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STATUTORY INSTRUMENTS

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**2003 No. 2108**

**The Enterprise Act 2002 (Consequential Amendments) (Prescribed Part) (Scotland) Order 2003**

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Enterprise Act 2002 (Consequential Amendments) (Prescribed Part) (Scotland) Order 2003 and shall come into force on 15th September 2003.

(2) In this Order “the Act” means the Enterprise Act 2002, “the Rules” means the Insolvency (Scotland) Rules 1986(1) and references to numbered Rules are to the Rules so numbered in the Rules.

**PART 1 –**

**AMENDMENTS TO THE INSOLVENCY (SCOTLAND) RULES 1986**

2. The Rules shall be amended in accordance with this Part.

**Amendment to Introductory Provisions**

3. In Rule 0.2 (interpretation), in the appropriate alphabetical location, add ““prescribed part” has the same meaning as it does in section 176A(2)(a) of the Act”.

**Amendments to Part 1 – Company Voluntary Arrangements**

4.—(1) In Rule 1.3 (contents of proposal), after sub-paragraph (2)(c) insert–

“(ca) to the best of the directors' knowledge and belief–

(i) an estimate of the value of the prescribed part, should the company go into liquidation if the proposal for the voluntary arrangement is not accepted, whether or not section 176A is to be disapplied, and

(ii) an estimate of the value of the company's net property on the date that the estimate is made,

provided that such estimates shall not be required to include any information the disclosure of which could seriously prejudice the commercial interests of the company, but if such information is excluded the estimates shall be accompanied by a statement to that effect;”.

(2) In Rule 1.10 (preparation of proposal)–

(a) in paragraph (a), after the words “Rule 1.3” insert “(subject to paragraph (c) below)”; and

(b) after paragraph (b), insert–

“(c) the administrator or liquidator shall include, in place of the estimate referred to in Rule 1.3(2)(ca), a statement which contains–

- (i) to the best of his knowledge and belief–
    - (aa) an estimate of the value of the prescribed part (whether or not he proposes to make an application under section 176A(5) or section 176A(3) applies), and
    - (bb) an estimate of the value of the company’s net property,  
provided that such estimates shall not be required to include any information the disclosure of which could seriously prejudice the commercial interests of the company, but if such information is excluded the estimates shall be accompanied by a statement to that effect, and
  - (ii) whether, and, if so, why, he proposes to make an application under section 176A(5).”.
- (3) In Rule 1.23 (completion or termination of the arrangement)(2), after paragraph (2) insert–  
“(2A) In the report under paragraph (2), the supervisor shall include a statement as to the amount paid, if any, to unsecured creditors by virtue of the application of section 176A (prescribed part).”.

### **Amendments to Part 3 – Receivers**

5. After Rule 3.8 (members' dealings with the company) insert–

#### **“Prescribed Part**

**3.8A.** Where a receiver is appointed over the whole or any part of the property of a company and section 176A(2) applies, the receiver shall–

- (a) where the company is in liquidation or administration, make available to the liquidator or administrator for distribution to unsecured creditors the sums representing the prescribed part, or
- (b) in any other case (save where the receiver petitions for the winding up of the company), apply to the court for directions as to the disposal of the prescribed part.”.

### **Amendments to Part 4 – Winding Up by the Court**

- 6.—(1) In Rule 4.10(1) (information to creditors and contributories), after paragraph (1) insert–

“(1A) The report under paragraph (1) shall include–

- (a) to the best of the liquidator’s knowledge and belief–
  - (i) an estimate of the value of the prescribed part (whether or not he proposes to make an application to the court under section 176A(5) or section 176A(3) applies), and
  - (ii) an estimate of the value of the company’s net property,  
provided that such estimates shall not be required to include any information the disclosure of which could seriously prejudice the commercial interests of the company, but if such information is excluded the estimates shall be accompanied by a statement to that effect, and
- (b) whether, and, if so, why, the liquidator proposes to make an application to the court under section 176A(5).”.

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(2) Rule 1.23 was substituted by [S.I. 2002/2709](#).

(2) In Rule 4.28(2) (resignation of liquidator), after the word “payments” insert “and a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A (prescribed part)”.

(3) In Rule 4.31(2) (final meeting), after the word “payments” insert “and a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A (prescribed part)”.

### **Amendments to Part 7 – Provisions of General Application**

7. After rule 7.13 (report of meeting) insert–

“CHAPTER 1A  
PRESCRIBED PART

#### **Application under section 176A(5) to disapply section 176A**

**7.13A.** An application under section 176A(5) shall include averments as to–

- (a) the type of insolvency proceedings in which the application arises,
- (b) the financial position of the company,
- (c) the basis of the applicant’s view that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits, and
- (d) whether any other insolvency practitioner is acting in relation to the company and, if so, his address.

#### **Notice of order under section 176A(5)**

**7.13B.—**(1) Where the court makes an order under section 176A(5) the applicant shall, as soon as reasonably practicable after the making of the order–

- (a) send to the company a copy of the order certified by the clerk of court,
- (b) send to the registrar of companies and, where a receiver or liquidator has been appointed, to the Accountant in Bankruptcy a copy of the order together with the form required by Rule 7.30 and Schedule 5, and
- (c) give notice of the order to each creditor of whose claim and address he is aware.

(2) The court may direct that the requirement of paragraph (1)(c) of this Rule be met by the publication of a notice in a newspaper calculated to come to the attention of the unsecured creditors stating that the court has made an order disapplying the requirement to set aside the prescribed part.”.

**8.** At the end of Rule 7.31, insert “, with the exception of the fees, costs, charges and other expenses associated with the prescribed part, which shall be met out of the prescribed part” .

### **Amendments to Schedule 1 - Modifications of Part 4 in relation to Creditors' Voluntary Winding Up**

**9.—**(1) Rule 4.10 as substituted by paragraph 6 of Schedule 1 to the Rules is renumbered as Rule 4.10(1), and the following inserted after the paragraph so renumbered–

“(2) The report under paragraph 1(b) shall include–

- (a) to the best of the liquidator’s knowledge and belief–
  - (i) an estimate of the value of the prescribed part (whether or not he proposes to make an application to the court under section 176A(5) or section 176A(3) applies), and

(ii) an estimate of the value of the company's net property,

provided that such estimates shall not be required to include any information the disclosure of which could seriously prejudice the commercial interests of the company, but if such information is excluded the estimates shall be accompanied by a statement to that effect; and

(b) whether, and, if so, why, the liquidator proposes to make an application to the court under section 176A(5).”.

(2) In Rule 4.31(2) as substituted by paragraph 18 of Schedule 1 to the Rules, after the word “payments” insert “and a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A (prescribed part)”.

#### **Amendments to Schedule 5 – Forms**

**10.**—(1) There shall be inserted in Schedule 5 to the Rules, following Form 4.30 (Scot)(3), the form set out in Part 1 of the Schedule to this Order.

(2) For Page 2 of Form 4.4 (Scot) in Schedule 5 to the Rules substitute the page set out in Part 2 of the Schedule to this Order.

## **PART 2 –**

### **AMENDMENTS TO THE RECEIVERS (SCOTLAND) REGULATIONS 1986**

**11.**—(1) Regulation 7 of the Receivers (Scotland) Regulations 1986(4) is renumbered as regulation 7(1) and the following inserted after the paragraph so renumbered—

“(2) The receiver's report under section 67(1) shall state, to the best of his knowledge and belief—

(a) an estimate of the value of the prescribed part (whether or not he proposes to make an application under section 176A(5) or whether section 176A(3) applies), and

(b) an estimate of the value of the company's net property,

provided that such estimates shall not be required to include any information the disclosure of which could seriously prejudice the commercial interests of the company, but if such information is excluded the estimates shall be accompanied by a statement to that effect.

(3) The report shall also state whether, and, if so, why, the receiver proposes to make an application to the court under section 176A(5).”.

(2) For Page 2 of Form 5 (Scot) substitute the page set out in Part 2 of the Schedule to this Order.

Department of Trade and Industry  
8th August 2003

*NIGEL GRIFFITHS*  
Parliamentary Under-Secretary of State For  
Small Business and Enterprise,

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(3) Form 4.30(Scot) was inserted by [S.I. 2003/2109](#).

(4) [S.I. 1986/1917](#).