

Draft Regulations laid before the Scottish Parliament under section 72(2) of the Bankruptcy (Scotland) Act 1985 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2016 No.

**INSOLVENCY
BANKRUPTCY
DEBT**

**The Protected Trust Deeds (Scotland)
Amendment Regulations 2016**

Made - - - - 2016

Coming into force - - 30th November 2016

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 72(1A) and paragraph 5 of schedule 5 of the Bankruptcy (Scotland) Act 1985⁽¹⁾ and all other powers enabling them to do so.

In accordance with sections 72(2) of that Act⁽²⁾, 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 Protected Trust Deeds (Scotland) Amendment Regulations 2016 and come into force on 30th November 2016.

(1) [1985 c.66](#) (“the 1985 Act”). The 1985 Act is repealed by the Bankruptcy (Scotland) Act 2016 ([asp 21](#); “the 2016 Act”), schedule 9, Part 1; by virtue of section 234(3)(a)(ii) and (b) of the 2016 Act the powers to make amendments under which these Regulations are made are not affected by that repeal in so far as they relate to the operation of the 1985 Act in relation to trust deeds executed before 30th November 2016. Section 72(1A) was inserted by the Bankruptcy and Debt Advice (Scotland) Act 2014 ([asp 11](#)), schedule 3, paragraph 34(a). Section 73(1) of the 1985 Act contains a definition of “prescribed” relevant to the 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](#)).

(2) Section 72(2) has been modified by paragraph 5(2) of schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010 ([asp 10](#)).

Amendment of forms for trust deeds executed on or after 28th November 2013 but before 30th November 2016

- 2.—(1) The Protected Trust Deeds (Scotland) Regulations 2013(3) are amended as follows.
- (2) In the schedule (forms to be used in connection with protected trust deeds)—
- (a) in column 2 of the table of forms(4), for the entry for Form 4 substitute “Trustee’s annual statement report on protected trust deed management”; and
 - (b) for—
 - (i) Form 4 (trustee’s statement of status of a protected trust deed)(5);
 - (ii) Form 5 (application for discharge of debtor);
 - (iii) Form 6 (application to creditors for discharge of the trustee of a protected trust deed)(6); and
 - (iv) Form 7 (trustee statement of realisation and distribution of estate under a protected trust deed)(7),substitute respectively Forms 4, 5, 6 and 7 set out in the schedule to these Regulations.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

(3) S.S.I. 2013/318, as amended by S.S.I. 2014/290 and S.S.I. 2015/149 and revoked by schedule 9, Part 2 of the 2016 Act, subject to savings in section 234(3)(a)(ii) of the Act.

(4) The table of forms was amended by S.S.I. 2014/290.

(5) Form 4 was substituted by S.S.I. 2015/149.

(6) Form 6 was substituted by S.S.I. 2014/290.

(7) Form 7 was substituted by S.S.I. 2014/290.

SCHEDULE

Regulation 2

Forms to be used in connection with protected trust deeds

Form 4

Regulation 21(2)

The Protected Trust Deeds (Scotland) Regulations 2013

Trustee's annual statement report on protected trust deed management

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 address

Town
County
Post Code

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

Insert insolvency practitioner's name
Insert business address

Town
County
Post Code

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

* delete as appropriate

I expect to obtain my discharge as trustee by _____ (insert date).

Statement of performance of protected trust deed (PTD):

		Actual in Year	Total to date (See Note 2)	Final Expected	
		Col 1	Col 2	Col 3	
A	Number of Contributions in-gathered				
B	Total realisation from contributions	£	£	£	
C	Other miscellaneous funds	£	£	£	Note 3
D	Total realisation from moveable assets	£	£	£	
E	Total realisation from heritable assets	£	£	£	Note 4

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F	Total realisation from assets	£	£	£	D + E
G	Total bank interest	£	£	£	
H	Gross realisation	£	£	£	B + C + F + G
I	Trustee's remuneration taken (fixed administration fee)	£	£	£	See Note 5
J	Trustee's remuneration taken (% of assets and contributions realised)	£	£	£	See Note 6
K	Outlays (including statutory fees + third party fee)	£	£	£	
L	Total cost of administration	£	£	£	I + J + K
M	Net realisation	£	£	£	H - L
N	Debt due to preferred creditors	£	£	£	
O	Debt due to ordinary creditors	£	£	£	
P	Debts due to postponed creditors	£	£	£	
Q	Total debt due	£	£	£	N + O + P
R	Dividend paid to preferred creditors		p/£	p/£	p/£
S	Dividend paid to ordinary creditors		p/£	p/£	p/£ Note 7

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 S3) _ (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 S3) _ (p/£). This is less than 80% of the final dividend declared in my Form 3 statement dated _____ (insert date Form 3 (Part 1) signed).

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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 8).

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. Record the details of miscellaneous funds ingathered from e.g. third party payments, realisation of shares, investments, intellectual property, PPI, gratuitous alienation, unfair preference etc.
4. Total realisation from assets should exclude the value of any security and realisation costs.
5. 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.
6. This fee must be calculated using the % figures declared in Form 3 (Rows 2, 3, 4 and 5).
7. 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.
8. Interim Dividends must be paid no later than 6 weeks after month 24 of the trust deed and every 6 months thereafter, if sufficient funds are available.
9. 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.

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Form 5

Regulation 24(1)(b)

Application for discharge of debtor (see Note 1)

The Protected Trust Deeds (Scotland) Regulations 2013

AiB Reference Number:

Statement

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/its estate to

me, Insert insolvency practitioner's name
Insert business address

Town
County
Post Code

as trustee for the benefit of *his/her/its 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)

I certify that to the best of my knowledge:

- i. the debtor has met *his/her/its obligations under the trust deed; and
- ii. the debtor has co-operated with the administration of the trust.

Any notice of inhibition under paragraph 2 of schedule 5 of the Bankruptcy (Scotland) Act 1985 has been recalled or has expired.

* delete as appropriate

I expect that the final distribution of the debtor's estate will be completed on: _____
(insert date)

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Protected Trust Deeds (Scotland) Amendment Regulations 2016 No. 399

I expect that the final realisation and distribution of the estate will be as summarised:

		Actual Totals	Expected Totals (Form 3)	Actual Expected Final Totals	
A	Number of contributions in - gathered				
B	Total realisations from contributions	£	£	£	
C	Other miscellaneous funds	£	£	£	See Note 2
D	Realisation from moveable assets	£	£	£	
E	Realisation from heritable assets	£	£	£	See Note 3
F	Total asset realisations	£	£	£	D + E
G	Total bank interest	£	£	£	
H	Gross realisation	£	£	£	B + C + F + G

I apply for the debtor's discharge to be registered in the register of insolvencies.

Signed _____ (trustee)

Name _____ (trustee)

Date _____

Notes

1. This form must be immediately sent to the Accountant in Bankruptcy when the trustee wishes the debtor's discharge to be registered in the register of insolvencies.
2. Record the details of miscellaneous funds ingathered from e.g. third party payments, realisation of shares, investments, intellectual property, PPI, gratuitous alienation, unfair preference etc.
3. Total realisation from assets should exclude the value of any security and realisation costs.
4. An application for discharge is not appropriate where the trustee does not consider that the debtor has met his/her/its obligations in terms of the trust deed, or if the debtor has failed to co-operate with the administration of the trust.
5. The debtor's discharge will not discharge the debtor from any liability arising after the date on which the trust deed was granted or any debt which would be excluded from a discharge under section 55(2) of the Bankruptcy (Scotland) Act 1985. Furthermore, the discharge does not affect the rights of secured lenders or the right to recover any debt arising from a student loan.

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Form 6

Regulation 25(2)

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/its estate to

me,

Insert insolvency practitioner's name
Insert business address

Town
County
Post Code

as trustee for the benefit of *his/her/its 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 terminated for the following reason(s)

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

The final distribution of the debtor's estate was completed on: _____
(insert date)

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Protected Trust Deeds (Scotland) Amendment Regulations 2016 No. 399

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	Other miscellaneous funds	£	£	£	See Note 2
D	Realisation from moveable assets	£	£	£	
E	Realisation from heritable assets	£	£	£	See Note 3
F	Total asset realisations	£	£	£	D + E
G	Total bank interest	£			
H	Gross realisation	£	£	£	B + C + F + G
I	Trustee's remuneration taken (fixed administration fee)	£	£	£	See Note 4
J	Trustee's remuneration taken (% of assets and contributions realised)	£	£	£	See Note 5
K	Outlays (including statutory fees + Third Party fee paid)	£	£	£	
L	Total costs of administration	£	£	£	I + J + K
M	Net realisation	£	£	£	H – L
N	Debt due to preferred creditors	£	£	£	
O	Debt due to ordinary creditors	£	£	£	
P	Debt due to postponed creditors	£	£	£	
Q	Total debts due	£	£	£	N + O + P
R	Dividend paid to preferred creditors	p/£	p/£	p/£	
S	Dividend paid to ordinary creditors	p/£	p/£	p/£	(M-N)/O 100
T	Statutory interest paid	£			
U	Reversion to debtor	£			
V	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 Protected Trust Deed (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):

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I have granted the debtor *his/her/its discharge from this protected trust deed and completed and issued Form 5. The debtor is now discharged from all *his/her/its 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/its 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 6)

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. Record the details of miscellaneous funds ingathered from e.g. third party payments, realisation of shares, investments, intellectual property, PPI, gratuitous alienation, unfair preference etc.
3. Total realisation from assets should exclude the value of any security and realisation costs.
4. 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.
5. This fee must be calculated using the % figures declared in Form 3 (Rows 2, 3, 4 and 5).
6. 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.

Form 7

Regulation 25(8)

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 the definition of "trust deed" in section 5(4A) of the Bankruptcy (Scotland) Act 1985] *his/her/its estate to

me, Insert insolvency practitioner's name
Insert business address

Town
County
Post Code

as trustee for the benefit of *his/her/its 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:*

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Protected Trust Deeds (Scotland) Amendment Regulations 2016 No. 399

* 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	Other miscellaneous funds	£	£	£	See Note 2
D	Realisation from moveable assets	£	£	£	
E	Realisation from heritable assets (see note 3)	£	£	£	See Note 3
F	Total asset realisations	£	£	£	D + E
G	Total bank interest	£			
H	Gross realisation	£	£	£	B + C + F + G
I	Trustee's remuneration taken (fixed administration fee)	£	£	£	See Note 4
J	Trustee's remuneration taken (% of assets and contributions realised)	£	£	£	See Note 5
K	Outlays (including statutory fees + Third Party fee paid)	£	£	£	
L	Total costs of administration	£	£	£	I + J + K
M	Net realisation	£	£	£	H – L
N	Debt due to preferred creditors	£	£	£	
O	Debt due to ordinary creditors	£	£	£	
P	Debt due to postponed creditors	£	£	£	
Q	Total debts due	£	£	£	N + O + P
R	Dividend paid to preferred creditors	p/£	p/£	p/£	
S	Dividend paid to ordinary creditors	p/£	p/£	p/£	(M-N)/O x 100
T	Statutory interest paid	£			
U	Reversion to debtor	£			
V	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. Record the details of miscellaneous funds ingathered from e.g. third party payments, realisation of shares, investments, intellectual property, PPI, gratuitous alienation, unfair preference.
3. Total realisation from assets should exclude the value of any security and realisation costs.
4. 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.
5. This fee must be calculated using the % figures declared in Form 3 (Rows 2, 3, 4 and 5).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend Forms 4, 5, 6 and 7 used in relation to protected voluntary trust deeds entered into by debtors for the benefit of their creditors which were executed on or after 28th November 2013 but before 30th November 2016 prescribed in the Protected Trust Deeds (Scotland) Regulations 2013 (“the PTD Regulations”).

The PTD Regulations are revoked by schedule 9 of the Bankruptcy (Scotland) Act 2016, but continue to apply to these trust deeds under section 234(3) of that Act.

These Regulations make minor changes to Forms, 4, 5, 6 and 7 for trust deeds executed before 30th November 2016 to bring them into line with the forms for trust deeds executed on or after that date governed by the new Regulations made under Part 14 of the Bankruptcy (Scotland) Act 2016 (see section 162 of that Act) in the Protected Trust Deeds (Forms) (Scotland) Regulations 2016 (S.S.I. 2016/[]).

These changes do not apply to any trust deed granted before 28th November 2013 by virtue of regulation 31 of the PTD Regulations.

Regulation 26 of the PTD Regulations provides for the electronic delivery of notices or documents.

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>.