

ACCOUNTANT  
IN BANKRUPTCY  
SCOTLAND'S INSOLVENCY SERVICE

PUBLICATION AIB7

PROTECTED TRUST DEEDS



## CONTENTS

You can get more copies of this booklet, or copies of other booklets we produce, by phoning our helpline on **0845 762 6171**. (You can also find them on the Publications page of our website: <http://www.aib.gov.uk>)

This publication is available on request in community language versions and alternative formats. Please contact **0845 612 6460** for this to be arranged.



Introduction	4
Trust deeds in general	5
Protected trust deeds	7
People who give advice	10

## INTRODUCTION TO PROTECTED TRUST DEEDS

If you have a serious debt problem but do not want to be sequestrated (made bankrupt), you can think about a protected trust deed.

There are 2 types of trust deed:

- a trust deed (sometimes referred to as an unprotected trust deed); and
- a protected trust deed.

As most people go for a protected trust deed, this booklet is mainly about this type. But because **all** trust deeds start as unprotected trust deeds, it does also talk about them.

A trust deed voluntarily transfers your assets (things you own) to a trustee. They manage and sell these to pay your creditors (the people you owe money to).

For a trust deed to become protected, it must meet certain conditions laid down in law. The advantage of the protected trust deed is that it stops creditors going to court to make you bankrupt.

A protected trust deed is not as formal as sequestration and also avoids some of the restrictions of being bankrupt. But it is binding in law on both you and your trustee and is a very serious step to take.

**So think very carefully before signing a trust deed and ask for advice from a solicitor or one of the agencies listed on pages 10 to 12.**

This booklet answers questions we are often asked about trust deeds.

## TRUST DEEDS IN GENERAL

### **What is a trust deed?**

It is a voluntary agreement transferring what you own (your assets) to a trustee (usually an accountant). The trustee manages and sells these assets to try and pay off your debts. They cannot take essential household items. You are both legally bound by the terms in the trust deed.

### **Can I ask anyone to be my trustee?**

No. You must ask a qualified and registered insolvency practitioner (see page 12). You cannot ask the Accountant in Bankruptcy.

### **Does a trust deed stop my creditors taking action against me?**

Only if it becomes a protected trust deed. If it is not protected, only creditors who agree to it are bound by it. Those who object to it can still take legal action against you. They can even ask the court to make you bankrupt. The only way to stop all your creditors taking legal action is to have the trust deed protected.

### **Who pays for a trust deed?**

All the trust deed costs have to be paid out of the assets you transfer to your trustee and/or from money you pay as a contribution. But you will need to have assets **or** be in a job to sign a trust deed.

### **How much do I need to owe before I can sign a trust deed?**

It doesn't matter. There is no set amount of debt needed to sign a trust deed.

### **Are trust deed terms laid down in law?**

No. A trust deed can contain any terms you think your creditors will accept. You can sign one which only transfers some of what you own. But such a trust deed cannot become a protected trust deed and your creditors are likely to object to it. If you want a protected trust deed, you must transfer **all** you own except household items. There is a standard deed used for protected trust deeds.

### **After I sign a trust deed, what more do I have to do for my trustee and creditors?**

You must co-operate with your trustee and keep to the terms of the trust deed. They may require you to pay some of what you earn. They will deal with your creditors.

### **Are there any other consequences of signing a trust deed?**

If you sign a trust deed, it allows a creditor (or creditors) who you owe at least £1500 to petition for your sequestration in the 5-week period before it becomes protected. If those creditors write and tell your trustee that they object, they have an extra week to send their petition to court.

### **Can I still be a director of a limited company?**

Usually the articles of a limited company stop a director from signing a trust deed. You need to check these articles.

### **Can I hold other public office?**

Usually, but some public bodies have rules stopping anyone who has signed a trust deed from holding office. Check with the body concerned.



## How does the Debt Arrangement Scheme (DAS) affect trust deeds?

If you have signed a trust deed, whether it is protected or not, and have not been discharged you cannot apply for a debt payment programme (DPP) under DAS.

The reverse is also true. If you have entered into a DPP under DAS, you are not entitled to enter into a trust deed as long as the DPP is approved.

## PROTECTED TRUST DEEDS

### What is the advantage of a protected trust deed?

It stops **all** your creditors (even those who object to the trust deed) from chasing you for the money you owe them.

### How does a trust deed become a protected trust deed?

Your trustee must do the following:

- put a notice (advert) in a publication called the Edinburgh Gazette.
- write to everyone you owe money telling them that you want a protected trust deed and sending them a copy of the notice in the Edinburgh Gazette.

The people you owe money to have 5 weeks to object starting from the date the notice appears in the Edinburgh Gazette.

Normally a trust deed automatically becomes protected **unless** your trustee receives written objections from either:

- a majority of your creditors, or
- creditors representing at least one-third of your debts.

### **What if a majority of my creditors object to my trust deed becoming protected?**

If your creditors reject a trust deed that meets all the other conditions to become protected, you can petition for your own sequestration if

- you owe at least £1500, and
- you have not been made bankrupt in the last 5 years.

(See booklets AiB1 and AiB2.)

If you are not sequestrated, a trust deed will continue to run even if it does not become a protected trust deed. But creditors who have objected to it can still petition for your sequestration.

### **Is a protected trust deed recorded in the Register of Insolvencies?**

Yes. And as this is a public register, anyone can ask for a search to see if you have a protected trust deed. (Unprotected trust deeds are not recorded.)

### **What happens if I do not co-operate with my trustee or keep to what I have agreed to in my trust deed?**

They can petition for your sequestration.

### **Can I be sequestrated for any other reason even if I have a protected trust deed?**

Sometimes, but it doesn't happen very often.

- Your trustee can petition for your sequestration at any time they think it would raise more money for your creditors.
- If one of your creditors thinks they can prove that they can get more of their money repaid if you are sequestrated, they can present a petition in the court for your sequestration – even if the trust deed is protected.

These are both very rare events indeed.

→ If you run up more debt after you have signed the trust deed, the people you owe the new debt to can petition for your sequestration.

### Can my trustee sell my house?

Yes. They can sell **all** the property you transfer by trust deed. But, if your house is jointly owned or if it is the family home, your trustee needs the permission of the other owner or anyone else who has rights to live in the house. (If the other owner refuses permission to sell, the trustee can go to court to try and force what is known as a division and sale. If this is granted, the house can be sold and your share of the money raised will go to pay off your debts. The other owner will get their share.)

### Will credit reference agencies blacklist me?

Yes, as your trustee must advertise your trust deed in the Edinburgh Gazette before it can be protected. It is also entered in the Register of Insolvencies when it is protected.

### When will I be discharged from my debts?

It will say in your trust deed how long it is to run for and when you will be discharged. Normally it is 3 years from the date you sign it (though it can be 4 or 5 years). But unlike in a sequestration, this discharge is not automatic. Your creditors have to discharge your trustee before you can be discharged. This means a protected trust deed may still remain open in the Register of Insolvencies for some time after the 3 years.

Your discharge in a protected trust deed is usually binding on all your creditors. This means they can't chase you for the money you owed them when you signed the trust deed.

But there are 2 exceptions. These are:

- debts not covered by the trust deed (like overpayment of social security); or
- if a creditor who objected to the trust deed can **prove** in court that he would have got more of his money back if you had been made bankrupt. This is a very rare event indeed.

(If the trust deed fails to become protected, your discharge does not stop creditors who objected to the trust deed in the first place still chasing you for the money you owe them.)

### **Do I get my property back when I get my discharge?**

Once you have transferred assets to your trustee, it is his duty to sell them for the benefit of your creditors. Any assets or money left over after all the expenses and debts have been paid should be returned to you.


## **PEOPLE WHO GIVE ADVICE**

### **Accountant in Bankruptcy**

You can ask us at Accountant in Bankruptcy for help. Our address is:

1 Pennyburn Road  
Kilwinning  
Ayrshire  
KA13 6SA  
Phone: 0845 612 6460  
Fax: 0845 612 6470  
Helpline: 0845 762 6171

We will be happy to advise you about how to set up a protected trust deed and what are the consequences. It is best to ring our helpline. Calls are all charged at the local rate. You can also write, email ([helpine@aib.gsi.gov.uk](mailto:helpine@aib.gsi.gov.uk)), or fax.



**We at the Accountant in Bankruptcy are only able to give information on procedures and consequences. We cannot tell you whether a protected trust deed is the best way to deal with your debt.**

**Other useful contacts for free advice**

For general advice on debt:

**Money Advice Centres**

**Citizens Advice Bureaux**

**Trading Standards Offices**

Your local phone book should give you addresses and telephone numbers for these agencies.

For help finding a solicitor with specialist knowledge about insolvency, contact:

**Law Society of Scotland**

26 Drumsheugh Gardens

Edinburgh

EH3 7YR

Phone: 0131 226 7411

For help finding an insolvency practitioner:

**Institute of Chartered Accountants of Scotland**

CA House

21 Haymarket Yards

Edinburgh

EH12 5BH

Phone: 0131 347 0100





This publication is available on request in community language versions and alternative formats. Please contact **0845 612 6460** for this to be arranged.

अनुरोध करने पर यह प्रकाशन सामुदायिक भाषा संस्करणों एवं वैकल्पिक स्वरूपों में उपलब्ध है। ऐसी व्यवस्था करने के लिए कृपया **0845 612 6460** पर संपर्क करें।

یہ اشاعت درخواست کرنے پر معاشرتی زبان کے نسخوں اور متبادل شکلوں میں دستیاب ہے۔ برائے مہربانی اس کے انتظام کے لئے **0845 612 6460** پر رابطہ کریں۔

এই প্রকাশনাটি অনুরোধসাপেক্ষে জনগোষ্ঠীর ভাষায় লিখিত সংস্করণে এবং বিকল্প ফরম্যাটে পাওয়া যায়। অনুগ্রহ এই ব্যবস্থা করার জন্য **0845 612 6460** নম্বরে যোগাযোগ করুন।

此出版物有社區語言版本和其他格式，  
請致電 **0845 612 6460** 索取。

هذه النشرة متوفرة عند الطلب بإصدارات بلغات الجاليات وبالصيغ البديلة.  
الرجاء الاتصال بالرقم الهاتفي **0845 612 6460** لترتيب هذا.

ਇਹ ਪ੍ਰਕਾਸ਼ਨ ਭਾਈਚਾਰਕ ਭਾਸ਼ਾ ਰੂਪਾਂ ਅਤੇ ਬਦਲਵੇਂ ਫਾਰਮੈਟਾਂ ਵਿੱਚ ਬਿਨਤੀ  
'ਤੇ ਉਪਲਬਧ ਹਨ। ਇਸਦਾ ਪ੍ਰਬੰਧ ਕਰਾਉਣ ਲਈ ਕਿਰਪਾ ਕਰਕੇ  
**0845 612 6460** 'ਤੇ ਸੰਪਰਕ ਕਰੋ।

Tha am foillseachadh seo ri fhaotainn air iarrtas ann an cànanan coimhearsnachd agus ann an cruthan eile.  
Cuiribh fios gu **0845 612 6460** airson seo a chur air dòigh.

**We have written this booklet for general guidance only.  
It is not a detailed or full statement of the law.**

# OTHER PUBLICATIONS

## Annual Report

### Notes for Guidance

- AiB1** Debtor's guide
- AiB2** Filling in the debtor's application forms
- AiB3** Completing the statement of assets and liabilities
- AiB4** Creditor's guide
- AiB5** Petitions
- AiB6** Apparent insolvency
- AiB7** **Trust deeds**
- AiB8** Sequestration: debtor rights
- AiB9** Sequestration: creditor rights
- AiB10** Statutory meeting of creditors
- AiB11** Register of insolvencies, including:
  - AiB12a** Search request form (sequestrations)
  - AiB12b** Search request form (companies)
- AiB13** Introduction to sequestration
- AiB14** Recall of sequestration
- AiB15** Corporate insolvency: advice on liquidations and receiverships

T 0845 612 6460 F 0845 612 6470 HELP 0845 762 6171  
HELPLINE@AIB.GSI.GOV.UK WWW.AIB.GOV.UK  
KILWINNING Ayrshire KA13 6SA  
1 PENNYBURN ROAD

