
SCOTTISH STATUTORY INSTRUMENTS

2024 No. 198

The Protected Trust Deeds (Miscellaneous Amendment) (Scotland) Regulations 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(1), 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.

(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)”.