

Scottish Government Proposals for Changes to Protected Trust Deeds

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Scottish Government
Riaghaltas na h-Alba
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Ministerial Foreword



Scotland has earned international recognition for the progressive and far-sighted debt solutions that have been put in place. We have a system which aims to balance the needs of those struggling with unsustainable debts while ensuring those that can pay their debt do pay their creditors.

Scotland has three statutory debt solutions – bankruptcy, protected trust deeds and the Debt Arrangement Scheme. The Debt Arrangement Scheme is the UK's only statutory debt management scheme that can protect the family home and other assets and prevent further action from being taken by creditors. We are also the only part of the UK to have implemented a moratorium period to provide those that need it, some breathing space and time to seek advice about the right solution for them.

I recognise though that we must continue to ensure that our debt solutions continue to be suitable for those who need them. The Scottish Government is committed to continuously improving our legislation and value the feedback we receive from stakeholders. This is vital to help shape policy and ensure that solutions continue to be effective.

As part of that, the Scottish Government is reviewing our protected trust deed legislation. A protected trust deed is a voluntary but legally binding agreement to repay part or all of your debts. It is a form of insolvency and can have significant consequences, impacting on a person's credit rating and ability to get further credit, and can lead to bankruptcy if the terms of the agreement are not met.

This document asks for feedback on our draft proposals which aim to bring improvements to this statutory debt solution.

I look forward to hearing your views.

A handwritten signature in black ink, appearing to read 'Jamie Hepburn', with a long horizontal flourish extending to the right.

Jamie Hepburn MSP
Minister for Business, Fair Work and Skills

Introduction

1. The Scottish Government recognises the responsibility it has to take action where it can to help the people of Scotland, particularly in this time of economic uncertainty, by ensuring that its debt management and debt relief solutions are fit for purpose, support the people of Scotland and help to strengthen Scotland's economy.
2. During 2016, we began a series of legislative reviews to determine if changes introduced to the Debt Arrangement Scheme (DAS) and protected trust deeds (PTDs) in recent years have met their intended outcomes. As part of these reviews, we carried out two DAS and a PTD consultation. A summary of the responses to each of the consultations can be found on the Accountant in Bankruptcy's ([AiB website](#)). The first stage of the DAS review is now complete and a number of legislative changes identified during this part of the process came into force on 29 October 2018. The final part of the review is currently underway with the publication of the DAS Consultation 2018 – Building a Better Debt Arrangement Scheme. That consultation focusses on further proposals to make DAS more attractive for money advisers to encourage them to deliver the product.
3. Following the PTD consultation and building on the responses received, alongside detailed analysis of statistical data, we have continued to discuss and seek views on possible changes to the control framework for PTDs. As a direct result of feedback from stakeholders, via the consultation and further events, we have now identified a legislative approach that aims to address the concerns raised and enhance the effectiveness of PTDs through greater transparency and fairness. This document sets out our proposed way forward and, as some of the proposals have been developed through feedback received following the previous consultation, we now ask for your feedback on these specific proposals by providing your response to the key questions contained in **Annex B**.

Assessment of stakeholder concerns and supporting analysis

4. The Scottish Government is very grateful to all those who took the time to respond to our consultations. In all our discussions with stakeholders, it is clear that – of the current statutory solutions – PTDs give rise to most concern. This is also reflected in England and Wales, where the closest parallel option, Individual Voluntary Agreements (IVAs), raise very similar concerns. These concerns can be summarised into three main areas.

Are PTDs the most appropriate solution for all individuals who are in them?

5. From statistical analysis it can be seen that a reasonable proportion of those individuals in PTDs could settle their debts in a similar duration as an average DAS Debt Payment Programme (DPP) (Table 1 in **Annex A**). This raises doubt as to whether a PTD is the best option for these individuals or if repaying their debt via DAS would better meet their needs. Granting a PTD will bring more stringent consequences for the individual, specifically in that they are conveying assets to the

trustee, including rights to post-insolvency acquired assets under the acquirenda¹ period such as windfalls and inheritance – none of which will apply under DAS.

6. Creditors will also benefit from repayment through DAS by receiving a higher percentage of their money back as evidence has shown a substantial percentage of the contributions made in PTDs are required to cover the administration costs (see Table 2 in **Annex A**).

Extent to which PTDs strike the right balance between the interests of debtors and creditors

7. Stakeholders, particularly from the creditor and the advice sector, have voiced growing discontent over the level of returns to creditors from PTDs relative to the level of contributions made by debtors. It has been reported that some debtors are concerned that creditors, with some of whom they have developed personal relationships, are not receiving the repayment of debt they believed they would receive. Concern has also been raised about the fairness of the voting process in trust deeds. Many smaller creditors, some which have close ties to the local community, feel that their voice is not heard, and that their opposition to proposed trust deeds is not given sufficient weight. Credit Unions, who can be one of these smaller creditors, have suggested that the level of losses they are incurring as debts are written off in protected trust deeds are reaching the point where the credit union may find itself in financial difficulty.

Treatment of “high equity” trust deeds

8. Particular concern has been highlighted over the treatment of “high equity” trust deeds where the debtor has significant equity in a property, often far outweighing their debts. It has become increasingly rare over recent years for trust deeds to include any meaningful contribution either from the realisation or in lieu of the realisation of property in such cases.

9. It seems that common practice is rather for the trust deed to be extended for either 12 or 24 months, so that the debtor pays the same contribution based on their surplus income for this period. That bears no direct relation to the amount of equity the debtor holds. Smaller creditors, who may have to write off significant sums and feel that their objections are not given sufficient weight in decisions on whether or not to protect the trust deed, have told us that they consider that cases in which debtors can both receive debt relief and keep hold of large amounts of equity do not provide a fair balance between the parties.

10. Concerns were initially raised via stakeholder discussions throughout 2016, but have been less prominent in recent discussions during 2017-18. Table 3 (**Annex A**) shows that of all PTDs granted between 28 November 2013 and 31 March 2018, there were 1,294 high equity cases (where there is equity of £20,000 or more) and of these cases, 69% are balance sheet solvent – that is, the equity available was

¹ Acquirenda – assets acquired by a debtor within four years after the date of sequestration vest in the trustee for the benefit of creditors

sufficient to pay off the debts in full. To place these numbers into context, the balance sheet solvent high equity cases, mentioned above, equate to 4% of the entire case load for the same time period.

11. To address this issue, AiB met with all major trust deed providers to discuss matters, and then sent two “Dear Trustee” letters setting out our concerns. The letters made it clear that arrangements where trustees proposed to ingather an additional 12 or 24 months contributions in lieu of realising the equity in a property would only be appropriate in the most exceptional of circumstances. In addition, the trustee would have to evidence that all options for realising the equity had been explored, or that there were specific circumstances that would lead creditors to show forbearance. There are signs that the action is starting to bring about a change in behaviour in such cases and AiB will continue to monitor this and report our findings to Ministers and the relevant Recognised Professional Bodies (RPBs). We do not propose to make any changes to the legislation at present to this part of the process.

Possible solutions

12. PTDs are of course already subject to tight regulatory control from both AiB, who monitor the processes conducted under the legislation ensuring that they are done correctly, and the RPBs, who monitor the conduct of the Insolvency Practitioners appointed in trust deeds and other insolvency solutions. The wider debt management industry is also subject to detailed regulation and scrutiny by the Financial Conduct Authority.

13. However in light of feedback from stakeholders and statistical analysis, we believe there is a need for further regulatory action. The two areas of concern we intend to address in the short term have been highlighted above. We set out statistical evidence and reasons for reaching this conclusion below.

Where PTDs may not be the most appropriate solution

When the debtor’s contribution could pay off the debt in full

14. Two key principles that underpin the recent legislative reforms of the debt management and debt relief system in Scotland are that those debtors who can pay their debts, should pay their debts, and that the system assists in getting the right person into the right product. The current regulations prevent the protection of a trust deed where the proposed contribution would be sufficient to pay off the debt in full in four years or less – four years being the normal period for which the debtor will make contributions in a trust deed. The question is whether this strikes the right balance between debtors’ and creditors’ interests.

15. Throughout the consultation, particular concerns have been raised about whether for “low debt” trust deeds, DAS would have been a more appropriate solution in a significant number of cases. The debtor’s contribution, if full surplus income is paid, under both solutions should be the same, as both use the Common Financial Tool to determine the contribution. Benefits for the debtor include not being

made insolvent whereas from the creditors' perspective, DAS returns at least 90%² of the principal debt, whilst the average dividend payable (in cases that paid a dividend to ordinary creditors) for PTD cases concluded in 2016-17 and 2017-18 has been 19.8 and 17.8 pence in the £, respectively.

16. As can be seen in Table 1 (**Annex A**), 49% of "low debt" PTDs (total debt of below £7,000) could have utilised DAS to facilitate repayment of the total debt in a DPP spanning five years or less. Given the difference in the level of returns to creditors, the question is whether it is reasonable to expect debtors to make contributions for an additional year, or whether they should be entitled to debt relief. Debtors could also potentially benefit from being in DAS rather than in a PTD, as DAS is not insolvency and, as mentioned, will not come with the consequences involved such as conveying assets pre and post insolvency, allowing the individual to maintain control of their estate.

17. Additionally, in a growing number of trust deeds, the debtor will be asked to make contributions for a longer period than the four years, for example, in lieu of the trustee realising assets or equity. In such cases, the trust deed may still be protected, even if the debt would be paid off in full by the contributions paid over the longer period. In these circumstances, we do not consider a trust deed an appropriate solution, and we propose to change the regulations to end this anomaly.

18. We are therefore considering introducing legislation to specify that where debts in a trust deed can be paid back in full, considering the contributions being made, in a time frame of 60 months or less – or otherwise within the duration of the trust deed - then the trust deed would not be protected. Your feedback on this proposal is sought in **Annex B**.

Minimum debt

19. The 2013 Regulations introduced a minimum debt level of £5,000 in PTDs and the consultation asked if this remained an appropriate debt level. The majority of respondents agreed that it is, with others who disagreed arguing that it be increased to between £7,500 and £10,000. Further discussions with key stakeholders highlighted concerns, particularly from the money advice sector, that increasing the minimum debt would be detrimental to the more vulnerable individuals in society. It was highlighted that those who could not afford to get large amounts of credit would be penalised by this and forced into bankruptcy, as it would be unlikely they would have the surplus income needed for DAS. Taking this feedback into consideration, we are minded to leave the minimum debt level at £5000. However as some time has passed since the initial consultation, it would seem reasonable to seek current views on this. Your feedback on changing the minimum debt level in trust deeds is sought in **Annex B**.

² The outcome of the current parallel [DAS consultation](#) could see this reduce.

Striking the right balance between debtors and creditors

Fees and outlays

20. Table 2 (**Annex A**) shows the percentage of funds ingathered in PTDs which are returned to creditors has steadily decreased over the last 10 years, whilst the average cost charged for the administration of a trust deed has generally increased. This of course may be justified if either the nature of the trust deed caseload had grown more complex or there were other more general reasons for expecting an increase in the costs of administration. In fact, the evidence as we have it suggests exactly the opposite – very few trust deeds now involve ingathering funds by dealing with complicated assets (as can be seen in Table 4 **Annex A**), and IT developments have significantly reduced the costs of administration: this is underlined by AiB’s own experience in successfully reducing the costs of administering “full administration” bankruptcies (which are broadly similar).

21. Changes made in November 2013 sought to bring greater accountability for the nature and amount of costs charged, by moving the basis of charging for PTDs to a fixed fee augmented by commission based on a percentage of the total assets and contributions realised by the trustee. The trustee may also recover administrative costs from the debtor’s estate. Stakeholders have raised concerns with regard to these “administrative costs”, which are known as “category one disbursements” and “category two disbursements”. Category one disbursements are costs claimed on the case by a trustee where payment has been made to a third party, for example, paying for professional services such as postage. Category two disbursements are costs that are related to the PTD appointment and are incurred where no payment has been made to an independent third party, for example, generic costs in the administration of the trust deed such as printing documents and business mileage. The trustee has to seek permission from creditors to claim category two disbursements in addition to their fee. Most stakeholders agree that introducing the revised remuneration process has brought greater transparency and control over the administration fees and costs as intended. That said, significant concerns were raised that since the introduction of the fixed fee, category one and two disbursements have greatly increased. Stakeholders have suggested that further changes are needed in this area.

22. Category one and category two disbursements are reported to AiB both as initial estimations of costs that will fall to a case, and then the costs that are actually incurred at a later date. For all cases granted on or after 28 November 2013 we can compare the difference between the estimated and actual incurred fees reported. Reports show that 72% of cases saw an increase with the average estimated fee reported at £1300 but the actual average incurred fee recorded at £1600 – significantly higher than was the case before 2013. There is no obvious reason for this, and strong reasons (as mentioned previously) that suggest we should have expected movement in the other direction. Detailed statistics on category one and two disbursements can be found in **Annex A**.

23. The 2013 Regulations included measures to introduce greater transparency and control over the administration fees and costs of a PTD. In light of the statistical

information we have and direct feedback from our stakeholders, these objectives do not appear to have not been fully achieved. Costs have actually increased despite increased automation in the process. To further increase transparency, we propose to include category one and two disbursements within the fixed fee - that is, the trustee would be required to administer the trust deed for a single fixed fee, set when the PTD was circulated to creditors, which would only be changed in relation to elements such as a percentage taken of the funds ingathered. Your feedback on this proposal is sought in **Annex B**.

Creditor voting process

24. In recent years some creditors, particularly those likely to hold only a small proportion of debt within a PTD, have reported their frustration over the current voting system. In particular, they feel their voice is lost in a process that requires a significant degree of active objection to prevent trust deed protection and which is consequently underpinned by deemed consent. Currently, a trust deed will not be protected if the majority in number of creditors, or creditors with at least one third in value of the debt included in the PTD object in writing. There are many creditors that typically hold a small percentage of the total debt who feel powerless to prevent the protection of proposals that offer an extremely poor dividend return, or do not adequately deal with assets conveyed to the trustee. Consequently these creditors may have a tendency not to participate in the voting process at all.

25. A number of factors influence the approach taken to creditor voting practices. Proposals are generally adopted where the outcomes fall within the financial parameters set by larger creditors. These organisations tend to be able to absorb losses more easily as they make provisions for bad debt in their commercial charging models or, due to the size of their customer base, can balance these losses within other products. We also understand that the acceptance of proposals stem from a reluctance to be perceived as treating customers unfairly. Additionally, the emergence of creditor agents has been influential in dictating acceptance thresholds.

26. As previously mentioned, many smaller creditors, who often have ties to local communities, consider they are prejudiced by the current system. They feel they can be forced into arrangements resulting in financial losses that are significant for their organisation, and could impact their ability to help the community in return.

27. In striking the correct balance between creditors and debtors, our informal consultations have strongly suggested the need to re-examine the voting system and rules around what would be acceptable in terms of deemed consent. There are potential benefits in striving to increase creditor engagement and active involvement in the approval of proposals. It is acknowledged that this could be seen as imposing administrative burden on creditors, in that they could no longer rely on abstention to count as an affirmative vote. Investment in technology has, however, created the facility for creditors to see full details of a proposed trust deed on-line in a format that can be easily digested and then vote via the click of a button. This is a significant development and a step-change from the reliance on burdensome postal procedures necessary at the time the current rules were developed.

28. In light of this feedback we propose to introduce a new voting model, more closely aligned to the current creditor voting system involved in the Company Voluntary Arrangements (CVAs) process. This would mean that a trust deed would only be protected if, from the creditors who have voted, those who own 75% of the value of debt have actively accepted the terms of the trust deed. The following scenario-based examples may best explain how this model would work in practice:

Scenario 1 – A trust deed containing a total debt of £20,000 is split between five creditors. One creditor who is owed £3,000 actively rejects the proposal, no other creditors reply. This trust deed would not be protected.

Scenario 2 – A trust deed containing a total debt of £8,000 is split between four creditors. One creditor who is owed £500 rejects and one creditor who is owed £2,000 actively accepts: the others do not respond. The trust deed would be protected on the basis that creditors with debts amounting to 75% or more of the value included in the votes received have actively accepted the proposal.

Scenario 3 – A trust deed containing a total debt of £6,000 is split between eight creditors. One creditor who is owed £500 rejects and two creditors owed £1,200 jointly actively accept the proposal. The other creditors do not reply. The trust deed would fail to become protected on the basis that the 75% threshold for active consent among the voting creditors has not been reached.

29. The proposed revision to the existing model promotes active consent and has been suggested by stakeholders as an appropriate option for the trust deed process. A further consideration in this regard is the approach to adopt in the event that no creditors respond to the proposal. Our proposed approach in this scenario would see the trust deed becoming protected. While we acknowledge that this does not follow the CVA model, we would consider it appropriate for an individual seeking resolution to financial difficulty not be penalised in the event that creditors choose not to respond. Your feedback on these proposals is sought in **Annex B**.

Further powers to refuse to protect a trust deed

30. The previous consultation asked if there should be any additional grounds under which a trust deed should not be protected over and above the powers AiB currently have. Although a majority of respondents were in favour of introducing additional grounds where AiB could refuse protection, there was no general consensus as to what these grounds should be and the circumstances under which they would be exercised. The Scottish Government recognises that a trust deed remains, in essence, a private and voluntary agreement between a debtor, their trustee and their creditors and if the creditors are content to accept the terms presented, it is not for AiB to intervene.

31. Introducing such a measure could be argued to perhaps create further stress and uncertainty for debtors who will have already embarked on a lengthy process to address the debt issues they are seeking to resolve. In addition, legislative provisions exist for non-acceding creditors to challenge the protection of a PTD in court if they consider that they are being unduly prejudiced. If the voting process in

trust deeds is changed to a) allow smaller creditors more of a say, and b) ensure a level of creditor active engagement, there may be no requirement to provide additional grounds for the refusal of protection of a trust deed by AiB.

32. Reforms to the voting process would help promote creditor engagement, assist in striking the right balance between the interest of debtors and creditors and remove the requirement for any further powers to refuse protection of a trust deed. Therefore, in light of the voting process changing, we propose to make no amendment to Regulation 11.

33. However we are interested in views on this matter. Whether AiB should have further powers to refuse protection of a trust deed is included as a question in this consultation. Your feedback on this proposal is sought in **Annex B**.

Confirmation of Debt

34. The earlier consultation asked if creditors should have to submit their claims in a PTD within 120 days if they were to be included in the payment of dividend. Most respondents indicated support for the introduction of this process on the grounds that it would increase transparency. To increase transparency and to bring the creditor claims process in line with what is already operating in bankruptcy we propose to introduce a 120 day time limit for creditor claims in PTDs - unless the creditor could show that due to exceptional circumstances they could not meet this deadline. This will ensure that the estimated dividend payable to creditors will usually be established early in the process.

Summary of Proposed changes to PTD Legislation

35. As indicated above, the Scottish Government acknowledges fully that a trust deed remains in essence a private and voluntary agreement between a debtor, their trustee and creditors – and that if creditors are content to accept what is being offered in the trust deed in exchange for debt relief, it is not for AiB or any other party to prevent the protections being put in place. That leaves the issues of safeguarding transparency in the process to ensure creditors know what they are being offered and that they are indeed content.

36. However, there is also a wider public interest. It is important that the overall statutory framework delivers the principles mentioned above that - debtors who can pay, should pay; a fair balance is struck between the interests of debtors and creditors; and there is more opportunity for a broader range of creditors to have a say in the process. And above all, we must ensure debtors are in the most appropriate solution.

37. To help meet these objectives we would be grateful for your feedback on the following proposals:

- introduction of the process where a PTD will not be protected if contributions will pay off the full debt in the life time of the PTD or within 60 months
- if the minimum debt level in a PTD should be increased
- inclusion of category one and category two disbursements within the fixed fee

- change to the creditor voting process
- extending the powers of AiB to refuse protection of a trust deed

Responding to this Consultation

We are inviting responses to this consultation by 19 April 2019.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/accountant-in-bankruptcy/proposals-for-changes-to-protected-trust-deeds>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 19 April 2019.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Policy Development Team
Accountant in Bankruptcy
Scottish Government
1 Pennyburn Road
Kilwinning
KA13 6SA

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at AIB_Policy_Development_Enquiries@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Annex A: Statistics

Debt, contributions and equity in trust deeds

Table 1: Number of PTDs by total debt due to creditors and time to repay debt, 2014-15 to 2017-18¹

Time to repay total debt due (years)	Total debt due to creditors (£)						All debts
	£5,000 to less than £6,000	£6,000 to less than £7,000	£7,000 to less than £8,000	£8,000 to less than £9,000	£9,000 to less than £10,000	£10,000 or more	
4 to less than 5	431	488	249	91	45	188	1,492
5 to less than 6	241	533	649	489	274	551	2,737
6 to less than 7	13	137	365	393	490	1,235	2,633
7 to less than 8	1	16	71	213	253	1,768	2,322
8 to less than 9	0	0	6	36	115	1,898	2,055
9 to less than 10	1	0	0	6	13	1,703	1,723
10 years or more	0	4	4	3	10	7,485	7,506
No Contribution	0	0	0	0	0	83	83
All	687	1,178	1,344	1,231	1,200	14,911	20,551

¹ PTDs granted on or after 28 November 2013 with protected date between 1 April 2014 and 31 March 2018 (20,551 PTDs).

Table 2: total funds paid to creditors in discharged cases compared to total payments made into the PTDs

Year	Cases Discharged	Total Receipts	Average Cost	Total Paid to Creditors	% of Funds Collected Paid to Creditors
2007/8	6250	£64,011,514	£5,315	£30,793,083	48%
2008/9	6166	£61,046,569	£5,182	£29,093,476	48%
2009/10	6970	£62,301,468	£5,366	£24,900,048	40%
2010/11	7387	£64,147,144	£4,958	£27,525,846	43%
2012/12	5428	£48,292,445	£5,214	£19,989,058	41%
2012/13	5332	£46,514,428	£5,159	£19,004,709	41%
2013/14	6787	£68,602,008	£6,392	£25,219,523	37%
2014/15	6939	£71,105,626	£6,268	£27,610,906	39%
2015/16	7298	£76,430,000	£6,594	£28,310,000	37%
2016/17	8096	£83,887,000	£6,735	£29,364,000	35%
2017/18	7163	£65,287,000	£5,998	£22,323,000	34%

Table 3: Equity and whether PTD is balance sheet solvent, 2014-15 to 2017-18¹

Equity (£)	Balance sheet solvent		All
	No	Yes	
Zero equity	16,677		16,677
£1 to less than £20,000	2,423	157	2,580
£20,000 to less than £30,000	263	254	517
£30,000 to less than £40,000	87	184	271
£40,000 to less than £50,000	21	129	150
£50,000 to less than £60,000	15	93	108
£60,000 to less than £70,000	5	77	82
£70,000 to less than £80,000	0	42	42
£80,000 to less than £90,000	0	30	30
£90,000 to less than £100,000	2	22	24
£100,000 or more	3	67	70
Total	19,496	1,055	20,551

¹ PTDs granted on or after 28 November 2013 with protected date between 1 April 2014 and 31 March 2018 (20,551 PTDs).

Table 4 analysis of realisation in Trust Deeds since 2014

	£ million			
	Total contribution	Total moveable asset realisation	Total heritable asset realisation	Gross realisation
	<i>a</i>	<i>b</i>	<i>c</i>	<i>d = a + b + c</i>
2014/15	33.8	0.5	2.7	37.0
2015/16	34.9	0.4	2.4	37.7
2016/17	40.6	0.2	2.7	43.5
2017/18	47.4	0.4	3.2	50.9
All years	156.7	1.5	10.9	169.1

** the information under column c is taken from the heritable asset field which has been used by trustees for a number of different pieces of information such as nominal payments relinquishing interest in property or an amount equivalent to one or two extra years of contributions. It will not always mean money coming direct form sale of equity.*

Outlays

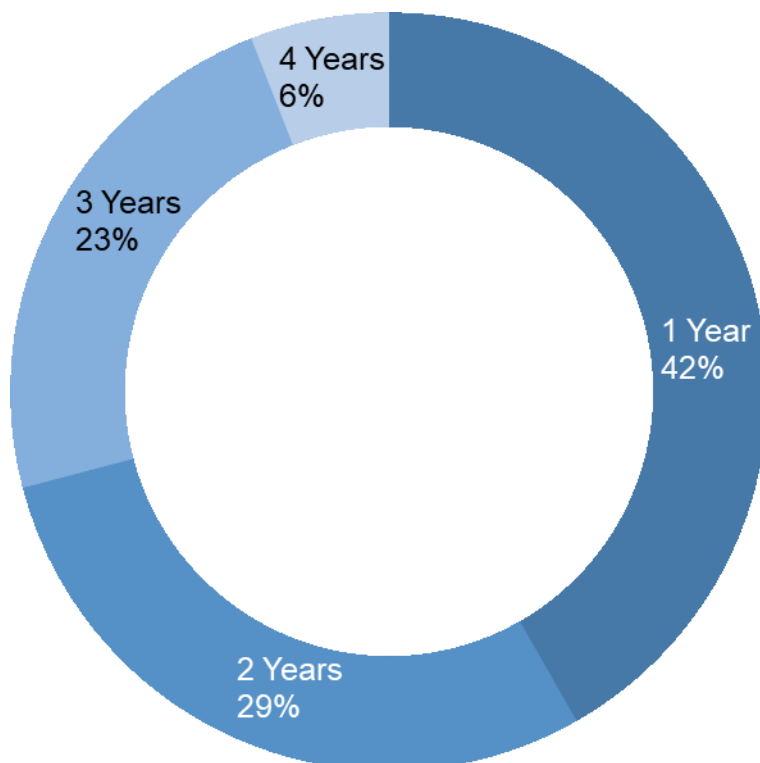
Background

Category one and category two disbursements are shown in the outlays field of Form 3 (reporting the initial fee and estimated costs) and Form 4 (reporting costs actually incurred at a later date) for each PTD. Statistics presented below are shown for trust deeds granted on or after 28 November 2013. Data is not available for cases granted before that date, as it was the 2013 regulations which, along with introducing the fixed fee, separated outlays from that fixed fee. Note that in the Form 4 outlays (including statutory fees) are combined with third party fees whereas in the Form 3, outlays are separate from third party fees. To allow for a comparison to be made between Form 3 and Form 4, outlays (including statutory fees) and third party fees from Form 3 have been combined.

Number of cases

We have Form 3 and Form 4 data for 15,364 cases where the trust deed was granted on or after 28 November 2013 and protected between 1 April 2014 and 31 March 2018. The chart below shows that for 42% we have one year worth of information to compare Form 3 and Form 4 outlays fees.

Chart 1: Percentage of PTDs with 1, 2, 3 or 4 years of Form 4 with which to compare with Form 3, 2014-15 to 2017-18



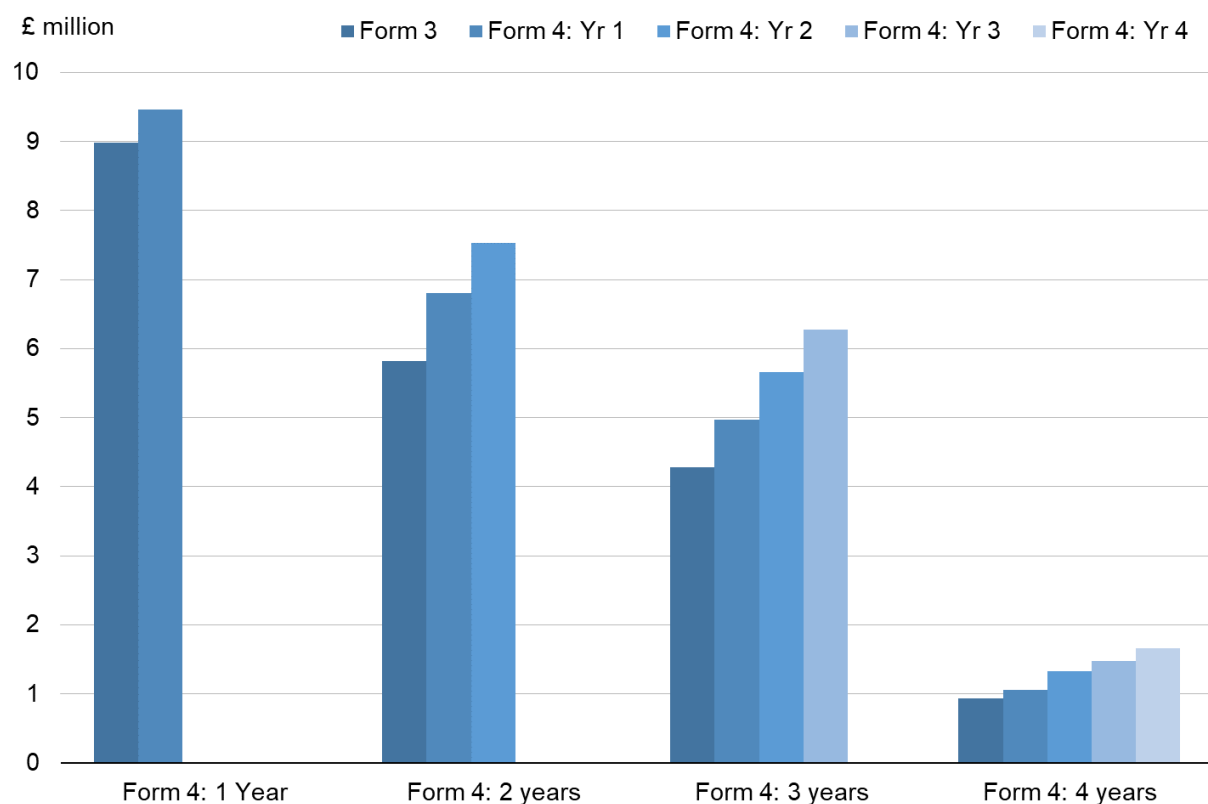
Change in final expected outlay fees between Form 3 and Form 4 over the life of the PTD

Chart 2 below compares the estimated outlay and third party fees from the Form 3 with the final expected outlay and third party fees from each annual Form 4 PTD return. This will show the change in expected fees for the life of the PTD from the Form 3 estimate and the Form 4 annual return.

For cases with one year of Form 4 information (Form 4: 1 Year) expected fees for all cases have increased from £9.0 million, as estimated in the Form 3, to £9.5 million in the first year of the PTD, an increase of 5.4%. For cases with two years of Form 4 information, there the increase after the first year grows to 17%. In the second year, expected outlay and third party fees increase again when compared with the estimated costs from the Form 3, an increase of 30%.

A similar pattern can be seen for cases with three and four years of Form 4 information where outlay fees show an overall increase in each year of the PTD. The lower absolute amounts reflect the fact that there are fewer cases with three or four years of Form 4 information.

Chart 2: Change in final expected outlay and third party fees between Form 3 (estimate) and each year of PTD (Form 4)



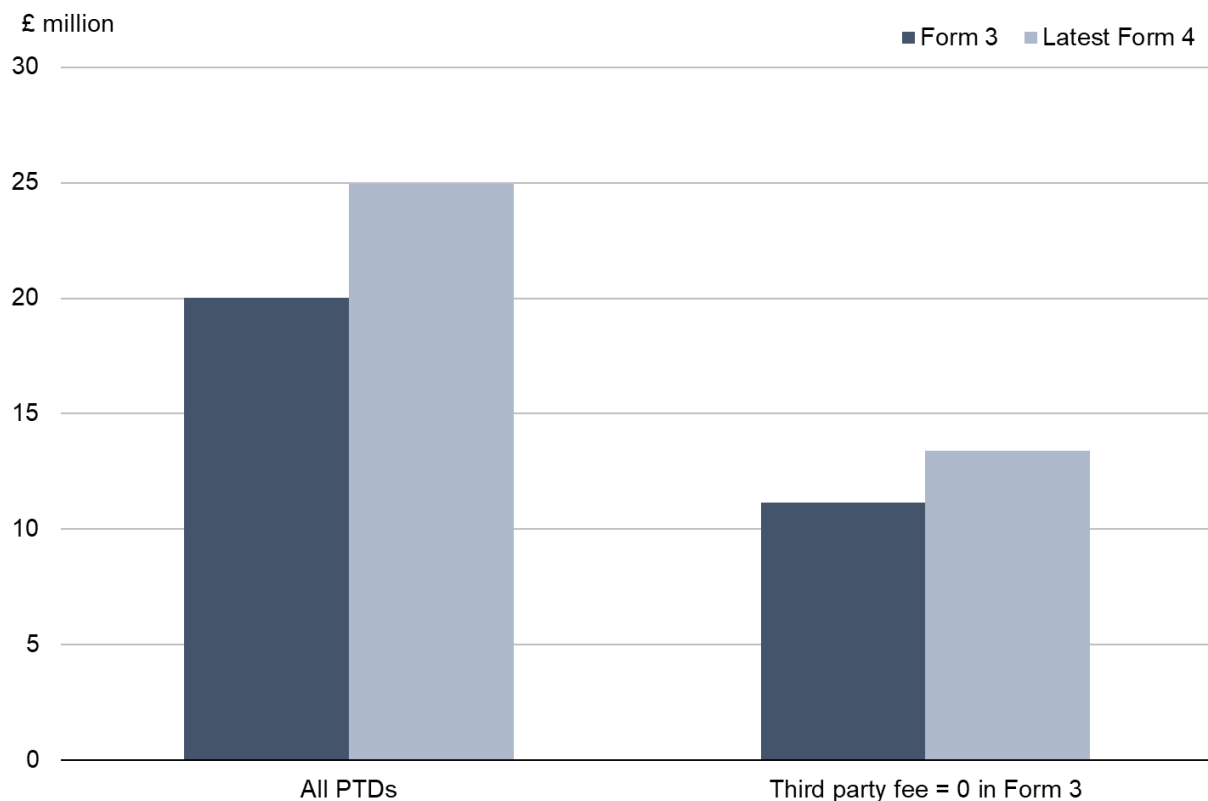
Overall change in outlay fees between Form 3 and latest Form 4

For all cases we can compare the outlays on Form 3 with the final expected outlays on Form 4. Where there is more than one Form 4, the latest one has been used. We see in Chart 3 below that total fees for all cases on Form 3 was £20.0 million and the final expected on Form 4 was £24.9 million, an increase of 25%. Overall, 72% of cases saw an increase in their outlays between Form 3 and their latest Form 4. The average of expected outlays per case for Form 3 was £1,300; at the Form 4 stage the average had increased to £1,600.

The chart also shows the change in fees for cases where third party fees are recorded as £0 on the Form 3. If third party fees are recorded as zero on the Form 3, they still could arise as the case progresses and there is no guarantee that they remain at zero. Looking at these cases is more likely to focus on the change in outlay costs, given that outlay and third party fees are recorded together on the Form 4. Of course, any change shown for these cases could be down to the introduction of third party fees as the case progresses and then recorded on the Form 4.

For cases where third party fees were recorded as zero on Form 3 (9,569 cases) fees increased from £11.2 million to £13.4 million, a 20% increase and similar to the increase for all PTDs.

Chart 3: Change in total outlay and third party fees from Form 3 and latest Form 4 for all PTDs and PTDs where third party fees were recorded as 0 on Form 3



ANNEX B - Key Questions

1. CONSIDERING IF A PTD IS THE BEST OPTION.

Question 1(a): Do you agree that protection should be refused where the full debt in a trust deed could be repaid in 60 months, through the debtor's contributions?

Yes No

Question 1(b): If you answered no to Q1(a), what do you consider an appropriate timescale?

Answer: _____

2. PAYMENT OF DEBTOR'S CONTRIBUTION - REGULATION 8

Question 2(a): Do you agree that a trust deed should not be eligible for protection where the value of contributions over its extended period is equal to or greater than the level of debt present when it was granted?

(Protected trust deeds are typically extended to allow payments to be made in lieu of property equity.)

Yes No

Question 2(b): If you answered no to Q2(a), why not?

Answer: _____

3. MINIMUM DEBT LEVEL – REGULATION 4

Question 3(a): Do you think that the minimum debt level allowed in a PTD should be increased from £5000?

Yes No

Question 3(b): If you answered yes to Q3(a) at what level would you set the minimum debt level at?

£7500 £8000 £10000 Other

(please state your preferred level)

Question 3(c): If you answered other to Q3(b) what do you think the minimum debt level should be?

ANSWER _____

4. REMUNERATION PAYABLE TO TRUSTEE UNDER PROTECTED TRUST DEED – REGULATION 23

Question 4(a): Do you agree that category one and two disbursements should be included in the fixed fee?

Yes No

Question 4(b): If you answered no to Question 4(a), why not?

Answer: _____

5. VOTING PROCEDURE IN PTD SECTION 170 (2) OF THE BANKRUPTCY (SCOTLAND) ACT 2016

Question 5(a): Should the voting system for PTDs be restructured where a trust deed would only be protected if out of the creditors who have voted those who own 75 % of the value of debt have actively accepted the terms of the trust deed?

Yes No

Question 5(b): If you answered no to Question 5(a), what should the terms be?

Answer: _____

Question 5(c): Do you believe that AiB should be given general powers to refuse the protection of a trust deed?

Yes No

Question 5(d): If you answered yes to Question 5(c) should these general powers to refuse the protection of a trust deed only be introduced if the creditor voting procedure does not change?

Yes No

Question 5(e): If no creditors respond to the trust deed proposal do you agree that the trust deed should become automatically protected?

Yes No

Please use the box below for any other comments you may have, or anything you feel is not covered in the consultation questions.



Scottish Government Proposals for Changes to Protected Trust Deeds

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

Individual Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes No



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