
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2013 No.

The Protected Trust Deeds (Scotland) Regulations 2013

PART 4

ADMINISTRATION, ACCOUNTING AND DISCHARGE

Discharge of debtor

24.—(1) If the conditions set out in paragraph (2) are met, subject to paragraphs (6), (9) and (11)—

- (a) the debtor will be discharged from all debts and obligations—
 - (i) in terms of the 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 the Accountant, an application for discharge of the debtor in Form 5; and
 - (ii) to the debtor, a copy of that application.

(2) The conditions are—

- (a) that the trustee makes a statement in the Form 5 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 2 of Schedule 5 to the Act has been recalled or has expired.

(3) If the conditions set out in paragraph (2) are met and unless paragraph (11) applies, on receipt of the Form 5 referred to in paragraph (1)(b)(i), the Accountant must register it in the register of insolvencies and the date of discharge is the date on which it is so registered.

(4) The Accountant must notify the trustee of the fact of registration and the date of the debtor's discharge without delay.

(5) The trustee must notify the debtor and every creditor known to the trustee of the information set out in the notification mentioned in paragraph (4) by no later 7 days after the date of receipt of the notification.

(6) The 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 or obligation mentioned in section 55(2) of the Act;
- (c) discharge the debtor from any liability for a debt in respect of which a security is held if the secured creditor has agreed under section 5(4A)(b)(ii) of the Act not to claim under the trust deed for any of the debt in respect of which the security is held; or

- (d) affect the rights of a secured creditor.
- (7) For the purposes of paragraph (2)(a)(i), it is not a failure to meet the debtor’s obligations—
- (a) for the debtor to refuse to consent to the sale of the debtor’s dwellinghouse (or of a part of that dwellinghouse) if the dwellinghouse or part is excluded from the estate conveyed to the trustee in accordance with section 5(4A)(b) of the Act;
 - (b) for the debtor to refuse to give a relevant consent in terms of section 40(1)(a) of the Act.
- (8) If on request by the debtor, or at the end of the period of 48 months beginning with the day on which the trust deed was granted, the trustee refuses to apply to the Accountant for discharge of the debtor, the trustee must—
- (a) inform the debtor 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 as regards the administration of the trust in accordance with regulation 28(1); and
 - (b) send a copy of this written notification to the Accountant by no later than 21 days after the date of issue of the notification.
- (9) This regulation does not affect the right to recover any debt arising from a student loan.
- (10) In paragraph (9), “student loan” means a loan made—
- (a) by virtue of regulations made under section 73(f) of the Education (Scotland) Act 1980(1);
 - (b) under section 1 of the Education (Student Loans) Act 1990(2);
 - (c) by virtue of regulations made under section 22 of the Teaching and Higher Education Act 1998(3); or
 - (d) by virtue of regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1998(4).
- (11) The Accountant may refuse to register a Form 5 in the register of insolvencies if the Accountant is 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.
- (12) If paragraph (11) applies and the Accountant refuses to register the Form 5 in the register of insolvencies, the Accountant must provide written notification of that refusal and the reason for it to the trustee and the debtor.
- (13) The trustee must send a copy of the notification mentioned in paragraph (12) to every creditor known to the trustee by no later than 7 days after the date of receipt of the notification.

(1) 1980 c.44. Section 73(f) was amended by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6), section 3(2). Section 73B was inserted by the Teaching and Higher Education Act 1998 (c.30), section 29(2).

(2) 1990 c.6. The Education (Student Loans) Act 1990 was repealed (subject to transitional and saving provisions) on 13th August 1998 (S.I. 1998/2004).

(3) 1998 c.30. Section 22 was amended by: the Learning and Skills Act 200 (c.21), section 146(2(a)) and Schedule 11, paragraph 1; the Higher Education Act 2004 (c.8), sections 42(1) and 43(2) and Schedule 7, paragraph 1; the Apprenticeships, Skills, Children and Learning Act 2009 (c.22), section 257(2); the Education Act 2011 (c.21), section 76(1) and (2)(a); the Income Tax (Earnings and Pensions) Act 2003 (c.1), Schedule 6, paragraph 236; the Finance Act 2003 (c.14), section 147(3).

(4) S.I. 1998/1760 (N.I. 14).