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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Protected Trust Deeds (Scotland) Regulations 2008 (“the 2008 Regulations”), principally making changes in consequence of the amendments in section 10 of the Home Owner and Debtor Protection (Scotland) Act 2010 (“the 2010 Act”), allowing a dwellinghouse to be excluded from a trust deed.

Regulation 3 amends the definition of “notified creditors” in regulation 2 of the 2008 Regulations to make clear, for the purposes of regulation 9 of the 2008 Regulations, that a secured creditor of an excluded dwellinghouse cannot vote on a trust deed becoming protected.

Regulation 4 inserts a new regulation 5A into the 2008 Regulations. It prescribes additional conditions for protected status for a trust deed which excludes a dwellinghouse. The conditions are that the trustee has provided the debtor and the secured creditor with a valuation, that the debtor has consented to the trustee dealing with the secured creditor in terms of the new consent Form A1 and that the secured creditor has also consented in terms of that Form.

Regulation 5 amends the statement of the trustee and debtor required by regulation 6 of the 2008 Regulations. The new paragraph (1)(b) of regulation 6 requires the debtor to have agreed in the trust deed to estate acquired after the grant of the trust deed (i.e. acquirenda) going to the trustee. In terms of the new regulation 6(3), this is not required for trust deeds already granted. Separately, new regulation 6(1A) provides further required details where a debtor’s dwellinghouse is excluded from a trust deed.

Regulation 6 amends regulation 8 of the 2008 Regulations so that, where a dwellinghouse is excluded, other creditors receive additional information: on the effect of an exclusion on any dividend, on any trust deeds in the previous 6 months, on the value of the excluded dwellinghouse and on the debt owed to the secured creditor of that dwellinghouse.

Regulation 7 amends regulation 10 of the 2008 Regulations so that information on any exclusion is sent to the Accountant in Bankruptcy. It also imposes a 4 week time limit on all information to be provided on all trust deeds.

Regulation 8 amends regulation 11 of the 2008 Regulations setting out the consequences of a trust deed becoming protected for a secured creditor who has consented to the exclusion.

Regulation 9 amends regulation 18 of the 2008 Regulations to allow a trustee to recover remuneration for work done in seeking a secured creditor’s consent, prior to a trust deed becoming protected.

Regulation 10 amends regulation 19 of the 2008 Regulations to make clear in the context of a possible discharge of a debtor that a refusal to sell a dwellinghouse as defined in section 5(4AA) of the 1985 Act or a family home as defined in section 40(4) of the 1985 Act is not to be treated as a failure to meet a debtor’s obligations. It also clarifies the effect of a discharge where a dwellinghouse has been excluded.

Regulation 11 amends regulation 21 of the 2008 Regulations to define the date of the final distribution, only for the purposes of regulation 21. It makes clear that a trustee can still seek a discharge where a creditor has not yet collected the funds of the distribution, provided that the funds have been placed beyond the control of the trustee.

Regulation 12 makes a minor amendment and regulation 13 introduces the Schedule containing the new Form A1.

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

A Business and Regulatory Impact Assessment has been prepared for these Regulations. Copies can be obtained from the Accountant in Bankruptcy's website: <http://www.aib.gov.uk>.