
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under paragraph 5 of Schedule 5 to the Bankruptcy (Scotland) Act 1985, as amended by the Bankruptcy and Diligence etc (Scotland) Act 2007. They make provision about how trust deeds become protected, the consequences of a trust deed being granted that status, the rights of creditors, the discharge of the debtor and trustee from the trust deed, and the administration of trust deeds.

Regulation 3 provides that a trust deed shall have protected status from the date the trust deed is recorded in the Register of Insolvencies by the Accountant in Bankruptcy. The Accountant in Bankruptcy must record the deed once he/she receives certain documents from the trustee (regulation 10). Prior to registration, however, certain conditions require to be met. These conditions are set down in regulations 4 to 10. Regulation 4 states who can and cannot be a debtor under a trust deed and regulation 5 states who can be a trustee of such deeds. After the trust deed is signed by the debtor and a statement is signed by the trustee and the debtor (regulation 6), the creditors must be notified through an advertisement in the Edinburgh Gazette (regulation 7). Not later than 7 days after that notice is published, the trustee must send certain documents to the creditors (regulation 8). The creditors have 5 weeks from the date of the notice to object. Unless the majority in number (or not less than one third in value) of creditors do not object within that period, they are deemed to have acceded to the trust deed (regulation 9).

Regulations 11 to 14 provide for the consequences of a trust deed becoming protected, including the circumstances in which a qualified creditor can petition for sequestration (regulation 12) and which creditors can apply to the courts (regulation 13).

Regulations 15 to 18 deal with the administration of the trust deed. Regulation 15 gives the Accountant in Bankruptcy power to give directions to the trustee as to how the administration should be conducted, with intimation of the terms of the direction to the debtor and creditors. Regulation 16 stipulates what documents the trustee must retain for 12 months after his discharge. Under regulation 17, the trustee is required to send statements of account to the debtor, creditors and the Accountant in Bankruptcy. The trustee is also required to send a report on the management of the trust deed to the Accountant in Bankruptcy. Regulation 18 deals with the trustee's remuneration.

Regulation 19 sets out the conditions which must be met in order for a debtor to be discharged of his debts and obligations under the protected trust deed and states that, if the conditions have been met, the trustee must send a letter of discharge to the debtor. Once the Accountant in Bankruptcy receives a copy of the letter of discharge, the debtor's discharge must be recorded in the Register of Insolvencies and the discharge is effective from that date. If the trustee decides that a debtor is not discharged, then the debtor may appeal to the sheriff.

Regulation 20 makes it clear that student loans cannot be discharged under a protected trust deed.

Regulation 21 deals with the discharge of the trustee and regulation 22 deals with what actions must be carried out by the trustee after he/she has received his/her discharge.

Regulation 23 allows *inter alia* appeals to be made by the debtor, creditor or trustee to the sheriff by way of summary application against any determination by the Accountant fixing the remuneration payable to the trustee, or any direction by the Accountant to the trustee as to the conduct of the administration of the trust deed.

Regulation 24 provides for a general direction making power of the sheriff on the application of any interested party.