

# **The Accountant in Bankruptcy**

## **Notes for Guidance of Trustees under Protected Trust Deeds**

This Guidance describes the general functions of The Accountant in Bankruptcy and trustees in relation to their responsibilities regarding Protected Trust Deeds (PTDs) which were granted on or after 28 November 2013.

It also contains details of the legislation that applies to PTDs and provides details for trustees and their third party agents, of the processes and procedures that The Accountant in Bankruptcy considers should be applied during the administration of PTDs.

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## **Notes for Guidance of Trustees under Protected Trust Deeds**

### **1. General Principles**

#### **1.1 The Accountant in Bankruptcy**

- 1.1.1 The Accountant in Bankruptcy (The Accountant) is a statutory officer appointed by the Scottish Ministers under Section 1 of the Bankruptcy (Scotland) Act 1985, as amended (the “1985 Act”).
- 1.1.2 The Accountant is independent as regards the exercise of her statutory functions, although her directions and determinations can generally be appealed to a sheriff. Scottish Ministers, after consultation with the Lord President of the Court of Session, may give the Accountant general directions as to the performance of her functions in relation to all bankruptcies and PTDs, but they may not give directions in respect of any particular case.
- 1.1.3 The Accountant may employ members of her staff to carry out administrative functions on her behalf. The Accountant’s staff will be referred to as AiB, throughout these Notes for Guidance.
- 1.1.4 The Accountant also provides Notes for Guidance for trustees in bankruptcies.
- 1.1.5 The bankruptcy Notes for Guidance are available on the Accountant in Bankruptcy website at [www.aib.gov.uk](http://www.aib.gov.uk) and will be referred to in these PTD Notes for Guidance as the principal Notes for Guidance”. This document is an additional set of notes dealing specifically with matters affecting trustees under PTDs.

#### **1.2 Trust Deeds**

- 1.2.1 A trust deed is a voluntary arrangement entered into by a debtor to convey assets to a trustee for the benefit of their creditors generally. A voluntary trust deed is not binding on any creditor who does not consent to its terms.
- 1.2.2 For the purposes of the 1985 Act, a trust deed must convey the debtor’s whole estate, with the exception of property which would not vest in a trustee in sequestration, to their trustee, see section 5(4A) of the 1985 Act, with the exception of any dwelling house that it is excluded under section 5(4A)(b)(ii) of the 1985 Act.
- 1.2.3 The Accountant will not expect an Insolvency Practitioner to agree to be appointed as a trustee of a trust deed of a living individual and which is to be proposed for protection, if it can be demonstrated that the total contributions, calculated using the format of the Common Financial Statement, over the proposed period of the PTD are sufficient to repay the total debts (including interest) advised by the debtor prior to the granting of the trust deed.

#### **1.3 Protected Trust Deeds**

- 1.3.1 A trust deed that meets specified conditions set out in sections 2 and 3 of these Notes may be protected. A PTD is binding on all creditors. However, a creditor who was not notified of the trust deed or who objected to the terms of the deed within the 5 week notification period can petition for the debtor’s sequestration at any point within the 5 week period – the sheriff may award sequestration if this is deemed to be in the best interests of creditors. The petition can be lodged at any time if the creditor avers that the provision for the

distribution of the estate is prejudicial to him or any class of creditor. The sheriff may award sequestration in these circumstances if the sheriff considers that the creditor's averment is correct.

1.3.2 The rules governing PTDs granted on and after 28 November 2013 are set out in legislation-

- Schedule 5 to The Bankruptcy (Scotland) Act 1985, as amended,
- The Protected Trust Deeds (Scotland) Regulations 2013 (The 2013 Regulations)

1.3.3 The previous provisions continue to apply to any trust deed granted before 28 November 2013.

#### **1.4 Trustees under PTDs**

1.4.1 The trustee must be a person who is qualified to act as an insolvency practitioner. Rules on the qualifications of insolvency practitioner are set out in Section 390 of the Insolvency Act 1986.

1.4.2 The trustee must not hold an interest opposed to the general interest of the debtor's creditors.

#### **1.5 Supervision of trustees under PTDs**

1.5.1 The supervisory authority of the Accountant is set out in section 1A of the 1985 Act. The supervisory functions include the supervision of the performance by trustees under PTDs of the functions conferred on them by the 1985 Act and the 2013 Regulations.

1.5.2 Details of the Accountant's supervisory role are set out in section 7 below.

#### **1.6 The EU Regulation**

1.6.1 The "EU Regulation" is Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings. The EU Regulation is intended to counter "forum shopping", i.e. to avoid incentives for the insolvent parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position.

1.6.2 The trustee under a PTD is required to state whether the EU Regulation applies to the trust deed. The EU Regulation will apply if the debtor's main centre of interests is in any EU member state (other than Denmark). A copy of the EU Regulation is available on the Insolvency Service website at

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000R1346:EN:HTML>

1.6.3 If the EU Regulation applies to a PTD, information about the insolvency proceedings in another EU member state will be recorded in the RoI (see Annex D below).

1.6.4 The trust deed will be main proceedings for the purposes of the EU Regulations if the debtor's centre of main interest is in the UK and will be territorial proceedings if the debtor's centre of main interest is in another member state but the debtor has an establishment in the UK and the trust deed has been granted prior to the opening of any main proceedings elsewhere.

1.6.5 An EU member state liquidator may petition a sheriff for conversion of a PTD into bankruptcy, see section 59A of the 1985 Act.

## **1.7 The Sheriff**

1.7.1 The 2013 Regulations provide rights of application and appeal to a sheriff. Any reference to a sheriff means the sheriff who would have had jurisdiction in a petition for bankruptcy at the date on which the trust deed was granted.

## **1.8 When these Notes apply**

1.8.1 These Notes only apply to trust deeds granted by debtors on, or after, 28 November 2013.

1.8.2 The 1985 Act, as in force immediately before 1st April 2008, and the Protected Trust Deeds (Scotland) Regulations 2008, as amended, continues to apply to any trust deed granted before that date.

## **2. Preparation of Trust Deeds**

### **2.1 Who can grant a Trust Deed?**

2.1.1 A trust deed can be granted by a living individual, or by any of the entities that are entitled to apply for their own bankruptcy under Section 6 of the 1985 Act. A trust deed can be granted by a partnership or a limited partnership, but not by a limited company or limited liability partnership.

2.1.2 A trust deed must only be granted for a single estate. A trust deed granted on behalf of a partnership is granted in respect of the estate of that partnership. Insolvent partners must grant separate trust deeds if they wish to include their personal assets and liabilities. A trust deed granted by a partnership does not protect the partners from bankruptcy for their personal debts nor discharge them personally from liability for partnership debts.

2.1.3 A couple cannot grant a joint trust deed. This includes a married couple, civil partnership, or those in a similar relationship even if there is estate held in common with the other person.

2.1.4 A trust deed cannot be granted by a debtor if they –

- are or have been bankrupt and their trustee has not been discharged, (Regulation 4(2)(a) of the 2013 Regulations), or
- are repaying debt through an approved debt payment programme under the Debt Arrangement Scheme, (Regulation 4(2)(b) of the 2011 DAS Regulations)
- have total amount of debts of less than £5,000.

### **2.2 Initial Contact**

2.2.1 The trustee must ensure –

- that the debtor is interviewed, either in person or by telephone, by the insolvency practitioner or by a suitably qualified member of their staff, before the debtor grants the trust deed

- that the debtor understands that the insolvency practitioner must maintain their independence
- that the debtor understands that a trust deed is an insolvency procedure
- that the debtor understands that they must disclose full information about all their assets and financial circumstances
- that a trust deed is an appropriate debt relief option in the debtor's circumstances
- that the debtor understands that they may lose their home if they are an owner occupier  
and
- that the debtor understands that a trust deed must be administered for the benefit of creditors.

### **2.3 Pre- trust deed work by third party Agents**

2.3.1 Any debt due to a third party (agent) for work completed prior to the granting of a trust deed, may not be claimed by the trustee as an outlay of the PTD, Regulation 23(6) of the 2013 Regulations refers. This applies regardless of when the invoice for this work is raised and submitted to the trustee, even if this is not until a date after the granting of the trust deed.

### **2.4 Advice to debtors**

2.4.1 Regulation 7(3) of the 2013 Regulations, requires that the insolvency practitioner must advise the debtor that granting a trust deed may –

- lead to bankruptcy
- cause problems with future credit
- mean that their house may be sold and they might have to move home, unless it is excluded under section 5(4A)(b)(ii) of the 1985 Act (see section 2.8)
- require the debtor to relinquish other property which they may own
- require payment of contributions
- affect business interests
- affect employment prospects  
and
- become public information.

2.4.2 The insolvency practitioner and the debtor must sign a joint statement confirming that this advice has been given.

2.4.3 There is no statutory form of statement and insolvency practitioners are free to use their own format to record this information. An optional form of statement is provided at Annex A.

## 2.5 Debt Advice and Information Package

2.5.1 Before a trust deed is granted the insolvency practitioner must provide the debtor with a copy of the debt advice and information package which is referred to in section 10(5) of the Debt Arrangement and Attachment (Scotland) Act 2002.

<http://www.legislation.gov.uk/asp/2002/17/section/10>

2.5.2 Before agreeing to be appointed as the trustee of a trust deed, the trustee must be satisfied that a trust deed will benefit the debtor's creditors in general. Section 5(4A) of the 1985 Act refers.

## 2.6 Liabilities

2.6.1 The debtor must provide information about their debts. Prior to the trust deed being granted, the trustee is required to take reasonable steps to assess the debtor's current total liability and confirm they exceed £5,000. The trustee should also obtain the contact details of all creditors prior to the initial circular being issued to creditors.

2.6.2 Debtors should be advised that they must disclose details of all their creditors and that a notice will be recorded in the public register of insolvencies (RoI), which brings the trust deed to the attention of any other creditors. The debtor should be advised that any member of the public will be able to view these details.

## 2.7 Assets

2.7.1 The debtor must provide information about all their assets, regardless if the trustee does not propose to realise an asset. The trustee must ensure that they identify and circularise details about all the debtor's assets which are conveyed as a result of the trust deed being granted and provide a reason why any asset is not to be realised in full during the administration of the trust deed.

2.7.2 Debtors should be advised that deliberate misinformation about, or non-disclosure of assets, may be an offence under common law.

2.7.3 It is particularly important to ensure that the debtor fully understands –

- that the trustee can seek to realise the full value of any assets which they own

and

- that this includes any equity in the debtor's family home, unless the dwelling house is excluded under section 5(4A)(b)(ii) of the 1985 Act (see section 2.8)

2.7.4 The PTD will exclude any assets that would not vest in a trustee in bankruptcy.

2.7.5 The following types of asset are not conveyed to the trustee under a PTD –

- assets which are held on trust for a third party;

- assets which are exempt from attachment under the Debt Arrangement and Attachment (Scotland) Act 2002. See sections 6.10.1-2 of the Accountant's Principle Notes for Guidance of Trustees;
- most personal and occupational pension plans. See sections 6.19.1-2 of the Accountant's Principal Notes for Guidance of Trustees.

2.7.6 The insolvency practitioner must record all excluded assets.

2.7.7 When an asset of the debtor is conveyed to the trustee, the trustee must seek to realise the full value of the asset unless the trustee can demonstrate that sufficient funds can be realised from other sources, in order to maximise the dividend payable to creditors.

## **2.8 Exclusion of a dwellinghouse**

2.8.1 The Home Owner and Debtor Protection (Scotland) Act 2010 amended the definition of trust deed in the 1985 Act in order to include trust deeds which exclude the debtor's dwellinghouse, this being defined as the debtor's sole or main residence over which there is a secured loan.

2.8.2 A trust deed will be able to meet the statutory definition if it excludes secured creditors who have agreed not to claim under the trust deed.

2.8.3 It is expected that consideration will be given to excluding the dwellinghouse if –

- a secured creditor holds a security over it
- there is no, very little, or negative equity in the property.

2.8.4 If the secured debt is excluded from the trust deed

- the terms of repayment are not affected
- the secured lender will not vote in the trust deed, nor receive a dividend
- the debtor will not be discharged from their secured debts.

2.8.5 To consider if a dwelling house should be excluded, the trustee must obtain the following information -

- a current valuation of the property
- a current redemption figure(s)

2.8.6 This information will be required in order to allow the trustee to assess if it is reasonable to consider excluding the secured debt, or if action will be required to realise equity in a property.

2.8.7 Where there is no security over a dwellinghouse, no exclusion will be possible.

2.8.8 Following consultation with the debtor, if they wish to proceed with the exclusion of the dwellinghouse, they must consent to the trustee acting on their behalf with any secured

creditor(s) holding a security over the dwellinghouse. This consent is obtained by the debtor signing Part 1 of Form 1A of the 2013 Regulations.

2.8.9 The secured creditor(s) must then agree not to make a claim for any of the debt in respect of which the security is held.

2.8.10 To obtain this consent the trustee must send the Form 1A to the secured creditor(s), together with copies of the valuation and redemption and request that they agree to the exclusion by signing Part 2 of the Form 1A.

2.8.11 If agreement is obtained the trust deed must contain the following statements:

- that subject to any exclusion under section 5(4A)(b) of the 1985 Act, that all the debtor's estate (other than property listed in section 33(1) of the 1985 Act or which would be excluded from vesting in a trustee of a sequestrated estate under any other provision of that Act or other enactment) is conveyed to the trustee
- that the debtor agrees to convey to the trustee for the benefit of creditors generally any estate, wherever situated, which is acquired by the debtor for a period of 4 years beginning with the date the trust deed is granted and would have been conveyed to the trustee if it had been part of the debtor's estate on the date on which the trust deed was granted
- details of any secured creditor who has agreed not to claim under the trust deed under section 5(4A)(b)(ii) of the 1985 Act

and

- details of the debt in respect of which a secured creditor has agreed not to claim.

## **2.9 Agreement in respect of a heritable property**

2.9.1 This section does not apply to the debtor's dwelling house if it has been excluded from the trust deed by virtue of section 5(4A)(b)(i) of the Act.

2.9.2 The trustee can agree not to realise any property that has been conveyed to him by virtue of the trust deed and to relinquish his interest in such a property and recall any notice of inhibition, on condition that either the debtor:

1. pays an amount, by a specified date, as determined by the trustee;
2. pays additional monthly contributions after the end of the 48 month payment period, for a period specified by the trustee,

and

3. co-operates with the trustee.

2.9.3 An agreement between the trustee and debtor to pay funds to remove the trustee's interest in their property must be recorded on Form 1B, as recorded in the Schedule to the 2013 Regulations.

2.9.4 The trustee must determine the amount and period of the contributions to be paid, based on a professional valuation of the heritable property and the redemption figures for any debt secured on the property as at the date of granting of the trust deed. A chartered surveyor

or other suitably qualified third party should complete the valuation. The valuation documentation, including detail of the work undertaken to provide the property valuation must be available if requested by creditors.

2.9.5 If the debtor does not comply with the Form 1B agreement, the trustee may withdraw from the agreement and sell the property.

2.9.6 If the property is sold, regardless of the circumstances that lead to the sale, the trustee will receive the full amount of available equity and the amount agreed and recorded in Form 1B no longer applies.

2.9.7 A copy of Form 1B is to be sent to the Accountant and every creditor known to the trustee.

## **2.10 Contributions**

2.10.1 The trust deed must state that the debtor will be expected to make a contribution from their income at regular intervals for a minimum period of 48 months, unless an alternative arrangement has been agreed – for example a deed based on asset realisation only.

2.10.2 The trustee may agree a shorter period, if it can be demonstrated that sufficient funds (from assets realisation supplemented by contributions) will be paid to allow payment of the debtor's debts (including interest accrued at the date the trust deed is granted) that have been substantiated through the adjudication of claims submitted by the creditor. In these circumstances, provision should also be made for the payment of statutory interest accruing from the date the trust deed was granted and the costs of administering the PTD.

2.10.3 The debtor must provide information about their income and expenditure. The trustee will assess a reasonable level of contribution based on calculation of the debtor's individual income and expenditure and any excess income they may have. This assessment must take into consideration the style and format of the Common Financial Statement, which is a recognised tool for determining acceptable amounts for a debtor's expenditure on items, and services and for determining the amount of contribution that the debtor can pay.

2.10.4 Trustees should exercise care when taking account of any other parties' income when determining if the debtor can pay a contribution, as there is no legal liability on any third party to contribute to the debtor's PTD.

2.10.5 No contribution can be taken from a debtor's Universal Credit or Social Security benefits, but the trustee may take account of such payments when determining the amount of a contribution. The contribution will be derived from the element of income that is in excess of the benefits received. Regulation 21(4) of the 2013 Regulations refers.

2.10.6 If funds are offered and paid by a third party, this cannot be relied on, or guaranteed to creditors.

2.10.7 A trustee may not accept payment from a third party if the third party is also in a debt relief or debt management programme and such a contribution may prejudice payments made to benefit their creditors.

2.10.8 Contributions should not be sought from any Scottish Welfare Fund grant paid to a debtor. These Grants are awarded only in order to avoid serious damage, or risk to the health or safety of the recipient or their family and should not be taken by the trustee for payment of historic debts.

#### 2.10.9 The debtor should be advised that

- an adequate level of contributions may be required in order to ensure that the trust deed makes an acceptable proposal for creditors
- the level of contributions can be varied up and down if the debtor's circumstances change
- the period of contributions can be extended or shortened if the debtor's circumstances change or they miss any contribution payments
- if the debtor cannot pay a contribution they must contact their trustee immediately
- if they fail to pay their contributions, their trustee may notify their employer and have the contribution deducted from their wages.
- if they fail to pay their contributions, their trustee may apply for their bankruptcy.

2.10.10 The level of contributions, frequency and the number of contributions to be made must be specified and agreed by the debtor, before the trust deed is granted.

2.10.11 If the total amount of contributions to be paid into the trust deed over 48 months will equal, or exceed, the total amount of the debtor's debts including interest, at the date the trust deed was granted, the trust deed cannot become protected. Regulation 8(4) of the 2013 Regulations refers.

#### 2.11 Time to think

2.11.1 The debtor must be given a copy of the debt advice and information package which is referred to in section 10(5) of the Debt Arrangement and Attachment (Scotland) Act 2002:

<http://www.legislation.gov.uk/asp/2002/17/section/10>

2.11.2 This advises the debtor of all alternative debt relief and debt management options and of the consequences of signing a trust deed and the effects if a trust deed does not become protected.

2.11.3 The trustee and debtor must sign a statement to the effect that the trustee has fulfilled all their duties, as specified in regulation 7 of 2013 Regs.

2.11.4 The debtor must be given adequate time to consider the consequences and alternatives before signing a trust deed.

2.11.5 The insolvency practitioner must be confident that the debtor has understood the advice they have provided. Insolvency practitioners should bear in mind that the debtor's anxiety about their immediate financial circumstances may affect their ability to think through the longer term consequences of a trust deed. Allowing the debtor time to think is a good practice that may avoid future complaints.

## **2.12 Contributions paid by an employer**

2.12.1 If a debtor fails to pay two consecutive contribution payments to their trustee from their income, the trustee can request that the debtor instructs their employer to pay the required contribution payments from the debtor's earnings, direct to the trustee.

2.12.2 The debtor will give this instruction to their employer using Form 4A, as recorded in the Schedule to the 2013 Regulations.

2.12.4 If a debtor refuses to complete Form 4A, the trustee may direct the debtor's employer to pay the required contribution payments from the debtor's earnings, direct to him. The trustee will give this instruction to the employer using Form 4B, as recorded in the Schedule to the 2013 Regulations.

2.12.5 If, at any time, the amount of the contributions paid direct by the employer to the trustee is to be varied, only the debtor may instruct the employer to vary the amount using Form 4C, as recorded in the Schedule to the 2013 Regulations.

2.12.6 If the debtor refuses to complete and submit Form 4C to his employer, the trustee must consider if this non-cooperation is sufficient grounds to end the PTD and either, not discharge the debtor and/or submit a petition for the debtor's bankruptcy.

2.12.7 Where an employer, without good cause, fails to make a payment due under an instruction the employer will be liable to pay the amount that should have been paid, direct to the trustee and he will not be entitled to recover these funds from the debtor.

2.12.8 The employer may charge a fee for making payments from the debtor's income to the trustee. The fee can be deducted from the balance of earnings due to the debtor, post payment of the contribution to the trustee. The amount of the fee can be the equivalent to the fee chargeable under the terms of Section 71 of the Debtors (Scotland) Act 1987.

<http://www.legislation.gov.uk/ukpga/1987/18/section/71>

2.12.9 The trustee must, without delay, notify the employer in writing, if the instruction to pay is to be recalled and specify when the last contribution should be paid to the trustee.

## **3. Dissemination to Creditors**

### **3.1 Register of Insolvencies (RoI)**

3.1.1 After the debtor has delivered the trust deed to the trustee, the trustee must, without delay, submit to AiB, preferably utilising the electronic portal system (ASTRA), a completed Form 1 notice, as recorded in the Schedule to the 2013 Regulations, to be published by registration in the RoI.

### **3.2 Documents to be sent to creditors**

3.2.1 Not later than seven days after the publication of the notice in the RoI, the trustee must send the following documents to every known creditor, other than a secured creditor who has consented in terms of regulation 6(c) of the 2013 Regulations –

- a copy of the trust deed

- a copy of the Rol notice, and
- a Form 2, as recorded in the Schedule to the 2013 Regulations, to enable the creditor to submit a claim.

### 3.2.2 A statement of the debtor's affairs which must contain the following –

- a list of the debtor's assets and liabilities
- a statement of the debtor's income and expenditure, at the date the trust deed was granted, in the style and format of the Common Financial Statement
- a statement as to the extent of any of the debtor's assets or income which are not conveyed to the trustee and are therefore, excluded from the PTD
- the number and value of contributions expected from the debtor
- a statement about the EC Regulation (see section 1.6 above)
- a statement whether the creditors are expected to receive a dividend, and if they are, the expected amount of dividend to be paid
- where applicable, the effect of any exclusion of the dwelling house may have on the dividend they may receive
- the rights of the creditor to see copies of valuations held by the trustee which relate to an asset of the debtor and statements showing the amount(s) owed by the debtor under a security and documents recording the income of the debtor
- A copy of any agreement on heritage, Form 1B
- an explanation of the preconditions of protection
- an explanation of the consequences of protection
- details of any PTD under which, in the 6 months preceding publication of the notice in the Register of Insolvencies, the debtor has been discharged or refused a letter of discharge in terms of regulation 24(1) or (8) of the 2013 Regulations
- where a secured creditor's consent has been obtained in terms of regulation 6(c) of the 2013 Regulations, a statement containing a valuation made by a third party of the debtor's dwellinghouse (or part thereof) which is excluded from the trust deed and the amount of the debt owed, in respect of the security
- A statement in Part 1 of Form 3, as recorded in the Schedule to the 2013 Regulations, detailing the trustee's anticipated realisations from the PTD.

3.2.3 Creditors must be provided with an explicit assessment of each debtor's income and expenditure and the resultant contribution, even where the overall household position has been considered. This will ensure that the trust deed was only granted for a single estate and based on a debtor's income and expenditure. The Accountant will require this evidence to be provided when considering registration of protected status.

- 3.2.4 This does not prevent creditors from being presented with a full picture of household income and expenditure where this is necessary. These situations can be particularly complex and in certain circumstances, the rationale for assessing an individual's income and expenditure can be illustrated most appropriately in the context of the overall household situation.
- 3.2.5 However, if the trustee does not present creditors with an accurate calculation of the debtor's individual financial status, the trust deed will not have met the condition of regulation 10 of the 2013 Regulations and may therefore, not be protected and registered in the Rol.
- 3.2.6 There is no statutory form of statement of affairs and trustees are free to use such format as seems best to them. A suggested form of statement is provided at [Annex B](#) to these Notes.

### **3.3 Objections**

- 3.3.1 The date of publication in the Register of Insolvencies is the first day of the "relevant period" for creditor responses. The relevant period is five weeks and if, for example, the advertisements is made on a Tuesday, it will expire at midnight on the following fifth Monday. Any creditor who does not respond within this period is treated as having acceded to the trust deed.
- 3.3.2 The trust deed may be protected if, at the end of the relevant period, the total of creditors who object –
- do not constitute a majority in number of the creditors
  - or
  - do not constitute one third or greater in value of creditors
- 3.3.3 The value of creditors is determined by the value of their claims; see section 73(3) of the 1985 Act. This does not require that the creditors claim be submitted within the relevant period.
- 3.3.4 If there are insufficient objections to prevent the protection of a trust deed at the end of the relevant period, any creditor who was sent the documents referred to in section 3.2 above but did not respond, will be deemed to have acceded to the trust deed.
- 3.3.5 Where a request has been made to exclude the dwellinghouse and the creditors agree to protect the trust deed the dwellinghouse will not be conveyed to the trustee.
- 3.3.6 Where a request has been made to exclude the dwellinghouse and the creditors refuse to protect the trust deed the trust deed will remain unprotected and the trustee should consider what steps are necessary and appropriate to be taken in those circumstances.

### **3.4 Registration of the trust deed**

- 3.4.1 As soon as reasonably practical after the end of the period of five weeks from the date of publication in the Register of Insolvencies and in any event no later than 4 weeks after the expiry of the relevant period, the trustee must send to AiB –

- a copy of the trust deed (signed, witnessed and dated)
- a copy of any agreement obtained regarding the exclusion of a secured lender and a copy of Form 1A from each secured creditor **or** a statement to the fact no such agreement has been obtained, as referred to in section 2.8 above
- a statement by the trustee that any creditor objections received in writing do not constitute a majority in number or one third or more in value.
- a copy of the statement of the debtor's affairs sent to creditors and referred to in section 3.2 above (Annex B or similar) regulation 10(1)(d) of the 2013 Regulations
- a copy of the joint statement referred to in section 2.4 above (Annex A or similar) regulation 7(3)(c) of the 2013 Regulations
- a copy of any agreement on property referred to in section 2.9 above (Form 1B) regulation 15(2) of the 2013 Regulations
- the statement of anticipated realisations and application for registration in the register of insolvencies, Part 1 and Part 2 to Form 3 in the Schedule to the 2013 Regulations
- a statement that the trustee has assessed the debtor's expenditure against the trigger figures published as part of the Common Financial Statement, to include an explanation if the trigger figures have been exceeded

3.4.2 The trust deed will not be protected if it is not presented to AiB for protection within the statutory four week period. If the trust deed is not protected for any reason, and the trustee wishes the trust deed to be protected, they may apply to the sheriff for a direction to re-submit a Form 1 to the AiB for publication in the Rol,

and

re-present the trust deed for protection within four weeks following the end of the five week relevant period.

3.4.3 If a trust deed is presented for a second time, as a result of an action, or inaction, of the trustee, the cost of re-presenting the trust deed may not be paid out of funds held in the trust deed estate without a direction being sought from the sheriff in accordance with Regulation 28.

### **3.5 Date of Protection**

3.5.1 On receipt of every document which the trustee must send to AiB, AiB will consider if:

- the conditions set out in regulations 4 to 10 of the 2013 Regulations have been met,

and

- the debtor's recorded income and expenditure is appropriate, having regard to the Common Financial Statement and any explanation that has been given by the trustee, as to how and why an income and/or expenditure figure has been determined.

- 3.5.2 If AiB is satisfied that all the required conditions have been met, the AiB will register the trust deed in the Rol.
- 3.5.3 A trust deed shall have protected status from the date that the trust deed is registered by AiB in the Rol.
- 3.5.4 If AiB is not satisfied that a trust deed meets all the conditions for protection, the trust deed will not be registered in the Rol and therefore, not protected.
- 3.5.5 AiB will notify the trustee of the decision to registration of the trust deed in the Rol, giving the reason(s) why the trust deed will not be protected. AiB will notify this decision within 7 days of receiving all relevant information from the trustee.
- 3.5.6 It is the responsibility of the trustee to inform the debtor and all known creditors of AiB's decision to either; register and protect the trust deed, or to refuse to protect the trust deed. This must be completed within 7 days of receipt of AiB's decision.
- 3.5.7 The trustee, debtor and/or creditors may appeal to the sheriff AiB's decision to refuse to protect a trust deed where that decision has been on the grounds that the Accountant is not satisfied that the expenditure allowed or the contribution from income is appropriate.
- 3.5.8 If on appeal under Regulation 27(1)(a), a sheriff rules that the trust deed does meet the conditions for protection, the Accountant will register the trust deed in the Rol, with effect from the date the trust deed was first presented to the Accountant for registration, or a date specified by the sheriff.

#### **4. Effects of Protection**

##### **4.1 Application for bankruptcy**

- 4.1.1 From the date on which the trust deed becomes protected, until the date of termination of the trust deed, the debtor cannot apply for their own bankruptcy (sequestration). See regulation 12(1)(b) of the 2013 Regulations.

##### **4.2 Debt Arrangement Scheme**

- 4.2.1 From the date on which the trust deed is granted, until the date of termination of the trust deed, the debtor cannot apply for a Debt Payment Programme under the Debt Arrangement Scheme. See regulation 21(2) (b) of the Debt Arrangement Scheme (Scotland) Regulations 2011.

<http://www.legislation.gov.uk/ssi/2011/141/regulation/21/made>

##### **4.3 Time to Pay**

- 4.3.1 A time to pay direction or a time to pay order ceases to have effect from the date on which the trust deed was granted, see Section 12 of the Debtors (Scotland) Act 1987.

<http://www.legislation.gov.uk/ukpga/1987/18/section/12>

## **4.4 Diligence**

4.4.1 Granting a trust deed constitutes apparent insolvency. On protection of a trust deed, any earnings arrestment, current maintenance arrestment or conjoined arrestment order (subject to regulation 13(3) of the 2013 Regs) ceases to have any effect. It is not competent for a creditor to execute and try and enforce an earnings arrestment or make a conjoined arrestment order, after the date of protection.

Regulation 13 of the 2013 Regulations refers.

## **4.5 Sequestration petition - qualified creditors**

4.5.1 A creditor who notifies the trustee of their objection to the trust deed becoming protected before the end of the relevant period (see section 3.3 above), or a creditor who has not been notified about the trust deed may, during the relevant period, petition a sheriff for the debtor to be made bankrupt.

4.5.2 A creditor who has objected to the terms of the trust deed can petition for bankruptcy after this, only if they aver that the provision for distribution of the estate is or is likely to be unduly prejudicial to a creditor or class of creditors, or if the trustee refuses to discharge the debtor under the trust deed.

## **4.6 Secured Creditors**

4.6.1 Where the secured creditor(s) has agreed to the exclusion of the dwellinghouse they will not be entitled to:

- make a claim in respect of the secured debt;
- do diligence against assets covered by the trust deed;

or

- petition for the debtor's sequestration.

## **4.7 Petition by the trustee**

4.7.1 The trustee can petition a sheriff for a debtor to be made bankrupt under section 5(2)(b)(iv) of the 1985 Act if –

- the debtor has failed to comply with –
  - an obligation under the trust deed, or
  - a reasonable requirement or instruction of the trustee

and

- the trustee avers that bankruptcy is in the best interest of creditors.

## **5. Administration**

### **5.1 Contributions**

5.1.1 In the determination of the amount of contribution the trustee may seek from a debtor, the trustee should assess the debtor's expenditure against the trigger figures for expenditure as published as part of the Common Financial Statement.

5.1.2 A trustee can only access the Common Financial Statement if they register and obtain a licence to do so. A licence can be obtained, free of charge, direct from the Money Advice Trust website at:

<http://www.cfs.moneyadvicetrust.org/>

5.1.3 A trust deed will not get protected status if the expected total amount of debtor's contributions over the payment period (48 months – calculated using 48 monthly payments or the equivalent thereof) will be equal to, or greater than, the total amount of the debtor's ordinary debts (including interest to date of granting the trust deed). Regulation 8(4) of the 2013 Regulations refers. In calculating the amount of the debtor's contribution from income, to determine if the total contributions over the payment period will be equal to, or greater than, the total amount of the debtor's ordinary debts (including interest to date of granting the trust deed), the trustee must use the whole of the debtor's surplus income in the calculation.

5.1.4 No contribution can be sought out of any Universal Credit, social security benefit, tax credit or Scottish Welfare Fund grant that is received by the debtor, but that the value of these benefits and credits may be taken into consideration in determining whether the debtor can afford to pay a contribution out of any other income.

5.1.5 The trustee should review the debtor's income and expenditure regularly, at least annually. If the debtor's income increases, or expenditure decreases, the level of contribution should be increased proportionately. If the debtor's circumstances change, it may be necessary to vary the amount of any contribution or the period over which contributions are payable.

### **5.2 Assets**

5.2.1 Where the dwellinghouse has not been considered for exclusion, a professional valuation of any property should be carried out as soon as practicable before the trust deed is presented to creditors for protection.

5.2.2 The cost of a valuation of any property completed before the granting of a trust deed cannot be claimed as an outlay of the trust deed.

5.2.3 The trustee must be satisfied that they have obtained current valid information regarding the outstanding amounts of all secured loans.

5.2.4 The trustee must reach an agreement with the debtor on how equity in a property will be realised during the period of the PTD. If this agreement involves the payment of sum at an agreed date or through contributions that will be taken based on an agreed amount of equity, this agreement is to be recorded using Form 1B and Part 1 of Form 3 to the Schedule to the 2013 Regulations. The equity figure used to calculate the sum realised is "frozen" provided that the debtor complies with the agreement that has been reached and documented on the Form 1B. This agreement ceases to apply if the property is sold.

- 5.2.5 A trustee must be satisfied of the available equity to be realised from a property, prior to the initial circular being issued to creditors. The trustee should provide information to creditors in the circular explaining the valuation basis used in relation to property.
- 5.2.6 If the debtor does not comply with the terms of the agreement recorded on Form 1B, it is the responsibility of the trustee to take any appropriate action to realise the equity in the debtor's property, in order to maximise the dividend payable to creditors in general.
- 5.2.7 If the trustee is required to sell a property, the trust estate is entitled to receive the full amount of equity realised from the sale, regardless of the circumstances that have resulted in the sale of the property.
- 5.2.8 The trustee should not allow a property to be relinquished back to the debtor, if it is calculated that there is equity which, if realised, will generate an increase in dividend payment to creditors, unless the trustee can demonstrate why it is not cost effective to realise the equity.
- 5.2.9 The Accountant recommends that the trustee agrees with the debtor how he will realise the equity in the property of a debtor as early as possible. This is in line with the guidance for bankruptcy (see section 6.11.5 of the Notes for Guidance for Trustees).
- 5.2.10 Where a dwelling house has been excluded and property prices rise, or indeed if equity is held in the property from the outset, and the debtor sells the property during the term of the trust deed the full amount of equity released will be conveyed to the trustee. This should be narrated as part of the agreement on Form 1B.

### **5.3 Powers relating to Section 40 of the Bankruptcy (Scotland) Act 1985**

- 5.3.1 The Homeowner and Debtor Protection (Scotland) Act 2010 extends the provisions of Section 40 of the 1985 Act, in relation to the family home, to trustee's acting under a trust deed. See sections 6.11 of the Accountant's Principal Notes for Guidance for Trustees.
- 5.3.2 Before commencing proceedings to obtain the authority of a sheriff under section 40(1)(b) of the 1985 Act the trustee must give notice of the proceedings to the local authority in whose are the home is situated. This notice should be given on Form 24 of the Bankruptcy (Scotland) Amendment Regulations 2010.

### **5.4 Unfair Preferences etc.**

- 5.4.1 The trustee under a PTD or the creditor of a debtor, who has granted a trust deed which has become protected, is entitled to challenge an unfair preference, a capital sum on divorce or a gratuitous alienation under the same rules applying to bankruptcy. See section 4.10 – 4.12 of the principal Notes for Guidance.

### **5.5 Claims**

- 5.5.1 Creditors should submit claims on Form 2 of the 2013 Regulations. The trustee should encourage known creditors to claim and where necessary issue a reminder in respect of outstanding claims. However, it is the creditor's responsibility to submit a claim.
- 5.5.2 The trustee will be required to adjudicate on all creditors' claims prior to payment of an interim or final dividend.

## **5.6 Dividend Payments**

5.6.1 If the trustee has sufficient funds from the debtor's estate, he must pay an interim dividend to creditors after 24 months from the date the trust deed was granted and every six months thereafter (the dividend period).

5.6.2 An interim dividend must be paid when after taking account of:

- the trustee's fees and outlays to date,
- an allowance has been made for any future contingencies,
- there are funds left to pay a minimum of 5p/£ to creditors on adjudicated claims which have been accepted.

5.6.3 If an interim dividend can be paid:

- it must be paid within six weeks after the end of the first 24 month period of the PTD,  
and
- within six weeks after every subsequent six months, beginning with the end of the previous dividend period.

Regulation 16 of the 2013 Regulation refers.

5.6.4 Regulation 21 allows a debtor or creditor to request an audit within 2 weeks after receipt of the trustee's annual accounts. Where a dividend will be payable and the timing corresponds with the statement, the trustee should allow for the 14 day audit request period to lapse when issuing the annual statement to allow any dividend to be paid before the end of the 6 week period.

## **5.7 Fee payable to the trustee**

5.7.1 The trustee of a PTD is entitled to a fixed fee for the full administration of a PTD and an additional fee, based upon a percentage of the total assets and contributions that the trustee has realised during the period of the PTD. Regulation 23 of the 2013 Regulations refers.

5.7.2 The amount of the fixed fee and the percentage figure, upon which the additional fee will be calculated, must be recorded on Form 3, Part 1 and circulated to creditors during the relevant five week period and then submitted to AiB, with Part II of Form 3, when the trust deed is presented for protection.

5.7.3 The trustee may claim as an outlay of the PTD, any audit fee charged by the Accountant during the administration of the PTD.

5.7.4 The trustee may not claim as an outlay of a PTD, the cost of any work undertaken prior to the granting of the trust deed irrespective of when the invoice for this work is submitted to the trustee. Any debt due to a third party for such work does not rank higher than any other creditor's in the PTD.

## **5.8 Increasing the trustee's fixed fee**

- 5.8.1 In the event of an unforeseen circumstance, the trustee can seek approval for an increase in their fixed fee.
- 5.8.2 To obtain approval, the trustee must first notify all known creditors of the reason why an increase is required to their fixed fee and the amount that they wish to increase their fee by.
- 5.8.3 The trustee must receive the approval of a majority in value of the notified creditors, to have permission to increase their fee. Creditors should respond to the request for approval within 21 days of the date the request is issued.
- 5.8.4 If the trustee does not get the required approval from creditors and a majority of creditors in value have not notified the trustee that they refuse to approve the increase in fee, the trustee may ask the Accountant to approve their fee increase. In considering this the Accountant shall consider the number of creditors based on adjudicated and accepted claims.
- 5.8.5 The trustee must be able to demonstrate to the Accountant that the fee increase is for work that could not be foreseen when the trustee originally completed the Form 3. The Accountant shall only approve an increase in the fixed fee where matters could not be reasonably foreseen by the trustee at the date of the trust deed being signed. Factors including instances of debtor's defaulting on contribution payments or other instances of non-compliance or routine matters in relation to the administration of a PTD will not be regarded as issues that could not be reasonably foreseen. An increase in the fixed fee shall not be agreed in those circumstances.
- 5.8.6 The Accountant will decide if the fee increase can be granted and the amount of any increase.
- 5.8.7 If the trustee is unhappy with the Accountant's final decision on their application to increase their fee, they may seek a direction from a sheriff, to instruct the Accountant to approve the requested fee increase. Regulation 28 of 2013 Regulations refers.

## **5.9 Preferred Debts**

- 5.9.1 Any debt that would be preferred under the 1985 Act in a bankruptcy should be treated as preferred under a PTD, so that the PTD does not prejudice the interest of any class of creditors.

## **5.10 Lloyd's Insurance Debts**

- 5.10.1 Trustees should note that regulation 33(7) of the Insurers (Reorganisation and Winding Up) Regulations 2004 as modified by regulation 40(11) of the Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005, requires that Schedule 5 to the 1985 Act should be read as if, after paragraph 4, there is included paragraphs 4A and 4B if an underwriting member or former member of the Society incorporated by Lloyd's Act 1871 grants a trust deed for creditors in Scotland. Paragraphs 4A and 4B are as follows:

"4A. Whether or not provision is made in any trust deed, where such a trust deed includes a composition in satisfaction of any insurance debts of a member or former member and a distribution to creditors of some or all of the assets of that member or former member in the course of or with a view to meeting obligations of his insurance business carried on at

Lloyd's, the trustee may not provide for any insurance debt to be paid otherwise than in priority to such of his debts as are not insurance debts or preferred debts within the meaning of section 51(2).

4B For the purposes of paragraph 4A,

(a)“insurance debt” has the meaning it has in the Insurance (Reorganisation and Winding Up) Regulations 2004; and .

(b)“member “ and “former member” have the meaning given in regulation 2(1) of the Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005 .”.”

5.10.2 The trustee may not provide for any “insurance debt” (as defined in regulation 2 of the Insurers (Reorganisation and Winding Up) Regulations 2004) to be paid otherwise than in priority to such of his debts as are not insurance debts or preferred debts within the meaning of section 51(2).

<http://www.legislation.gov.uk/uksi/2005/1998/regulation/40/made>

## **5.11 Supply of Utilities to a Business**

5.11.1 Section 70 of the 1985 Act extends to trustees under PTDs. This provision allows the trustee to request a supply of gas, electricity, water or telecommunications for the purposes of the debtor’s business. This only applies where the debtor continues to run a business, but includes not-for-profit businesses.

5.11.2 A utility supplier can require the trustee to accept personal liability for the on-going costs of supply but cannot make supply condition on the payment of the debtor’s outstanding liability for arrears. This means that a utility supplier cannot effectively create a preference as a condition of allowing a business to continue. This may mean that the debtor’s business is able to continue trading where it is in the best interest of creditors of the debtor to do so.

## **5.12 Accounting Intervals**

5.12.1 The trustee should prepare, at intervals of not more than 12 months from the date on which the trust deed was granted, the trust deed accounts and send these, no later than six weeks after the end of each accounting interval, to:

- the debtor
- each known creditor,
- and
- AiB

5.12.2 At the same intervals, the trustee must send to the AiB, the debtor and each creditor, a report in Form 4 to the Schedule to the 2013 Regulations.

Regulation 21 of the 2013 Regulations refers.

5.12.3 The trustee is required to make Statements on Form 4 to confirm the position to creditors regarding interim dividends and the expected final dividend.

5.12.4 If the expected final dividend figure has varied at any time to less than 80% of the final dividend figure that was first declared to creditors and to AiB using Form 3, the trustee must provide, using Form 4, the full reasons for this drop and all the options that the trustee has for finalising the PTD, with their recommended course of actions.

Creditors are invited to approve the trustee's recommended course of action.

5.12.5 If, within 21 days of issue of Form 4, the trustee does not receive objections to their recommended course action, from either a majority in number of the creditors, or not less than one third in value of creditors, then it is assumed that creditors have consented to the recommended action and the trustee may proceed with this action. If objections are received from a majority of creditors in number or one third or more in value, the trustee may consider applying to the AiB or a sheriff for a direction – Regulations 19 and 28 refers.

5.12.6 A supervision fee of £100 is payable by the trustee to the Accountant in Bankruptcy for each 12 month period of the PTD, beginning on the date of registration of the PTD and ending on the discharge of the trustee. If the trustee is discharged from office and the debtor is not discharged from their obligations, the fee will be refunded for any part period.

5.12.7 AiB will issue an invoice for the fee after each 12 month period from the date the trust deed becomes protected, to allow trustees time to ingather sufficient funds.

5.12.8 The supervision fee is payable by the trustee for all PTDs, regardless of whether sufficient funds have been in-gathered when the fee becomes due.

5.12.9 AiB will monitor receipt of the accounts, Form 4s and the supervision fee and monitor the information provided on the Form 4 annually. The trustee will receive a reminder, via the AiB Web Portal, or by email or post, if the accounts and a Form 4 are not received within the six week period after the due date.

5.12.10 Regular failure by a trustee to submit accounts or Form 4s to the appropriate people within the specified timescales may result in the Accountant reporting the matter to a sheriff and/or the trustee's recognised professional body (RPB) or the Insolvency Service Complaints Gateway.

### **5.13 Retention of Documents**

5.13.1 The trustee should retain copies of the documents listed in Annex C to these Notes until 12 months after the date of their discharge. Regulation 22 of the 2013 Regulations refers.

5.13.2 AiB may request additional documents that should be retained, either generally or in relation to a specific case. AiB will not specify any additional documents in any case where the trustee has been discharged.

### **5.14 Change of trustee**

5.14.1 The trustee may make such arrangements as appropriate to resign from office or to make contingency for circumstances in which another trustee may be nominated.

5.14.2 Creditors must be informed in advance if there will be a change of fee rates when the new trustee is appointed.

- 5.14.3 If fee rates are to increase, the higher fee rate must not be charged until the date the replacement trustee is appointed, unless this has been approved by creditors or a sheriff.
- 5.14.4 An appropriately executed Deed of Assumption must be produced on each occasion a replacement trustee is appointed and a copy of this Deed must be sent to AiB, so the change of trustee details can be entered in the Rol.
- 5.14.5 If a replacement trustee is appointed for a large number of PTDs the notification to AiB may be made through a Deed of Assumption, signed by the original and replacement trustees, supported by a Schedule detailing all the PTDs affected by the change.
- 5.14.6 If a trustee is replaced as a result of a commercial arrangement between Insolvency Practitioners, or their firms, the cost of the replacement trustee process may not be claimed from the PTD estates, unless a sheriff has approved such payment.
- 5.14.7 The Keeper of the Register of Inhibitions has advised that, if a Schedule is submitted with a Deed of Assumption, listing multiple PTDs, each page of the Schedule must be signed by both the original and replacement trustees, or any inhibition that applies, will not be amended.
- 5.14.8 It is good practice for the replacement trustee to notify the creditors of their appointment. The discharge of the replacement trustee will have the effect of discharging any previous trustee unless there is a contrary ruling by a sheriff. AiB will record the change of trustee and this will be shown in the Rol.

## **5.15 Power to Cure Defects**

- 5.15.1 Under Regulation 28 of the 2013 Regulations, the trustee can apply to a sheriff for an order to correct any defect in procedure. This is similar to the provision for bankruptcies in Section 63 of the 1985 Act.

## **5.16 Electronic delivery of Forms and Notices**

- 5.16.1 Any document or Form that is required to be submitted to any person so recorded in the 2013 Regulations, may be given, delivered or sent by electronic means, provided that the recipient has consented to this form of transmission and provided an electronic address.

Regulation 26 of the 2013 Regulations refers.

- 5.16.2 AiB has introduced a secure Web Portal System - ASTRA for the submission of statutory Forms and other supporting documents. Trustees are encouraged to sign up to and utilise this Web Portal. The Web Portal has provision to alert trustees to when statutory documents must be submitted and provides a secure network to complete the Forms online and submit them.
- 5.16.3 Subject to any evidence to the contrary, a document can be presumed to have been delivered electronically if the sender can produce a copy of an electronic message that confirms issue and which shows the date and time of issue and the address it was sent to.
- 5.16.4 A document may not be issued electronically if an alternative delivery method is required by order of a court.

The AiB consent generally with all trustees to electronic delivery via ASTRA or by e-mail to the following addresses:

Form 4 - [ptdform4@aib.gsi.gov.uk](mailto:ptdform4@aib.gsi.gov.uk)

Forms 5 and 7- [ptdform5form7@aib.gsi.gov.uk](mailto:ptdform5form7@aib.gsi.gov.uk)

## **6. Audit**

### **6.1 Liability for Audit**

6.1.1 A trustee in a PTD has the right to request that his fees are determined by the Accountant before creditors are circularised. However, as the trustee may only take a fixed fee for the administration of a PTD, and an additional fee, if so approved by creditors or The Accountant (See Section 5.8), there is no expectation for trustees to request that their fees are determined by the Accountant. Such action will only add unnecessary cost to the PTD.

6.1.2 AiB may audit a trustee's accounts and fix his outlays at any time. Regulation 23 of the 2013 Regulations refers.

6.1.3 A creditor, the debtor, or trustee can at any time request that AiB audit the accounts and determine the trustee's remuneration.

6.1.4 Schedule 5 of the 1985 Act as amended, states:

"1. Whether or not provision is made in the trust deed for auditing the trustee's accounts and for determining the method of fixing the trustee's remuneration or whether or not the trustee and the creditors have agreed on such auditing and the method of fixing the remuneration, the debtor, the trustee or any creditor may, at any time before the final distribution of the debtor's estate among the creditors, have the trustee's accounts audited by and his remuneration fixed by the Accountant in Bankruptcy.

1A. The Accountant in Bankruptcy may, at any time, audit the trustee's accounts and fix his remuneration."

6.1.5 The Accountant may instruct the trustee to prepare accounts before the end of the usual accounting period, in order to carry out an audit.

6.1.6 In order for The Accountant to complete her statutory duty to audit PTD accounts and fix the trustee's fees and outlays, the trustee must be able to provide information to The Accountant to enable her to understand whether the fixed fee is reasonable in the circumstances of the case.

### **6.2 Audit and determination of Fixed Fee**

6.2.1 The Accountant will not expect a request for an audit of the trustee's fixed fee, if the fee taken is in accordance with the information declared and approved by creditors.

6.2.2 The Accountant may determine a fixed fee at an alternative amount if the trustee has requested a proportion of the fixed fee for any work that has either not been completed or where the trustee should have known the work would not be completed during the administration of the PTD. In reaching a determination on the appropriate fixed fee, the

Accountant will have regard to whether the fees are appropriate, reasonable and commensurate with regard to the work undertaken.

- 6.2.3 If AiB believe they have grounds to reduce a trustee's fee, the trustee will be advised of this and given the opportunity to provide any additional information or documents to support the fee/outlay claimed.
- 6.2.4 AiB may reduce a fee claimed by the trustee in respect of the assets and contributions that have been in-gathered during the administration of the estate, if AiB can demonstrate that a percentage rate applied by the trustee to determine this fee, was greater than the rate declared at the outset to creditors on Form 3, or if the incorrect asset/contributions value has been used.
- 6.2.5 Where a trustee's fee has been determined the trustee will be notified through AiB's audit observation process.
- 6.2.6 In the event that a requested fee is reduced, the trustee will be notified of the determination and reason for the reduction.
- 6.2.7 The trustee, debtor or a creditor may appeal the Accountant's determination. Regulation 27(1)(d) of the 2013 Regulations refers.
- 6.2.8 The debtor or creditor must be able to satisfy a sheriff that s/he, has, or is likely to have, a pecuniary interest in the outcome of the appeal.

### **6.3 Income Verification in all Cases**

- 6.3.1 Copies of bank statements are required to enable AiB to confirm bank interest received and the balance of funds held at the close of the account period.
- 6.3.2 Documents supporting the receipt of other funds e.g. a copy of the state for settlement for realisation of property, cheques from payee for realisation of moveable assets, are required.

### **6.4 Determining Outlays in all Cases**

- 6.4.1 Outlays are determined by checking that each entry has supporting vouchers or an invoice verifying the cost incurred. In cases where no supporting documentation is provided an audit observation is raised asking the trustee to forward the required documentation.
- 6.4.2 A number of outlays are accepted as standard and do not need to be vouched:
- Statutory Advertising fee
  - Bordereau (if under £100.00)
  - Stationery & Postage – not required as this would be trustee writing a receipt for their own usage.
  - Travel
  - Telephone/Fax
  - Register of Inhibitions
  - Keeper's Registration Fees.
  - Cost of realisations deducted at source\*\*

Generally any outlay not detailed above, requires to be vouched, although The Accountant is entitled to query any outlay claimed if required.

6.4.3 If the trustee is unable to provide an acceptable invoice or supporting voucher to satisfy AiB that the outlay is payable and the work was necessary and the cost of the outlay was reasonable for the work completed, AiB may issue a direction to the trustee, instructing him to either remove part, or the whole, of the cost as an outlay of the PTD.

6.4.4 The fee for work completed by a third party, on behalf of the trustee, prior to the date the trust deed was granted, may not be claimed as an outlay of a PTD.

6.4.5 The trustee may appeal an AiB direction to a sheriff, if he is unhappy with the direction that he has received.

## **6.5 Outlays**

6.5.1 Outlays for this purpose include all sums actually paid by the trustee from his own or PTD funds and do not include statutory fees, trading expenses or expenses of realisation. Outlays not included in the calculation for the Audit fee are:

- Bank Charges
- Trading Expenses
- Tax on Interest
- Income Tax
- Inheritance Tax
- Cost of realisations \*\*
- Audit fees
- Other statutory fees raised by AiB e.g. PTD supervision and registration fees.

\*\* If a trustee notes on their receipts and payments accounts that an item is an expense of realisation, evidence must be provided to show that the trustee was not involved in paying these costs, for example a state for settlement which shows that legal fees were deducted directly by the solicitor.

## **6.6 Audit Fee**

6.6.1 The Accountant's statutory audit fee is 5% of the trustee's remuneration (exc. VAT) and applicable outlays, including approved third party fees. AiB will raise a transaction from which an invoice is produced by the AiB Finance Team and forwarded to the trustee responsible for paying the amount due, within 90 days of receipt. No charge can be levied on any other party for this cost.

6.6.2 When all actions have been completed and the trust deed account determined AiB will contact the trustee to arrange uplift of their files. The trustee is responsible for meeting this cost. If a Legal Post address is known files can be returned by this method.

6.6.3 Trustees are encouraged to contact either the Supervision Team on 0300 200 2710, if any clarification is required prior to submitting accounts or case files.

## **7 Supervision of PTDs**

### **7.1 Information and Documents**

7.1.1 The Accountant has a statutory duty to supervise the actions of a trustee of a PTD and therefore, she may challenge the performance and actions of trustee if she does not consider these have been completed in accordance with the legislation or Guidance.

7.1.2 When AiB receives a request to audit a PTD, she may complete a review of the administration of the PTD at the same time.

7.1.3 In support of her supervision function, AiB may require the trustee to provide information or copies of documents relating to the administration of the PTD. AiB may require the trustee to keep such records as considered necessary to investigate the administration of a PTD.

7.1.4 Whether the trustee is still acting in a PTD or not, the trustee must supply The Accountant with such information as may be requested in order to allow The Accountant to complete her duty to supervise the actions of the trustee. Regulation 20(2) of the 2013 Regulations refers.

7.1.5 If the trustee fails, without a reasonable excuse, to provide information requested by The Accountant, the matter can be reported to a sheriff who can censure the trustee and make any other order as they deem is appropriate. Regulation 20(3) of the 2013 Regulations refers.

### **7.2 AiB Directions**

7.2.1 AiB has the authority under regulation 19 of the 2013 Regulations to issue directions to the trustee under a PTD, as to how they should conduct the administration of the PTD.

7.2.2 This power of direction is wide and can cover a direction to the trustee to do anything or desist from doing something in respect of the conduct of the administration of a PTD. Generally, AiB will ensure that a direction is not issued unless she deems the action required is in the interests of the trustee, debtor or creditors.

7.2.3 A direction will be intimated in writing to the trustee. The trustee should copy the intimation to the debtor and all known creditors.

7.2.4 AiB may also copy the direction to the trustee's RPB or the Insolvency Service Complaints Gateway, if she considers the direction supports any complaint that AiB may have about the trustee's behaviour.

7.2.5 If a trustee receives a direction from The Accountant they must either; appeal the direction, within 21 days of the direction being issued, or comply with the direction within 30 days of its receipt. Regulations 27(1)(c) and 19(4) of the 2013 Regulations refer.

7.2.6 The Accountant may report a trustee to a sheriff, if the trustee fails, without reasonable excuse, as determined by The Accountant, to comply with a direction she has issued. A Sheriff may censure the trustee or make any such order as the Sheriff considers is appropriate in the circumstances.

7.2.7 There is a right of appeal to a sheriff against a direction. However, a debtor or creditor must be able to satisfy the sheriff that they have a pecuniary interest in the outcome of the appeal. The form of appeal is prescribed in the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2008 and is copied in Annex E. A sheriff may order intimation of any other party and may order such further procedure as they deem appropriate.

### **7.3 Examples of AiB Directions**

7.3.1 The following are examples of Directions which The Accountant considers may be appropriate having reviewed a number of PTDs. This is not an exhaustive examples list and The Accountant may issue different Directions as circumstances determine:

- A third party agency fee is disallowed, or reduced, as an outlay of the PTD because:
  - The third party agency work is not evidenced, or the fee is deemed excessive for the work evidenced as completed;
  - The third party fee was incurred prior to the granting of the trust deed.

7.3.2 The trustee is directed to realise an asset, if they have failed to do so and the sale of the asset will benefit creditors.

7.3.3 The trustee is directed to remove, or reduce an outlay as a cost of the PTD if there is inadequate or no, evidence to demonstrate that the outlay was a legitimate cost of the PTD.

7.3.4 The trustee is directed to end the PTD early and seek their discharge as trustee, if the PTD is not expected to realise a dividend to creditors. Issue of this direction will be subject to a number of conditions, including assurance that the trustee has received appropriate remuneration for their work and there is minimal risk that future funds will become available that could be paid to creditors. See Section 8 regarding discharge of the debtor.

### **7.4 Sheriff's Directions**

7.4.1 There is also a general right for any interested person to apply to a sheriff at any time for a direction of the court in respect of, or in relation to, the administration of a PTD. "Interested person" means some person who has a direct, as opposed to general, interest in the administration of the PTD, for example, the debtor's partner. Regulation 28 of the 2013 Regulations refers.

### **7.5 Reports and Offences**

7.5.1 The supervisory function of The Accountant in relation to PTDs, subsection (1) of section 1A of the 1985 Act, extends the powers contained in subsections (2) and (3) of that section to trustees under PTDs.

7.5.2 Trustees have a statutory duty to complete and submit the PTD Forms recorded at Section 10 and pay to The Accountant the PTD Supervision Fee. The Accountant will inform a trustee if they are late in submitting a Form, or have not paid the PTD Supervision Fee.

7.5.3 If it appears to AiB that a trustee under a PTD has failed without reasonable excuse to perform a duty under the 1985 Act or any other provision, the matter may be reported to a

sheriff. A sheriff may call a hearing and remove the trustee from office or censure them or make any other order as appropriate.

7.5.4 If The Accountant has reasonable grounds to suspect that the trustee under a PTD has committed an offence, she may report the matter to the Lord Advocate.

## **8. Debtor's Discharge**

### **8.1 Discharge is Conditional**

8.1.1 Discharge of the debtor is not automatic. Regulation 24 of the 2013 Regulations allows the trustee to apply to AiB for the debtor to be discharged from their debts, if the trustee is satisfied that, to the best of their knowledge, the debtor has met their obligations under the PTD and the debtor has co-operated during the administration of the PTD.

8.1.2 A PTD is a voluntary arrangement and a debtor is expected to comply with the terms of that arrangement, to provide information about assets and liabilities, income and expenditure, to cooperate in the realisation of their estate and to pay contributions. A debtor who unreasonably fails to comply, or does not co-operate with the trustee, has not kept to the agreement and should not have the benefit of imposing that agreement on creditors.

8.1.3 A debtor is not considered to have failed to meet their obligations if they refuse to consent to the sale of the dwellinghouse which is excluded from a trust deed in accordance with section 5(4A)(b) of the 1985 Act or refuse to give a relevant consent in terms of section 40(1)(a) of the 1985 Act.

8.1.4 It would not be appropriate to refuse to discharge a debtor because of circumstances beyond their control, such as a change of circumstances which prevents them from paying any contribution payable under Regulation 8, or if an asset realises an amount less than originally estimated by the trustee on Form 3.

8.1.5 The trustee is entitled to charge a reasonable fee for a letter of discharge which is chargeable against the debtor's estate.

8.1.6 A reasonable fee means a fee which the trustee would normally charge for the issue of a letter or a fee equivalent to the AiB fee for a certificate of discharge under bankruptcy.

### **8.2 Date of Discharge**

8.2.1 If the trustee is satisfied that the debtor has met their obligations in terms of their PTD, and they have co-operated in full with the trustee, an application for the debtor's discharge, Form 5 in the Schedule to the 2013 Regulations, should be completed by the trustee and sent to AiB for approval after any notice of inhibition has been recalled or expired.

8.2.2 If AiB is satisfied that the debtor has met their obligations and cooperated, on receipt of Form 5, the debtor's discharge will be recorded in the RoI and the date of their discharge will be the date the entry is made in the RoI.

8.2.3 AiB will, without delay, notify the trustee that the debtor has been discharged and provide the date of discharge. The trustee must notify the debtor and every known creditor, of the date the debtor has been discharged.

8.2.4 The Accountant may refuse to register a Form 5 in the register of insolvencies if the Accountant is not satisfied that the debtor has not met their obligations in terms of the PTD or co-operated with the administration of the trust. Regulation 24(11) of the 2013 Regulations refers.

8.2.5 AiB will refuse to register the discharge of a debtor if she is not satisfied that, for example:

- The debtor has co-operated during the lifetime of the PTD and this has impacted on the final dividend return to creditors,
- The debtor has made full declaration of their assets and income,
- The debtor has paid the appropriate amount and number of contributions,
- The trustee has realised sufficient funds from the debtor's assets and additional work is still required that requires the debtor's cooperation.

This list is not exhaustive.

8.2.6 AiB will notify the trustee and the debtor in writing if she refuses to discharge the debtor and give the reason(s) for this. AiB may also issue a direction to the trustee, to direct him how to act, if it is felt additional work is still required before the debtor can be discharged.

8.2.7 The trustee must send a copy of AiB's notification to all known creditors, no later than 7 days after receipt of the notification from AiB.

8.2.8 If the issues that have been identified in AiB's decision not to discharge the debtor can be addressed, a further Form 5 application may be re-submitted to AiB.

8.2.9 If any party is unhappy with the decision of AiB to refuse to register the discharge of the debtor in the RoI, they may appeal this decision to a sheriff within 21 days of the decision being made.

The decision of the sheriff on an appeal is final.

### **8.3 Reversion**

8.3.1 The remaining funds should revert to the debtor if –

- the debtor is discharged and the final distribution made
- the trustee is satisfied that all known creditors who were entitled to claim have submitted a valid claim, or following an appropriate reminder have declined to submit a claim

and

- funds remain in the estate after the full payment of remuneration and claims.

### **8.4 Effect of Discharge**

8.4.1 On discharge from the PTD, the debtor will be discharged from any outstanding debts and obligations for which they were liable at the date that they granted the trust deed. There are some important exceptions to this rule.

8.4.2 A PTD does not discharge a debtor from the following kinds of debt –

- fines, penalties, compensation and forfeiture orders imposed by any court
- any liability due to fraud
- student loans (Regulation 24(10) of the 2013 Regulations refers)
- money owed to someone who holds a security on their property, such as a mortgage or secured loan, including a security held where the secured creditors have consented in terms of regulation 5A (c) of the 2008 Regulations
- secured debt
- any liability arising after the date on which the trust deed was granted

## **8.5 Trustee's Refusal to Discharge the Debtor**

8.5.1 If, on request of the debtor, or at the end of the 48 month payment period, beginning with the day on which the trust deed was granted, the trustee considers that a Form 5 application for discharge is not appropriate, the trustee must inform the debtor in writing and state:

- the reasons why they do not consider discharge appropriate,
- That the debtor is not discharged from their debts,  
and
- The debtor's right to appeal the trustee's decision.

8.5.2 A copy of this letter should be sent to AiB no later than 21 days after the Trustee has issued their notification.

8.5.3 If the trustee refuses to discharge the debtor, the debtor is not discharged from their debts and creditors are not bound by the PTD.

8.5.4 The trustee may still seek his own discharge from the creditors even if they refuse to discharge the debtor. It is good practice for the trustee to notify the creditors if the debtor is not to be discharged.

## **9. Trustee's discharge**

### **9.1 Discharge by Creditors**

9.1.1 The trustee is required to seek their discharge from creditors within 28 days of the final distribution under the PTD. The trustee applies to the creditors using Form 6 in the 2013 Regulations. The final distribution date is considered to be date the estate is no longer under the control of the trustee, which may be the date any unclaimed funds are consigned to AiB (see section 9.7).

9.1.2 The trustee's discharge depends on the consent (actual and deemed) of a majority in value of creditors within 14 days of the issue of Form 6.

## **9.2 Deemed Consent**

9.2.1 Any creditor who does not respond to the Form 6 within 14 days from the date it is issued is deemed to consent to the trustee's discharge.

## **9.3 Effect of Discharge**

9.3.1 The discharge of the trustee releases them from any liability to the creditors in respect of any act or omission in exercising the functions conferred on them by the 1985 Act and the 2013 Regulations, except for a liability arising from fraud.

9.3.2 The effect of discharge extends to any previous trustee of the PTD unless there is a contrary ruling to the contrary from a sheriff.

## **9.4 Right of Appeal**

9.4.1 If the creditors refuse to discharge the trustee, the trustee has a right of appeal to a sheriff under regulation 27(3) of the 2013 Regulations.

## **9.5 Notice to AiB**

9.5.1 Within 28 days of the discharge of the trustee, the trustee will send a statement to AiB in Form 7 in the 2013 Regulations and AiB will record this in the RoI. Accounts revised under regulation 25(7)(b) should also be sent to AiB.

## **9.6 Creditor's Application**

9.6.1 If a non-acceding creditor or a non-notified creditor believes that the way the trustee has collected and distributed the debtor's estate is unfair, they can apply to a sheriff on the grounds that it is unduly prejudicial. See regulation 18 of the 2013 Regulations.

9.6.2 If the sheriff grants the creditor's application, AiB will record the order in the RoI and the trustee will be liable to that creditor.

## **9.7 Payment to creditors and consignment of funds**

9.7.1 It is expected that the trustee will make all efforts to ensure that monies are accepted by the creditors before consigning funds. There is no statutory requirement for the trustee to obtain a Form of Receipt back from a creditor prior to payment of a dividend. Funds should not be consigned for this reason if the trustee has a creditor's details from their claim form and a dividend payment can be sent to the creditor's last known address.

9.7.2 Prior to the trustee obtaining their discharge any unclaimed dividend must be consigned with the Accountant under Section 53(8) of the 1985 Act.

9.7.3 A style of consignment receipt is shown at Appendix F to the principal Notes for Guidance.

9.7.4 A certified list of the dividends being consigned should be sent with a cheque made payable to the 'Accountant in Bankruptcy'. In either case, a fee will be payable to the Accountant for each consignment lodged with her. This fee will be deducted from the

consigned dividend unless otherwise notified. The relevant fee can be found in the Bankruptcy Fees (Scotland) Regulations 1993, as amended.

## **10. Statutory Forms**

### **10.1 Form 1 – Notice in the Register of Insolvencies by Trustee under a Trust Deed for the Benefit of Creditors**

10.1.1 After the trust deed has been delivered to the trustee, the trustee must without delay send a notice in Form 1 to the Accountant for publication by registration of the register of insolvencies

### **10.2 Form 1A - Consents required for exclusion of a secured creditor from a protected trust deed**

10.2.1 Where a secured creditor is excluded from a trust deed under section 5(4A)(b)(ii) of the Act, prior to the debtor granting the trust deed, the debtor must in Part 1 of Form 1A, request obtaining the secured creditor's agreement not to claim under the trust deed for any of the debt in respect of which the security is held, and the secured creditor's agreement must be set out in Part 2 of Form 1A.

### **10.3 Form 1B – Agreement in respect of heritable property**

10.3.1 The trustee may agree on Form 1B at the date on which the trust deed was granted, not to realise any specified heritable estate which has been conveyed to the trustee, relinquish the trustee's interest, and recall any notice of inhibition in accordance with paragraph 2(2) of schedule 5 to the Act.

10.3.2 This is also dependent on the debtor paying the amount determined by the trustee and on the date determined by the trustee. If, after the payment period, where there is a contribution from income, the debtor may continue to pay a monthly amount determined by the trustee for a period determined by the trustee and cooperate with the administration of the trust (regulation 8(2)).

### **10.4 Form 2 – Statement of Claim by Creditors in Trust Deed**

10.4.1 No later than 7 days after the registration of the trust deed, the trustee should send a copy of Form 2 to every known creditor to enable them to lodge a claim in the trust (except secured creditors)

### **10.5 Form 3 – Protected Trust Deed- Trust Deed Protection Proposal and Trustee's Application**

10.5.1 No later than 7 days after the registration of the trust deed, the trustee should send a statement to the creditor in part 1 of Form 3 of the trustee's anticipated realisations from the trust deed. Part 2 should also be sent to the AiB as soon as possible and not later than 4 weeks after the expiry of the five week period following the publication of a notice of the trust deed in the Rol.

10.5.2 The Form 3 provides an estimate of the expected realisations of the PTD. The Form 3 is a formal declaration by the trustee and therefore, **Form 3 must be signed and dated by the trustee**. The Form must be completed with the following information:

- the name and address of the debtor
- the date the trust deed was signed by the debtor
- trustees name, company name and address
- the anticipated date the trust deed will be completed
- the estimated figures for realisation

10.5.3 The Form 3 table should be completed as follows:

**A Number of Contributions** - the expected number of contributions, if any, during the relevant period should be entered in the Estimate column.

**B Total Value of Contributions** – the expected value of the contribution agreed to be made by the debtor should be entered in the Estimate column.

**C Total Realisation from Moveable Assets** - the total expected value of any realisation from moveable assets, if any, eg insurance policies should be entered in the Estimate column

**D Total Realisations from Heritable Assets (excluding any security)** - the total expected value of any realisation from assets, if any, eg equity from property should be entered in the Estimate column.

**E Gross Realisations** – the total expected realisation from contributions added to the total expected realisation of assets (B + C + D) should be entered in the Estimate column.

**F Projected trustee's fee for realising assets and contributions** – Total of fees using the % figures recorded in rows 2, 3 and 4

**G Total trustee's fee** – total figure adding projected trustee's fee for realising assets and contributions to the trustee's fixed administration fee

**H Outlays** - including statutory fees + third party fee (see row 5 above + Note 1

**I Total cost of administration** – Calculated by adding total trustee's fee and outlays together

**J Net realisation** – the difference when the cost of all expenses including remuneration is taken from gross realisations (E – I) should be entered in the Estimate column.

**K Debt due to ordinary creditors** – the amount due to creditors, as known by the trustee at the date of signing, should be entered in the estimated column.

**L Debt due to preferred creditors** - the amount due to preferred creditors, as known by the trustee at the date of signing, should be entered in the estimated column.

**M Total debt due to creditors** – amount due to all creditors (K + L)

**J Dividend to ordinary creditors** – the dividend is calculated by dividing the net realisation by the debt due to ordinary creditors (J/M x 100) and entered in the Estimate column.

An example of a completed Form 3 can be found at Annex F. The Form 3 will be rejected if the appropriate sections are not completed and if the form is not signed by the trustee.

## 10.6 Form 4 – Trustee’s Statement of Status of a Protected Trust Deed

10.6.1 A Form 4 is an annual report by the trustee which details the progress of a PTD. This is a statutory form which must be submitted to AiB, the debtor and creditors on the anniversary of the date the PTD was granted.

10.6.2 The **Form 4 must be signed and dated by the trustee, or by an authorised member of his staff**, and should be accompanied by a signed Receipts and Payments for the relevant period. The Receipts and Payments can be signed on behalf of the trustee by an authorised member of staff.

10.6.3 A Form 4 should include the following information:

- debtors name and address
- trustee’s name, company name and address
- anticipated completion date of the PTD
- delete as appropriate to show the statement that applies to the current status of the PTD

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

or

“I state that the expected final dividend is now: X.Xp/£ (insert amount of new expected final dividend – Box P3) 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):

or

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 declaration in my Form 3 statement dated\_\_\_\_ (insert date Form 3 (Part 1) signed).

- If the dividend has stayed the same then the date of the previous Form 3 or Form 4 should be entered
- If the dividend has changed for any reason, the revised dividend figure should be stated along with a **detailed** explanation for the change e.g.
- “The dividend to creditors has decreased due to an unexpected decrease in the value of assets of £xx.xx to be realised.”
- “The debtors circumstances have changed significantly since the PTD was signed therefore X hours of additional time with the debtor were required to revise earnings information and contributions.”

- Signature and date signed by trustee or authorised member of staff

10.6.4 Form 4 table **must** be completed when there has been a change to funds ingathered or anticipated, even though in certain circumstances this may not change the dividend previously estimated.

The Form 4 table should be completed as follows:

**A Number of contributions ingathered** - the actual number of contributions that have been made by the debtor to date should be entered in the 1st column and the number of contributions that are paid to date in the PTD should be entered in the 2nd column. The final expected figure should be entered in the 3<sup>rd</sup> column.

**B Total realisations from contributions** – the total realisations from contributions can be calculated by multiplying the number of contributions by the value of contributions (A x B). The actual number of contributions that have been made by the debtor to date should be entered in the 1st column and the number of contributions that are paid to date in the PTD should be entered in the 2nd column. The final expected figure should be entered in the 3<sup>rd</sup> column

**C Total realisations from moveable assets** – the total realisations from moveable assets should exclude the value of any security and should include any bank interest that has been incurred. Any assets realised to date should be entered in the 1st column and the assets realised to date in the PTD should be entered in the 2nd column. The final expected figure should be entered in the 3<sup>rd</sup> column

**D Total realisations from heritable assets** – the total realisations from heritable assets should include the value of any security and should include any bank interest that has been incurred. Any heritable assets realised to date should be entered in the 1st column and the heritable assets realised to date in the PTD should be entered in the 2nd column. The final expected figure should be entered in the 3<sup>rd</sup> column

**E Total realisations from assets** – the gross realisations can be calculated by adding the total realisations from assets (C + D). Any assets realised to date should be entered in the 1st column and the assets realised to date in the PTD should be entered in the 2nd column. The final expected figure should be entered in the 3<sup>rd</sup> column

**F Bank Interest** – actual amount of bank interest in the year should be entered in the 1st column and the total accrued to date in the PTD should be entered in the 2<sup>nd</sup> column. The final expected figure should be entered in the 3<sup>rd</sup> column

**G Gross realisation** – the gross realisation can be calculated by adding B + E + F

**H Trustee's remuneration taken (fixed administration fee)** – if the final expected administration fee has increased, a copy of the creditors' or AiB's approval to increase this fee must be submitted with the Form 4

**I Trustee's remuneration taken (% of assets and contributions realised)** – this must be calculated by using the figures in Form 3 rows 2, 3 and 4

**J Outlays (including the statutory fees and third party fee)**

**K Total cost of administration** – This can be calculated by adding H + I + J

**L Net realisation** – the net realisations can be calculated by deducting the cost of administration and outlays from the gross realisations figure this can be calculated by subtracting K from G. The net realisations that have been ingathered that year should be entered in the 1st column and the net realisations that are ingathered to date should be entered in the 2nd column. A sum total of the ingathered and anticipated figures should be entered in the 3rd column.

**M Debt due to ordinary creditors** – the total sum of debt due to ordinary creditors should be entered in the total column to two decimal places.

**N debt due to preferred creditors** - the total sum of debt due to preferred creditors should be entered in the total column to two decimal places.

**O Total debt due** – This can be calculated by adding M to N

**P Dividend paid to ordinary creditors** – Record the actual amount of 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 PTD.

Interim Dividends must be paid in month 24 of the trust deed and every 6 months thereafter, if sufficient funds are available. The calculation for column 3/row P = ((Column 3/Row L) / (Column 3 Row O)) x 100

An example of a completed form can be found at Annex G.

10.6.5 A Form 4 will be returned for the following reasons:

- Form 4 not signed
- Form 4 incomplete
- the trust deed has not been entered on the Rol as protected
- Where Form 4 table has not being completed in accordance with the guidelines detailed above.
- No Receipts and Payments attached
- Receipts and payments not signed
- Form 4 is submitted prior to the due date

**10.7 Form 4A Employee's Payment Instruction to Employer** – this form should be passed by the debtor as requested by the trustee to their employer to enable deductions of specific amounts to be made from the debtor's earnings to the trustee.

**10.8 Form 4B Trustee's Payment Instruction to Employer** – If the debtor fails to comply with the trustee and does not give his employer 4A then the trustee may give the employer this instruction directly.

**10.9 Form C Payment Variation instruction to employer** – This form can be used when the debtor and the trustee agree that a variation to the original payment instruction can be made. The debtor may provide the form to the employer.

## 10.10 Form 5 – Application for Discharge of Debtor

10.10.1 A Form 5 is a document to confirm the trustee's request to grant the debtor their discharge from their PTD.

10.10.2 A Form 5 should be submitted when the trustee deems that the debtor has fulfilled the obligations of their PTD and co-operated with the administration.

The information contained on the Form 5 should include:-

- debtors name, address and postcode
- statement regarding conveyance of estate
- trustee name, Company name, address and postcode
- statement certifying the debtor has been discharged from their PTD
- a statement that the debtor will be discharged on the date their discharge is recorded in the Register of Insolvencies
- signed and dated by the trustee.

The form table will include:

A Number of contributions ingathered

B Total realisations from contributions

C Realisations from moveable assets

D Realisation from heritable assets

E Total asset realisations

F Total Bank interest

G Gross realisation

10.10.3 A Form 5 should be submitted prior to the submission of a Form 7 and Receipts and Payments (showing a zero balance) for the relevant period.

10.10.4 The Form 5 must be submitted prior to the Form 7 and Receipts and Payments a letter will be issued confirming receipt of the Form 5 and requesting the Form 7 to be submitted.

10.10.5 The date of discharge will be date discharge is registered in the Rol.

10.10.6 Any incomplete Form 5 will be returned to the trustee for the following reasons:-

- not signed by trustee

10.10.7 The Accountant will write to the trustee and debtor if, for any reason, The Accountant will not register the debtor's discharge in the Rol, stating the reason(s) for this.

### **10.11 Form 6 – Application to Creditors for Discharge of the trustee of a Protected Trust Deed**

10.11.1 The trustee is required to seek their discharge from creditors within 28 days of the final distribution under the PTD. The trustee applies to the creditors in Form 6 of the 2013 Regulations. A copy of the Form 6 must be sent to AiB.

10.11.2 The trustee must have made their decision about the discharge of the debtor, and issued either the Form 5, or the letter to the debtor (Section 8.5), before the trustee applies for their discharge using Form 6.

### **10.12 Form 7- Trustee's Statement of Realisations and Distribution of Estate under a Protected Trust Deed**

10.12.1 A Form 7 is a document granting the trustee their discharge from a PTD.

10.12.2 A Form 7 must be submitted when the creditors have agreed to the trustee's request to be discharged from a PTD (see Form 6).

In order to assure the Accountant that the trustee is aware of the final outcome of the PTD, the **Form 7 must be signed and dated by the trustee.**

The information contained on the Form 7 should include:-

- debtors name, address and postcode
- statement regarding conveyance of estate
- trustee name, company name, address and postcode
- the date the creditors consented to the trustee discharge should be inserted
- the table should be fully completed from the information on the Receipts and Payments
- delete as appropriate to show the statement that applies to the current status of the PTD
- signed and dated by the trustee.

10.12.3 The Form 7 table should be completed as follows:

**A Number of contributions ingathered** - the actual number of contributions that have been made by the debtor to date should be entered in the 1st column and the number of contributions that are paid to date in the PTD should be entered in the 2nd column. The final expected figure should be entered in the 3<sup>rd</sup> column.

**B Total realisations from contributions** – the total realisations from contributions can be calculated by multiplying the number of contributions by the value of contributions (A x B). the actual number of contributions that have been made by the debtor to date should be entered in the 1st column and the number of contributions that are paid to date in the PTD

should be entered in the 2nd column. The final expected figure should be entered in the 3<sup>rd</sup> column

**C Total realisations from moveable assets** – the total realisations from moveable assets should exclude the value of any security and should include any bank interest that has been incurred. Any assets realised to date should be entered in the 1st column and the assets realised to date in the PTD should be entered in the 2nd column. The final expected figure should be entered in the 3<sup>rd</sup> column

**D Total realisations from heritable assets** – the total realisations from heritable assets should include the value of any security and should include any bank interest that has been incurred. Any heritable assets realised to date should be entered in the 1st column and the heritable assets realised to date in the PTD should be entered in the 2nd column. The final expected figure should be entered in the 3<sup>rd</sup> column

**E Total realisations from assets** – the gross realisations can be calculated by adding the total realisations from assets (C + D). Any assets realised to date should be entered in the 1st column and the assets realised to date in the PTD should be entered in the 2nd column. The final expected figure should be entered in the 3<sup>rd</sup> column

**F Bank Interest** – actual amount of bank interest in the year should be entered in the 1st column and the total accrued to date in the PTD should be entered in the 2<sup>nd</sup> column. The final expected figure should be entered in the 3<sup>rd</sup> column

**G Gross realisation** – the gross realisation can be calculated by adding B + E + F

**H Trustee's remuneration taken (fixed administration fee)** – if the final expected administration fee has increased, a copy of the creditors' or AiB's approval to increase this fee must be submitted with the Form 4

**I Trustee's remuneration taken (% of assets and contributions realised)** – this must be calculated by using the figures in Form 3 rows 2, 3 and 4

**J Outlays (including the statutory fees and third party fee)**

**K Total cost of administration** – This can be calculated by adding H + I + J

**L Net realisation** – the net realisations can be calculated by deducting the cost of administration and outlays from the gross realisations figure this can be calculated by subtracting K from G. The net realisations that have been gathered that year should be entered in the 1st column and the net realisations that are gathered to date should be entered in the 2nd column. A sum total of the gathered and anticipated figures should be entered in the 3rd column.

**M Dividend paid to ordinary creditors** – the pence in the pound can be calculated by net realisation divided by the debt due to ordinary creditors ( $L/O \times 100$ )

**N Amount paid to preferred creditors**

**O Total debts due**

**P Reversion to debtor**

**Q Total funds consigned**

10.12.4 Additional documents may be required when a Form 7 is submitted. These are detailed below.

10.12.5 This form must be completed and sent to AiB within 28 days of the date on which the trustee has received his or her discharge from the creditors, regardless of whether there was any distribution to the creditors.

10.12.6 If PTD fails and the debtor is NOT being discharged, a signed Receipts and Payments, showing a zero or negative balance for the relevant period. A copy of the letter addressed to the debtor advising that the above course of action is being taken together with details of their right to appeal to a Sheriff. If the debtor cannot be contacted, a letter should be sent to the debtors last known address.

10.12.7 If the PTD ends and the debtor has been discharged, a Form 5 (see 10.5) and a signed Receipts and Payments for the relevant period showing a zero balance.

10.12.8 When all relevant information has been received the information provided on the form will be entered on the Rol together with the date of discharge of the trustee and the debtor, where appropriate.

10.12.9 A letter will be sent to the trustee confirming this action has been taken. If the Form 7 is received prior to the second anniversary of the trust deed AiB will issue an invoice for any outstanding supervision fee.

10.12.10 A Form 7 will be returned for the following reasons:

- the form is not signed by the trustee
- the table is not completed
- the Receipts and Payments are not signed
- the Receipts and Payments does not match Form 7 table data
- any additional required documents are not attached
- the trustee discharge date has not been entered

## Protected Trust Deeds (Scotland) Regulations 2013

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

**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 dwellinghouse to be excluded in terms of section 5(4A)(b) of the Bankruptcy (Scotland) Act 1985**

	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 dwellinghouse in order to obtain the secured creditor's consent to exclude the dwellinghouse from my draft trust deed attached.

Signature of debtor \_\_\_\_\_ Date \_\_\_\_\_

**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 dwellinghouse 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 \_\_\_\_\_

**Agreement in respect of heritable property**

## The Protected Trust Deeds (Scotland) Regulations 2013

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.

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:

## STATEMENT OF CLAIM BY CREDITORS IN TRUST DEED

The Protected Trust Deeds (Scotland) Regulations 2013

**This form must be completed and sent to the trustee**

<p>Notes</p> <p>(a) <i>Insert name and address of debtor</i></p> <p>(b) <i>Insert name, address and website (if applicable) of creditor</i></p> <p>(c) <i>Insert name, address, email address and phone number of the authorised person acting on behalf of creditor</i></p> <p>(d) <i>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>(e) <i>Insert total amount claimed in respect of all the debts, the particulars of which are set out overleaf</i></p> <p><b>It is important that you keep the trustee of this trust deed informed of any changes to your contact details. Failure to so may mean the trustee is unable to contact you if he/she wants to make a payment to you from this trust deed.</b></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>
<b>PARTICULARS OF EACH DEBT</b>	

Notes

*A separate set of particulars should be set out in respect of each debt.*

1. *Describe briefly the debt, giving details of its nature, the date when it was incurred and when payment became due.*

*Attach documentary evidence of the debt:*

2. *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.*

*Show separately the VAT on the debt and indicate whether the VAT is being claimed back from HM Revenue and Customs.*

**If documentary evidence of your debt is not provided, your claim may be rejected.**

3. *Specify and give details of the nature of any security held in respect of the debt including –*
  - (a) *the subjects covered and the date on which it was granted:*
  - (b) *the value of the security:*
  - (c) *whether the creditor is surrendering or undertakes to surrender the security.*

*Security is defined for the purposes of the Bankruptcy (Scotland) Act 1985 and the Protected Trust Deeds (Scotland) Regulations 2013, as meaning “any security, heritable or moveable, or any right of lien, retention or preference”.*

4. *In the case of a Member State*

1. Particulars of debt

2. Amount of debt

3. Security of debt

4. Underlying claims

*liquidator creditor, specify and give details of underlying claims in respect of which the creditor is claiming as creditor.*

*Attach documentary evidence of debts*

*5. 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).*

5. Total amount of the debt

**This form must be completed and sent to the trustee**

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 + third party fee (see Row 5 above + Note 1)	£	
I	Total cost of administration	£	G+H
J	Net realisation	£	E-I
K	Debt due to ordinary creditors	£	
L	Debt due to preferred creditors	£	
M	Total debt due to creditors	£	K+L
N	Dividend to ordinary creditors	p/£	J/M

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.**

--

**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:** 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**

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

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 2 (Regulation (11)(1)(g))**

**TRUST DEED PRESENTED FOR PROTECTION**

**To the Accountant in Bankruptcy**

**Statement**

The necessary majority of the creditors have acceded, or have been treated as having acceded, to the protection of the trust deed of

{insert debtor's name and address}.

I enclose all documents and statements in accordance with regulation 11(1) of the Protected Trust Deeds (Scotland) Regulations 2013.

I confirm that the conditions set out in regulations 4 to 10 of the Protected Trust Deeds (Scotland) Regulations 2013 have been met.

I apply for the registration of this 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 address

Town

County

Post Code

On \_\_\_\_\_ (insert date) conveying \*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

\* delete as appropriate

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

Statement of performance of protected trust deed (PTD):

	ual In Year	l realised to (See Note 2)	al Expected	
	Col 1	Col 2	Col 3	
ber of contributions in-gathered				
realisation from contributions				
realisation from moveable assets				
realisation from heritable assets				Note 3
realisations from assets				D
k interest				
s realisation				E + F
tee's remuneration taken (fixed				Note 4

Administration fee)				
Trustee's remuneration taken (% of assets and contributions realised)				Note 5
Days (including statutory fees + Third Party fee				
Cost of administration				+ J
Realisation				
Due to ordinary creditors				
Due to preferred creditors				
Debt due				
Dividend paid to ordinary creditors				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):

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\*\*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):

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\*\*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.

**Employee's Payment Instruction to Employer**

The Protected Trust Deeds (Scotland) Regulations 2013

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 regulation 14(4) of the Protected Trust Deeds (Scotland) Regulations 2013, to comply with this instruction.

You are entitled, by virtue of regulation 14(7) of the Protected Trust Deeds (Scotland) Regulations 2013, 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

\_\_\_\_\_

**Trustee's Payment Instruction to Employer**

The Protected Trust Deeds (Scotland) Regulations 2013

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 regulation 14(2) of the Protected Trust Deeds (Scotland) Regulations 2013.

Therefore, I, [insert trustee's name], instruct [insert employer's name], in accordance with regulation 14(3) of the Protected Trust Deeds (Scotland) Regulations 2013, 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 regulation 14(4) of the Protected Trust Deeds (Scotland) Regulations 2013, to comply with this instruction.

You are entitled, by virtue of regulation 14(7) of the Protected Trust Deeds (Scotland) Regulations 2013, 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):

Trustee's Signature \_\_\_\_\_ date \_\_\_\_\_

**Payment variation instruction to employer**

The Protected Trust Deeds (Scotland) Regulations 2013

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 regulation 14(4) of The Protected Trust Deeds (Scotland) Regulations 2013, to comply with this instruction.

You are entitled, by virtue of regulation 14(7) of The Protected Trust Deeds (Scotland) Regulations 2013, 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 \_\_\_\_\_

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 estate to

me,  
practitioner's name

Insert insolvency  
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)

I certify that to the best of my knowledge:

- i. the debtor has met \*his/her 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 to 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:

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

		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	Dividend paid to ordinary creditors	p/£	p/£	p/£	
N	Amount paid to preferred creditors	£	£	£	
O	Total debts due	£	£	£	
P	Reversion to debtor	£			

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. Total realisation from assets should exclude the value of any security and realisation costs.
3. If the final '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 form 5.
4. This fee must be calculated using the % figures declared in Form 3 (Rows 2, 3 and 4).
5. An application for discharge is not appropriate where the trustee does not consider that the debtor has met his/her obligations in terms of the trust deed, or, if the debtor has failed to co-operate with the administration of the trust.
6. 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 Act. Furthermore, the discharge does not affect the rights of secured lenders or the right to recover any debt arising from a student loan.

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,
practitioner's name

Insert insolvency
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)

Two horizontal lines for providing reasons.

- 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	Dividend paid to ordinary creditors	p/£	p/£	p/£	
N	Amount paid to preferred creditors	£	£	£	
O	Total debts due	£	£	£	
P	Reversion to debtor	£			
Q	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):

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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	Dividend paid to ordinary creditors	p/£	p/£	p/£	
N	Amount paid to preferred creditors	£	£	£	
O	Total debts due	£	£	£	
P	Reversion to debtor	£			
Q	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).