


# **The Protected Trust Deeds (Miscellaneous Amendment) (Scotland) Regulations 2024**

**Business and Regulatory Impact Assessment**

  
3 May 2024

 | Scottish Government  
Riaghaltas na h-Alba  
gov.scot

## Table of Contents

Title of Proposal .....	1
Purpose and intended effect .....	1
Consultation .....	4
Options.....	6
Sectors and Groups Affected .....	7
Benefits .....	7
Costs .....	10
Regulatory and EU Alignment impacts.....	16
Intra-UK Trade .....	16
International Trade .....	16
EU Alignment .....	16
Scottish Firms Impact Test.....	16
Competition Assessment.....	17
Consumer Assessment .....	17
Test Run of Business Forms .....	18
Digital Impact Test.....	18
Legal Aid Impact Test.....	18
Enforcement, Sanctions and Monitoring.....	18
Implementation and Delivery Plan.....	19
Post-implementation Review.....	19
Summary and Recommendations .....	19
Declaration and Publication.....	21

## **Title of Proposal**

1. The Protected Trust Deeds (Miscellaneous Amendment) (Scotland) Regulations 2024.

## **Purpose and intended effect**

2. These Regulations will bring forward stakeholder-led recommendations to introduce improvements to the current Protected Trust Deed (PTD) process. The provisions contained in the Regulations will help ensure this statutory debt solution is fit for purpose and provides the necessary support and protection to those who need to access debt relief through this solution.

## **Background**

3. The legislation for PTDs is contained in Part 14 of the Bankruptcy (Scotland) Act 2016. Powers contained in sections 194(1), 205(1) and 224(1) of this Act allow Scottish Ministers to make amendments to Part 14 by way of Regulations.

4. In 2019 the Scottish Ministers committed to undertake a wide-ranging policy review of Scotland's statutory debt solutions, specifically moratorium protection, bankruptcy, PTDs and the Debt Arrangement Scheme, with the aim of further enhancing and improving the system (further details of this review are included within the Consultation section).

5. Additionally, the then Economy, Energy and Fair Work Committee, conducted a short, focused inquiry into PTDs in early 2020. Their [report of recommendations](#) was published in May 2020.

6. During Stage 2 of the wider review a stakeholder working group considered the recommendations made by the Economy, Energy and Fair Work Committee while considering options on how to improve the current PTD process.

7. These Regulations bring forward the areas requiring secondary legislation for PTDs from recommendations made in Stage 2 of the review of Scotland's statutory debt solutions on how the PTD process could be improved. Other areas which require primary legislation are being taken forward in the Bankruptcy and Diligence (Scotland) Bill, which was introduced to Parliament in April 2023, with the remaining areas being taken forward through a mix of operational guidance and separate secondary legislation.

## **Objective**

8. The purpose of these Regulations is to bring forward changes to PTD legislation that will address some of the recommendations made by stakeholders.

9. The provisions included in these Regulations will:

- Make some of the terms contained in an existing voluntary protocol a statutory requirement. This means:
  - where a dividend is payable it will be paid to creditors at month 12 and quarterly thereafter
  - a trustee has to seek the agreement of Accountant in Bankruptcy (AiB) when refusing to discharge a debtor from a PTD
- allow for the removal of the protected status of a PTD where there has been a material error made in the process of the trust deed gaining protected status
- remove any time limitation for a trustee refusing to apply for a debtor's discharge
- allow early discharge of the debtor in extenuating circumstances
- allow AiB to act as trustee of last resort where a trustee can no longer act in that capacity and a replacement trustee cannot be found.

10. In addition, the Regulations will increase the supervision fee of a trustee under a protected trust deed. They will also place beyond doubt that anyone or a legal entity applying for the protection of a trust deed will have to have been habitually resident in Scotland or established a place of business in the year prior to the granting of the trust deed. Alternatively, a body or entity applying will have to be constituted or formed under Scots law and at any time to have carried out business within Scotland.

## **Rationale for the Government intervention**

11. The Scottish Government recognises the responsibility it has to take action to help the people of Scotland by ensuring its debt management and debt relief solutions are fit for purpose and are accessible to those who need help.

12. It is assessed that the following National Outcomes are relevant to these Regulations:

- **We tackle poverty by sharing opportunities, wealth and power more equally** – ensuring statutory debt solutions are designed and available to help people in severe financial difficulty and give them a fresh start
- **We have a globally competitive, entrepreneurial, inclusive and sustainable economy** – providing predictably and confidence for lenders by ensuring statutory debt solutions are interpreted consistently, are sustainable and meet the needs of the people of Scotland
- **We have thriving and innovative businesses, with quality jobs and fair work for everyone** – ensuring the statutory debt solutions are fit for purpose and able to be clearly interpreted in order to help those who need them and to assist people to get back on their feet and contribute towards the economy
- **We respect, protect and fulfil human rights and live free from discrimination** – ensuring statutory debt solutions are available to everyone and that everyone is treated consistently and with dignity and respect when accessing debt solutions

## Consultation

### Within Government

13. There has been consultation across Scottish Government. HMRC was a member of the stakeholder-led working groups, and other relevant bodies were included in the public consultations.

### Public Consultation

14. In April 2015, wide ranging bankruptcy reforms were introduced through the Bankruptcy and Debt Advice (Scotland) Act 2014. In 2019, the Scottish Government consulted with stakeholders to gauge how these reforms were working in practice. The Scottish Ministers then committed to undertake a wide-ranging policy review of Scotland's statutory debt solutions, specifically moratorium protection, bankruptcy, PTDs and the Debt Arrangement Scheme.

15. The policy review was organised into three stages. The first stage concluded with immediate changes being introduced through the [Bankruptcy \(Miscellaneous Amendments\) \(Scotland\) Regulations 2021](#). These included important measures to improve access to bankruptcy by reducing or removing application fees for those in need of debt relief. The second stage was undertaken by stakeholder-led working groups. Their remit was to look at the operation of existing statutory debt solutions, aimed at providing recommendations and options for improvement. The third stage, aiming at a longer-term strategic review of the debt solutions, began in late 2023.

16. The second stage of the review was undertaken by three stakeholder-led working groups formed from a wide body of sector specialists with expertise in debt advice and the operation of statutory debt solutions. The members included money advice professionals, insolvency professionals, creditor bodies and academics. The working groups considered any improvements which could be made to the existing statutory debt solutions.

17. One of the groups established to help carry out the review considered the aforementioned recommendations made by the then Economy, Energy and Fair Work Committee who had conducted a short, focused inquiry on PTDs in January 2020. A number of the recommendations made were addressed operationally through a voluntary protocol which came into force on 1 October 2021. The group met over the course of 2021 to consider the protocol, remaining recommendations and further areas of the PTD process to see where improvements could be made. This resulted in a [report containing 15 recommendations](#) being presented to Scottish Ministers for consideration

18. In March 2022, these recommendations along with the recommendations from the two other working group were included in a report issued to Scottish Ministers. The Scottish Government considered those recommendations and subsequently, on 12 August 2022, published a consultation, '[Scotland's Statutory Debt Solutions and Diligence: Policy Review Response](#)', in response to the second stage of the review and the diligence review. The consultation closed on 7 October 2022.

19. At the close of the consultation a total of 46 responses were received, of which 13 were from individuals and 33 were from organisations. A summary of responses to this consultation was published by the Scottish Government on 26 January 2023 and can be viewed at the following link - [Scotland's statutory debt solutions and diligence: policy review consultation: summary of responses report](#).

## **Other Consultation**

20. Further consultation has been undertaken by the Scottish Government by direct liaison with the members of the PTD Standing Committee. The PTD Standing Committee is composed of members from the creditor, insolvency practitioner and debt advice sectors as well as recognised professional bodies. The Committee provides information and guidance to AiB on the administration of trust deeds and helps identify any issues or areas of concern in the process. Its general purpose is to act as a discussion forum for stakeholders to ensure there is an effective conduit for the receipt and dissemination of information concerning PTDs across stakeholder groups and interested parties.

## **Business**

21. Other than as stated above we have not held further face-to-face discussions with individual businesses. However, the wider review of Scotland's statutory debt solutions has been a stakeholder-led process with each of the groups representing a broad spectrum of sector specialists and organisations who may be affected by these Regulations. In particular, the stage two working group discussing the PTD process and recommendations made by the Economy, Energy and Fair Work Committee had representatives from both the creditor and insolvency sectors that regularly work with PTDs. This included HMRC, National Credit Union Forum, Equifax, and a number of Insolvency firms. The public consultations were open to all those who wished to participate.

## **Options**

### **Option 1 – Do nothing**

22. Under this option the Regulations will not be introduced and the legislation will remain as it is. Many of the proposals in the Regulations have come from recommendations made directly by stakeholders to improve the current PTD process and help the people of Scotland struggling with debt. Without these changes stakeholders will continue to see the current system as inefficient. They may also consider their time and effort into reviewing the current process and coming up with recommendations to make improvements to PTDs as not valued by the Scottish Government.

### **Option 2 – Introduce the draft Regulations**

23. Under this option, the provisions outlined in the draft Regulations will be introduced, realising the changes to the law listed above in the [objective section](#).



## **Sectors and Groups Affected**

24. The following groups are affected by these Regulations:

- Debtors
- Creditors
- Insolvency Practitioners
- Accountant in Bankruptcy
- The broader Scottish economy

## **Benefits**

### **Option 1 - Do nothing**

25. The benefit of option 1 is that the status quo will be retained, with the effect that current practice and procedure for affected parties will not require to be amended.

### **Option 2 - Introduce the draft Regulations**

26. There are significantly more benefits if option 2 is taken forward.

27. Putting the terms of the voluntary protocol into legislation will ensure that all PTDs work under the best practice laid out in the protocol. With 91% of the current live PTD caseload already operating under this best practice, introducing these Regulations will end the current two-tier system ensuring that all individuals involved benefit from the same level of protection irrespective of the trustee's organisation.

28. The Regulations will streamline the discharge process. They will allow a debtor to be discharged early from a PTD where there are extenuating

circumstances which mean they can no longer make contributions through no fault of their own. This would mean that they would have their debts discharged in certain circumstances, with agreement from creditors or the AiB, and not have the PTD fail due to circumstances outwith their control.

29. In addition, the removal of any time restriction for refusing to discharge a debtor will allow the trustee to take steps to refuse discharge at an appropriate time when they have judged that the PTD will not be successful – normally due to debtor non-compliance. The debtor will then be free to find a more suitable solution to their problem debt rather than having to wait for the full payment term to pass. It will also give creditors the opportunity to seek other methods to recover their debt at an earlier stage as opposed to being confined to the terms of PTD that is receiving no contribution due to debtor non-compliance.

30. The new provision to allow AiB to act as trustee of last resort will provide security in the event of the failure of a volume provider of PTDs, if no other firm has the capacity to take on their cases. At present, when a trustee can no longer act in that capacity, another trustee will provide security to those involved in a PTD by taking over management of the case. There is a risk that this becomes impractical if a very high number of PTDs is involved. This provision allows AiB to step in if the volume of cases means that the PTDs would be left with no trustee. The provision is subject to public interest and the capacity of AiB to take on the work.

31. To allow for protection to be removed in the event that an error has been made in the protection process will mean that parties involved in a PTD, will not be penalised and confined to the terms of a PTD, where protection should not have been awarded in the first place. The increase to the trustee supervision fee by £20 from the current £100 assists in funding AiB's operational running costs. Due to recent decisions on reducing public body funding and the pay award for staff, the agency is facing a shortfall in budgets in the years ahead.

32. AiB's expenditure is predominantly covered from fees and charges and as per the Scottish Public Finance Manual these are set on the basis of full cost recovery. In response to the pandemic the Scottish Government made the decision

to reduce bankruptcy application fees and increase fee waivers which now means that more than 90% of bankruptcy applications do not pay any fee. There is also a decline in the volume of bankruptcy cases with assets and the associated fees meaning there is less income to offset the administration costs. The Agency is forecasting that the current level of fees will not be sufficient to recover its costs – details of the forecast shortfall are contained in table 1.

Table 1: AiB forecast on shortfall (£000)

Year	2024-25 £000	2025-26 £000	2026-27 £000	2027-28 £000	2028-29 £000
Shortfall	263	463	755	1,038	1,337

33. In considering various options to help combat this shortfall and ensuring that the cost is not met by debtors facing unsustainable debt, increasing the trustee supervision fee seems the most reasonable option. The fee has not been increased since 2012 and calculating the increase in CPI over this period at 36% an increase to £120 represents a below-inflation rise<sup>1</sup>.

34. Bankruptcy and PTDs are the two components of the Scottish personal insolvency model. AiB’s aim is to generate sufficient funds from conducting its statutory duties in personal insolvency to recover costs. To achieve this aim, the only feasible option is to increase the PTD supervision fee. The same group of creditors benefit from both the bankruptcy and the trust deed system and it is therefore considered reasonable to take this approach to ensure the costs of Scottish personal insolvency can be recovered effectively.

35. Should this increase be applied to existing PTDs from the date that these Regulations come into force, it would generate an income of between £450,000 to

---

<sup>1</sup> The data is at <https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/l522/mm23>. The index for 2012 Q2 is 95.8 and the most recent figure is 2023 Q4 at 130.3.

£600,000 next year. However, if it were only to be applied to PTDs protected after the Regulations come into force, it would generate £90,000 in 2025-26, then £210,000 the following year. Considering the purpose of this provision to help recover AiB's costs it would seem sensible to apply the change to the fee charged for a 12 month period of supervision including for existing PTDs which are supervised at any point during that 12 month period after the Regulations come into force.

36. The understanding that anyone or entity applying for the protection of a trust deed will have to have been habitually resident in Scotland or established a place of business in Scotland for a period of time prior to the granting of a trust deed is already part of the process. The implementation of this provision will simply place this on a legislative footing and subsequently beyond doubt.

## **Costs**

### **Option 1 - Do nothing**

37. There are no immediately foreseeable costs implication of option 1. However, choosing option 1 will mean that the benefits of option 2 will not be realised. This could also lead to the risk of stakeholders, who developed these recommendations, feeling that the work they have done to help modernise the current system has been ignored.

### **Option 2 - Introduce the draft Regulations**

38. There will be minimum cost to the Scottish Government with the implementation of the Regulations with any cost being absorbed by current budgets.

### **Cost to other organisations**

### **Making the terms contained in the voluntary protocol a statutory requirement**

39. Currently 91% of the live PTD caseload is being administered under the current voluntary protocol (through 7 trustee organisations). Therefore, the organisations managing these PTDs will face no cost when the terms of the protocol are put into legislation as they already have operations in place to manage the requirements.

40. The organisations managing the remaining 9% will have to make amendments to their operational processes to abide by the terms of the protocol. This will include ensuring that dividend payments are paid earlier than expected under present rules and that agreement is sought from AiB when a trustee wishes not to discharge a debtor.

41. Trustees currently working under the terms of the protocol did not highlight any concerns about significant costs in implementing the new procedures. Therefore, we do not envisage any issues for the remaining trustees when they introduce these proposed changes. We anticipate the costs they will incur to be minimal.

42. For example, the notice sent to AiB where a trustee does not wish to discharge a debtor from their PTD is currently done via email so any extra cost to the trustee organisation here would be in relation to staff time which would be minimal. To date there have been 2,115 applications to AiB for refusal of discharge. If we equate this to 10 mins of staff time at an average rate of £15 per hour for staff costs this will cost around £5,287 - split over a current live load of 28,398 cases.

43. Furthermore, the requirement under the protocol to pay a dividend earlier than stipulated under current legislation will only make changes to the time period of when a dividend should be paid. The position will remain that a dividend will only be paid if sufficient funds from the debtor's estate are available. The trustee already incurs costs (via systems or banking) to pay these dividends, so the change will mean that this will be done at an earlier stage therefore there should be no significant costs to the organisations as a result.

44. The cost incurred by AiB in managing cases currently administered under the protocol has been absorbed into current budgets and this will continue with the new cases when the legislation comes into force.

### **Remove any time limitation for a trustee refusing to apply for a debtor's discharge**

45. This provision allows a process that already exists to begin at an earlier date than currently allowed under legislation and will not result in additional costs to businesses or the Scottish Government.

### **Allow early discharge of the debtor in extenuating circumstances**

46. This will allow the trustee to seek agreement from creditors to allow a debtor to be discharged from their debts early if there is no prospect of the debtor meeting their obligations through no fault of their own. This will allow the trustee to close the case and incur no further administrative costs or supervision fees in cases where it is clear that there is no possibility of the case continuing under the terms agreed.

47. Once the circumstances have been agreed with creditors or AiB, the discharge process will be the same as it is currently so will not incur a further cost.

48. As debts will be discharged under this provision creditors will not be able to take action to recover those debts owed. However, the circumstances under which this action will be taken forward will mean that the debtor would not be able to repay those debts in any case.

49. Creditors will be asked to vote on any such proposal and if there is a substantial level of objection the case will be referred to AiB for a decision. These checks mitigate the risk of the provision being abused and cases being discharged early without proper cause.

50. AiB will require to make small system changes to accommodate for this provision, however, these will be absorbed into current budgets.

**Allow AiB to act as trustee of last resort where a trustee can no longer act in that capacity and a replacement trustee cannot be found**

51. In a scenario whereby the trustee with the largest live PTD caseload was no longer able to act in that capacity nor find a replacement trustee, AiB would have to take control of around 13,000 cases.

52. There are no current processes or system functionality in AiB to allow this function to be carried out so this would have to be developed, however this would be absorbed into the Agency's current budget.

53. There would be no cost incurred to any creditor or debtor in the process.

**Allow for the removal of protected status of the PTD where there has been an error made in the process of the trust deed gaining protected status**

54. The provision does not create any direct costs to those involved in the PTD, however there may be indirect costs incurred. For example, if the debtor has made any payment to the trustee in way of contributions the trustee may be obliged to return these to the debtor if the error leading to the removal of protection was their fault. This would be stipulated by the trustee's code of conduct or by their Recognised Professional Body, not by these Regulations. A further example could be the cost of the trustee having to readvertise if the debtor reapplies for protection. We anticipate the total costs should be minimal because the provision would only apply to a small number of cases where an error affects the status of the PTD.

55. The time limit imposed in this provision means that if the error is realised more than three months after protection action will not be taken to remove protection. Therefore, this mitigates this risk here by limiting the amount of time any contributions will have to be paid and ultimately meaning that very little action will have been taken by the trustee to realise any assets.

56. Once protection has been overturned under this provision creditors will be able to take action to enforce repayment of debt until the debtor seeks a new debt solution if they choose to do so. The creditor would incur a cost if they chose to take court action but they would not be forced to do this. The provision does not stop the debtor from seeking another solution including applying for a moratorium if they qualify to stop creditors taking action to recover the debt owed to them. Entering a moratorium or the debt arrangement scheme can be done without cost to the debtor, however they may incur the cost of £150 if they do not meet bankruptcy application fee exemptions. As any option is taken will be down to debtor choice, we will not be able to quantify potential costs.

### **Increase the supervision fee of a trustee under a protected trust deed**

57. This provision will incur a cost for the trustee organisations who administer PTDs, by increasing the current annual supervision fee from £100 per case to £120.

58. For the trustee (or organisation) administering the highest caseload (approx. 13,000 cases) this will be an increase of £260,000 per annum. For the trustees (or organisations) administering the minimum caseload this will be an increase of £20 per annum.

59. This supervision fee will be classed as an administration cost in the PTD process which the trustee will treat as a necessary expense. Ultimately, this fee will be deducted from PTD estate before payment is made to creditors.

60. Therefore, the creditor organisations will ultimately bear the cost. For context, the 6,000 or so trust deeds that finished last year collected payments of around £58m, of which £22m went to creditors. The remaining £36m covering the costs of administration - £32m to the insolvency practitioner firms and £4m to the Agency. Increasing the Agency's fees by the proposed £20 a year equals only a 3% reduction in returns to creditors.



**Table 2: The 10 most common creditors by the volume of live PTDs associated<sup>2</sup>**

<b>Creditor name</b>	<b>Number of live PTDs</b>
Lowell Financial	14,086
Capital One	11,882
Bank of Scotland	7,335
Barclaycard	6,929
New Day	6,042
Vanquis Bank	6,022
HMRC	4,400
Shop Direct	3,948
MBNA	3,795
Home Retail Group	3,574

### **Confirm Jurisdiction rules**

61. The understanding that anyone or a legal entity applying for the protection of a trust deed will have to have been habitually resident in Scotland or established a place of business in Scotland for a period of time prior to the granting of a trust deed is already part of the process. The implementation of this provision will simply place this on a legislative footing and subsequently beyond doubt. This will not result in additional costs to businesses or the Scottish Government.

---

<sup>2</sup> Note to table 2. Table 2 displays the most common creditors by how many live protected trust deeds they are associated with where the trust deed was protected on or before 31 December 2023. Figures for 2023-24 remain provisional until final validation in July 2024. A single PTD case can involve multiple creditors, resulting in the total number of creditor occurrences presented in this table exceeding the total caseload. For this table, the figures for creditors should not be interpreted as unique case counts but as instances of creditor involvement across all cases.

## **Regulatory and EU Alignment impacts**

62. The provisions in the Regulations have no impacts on the Scottish Government's regulatory features related to leaving the EU. See below for further commentary.

### **Intra-UK Trade**

63. These provisions in the Regulations will have the same impact on creditors irrespective of where they are located in the United Kingdom and will have no impact on trade.

64. Having considered the United Kingdom Internal Market Act 2020 and Common Frameworks I can confirm that these Regulations will not impact on intra-UK trade.

### **International Trade**

65. The Regulations will provide provisions as laid out in the [objective section](#). The measures in these Regulations will have no impact on international trade and investment.

### **EU Alignment**

66. The Regulations and its associated policies will have no EU implications and there is no identified conflict with the Scottish Government's policy on EU alignment. There will be no impact on relations with significant international organisations.

### **Scottish Firms Impact Test**

67. There have been face to face discussions with individual organisations who are members of the PTD Standing Committee on the impact of these Regulations. This includes representatives from creditor, insolvency practitioner and debt advice

sectors as well as recognised professional bodies. We have also shared the draft Regulations with this group to get their feedback on proposals. Their feedback has helped to shape these Regulations which are now, in general, supported by this group.

68. The proposals in the Regulations are mainly from recommendations made by the stakeholder working group during the wide-ranging policy review of Scotland's statutory debt solutions. This group represented a broad spectrum of sector specialists and organisations who may be affected by these Regulations.

## **Competition Assessment**

69. Having considered the Competition and Markets Authority competition assessment questions, I can confirm that these changes will apply equally to all who engage with these Regulations. There should be no competitive advantage to any particular individual or group as a consequence of the introduction of these Regulations.

- Will the proposal directly limit the number or range of suppliers? No
- Will the proposal indirectly limit the number or range of suppliers? No
- Will the proposal limit the ability of suppliers to compete? No
- Will the proposal reduce suppliers' incentives to compete vigorously? No

## **Consumer Assessment**

70. This policy will not affect the quality, availability or price of any goods or services in a market, including any essential services market; does not involve storage or increased use of consumer data; will not increase opportunities for unscrupulous suppliers to target consumers; will not impact the information available to consumers on either goods or services (or their rights in relation to these); and will not affect routes for consumers to seek advice or raise complaints on consumer issues.

## **Test Run of Business Forms**

71. Any new forms introduced by the Regulations will be test run to ensure that they are easy to use and have minimal resource implications for the user.

## **Digital Impact Test**

72. The Scottish Government has considered the extent to which technology will impact on future delivery.

73. Making the terms contained in a voluntary protocol a statutory requirement, changes to the discharge process and increasing the supervision fee will all be incorporated into current digital processes currently available.

74. Allowing for the removal of protected status of a PTD where an error has been made in the process and for AiB to act as trustee of last resort where a trustee can no longer act in that capacity and a replacement trustee cannot be found are new processes. Systems will require minimal development to manage these and these will be factored into AiB's digital development programme.

75. All digital processes currently available and to be developed will take account of changing technologies and markets.

## **Legal Aid Impact Test**

76. The Scottish Legal Aid Board have assessed that these Regulations will have no significant impact on the legal aid fund.

## **Enforcement, Sanctions and Monitoring**

77. AiB has an overall supervision role in the administration of PTDs and the monitoring of the new provisions will be factored into the processes already established here.

## **Implementation and Delivery Plan**

78. If approved by parliament, the Protected Trust Deeds (Miscellaneous Amendment) (Scotland) Regulations 2024 will come into force on 1 July 2024.

79. AiB will publish the introduction of the Regulations on its website. The Regulations will also be incorporated in the legislation published on the legislation.gov.uk website. AiB will, where appropriate, prepare and publish on their website, guidance to support stakeholders when implementing the new legislation.

## **Post-implementation Review**

80. To evaluate the impact of the new legislation the Scottish Government will give an undertaking that AiB will carry out a review of these provisions after they have been in place for an appropriate amount of time. The Scottish Government will analyse statistical data supplied and feedback collated by AiB.

81. It will also continue its regular engagement with key stakeholders operating in the areas of PTDs in order to review the operation of these provisions.

## **Summary and Recommendations**

### **Option 1 – Do nothing**

82. Do nothing and retain the status quo, with the effect that current practice and procedure for affected parties will not require amendment.

83. This option would maintain the status quo for PTDs. This option also leaves the current law in an unsatisfactory manner and prevents the opportunity to improve the current process. This is undesirable.

## **Option 2 – Introduce the Regulations**

84. Progress with the Regulations.

85. There will be minimum cost to the Scottish Government with the implementation of the Regulations with any cost being absorbed by current budgets.

86. Currently 91% of live PTD caseload are being administered under the current voluntary protocol (through 7 trustee organisations). Therefore, the organisations managing these PTDs will face no cost when the terms of the protocol are put into legislation as they already have operations in place to manage the requirements. The organisations managing the remaining 9% will have to make amendments to their operational processes to abide by the terms of the protocol but these costs should be minimal.

87. The risk of any indirect costs incurred through the provision to remove the protected status of a PTD where an error has been made will be mitigated by the time limit imposed on this provision. The debtor will not be prohibited from accessing any other statutory debt solution.

88. Creditors will be able to vote in the case where a trustee wishes to discharge a debtor early due to extenuating circumstances and if there is substantial creditor objection will be referred to AiB for decision. These checks mitigate the risk of the provision being abused and cases being discharged early without proper cause.

89. The increase of the supervision fee of a trustee under a PTD will ultimately be met by creditor organisations. The increase by £20 a year equates to a 3% reduction in return to creditors. It is acknowledged that the Agency's income from PTDs already exceeds what the Agency spends on its functions in this specific area but as bankruptcy and PTDs form the Scottish personal insolvency model we believe it is appropriate to take the proposed approach to their funding, and justified for creditors to contribute to the overarching costs as the same group of creditors benefit from both the bankruptcy and the trust deed system.

90. No costs will be incurred with the confirmation of jurisdiction rules.

## **Recommendation**

91. Following an analysis of the costs and benefits of each option, it is recommended that option 1 be dismissed, and option 2 be adopted.

## **Declaration and Publication**

92. I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

A handwritten signature in black ink, appearing to read 'Tom Arthur', written over a light blue horizontal line.

Date: 02/05/2024

Minister's name: Tom Arthur MSP

Minister's title: Minister for Community Wealth and Public Finance

Scottish Government Contact point: