

Draft Regulations laid before the Scottish Parliament under section 72(2) and (3)(a)(iic) and (b) of the Bankruptcy (Scotland) Act 1985 and section 62(4) of the Debt Arrangement and Attachment (Scotland) Act 2002, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2014 No.

INSOLVENCY

BANKRUPTCY

DEBT

The Common Financial Tool etc. (Scotland) Regulations 2014

Made - - - -

Coming into force - -

1st April 2015

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 5D, 71C and 72(1A) of and paragraph 5 of Schedule 5 to the Bankruptcy (Scotland) Act 1985(a) (“the 1985 Act”), section 7(2)(bd) of the Debt Arrangement and Attachment (Scotland) Act 2002(b) (“the 2002 Act”) and all other powers enabling them to do so.

In accordance with section 72(2) and (3)(a)(iic) and (b) of the 1985 Act and section 62(4) of the 2002 Act(c), a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Common Financial Tool etc. (Scotland) Regulations 2014 and come into force on 1st April 2015.

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- (a) 1985 c.66 (“the 1985 Act”). Section 5D was inserted by section 3 of the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11) (“the 2014 Act”). Section 71C was inserted by section 36 of the 2014 Act. Section 72(1A) was inserted by the 2014 Act, schedule 3, paragraph 34(a). Paragraph 5 of Schedule 5 to the 1985 Act was amended by section 20 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) (“the 2007 Act”) and section 13(2) of the Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6). Section 73(1) of the 1985 Act contains a definition of “prescribed” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
- (b) 2002 asp 17, as amended by the 2007 Act, sections 173, 209(1), 211 and 212 and schedule 4, paragraph 10, schedule 5, paragraph 30 and schedule 1, Part 1. Section 7(2)(bd) was inserted by the 2014 Act, section 3(2).
- (c) Section 72(3) was amended by the 2014 Act, paragraph 34 of schedule 3 and schedule 4. Section 62(4) was amended by the 2014 Act, paragraph 38(b) of schedule 3. Sections 72(2) and (3)(a)(iic) and (b) and 62(4) have been modified by paragraph 5(2) of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (“the 2010 Act”). The powers to make these Regulations are exercised together by virtue of section 33(2) of the 2010 Act.

Interpretation

2.—(1) In these Regulations—

“the 1985 Act” means the Bankruptcy (Scotland) Act 1985;

“Common Financial Statement” means the style and format for income and expenditure categories under that title (and, where relevant, related spread sheets, budget sheets, trigger figures, guidance materials and notes) published by the Money Advice Trust^(a);

“common financial tool” has the meaning given by section 5D(1) of the 1985 Act^(b); and

“debtor’s contribution” has the meaning given by section 5D(1) of the 1985 Act.

Common Financial Tool

Common financial tool

3.—(1) The specified method to be used to assess the debtor’s contribution in accordance with paragraphs (2) to (11) and regulation 4 (“the common financial tool”) is the Common Financial Statement.

(2) The debtor’s contribution is to be the debtor’s whole surplus income (assessed for instance weekly, fortnightly or monthly in accordance with the Common Financial Statement) in excess of the lower of—

- (a) the debtor’s expenditure over that period; or
- (b) the trigger figures for a reasonable amount of expenditure published from time to time as part of the Common Financial Statement.

(3) The Accountant in Bankruptcy, the trustee on variation or removal under section 32F of the 1985 Act^(c), the court, or the trustee acting under a protected trust deed, may allow an amount of expenditure to the debtor which exceeds those trigger figures if satisfied that the expenditure is reasonable.

(4) In determining what is reasonable under paragraph (3), evidence of why the expenditure is reasonable must be provided, or supplied by the debtor on request, to satisfy the Accountant in Bankruptcy, trustee or court with regard to that evidence and any explanation provided.

(5) Insofar as the income and expenditure of any other person may be taken into account in the Common Financial Statement, if either income or expenditure is so taken into account, both the income and the expenditure of that person must be taken into account.

(6) In calculating the debtor’s income where she or he is paid regularly by a period other than a week, fortnight or month, the debtor’s income shall be the income for that period times such multiplier as converts the period into a year divided by 52, 26 or 12 as the case may be.

(7) If the debtor has income solely from social security benefits and tax credits, no contribution is due.

(8) If the expenditure amount so determined is less than the total amount of any income received by the debtor by way of guaranteed minimum pension (within the meaning of the Pension Schemes Act 1993^(d)) that income amount shall be allowed instead.

(9) The expenditure amount determined under paragraph (3) must be sufficient to allow for—

- (a) aliment for the debtor;

(a) The Money Advice Trust is a company registered in England and Wales with registered number 4741583, registered charity in England and Wales registration number 1099506. Available at www.cfs.moneyadvicetrust.org.

(b) Inserted by section 3 of the 2014 Act.

(c) Inserted by section 4 of the 2014 Act.

(d) 1993 c.48.

- (b) any obligation of aliment owed by the debtor (“obligation of aliment” having the same meaning as in the Family Law (Scotland) Act 1985(a));
- (c) any obligation of the debtor to make a periodical allowance to a former spouse or former civil partner; and
- (d) any obligation of the debtor to pay child support maintenance under the Child Support Act 1991(b).

(10) The amount referred to in paragraph (9)(b) and (c) need not be sufficient for compliance with a subsisting order or agreement as regards the aliment or periodical allowance.

(11) Any person applying the common financial tool must have regard to guidance issued by the Accountant in Bankruptcy on—

- (a) the treatment of types of income and expenditure under paragraph (3);
- (b) how income and expenditure are to be verified by the money adviser and the trustee; and
- (c) the conduct of money advisers in carrying out their functions under the Act in relation to the common financial tool.

Common financial tool: supporting statements and evidence

4.—(1) Any debtor application, initial proposals under section 32A(2) of the 1985 Act, application for review or appeal of the debtor’s contribution under section 32C or 32H of the 1985 Act(c) must contain or be accompanied by a statement—

- (a) that the money adviser or trustee, as the case may be, assessed the debtor’s expenditure against the Common Financial Statement; and
- (b) explaining any instance in which those trigger figures are exceeded.

(2) Any statement setting out expenditure in excess of the trigger figures must be accompanied by evidence of why any expenditure allowed that exceeds the trigger figures is reasonable.

(3) Any statement that there has been a change in the debtor’s financial circumstances must be accompanied by evidence that the debtor’s circumstances were not as they were when last assessed for the purposes of this regulation.

Money Advice Trust licence requirements: report

5. Where it appears to the Accountant in Bankruptcy that in using the Common Financial Statement to advise on completion of a debtor application a money adviser has contravened a licence requirement imposed by the Money Advice Trust, the Accountant in Bankruptcy may notify the Trust of that matter.

Protected Trust Deeds

Amendments to Protected Trust Deeds (Scotland) Regulations 2013

6. The Protected Trust Deeds (Scotland) Regulations 2013(d) are amended in accordance with regulations 7 to 10.

Common Financial Tool: consequential amendments

7.—(1) After the definition of “Common Financial Statement” in regulation 2 (interpretation), insert—

““common financial tool” has the meaning given by section 5D(1) of the 1985 Act;”.

(a) 1985 c.37.

(b) 1991 c.48.

(c) Sections 32A, 32F, 32C and 32H of the 1985 Act were inserted by section 4 of the 2014 Act.

(d) S.S.I. 2013/318.

(2) In regulation 7(1)(c) (statements in relation to trust deed) after “benefit of creditors” insert “, including any contribution required by the common financial tool where the debtor is a living individual.”

(3) In regulation 8 (payment of debtor’s contribution)—

(a) at the end of paragraph (1), insert “, as required by the common financial tool where the debtor is a living individual”; and

(b) in paragraph (5), for “paragraph (4)” substitute “paragraphs (1) and (4)”.

(4) In regulation 10(1)(d)(ii) (documents to be sent to creditors), for “in the style and format of the Common Financial Statement” substitute “, in Form 2A where the debtor is a living individual”.

(5) For regulation 11(1)(h) (registration of the trust deed etc.) substitute—

“(h) where a debtor who is a living individual makes a contribution from income, a statement—

(i) that the amount of that contribution is in accordance with the common financial tool as assessed by the trustee; and

(ii) any evidence or explanation required in applying the common financial tool;”

(6) For regulation 11(2)(c) substitute—

“(c) the Accountant is satisfied in accordance with the common financial tool with the amount of the contribution determined.”.

Administration

8.—(1) After regulation 21(2) (administration of trust), insert—

“(2A) If the trustee receives within 21 days after the date on which the Form 4 was sent notification in writing from—

(a) a majority in number; or

(b) not less than one third in value, of creditors that they object to the recommended course of action in the Form 4 where the expected final dividend to ordinary creditors is 20% lower than the expected dividend to ordinary creditors set out in the Form 3, the trustee must request a direction under regulation 19(3) as to how the trust must be administered.”.

(2) In regulation 23(3)(a) (approval of increase in fixed fee), for “majority in number” substitute “majority in value”.

(3) In regulation 24(8) (refusal of trustee to apply for debtor’s discharge), for “at the end of the period of 48 months beginning with the day on which the trust deed was granted” substitute “as soon as reasonably practicable after the end of the period for which payments are required under the trust deed”.

Remuneration for outlays before grant of trust deed

9. At the end of regulation 23(1)(c) (remuneration to which trustee entitled), insert “or before that date on a single valuation of any specified heritable estate”.

Minor amendments

10.—(1) In regulation 19(5) (directions to trustee under protected trust deed: period of compliance), for “regulation 27(1)(b)” substitute “regulation 27(1)(c)”.

(2) In regulation 23(1) (remuneration to which trustee entitled) after “consist” insert “only”.

(3) In regulation 23(7) (remuneration: audit fee) for “Bankruptcy Fees etc. (Scotland) Regulations 2012” substitute “Bankruptcy Fees (Scotland) Regulations 2014(a)”.

(4) In regulation 24(5) (discharge of debtor), after “later” insert “than”.

(5) In the Schedule (forms to be used in connection with protected trust deeds)—

(a) in the table of forms, after the entry for Form 2, insert—

“2A	Income and expenditure	Regulation 10(1)(d)(ii)”;
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(b) after Form 2 insert Form 2A set out in the Schedule to these Regulations; and

(c) for—

(i) Form 3 (trust deed protection proposal);

(ii) Form 4 (trustee’s statement of status of a protected trust deed);

(iii) Form 6 (application to creditors for discharge of trustee); and

(iv) Form 7 (trustee statement of realisation and distribution),

substitute respectively Forms 3, 4, 6 and 7 set out in the Schedule to these Regulations.

Trust deeds granted before 1st April 2015

11. These Regulations do not apply to trust deeds granted before 1st April 2015; and the Protected Trust Deeds (Scotland) Regulations 2013 as in force immediately before that date continue to apply to those trust deeds.

Name

Authorised to sign by the Scottish Ministers

St Andrew’s House,

Edinburgh

Date

SCHEDULE Forms

Regulations 7(4) and 10(5)

Form 2A

Regulation 10(1)(d)(ii)

INCOME AND EXPENDITURE

The Protected Trust Deed (Scotland) Regulations 2013

Debtor's Name
AiB Reference Number:

Salary and wages

Income	Amount (£)	Frequency
Debtor's salary/wages		
Partner's salary/wages		

Total

Pensions

Pension(s)	Amount (£)	Frequency
State Pension(s)		
Private or work pension(s)		
Pension Credit		

Total

Other income

Other income	Amount (£)	Frequency
Maintenance or child support		
Boarders or lodgers		
Non-dependant contribution		
Student loans or grants		
(To be completed with any other household income)		

Total

Benefits

Type of benefit	Amount (£)	Frequency
Jobseeker's Allowance		
Income Support		
Working Tax Credits		
Child Tax Credits		
Employment and Support Allowance		
DLA, PIP or Attendance Allowance		
Carer's Allowance		
Housing Benefit/Local Housing Allowance		
Council Tax Reduction		
Universal Credit		
(Other)		
(Other)		
(Other)		

Total

Please use the space provided below to give details of any benefit listed under "other"

Expenditure

Essential expenditure	Amount	Frequency
Rent		
Ground rent, service charges, factor fees		
Mortgages		
Other Secured Loans		
Building and Content Insurance		
Pension and Life insurance		
Council Tax		
Gas		
Electricity		
TV Licence		
Magistrates or Sheriff Court Fines		
Maintenance or Child Support		
Hire Purchase/Conditional Sales		
Childcare Costs		
Adult Care Costs		

Total

Phone	Amount	Frequency
Home Phone		
Mobile Phone(s)		

Total

Travel	Amount	Frequency
Public Transport (work, school, shopping, etc)		
Car Insurance		
Vehicle Tax		
Fuel (Petrol, Diesel, Oil, etc)		
MOT and car maintenance		
Breakdown and Recovery		
Parking Charges or Tolls		

Total

Housekeeping	Amount	Frequency
Food and Milk		
Cleaning and Toiletries		
Newspapers and Magazines		
Cigarettes Tobacco and Sweets		
Alcohol		
Laundry and dry cleaning		
Clothing and Footwear		
Nappies and baby items		
Pet Food		

Total

Other expenditure	Amount	Frequency
Health (dentist, glasses, prescriptions, health insurance)		
Repairs/house maintenance (including window cleaning, maintenance contracts)		
Hairdressing/haircuts		
Cable, Satellite and Internet		
TV, video and other appliance rental		
School meals and meals at work		
Pocket money and school trips		
Lottery and Pools etc.		
Hobbies/leisure/sport (include pub outings, etc.)		
Gifts (Christmas Birthday, Charity etc.)		
Vet Bills and Pet Insurance		

Total

All other expenses not covered above	Amount	Frequency

Total

Total Income
Total Expenditure
Surplus Income

Statements:

I certify that this is a full disclosure of my Income and Expenditure:

Debtor Signature _____ Date

I confirm that in accordance with Regulation 11(1)(h) of the Protected Trust Deeds (Scotland) Regulations 2013 (as amended), I have assessed the debtor's contribution in accordance with Common Financial Tool (CFT) and the CFT has been used in this calculation.

I confirm that the Common Financial Statement (CFS) trigger figures have been used in this calculation and have not been exceeded. *

The Common Financial Statement (CFS) trigger figures have been exceeded in the following category/categories and the reason(s) are: *

* Delete as appropriate

I confirm that Common Financial Statement (CFS) allowances for dependant(s) and/or vehicle(s), that have been used in this calculation, have not to the best of my knowledge and belief, been replicated in any other income and expenditure assessment carried out in respect of a trust deed for any other individual.

Trustee Signature _____ Date

PROTECTED TRUST DEED
TRUST DEED PROTECTION PROPOSAL AND TRUSTEE'S APPLICATION

The Protected Trust Deeds (Scotland) Regulations 2013

Part 1 – to be completed by the trustee and sent to all known creditors no later than 7 days after the publication of the notice of the trust deed in the Register of Insolvencies.

Part 2 – to be completed by the trustee and sent with a copy of Part 1, to the Accountant in Bankruptcy, no later than 4 weeks **after** the expiry of the 5 week period following the publication of a notice of this trust deed in the Register of Insolvencies

PART 1 (Regulation 10(1)(e))

TRUST DEED PROTECTION PROPOSAL

To creditors

Trust Deed granted

Date Trust Deed granted		Objection deadline date	
Date Trust Deed published in register of insolvencies			
Linked to another Trust Deed	YES/NO	Name of linked applicant	
Trustee's Name		Trustee's Company	
Trustee's address			

Debtor's Details

Full name of debtor			
Address inc. postcode			
Date of Birth		Marital Status	
Residential Status		Employment Status	
Occupation		Age(s) of Dependents	
Does debtor own property?	YES/NO	Amount of debtor's share of equity in property	£
Is property excluded from Trust Deed + [Form 1A] completed?			YES/NO

The estate of {insert debtor's name} has been conveyed to {insert name and address of trustee} for the benefit of creditors.

Trustee and Third Party fees

1	Trustee's fixed administration fee	£	See Note 1
2	Trustee's % fee for realisation of moveable asset(s)	%	
3	Trustee's % fee for realisation of heritage	%	
4	Trustee's % fee for realisation of contributions	%	
5	Third party fee(s)	£	See Note 2

I expect this trust deed to be completed by {insert date}

I expect the following realisation for the benefit of creditors.

		TOTAL	
A	Number of contributions		
B	Total value of Contributions	£	
C	Total realisations from moveable assets	£	
D	Total realisations from heritable assets (excluding any security)	£	
E	Gross realisation	£	B+C+D
F	Projected trustee's fee for realising assets and contributions	£	See Note 3
G	Total trustee's fee	£	1 + F
H	Outlays (including statutory fees)	£	
I	Total cost of administration	£	G+H+5
J	Net realisation	£	E-I
K	Debt due to preferred creditors	£	
L	Debt due to ordinary creditors	£	
M	Debt due to postponed creditors	£	
N	Total debt due to creditors	£	K+L+M
O	Dividend to ordinary creditors	p/£	(J-K)/L x 100

Note 1 – Insert the amount of the total fixed fee for the administration of the PTD to the date of expected completion.

Note 2 – details of any third party to be employed to complete work on behalf of the trustee, and details of work to be completed.

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Reason(s) for insolvency and any non-standard arrangements should be detailed here, including details and reasons for non-realisation of any assets.



Note 3: Total of fees calculated using % figures recorded in Rows 2, 3 and 4.

This trust deed will become protected when the Accountant in Bankruptcy:

- has received all the required documents;
- is content that the conditions set out in regulations 4 to 10, of the Protected Trust Deeds (Scotland) Regulations 2013 have been met, and
- has registered the trust deed in the register of insolvencies.

Signed (trustee)

Name (trustee)

Date

The Protected Trust Deeds (Scotland) Regulations 2013

TRUSTEE'S STATEMENT OF STATUS OF A PROTECTED TRUST DEED,

For year _____ (insert year number) of trust deed

**Statement to debtor, creditors and The Accountant in Bankruptcy
(see Note 1)**

AiB Reference Number:

Insert debtor's name
Insert debtor's addressTown
County
Post Code

On _____ (insert date) conveying *his/her estate to me

Insert insolvency practitioner's name
Insert business addressTown
County
Post Code

as trustee for the benefit of *his/her creditors generally

* delete as appropriate

I expect this trust deed will be completed by _____ (insert date).

Statement of performance of protected trust deed (PTD):

		Actual in Year	Total to date (Note 2)	Final Expected	
		Col 1	Col 2	Col 3	
A	Number of Contributions in-gathered				
B	Total realisation from contributions	£	£	£	
C	Total Realisation from moveable assets	£	£	£	
D	Total realisation from heritable assets	£	£	£	See Note 3
E	Total realisation from assets	£	£	£	C + D

F	Bank interest	£	£	£	
G	Gross realisation	£	£	£	B + E + F
H	Trustee's remuneration taken (fixed administration fee)	£	£	£	See Note 4
I	Trustee's remuneration taken (% of assets and contributions realised)	£	£	£	See Note 5
J	Outlays (including statutory fees + third party fee)	£	£	£	
K	Total cost of administration	£	£	£	H + I + J
L	Net realisation	£	£	£	G - K
M	Debt due to preferred creditors				
N	Debt due to ordinary creditors	£	£	£	
O	Debt due to postponed creditors	£	£	£	
P	Total debt due	£	£	£	M + N + O
Q	Dividend paid to preferred creditors	p/£	p/£	p/£	
R	Dividend paid to ordinary creditors	p/£	p/£	p/£	Note 6

Statements:

** I state that an interim dividend has not been paid to creditors in Year ___ (insert year number) for the following reason(s):

**I state that the expected final dividend is now: _____ (insert amount of new expected final dividend – Box P3) _ (p/£) and has varied from the dividend declared in my Form 3 statement dated _____ (insert date of signed Form 3 (Part 1)), for the following reason(s):

**I state that the expected final dividend is now _____ (insert amount of expected final dividend – Box P3) _ (p/£). This is less than 80% of the final dividend declared in my Form 3 statement dated _____ (insert date Form 3 (Part 1) signed).

I have attached the reason(s) for this change and detailed all the options that I have, as trustee, for finalising this trust deed, with the expected timeframe and final dividend for each option and my recommended course of action (see Note 7).

Creditors are invited to approve my recommended course action

Unless I receive, within 21 days of the date of this form 4, notification in writing from a majority in number, or not less than one third in value of creditors, that they object to my recommended action, it will be assumed that creditors support the recommended action and I will proceed to complete the administration of this protected trust deed in accordance with my recommendation.

** delete if not appropriate

Signed _____ (trustee)

Name _____ (trustee)

Date _____

Notes

1. Form 4 must be sent to: the debtor; all creditors who have acceded to, or are deemed to have acceded to, the protection of this trust deed and to the Accountant in Bankruptcy, no later than 6 weeks after the expiry of each one year period following the granting of the trust deed.
2. Record totals of all Form 4s submitted to date.
3. The total realisation from assets must exclude the value of any security and realisation costs.
4. If the final expected 'fixed administration fee' has increased, a copy of the creditors', or the Accountant in Bankruptcy's, approval to increase this fee, must be submitted with the form 4.
5. This fee must be calculated using the % figures declared in form 3 (Rows 2, 3 and 4).
6. Record the actual amount of any interim dividend paid in the one year period, the total amount of Interim Dividends paid to date and the total expected final dividend to be paid at the end of the protected trust deed.
7. Interim Dividends must be paid in month 24 of the trust deed and every __ months thereafter, if sufficient funds are available.
8. This information must be provided with Form 4, to all creditors who have acceded to, or who are deemed to have acceded to, the protection of this trust deed.

APPLICATION TO CREDITORS FOR DISCHARGE OF THE TRUSTEE OF A
PROTECTED TRUST DEED

The Protected Trust Deed (Scotland) Regulations 2013

AiB Reference Number:

Statement to creditors (see Note 1)

A trust deed was granted by

Insert debtor's name
Insert debtor's address

Town
County
Post Code

on _____ (insert date) conveying [(to the extent specified in section 5(4A) of the
Bankruptcy (Scotland) Act 1985)] *his/her estate to

me, (*insert insolvency practitioner's name*)
Insert business address

Town
County
Post Code

as trustee for the benefit of *his/her creditors generally

A sufficient proportion of the creditors acceded, or were treated as having acceded, to the
protection of this trust deed and it was registered as a protected trust deed in the register
of insolvencies on _____ (insert date)

Statement

The trustee states that

- the protected trust deed has ceased to be operative for the following reason(s)

- to the best of the trustee's knowledge the debtor has met *his/her
Obligations under this trust deed.

The final distribution of the debtor's estate was completed on:

A copy of the trustee's statement of realisation and distribution of the estate was sent to creditors on _____ (insert date) and is summarised below:

		Final Total	Expected (Form 3)	Variance (Col 1 - Col 2)	
A	Number of contributions in - gathered				
B	Total realisations from contributions	£	£	£	
C	Realisation from moveable assets	£	£	£	
D	Realisation from heritable assets	£	£	£	See Note 2
E	Total asset realisations	£	£	£	C + D
F	Total Bank interest	£			
G	Gross realisation	£	£	£	B + E + F
H	Trustee's remuneration taken (fixed administration fee)	£	£	£	See Note 3
I	Trustee's remuneration taken (% of assets and contributions realised)	£	£	£	See Note 4
J	Outlays (including statutory fees + Third Party fee paid)	£	£	£	
K	Total costs of administration	£	£	£	H + I + J
L	Net realisation	£	£	£	G - K
M	Debt due to preferred creditors	£	£	£	
N	Debt due to ordinary creditors	£	£	£	
O	Debt due to postponed creditors	£	£	£	
P	Total debts due	£	£	£	M + N + O
Q	Dividend paid to preferred creditors	p/£	p/£	p/£	
R	Dividend paid to ordinary creditors	p/£	p/£	p/£	$(L-M)/N \times 100$
S	Reversion to debtor	£			
T	Total funds consigned	£			

Statements

I state that the final dividend paid to creditors:

* is the same as the amount I expected to pay, as declared in the form 3 for this PTD.

* has varied from the amount of dividend I expected to pay, as declared in my Form 3 for this PTD, for the following reason(s):

I have granted the debtor *his/her discharge from this protected trust deed and completed and issued Form 5. The debtor is now discharged from all *his/her debts which were owed to the creditors who acceded, or were treated as having acceded, to the protection of this trust deed, with effect from: {insert date of discharge registered in register of insolvencies}.

or

I will not grant the debtor *his/her discharge from this protected trust deed and their debts and I have notified the debtor in writing of the fact and reasons for this decision. The debtor is liable to pay the balance of all debts owed to creditors at the date I am discharged as trustee.

Application

The trustee hereby applies to the creditors for *his/her discharge from office. (See Note 5)

Signed _____ (trustee)

Name _____ (trustee)

Date _____

* delete as appropriate

Notes

1. This form must be sent to all creditors who acceded, or who are treated as having acceded, to the protected trust deed not more than 28 days after the date on which the trustee makes the final distribution of the debtor's estate and at the same time, a copy must be sent to the Accountant in Bankruptcy.
2. Total realisation from assets should exclude the value of any security and realisation costs.
3. If the final total 'fixed administration fee' exceeds the expected fixed administration fee (Form 3) a copy of the creditors', or the Accountant in Bankruptcy's, approval to increase this fee, must be submitted with the Form 6.
4. This fee must be calculated using the % figures declared in Form 3 (Rows 2, 3 and 4).
5. The trustee will be discharged from office if a majority in value of creditors agree to the application. A creditor who does not respond within 14 days from the date of this Form is deemed to have agreed to the trustee's discharge.

TRUSTEE STATEMENT OF REALISATION AND DISTRIBUTION OF
ESTATE UNDER A PROTECTED TRUST DEED

The Protected Trust Deeds (Scotland) Regulations 2013

AiB Reference Number:

Statement (see Note 1)

A trust deed was granted by

Insert debtor's name
Insert debtor's address

Town
County
Post Code

on _____ (insert date) conveying [(to the extent specified in section 5(4A) of the
Bankruptcy (Scotland) Act 1985)] *his/her estate(s) to

me, (*insert insolvency practitioner's name*)
Insert business address

Town
County
Post Code

as trustee for the benefit of *his/her creditors generally

Averment

I confirm that

1. the creditors consented to my discharge as trustee on _____ (insert date)
2. the debtor's estate has been distributed in accordance with the information provided in form 6,*

or

the following is a revised statement of my final realisation and distribution of the debtor's estate.*

* Delete as appropriate

		Final Total	Expected (Form 3)	Variance (Col 1 – Col 2)	
A	Number of contributions in-gathered				
B	Total realisations from contributions	£	£	£	
C	Realisation from moveable assets	£	£	£	
D	Realisation from heritable assets (see note 3)	£	£	£	See Note 2
E	Total asset realisations	£	£	£	C + D
F	Total Bank interest	£			
G	Gross realisation	£	£	£	B + E + F
H	Trustee's remuneration taken (fixed administration fee)	£	£	£	See Note 3
I	Trustee's remuneration taken (% of assets and contributions realised)	£	£	£	See Note 4
J	Outlays (including statutory fees + Third Party fee paid)	£	£	£	
K	Total costs of administration	£	£	£	H + I + J
L	Net realisation	£	£	£	G – K
M	Debt due to preferred creditors	£	£	£	
N	Debt due to ordinary creditors	£	£	£	
O	Debt due to postponed creditors	£	£	£	
P	Dividend paid to ordinary creditors	p/£	p/£	p/£	$(L-M)/N \times 100$
Q	Amount paid to preferred creditors	p/£	p/£	p/£	
R	Total debts due	£	£	£	
S	Reversion to debtor	£			
T	Total funds consigned	£			

I request that my discharge as trustee is registered in the register of insolvencies.

Signed _____ (trustee)

Name _____ (trustee)

Date _____

Notes

1. This form must be completed and sent to the Accountant in Bankruptcy within 28 days of the date on which the trustee has received his or her discharge from the creditors, regardless of whether any funds were distributed to the creditors.
2. Total realisation from assets should exclude the value of any security and realisation costs.
3. If the final total 'fixed administration fee' exceeds the fixed administration fee (set out in form 3) a copy of the creditors', or the Accountant in Bankruptcy's, approval to increase this fee, must be submitted with form 6.
4. This fee must be calculated using the % figures declared in form 3 (Rows 2, 3 and 4).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the method for determining an appropriate amount of a living debtor's income to be paid to a trustee after sequestration of the debtor's estate, known as the "common financial tool" in the Bankruptcy (Scotland) Act 1985 ("the 1985 Act"), as amended by the Bankruptcy and Debt Advice (Scotland) Act 2014.

The Regulations also make a number of other amendments to related legislation in the Protected Trust Deeds (Scotland) Regulations 2013 ("the PTD Regulations").

The common financial tool is to be used in making debtor contribution orders under sections 32A to 32H of the 1985 Act, which fix the contribution which a debtor must pay from income received after sequestration for the benefit of creditors. Those orders replace income payment orders under section 32(2) of the 1985 Act. The common financial tool may also be taken into account on variation of an income payment order, though the sheriff may have regard to other factors too.

Regulations 3 and 4 provide for the common financial tool, providing for how income and expenditure of the debt is established by reference principally to the Common Financial Statement published by the Money Advice Trust (the "CFS").

The debtor's surplus income in excess of the lower of the debtor's expenditure, or the "trigger figures" which are part of the CFS for a reasonable amount of expenditure is the basis of the contribution, and an amount of reasonable expenditure may be allowed to the debtor which exceeds those trigger figures. Guidance is also to be set out by the Accountant in Bankruptcy on types of income and expenditure, verifying income and expenditure and money advisers' functions.

Supporting statements, explanation and evidence is required (regulation 4). The Accountant in Bankruptcy can in some cases related to debtor applications notify the Money Advice Trust where it appears money advisers have breached licence restrictions or repeatedly failed to advise in accordance with the CFS (regulation 5).

Regulations 6 to 10 make changes to the PTD Regulations arrangements to protect debtors entering into trust deed arrangements with their creditors from other creditors. Consequential changes are made for the introduction of the common financial tool under the powers in paragraph 5 of Schedule 5 to the 1985 Act (regulation 7), building on the fact that the PTD Regulations already require users to use the Common Financial Statement.

Other miscellaneous and minor amendments are made to the PTD Regulations, including to require trustees to seek a direction from the Accountant in Bankruptcy where creditors object to a recommended course of action where a trustee proposes a lower dividend in Form 4 submitted under the PTD Regulations (regulation 8(1)). A single valuation of specified heritable estate before a trust deed was granted is allowed as an outlay of the trust deed (regulation 9).

These Regulations do not apply to trust deeds granted before 1st April 2015 (regulation 11).

A Business and Regulatory Impact Assessment has been prepared for these Regulations. Copies can be obtained from the Accountant in Bankruptcy's website: <http://www.aib.gov.uk>.

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