

2024 No. 198

INSOLVENCY

BANKRUPTCY

DEBT

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

Made - - - - *27th June 2024*

Coming into force - - *1st July 2024*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 194(1), 205(1) and 224(1) of the Bankruptcy (Scotland) Act 2016^(a) and all other powers enabling them to do so.

A draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament in accordance with section 225(4) of that Act.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Protected Trust Deeds (Miscellaneous Amendment) (Scotland) Regulations 2024 and come into force on 1 July 2024.

(2) In these Regulations “the 2016 Act” means the Bankruptcy (Scotland) Act 2016.

Connection to Scotland

2.—(1) The 2016 Act is amended as follows.

(2) In section 164(1) (protected status: the debtor), before “grants a trust deed for a single estate”, insert “has a sufficient connection to Scotland and”.

(3) After section 164(1), insert—

“(1A) For the purposes of subsection (1), a debtor has a sufficient connection to Scotland if—

(a) in the case of a debtor who is a living individual, the individual—

(i) was habitually resident in Scotland at any time in the year immediately preceding the date the trust deed is granted, or

^(a) 2016 asp 21. Section 228 contains a definition of “prescribed” relevant to the powers under which these Regulations are made. The powers to make these regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) and the Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

- (ii) had an established place of business in Scotland within that period,
- (b) in the case of a debtor which is a body or entity of a kind mentioned in paragraphs (b) to (f) of subsection (1), the body or entity—
 - (i) had an established place of business in Scotland at any time in the year immediately preceding the date the trust deed is granted, or
 - (ii) was constituted or formed under Scots law and at any time carried on business in Scotland.”.

Removal of protected status where material error or irregularity

3.—(1) The 2016 Act is amended as follows.

(2) In section 171(2)(b) (registration for protected status), at the beginning insert “AiB is satisfied that”.

(3) After section 171 (registration for protected status), insert—

“Removal of protected status where material error or irregularity

171A Removal of protected status where material error or irregularity

(1) If, within 3 months of the trust deed being registered in the register of insolvencies under section 171(2), the trustee becomes aware that any of the conditions set out in sections 164, 165, 166(2) (where it applied) or 167 to 170 were not met at the point of registration due to a material error or irregularity, the trustee must notify AiB.

(2) Where AiB is notified under subsection (1), AiB must decide whether the trust deed should cease to have protected status (see section 163).

(3) If AiB decides under subsection (2) that the trust deed should cease to have protected status AiB must, as soon as reasonably practicable, notify the trustee and the debtor in writing of that decision.

(4) Where the trustee receives a notification under subsection (3) the trustee must, as soon as reasonably practicable, notify every creditor known to the trustee (other than any secured creditor who has, as mentioned in paragraph (b)(ii) of the trust deed definition, agreed not to claim under the trust deed for any of the debt in respect of which the security is held).

(5) A notice under subsection (3) or (4) must state—

- (a) the fact that a decision under subsection (2) has been made,
- (b) the date on which the decision was made, and
- (c) the ground or grounds for the decision.

(6) Where a notice is issued under subsection (3)—

- (a) the trust deed ceases to have protected status 14 days after that notice is given (but see section 171B), and
- (b) AiB must, as soon as reasonably practicable, remove the entry for the trust deed in the register of insolvencies.

171B Decision under section 171A: application to review

(1) The debtor, the trustee or a creditor may apply to AiB for a review of its decision under section 171A(2).

(2) An application under subsection (1) must be made within 14 days beginning with the date that decision was notified under section 171A(3).

(3) If an application for review under subsection (1) is made, AiB’s decision under section 171A(2) is suspended until the determination of that review by AiB.

(4) If an application for a review under subsection (1) is made, AiB must—

- (a) confirm or revoke the decision within 21 days beginning with the day on which the application is made, and
 - (b) notify the debtor, the trustee and (where relevant) the creditor who made the application under subsection (1) of the outcome.
- (5) If, under subsection (4), AiB—
- (a) confirms a decision, the decision takes effect 21 days after the day on which AiB notifies the debtor, the trustee and (where relevant) the creditor who made the application under subsection (1) of the outcome of its review,
 - (b) revokes a decision, the decision is of no effect.
- (6) The trustee must, as soon as reasonably practicable following receipt of a notification under subsection (4), notify the outcome of the review to every creditor known to the trustee.

171C Effect of removal of protected status

A trust deed ceasing to have protected status by virtue of a decision under section 171A is not to—

- (a) invalidate any acts of the trustee between the date the trust deed was registered and the date a decision under section 171A takes effect,
 - (b) prevent the trust deed from re-attaining protected status provided the conditions in sections 164-170, so far as applicable, are met, or
 - (c) prevent the debtor from—
 - (i) making a debtor application under section 2 or, as the case may be, 6,
 - (ii) applying for a moratorium under section 195 or, as the case may be, 196,
 - (iii) applying for a debt payment programme within the meaning of section 2 of the 2002 Act.”.
- (4) In section 188 (protected trust deed: appeal)—
- (a) after subsection (2), insert—

“(2A) The persons mentioned in subsection (2B) may appeal to the sheriff against the outcome of any review undertaken by AiB under section 171B.

(2B) The persons are—

 - (a) the trustee,
 - (b) the debtor,
 - (c) any creditor.

(2C) Where an appeal is brought under subsection (2A), AiB’s determination on a review under section 171B is suspended until the determination of that appeal.”,
 - (b) in subsection (5), after “subsection (1)”, insert “or (2A)”.

Dividend payments

- 4.—**(1) In section 176(1) of the 2016 Act (dividend payments)—
- (a) in paragraph (a), for “24” substitute “12”, and
 - (b) in paragraph (b), for “6” substitute “3”.
- (2) The amendments made by paragraph (1) apply only in relation to a trust deed granted on or after 1 July 2024.

Debtor discharge

- 5.—**(1) The 2016 Act is amended as follows.

(2) In section 172(2) (effect of protected status: general), for “if the trustee refuses a request by the debtor to apply to AiB for discharge in terms of section 184(8)” substitute “if AiB agrees that the debtor should not be discharged from the trust deed under section 184A”.

(3) In section 184 (protected trust deed: discharge of debtor), omit subsection (8).

(4) After section 184, insert—

“184A Protected trust deed: refusal of debtor discharge

(1) If—

- (a) the period for which payments are required under the trust deed has ended, and
- (b) on request by the debtor, or where the trustee has not made a statement under section 184(2)(a) on the basis that the trustee considers that the debtor—
 - (i) has not met the debtor’s obligations in terms of the trust deed, or
 - (ii) has not co-operated with the administration of the trust,

the trustee must as soon as reasonably practicable apply to AiB for agreement to refuse to discharge the debtor from the trust deed.

(2) If—

- (a) the period for which payments are required under the trust deed has not ended,
- (b) on request by the debtor, or where the trustee is satisfied that the debtor—
 - (i) has not met the debtor’s obligations in terms of the trust deed, or
 - (ii) has not co-operated with the administration of the trust, and
- (c) the trustee is satisfied that that failure to meet the debtor’s obligations under the trust deed or to co-operate with the administration of the trust is likely to continue until the period for which payments are required under the trust deed ends,

the trustee must as soon as reasonably practicable apply to AiB for agreement to refuse to discharge the debtor from the trust deed.

(3) An application under subsection (1) or (2) must—

- (a) be in the form prescribed for that purpose in the Protected Trust Deeds (Forms) (Scotland) Regulations 2016(a), and
- (b) include details of the trustee’s consideration under subsection (1) or, as the case may be, (2).

(4) Where AiB receives an application under subsection (1) or (2), and AiB agrees that the debtor should not be discharged from the trust deed, AiB must notify the trustee of that conclusion as soon as reasonably practicable.

(5) Where the trustee receives a notification from AiB under subsection (4), the trustee must—

- (a) within 7 days, inform the debtor by notice in writing—
 - (i) of the fact and the reason for the refusal,
 - (ii) that the debtor is not discharged from the debtor’s debts and obligations in terms of the trust deed, and
 - (iii) of the debtor’s right to apply to the sheriff for a direction under section 189(1), and
- (b) within 21 days of the date the notice is sent to the debtor under paragraph (a), send a copy of that notice to AiB.

(6) Where AiB considers that the debtor should be discharged from the trust deed, AiB must issue such direction to the trustee as it considers appropriate.

(a) S.S.I. 2016/398, as amended by S.S.I. 2017/136. See regulation 7 and the schedule below.

(7) Section 184(7) applies for the purposes of this section in the same way as it applies for the purposes of section 184(2)(a)(i).

(8) Nothing in this section prevents the trustee from being discharged under section 186.

184B Protected trust deed: early discharge in extenuating circumstances

(1) This section applies where the trustee considers that, due to extenuating circumstances affecting the debtor—

- (a) the debtor can no longer meet their obligations under the trust deed,
- (b) there is no reasonable prospect of the debtor being able to resume meeting their obligations under the trust deed, and
- (c) the debtor should be discharged from the trust deed before the end of the period for which payments are required under the trust deed.

(2) The trustee must send a notice to each of the creditors of whom the trustee is aware.

(3) A notice under subsection (2) must—

- (a) include details of the trustee's consideration under subsection (1), and
- (b) seek agreement from the creditor that the debtor be discharged from the trust deed.

(4) The trustee must apply to AiB for the discharge of the debtor unless subsection (5) applies.

(5) This subsection applies if the trustee has, within 21 days of sending notices under subsection (2), received notification in writing from a majority in number, or no fewer than $\frac{1}{3}$ in value, of the creditors that they object to the proposal to discharge the debtor.

(6) An application under subsection (4) must be in the form prescribed for that purpose by the Protected Trust Deeds (Forms) (Scotland) Regulations 2016.

(7) Before applying to AiB for the discharge of the debtor, the trustee must be satisfied that any notice of inhibition under paragraph 3 of schedule 4 has been recalled or has expired.

(8) On receipt of an application under subsection (4), AiB must register it in the register of insolvencies.

(9) Where AiB registers an application under subsection (4)—

- (a) the debtor falls to be discharged from all debts and obligations—
 - (i) in terms of the protected trust deed, or
 - (ii) for which the debtor was liable as at the date that deed was granted,
- (b) the date of discharge is the date on which the application is so registered, and
- (c) AiB must without delay notify the trustee of—
 - (i) the fact of registration, and
 - (ii) the date of the debtor's discharge.

(10) The trustee must, within 7 days after receipt of the notification mentioned in subsection (8), notify the debtor and every creditor known to the trustee of the information set out in that notification.

(11) Section 184(6) applies to the notification of the debtor's discharge under subsection (9) in the same way as it applies to a letter of discharge under section 184.

184C Early discharge in extenuating circumstances: procedure where creditors object

(1) This section applies where—

- (a) the trustee has, in accordance with section 184B(2) and (3), sought the agreement of the creditors to the early discharge of the debtor from a trust deed, and
- (b) at the end of the period of 21 days beginning with the day on which notices are sent under section 184B(2), the trustee has received notification in writing from a

majority in number, or no fewer than $\frac{1}{3}$ in value, of the creditors that they object to the proposal to discharge the debtor.

(2) The trustee must apply to AiB for a review of the proposal that the debtor be discharged.

(3) An application for a review under subsection (2) must—

- (a) include details of the trustee's consideration under section 184B(1),
- (b) include details of the objections received from the creditors, and
- (c) be made no later than 14 days beginning with the end of the period of 21 days referred to in subsection (1)(b).

(4) Where it receives an application under subsection (2), AiB must—

- (a) determine whether it is satisfied that, taking into account all the circumstances, it is fair and reasonable for the debtor to be discharged from the trust deed, and
- (b) notify the trustee of the outcome of that review.

(5) The trustee must, no later than 7 days after receiving a notification under subsection (4)(b), notify the outcome of AiB's review to—

- (a) the debtor, and
- (b) each creditor to whom notice was sent under section 184B(2).

(6) Where, after conducting a review under subsection (4), AiB determines that the debtor should be discharged from the trust deed—

- (a) the trustee must apply to AiB for the discharge of the debtor, and
- (b) on receipt of such an application, AiB must register it in the register of insolvencies.

(7) Where AiB registers an application under subsection (6)—

- (a) the debtor falls to be discharged from all debts and obligations—
 - (i) in terms of the protected trust deed, or
 - (ii) for which the debtor was liable as at the date that deed was granted,
- (b) the date of discharge is the date on which the application is so registered, and
- (c) AiB must without delay notify the trustee of—
 - (i) the fact of registration, and
 - (ii) the date of the debtor's discharge.

(8) The trustee must, within 7 days after receipt of the notification mentioned in subsection (7)(c), notify the debtor and every creditor known to the trustee of the information set out in that notification.

(9) Section 184(6) applies to the notification of the debtor's discharge under subsection (7) in the same way as it applies to a letter of discharge under section 184.

(10) Where, after conducting a review under subsection (4), AiB determines that the debtor should not be discharged from the trust deed, AiB must issue a direction to the trustee.”.

(5) In section 188 (protected trust deed: appeal)—

- (a) in subsection (1)(c), after “section 179(1)”, insert “, 184A(6) or 184C(10)”,
- (b) omit the word “or” at the end of subsection (1)(c),
- (c) at the end of subsection (1)(d), insert—
 - “, or
 - (e) any determination by AiB under section 184C(4).”, and
- (d) in subsection (4), for “apply under section 184(1)(b)(i) for the debtor's discharge” substitute “seek agreement from AiB to refuse to discharge the debtor under section 184A(1)”.

Replacement of trustee in a protected trust deed

6. After section 186 of the 2016 Act (protected trust deed: discharge of trustee), insert—

“186A Replacement of trustee in a protected trust deed

(1) AiB may, of its own accord or on the representation of any person, appoint itself as trustee in a protected trust deed where AiB is satisfied that—

- (a) the trustee under a protected trust deed is unable to continue to act under that protected trust deed (including, for example, because the trustee is no longer authorised to act as an insolvency practitioner or because the trustee has died),
- (b) all reasonable efforts have been made to appoint a replacement trustee but without success, and
- (c) it is necessary, taking account of all the circumstances, for AiB to become the trustee in the protected trust deed.

(2) Before appointing itself as trustee under subsection (1), AiB must—

- (a) take into account any representations made by an interested person,
- (b) consider the public interest, and
- (c) consider AiB’s capacity and resources.

(3) Where AiB becomes the trustee in a protected trust deed by virtue of subsection (1), AiB must—

- (a) notify—
 - (i) the debtor, and
 - (ii) each creditor of whom AiB is aware, and
- (b) make an appropriate entry in the register of insolvencies.

186B Modification of this Part where Accountant in Bankruptcy becomes trustee in a protected trust deed

(1) Where AiB becomes the trustee in a protected trust deed by virtue of section 186A(1), this Part and schedule 4 apply to AiB as they apply to a trustee in a protected trust deed, subject to the following modifications.

(2) The following do not apply—

- (a) section 165 (protected status: the trustee),
- (b) sections 169 to 171,
- (c) section 179 (directions to trustee under protected trust deed),
- (d) section 184A (protected trust deed: refusal of debtor discharge),
- (e) paragraphs 1 and 2 of schedule 4 (voluntary trust deeds for creditors).

(3) Section 171A (removal of protected status where material error or irregularity) is to be read as if—

- (a) in subsection (1), for “the trustee must notify AiB” there were substituted “AiB must decide whether the trust deed should cease to have protected status (see section 163)”,
- (b) subsection (2) were omitted,
- (c) in subsection (3)—
 - (i) for “subsection (2)” there were substituted “subsection (1)”,
 - (ii) for “the trustee and the debtor” there were substituted “the debtor and every creditor known to AiB (other than any secured creditor who has, as mentioned in paragraph (b)(ii) of the trust deed definition, agreed not to claim under the trust deed for any of the debt in respect of which the security is held)”,

- (d) subsection (4) were omitted,
 - (e) in subsection (5)—
 - (i) “or 4” were omitted,
 - (ii) in paragraph (a), for “subsection (2)” there were substituted “subsection (1)”.
- (4) Section 171B (decision under section 171A: application to review) is to be read as if—
- (a) in subsection (1)—
 - (i) “, the trustee” were omitted, and
 - (ii) for “section 171A(2)” there were substituted “section 171A(1)”,
 - (b) in subsection (3), for “section 171A(2)” there were substituted “section 171A(1)”,
 - (c) in subsection (4)(b), “, the trustee” were omitted,
 - (d) in subsection (5)(a), “, the trustee” were omitted.
- (5) Section 180 (information and notification obligations of trustee under protected trust deed) is to be read as if subsections (2) to (4) were omitted.
- (6) Section 181 (administration of trust under protected trust deed) is to be read as if—
- (a) subsections (1)(c), (4) and (5) were omitted,
 - (b) in subsection (2), “AiB” were omitted.
- (7) Section 182 (retention of documents by trustee under protected trust deed) is to be read as if, in paragraph (p), for “, by notice to the trustee” to the end there were substituted “identifies as a document that should be retained.”.
- (8) Section 183 (remuneration payable to trustee under protected trust deed), is to be read as if subsections (2)(b), (3), (4), (7) and (8) were omitted.
- (9) Section 184 (protected trust deed: discharge of debtor) is to be read as if—
- (a) subsections (1)(b), (4) and (9) to (11) were omitted,
 - (b) for subsection (3) there were substituted—
 - “(3) AiB must record the fact and the date of the debtor’s discharge in the register of insolvencies.”,
 - (c) for subsection (5) there were substituted—
 - “(5) AiB must, within 7 days of recording the information referred to in subsection (3), notify the debtor and every creditor known to AiB of the fact and the date of the debtor’s discharge.”.
- (10) Section 184B (protected trust deed: early discharge in extenuating circumstances) is to be read as if—
- (a) for subsection (4) there were substituted—
 - “(4) AiB must record the fact and the date of the debtor’s discharge in the register of insolvencies unless subsection (5) applies.”,
 - (b) subsections (6) and (8) were omitted,
 - (c) in subsection (7), “Before applying to AiB for the discharge of the debtor” were omitted,
 - (d) in subsection (9)—
 - (i) for “an application under subsection (4)” there were substituted “the fact and the date of the debtor’s discharge under subsection (4)”,
 - (ii) paragraph (c) were omitted.
- (11) Section 184C (early discharge in extenuating circumstances: procedure where creditors object) is to be read as if—
- (a) for subsection (2) there were substituted—

“(2) AiB must review its proposal for the purpose of determining whether, taking account of all of the circumstances, it is fair and reasonable that the debtor be discharged.”,

(b) subsections (3) and (4) were omitted,

(c) for subsection (5) there were substituted—

“(5) AiB must notify the outcome of its review to—

(a) the debtor, and

(b) each creditor to whom notice was sent under section 184B(2).”,

(d) for subsection (6) there were substituted—

“(6) Where, after conducting a review under subsection (2), AiB determines that the debtor should be discharged from the trust deed, AiB must record the fact and the date of the debtor’s discharge in the register of insolvencies.”,

(e) in subsection (7)—

(i) for “registers an application” there were substituted “registers the debtor’s discharge”,

(ii) in paragraph (b), for “the application” there were substituted “the discharge”,

(iii) in paragraph (c), for “the trustee” there were substituted “the debtor and every creditor known to AiB”,

(f) subsections (8) and (10) were omitted.

(12) Section 186 (protected trust deed: discharge of trustee) is to be read as if—

(a) subsection (4) were omitted,

(b) in subsection (8)—

(i) paragraphs (a) and (c) were omitted,

(ii) in paragraph (b), for “send AiB, for registration”, there were substituted “register”.

(13) Section 188 (protected trust deed: appeal) is to be read as if—

(a) subsections (1)(a) to (d) and (4) were omitted,

(b) in subsection (1)(e), for “section 184C(4)” there were substituted “184C(2)”.

Amendment of the Protected Trust Deeds (Forms) (Scotland) Regulations 2016

7.—(1) The Protected Trust Deeds (Forms) (Scotland) Regulations 2016(a) are amended as follows.

(2) In the table at the beginning of the schedule (list of forms to be used in connection with protected trust deeds)—

(a) in the entry for Form 5 (application for discharge of debtor), in the third column, for “Section 184(1)(b) and (2)(a)” substitute “Section 184(1)(b) and (2)(a) and section 184B”,

(b) after the entry for Form 5, insert—

| | | |
|----|--|--------------|
| 5A | Application for agreement to refuse debtor discharge | Section 184A |
|----|--|--------------|

(3) In the schedule, in Form 5—

(a) for “Section 184(1)(b) and (2)(a)”, substitute “Section 184(1)(b) and (2)(a) and section 184B”,

(a) S.S.I. 2016/398, as amended by S.S.I. 2017/136.

(b) after “ii. the debtor has co-operated with the administration of the trust”, insert—

“, OR

i. It is my opinion that, due to extenuating circumstances affecting the debtor *he/she/it is no longer able to fulfil *his/her/its obligations under the trust deed; there is no reasonable prospect of the debtor being able to resume meeting those obligations; and the debtor should be discharged under the terms of section 184B, and

ii. I certify that a notice has been sent to each of the known creditors and the creditors who have objected in writing to the discharge of the debtor do not constitute a majority in number or more than $\frac{1}{3}$ in value”.

(4) In the schedule, after Form 5, insert the form set out in the schedule of these Regulations.

Amendment of the Bankruptcy Fees (Scotland) Regulations 2018

8.—(1) The Bankruptcy Fees (Scotland) Regulations 2018(a) are amended as follows.

(2) After regulation 10 (waiver of fees), insert—

“**10A.** No fee is payable to AiB under these Regulations where AiB becomes the trustee in a protected trust deed by virtue of section 186A of the Act.”.

(3) In the second column of paragraph 8(c) of Part 2 of the table of fees in the schedule (fees for other functions of the Accountant in Bankruptcy), for “£100.00” substitute “£120.00”.

(4) The amendment made by paragraph (3) applies in respect of any 12 month period of supervision (or part of such period) referred to in the second column of paragraph 8(c) as so amended that ends on or after 1 July 2024.

IVAN MCKEE

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
27th June 2024

(a) S.S.I. 2018/127, to which there are amendments not relevant to these Regulations.

SCHEDULE

Regulation 7(4)

Form 5A

Application for agreement to refuse debtor discharge

Bankruptcy (Scotland) Act 2016
Section 184A

Report by

| | |
|--|----------------------------|
| | Trustee's name |
| | Trustee's business address |
| | Town |
| | County |
| | Postcode |

In the protected trust deed of

| | |
|--|------------------|
| | Debtor's name |
| | Debtor's address |
| | Town |
| | County |
| | Postcode |

In accordance with section 184A of the Bankruptcy (Scotland) Act 2016, I confirm that it is my intention to refuse the discharge of the debtor. I intend to notify the debtor in writing—

- (i) of the fact and the reason for the refusal,
- (ii) that the debtor is not discharged from the debtor's debts and obligations in terms of the trust deed, and
- (iii) of the debtor's right to apply to the sheriff for a direction under section 189(1) of the Bankruptcy (Scotland) Act 2016.

In submitting this report, I have provided a statement confirming the extent to which, in my view, the debtor has—

- (i) complied with any debtor contribution order,

(ii) co-operated with the trustee,

(iii) made a full and fair surrender of the debtor's estate,

(iv) made a full disclosure of all claims which the debtor is entitled to make against other persons,
and

(v) delivered to the trustee every document under the debtor's control relating to the debtor's
estate, business or financial affairs.

I submit that the debtor's discharge under section 184 of the Bankruptcy (Scotland) Act 2016 is
not granted, and I seek agreement from the Accountant in Bankruptcy in order to formally notify
the debtor of this in writing.

Signature of trustee _____ Date _____

Report

(Please use this section to provide any supporting information in relation to the above)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend Part 14 of the Bankruptcy (Scotland) Act 2016 (“the 2016 Act”) on voluntary trust deeds for creditors, the Protected Trust Deeds (Forms) (Scotland) Regulations 2016 and the Bankruptcy Fees (Scotland) Regulations 2018.

Regulation 2 amends section 164 of the 2016 Act to add an additional condition for the protection of a trust deed. Where a trust deed is to be granted by a living debtor, that person must have been habitually resident, or had an established place of business, in Scotland at any time in the year preceding the granting of the trust deed. Where the debtor is any of the bodies or entities mentioned in section 164(1)(b) to (f), it must have had an established place of business in Scotland at any time in the year preceding the granting of the trust deed, or been formed or constituted under Scots law and at any time carried on business within Scotland.

Regulation 3 inserts new sections 171A, 171B and 171C into the 2016 Act. New section 171A provides that where there has been a material error or irregularity in the process that led to a trust deed gaining protected status, the Accountant in Bankruptcy (“AiB”) may decide to remove protected status. AiB’s decision can be reviewed under section 171B, and section 171C sets out the consequences of the removal of protection.

Regulation 4 adjusts the time periods in section 176 of the 2016 Act regarding the payment of dividends to creditors in a protected trust deed. The first dividend period is reduced from 24 months to 12 months, and subsequent dividend periods are 3 months, rather than 6 months. These changes will apply to trust deeds granted on or after these Regulations come into force on 1 July 2024.

Regulation 5 inserts a new section 184A into the 2016 Act, so that where the trustee in a protected trust deed considers that the debtor should not be discharged from the trust deed (for reasons of non-cooperation or failure to pay), the trustee must seek AiB’s agreement to refuse to discharge the debtor. Regulation 7(4) adds a relevant form to the Protected Trust Deeds (Forms) (Scotland) Regulations 2016.

Regulation 5 also inserts new sections 184B and 184C into the 2016 Act. The new sections introduce a process for early discharge where extenuating circumstances affecting the debtor mean that the debtor is no longer able to meet their obligations under the trust deed. The trustee is required to seek the agreement of the creditors to the proposed discharge. Unless the trustee receives written notification from a majority in number, or no fewer than one third in value, of the creditors that they object to the proposal, the debtor is discharged. If a majority in number or no fewer than one third in value of the creditors object in writing, the trustee must ask AiB to review the proposal. Where AiB reviews a proposal, it must determine whether it is satisfied that, taking account of all of the circumstances, it is fair and reasonable for the debtor to be discharged. AiB’s directions and determinations under new sections 184A, 184B and 184C are appealable to the sheriff.

Regulation 6 inserts new sections 186A and 186B into the 2016 Act. Section 186A allows AiB to take over as the trustee in a protected trust deed where the existing trustee is unable to continue to act and where no replacement trustee can be found. Section 186B provides that where AiB becomes the trustee under new section 186A, Part 14 of the 2016 Act will apply to AiB as it applies to any other trustee, subject to the modifications specified.

Regulation 8 amends the Bankruptcy Fees (Scotland) Regulations 2018. It provides that no fee is payable under those Regulations where AiB has become the trustee in a protected trust deed by virtue of new section 186A of the 2016 Act, and it uprates AiB’s annual supervision fee in respect of protected trust deeds from £100 to £120. This change will apply in respect of existing as well as new trust deeds.

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Accountant in Bankruptcy, 1 Pennyburn Road, Kilwinning, KA13 6SA or www.aib.gov.uk.

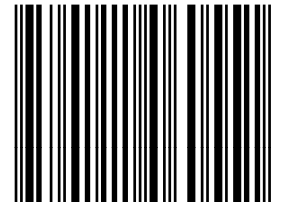
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