
SCOTTISH STATUTORY INSTRUMENTS

2024 No. 198

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

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)”.