

POLICY NOTE

THE PROTECTED TRUST DEEDS (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2024

S.S.I. 2024/Draft

1. The above instrument is made in exercise of the powers conferred by sections 194(1), 205(1) and 224(1) of the Bankruptcy (Scotland) Act 2016 and all other powers enabling them to do so. The instrument is subject to the affirmative procedure.

Summary Box

Purpose of the instrument. To bring forward stakeholder-led recommendations to introduce improvements to the current Protected Trust Deed (PTD) process. The provisions 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.

Policy Objectives

2. The aim of the Protected Trust Deeds (Miscellaneous Amendment) (Scotland) Regulations 2024 (“the Regulations”) is to reflect good practice introduced through a voluntary protocol with trustees of trust deeds for the benefit of creditors in insolvency in statutory requirements, and to offer further protections to those seeking debt relief through PTDs. This includes allowing a person to be discharged from their PTD in extenuating circumstances. The Regulations will also make other changes to the processes for trustees to ensure the smooth operation of PTDs.

3. In brief, the Regulations amend Part 14 of the Bankruptcy (Scotland) Act 2016 on voluntary trust deeds for creditors to:

- Make some of the terms contained in a voluntary protocol a statutory requirement. This means where a dividend is payable it will be paid to creditors at month 12 and quarterly thereafter, and a trustee will have 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 for 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.
- Increase the supervision fee of a trustee under a PTD from £100 to £120.
- 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 an established 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 have carried out business within Scotland.

EU Alignment Consideration

4. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

5. 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.

6. The Scottish Ministers then committed to undertake a wide-ranging policy review of Scotland's statutory debt solutions, specifically the moratorium protection, bankruptcy, PTDs and the Debt Arrangement Scheme.

7. In response to the coronavirus pandemic, the first stage of the review was to consider changes which could be immediately implemented. This culminated in the changes introduced through the Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021.

8. 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 practitioners, creditor bodies and academics. The working groups considered improvements which could be made to each of the statutory debt solutions.

9. One of the groups considered the 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 their recommendations made were addressed operationally through a voluntary protocol which came into force on 1 October 2021. The group considered the remaining recommendations and further areas of the PTD process to see where improvements can be made. This resulted in a report containing 15 recommendations being presented to Scottish Ministers for consideration.

10. In March 2022, these recommendations along with the recommendations from the two other working groups 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. A total of 46 responses were received, of which 13 were from individuals and 33 were from organisations. On 26 January 2023, the Scottish Government published a summary of responses report.

11. Further consultation through direct liaison with members of the PTD standing Committee has also taken place. The PTD Standing Committee is composed of members from the creditor, insolvency practitioner and debt advice sectors as well as recognised professional bodies.

Impact Assessments

12. A Business and Regulatory Impact Assessment has been completed on the effects of the instrument and has been published when this instrument was laid before the Parliament. A copy can be found on www.legislation.gov.uk.

13. No equality issues were raised during the Equality Impact Assessment framing exercise and an Equality Impact Assessment Results document will be published on the Scottish Government website. There were no direct or indirect barriers found as a result of the proposed changes being introduced. The changes introduced are primarily associated with placing good practice introduced through a voluntary protocol in statute, adding further protections for those seeking debt relief through PTDs, and allowing a person to be discharged from the PTD in extenuating circumstances.

14. The impact of these proposals on children's human rights and wellbeing were considered and no direct or indirect impacts were identified. No impacts were raised as part of the consultation process. It was considered therefore that a full Child Rights and Wellbeing Impact Assessment is not required.

15. In view of the Fairer Scotland Duty regarding socio-economic inequalities under the Equality Act 2010, the impact of these proposals on those with low wealth and low income has been considered and no impact has been identified. The changes being introduced are not considered to be strategic and are instead small but necessary changes.

Financial Effects

16. The changes introduced by this instrument will not result in costs to the Scottish Government. Increasing the supervision fee of a trustee under a protected trust deed is expected to impact on trustees. This will vary depending on the caseload held by each trustee. For the trustee (or organisation) administering the highest caseload this will be an increase of £260,000 per annum across their caseload, for the trustee administering the minimum caseload this will be an increase of £20 per annum. This cost will ultimately be passed on to the creditors and equates to a 3% reduction in returns to creditors.

17. The costs associated with the remaining provisions including introducing the protocol best practice into legislation, are expected to be minimal.

Accountant in Bankruptcy on behalf of the Scottish Government

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