
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 143

The Protected Trust Deeds (Scotland) Regulations 2008

Citation and commencement

1. These Regulations may be cited as the Protected Trust Deeds (Scotland) Regulations 2008 and come into force on 1st April 2008.

Interpretation

2. In these Regulations—

“notified creditors” means all creditors to whom a trustee has sent documents in terms of regulation 8 of these Regulations;

“protected trust deed” is as defined in section 73(1) of the Bankruptcy (Scotland) Act 1985(1);

“remuneration” means reasonable fees and outlays;

“register of insolvencies” is as defined in section 73(1) of the Bankruptcy (Scotland) Act 1985;

“the Accountant” means the Accountant in Bankruptcy;

“the Act” means the Bankruptcy (Scotland) Act 1985;

“the EC Regulation” means Council Regulation (EC) No. 1346/2000 of 29th May 2000(2) on insolvency proceedings;

“the relevant period” means the period of 5 weeks beginning with the date of publication of the notice referred to in regulation 7; and

“trust deed” means a trust deed that is intended to become a protected trust deed.

Protected trust deed

3. A trust deed will have protected status, if the conditions set out in regulations 4 to 10 are met, from the date that the trust deed is recorded by the Accountant in the register of insolvencies.

The debtor

4.—(1) The debtor must be—

(a) a living individual;

(b) a partnership;

(c) a limited partnership within the meaning of the Limited Partnerships Act 1907(3);

(d) a trust; or

(e) a corporate body or unincorporated body,

that grants a trust deed for a single estate.

(1) Section 73(1) of the Bankruptcy (Scotland) Act 1985 was amended by paragraph 60 of Schedule 1 to the Bankruptcy and Diligence (Scotland) Act 2007.

(2) O.J. No. L 160, 30.6.2000, p1-18.

(3) 1907 c. 24.

- (2) The debtor must not be—
- (a) a debtor in respect of whom sequestration has been granted;
 - (b) in the case of an individual, subject to an approved debt payment programme under the Debt Arrangement Scheme⁽⁴⁾; or
 - (c) an entity referred to in section 6(2) of the Act.

Qualifications of trustee

5.—(1) The trustee under the trust deed must be a person who would not be disqualified under section 24(2) of the Act from acting as the replacement trustee if the debtor’s estate were being sequestrated.

(2) If the trustee is replaced by another trustee, the new trustee must notify the Accountant that the new trustee has become the trustee of the trust deed.

Statement of trustee and debtor

6.—(1) The trust deed must state 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.

- (2) Prior to the debtor granting the trust deed—
- (a) the trustee must advise the debtor that granting the deed may result in—
 - (i) the estate of the debtor being sequestrated;
 - (ii) the debtor being refused credit, whether before or after the date of the debtor being discharged;
 - (iii) the debtor not being able to remain in the debtor’s current place of residence;
 - (iv) the debtor being required to relinquish property which the debtor owns;
 - (v) the debtor requiring to make contributions from income for the benefit of creditors;
 - (vi) damage to the debtor’s business interests and employment prospects; and
 - (vii) the fact that the debtor has granted a trust deed becoming public information; and
 - (b) the trustee must provide the debtor with a copy of a debt advice and information package referred to in section 10(5) of the Debt Arrangement and Attachment (Scotland) Act 2002⁽⁵⁾,

and the trustee and the debtor must sign a statement to the effect that the trustee has fulfilled the duties referred to in this regulation.

Notice in the Edinburgh Gazette

7. Forthwith after the trust deed has been delivered to the trustee, the trustee must publish in the Edinburgh Gazette a notice in the form of Form 1 set out in Schedule 1 to these Regulations.

Documents to be sent to creditors

8. Not later than 7 days after the date of publication of the notice referred to in regulation 7, the trustee must send to every creditor known to the trustee—

- (a) a copy of the trust deed;

(4) The Debt Arrangement Scheme was set up under the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#).

(5) [2002 asp 17](#).

- (b) a copy of that notice;
- (c) a statement of the debtor's affairs, prepared by the trustee, containing—
 - (i) a list of the debtor's assets and liabilities;
 - (ii) a list of the income and expenditure as at the date when the trust deed was granted;
 - (iii) a statement as to the extent to which those assets and income will not vest in the trustee;
 - (iv) a statement as to any contribution from income which the debtor is expected to make;
 - (v) a statement whether, and on what basis, the EC Regulation applies or does not apply to the trust deed and, if it applies, whether the proceedings are main proceedings or territorial proceedings;
 - (vi) a statement by the trustee whether, on the basis of the information then available, the creditors are likely to be paid a dividend;
 - (vii) a statement that the trustee on request must provide a copy of—
 - (aa) any valuation held by the trustee which has been made by a third party and which relates to an asset of the debtor;
 - (bb) any statement showing the amount due by the debtor under a security; and
 - (cc) any document showing the present income of the debtor; and
 - (viii) a statement explaining—
 - (aa) the conditions which require to be fulfilled before the trust deed will become a protected trust deed; and
 - (bb) the consequences of the deed becoming a protected trust deed; and
- (d) a copy of Form 2 as set out in Schedule 1 to these Regulations for the creditor to make a statement of claim.

Accession by creditors to the trust deed

9.—(1) The trust deed must be acceded to by the notified creditors.

(2) The trust deed will be deemed to be acceded to by the notified creditors, unless within the relevant period the trustee has received notification in writing from a majority in number or not less than one third in value of those creditors that they object to the trust deed.

Registration of protected status

10.—(1) As soon as reasonably practicable after the expiry of the relevant period, the trustee must send to the Accountant for registration in the register of insolvencies—

- (a) a copy of the trust deed;
- (b) a copy of the notice referred to in regulation 7;
- (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—
 - (i) a majority in number of the creditors; or
 - (ii) one third or greater in value of the creditors;
- (d) a copy of the signed statement referred to in regulation 6;
- (e) a copy of the statement of the debtor's affairs mentioned in regulation 8(c);
- (f) a statement in the form of Form 3 set out in Schedule 1 to these Regulations of anticipated realisations from the protected trust deed.

(2) On receipt of the documents listed in paragraph (1) the Accountant must forthwith record the trust deed in the register of insolvencies.

Effect of protected status

11.—(1) Where a trust deed has become a protected trust deed, then—

- (a) subject to regulation 12, a creditor who has—
 - (i) not been sent the documents mentioned in regulation 8; or
 - (ii) notified the trustee of objection to the trust deed within the relevant period,will have no higher right to recover the debt than a creditor who has acceded, or been deemed 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) Creditors will no longer be deemed to have acceded to a trust deed in terms of regulation 9(2) if the trustee issues a determination that the debtor is not discharged from the debtor’s liabilities in terms of regulation 19(5).

Petition by qualified creditor

12.—(1) A qualified creditor who has not been sent the documents mentioned in regulation 8 or who has notified the trustee of objection to the trust deed within the relevant period may present a petition to the sheriff for sequestration of the debtor’s estate—

- (a) not later than 5 weeks after the date of publication of the notice under regulation 7; or
- (b) subject to section 8(1)(b) of the Act, 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.

(2) The sheriff may award sequestration in pursuance of paragraph (1)(a) if he or she considers that to do so would be in the best interests of the creditors.

(3) The sheriff will award sequestration in pursuance of paragraph (1)(b) if, but only if, he or she is satisfied that the creditor’s said averment is correct.

Creditors not acceding to protected trust deed

13.—(1) A creditor who has not been sent a copy of the notice mentioned in regulation 8(b) or who has notified the trustee of objection to the trust deed within the relevant period may apply, not more than 28 days after the Accountant’s registration in the register of insolvencies under regulation 22(b) of the trustee’s realisation and distribution of estate, to the sheriff under regulation 14.

(2) For the purposes of this regulation, the sheriff to whom an application may be made will be the sheriff to whom a petition for sequestration would be brought in respect of the debtor in terms of sections 9(1) and (2) of the Act.

Power of court on application under regulation 13

14.—(1) Where, on an application by a creditor under this regulation, the sheriff is satisfied (on grounds other than those on which a petition under regulation 12(1)(b) was or could have been presented by that creditor) that the intromissions of the trustee with the estate of the debtor have been so unduly prejudicial to that creditor’s claim that the creditor should not be bound by the trustee’s discharge, the sheriff may order that that person will not be so bound.

(2) Where the sheriff makes an order under paragraph (1), the sheriff clerk must—

- (a) send a copy of the order to the trustee; and
- (b) send a copy to the Accountant for registration of the order in the register of insolvencies.

Directions to trustee by Accountant

15.—(1) The Accountant may give directions to the trustee under a protected trust deed as to how the trustee should conduct the administration of the trust deed.

(2) Any direction under paragraph (1) must be issued to the trustee, with intimation of the terms of the direction to both the debtor and the creditors.

(3) Such a direction under paragraph (1) may be issued on the initiative of the Accountant or (at the discretion of the Accountant) at the request of the trustee or the debtor or any creditor.

Retention of documents by trustee

16. The trustee under a protected trust deed must retain until 12 months after the date of the trustee's discharge by the creditors—

- (a) the documents specified in Schedule 2 to these Regulations or copies of these; and
- (b) any other documents relating to the administration of the trust deed which the Accountant notifies to the trustee prior to the trustee's discharge as being documents which the trustee possesses and the Accountant considers that the trustee should retain.

The administration of the trust deed

17.—(1) At intervals of not more than 12 months, beginning with the date the trust deed is granted, the trustee must send to the debtor and each creditor and the Accountant a statement of his accounts in administering the trust deed.

(2) The debtor or any creditor may, within 14 days of receiving this statement, require the Accountant to exercise the function in section 1A(1)(a)(iia) of the Act by carrying out an examination of the administration of the trust deed by the trustee.

(3) At intervals of not more than 12 months, beginning with the date the trust deed is granted, the trustee must send to the Accountant a report on the management of the trust deed by the trustee within the previous 12 month period in the form of Form 4 set out in Schedule 1 to these Regulations.

Remuneration payable to trustee

18.—(1) The trustee is entitled to remuneration for work done in administering a trust deed.

(2) Any debt due to a third party (being neither an employee or agent of the trustee) for work done on behalf of the trustee prior to the granting of the trust deed will not rank higher than any other creditor's claim.

(3) The trustee is entitled to recover from the debtor's estate any audit fee charged by the Accountant under paragraph 1 or 1A of Schedule 5 to the Act in accordance with the rate specified in the Table of Fees in the Schedule to the Bankruptcy Fees (Scotland) Regulations 1993(6).

(4) The trustee is entitled to charge a reasonable fee for the issue of a letter of discharge of the debtor which can be recovered out of the debtor's estate.

(6) S.I.1993/486, as amended by S.I. 1999/752, S.S.I. 2007/220, S.S.I. 2008/5 and S.S.I. 2008[].

Discharge of the debtor

19.—(1) Subject to paragraph (2) and regulation 20 below, a debtor will be discharged from all his or her trust deed debts and obligations contracted by that debtor, or for which that debtor was liable at the date that the trust deed was granted, if the following conditions are met—

- (a) the trustee under the protected trust deed makes a statement that to the best of the trustee's knowledge the debtor has met the debtor's obligations under the trust deed; and
- (b) any notice of inhibition under paragraph 2 of Schedule 5 to the Act has been recalled or expired.

(2) A letter of discharge does not discharge the debtor from any liability arising after the date on which the trust deed was granted or any debt which would be excluded from a discharge under section 55(2) of the Act, nor does it affect the rights of secured creditors.

(3) If the conditions in paragraph (1) above are met, the trustee must send—

- (a) to the debtor a written letter of discharge in form of Form 5 set out in Schedule 1 to these Regulations from the trust deed;
- (b) to the Accountant a copy of the letter referred to in paragraph (a) above for recording in the register of insolvencies.

(4) On receiving the copy of the letter referred to in paragraph (3)(b), the Accountant must forthwith record the debtor's discharge in the register of insolvencies and the date of registration will be the date of discharge.

(5) If the trustee decides not to grant the debtor's discharge, the trustee will inform the debtor in writing of the fact and the reasons for so deciding and that the debtor is accordingly not discharged from the debtor's debts and obligations in terms of the trust deed.

Student loans not discharged

20.—(1) Where a person is a creditor in respect of a student loan, then the right of a person to recover any debt arising from such a loan is not affected by regulation 19(1).

(2) In paragraph (1), "student loan" means a loan made under the Education (Student Loans) Act 1990(7) or by virtue of regulations made under paragraph (f) of section 73 of the Education (Scotland) Act 1980(8).

Discharge of trustee

21.—(1) Where the trustee under a protected trust deed has made the final distribution of the estate among the creditors, the trustee must not more than 28 days after the final distribution seek to obtain a discharge from the creditors who have acceded, or are deemed to have acceded, by making an application to the creditors, which will be in the form of Form 6 set out in Schedule 1 to these Regulations.

(2) Any creditor who does not respond to the trustee's application within 14 days is deemed to have agreed to the trustee's discharge.

(3) Where a majority of the creditors in value have given their consent to the discharge of the trustee within 14 days from the date of the trustee's application, the trustee is discharged.

(4) Where a discharge is granted under this regulation, it discharges any previous trustee of the trust deed unless any interested party obtains a ruling from the sheriff to the contrary under regulation 24.

(7) 1990 c. 6.

(8) 1980 c. 44.

Action after discharge of trust

- 22.** The trustee must, immediately after the trustee has received his discharge,—
- (a) confirm to the Accountant that the trustee has been discharged; and
 - (b) send to the Accountant for registration in the register of insolvencies the trustee's statement of realisation and distribution of estate under a protected trust deed which will be in the form of Form 7 set out in Schedule 1 to these Regulations.

Appeals

23.—(1) Subject to paragraph (3), the trustee under a protected trust deed or the debtor or any creditor may appeal to the sheriff by way of summary application against—

- (a) any determination by the Accountant fixing the remuneration payable to the trustee; or
- (b) any direction by the Accountant to the trustee as to the conduct of the administration of the trust deed.

(2) Subject to paragraph (3)—

- (a) the debtor under a protected trust deed may appeal to the sheriff by way of summary application against a refusal of the trustee to grant the debtor's discharge in terms of regulation 19; and
- (b) the trustee under a protected trust deed may appeal to the sheriff by way of summary application against a refusal of creditors to grant the trustee's discharge in terms of regulation 21.

(3) For the purposes of paragraphs (1) and (2) the sheriff to whom an appeal is to be made will be the sheriff to whom a petition for sequestration would have been brought in respect of the debtor in terms of sections 9(1) and (2) of the Act at the date the trust deed was granted.

(4) A debtor or creditor may appeal under paragraph (1) if, but only if, able to satisfy the sheriff that he or she has, or is likely to have, a pecuniary interest in the outcome of the appeal.

(5) An appeal under paragraph (1) must be lodged no later than 14 days after the date on which the Accountant issues the determination or direction which is the subject of the appeal.

(6) The decision of the sheriff on an appeal under paragraph (1) or (2) is final.

Directions of the sheriff

24.—(1) Any person having an interest may apply at any time to the sheriff for a direction of the court in respect of or in relation to the administration of a trust deed.

(2) A direction of the sheriff in terms of this regulation may include any order the sheriff thinks fit in the interests of justice including an order to cure any defect in procedure.

(3) For the purposes of paragraphs (1) and (2) the sheriff to whom an application is to be made will be the sheriff to whom a petition for sequestration would have been brought in respect of the debtor in terms of sections 9(1) and (2) of the Act at the date the trust deed was granted.

Forms

25. The forms set out in Schedule 1 to these Regulations are the forms referred to in these Regulations.

Savings

26. These Regulations apply only to trust deeds granted after the date these Regulations come into force.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

St Andrew's House,
Edinburgh
28th March 2008

FERGUS EWING
Authorised to sign by the Scottish Ministers