act 2016, PART 14 is up to date with all changes known to be in force on or before 16 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Conditions for protected status

164 Protected status: the debtor

- (1) The debtor must be—
 - (a) a living individual who,
 - (b) a partnership which,
 - (c) a limited partnership (within the meaning of the Limited Partnerships Act 1907) which,
 - (d) a trust which,
 - (e) a corporate body which, or
 - (f) an unincorporated body which,
 grants a trust deed for a single estate.
- (2) The debtor must not be—
 - (a) a debtor whose estate has been sequestrated if the trustee in the sequestration has not been discharged under section 148 or 151, or
 - (b) an entity referred to in section 6(2).
- (3) The total amount of the debtor's debts (including interest) as at the date on which the debtor grants the trust deed must be not less than £5,000.

Commencement Information

I3 S. 164 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

165 Protected status: the trustee

The trustee under the trust deed must be a person who would not be disqualified under section 49(3) to (5) from acting as the replacement trustee were the debtor's estate being sequestrated.

Commencement Information

I4 S. 165 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

166 Exclusion of a secured creditor from trust deed

- (1) The conditions set out in subsection (2) apply where a secured creditor is, by virtue of an agreement such as is mentioned in paragraph (b)(ii) of the definition of “trust deed” in section 228(1) (in this Part referred to as “the trust deed definition”), excluded from a trust deed.
- (2) Before the debtor grants the trust deed—
 - (a) the trustee must provide the debtor and the secured creditor with a valuation, made by a chartered surveyor or other suitably qualified person, of the dwellinghouse (or part) which is to be excluded from the estate conveyed as mentioned in paragraph (b)(i) of the trust deed definition,
 - (b) the debtor must, in such form as may be prescribed for the purposes of this paragraph, request obtaining the secured creditor's agreement not to claim

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under the trust deed for any of the debt in respect of which the security is held, and

- (c) any agreement so obtained must be set out in such form as may be prescribed for the purposes of this paragraph.

Commencement Information

I5 S. 166 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

167 Statements in and advice regarding trust deed

- (1) The trust deed must state—
 - (a) that, subject to any exclusion mentioned in paragraph (b)(i) of the trust deed definition, all of the debtor's estate (other than property listed in section 88(1) or which would be excluded under any other provision of this Act or of any other enactment from vesting in the trustee of a sequestrated estate) is conveyed to the trustee, and
 - (b) that the debtor agrees to convey to the trustee, for the benefit of creditors generally, any estate (wherever situated) which—
 - (i) is acquired by the debtor during the 4 years beginning with the date on which the trust deed is granted, and
 - (ii) would have been conveyed to the trustee by virtue of paragraph (a) had it been part of the debtor's estate on the date on which the trust deed was granted.
- (2) Where the debtor's dwellinghouse, or part of the debtor's dwellinghouse, is excluded as mentioned in paragraph (b)(i) of the trust deed definition from the estate conveyed to the trustee, the trust deed must also include details—
 - (a) of any secured creditor who has agreed not to claim under the trust deed for any of the debt in respect of which the security is held, and
 - (b) of that debt.
- (3) Before the debtor grants the trust deed—
 - (a) the trustee must advise the debtor that granting the deed may result—
 - (i) in the debtor's estate being sequestrated,
 - (ii) in the debtor's being refused credit, whether before or after the debtor's discharge under section 184,
 - (iii) subject to any exclusion mentioned in paragraph (b)(i) of the trust deed definition, in the debtor's not being able to remain in the debtor's current place of residence,
 - (iv) subject to any such exclusion, in the debtor's being required to relinquish property which the debtor owns,
 - (v) in the debtor's being required to make contributions from income for the benefit of creditors,
 - (vi) in damage to the debtor's business interests and employment prospects, and
 - (vii) in the fact of the debtor's having granted a trust deed becoming public information,
 - (b) the trustee must provide the debtor with a copy of a debt advice and information package, and

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- (c) the trustee and the debtor must both sign a statement to the effect that the trustee has fulfilled the duties referred to in this subsection.

Commencement Information

I6 S. 167 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

168 Payment of debtor's contribution

- (1) The trust deed must state that the debtor is, during the payment period mentioned in subsection (2), to pay any contributions from income for the benefit of creditors (including, where the debtor is an individual, any contribution required by the common financial tool) at regular intervals.
- (2) The payment period is—
- (a) a period of 48 months beginning with the date on which the trust deed is granted,
 - (b) such period shorter than 48 months as is determined by the trustee, or
 - (c) such period longer than 48 months as is—
 - (i) determined by the trustee where there has been a period during which the debtor has not paid those contributions, or
 - (ii) agreed between the debtor and the trustee.
- (3) The trustee may, under subsection (2)(b), determine a shorter payment period only if, in the trustee's opinion, payment of those contributions (from income or otherwise) during that period would allow distribution of the debtor's estate to meet in full the total amount, as at the date on which the debtor grants the trust deed, of the debtor's debts (including interest).
- (4) Where the debtor is an individual, those contributions must be such as to result, over the payment period, in the payment of a sum less than the total amount, as at the date on which the debtor grants the trust deed, of the debtor's debts (including interest).
- (5) In calculating those contributions for the purposes of subsections (1) and (4), the whole of the debtor's surplus income over the amount allowed for expenditure in the statement of the debtor's income and expenditure supplied under section 170(1)(d)(ii) must be applied.

Commencement Information

I7 S. 168 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

169 Notice in register of insolvencies

After the trust deed has been delivered to the trustee, the trustee must without delay send a notice in such form as may be prescribed for the purposes of this section to AiB for publication by registration in the register of insolvencies.

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Commencement Information

18 S. 169 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

170 Documents to be sent to creditors

- (1) Not later than 7 days after the date of registration under section 169, the trustee must send 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)—
- (a) a copy of the trust deed,
 - (b) a copy of such form as may be prescribed for the purposes of a creditor making a statement of claim,
 - (c) a copy of the notice mentioned in section 169,
 - (d) a statement of the debtor's affairs, prepared by the trustee, containing—
 - (i) a list of the debtor's assets and liabilities,
 - (ii) a statement of the debtor's income and expenditure as at the date on which the trust deed was granted (being, where the debtor is a living individual, a statement in the ^{F1}form prescribed for that purpose by the Protected Trust Deeds (Forms) (Scotland) Regulations 2016]),
 - (iii) a statement as to the extent to which those assets and that income will not vest in the trustee,
 - (iv) a statement as to whether, and if so on what basis, the ^{F2}EU insolvency proceedings regulation applies to the trust deed,
 - ^{F3}(v)
 - (vi) a statement as to whether the creditors are likely to be paid a dividend and the amount of the dividend that is expected to be paid,
 - (vii) if the case is one in which there is an exclusion such as is mentioned in paragraph (b)(i) of the trust deed definition, a statement by the trustee, on the basis of the information for the time being available to the trustee, as to what the effect of that exclusion is likely to be on any such dividend,
 - (viii) a statement that the trustee on request must provide a copy of any valuation held by the trustee which has been made by a third party and which relates to an asset of the debtor, any statement showing the amount due by the debtor under a security and any document showing the income for the time being of the debtor,
 - (ix) a copy of any agreement referred to in section 175(1),
 - (x) a statement explaining the conditions which require to be fulfilled before the trust deed will become a protected trust deed and the consequences of its so becoming,
 - (xi) details of any protected trust deed in respect of which, in the 6 months preceding publication of the notice provided for in section 169, the debtor has been discharged in terms of section 184(1) (or regulation 24(1) of the Protected Trust Deeds (Scotland) Regulations 2013 (S.S.I. 2013/318)) or been refused a letter of discharge under section 184(8) (or regulation 24(8) of those regulations), and
 - (xii) where a secured creditor's agreement has been obtained by virtue of paragraph (b) of section 166(2), a statement containing the valuation

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- made by virtue of paragraph (a) of that section and a statement of the amount owed, in respect of the security held, to that creditor, and
- (e) a statement, in such form as may be prescribed for the purposes of this paragraph, of the trustee's anticipated realisations from the trust deed.
- (2) The trust deed must be acceded to by the creditors to whom the trustee is required by subsection (1) to send documents (those creditors being in this Part referred to as “the notified creditors”) but is deemed to have been acceded to by them unless, within the relevant period, the trustee receives notification in writing from a majority in number, or no fewer than $\frac{1}{3}$ in value, of them that they object to the trust deed being granted protected status.

Textual Amendments

- F1** Words in s. 170(1)(d)(ii) substituted (30.11.2016) by [S.S.I. 2016/398, reg. 2\(2\)](#)
- F2** Word in s. 170(1)(d)(iv) substituted (26.6.2017) by [The Insolvency \(Regulation \(EU\) 2015/848\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/210\), regs. 1, 4\(12\)](#) (with reg. 9)
- F3** [S. 170\(1\)\(d\)\(v\)](#) omitted (31.12.2020) by virtue of [The Insolvency \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/94\), regs. 1, 4\(14\)](#) (with reg. 9) (as amended by [S.S.I. 2020/337, regs. 1, 2](#); [2020 c. 1, Sch. 5 para. 1\(1\)](#))

Commencement Information

- I9** S. 170 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

Registration for protected status

171 Registration for protected status

- (1) As soon as reasonably practicable after the expiry of the relevant period (and in any event within 4 weeks after that expiry), the trustee must send to AiB 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 section 166(2)(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 $\frac{1}{3}$ or more in value, of the creditors,
 - (d) a copy of the statement referred to in section 167(3)(c),
 - (e) a copy of the statement referred to in section 170(1)(d),
 - (f) a copy of any agreement referred to in section 175(1),
 - (g) a statement, in the form prescribed for the purposes of section 170(1)(e), of the trustee's anticipated realisations from the trust deed,
 - (h) where the debtor, being a living individual, makes a contribution from income—
 - (i) a statement that the amount of the contribution is in accordance with the common financial tool as assessed by the trustee, and

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- (ii) any evidence or explanation required in applying the common financial tool
- [^{F4}(i) a statement by the trustee, in the form prescribed for that purpose in the Protected Trust Deeds (Forms) (Scotland) Regulations 2016, that—
 - (i) the documents and statements required under paragraphs (a) to (h) of this subsection accompany the statement, and
 - (ii) the conditions set out in sections 164 to 170 have been met].
- (2) AiB must register the trust deed in the register of insolvencies if—
 - (a) AiB has received all the documents required to be sent under subsection (1),
 - (b) the conditions set out in sections 164 to 170 have been met, and
 - (c) AiB is satisfied, in accordance with the common financial tool, with the amount of the contribution determined.
- (3) Subsection (4) applies where AiB notifies the trustee either—
 - (a) that the trust deed is registered in the register of insolvencies, or
 - (b) that such registration is refused.
- (4) The trustee must, within 7 days after being so notified, notify the debtor and every creditor known to the trustee that the trust deed is so registered or refused.

Textual Amendments

F4 S. 171(1)(i) inserted (30.11.2016) by S.S.I 2016/398, reg. 2(4)

Commencement Information

I10 S. 171 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

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,

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- (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.

Commencement Information

I11 S. 172 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

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.

Commencement Information

I12 S. 173 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

[^{F5}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

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- (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

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- (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.]

Textual Amendments

F5 S. 173A inserted (1.8.2017) by [The Public Services Reform \(Corporate Insolvency and Bankruptcy\) \(Scotland\) Order 2017 \(S.S.I. 2017/209\)](#), arts. 1(2), 6

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—

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- (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.

Commencement Information

I13 S. 174 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

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.

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Commencement Information

I14 S. 175 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

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.

Commencement Information

I15 S. 176 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

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.

Commencement Information

I16 S. 177 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

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.

Changes to legislation: Bankruptcy (Scotland) Act 2016, PART 14 is up to date with all changes known to be in force on or before 16 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (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).
- (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).

Commencement Information

I17 S. 178 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

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.

Commencement Information

I18 S. 179 in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

Changes to legislation: Bankruptcy (Scotland) Act 2016, PART 14 is up to date with all changes known to be in force on or before 16 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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.
- (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.

Commencement Information

I19 [S. 180](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

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.

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- (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.

Commencement Information

I20 [S. 181](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

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.

Commencement Information

I21 [S. 182](#) in force at 30.11.2016 by [S.S.I. 2016/294](#), [reg. 2](#)

Changes to legislation: Bankruptcy (Scotland) Act 2016, PART 14 is up to date with all changes known to be in force on or before 16 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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
 - (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.

Commencement Information

122 S. 183 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

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

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- (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—

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- (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.

Commencement Information

I23 S. 184 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

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—
- (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).

Commencement Information

I24 S. 185 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

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.

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- (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.

Commencement Information

I25 S. 186 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

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.

Changes to legislation: Bankruptcy (Scotland) Act 2016, PART 14 is up to date with all changes known to be in force on or before 16 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Commencement Information

I26 S. 187 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

Appeals and directions

188 Protected trust deed: appeal

- (1) The persons mentioned in subsection (2) may appeal to the sheriff against—
 - (a) any refusal by AiB to register a trust deed if it is a refusal on the grounds that AiB is not satisfied as mentioned in section 171(2)(c),
 - (b) any determination by AiB fixing the remuneration payable to the trustee under a protected trust deed,
 - (c) any direction under section 179(1) to the trustee, or
 - (d) any refusal by AiB under section 184(9).
- (2) The persons are—
 - (a) the trustee,
 - (b) the debtor, if able to satisfy the sheriff that the debtor has, or is likely to have, a pecuniary interest in the outcome of the appeal, and
 - (c) any creditor, if able to satisfy the sheriff that the creditor has, or is likely to have any such interest in that outcome.
- (3) The trustee may appeal to the sheriff against a refusal by the creditors to grant the trustee's discharge under section 186(2).
- (4) The debtor may appeal to the sheriff against a refusal by the trustee to apply under section 184(1)(b)(i) for the debtor's discharge.
- (5) Any appeal under subsection (1) must be made within 21 days after the refusal, determination or direction appealed against.
- (6) The sheriff to whom any appeal under this section is to be made is the sheriff who, had a petition for the 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).
- (7) The decision of the sheriff on an appeal under this section is final.

Commencement Information

I27 S. 188 in force at 30.11.2016 by S.S.I. 2016/294, reg. 2

189 Protected trust deed: sheriff's direction

- (1) Any person with an interest may at any time apply to the sheriff for a direction as regards the administration of a trust under a protected trust deed.
- (2) A direction by virtue of subsection (1) may include—
 - (a) any order the sheriff thinks fit to make in the interests of justice, or
 - (b) an order to cure any defect in procedure.

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- (3) The sheriff to whom any application under this section is to be made is the sheriff who, had a petition for the 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).

Commencement Information

I28 S. 189 in force at 30.11.2016 by S.S.I. 2016/294, [reg. 2](#)

Application for conversion to sequestration

F6 190 Application for conversion to sequestration

Textual Amendments

F6 Ss. 190-192 omitted (31.12.2020) by virtue of [The Insolvency \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/94\)](#), [regs. 1, 4\(15\)](#) (with [reg. 9](#)) (as amended by [S.S.I. 2020/337](#), [regs. 1, 2](#)); [2020 c. 1, Sch. 5 para. 1\(1\)](#)

F6 191 Contents of affidavit required under section 190(2)

Textual Amendments

F6 Ss. 190-192 omitted (31.12.2020) by virtue of [The Insolvency \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/94\)](#), [regs. 1, 4\(15\)](#) (with [reg. 9](#)) (as amended by [S.S.I. 2020/337](#), [regs. 1, 2](#)); [2020 c. 1, Sch. 5 para. 1\(1\)](#)

F6 192 Powers of Accountant in Bankruptcy on application for conversion to sequestration

Textual Amendments

F6 Ss. 190-192 omitted (31.12.2020) by virtue of [The Insolvency \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/94\)](#), [regs. 1, 4\(15\)](#) (with [reg. 9](#)) (as amended by [S.S.I. 2020/337](#), [regs. 1, 2](#)); [2020 c. 1, Sch. 5 para. 1\(1\)](#)

Part 14: general

193 Interpretation of Part 14

In this Part—

Changes to legislation: Bankruptcy (Scotland) Act 2016, PART 14 is up to date with all changes known to be in force on or before 16 September 2021. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

F7
 ...

“the date of protection” has the meaning given by section 163(2),
 “the date of protection” has the meaning given by section 163(2),
 “the notified creditors” has the meaning given by section 170(2),
 “the relevant period” means the period of 5 weeks beginning with the date of registration of the notice referred to in section 169,
 “remuneration” means reasonable fees and outlays, and
 “the trust deed definition” has the meaning given by section 166(1).

Textual Amendments

F7 Definition in s. 193 repealed (30.11.2016) by [S.S.I. 2016/398, reg. 2\(3\)](#)

Commencement Information

I29 S. 193 in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

194 Regulations modifying Part 14

- (1) The Scottish Ministers may by regulations modify (or add to) the provisions of this Part but, subject to subsections (2) and (3), only in so far as corresponding modifications or additions might, before the coming into force of this Part, have been made by virtue of paragraph 5(1) of schedule 5 of the Bankruptcy (Scotland) Act 1985 to the Protected Trust Deeds (Scotland) Regulations 2013 (S.S.I. 2013/318).
- (2) Regulations under subsection (1) may make provision enabling applications to be made to the court.
- (3) Regulations under subsection (1) may contain such modifications of the provisions of this Act as appear to the Scottish Ministers to be necessary in consequence of those regulations.

Commencement Information

I30 [S. 194](#) in force at 30.11.2016 by [S.S.I. 2016/294, reg. 2](#)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 78(2)(a) words in s. 78(2) renumbered as s. 78(2)(a) by [2019 asp 4 s. 7\(2\)\(a\)](#)
- s. 78(2)(b) and word inserted by [2019 asp 4 s. 7\(2\)\(b\)](#)