

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

**Island Communities Impact Assessment
Screening**

June 2024

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Name of Policy

1. Protected Trust Deeds (Miscellaneous Amendment) (Scotland) Regulations 2024.

Step One – Develop a clear understanding of your objectives

2. The aim of the Protected Trust Deeds (Miscellaneous Amendment) (Scotland) Regulations 2024 (the “Regulations”) is to make improvements to the operation of Protected Trust Deeds (PTDs). The provisions contained in the Regulations will help to ensure that PTDs are fit for purpose and provide the necessary support and protection to those who need to use them.
3. The islands have not been specifically identified and we do not anticipate that these Regulations will differentially affect those who live on the islands compared to those who live on the mainland.

The Regulations

4. The Regulations amend the Bankruptcy (Scotland) Act 2016. Below is an overview of each provision and it’s intended impact/outcome.

PTD Protocol

5. The PTD Protocol (the “Protocol”) was introduced in October 2021 with the intention to promote good practice, improve transparency and provide further clarity in support of guidance. The Protocol is voluntary which means there is no requirement for trustees to follow it. Its provisions are based on consent only.
6. These Regulations will put the following two processes from the Protocol into legislation to ensure that all PTDs are operating under the same rules.

Interim dividend process for trustees

7. In a PTD, a trustee will gather funds to pay the creditors. These are usually from the sale of assets (things the debtor owns) and a monthly contribution paid from the debtor's income.

8. In current legislation, the trustee in a PTD must pay an interim dividend to creditors no later than 2 years after the date the trust deed is granted. After this, a dividend should be paid to creditors every 6 months. This is only where the trustee has sufficient funds to do so and it does not stop a trustee from paying a dividend to creditors at an earlier stage.

9. Good practice introduced under the Protocol says that, where there are sufficient funds to do so, an interim dividend should be paid to creditors 1 year after the date the trust deed is granted. After this, a dividend should be paid to creditors every 3 months. The purpose of this change is to ensure that the debtor's payments are contributing to reducing their debt earlier and more frequently in the process.

Refusal of debtor discharge

10. If a debtor does not comply with the terms of their PTD, the trustee can refuse to discharge them. This will usually be because the debtor has not co-operated with the trustee or failed to meet the obligations that they signed up to in their trust deed.

11. The refusal of discharge has significant implications for the debtor. Their debts that were included in the PTD will not be written off which means they will still be responsible for paying them, plus any additional interest or charges during the time of the PTD. Currently, to refuse discharge, the trustee must notify the debtor in writing, and they must send a copy of this notice to the Accountant in Bankruptcy (AiB).

12. There was a feeling that this process needed further scrutiny and that the trustee should require the approval of AiB before they can refuse a debtor's discharge. Therefore, the Protocol introduced the 'Refusal of Debtor Discharge

Document'. This document is completed by the trustee and must detail the steps they have taken before deciding to refuse discharge. It is then sent to AiB to decide whether the refusal of discharge should be approved or rejected.

Removal of protection of a trust deed

13. A trust deed is a legally binding agreement between an individual and their creditors. It can become protected if most creditors are happy with the terms of the trust deed.

14. If a trust deed is not protected, then creditors can still take court action to get back the money they are owed. When a trust deed is protected, creditors cannot add more interest or charges to the debt, take any court action for unpaid debts and the debts will be written off at the end.

15. There is currently nothing in legislation to allow for the protection of a PTD to be removed if an error had been made in the protection process, meaning the PTD should not have been protected. An example of this would be a system error where creditors were not notified of the trust deed and therefore not given the opportunity to vote. Currently, these creditors would be locked into the terms of the PTD.

16. These Regulations will introduce a power to allow AiB to remove the protection from a trust deed when this type of error has been made. This will result in the debtor reverting back to their trust deed before protection and creditors no longer being bound by its terms. The trustee can apply for protection again providing the correct procedure is followed.

Remove time limitations to refuse debtor discharge

17. If a debtor is not co-operating and is failing to meet the obligations of their trust deed, the trustee can apply to AiB to refuse their discharge. Refusing discharge means that, at the end of the trust deed, the debts will not be written off and the debtor will still be responsible for them plus any additional interest or charges.

18. If a trustee wants to apply to refuse a debtor's discharge, they currently must wait until the end of the trust deeds repayment period (the repayment period is usually 48 months, but an alternative can be agreed at the start of the trust deed). The consequences of this are that the trustee is locked into a PTD where there is no co-operation from the debtor and the trustee is continuing to incur administration costs for the case.

19. This proposal in the Regulations will allow the trustee to apply to refuse the debtors discharge earlier in the process when they have judged that the PTD will not be successful. This will normally be due to the debtor not co-operating with the trustee. If the refusal to discharge the debtor is approved, the trustee can then apply for their own discharge and bring the trust deed to a close.

Early discharge of a debtor

20. Currently nothing in the legislation allows a debtor to be discharged early from a PTD unless all debts have been paid in full. The introduction of this new provision will allow early discharge of a debtor when they can no longer make contributions to their PTD through no fault of their own. This provision is only intended for use in extenuating circumstances such as terminal illness or severe injury.

21. This would mean that, with agreement from their creditors or AiB, the debtor would be released from their PTD and have their debts included in the PTD written off.

Trustee of last resort

22. At present, when a trustee can no longer fulfil their duties, another trustee will take on their cases. There is a risk that this would not be possible if the trustee that could no longer act had a very high number of cases. This could mean those cases would be left with no trustee to look after them. This new provision will give AiB the power to step in and become the trustee in those cases.

Increased supervision fee

23. The PTD supervision fee is currently £100. It is paid by the trustee to the AiB for their supervision of a trust deed. This provision will allow AiB to increase this fee to £120 to assist with their operational running costs.

Residency criteria to apply for a PTD

24. Current practice in the PTD process is that a person or entity has to live or have a business in Scotland, before they can apply for a PTD. This provision will put this explicitly into legislation.

Is the policy, strategy or service new?

25. The provisions in these Regulations are amending current provisions and creating new provisions in legislation.

Step Two – Gather your data and identify your stakeholders

26. The data available on island communities with respect of statutory debt solutions is limited.

27. The provisions within the Regulations will amend legislation which will apply equally to all parties. It will not be different between the island communities and the rest of Scotland. There has been some recognition in diligence law and practice of island situations, eg. providing alternatives for service of papers, but similar issues do not arise with any of these changes.

Step Three – Consultation

Stakeholder groups

28. A number of proposals in these Regulations are stakeholder-led. Scottish Ministers committed to undertake a wide-ranging policy review of Scotland's statutory debt solutions. As part of that review working groups were formed with key stakeholders from the debt, creditor and insolvency practitioner's sector. Their remit was to look at the operation of existing statutory debt solutions and provide recommendations for improvement. The recommendations put forward by the working groups have formed the basis of these Regulations.

Public consultation

29. In August 2022, the Scottish Government published '[Scotland's statutory debt solutions and diligence - policy review response: consultation](#)'. Within the consultation the Scottish Government proposed a series of improvements to the statutory debt solutions from the recommendations of the working groups and asked for further views.

Other consultation

30. The following four provisions in these Regulations were not included in the public consultation:

- allow for the removal of protected status of a PTD where there has been an error made in the process of the trust deed gaining protected status
- allow AiB to act as trustee of last resort where a trustee can no longer act in that capacity and a replacement trustee cannot be found
- increase to the PTD supervision fee
- clarification on residency criteria to apply for a PTD

31. The Scottish Government consulted directly with the members of the PTD Standing Committee on these provisions. The PTD Standing Committee is composed of members from the creditor, insolvency practitioner and debt advice sector as well as recognised professional bodies. The Committee provides information and guidance to AiB on the administration of trust deeds and helps identify any issues or areas of concern in the process. Its general purpose is to act as a discussion forum for stakeholders to ensure there is an effective conduit for the receipt and dissemination of information concerning PTDs across stakeholder groups and interested parties.

Conclusion

32. There were no concerns raised either from the consultation responses or from any other stakeholder engagement about any undue impact the provisions would have on the island communities.

Step Four – Assessment

33. Any potential impacts outlined in this document are not unique to island communities and may also be faced by rural communities across mainland Scotland, nor have they been raised significantly through consultation or by the stakeholder-led working groups.

34. Given the foregoing, we do not consider that these Regulations will have an effect on an island community which is significantly different from its effect on other communities (including other island communities).

Recommendation

35. In preparing the Island Communities Impact Assessment, we have formed the opinion that these Regulations are not likely to differentially affect those who live on the islands compared to those who live on the mainland. Therefore, a full Islands Community Impact Assessment is NOT required.

Sign off

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Date: February 2024

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Date: May 2024



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