

Economy and Fair Work Committee
Wednesday 5 June 2024
18th Meeting, 2024 (Session 6)

Note by the Clerk on The Protected Trust Deeds (Miscellaneous Amendment) (Scotland) Regulations 2024

Overview

1. At this meeting, the Committee will take evidence from the Minister for Public Finance and officials on The Protected Trust Deeds (Miscellaneous Amendment) (Scotland) Regulations 2024 before debating a motion in the name of the Minister inviting the Committee to recommend approval of the instrument.
2. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below:

Title of instrument: [The Protected Trust Deeds \(Miscellaneous Amendment\) \(Scotland\) Regulations 2024 \(legislation.gov.uk\)](https://legislation.gov.uk)

Laid under: [Bankruptcy \(Scotland\) Act 2016 \(legislation.gov.uk\)](https://legislation.gov.uk)

Laid on: 3 May 2024

Procedure: Affirmative

Lead committee to report by: 11 June 2024

Commencement: If approved, the instrument comes into force on 1 July 2024.

Procedure

3. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
4. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.

6. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
 - an evidence session with the Minister and officials, followed by
 - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
7. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument.

Delegated Powers and Law Reform Committee consideration

8. The DPLR Committee considered the instrument on 14 May 2024 and reported on it in its [36th Report, 2024](#). The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

9. The Bill takes forward the recommendations which require primary legislation from three working groups looking at improvements to statutory debt solutions in Scotland. The provisions will help ensure this statutory debt solution is fit for purpose and provides the necessary support and protection to those who need to access debt relief through this solution.
10. The Policy Note accompanying the instrument is included in the annexe. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

Evidence received

11. As requested, COSLA was contacted for any views. No response has been received.

Report

12. **Following today's proceedings, a draft report will be prepared by the clerks. The Committee is invited to delegate responsibility for agreeing the draft report to the Convener.**

**Clerks to the Committee
May 2024**

Annexe: Scottish Government Policy Note

POLICY NOTE

The Protected Trust Deeds (Miscellaneous Amendment) (Scotland) Regulations 2024 S.S.I. 2024/Draft

1. The above instrument is made in exercise of the powers conferred by sections 194(1), 205(1) and 224(1) of the Bankruptcy (Scotland) Act 2016 and all other powers enabling them to do so. The instrument is subject to the affirmative procedure.

Summary Box

Purpose of the instrument. To bring forward stakeholder-led recommendations to introduce improvements to the current Protected Trust Deed (PTD) process. The provisions will help ensure this statutory debt solution is fit for purpose and provides the necessary support and protection to those who need to access debt relief through this solution.

Policy Objectives

2. The aim of the Protected Trust Deeds (Miscellaneous Amendment) (Scotland) Regulations 2024 (“the Regulations”) is to reflect good practice introduced through a voluntary protocol with trustees of trust deeds for the benefit of creditors in insolvency in statutory requirements, and to offer further protections to those seeking debt relief through PTDs. This includes allowing a person to be discharged from their PTD in extenuating circumstances. The Regulations will also make other changes to the processes for trustees to ensure the smooth operation of PTDs.
3. In brief, the Regulations amend Part 14 of the Bankruptcy (Scotland) Act 2016 on voluntary trust deeds for creditors to:
 - Make some of the terms contained in a voluntary protocol a statutory requirement. This means where a dividend is payable it will be paid to creditors at month 12 and quarterly thereafter, and a trustee will have to seek the agreement of Accountant in Bankruptcy (AiB) when refusing to discharge a debtor from a PTD.
 - Allow for the removal of the protected status of a PTD where there has been a material error made in the process for the trust deed gaining protected status.
 - Remove any time limitation for a trustee refusing to apply for a debtor’s discharge.
 - Allow early discharge of the debtor in extenuating circumstances.
 - 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 the supervision fee of a trustee under a PTD from £100 to £120.
- Place beyond doubt that anyone or a legal entity applying for the protection of a trust deed will have to have been habitually resident in Scotland or an established place of business in the year prior to the granting of the trust deed. Alternatively a body or entity applying will have to be constituted or formed under Scots law and at any time have carried out business within Scotland.

EU Alignment Consideration

4. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

5. In April 2015, wide ranging bankruptcy reforms were introduced through the Bankruptcy and Debt Advice (Scotland) Act 2014. In 2019, the Scottish Government consulted with stakeholders to gauge how these reforms were working in practice.
6. The Scottish Ministers then committed to undertake a wide-ranging policy review of Scotland's statutory debt solutions, specifically the moratorium protection, bankruptcy, PTDs and the Debt Arrangement Scheme.
7. In response to the coronavirus pandemic, the first stage of the review was to consider changes which could be immediately implemented. This culminated in the changes introduced through the Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021.
8. The second stage of the review was undertaken by three stakeholder led working groups formed from a wide body of sector specialists with expertise in debt advice and the operation of statutory debt solutions. The members included money advice professionals, insolvency practitioners, creditor bodies and academics. The working groups considered improvements which could be made to each of the statutory debt solutions.
9. One of the groups considered the recommendations made by the then Economy, Energy and Fair Work Committee who had conducted a short, focused inquiry on PTDs in January 2020. A number of their recommendations made were addressed operationally through a voluntary protocol which came into force on 1 October 2021. The group considered the remaining recommendations and further areas of the PTD process to see where improvements can be made. This resulted in a report containing 15 recommendations being presented to Scottish Ministers for consideration.
10. In March 2022, these recommendations along with the recommendations from the two other working groups were included in a report issued to Scottish Ministers. The Scottish Government considered those recommendations and

subsequently, on 12 August 2022 published a consultation 'Scotland's Statutory Debt Solutions and Diligence: Policy Review Response', in response to the second stage of the review and the diligence review. The consultation closed on 7 October 2022. A total of 46 responses were received, of which 13 were from individuals and 33 were from organisations. On 26 January 2023, the Scottish Government published a summary of responses report.

11. Further consultation through direct liaison with members of the PTD standing Committee has also taken place. The PTD Standing Committee is composed of members from the creditor, insolvency practitioner and debt advice sectors as well as recognised professional bodies.

Impact Assessment

12. A [Business and Regulatory Impact Assessment](#) has been completed on the effects of the instrument and has been published when this instrument was laid before the Parliament. A copy can be found on www.legislation.gov.uk.
13. No equality issues were raised during the Equality Impact Assessment framing exercise and a full Equality Impact assessment is not required. There were no direct or indirect barriers found as a result of the proposed changes being introduced. The changes introduced are primarily associated with placing good practice introduced through a voluntary protocol in statute, adding further protections for those seeking debt relief through PTDs, and allowing a person to be discharged from the PTD in extenuating circumstances.
14. The impact of these proposals on children's human rights and wellbeing were considered and no direct or indirect impacts were identified. No impacts were raised as part of the consultation process. It was considered therefore that a full Child Rights and Wellbeing Impact Assessment is not required.
15. In view of the Fairer Scotland Duty regarding socio-economic inequalities under the Equality Act 2010, the impact of these proposals on those with low wealth and low income has been considered and no impact has been identified. The changes being introduced are not considered to be strategic and are instead small but necessary changes.

Financial Effects

16. The changes introduced by this instrument will not result in costs to the Scottish Government. Increasing the supervision fee of a trustee under a protected trust deed is expected to impact on trustees. This will vary depending on the caseload held by each trustee. For the trustee (or organisation) administering the highest caseload this will be an increase of £260,000 per annum across their caseload, for the trustee administering the minimum caseload this will be an increase of £20 per annum. This cost will ultimately be passed on to the creditors and equates to a 3% reduction in returns to creditors.

EFW/S6/24/18/5

17. The costs associated with the remaining provisions including introducing the protocol best practice into legislation, are expected to be minimal.

Accountant in Bankruptcy on behalf of the Scottish Government
May 2024