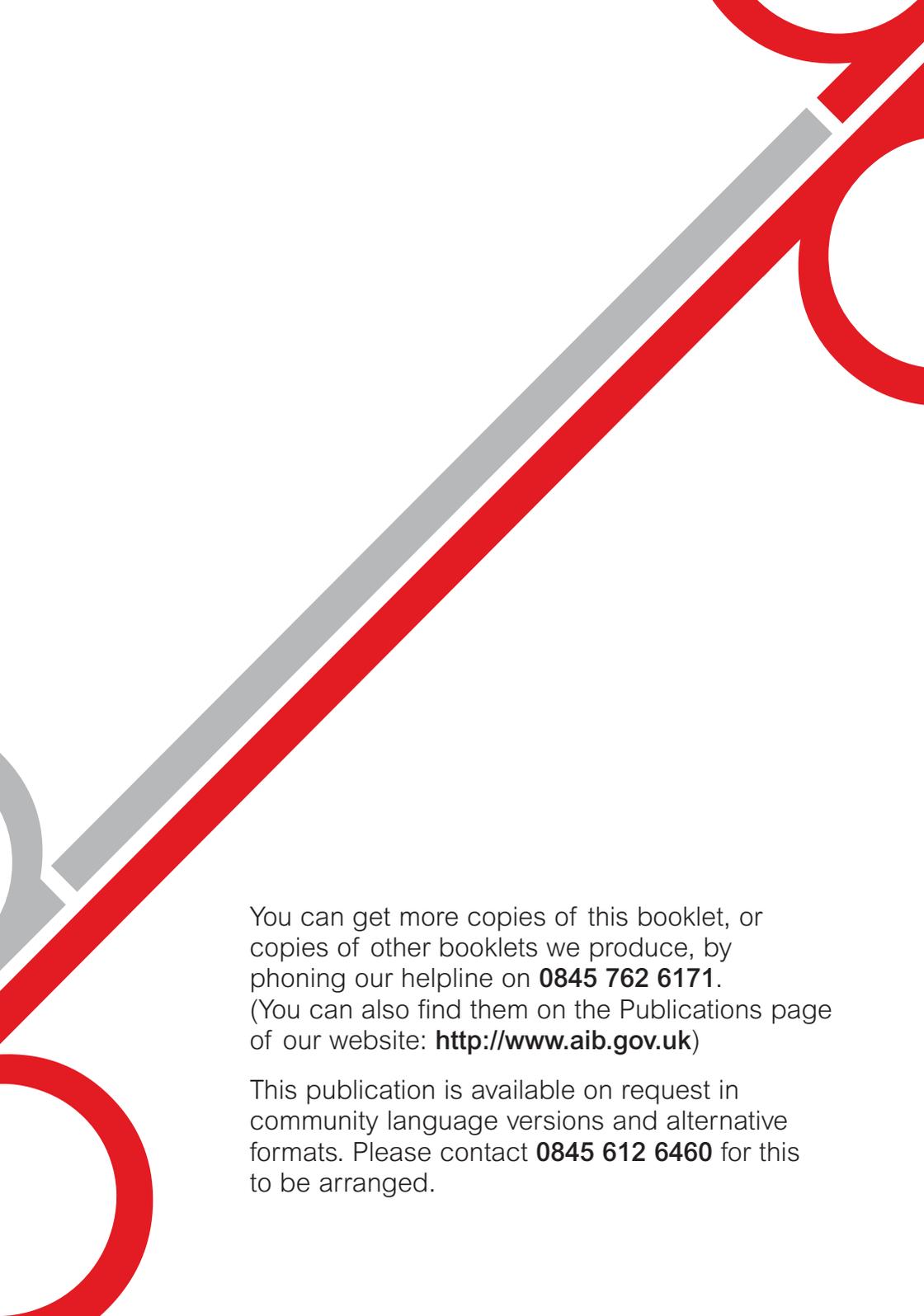




ACCOUNTANT
IN BANKRUPTCY
SCOTLAND'S INSOLVENCY SERVICE

TRUST DEED GUIDE





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.

Trust Deed Guide

Contents

Introduction	1
What is a trust deed?	1
What is a protected trust deed?	2
What are the consequences of signing a trust deed?	2
What happens when I sign a trust deed?	3
How does my trust deed become a protected trust deed?	3
What will creditors expect?	4
What is paid to my trustee?	4
Where does the money come from?	5
What happens if my circumstances change?	6
What happens to my debts?	6
What happens if I don't co-operate with my trustee?	7
What should I do if I am unhappy with my trustee?	7
What if my creditors are unhappy with my trustee?	8
Further information	9

Trust Deeds

Introduction

This leaflet gives general guidance on trust deeds. It is aimed at people who might be thinking about signing a trust deed but it will also be helpful for people who are owed money by someone who has signed a trust deed. It is not intended to be a complete guide to the law. This leaflet reflects the rules in force from 1 April 2008. For protected trust deeds that started before 1 April 2008 see the AiB publication 'AiB 7 – Protected Trust Deeds'.

What is a trust deed?

A trust deed is a voluntary agreement with your creditors (the people you owe money to) to repay part of what you owe them. A trust deed transfers your rights to the things that you own to a trustee who will sell them to pay your creditors part of what is owed to them. A trust deed will normally include a contribution out of your income for a specified period, this is usually 36 months but can vary. Your trustee must be a qualified insolvency practitioner. Insolvency practitioners are regulated by law and must be members of an approved governing body.

An ordinary trust deed is not binding on creditors unless they agree to its terms.

What is a protected trust deed?

A protected trust deed is a special kind of trust deed that is binding on all your creditors. Provided you comply with the terms of your protected trust deed, your creditors usually can take no further action to pursue your debt or to make you bankrupt.

A protected trust deed prevents you from applying for your own bankruptcy or for a debt payment programme under the Debt Arrangement Scheme.

If you run up any new debts after you sign the trust deed, you will not be protected from action by your new creditors.

What are the consequences of signing a trust deed?

Signing a trust deed is a serious step – you must be sure that you understand what you are signing.

Before you sign, your trustee must give you advice about the consequences and must tell you about the alternatives to a trust deed. The alternatives may include a debt management plan and a Debt Payment Plan under the Debt Arrangement Scheme. The trustee must also give you a copy of the Scottish Government's Debt Advice and Information Package.

Like bankruptcy, a protected trust deed may affect your credit rating and may prevent you from doing some jobs. If you do not succeed in getting your trust deed protected your creditors may be able to make you bankrupt.

You should be aware that the trustee will charge for the work they do and that you can choose who your trustee will be. Your trustee must give you an indication of what they will charge before you sign.

You can get free advice on trust deeds and your other alternatives from Citizens Advice Bureaux or Local Authority money advisers.

What happens when I sign a trust deed?

When you sign a trust deed your trustee will:

- > advertise your trust deed in the 'Edinburgh Gazette'. The 'Edinburgh Gazette' is a newspaper used by the credit industry. This means that your trust deed will come to the notice of organisations like banks and credit reference agencies;
- > write to all your creditors and ask them to agree to your trust deed; and
- > if a sufficient proportion of your creditors agree to your trust deed, your trustee will send a copy of it to the Accountant in Bankruptcy.

The Accountant in Bankruptcy will record your trust deed in the Register of Insolvencies. The Register of Insolvencies is a public record.

How does my trust deed become a protected trust deed?

Your trust deed will become protected if a sufficient proportion of creditors agree to it. You need agreement from at least half of your creditors and the creditors who agree must be owed at least one third of your total debt. Creditors who do not reply to your trustee within 5 weeks of the date of the advert in the 'Edinburgh Gazette' are treated as if they had agreed.

Your trust deed will become a protected trust deed from the date that it is recorded in the Register of Insolvencies.

If your creditors object and your trust deed does not become protected, they can take you to court to get back the money that you owe to them. They can ask the court to make you bankrupt.

They can only ask the court to make you bankrupt if they can prove that bankruptcy would be a fairer deal for them. However, this is unlikely because the trustee of a trust deed deals with contributions and assets in just the same way as they would in bankruptcy.

If your trust deed fails to become protected because your creditors have objected to it, you can also apply for your own bankruptcy. You should seek advice from Citizens Advice Scotland or local authority money advisers before making yourself bankrupt.

What will creditors expect?

If your trust deed becomes a protected trust deed your creditors' rights are limited.

Creditors will not agree to a trust deed unless they think the offer you have made to repay part of what you owe to them is reasonable.

As a general rule creditors will expect you to repay as much as you can afford. Creditors do not have to accept any offer. They won't agree to your trust deed if they think you can afford to pay more than you have offered to pay or if they think that you ought to be made bankrupt.

Your trustee will also need to collect enough to pay his own fees and these must be paid before payments are made to creditors.

What is paid to my trustee?

Your trustee will expect to be paid for the work done in setting up and administering your trust deed. Your trustee will be paid before any money is available to repay your creditors. Trustee's fees vary, they usually range between £2,500 and £5,000 but they could be a lot more if your trust deed is complex.

Your trustee's fees can be audited by the Accountant in Bankruptcy who is a Scottish Government official with responsibility for supervising personal insolvency in Scotland. An audit will confirm that work charged was necessary and properly recorded. An audit cannot change the hourly rate charged for work done by an insolvency practitioner.

Where does the money come from?

The money needed to fund your trust deed usually comes from two sources, contributions and the sale of things that you own (your assets).

You will normally be expected to pay a contribution out of your income. Your trustee will advise you how much you should pay after allowing for what you need to live on each month. You will usually be expected to pay a contribution for 36 months.

A trust deed cannot be protected unless you convey all your assets to your trustee. It is your trustee's duty to realise the value of your assets. However, your trustee will normally allow you to keep essential things that you need for your house and family, like household appliances and children's toys. Your trustee may agree that you can keep your car if you need it for work and you are paying a contribution.

Your most valuable asset is likely to be your house. You will be expected to release the equity of your share of your house. Your trustee will help you to do this and explore options that

avoid selling the house on the open market. They may, for example, allow another family member to buy out your interest or for you to arrange a remortgage at the end of your trust deed. You should discuss this with your trustee but remember that any money tied up in your house will have to be dealt with eventually and your trustee may have to sell your house.

It is important that you keep up repayments on your mortgage, because a trust deed won't prevent repossession if you fall behind on your mortgage.

What happens if my circumstances change?

Your trustee will assess your contribution based on your circumstances when you sign the trust deed. Your contribution may be reassessed if your circumstances change. If your income goes up then your trustee is likely to ask you to pay a higher contribution. If your income goes down the trustee may agree to reduce or suspend your contributions.

If you acquire new assets during your trust deed your trustee may want to realise those assets for your creditors.

What happens to my debts?

If you cooperate with your trustee, surrender your assets and pay your contributions, your trustee will issue a letter of discharge at the end of your trust deed. A copy of this will be sent to the Accountant in Bankruptcy and your discharge will be recorded in the Register of Insolvencies.

When you are discharged from a protected trust deed, you will be discharged from any outstanding debts which were due at the date you signed your trust deed. This means that your creditors are no longer allowed to pursue money that was owed to them when you signed the trust deed. There are some important exceptions to this rule.

A trust deed does not discharge you from the following kinds of debt:

- > fines, penalties, compensation and forfeiture orders imposed by any court;
- > any liability due to fraud;
- > any obligation to pay aliment;
- > student loans; and
- > money owed to someone who holds a security on your property, such as a mortgage or secured loan.

What happens if I don't co-operate with my trustee?

If you do not co-operate with your trustee, your trustee is unlikely to agree to discharge you from your trust deed. If your trustee does not discharge you, they will write to tell you that they have made this decision and you will have a right of appeal to the sheriff. A trust deed is an agreement you entered into voluntarily and if you fail to keep your side of the agreement you will lose the protection from your creditors.

If you have not co-operated your trustee also has the right to apply to the sheriff to make you bankrupt if they think this is in the creditors' best interests.

What should I do if I am unhappy with my trustee?

If you are unhappy with your trustee it is very important that you talk to them. Your trustee is the person who will decide whether or not you have met your obligations under the protected trust deed and whether you will be discharged from your debts.

All trustees must be members of an approved governing body. Your trustee will give you details of their governing body and you can contact them if you are unhappy with the way your trustee has dealt with your trust deed. Details of their governing body should be on the trustee's headed letters.

The Accountant in Bankruptcy has a general power of supervision and audit of protected trust deeds. The Accountant in Bankruptcy can investigate complaints against trustees but she will expect you to have raised your concerns with your trustee and their governing body before you make a complaint to her.

What if my creditors are unhappy with my trustee?

If your creditors are unhappy with the way your trustee has dealt with your trust deed they can ask the Accountant in Bankruptcy to audit the trustee's accounts or to investigate a complaint.

Further information

Contact details for the Accountant in Bankruptcy

The Accountant in Bankruptcy
1 Pennyburn Road
Kilwinning
Ayrshire
KA13 6SA

Telephone: 0845 612 6460
Fax: 0845 612 6470
Helpline: 0845 762 6171 (all calls charged at local rates)
E-mail: helpline@aib.gsi.gov.uk (for general help about
the bankruptcy process)
Website: www.aib.gov.uk

Sources of advice and information

Some useful contacts for free advice on debt:

Money Advice Scotland

Telephone: 0141 572 0237
Website: www.moneyadvicescotland.org.uk
E-mail: Info@moneyadvicescotland.org.uk

Citizens Advice Scotland

Telephone: 0845 450 0351
Website: www.cas.org.uk

Scottish Debtline

Telephone: 0800 138 3328
Website: www.scottishdebtline.co.uk

Trading Standards Scotland

Website: www.scotss.org.uk

Local addresses and telephone numbers for these agencies will be found in your phone book.

For help finding an insolvency practitioner, contact:

Institute of Chartered Accountants of Scotland

CA House

21 Haymarket Yards

Edinburgh

EH12 5BH

Phone: 0131 347 0100

Website: www.icas.org.uk

For help finding a solicitor with special knowledge of bankruptcy, contact:

Law Society of Scotland

26 Drumsheugh Gardens

Edinburgh

EH3 7YR

Phone: 0845 113 0018

Website: www.lawscot.org.uk

E-mail: cro@lawscot.org.uk

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 ਵਿਚ 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.

Aby otrzymać niniejszy dokument w innej wersji językowej, na kasecie lub w wersji z powiększonym drukiem, prosimy o kontakt: **0845 612 6460**

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



T 0845 612 6460
Kilwinning Ayrshire KA13 6SA
F 0845 612 6470
1 Pennyburn Road
helpline@afb.gsi.gov.uk
Help 0845 762 6171
www.afb.gov.uk