



RESPONSE TO
PROTECTED TRUST DEED CONSULTATION 2016

ACCOUNTANT IN BANKRUPTCY

Executive Summary

Introduction

- 1 The Institute of Chartered Accountants of Scotland (ICAS) is the oldest professional body of accountants and represents over 21,000 members who advise and lead business across the UK and in almost 100 countries across the world. ICAS is a Recognised Professional Body (RPB) which regulates insolvency practitioners (IPs) who can take appointments throughout the UK. We have an in-depth knowledge and expertise of insolvency law and procedure.
- 2 ICAS's Charter requires it to primarily act in the public interest, and our responses to consultations are therefore intended to place the public interest first. Our Charter also requires us to represent our members' views and protect their interests. On the rare occasion that these are at odds with the public interest, it is the public interest that must be paramount.
- 3 ICAS is interested in securing that any changes to legislation and procedure are made based on a comprehensive review of all of the implications and that alleged failings within the process are supported by evidence.
- 4 ICAS is pleased to have the opportunity to submit its views in response to the Protected Trust Deed Consultation 2016 issued by the Accountant in Bankruptcy. We shall be pleased to discuss in further detail with the Accountant in Bankruptcy any of the matters raised within this response.

Executive summary

- 5 ICAS believes that while the majority of changes brought in by the Protected Trust Deeds (Scotland) Regulations 2013 (the Regulations) are likely to bring positive benefit, due to the nature of Protected Trust Deeds (PTDs) and the length of time which they run over, at this particular time it is difficult to find substantive and qualitative evidence in order to assess the impact of the changes made.
- 6 Subsequent to the introduction of the Regulations, the European Commission have published their Recommendation on Insolvency (EC 2014/1500) which asks EU Member States to implement insolvency frameworks which will discharge debtors within a period of three years. A number of provisions with the Regulations should be reviewed in light of the EU Recommendation.
- 7 ICAS is concerned that issues regarding debtor's heritable property, and particularly a debtor's dwellinghome, remain largely unanswered and believe that a full review of how equity in particular should be dealt with. This issue is at the heart of all personal insolvency procedures. The issue has been highlighted again through difficulties brought out through the practical implementation of Regulation 15 and Form 1B. We call for an urgent dialogue amongst stakeholders and that this is made a priority of the Scottish Government.
- 8 Experience of trustees in relation to the Common Financial Tool (CFT) in both PTDs and sequestrations suggest that the CFT promotes consistency in evaluating surplus income. However, some concerns are expressed in relation to shortcomings of the Common Financial Statement which is used as the CFT and the associated administrative burden on both trustees and the Accountant in Bankruptcy. It is suggested that an alternative CFT based on a sliding percentage scale of income after deduction of essential household expenditure would address both shortcomings of the Common Financial Statement and reduce the administrative burden.
- 9 The complex interaction of statute, common law, trust law and insolvency law is resulting in increasing uncertainty for debtors and trustees in a number of areas. In particular, the issue of how assets discovered post discharge of debtor and trustee should be dealt with has come into focus as a result of PPI and the Paymex decision in recent years. We consider that legislation could usefully be introduced to provide greater certainty and clarification on such matters.
- 10 PTDs would benefit from a number of more minor amendments to the Regulations. Further comment on these are provided within our detailed responses to the consultation questions.

Detailed Comments

- 11 Our detailed responses to the questions posed within the Consultation document are set out in [Appendix 1](#)
- 12 We consider that the Protected Trust Deeds (Scotland) Regulations 2013 (as amended) contain a number of matters which could usefully be addressed to bring clarity or address issues in practice which would be beneficial. Our detailed comments are included at [Appendix 2](#).

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Appendix 1 – Responses to questions posed in the Consultation

Question 1(a): Does £5,000 remain an appropriate minimum debt level?

Yes No

Question 1(b): If you answered no to Q1(a), what do you think the minimum debt level should be?

Answer: _____

Question 2(a): Is the length of acquirenda period considered to be appropriate?

Yes No

Question 2(b): If you answered no to Q2(a), what would be an appropriate timescale?

Answer: The acquirenda period imposed by Regulation 7 takes no account that the protected trust deed could last for a period less than 4 years where the debtors contributions and asset realisations would be able to meet in full the total amount of the debtors debts (including interest). In this situation while the debtor has repaid the debt in full the acquirenda period still survives but has no practical effect. The acquirenda period should be linked to the earlier of the discharge of the debtor or the prescribed acquirenda period. We agree that the prescribed acquirenda period should reflect and be consistent with the acquirenda period in sequestration.

Question 3(a): Is the contribution period of 48 months appropriate?

Yes No

Question 3(b): If you answered no to Q3(a), why not? What period would be appropriate?

Answer: EC recommendation 2014/1500 calls for member states to implement a framework where debtors are discharged within a maximum of three years. The contribution period of 48 months is the longest within the UK, England and Wales and Northern Ireland retaining a three year period for statutory debt relief procedures. We would therefore support the re-introduction of a three year procedure in PTDs.

It is too early to consider whether the extension of contributions to a four year period will impact on the sustainability of contributions. We remain of the view that sustainability of contributions should remain a primary factor in determining the method of calculation and period over which contributions should be sought.

Question 3(c): Where a debtor does not continue to make payments for a period of time during the agreement, is it right that the payment period can be extended?

Yes No

Question 3(d): If you do not agree with question 3(c), why not?

Answer: _____

Question 3(e): Are there any circumstances when a debtor should be allowed to take a break from making payments during the period of the PTD?

Yes No

Question 3(f): If you feel there are circumstances when a debtor should be allowed to take a break, what are the circumstances?

Answer: The provisions within Regulation 8 for the Trustee to extend the period of contributions where the debtor has not paid their contribution appears sufficiently flexible to take account of individual circumstances. We believe that Trustees are best placed to consider whether the debtor has an ability to continue their contribution at the level set or whether a reduction in contribution is required. The Trustee is also best placed to assess any requests for payment breaks. We are not aware of any evidence to suggest that the current process is not working and that legislative intervention would be appropriate.

Question 4(a): Is 48 months an appropriate timescale?

Yes No

Question 4(b): If no, what would be an appropriate timescale, if any?

Answer: EC recommendation 2014/1500 calls for member states to implement a framework where debtors are discharged within a maximum of three years. The contribution period of 48 months is the longest within the UK, England and Wales and Northern Ireland retaining a three year period for statutory debt relief procedures. We would therefore support the re-introduction of a three year procedure in PTDs.

Question 5(a): Do you agree that the Common Financial Tool (currently the Common Financial Statement) is an effective way of ensuring transparency in calculating the level of contribution to be paid by each debtor?

Yes No

Question 5(b): If you do not agree with question 5(a), why not?

Answer: We support the policy objective that there should be consistency in the method of calculating the level of debtor contributions across debt relief procedures. The Common Financial Statement permits flexibility in expenditure allowances in calculating the available surplus income but is highly dependent upon evidence and a subjective view of reasonableness.

To achieve full transparency and provide consistency a Common Financial Tool which removes subjectivity and the administrative burden of evidencing expenditure is required. This could be achieved through a Common Financial Tool which uses a calculation based on a sliding percentage scale against surplus income calculated after deduction of essential expenditure (housing, utilities, etc).

Question 5(c): Have you identified any issues with the application of the Common Financial Statement to PTDs?

Yes No

Question 5(d): If you answered yes to question 5(c), what issues have you identified?

Answer: The Common Financial Statement does not adequately deal with debtors whose income fluctuates on a regular basis. For example, debtors who earn unregular overtime, obtain bonuses, or whose income is commission based. While it may be possible to make an assessment of 'core' (or anticipated minimum amounts to be received) if 100% of surplus income is to be assessed this is not possible on a practical basis.

Where overtime is optional for the debtor, the operation of the CFT requires any overtime earned by the debtor will be contributed in full as surplus income. There is therefore no incentive for the debtor

to take advantage of additional hours and as a result there is also a detriment to the creditors. A recognition that there is a mutual benefit between debtor and creditors would be welcomed.

The CFT also is highly subjective in relation to many areas of expenditure, especially in the area of what could be described as 'lifestyle expenditure'. While we agree that any method should allow flexibility to reflect individual's circumstances the degree of flexibility permitted and subjective assessment of individual circumstances undermines the policy of consistency in calculation.

There is anecdotal evidence that debtors are "shopping around" with a view to finding the most advantageous interpretation of the CFT to their circumstances.

To achieve consistency a Common Financial Tool which removes subjectivity is required. This could be achieved through a Common Financial Tool which uses a calculation based on a sliding percentage scale against surplus income calculated after deduction of essential expenditure (housing, utilities, etc) thereby leaving the debtor the ability to prioritise their lifestyle spend as they consider appropriate to their circumstances.

Question 6(a): Is it appropriate that AiB has the authority to refuse to protect a trust deed if they have determined that the contribution amount has not been assessed appropriately in accordance with the Common Financial Tool?

Yes No

Question 6(b): If you answered no to question 6(a), why not?

Answer: If the policy objective of achieving consistency in calculation of contribution is to be achieved then it would be preferable that a CFT is used which removes any prospect of being used inappropriately. This would remove uncertainty over whether a trust deed will become protected and reduce an administrative burden (and cost) on both the trust estate and the Accountant in Bankruptcy.

Where subjectivity is retained then we would agree that it is appropriate for the AiB to consider how the CFT has been used in assessing the contribution amount.

Question 6(c): Are there additional grounds under which a trust deed should not be protected?

Yes No

Question 6(d): If you answered 'yes' to question 6(c), what are these circumstances?

Answer: The increasing statutory regulation of protected trust deeds has resulted in PTDs becoming a hybrid of a commercial agreement between debtors and creditors and a prescribed statutory debt relief procedure. There is therefore an inherent tension in the extent of intervention powers that should be permitted.

The extent of grounds on which a trust deed should not be allowed to become protected should be restricted to situations where it is necessary to protect minority interests or to regulate other matters provided for in statute. The existing power granted to the AiB by Regulation 11 prevents protection where the CFT has not been used correctly.

We are aware that there have been concerns raised previously around protection where a material change in the debtor's circumstances occurred in the period between granting the trust deed and application for protection which may impact on the view of the creditors decision on whether to object to the trust deed or not. It may be appropriate to consider whether provisions are required in Regulations to ensure that material changes in circumstances are communicated to creditors (and sufficient time is allowed for creditors to intimate any change in view) with protection only possible once this has been done.

We also note the comments regarding equity rich PTDs. Please see our comments to question 8 below in relation to this matter. While it would appear at first instance that it would be appropriate for powers to be taken to prevent protection in such circumstances we do not consider that this would be

appropriate as a change to the Regulations in respect of heritable property and relevant agreements can more appropriately deal with this issue.

The matter has however highlighted that minority creditors who object to a trust deed may not be afforded adequate protection or representation of their views. Consideration might be given to a 'fair and reasonable' review where minority creditors have objected but there have been insufficient other objections received in terms of Regulation 10(2).

Question 7(a): Is it appropriate that, where a debtor has failed on two consecutive occasions to pay their required contribution, the trustee can instruct the debtor's employee to make a deduction from the debtor's income?

Yes No

Question 7(b): If you answered no to question 7(a), why not?

Answer: _____

Question 7(c): Have you experienced any issues with the process used to instruct an employer to make a deduction from the income of a debtor?

Yes No

Question 7(d): If you answered yes to Question 7(c), what were these issues? How could the process be improved?

Answer: The forms do not specifically include a contribution payment schedule and the process could be amended to include one, setting out the specific responsibilities of the debtor, payment periods and what happens on default.

Regulation 14 intends that on the debtor missing at least two contributions, the trustee will instruct the debtor to complete and submit Form 4A to their employer and that if the debtor does not fulfil the instruction then only at that stage may the trustee send direct to the employer Form 4B. As the debtors failure to pay the contribution is likely to be as an act of non-co-operation the likelihood of the debtor complying with the instructions in respect of Form 4A are remote. As a result, in practice trustees are asking the debtor to sign Form 4A at the same time as they agree their contribution with consent to hold it undelivered and for the trustee being able to send to the employer if the conditions in Regulation 14(1) are met.

While this is a pragmatic approach and one that could be reflected in statute, it is a cumbersome provision. It would appear that a streamlined procedure of allowing the Trustee to submit Form 4B (and removing Form 4A provisions) would be more efficient.

Similarly Form 4C notifying the employer of a variation in the contribution should come from the Trustee and not the debtor.

Question 8(a): Have the changes introduced through Form 1B agreements, and Regulation 15, adequately addressed the treatment of equity in trust deeds?

Yes No

Question 8(b): If no, why not?

Answer: The policy intention to address the treatment of equity in trust deeds through Regulation 15 is welcomed, however the implementation without adequate consultation has resulted in a regrettable and unsatisfactory situation.

We are firmly of the view that a thorough debate is required on wider issues such as how to measure equity, should there be a de minimus level before it has to be realised, should the debtor be allowed to retain any part of the equity, what are the criteria for the trustee abandoning the equity, should

there be provision for the trustee extending the period for the payment of contributions to allow the debtor to purchase the equity, action required in the event of failure of the trust deed etc.

We would call upon the government to address the issue of equity in all personal insolvency processes as a matter of urgency.

Concern has been expressed about an increasing trend amongst a limited number of trust deed providers to realise the equity interest through terms more commonly seen in IVAs. This does not appear to reflect the different legal position of trust deeds and IVAs. As a result, we believe that debtors are “shopping around” or being directed to trustees who will enter into an agreement which in certain circumstances will result in significant levels of equity being retained by the debtor and failing to balance the interests of debtors and creditors.

Question 8(c): Is a Protected Trust Deed an appropriate solution for someone who has assets, including equity, which exceed their total level of debt?

Yes No

Question 8(d): If you answered no, please explain your reasons.

Answer: A PTD can be an appropriate solution based on specific individual circumstances. We consider that debtors should have the ability to choose which debt solutions are appropriate to their own circumstances. For example, some individuals may prefer to deal directly with a trustee in a trust deed rather than enter DAS where they would deal with a government agency and payment distributors, particularly where equity in a family home is to be realised. A trust deed may also balance better the rights of creditors in comparison to DAS as they would remain entitled to interest and charges.

Question 9(a): Are the periods 24 months after the granting of the trust deed and every 6 months thereafter, appropriate timescales for the payment of interim dividends?

Yes No

Question 9(b): If you answered no to Question 9(a), what timescales do you believe would be appropriate?

Answer: _____

Question 9(c): Should creditors have to submit their claims within 120 days if they are to be included in the payment of dividends? This is required in sequestrations.

Yes No

Question 9(d): If you answered no to Question 9(c), what timescale, if any, would you like introduced for submission of creditors' claims?

Answer: _____

Question 10(a): Is a 20% drop in dividend an appropriate level for trustees to provide further information to creditors on the viability of the PTD?

Yes No

Question 10(b): If you answered no to Question 10(a), what should the level be?

Answer: _____

Question 10(c): Have you experienced any issues sending or receiving the Form 4?

Yes No

Question 10(d): If you answered yes to Question 10(c), what issues have you experienced?

Answer: _____

Question 10(e): Is the information contained within the Form 4 sufficient for your purposes?

Yes No

Question 10(f): If you answered no to Question 10(d), what other information would you like to see included?

Answer: _____

Question 11(a): Has the introduction of the single fixed, fee brought greater transparency and control over the administration fees and costs of a PTD?

Yes No

Question 11(b): If you answered no to Question 11(a), why not?

Answer: Control of fees in a PTD were controlled by the bulk creditors and their agents prior to the changes to the Regulations. These controls appeared to operate effectively. The changes to Regulations have effectively brought into statute a practice that was operating on a voluntary basis.

It is too early to evaluate whether over the full term of PTDs there will be requests for fee increases as a result of work which could not have been anticipated at the outset of the trust deed.

Question 11(c): Do you consider that further changes are needed to the PTD fees and costs structure?

Yes No

Question 11(d): If you answered yes to Question 11(c), what changes do you consider are needed?

Answer: _____

Question 12(a): Do you agree that third party work completed prior to the granting of a trust deed should rank equally with other creditors' claims?

Yes No

Question 12(b): If you answered no to Question 12(a), why not?

Answer: The concept of ranking expenses of the trust deed equally with other creditors' claims is contrary to the general priority of ranking within the UK. While the concern about 'fact finder' fees is well understood, the legislative change has resulted in far wider and potentially unintended consequences.

We agree with the subsequent amendment to the Protected Trust Deeds (Scotland) Regulations 2013 to allow a single valuation in respect of each heritable property, allowing debtors greater certainty regarding the potential equity position in relation to heritable property and allowing debt advice to be provided with greater clarity of information. This principle however equally applies to other property and further changes could usefully be made to permit valuation fees in relation to any estate of the debtor to be entitled to be charged as an outlay of the trust deed.

Question 13(a): Can the process for returning funds to creditors be improved upon?

Yes No

Question 13(b): If you answered yes to Question 13(a), what change(s) would you like made to the legislation?

Answer: A significant problem for trustees making distribution payments relates to creditors correspondence details changing or their debt being sold on and assigned to other parties in the period between claims being submitted and the distribution.

Similarly trustees report that creditors either return cheques or do not encash cheques because they are unable to find the relevant account against which to apply the balance as the account has been 'written off' through the creditors internal accounting systems. Where the distribution amount is relatively immaterial to the creditor it appears there is often a commercial decision taken not to encash the distribution.

We do not consider that legislative changes would necessarily be the most appropriate action to take to address such issues.

It is also inappropriate for the trustee to keep a case open, incurring compliance and other costs in doing so for no benefit, as a result of creditor action or inaction. We agree that reasonable steps must be taken to ensure the creditor entitled to the distribution is traced where appropriate and provided with the opportunity to receive their dividend, however this must be balanced with the efficient and practical closure and finalisation of the trust deed.

Increased use of BACS transfers for payment distributions together with distributions made as early as possible in the life of the trust deed should facilitate a reduction in consigned funds. Similarly, education provided to creditors and clarity around their responsibilities around receipt of distributions could assist in reducing funds requiring to be consigned.

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

Effect of closed trust deeds on subsequently discovered assets

PTDs are governed by a hybrid of trust law (legislation and common law) and insolvency law. This as a result occasionally highlights a lack of clarity on how the various provisions interact. Recent issues derived from PPI and the Paymex decision has highlighted a lack of clarity over the interaction between a closed trust deed and assets which have been discovered after both the debtor and trustee have been discharged. We consider that it would be useful to bring clarity through legislation to the circumstances, if any, in which assets discovered after the trustee has been discharged continue to reside in the trust and are capable of being realised for the benefit of creditors.

Similarly, we consider that it would be beneficial to clarify in legislation the procedure for abandonment of assets by the trustee or re-conveyance to the debtor when the trust terminates.

Exclusion of debtor's dwellinghome

The provisions to exclude a debtor's dwellinghome from a PTD are rarely used. We understand that since the provisions were introduced through the Home Owner and Debtor Protection (Scotland) Act 2010 the number of trust deeds utilising those provisions are negligible. The policy intent of allowing the dwellinghome to be excluded – to afford additional protection to the debtor – is not considered to be achieved in practice as exclusion would leave subsequent secured creditor liabilities outwith the discharge from debt meaning the debtor would still remain liable for those debts. We consider that as part of the discussion called for on how equity should be dealt with (see question 8) that the exclusion provisions should be reviewed.

Appendix 2 – Comments on specific Regulations

Regulation	Comment
2	Definition of “remuneration” includes the subjective term “reasonable”. This does not seem appropriate for a definition as it introduces unnecessary subjectivity.
7(1)(b)	We are concerned that there is scope for uncertainty over the ability of the Trustee to realise assets where title is expected to pass to the debtor at or around the end of the 4 year acquirenda period. For example, a debtor may have a vehicle subject to HP which is due to expire 3 years and 11 months after the signing of the trust deed and therefore is expected to be caught within the acquirenda provisions and therefore there will be a realisation by the Trustee. It is possible that this could be abused where the debtor misses a couple of payments deliberately in order to defer the acquisition within their estate or as a result of misfortune is unable to make some payments to the same effect. Both scenarios will impact on the realisations and expected return to creditors. We would suggest that acquirenda is better linked to the discharge of the debtor, providing greater certainty for the trustee and protects the position in respect of the return to creditors.
8(2)(a)	We are concerned that there is a lack of evidence that a 48 month contribution period will result in a net benefit increase to creditors. We are concerned that the increase in breakage rates and increased administration costs will result in a reduced return to creditors.
8(3)	<p>We believe that this regulation requires clarification in that “(including interest)” should be amended to “(including statutory interest)” as interest is not defined and is different from interest referred to for instance in regulation 4(3).</p> <p>We believe the regulation should be amended to make it clear that a shorter period of contribution is only possible where a distribution in full of the debtor’s debts and statutory interest would be possible, after allowing for the costs of administration and realisation within the protected trust deed.</p>
8(4)	We believe that this regulation requires clarification in that “(including interest)” should be amended to “(including statutory interest)” as interest is not defined and is different from interest referred to for instance in regulation 4(3).
9	<p>We believe that the use of the phrase “without delay” is too open to interpretation. It would be preferable to refer to a specified period. We consider “two business days” would be reasonable.</p> <p>There is no timescale set for publication by the AIB in the register of insolvencies. While it may be anticipated that this will be perhaps within 24 hours of receipt, particularly where the Form 1 is submitted electronically, there is no period set at all by which to ensure that the AiB is administering efficiently. In our view it would be advisable to include a further sub-clause requiring the AiB to publish the notice within a set timescale. We would suggest that two business days would be appropriate.</p>
11(1)	We consider that the phrases “As soon as reasonably practicable” and the backstop date of 4 weeks are incompatible and unnecessary. It would be preferable to refer to a specified period for the information to be sent to the AiB. We consider 7 days would be reasonable.
14	We wonder whether a Form is required to be sent by a Trustee to an employer where a variation has been notified to the debtor but the debtor does not co-operate.

- 15(3)(a) The drafting of the regulation suggests that conditions (i) and (ii) must both be met which does not appear to be correct. It may be useful to clarify this for the avoidance of doubt by including “or” at the end of (i)
- 15(4) The Regulation does not address the issue of the basis on which equity is calculated. There are many different basis of valuation (open market, forced sale) and as a result the basis of valuation would significantly affect the equity level. This can lead to an inconsistent approach being adopted by different trustees.
- Similarly it is unclear whether the trustee is required to realise the full equity or is permitted to make allowance for any reduction which they consider appropriate. Again this could lead to an inconsistent approach being adopted by different trustees.
- In case of negative equity the Regulations do not clarify the approach to be taken by Trustees and in particular whether a nominal payment should be required in order to discharge the trustee’s interest.
- 15(6) We believe that the use of the phrase “as soon as is practicable” is too open to interpretation. It would be preferable to refer to a specified period. We consider within 7 days would be reasonable.
- It is unclear the purpose of the requirement to circulate every known creditor a copy of Form 1B. This would appear to add an unnecessary burden and costs to the administration of the protected trust deed and is counterproductive to the policy objective of addressing disappointing dividend returns.
- 16(1) The 6 week period conflicts with the provisions of regulation 21(3). It is possible that there will be a minimum of 8 weeks before the trustee can be sure that adequate provision has been made to allow the dividend payment to be made.
- 16(2) The reference to “debtors debt” is not appropriate. This should be referred to claims which have been accepted.
- 19(2) It is unclear the purpose of the requirement to intimate to every known creditor any directions issued by the AIB. This would appear to add an unnecessary burden and costs to the administration of the protected trust deed and is counterproductive to the policy objective of addressing disappointing dividend returns. Where it is appropriate to intimate to the debtor or creditors then this can be provided for within the direction issued by the AiB rather than requiring notification on each and every occasion.
- 20(1) As this deals with a requirement under regulation 8 it seems more appropriate that this should be included within that regulation.
- We believe that the use of the phrase “without delay” is too open to interpretation. It would be preferable to refer to a specified period. We consider “within 2 business days” would be reasonable.
- 20(4) We believe that the use of the phrase “without delay” is too open to interpretation. It would be preferable to refer to a specified period. We consider “within 2 business days” would be reasonable.
- 21 The timescales provided for within this regulation provide practical difficulties for a trustee to make a dividend payment in accordance with regulation 16. The interaction of the two regulations requires to be aligned.
- 21(4) As this deals with a requirement under regulation 8 it seems more appropriate that this should be included within that regulation.

- 23(2) We are concerned with the use of “unforeseen circumstances”. The nature of insolvency appointments is that it is impossible to predict all circumstances. It would possibly be more appropriate to refer to “**reasonably** unforeseen circumstances”
- 23(2)(a) No timescale is set for creditors to respond to notification of a fixed fee request. It would seem appropriate for provision to be made within the Regulations for a period to be fixed. We would suggest that a minimum period of 14 days would be appropriate.
- 24(11) It is unclear why there would be a difference in the treatment of a creditor being deemed to no longer having acceded to a trust deed per regulation 12(2) where a debtors discharge is refused by a trustee under 24(8) and not where the AIB refuses to register a Form 5 under 24(11).
- It is unclear whether if the AIB refuses to register a Form 5 whether there is any period required or what steps must be taken before a Form 5 can be sent again for registration.
- It is unclear whether should following an appeal to the sheriff in accordance with regulation 27 the decision of the AIB is upheld whether the trustee is able to subsequently resubmit a Form 5 once any defects that can be corrected are corrected or whether the refusal to register a Form 5 is final with the implications that that carries.
- 25(2) The requirement to define “date of the final distribution” by reference to subparagraph (4) seems superfluous. It would seem more relevant to simply refer to the period in (2) to be referred to as “..28 days after all of the estate distributed has been placed beyond the control of the trustee, the trustee must apply...”. We are concerned that the reference to “date of the final distribution” is misleading in (2) and its definition will not be readily understood.
- 25(6) We believe that reference to the “majority of creditors in value” requires clarification to ensure that this refers to those who vote. This will ensure consistency with other insolvency processes.
- 26(1) Given the AIB stated intention is to seek electronic delivery as the position of default, it would appear prudent that provision is made within the Regulations that the AIB has consented to electronic delivery thereby avoiding the requirement for the AIB to provide consent in each specific cases or generally and avoiding the possibility that consent may inadvertently not have been given to a trustee.

RESPONDENT INFORMATION FORM

Please note that this form must be returned with your response to ensure that we handle your response appropriately.

1. Name/Organisation

Organisation Name

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Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

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3. Permissions - I am responding as...

Individual

Please tick as appropriate

Group/Organisation

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) 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?

Please tick as appropriate

Yes

No

Please return your response to AIB_Policy_Development_Enquiries@gov.scot or to: Erin McCreadie, AiB, 1 Pennyburn Road, Kilwinning, Ayrshire, KA13 6SA by **25 April 2016**.