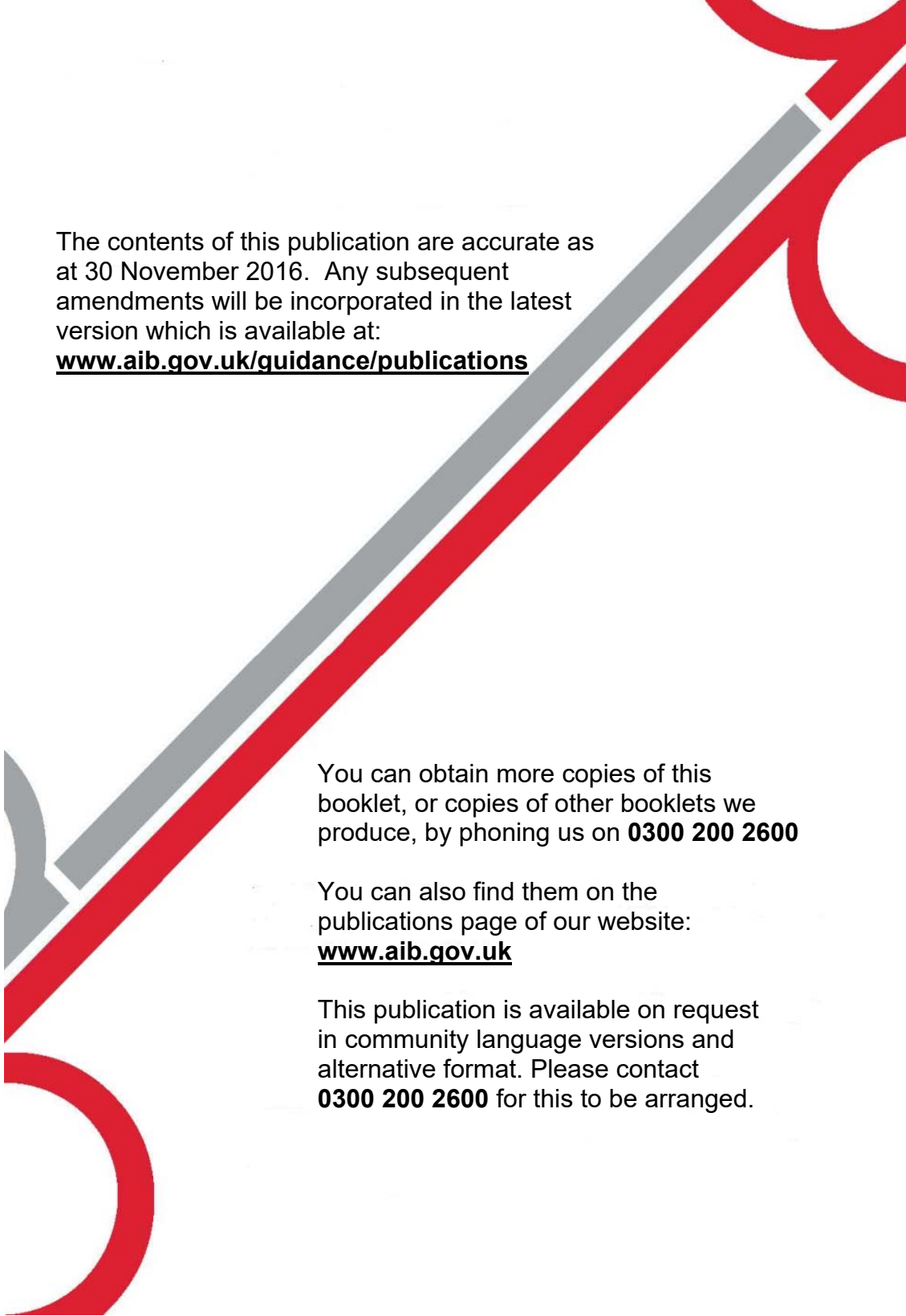




Trust Deed guide
Trust Deeds granted from 30 November 2016



The contents of this publication are accurate as at 30 November 2016. Any subsequent amendments will be incorporated in the latest version which is available at:

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Trust Deed Guide

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Trust Deeds

Introduction

If you are struggling to repay your debts, depending on your circumstances, a trust deed may offer a possible solution.

Signing a trust deed is a serious matter. You should seek advice before signing a trust deed. You can get free, impartial advice or information on the options available to you from Citizens Advice Scotland, Money Advice Scotland or local authority money advisers. A solicitor or insolvency practitioner can also offer financial advice but may charge for their service.

This booklet gives general advice on trust deeds. It is aimed at people who might be thinking about signing a trust deed, but can also be useful 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 booklet reflects the rules in force for trust deeds that are granted from 30 November 2016.

For information on protected trust deeds that started before this date, speak to your trustee or call Accountant in Bankruptcy on 0300 200 2600.

1. What is a trust deed?

A trust deed is a voluntary agreement with your creditors (the people you owe money to) to repay part, or all of what you owe them.

A trust deed transfers your rights to the things that you own (assets), to a trustee who can sell them to pay your creditors. A trust deed will normally include a contribution from your income for a set period; this will normally include payments over 48 months but this 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 and it becomes protected. Trust deeds should only be agreed if there is an intention to have the terms presented to creditors for protection.

1.1. What is the effect 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 of signing a trust deed and provide information about the alternatives. The alternatives may include a debt payment plan under DAS. The trustee must also give you a copy of the Scottish Government's Debt Advice and Information Package.

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 will set out a fixed administration fee and an additional fee based on a percentage of the funds collected during the trust deed. These fees will be recovered from money ingathered by your trustee during your trust deed and should not be paid separately. However, any third party fees incurred prior to the signing of the trust deed will be excluded as allowable outlays and there may be a requirement to meet these costs upfront.

These costs may include, for example, fees charged by a debt advice service in advance of referral to an insolvency practitioner.

2. What is a protected trust deed?

A protected trust deed is a special kind of trust deed that is binding on all your creditors. This means that, provided you comply with the terms of your protected trust deed, your creditors cannot take further action to recover the money you owe or make you bankrupt. Your secured creditors may, however, still take action to take possession of your home if you fall behind with your mortgage payments. A protected trust deed prevents you from applying for your own bankruptcy or for a debt payment programme under the Debt Arrangement Scheme (DAS).

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

Like bankruptcy, a protected trust deed can affect your credit rating and can also 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.

2.1 How does my trust deed become a protected trust deed?

When you sign a trust deed your trustee will:

> prepare a notice for publication in the Register of Insolvencies (RoI). The RoI is a public record which anyone can access. 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 Accountant in Bankruptcy (AiB).

AiB will only amend the status of your trust deed to protected if the criteria for protection are met. AiB will reflect the change of status in the RoI and the protected trust deed will then be formally recorded.

Your trust deed will become protected if a sufficient proportion of creditors agree to it. When you sign a trust deed, your trustee will write to all your creditors asking them to agree to its terms. They must respond within five weeks. If more than half of your creditors in number or those accounting for one third or more of your debt do not agree to the terms of the trust deed, it will not be protected.

Creditors who do not reply to your trustee within five weeks of the date of the public notification in the RoI are treated as if they had agreed. During these five weeks, a creditor who objects to the trust deed can still apply to the court to make you bankrupt.

Your trust deed will not become a protected trust deed if the agreed contributions over the payment period are sufficient to repay all of your debts in full. In these circumstances there are other more suitable debt solutions available. The trust deed will not be protected if the debts at the date of granting are less than £5,000.

Your trust deed will become a protected trust deed from the date that the protection is recorded on the RoI.

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. They can also ask the court to make you bankrupt.

If your trust deed fails to become protected because your creditors have objected to it, you can also apply for your own bankruptcy. Bankruptcy has serious consequences and you should seek advice from Citizens Advice Scotland or local authority money advisers before applying.

3. What will creditors expect?

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

By allowing your trust deed to become protected, your creditors agree to its terms and they will take no further action to recover what you owe them, or to make you bankrupt, as long as the trust deed is in place.

4. What is paid to my trustee?

Your trustee will expect to be paid a fixed administration fee and an additional fee based on a percentage of funds collected during the trust deed, for the work done in administering your trust deed. Once the trustee's fixed fee has been set it may only be increased with the consent of creditors or AiB. Your trustee will be paid before any money is available to repay your creditors.

Your trustee's fees can be audited by The Accountant in Bankruptcy who is a Scottish Government official with the responsibility for supervising personal insolvency in Scotland.

5. Where does the money come from?

The money needed to fund your trust deed usually comes from two sources, contributions from your income and the sale of things that you own. You will normally be expected to pay a contribution out of your income. Your trustee will advise on how much you should pay after allowing for what you need to live on each month. There will be a standard approach to the calculation of income and expenditure. You will usually be expected to pay a contribution for 48 months, although you may agree a longer contribution period with your trustee.

A trust deed cannot normally become protected unless you pass control of all your assets to your trustee. However, in certain circumstances, and only if your creditors agree, a trust deed which excludes your home may become protected.

It is your trustee's duty to realise the value of your assets for the benefit of your creditors. However, your trustee is required to allow you to keep essential things that you need for your house and family, such as, household appliances and children's toys.

Your trustee may also agree that you can keep your car if it is of low value and you have a reasonable need for it. Your most valuable asset is likely to be your home. Unless your home has been excluded from your trust deed by agreement with your creditors, you may be required to release any equity in your share of your home.

Your trustee will help you to do this and will 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 re-mortgage at the end of your trust deed. You should discuss this with your trustee but remember that any money tied up in your home will have to be dealt with eventually and your trustee may have to sell your home if no agreement can be made over the property.

It is important that you keep up repayments on your mortgage after signing a trust deed, because a trust deed will not prevent repossession if you fall behind on your mortgage.

6. How can I exclude my home from my trust deed?

If you own your home, you may have the option of asking your secured creditors (mortgage lender) for their permission to exclude your home from the trust deed. If your secured creditors agree, the rest of your creditors will be informed of this when they are asked to agree to the protection of your trust deed. If your creditors do not object to your trust deed becoming protected, you will keep control of the equity in your home.

The rest of your assets pass to your trustee as normal. If your creditors do not agree to your trust deed becoming

protected because your home will be excluded from the trust deed, you can propose another trust deed which includes your home.

7. What happens if my circumstances change?

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

If you acquire new assets within four years of signing your trust deed, such as an inheritance or lottery win, you must inform your trustee. Control of these assets also pass to your trustee and they may be used to pay your creditors.

If you sell or dispose of a home which was excluded from your protected trust deed, any money you are left with after paying your secured loans and meeting the cost of the sale must be passed to your trustee.

8. What happens to my debts?

At the end of your trust deed, you will be discharged from all your trust deed debts providing your trustee considers that you have met your obligations under the trust deed. If this is the case, your trustee will apply to AiB for your discharge, and on granting this, your creditors will not be able to pursue money that was owed to them prior to you signing the trust deed. Your discharge will be recorded in the Rol.

There are some debts that are not discharged at the end of your trust deed.

These include:

- > fines, penalties, compensation and forfeiture orders imposed by any court;
- > any liability due to fraud including benefit overpayments;
- > 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.

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

A trust deed is an agreement you entered into voluntarily and if you fail to keep your side of the agreement there are implications for you.

If you do not co-operate with your trustee during the period of your trust deed, they are unlikely to discharge you from your debts when your trust deed comes to an end.

If your trustee decides not to discharge you from your debts, they will inform you in writing of their decision and will give you their reasons for this. They must also inform you that you

have the right to appeal against their decision to a sheriff in a Scottish Court.

If you fail to comply with any of your obligations under a trust deed, your trustee can ask the court to make you bankrupt.

They can also ask the court to make you bankrupt if they think this would be in the best interests of your creditors.

10. 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 about your concerns. Your trustee is the person who will decide whether or not you have met your obligations and whether you will be discharged from your debts when the trust deed ends.

All trustees must be members of a Recognised Professional Body (RPB). Your trustee will give you details of their RPB and you can contact them if you are unhappy with the way your trustee has dealt with your trust deed. Details of a trustee's RPB should also be on their headed letters.

The Accountant in Bankruptcy has the power of supervision and audit of protected trust deeds. The Accountant in Bankruptcy can investigate complaints against trustees and issue a direction to a trustee if she does not believe they have acted appropriately.

You may also apply to a sheriff in a Scottish Court to direct your trustee if you believe they have not acted appropriately. It is recommended that you always obtain legal advice, if you are considering taking court action. You should raise your concerns with your trustee before you make a complaint to The Accountant in Bankruptcy.

11. 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 your trustee's accounts or to investigate a complaint. They may also complain to your trustee's RPB and apply for direction from a sheriff in a Scottish Court.

12. Do I get any of my assets back when I am discharged from my trust deed?

It is your trustee's duty to sell your assets, to realise funds with which to repay your creditors. Any assets or money left over at the end of your trust deed, after all fees, expenses and debts have been paid, will be returned to you.

13. Can I be the director of a limited company?

Usually the articles of a limited company stop a director from signing a trust deed. It is important you check this before signing a trust deed.

14. Can I hold public office?

Some public bodies have rules stopping anyone who has signed a trust deed from holding office. It is important you check this before signing a trust deed.

15. Will my credit record be affected?

Yes. It is likely that credit reference agencies will record details of your trust deed on your credit file.

16. Will my job be affected?

Some employers do not allow people who have signed a trust deed or are bankrupt to work for them, most commonly financial institutions. Before you sign a trust deed, you should check the terms of your contract carefully or speak to your employer.

17. Who can I contact for advice?

If you are struggling with debt, you should seek advice as soon as possible. Seeking advice and dealing with your debt at an early stage may help you avoid some of the more serious consequences of being in debt, such as legal action by your creditors and bankruptcy.

There are a number of people who can give free, confidential and impartial money advice face-to-face in your local area. Some organisations may also give information and advice over the telephone. Whoever you ask for advice, make sure that the person dealing with you knows you live in Scotland.

17.1 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: 0131 550 1000

Website: www.cas.org.uk

National Debtline Scotland

Telephone: 0808 808 4000

Website: <https://nationaldebtline.co.uk/scotland>

StepChange Debt Charity

Telephone: 0800 138 1111

Website: <http://www.stepchange.org>

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 Accountant of Scotland

CA House
21 Haymarket Yards
Edinburgh
EH12 5BH
Telephone: 0131 347 0100
Website: www.icas.org.uk

Insolvency Practitioners Association

Valiant House
4-10 Heneage Lane
London
EC3A 5DQ

Telephone: 020 7623 5108
Website: www.insolvency-practitioners.org.uk

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

Law Society of Scotland

26 Drumsheugh Gardens
Edinburgh
EH3 7YR
Telephone: 0131 226 7411
Website: www.lawscot.org.uk
E-mail: lawscot@lawscot.org.uk

17.2 Contact details for Accountant in Bankruptcy

Accountant in Bankruptcy

1 Pennyburn Road
Kilwinning
Ayrshire
KA13 6SA

Telephone: 0300 200 2600

Fax: 0300 200 2601

E-mail : aib@aib.gsi.gov.uk (for general information)

Website: www.aib.gov.uk

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1 Pennyburn Road
Kilwinning Ayrshire KA13 6SA
T 0300 200 2600 F 0300 200 2601
aib@aib-gsi.gov.uk www.aib.gov.uk

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