

Draft Regulations laid before the Scottish Parliament under section 225(4)(a) of the Bankruptcy (Scotland) Act 2016 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2016 No.

INSOLVENCY

BANKRUPTCY

DEBT

The Protected Trust Deeds (Forms) (Scotland) 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 166(2)(b) and (c), 169, 170(1)(b) and (e), 174(2) and (3), 175(1), 181(2), 183(1)(a) and (b), 184(1)(b) and (2)(a), 186(3) and (9), 194(1) and (3) and 225(2) of the Bankruptcy (Scotland) Act 2016(1) and all other powers enabling them to do so.

In accordance with section 225(4)(a) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Protected Trust Deeds (Forms) (Scotland) Regulations 2016 and come into force on 30th November 2016.

(2) In these Regulations “the Act” means the Bankruptcy (Scotland) Act 2016.

Forms

2.—(1) The forms set out in the schedule are prescribed for the purposes of the provisions of the Act referred to in the third column of the table in the schedule.

(2) In section 170(1)(d)(ii) of the Act (documents to be sent to creditors), for “style and format of the Common Financial Statement” substitute “form prescribed for that purpose by the Protected Trust Deeds (Forms) (Scotland) Regulations 2016(2)”.

(1) 2016 asp 21 (“the 2016 Act”). Section 228(1) of the 2016 Act contains a definition of “prescribed” relevant to the powers under which these Regulations are made.
(2) Form 2A in the schedule to these Regulations.

(3) The definition of “the Common Financial Statement” in section 193 of the Act (interpretation of Part 14 of the Act: voluntary trust deeds for creditors) is repealed.

(4) At the end of section 171(1) of the Act (registration for protected status), insert—

“(i) a statement by the trustee, in the form prescribed for that purpose in the Protected Trust Deeds (Forms) (Scotland) Regulations 2016(3), that—

(i) the documents and statements required under paragraphs (a) to (h) of this subsection accompany the statement, and

(ii) the conditions set out in sections 164 to 170 have been met”.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

SCHEDULE

Regulation 2(1)

List of forms to be used in connection with protected trust deeds

<i>Form</i>	<i>Purpose</i>	<i>Relevant provision of the Act</i>
1	Notice in the register of insolvencies by trustee under a trust deed for the benefit of creditor	Section 169
1A	Consents required for exclusion of a secured creditor from a protected trust deed	Section 166(2)(b) and (c)
1B	Agreement in respect of heritable property	Section 175
2	Statement of claim by creditors in a trust deed	Section 170(1)(b)
2A	Income and Expenditure	Section 170(1)(d)(ii)
3	Trust deed protection proposal and trustee's application	Section 170(1)(e) and (i) and section 183(1)(a) and (b)
4	Trustee's annual statement report on protected trust deed management	Section 181(2)
4A	Employee's payment instruction to employer	Section 174(2)
4B	Trustee's payment instruction to employer	Section 174(3)
4C	Payment variation instruction to employer	Section 174(2) and (4)
5	Application for discharge of debtor	Section 184(1)(b) and (2)(a)
6	Application to creditors for discharge of the trustee of a protected trust deed	Section 186(2) and (3)
7	Trustee statement of realisation and distribution of estate under a protected trust deed	Section 186(8) and (9)

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Protected Trust Deeds (Forms) (Scotland) Regulations 2016 No. 398

Form 1

Notice in register of insolvencies by trustee under trust deed for the benefit of creditors

Bankruptcy (Scotland) Act 2016
Section 169

The trust deed may become a Protected Trust Deed unless, within 5 weeks of the date of registration of this notice in the register of insolvencies, a majority in number or no fewer than one third in value of the creditors notify the trustee in writing that they object to the trust deed and do not wish to accede to it. Briefly, this has the effect of restricting the rights of non-acceding creditors to do diligence (i.e. enforce court decrees for unpaid debts) against the debtor and confers certain protection upon the trust deed from being superseded by the sequestration of the debtor's estate.

NOTES	TRUST DEED FOR CREDITORS BY
(a) Insert name of Debtor	(a) <input style="width: 100%;" type="text"/>
(b) Insert date of birth of Debtor	(b) <input style="width: 100%;" type="text"/>
(c) Insert name, designation and address of Debtor, any previous or known as names, previous known addresses within the past 5 years, and if he/she/it trades under a different name, state also his/her/its trading names and addresses	A trust deed has been granted by (c) <input style="width: 100%; height: 60px;" type="text"/>
(d) Insert date of granting of trust deed	on (d) ___ / ___ / ___ (dd/mm/yyyy) conveying (to the extent specified in section 167 (1) of the Bankruptcy (Scotland) Act 2016) his/her/its estate to me
(e) Insert name and address of Trustee	(e) <input style="width: 100%; height: 100px;" type="text"/> as trustee for the benefit of his/her/its creditors generally.

If a creditor wishes to object to the trust deed to prevent it becoming a protected trust deed (see notes above on the objections required for that purpose) notification of that objection must be delivered in writing or by electronic communication to the trustee within 5 weeks of the publication of this notice in the register of insolvencies.

Signature of the Trustee _____ Date _____

Form 1A

**Consents required for exclusion of a secured creditor from
a protected trust deed**

Bankruptcy (Scotland) Act 2016

Section 166(2)(b) and (c)

Part 1 (to be completed by debtor)

Insolvency practitioner's details

	Insert insolvency practitioner's name
	Insert insolvency practitioner's address
	Town
	County
	Postcode

Debtor's dwelling-house to be excluded in terms of section 166(2)(a) of and the definition of trust deed in section 228(1) of the Bankruptcy (Scotland) Act 2016

	Insert debtor's name
	Address
	Town
	County
	Postcode

I, [insert debtor's name], authorise [insert insolvency practitioner's name] to act on my behalf with creditor(s) holding security over the above dwelling-house in order to obtain the secured creditor's consent to exclude the dwelling-house from a trust deed for the benefit of my creditors, a draft of which is attached.

Signature of debtor _____ Date _____

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Part 2 (to be completed by secured creditor)

Creditor's details

	Insert creditor's name
	Insert creditor's address
	Town
	County
	Postcode

Description of security

Description	
Reference	

Particulars of debt to be excluded

Amount	£
Description	
Reference	

I confirm that the above described debt is the whole debt in respect of which I hold security over the debtor's dwelling-house described in Part 1.

I agree not to claim under the trust deed for any of the debt in respect of which my security is held ("the excluded debt").

I understand that if the excluded debt is excluded from a trust deed granted by the debtor in terms of the draft trust deed attached:

- The terms of repayment of the excluded debt are not affected.
- I will not vote in, or in respect of, the trust deed in relation to the excluded debt. Nor will I receive a dividend under the trust deed in relation to the excluded debt. But my voting and dividend rights in relation to a debt other than the excluded debt are not affected.
- If the trust deed is granted protected status, I am not entitled to—
 - (a) make a claim under the trust deed in respect of any of the excluded debt;
 - (b) do diligence against the assets covered by the trust deed; nor
 - (c) during the subsistence of the protected trust deed, petition for the sequestration of the debtor.
- Any discharge of the debtor after the trust deed achieves protected status does not discharge the debtor in respect of any liability for the excluded debt.

My agreement applies to a trust deed entered into by the debtor in terms of the draft trust deed attached, provided that the trust deed achieves protected status within 3 months of today's date.

Signed _____

(creditor in respect of excluded debt)

Date _____

Form 1B

Agreement in respect of heritable property

Bankruptcy (Scotland) Act 2016
Section 175

PTD Reference number:

Debtor's name

Address of property:

Trustee's name:

Trustee's Address:

I {insert trustee's name} agree that, on payment of the amount of £ {insert agreed amount} by {insert agreed date for full payment}, I will:

- not realise the property at {insert property address}, which is owned, or part owned, by {insert debtor's name}, which has been conveyed to me under the terms of the trust deed granted by {insert debtor's name}, and
- relinquish my interest in this property, and
- Recall any notice of inhibition, which I have caused to be recorded in the register if inhibitions and adjudications, in respect of this property*

*Trustee to delete if not applicable

Signed (Trustee):

Date:

Signed (Witness)

Date:

Name and status of Witness:

I, [insert debtor's name] agree to pay my trustee {insert trustee's name} the sum of £ {insert amount} as full payment to relinquish the trustee's interest in my property at {insert property address}. I agree that the total amount of £ {insert amount} will be paid as follows:

{insert dates and amounts of any contributions that will be paid}
{insert details of any lump sums to be paid and dates of expected payment}
{details of who will pay any contributions or lump sum(s) that will be paid}.

I understand that if I fail to comply with these agreed terms for payment of £ {insert amount} by {insert date}, my trustee may withdraw from this agreement and my property may be sold [and I may not receive my discharge from my trust deed].

Signature (debtor)

Date

Signed (Witness)

Date:

Name and status of Witness:

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Form 2

Statement of claim by creditors in trust deed

Bankruptcy (Scotland) Act 2016
Section 170(1)(b)

This form must be completed and sent to the trustee

<p><i>Notes</i></p> <p><i>(a) Insert name and address of debtor</i></p> <p><i>(b) Insert name, address and website (if applicable) of creditor</i></p> <p><i>(c) Insert name, address, email address and phone number of the authorised person acting on behalf of creditor</i></p> <p><i>(d) Insert details of any other proceedings in which a claim has been or is being submitted in respect of the debt, or part of the debt, and the amount claimed</i></p> <p><i>(e) Insert total amount claimed in respect of all the debts, the particulars of which are set out overleaf</i></p> <p>It is important that you keep the trustee of this trust deed informed of any changes to your contact details. Failure to do so may mean the trustee is unable to contact you if he/she wants to make a payment to you from this trust deed.</p>	<p>Trust deed of:</p> <p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(d)</p> <p>(e) I submit a claim of £ _____ In the above trust deed and certify that the particulars of the debt or debts making up that claim, which are set out overleaf, are true, complete and accurate, to the best of my knowledge and belief</p> <p>Signed _____ Creditor*/person acting on behalf of creditor</p> <p>Date _____</p>
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PARTICULARS OF EACH DEBT	
<p><i>Notes</i></p> <p><i>A separate set of particulars should be set out in respect of each debt.</i></p> <p>1. <i>Describe briefly the debt, giving details of its nature, the date when it was incurred and when payment became due.</i></p> <p>Attach documentary evidence of the debt:</p> <p>2. <i>Insert total amount of the debt, showing separately the principal amount and any interest which is due on the debt as at the date of the trust deed being granted. Interest may only be claimed if the creditor is entitled to it.</i></p> <p><i>Show separately the VAT on the debt and indicate whether the VAT is being claimed back from HM Revenue and Customs.</i></p> <p>If documentary evidence of your debt is not provided, your claim may be rejected.</p> <p>3. <i>Specify and give details of the nature of any security held in respect of the debt including –</i></p> <p><i>(a) the subjects covered and the date on which it was granted:</i></p> <p><i>(b) the value of the security:</i></p> <p><i>(c) whether the creditor is surrendering or undertakes to surrender the security.</i></p> <p><i>"Security" is defined for the purposes of the Bankruptcy (Scotland) Act 2016 as meaning "any security, heritable or moveable, or any right of lien, retention or preference".</i></p> <p>4. <i>In the case of a Member State liquidator creditor, specify and give details of</i></p>	<p>1. Particulars of debt (including reference number)</p> <p>2. Amount of debt</p> <p>3. Security of debt</p> <p>4. Underlying claims</p>

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<p><i>underlying claims in respect of which the creditor is claiming as creditor.</i></p> <p><i>Attach documentary evidence of debts</i></p> <p>5. <i>In calculating the total amount of the claim, a secured creditor must deduct the value of any security as estimated by the creditor, unless the creditor surrenders it (see note 3(c) above).</i></p> <p>6. <i>Insert creditor's bank details</i></p>	<p>5. Total amount of the debt</p> <p>6. Account name _____ Sort Code _____ Account number _____</p>
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This form must be completed and sent to the trustee

Form 2A

Income and Expenditure

Bankruptcy (Scotland) Act 2016
Section 170(1)(d)(ii)

Debtor's Name:
A/B Reference Number:

Number in Household:	
Number of Children (under 14):	
Number of Children (14+):	
Number of Vehicles in Household	

Salary and Wages

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

Total

Pensions

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

Total

Other income

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

Total

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Benefits

Type of benefit	Amount (£)	Frequency
Jobseeker's Allowance		
Income Support		
Working Tax Credits		
Child Tax Credits		
Child Benefit		
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		
Other		

Total

Phone	Amount (£)	Frequency
Home Phone		
Mobile Phone(s)		
Other		

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		
Other		

Total

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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		
Other		

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

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Total Income	<input type="text"/>
Total Expenditure	<input type="text"/>
Surplus Income	<input type="text"/>

Statements:

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

Debtor Signature _____ Date

I confirm that in accordance with section 171(1)(h) of the Bankruptcy (Scotland) Act 2016, 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

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Form 3

Trust deed protection proposal and trustee's application

Bankruptcy (Scotland) Act 2016
Section 170(1)(e) and (i) and 183(1)(a) and (b)

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**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 Firm	
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 (section 183(1)(a) and (b))

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 other miscellaneous funds	%	
5	Trustee's % fee for realisation of contributions	%	
6	Third party fee(s)	£	See Note 2

I expect to obtain my discharge as trustee by {insert date}

I expect the following realisation for the benefit of creditors.

		TOTAL	
A	Number of contributions		
B	Total value of Contributions	£	
C	Other miscellaneous funds	£	See Note 3
D	Total realisations from moveable assets	£	
E	Total realisations from heritable assets (excluding any security)	£	
F	Gross realisation	£	B+C+D+E
G	Projected trustee's fee for realising assets and contributions	£	See Note 4
H	Total trustee's fee	£	1 + G
I	Outlays (including statutory fees)	£	
J	Total cost of administration	£	H + I + 6
K	Net realisation	£	F-J
L	Debt due to preferred creditors	£	
M	Debt due to ordinary creditors	£	
N	Debt due to postponed creditors	£	
O	Total debt due to creditors	£	L+M+N
P	Dividend to ordinary creditors	p/£	(K-L)/M x 100

Note 1 – Insert the amount of the total fixed fee for the administration of the PTD to the date of trustee's discharge.

Note 2 – details of any third party to be employed or engaged 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.

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Note 3: Record the details of miscellaneous funds ingathered from e.g. third party payments, realisation of shares, investments or intellectual property etc.

Note 4: Total of fees calculated using % figures recorded in Rows 2, 3,4 and 5.

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 sections 164, 165, 166(2) (where it applies) and 167 to 170 of the Bankruptcy (Scotland) Act 2016 have been met, and
- has registered the trust deed in the register of insolvencies.

Signed (trustee)

Name (trustee)

Date

PART 2

TRUST DEED PRESENTED FOR PROTECTION

To the Accountant in Bankruptcy

Statement

The creditors who have objected in writing do not constitute a majority in number, or 1/3 or more in value of the creditors in relation to the protection of the trust deed of

{insert debtor's name and address}.

I enclose all documents and statements in accordance with section 171(1)(a) to (h) of the 2016 Act.

I confirm that the conditions set out in sections 164 to 170 of the 2016 Act have been met.

I apply for the registration of this trust deed in the register of insolvencies.

Signed	(trustee)
Name	(trustee)
Date	

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Form 4

Trustee's annual statement report on protected trust deed management

Bankruptcy (Scotland) Act 2016
Section 181(2)

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.

Form 4A

Employee's Payment Instruction to Employer

Bankruptcy (Scotland) Act 2016
Section 174(2)

AiB Reference number:
PTD Reference number:

Employee's instruction to employer

Employer's name and address:

Employee's payroll number:

Employee's name:

Address:

I, [insert employee's name] authorise [insert employer's name] to deduct the sum of £ [insert amount] from my earnings on each pay day and pay this amount, as soon as reasonably practicable, to the trustee of my protected trust deed [insert name, of trustee].

Deductions should be made until otherwise advised.

It is your duty under Section 174(5) of the Bankruptcy (Scotland) Act 2016, to comply with this instruction.

You are entitled, by virtue of Section 174(8)(a) of the Bankruptcy (Scotland) Act 2016, to charge a fee equivalent to the fee chargeable under section 71 of the Debtors (Scotland) Act 1987 and deduct that fee from the balance due to [insert debtor's name].

Deductions should be paid to:

Name of trustee:
Name of trustee's firm:
Trustee's business address:

Trustee's bank details:

Bank name and address:
Sort Code:
Account number:
Quote reference number (if applicable):

Employee's Signature _____ 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 (Forms) (Scotland) Regulations 2016 No. 398

Form 4B

Trustee's Payment Instruction to Employer

Bankruptcy (Scotland) Act 2016
Section 174(3)

AiB Reference number:
PTD Reference number:

Trustee's instruction to employer

Employer's name and address:

Employee's payroll number:

Employee's name:

Address:

I, [insert trustee's name], confirm that [insert employee's name] has failed to pay his/her required contributions to his protected trust deed and [insert employee's name] has also failed to provide the instruction required under Section 174(2) of the Bankruptcy (Scotland) Act 2016.

Therefore, I, [insert trustee's name], instruct [insert employer's name], in accordance with Section 174(3) of the Bankruptcy (Scotland) Act 2016, to deduct the sum of £ [insert amount] from the earnings of [insert employee's name] on each pay day and pay this amount to me, as soon as reasonably practicable.

Deductions should be made until otherwise advised.

It is your duty under Section 174(5) of the Bankruptcy (Scotland) Act 2016, to comply with this instruction.

You are entitled, by virtue of Section 174(8)(a) of the Bankruptcy Scotland Act 2016, to charge a fee equivalent to the fee chargeable under section 71 of the Debtors (Scotland) Act 1987 and deduct that fee from the balance due to [insert debtor's name].

Deductions should be paid to:

Name of trustee:

Name of trustee's firm:

Trustee's business address:

Trustee's bank details:

Bank name and address:

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Protected Trust Deeds (Forms) (Scotland) Regulations 2016 No. 398*

Sort Code:
Account number:
Quote reference number (if applicable):

Trustee's Signature _____ 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 (Forms) (Scotland) Regulations 2016 No. 398

Form 4C

Payment variation instruction to employer

Bankruptcy (Scotland) Act 2016
Section 174(4)

AiB Reference number:
PTD Reference number:

Employee's instruction to employer

Employer's name and address:

Employee's Payroll number:

Employee's name:

Address:

I, [insert employee's name] authorise [insert employer's name] to vary the sum of £ [insert amount] currently being deducted from my earnings to £[insert new amount], with effect from my next pay day, and for the new amount to be paid, as soon as reasonably practicable after each pay day thereafter, to the trustee of my protected trust deed [insert name, of trustee].

Deduction of this new amount should be made until [insert expected end date or state "until further notice"].

It remains your duty under Section 174(5) of the Bankruptcy (Scotland) Act 2016, to comply with this instruction.

You are entitled, by virtue of Section 174(8)(a) of the Bankruptcy (Scotland) Act 2016, to charge a fee equivalent to the fee chargeable under section 71 of the Debtors (Scotland) Act 1987 and deduct that fee from the balance due to [insert debtor's name].

Deductions should be paid to:

Name of trustee:

Name of trustee's firm:

Trustee's business address:

Trustee's bank details:

Bank name and address:

Sort code:

Account number:

Quote reference number (if applicable):

Employee's Signature _____ date _____

Form 5

Application for discharge of debtor (see Note 1)

Bankruptcy (Scotland) Act 2016
Section 184(1)(b) and (2)(a)

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 167(1)(a) of the Bankruptcy (Scotland) Act 2016 *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 3 of schedule 4 of the Bankruptcy (Scotland) Act 2016 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 (Forms) (Scotland) Regulations 2016 No. 398

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 145(3) of the Bankruptcy (Scotland) Act 2016. Furthermore, the discharge does not affect the rights of secured lenders or the right to recover any debt arising from a student loan.

Form 6

Application to creditors for discharge of the trustee of a protected trust deed

Bankruptcy (Scotland) Act 2016
Section 186(2)

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 228(1) of the Bankruptcy (Scotland) Act 2016)] *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 (Forms) (Scotland) Regulations 2016 No. 398

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):

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.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Protected Trust Deeds (Forms) (Scotland) Regulations 2016 No. 398

Form 7

Trustee statement of realisation and distribution of estate under a protected trust deed

Bankruptcy (Scotland) Act 2016
Section 186(9)

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 228(1) of the Bankruptcy (Scotland) Act 2016] *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:*

* Delete as appropriate

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Protected Trust Deeds (Forms) (Scotland) Regulations 2016 No. 398

		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/£	$(M-N)/O \times 100$
T	Statutory interest paid	£			
U	Reversion to debtor	£			
V	Total funds consigned	£			

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Protected Trust Deeds (Forms) (Scotland) Regulations 2016 No. 398

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 set out the forms to be used in relation to protected voluntary trust deeds entered into by debtors for the benefit of their creditors governed by Part 14 of the Bankruptcy (Scotland) Act 2016 (“the Act”).

The Regulations come into operation on 30th November 2016 and apply to those trust deeds executed on or after that date (in accordance with sections 162 and 234(3) of the Act).

Part 14 of the Act makes provision about how trust deeds become protected from action by creditors, the consequences of a trust deed being granted that status, the rights of creditors, the discharge of the debtor and trustee from the trust deed, and the administration of trust deeds.

Together with these regulations, that Part consolidates with modifications, the Protected Trust Deeds (Scotland) Regulations 2013 ([S.S.I. 2013/318](#)) as amended. The numbering of the forms used in those Regulations has been retained.

Regulation 2(2) and (3) correct an error in the Act and regulation 2(4) an omission from Form 3 in [S.S.I. 2013/318](#).

Section 187 of the Act provides for the electronic delivery of notices or documents authorised or required under Part 14 of the Act in certain circumstances relevant to the forms set out in these Regulations.

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>.