
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2010 No.

**The Protected Trust Deeds (Scotland)
Amendment Regulations 2010**

Citation and commencement

1. These Regulations may be cited as the Protected Trust Deeds (Scotland) Amendment Regulations 2010 and come into force on 15th November 2010.

Amendment of the Protected Trust Deeds (Scotland) Regulations 2008

2. The Protected Trust Deeds (Scotland) Regulations 2008(1) are amended in accordance with regulations 3 to 13.

3. In regulation 2 (interpretation), in the definition of “notified creditors” after “Regulations” insert “(and does not include a secured creditor who has consented in terms of regulation 5A(c))”.

4. After regulation 5 (qualifications of trustee), insert—

“Exclusion of a secured creditor

5A. Where a secured creditor is excluded from a trust deed under section 5(4A)(b)(ii) of the Act, prior to the debtor granting the trust deed—

- (a) the trustee must provide the debtor and the secured creditor with a valuation made by a third party of the debtor’s dwellinghouse (or part thereof) which is to be excluded from the trust deed under section 5(4A)(b)(i) of the Act;
- (b) the debtor must consent in terms of Part 1 of Form A1 set out in Schedule 1 to these Regulations; and
- (c) the secured creditor must consent in terms of Part 2 of Form A1 set out in Schedule 1 to these Regulations.”

5. In regulation 6 (statement of trustee and debtor)—

- (a) for the heading substitute “Statements in relation to trust deed”;
- (b) for paragraph (1), substitute—

“(1) The trust deed must state—

- (a) subject to any exclusion under section 5(4A)(b) of the Act, that all the debtor’s estate (other than property listed in section 33(1) of the Act or which would be excluded from vesting in a trustee of a sequestrated estate under any other provision of that Act or other enactment) 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 after the trust deed is granted and before the debtor’s discharge in terms of regulation 19; and

- (ii) would have been conveyed to the trustee if it had been part of the debtor’s estate on the date on which the trust deed was granted.”;
- (c) after paragraph (1), insert—
 - “(1A) Where a debtor’s dwellinghouse is excluded from a trust deed under section 5(4A)(b)(i) of the Act, the trust deed must also state—
 - (a) details of any secured creditor who has agreed not to claim under the trust deed under section 5(4A)(b)(ii) of the Act; and
 - (b) details of the debt in respect of which a secured creditor has agreed not to claim.”;
 - (d) at the beginning of paragraphs (2)(a)(iii) and (iv), insert “subject to any exclusion under section 5(4A)(b) of the Act.”; and
 - (e) after paragraph (2), insert—
 - “(3) A statement in terms of paragraph (1)(b) is not required for any trust deed granted before 15th November 2010.”.
- 6. In regulation 8 (documents to be sent to creditors)—
 - (a) after “the trustee” in the second place where it occurs insert “(other than a secured creditor who has consented in terms of regulation 5A(c))”;
 - (b) for sub-paragraph (c)(vi) substitute—
 - “(vi) a statement by the trustee, on the basis of the information then available—
 - (aa) whether the creditors are likely to be paid a dividend; and
 - (bb) what, in the case where a secured creditor is excluded from a trust deed under section 5(4A)(b)(ii) of the Act, is the effect on the dividend of that exclusion.”;
 - (c) the word “and” following sub-paragraphs (c)(vii) and (c)(viii) is omitted; and
 - (d) after sub-paragraph (c)(viii), insert—
 - “(ix) details of any protected trust deed under which, in the preceding 6 months, the debtor has been discharged in terms of regulation 19(1) or refused a discharge in terms of regulation 19(5); and
 - (x) where a secured creditor’s consent has been obtained in terms of regulation 5A(c), a statement containing—
 - (aa) a valuation made by a third party of the debtor’s dwellinghouse (or part thereof) which is excluded from the trust deed under section 5(4A)(b)(i) of the Act; and
 - (bb) the amount of the debt owed, in respect of the security held, to any secured creditor of that dwellinghouse who has been excluded from the trust deed under section 5(4A)(b)(ii) of the Act; and”.
- 7. In regulation 10 (registration of protected status)—
 - (a) after “relevant period” where it first occurs, insert “(and in any event no later than 4 weeks after the expiry)”;
 - (b) after paragraph (1)(a), insert—
 - “(aa) either—
 - (i) a copy of every secured creditor’s consent form required in terms of regulation 5A(c); or

- (ii) a statement by the trustee that no secured creditor is excluded from the trust deed;” and
 - (c) in paragraph (2) for “the documents listed in” substitute “every document which the trustee must send under”.
- 8.** In regulation 11 (effect of protected status), after paragraph (2) insert—
 - “(3) Where a secured creditor has consented to be excluded from a trust deed in terms of regulation 5A(c) and the trust deed becomes protected, that creditor is not entitled—
 - (a) to make a claim under the protected trust deed in respect of 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; nor
 - (c) to petition for the sequestration of the debtor during the subsistence of the protected trust deed.”.
- 9.** In regulation 18 (remuneration payable to trustee), after paragraph (1) insert—
 - “(1A) The trustee is entitled to remuneration for work done in seeking to comply with regulation 5A, whether or not a secured creditor is excluded from a trust deed.”.
- 10.** In regulation 19 (discharge of the debtor)—
 - (a) after paragraph (1), insert—
 - “(1A) Either of the following is not to be treated as a failure to meet the debtor’s obligations for the purpose of paragraph (1)(a):—
 - (a) a refusal by the debtor to consent to the sale of the debtor’s dwellinghouse which is excluded from a trust deed in accordance with section 5(4A)(b) of the Act; or
 - (b) a refusal to give a relevant consent in terms of section 40(1)(a) of the Act.”; and
 - (b) for paragraph (2), substitute—
 - “(2) A letter of discharge does not—
 - (a) discharge the debtor from any liability arising after the date on which the trust deed was granted;
 - (b) discharge the debtor from any liability for any debt which would be excluded from a discharge under section 55(2) of the Act;
 - (c) discharge the debtor from any liability for any debt in respect of which a security is held where the secured creditor consented in terms of regulation 5A(c);
 - (d) affect the rights of secured creditors.”.
 - 11.** In regulation 21 (discharge of trustee), after paragraph (1) insert—
 - “(1A) For the purposes of paragraph (1) the date of the final distribution is deemed to be the date on which all of the estate which is to be distributed amongst the creditors has been placed beyond the control of the trustee.”.
 - 12.** In the heading to regulation 22 (action after discharge), for “trust” substitute “trustee”.
 - 13.** In Schedule 1 (forms), before Form 1 insert the form set out in the Schedule to these Regulations.

Authorised to sign by the Scottish Ministers