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SCOTTISH STATUTORY INSTRUMENTS

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**2024 No. 198**

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

**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,

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- (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)”.