

SCHEDULE

PART 1

AMENDMENTS TO PART 1 OF THE PRINCIPAL RULES

Amendments to Rule 1.1

1. In Rule 1.1—

- (a) in paragraph (2) for sub-paragraph (a) there is substituted—
 - “(a) Chapter 2 applies where the proposal for the voluntary arrangement is made by the directors of the company and
 - (i) the company is neither in liquidation nor is an administration order (under Part II of the Act) in force in relation to it; and
 - (ii) no steps have been taken to obtain a moratorium under Schedule A1 to the Act in connection with the proposal;”;
- (b) in paragraph (2) for sub-paragraphs (c) and (d) there is substituted—
 - “(c) Chapter 4 applies in the same case as Chapter 3, but where the nominee is not the liquidator or administrator;
 - (d) Chapters 5 and 6 apply in all the three cases mentioned in sub-paragraphs (a) to (c) above; and
 - (e) Chapter 7 applies where the proposal is made by the directors of an eligible company with a view to obtaining a moratorium.”; and
- (c) after paragraph (3) there is inserted—
 - “(4) In this Part, a reference to an “eligible company” is to a company that is eligible for a moratorium in accordance with paragraph 2 of Schedule A1 to the Act(1).”.

Amendments to Rule 1.3

2. In Rule 1.3—

- (a) after sub-paragraph (f) of paragraph (2) there is inserted—
 - “(fa) how it is proposed to deal with the claim of any person who is bound by the arrangement by virtue of section 5(2)(b)(ii)(2);”;
- (b) for sub-paragraph (o) of paragraph (2) there is substituted—
 - “(o) the name, address and qualification of the person proposed as supervisor of the voluntary arrangement, and confirmation that he is either qualified to act as an insolvency practitioner in relation to the company or is an authorised person in relation to the company; and.”.

Amendment to Rule 1.7

3. In paragraph (2) of Rule 1.7 after the words “his opinion” where they first appear there is inserted “that the directors' proposal has a reasonable prospect of being approved and implemented and”.

(1) Schedule A1 is inserted into the Insolvency Act 1986 (c. 45) by section 1 of, and Schedule 1 to, the Insolvency Act 2000 (c. 39).

(2) Section 5(2)(b) of the Act was amended by section 2 of, and paragraph 6(c) of Schedule 2 to, the Insolvency Act 2000.

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Substitution of Rule 1.8

4. For Rule 1.8 there is substituted—

“Replacement of nominee

1.8.—(1) Where a person other than the nominee intends to apply to the court under section 2(4) (3) for the nominee to be replaced (except in any case where the nominee has died), he shall give to the nominee at least 7 days' notice of his application.

(2) Where the nominee intends to apply to the court under section 2(4) to be replaced, he shall give at least 7 days' notice of his application to the person intending to make the proposal.

(3) No appointment of a replacement nominee shall be made by the court unless there is lodged in court a statement by the replacement nominee—

- (a) indicating his consent to act; and
- (b) that he is qualified to act as an insolvency practitioner in relation to the company or is an authorised person in relation to the company.”.

Amendment to Rule 1.14

5. For paragraph (2) of Rule 1.14 there is substituted—

“(2) The meetings may be held on the same day or on different days. If held on the same day, the meetings shall be held in the same place, but in either case the creditors' meeting shall be fixed for a time in advance of the company meeting.

(3) Where the meetings are not held on the same day, they shall be held within 7 days of each other.”.

New Rule 1.14A

6. After Rule 1.14 insert—

“The Chairman at meetings

1.14A.—(1) Subject as follows, at both the creditors' meeting and the company meeting, and at any combined meeting, the convenor shall be chairman.

(2) If for any reason he is unable to attend, he may nominate another person to act as chairman in his place; but a person so nominated must be—

- (a) a person qualified to act as an insolvency practitioner in relation to the company;
- (b) an authorised person in relation to the company; or
- (c) an employee of the convenor or his firm who is experienced in insolvency matters.”.

New Rules 1.15A and 1.15B

7. After Rule 1.15 there is inserted—

(3) Section 2(4) was amended by section 2 of, and paragraph 3(b) of Schedule 2 to, the Insolvency Act 2000.

“Entitlement to vote (creditors)

1.15A.—(1) Subject as follows, every creditor who has notice of the creditors' meeting is entitled to vote at the meeting or any adjournment of it.

(2) Votes are calculated according to the amount of the creditor's debt as at the date of the meeting or, where the company is being wound up or is subject to an administration order, the date of its going into liquidation or (as the case may be) of the administration order.

(3) A creditor may vote in respect of a debt for an unliquidated amount or any debt whose value is not ascertained and for the purposes of voting (but not otherwise) his debt shall be valued at £1 unless the chairman agrees to put a higher value on it.

Procedure for admission of creditors' claims for voting purposes

1.15B.—(1) Subject as follows, at any creditors' meeting the chairman shall ascertain the entitlement of persons wishing to vote and shall admit or reject their claims accordingly.

(2) The chairman may admit or reject a claim in whole or in part.

(3) The chairman's decision on any matter under this Rule or under paragraph (3) of Rule 1.15A is subject to appeal to the court by any creditor or member of the company.

(4) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

(5) If on an appeal the chairman's decision is reversed or varied, or votes are declared invalid, the court may order another meeting to be summoned, or make such order as it thinks just.

The court's power to make an order under this paragraph is exercisable only if it considers that the circumstances giving rise to the appeal give rise to unfair prejudice or material irregularity.

(6) An application to the court by way of appeal against the chairman's decision shall not be made after the end of the period of 28 days beginning with the first day on which the report required by section 4(6) has been made to the court.

(7) The chairman is not personally liable for any expenses incurred by any person in respect of an appeal under this Rule.”.

Substitution of Rule 1.16

8. For Rule 1.16 there is substituted—

“1.16.—(1) If the chairman thinks fit, the creditors' meeting and the company meeting may be held together.

(2) The chairman may, and shall if it is so resolved at the meeting in question, adjourn that meeting for not more than 14 days.

(3) If there are subsequently further adjournments, the final adjournment shall not be to a day later than 14 days after the date on which the meeting in question was originally held.

(4) In the case of a proposal by the directors, if the meetings are adjourned under paragraph (2), notice of the fact shall be given by the nominee forthwith to the court.

(5) If following the final adjournment of the creditors' meeting the proposal (with or without modifications) has not been approved by the creditors it is deemed rejected.”.

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Amendment to Rule 1.17

9. In Rule 1.17—

- (a) for sub-paragraph (a) of paragraph (2) there is substituted—
 - “(a) state whether the proposal for a voluntary arrangement was approved by the creditors of the company alone or by both the creditors and members of the company and in either case whether such approval was with any modifications;”;
 - and
- (b) in paragraph (5) for the words “If the voluntary arrangement has been approved by the meetings” there is substituted “If the decision approving the voluntary arrangement has effect under section 4A”.

Amendments to Rule 1.18

10. In Rule 1.18—

- (a) for paragraph (1) there is substituted—
 - “(1) If the voluntary arrangement is approved (with or without modifications) by the creditors' meeting, a resolution may be taken by the creditors, where two or more supervisors are appointed, on the question whether acts to be done in connection with the arrangement may be done by any one or more of them, or must be done by all of them.”;
- (b) paragraph (2) is omitted; and
- (c) after the word “company” in sub-paragraph (b) of paragraph (3) there is inserted—

“or is an authorised person in relation to the company”.

New Rule 1.18A

11. After Rule 1.18 there is inserted—

“Notice of order made under section 4A(6)

- 1.18A.—**(1) This Rule applies where the court makes an order under section 4A(6)(4).
- (2) The member of the company who applied for the order shall serve certified copies of it on—
 - (a) the supervisor of the voluntary arrangement; and
 - (b) the directors of the company.
- (3) Service on the directors may be effected by service of a single copy on the company at its registered office.
- (4) The directors or (as the case may be) the supervisor shall forthwith after receiving a copy of the court’s order, give notice of it to all persons who were sent notice of the creditors' or company meetings or who, not having been sent such notice, are affected by the order.
- (5) The person on whose application the order of the court was made shall, within 7 days of the order, deliver a certified copy interlocutor to the registrar of companies.”.

(4) Section 4A was inserted into the Insolvency Act 1986 by section 2 of, and paragraph 5 of Schedule 2 to, the Insolvency Act 2000.

Amendment to Rule 1.19

12. In paragraph (1) of Rule 1.19 for the words “After the approval of the voluntary arrangement —” there is substituted “Where the decision approving the voluntary arrangement has effect under section 4A—”.

Amendment to Rule 1.22

13. In sub-paragraph (a) of Rule 1.22 for the words “approval of the arrangement” there is substituted “decision approving the arrangement taking effect under section 4A”.

Substitution of Rule 1.23

14. For Rule 1.23 there is substituted—

“Completion or termination of the arrangement

1.23.—(1) Not more than 28 days after the final completion or termination of the voluntary arrangement, the supervisor shall send to creditors and members of the company who are bound by it a notice that the voluntary arrangement has been fully implemented or (as the case may be) has terminated.

(2) With the notice there shall be sent to each creditor and member a copy of a report by the supervisor summarising all receipts and payments made by him in pursuance of the arrangement, and explaining in relation to implementation of the arrangement any departure from the proposals as they originally took effect, or (in the case of termination of the arrangement) explaining the reasons why the arrangement has terminated.

(3) The supervisor shall, within the 28 days mentioned above, send to the registrar of companies and to the court a copy of the notice to creditors and members under paragraph (1), together with a copy of the report under paragraph (2), and the supervisor shall not vacate office until after such copies have been sent.”.

Omission of rule 1.24

15. Rule 1.24 is omitted.

New Chapter 7

16. After Rule 1.24 the following provisions⁽⁵⁾ are inserted—

(5) The provisions inserted into the Rules by paragraph 16 are to give effect to the provisions of Schedule A1 to the Insolvency Act 1986 which was inserted into the Insolvency Act 1986 by section 1 of, and paragraph 4 of Schedule 1 to, the Insolvency Act 2000. Schedule A1 is amended by S.I.2002/1990.

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“CHAPTER 7

OBTAINING A MORATORIUM

PROCEEDINGS DURING A MORATORIUM

NOMINEES

CONSIDERATION OF PROPOSALS WHERE MORATORIUM OBTAINED

SECTION A: OBTAINING A MORATORIUM

Preparation of proposal by directors and submission to nominee

1.25.—(1) The document containing the proposal referred to in paragraph 6(1)(a) of Schedule A1 to the Act shall—

- (a) be prepared by the directors;
- (b) comply with the requirements of paragraphs (1) and (2) of Rule 1.3 (save that the reference to preferential creditors shall be to preferential creditors within the meaning of paragraph 31(8) of Schedule A1 to the Act); and
- (c) state the address to which notice of the consent of the nominee to act and the documents referred to in Rule 1.28 shall be sent.

(2) With the agreement in writing of the nominee, the directors may amend the proposal at any time before submission to them by the nominee of the statement required by paragraph 6(2) of Schedule A1 to the Act.

Delivery of documents to the intended nominee etc.

1.26.—(1) The documents required to be delivered to the nominee pursuant to paragraph 6(1) of Schedule A1 to the Act shall be delivered to the nominee himself or to a person authorised to take delivery of documents on his behalf.

(2) On receipt of the documents, the nominee shall forthwith issue an acknowledgement of receipt of the documents to the directors which shall indicate the date on which the documents were received.

Statement of affairs

1.27.—(1) The statement of the company’s affairs required to be delivered to the nominee pursuant to paragraph 6(1)(b) of Schedule A1 to the Act shall be delivered to the nominee no later than 7 days after the delivery to him of the document setting out the terms of the proposed voluntary arrangement or such longer time as he may allow.

(2) The statement of affairs shall comprise the same particulars as required by Rule 1.5(2) (supplementing or amplifying, so far as is necessary for clarifying the state of the company’s affairs, those already given in the directors' proposal).

(3) The statement of affairs shall be made up to a date not earlier than 2 weeks before the date of the delivery of the document containing the proposal for the voluntary arrangement to the nominee under Rule 1.26(1).

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However, the nominee may allow an extension of that period to the nearest practicable date (not earlier than 2 months before the date of delivery of the documents referred to in Rule 1.26(1)) and if he does so, he shall give a statement of his reasons in writing to the directors.

(4) The statement of affairs shall be certified as correct, to the best of their knowledge and belief, by two or more directors of the company, or by the company secretary and at least one director (other than the secretary himself).

The nominee's statement

1.28.—(1) The nominee shall submit to the directors the statement required by paragraph 6(2) of Schedule A1 to the Act within 28 days of the submission to him of the document setting out the terms of the proposed voluntary arrangement.

(2) The statement shall have annexed to it—

- (a) the nominee's comments on the proposal, unless the statement contains an opinion in the negative on any of the matters referred to in paragraph 6(2)(a) and (b) of Schedule A1 to the Act, in which case he shall instead give his reasons for that opinion, and
- (b) where he is willing to act in relation to the proposed arrangement, a statement of his consent to act.

Documents submitted to the court to obtain moratorium

1.29.—(1) Where pursuant to paragraph 7 of Schedule A1 to the Act the directors lodge the document and statements referred to in that paragraph in court those documents shall be delivered together with 4 copies of a schedule listing them within 3 working days of the date of the submission to them of the nominee's statement under paragraph 6(2) of Schedule A1 to the Act.

(2) When the directors lodge the document and statements referred to in paragraph (1), they shall also lodge—

- (a) a copy of any statement of reasons made by the nominee pursuant to Rule 1.27(3); and
- (b) a copy of the nominee's comments on the proposal submitted to them pursuant to Rule 1.28(2).

(3) The copies of the schedule shall be endorsed by the court with the date on which the documents were lodged in court and 3 copies of the schedule certified by the court shall be returned by the court to the person who lodged the documents in court.

(4) The statement of affairs required to be lodged under paragraph 7(1)(b) of Schedule A1 to the Act shall comprise the same particulars as required by Rule 1.5(2).

Notice and advertisement of beginning of a moratorium

1.30.—(1) After receiving the copies of the schedule endorsed by the court under Rule 1.29(3), the directors shall forthwith serve two of them on the nominee and one on the company.

(2) Forthwith after receiving the copies of the schedule pursuant to paragraph (1) the nominee shall advertise the coming into force of the moratorium once in the Edinburgh Gazette, and once in such newspaper as he thinks most appropriate for ensuring that its coming into force comes to the notice of the company's creditors.

(3) The nominee shall forthwith notify the registrar of companies, the keeper of the register of inhibitions and adjudications, the company and any petitioning creditor of the

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company of whose claim he is aware of the coming into force of the moratorium and such notification shall specify the date on which the moratorium came into force.

(4) The nominee shall give notice of the coming into force of the moratorium specifying the date on which it came into force to any messenger-at-arms or sheriff officer who, to his knowledge, is instructed to execute diligence or other legal process against the company or its property.

Notice of extension of moratorium

1.31.—(1) The nominee shall forthwith notify the registrar of companies, the keeper of the register of inhibitions and adjudications and the court of a decision taking effect pursuant to paragraph 36 of Schedule A1 to the Act to extend or further extend the moratorium and such notice shall specify the new expiry date of the moratorium.

(2) Where an order is made by the court extending or further extending or renewing or continuing a moratorium, the nominee shall forthwith after receiving a copy of the same give notice to the registrar of companies and the keeper of the register of inhibitions and adjudications and together with the notice shall send a certified copy interlocutor to the registrar of companies.

Notice and advertisement of end of moratorium

1.32.—(1) After the moratorium comes to an end, the nominee shall forthwith advertise its coming to an end once in the Edinburgh Gazette, and once in such newspaper as he thinks most appropriate for ensuring that its coming to an end comes to the notice of the company's creditors, and such notice shall specify the date on which the moratorium came to an end.

(2) The nominee shall forthwith give notice of the ending of the moratorium to the registrar of companies, the court, the keeper of the register of inhibitions and adjudications, the company and any creditor of the company of whose claim he is aware and such notice shall specify the date on which the moratorium came to an end.

Inspection of court file

1.33. Any director, member or creditor of the company is entitled, at all reasonable times on any business day, to inspect the court file.

SECTION B: PROCEEDINGS DURING A MORATORIUM

Disposal of charged property etc. during a moratorium

1.34.—(1) This Rule applies in any case where the company makes an application to the court under paragraph 20 of Schedule A1 to the Act for leave to dispose of property of the company which is subject to a security, or goods in possession of the company under an agreement to which that paragraph relates.

(2) The court shall fix a venue for the hearing of the application and the company shall forthwith give notice of the venue to the person who is the holder of the security or, as the case may be, the owner under the agreement.

(3) If an order is made, the company shall forthwith give notice of it to that person or owner.

(4) The court shall send two certified copies of the order to the company, who shall send one of them to that person or owner.

SECTION C: NOMINEES

Withdrawal of nominee's consent to act

1.35. Where the nominee withdraws his consent to act, he shall, pursuant to paragraph 25(5) of Schedule A1 to the Act, forthwith give notice of his withdrawal and the reason for withdrawing his consent to act to—

- (a) the registrar of companies;
- (b) the court;
- (c) the company; and
- (d) any creditor of the company of whose claim he is aware.

Replacement of nominee by the court

1.36.—(1) Where the directors intend to make an application to the court under paragraph 28 of Schedule A1 to the Act for the nominee to be replaced, they shall give to the nominee at least 7 days' notice of their application.

(2) Where the nominee intends to make an application to the court under that paragraph to be replaced, he shall give to the directors at least 7 days' notice of his application.

(3) No appointment of a replacement nominee shall be made by the court unless there is lodged in court a statement by the replacement nominee indicating his consent to act.

Notification of appointment of a replacement nominee

1.37. Where a person is appointed as a replacement nominee he shall forthwith give notice of his appointment to—

- (a) the registrar of companies;
- (b) the court (in any case where he was not appointed by the court); and
- (c) the person whom he has replaced as nominee.

Applications to court under paragraph 26 or 27 of Schedule A1 to the Act

1.38. Where any person intends to make an application to the court pursuant to paragraph 26 or 27 of Schedule A1 to the Act, he shall give to the nominee at least 7 days' notice of his application.

SECTION D: CONSIDERATION OF PROPOSALS WHERE MORATORIUM OBTAINED

General

1.39.—(1) The provisions of Chapter 1 of Part 7 (Meetings) shall apply with regard to the meetings of the company and of the creditors which are summoned pursuant to paragraph 29(1) of Schedule A1 to the Act, subject to the provisions in this section of this Chapter.

(2) The provisions of Rules 1.14, 1.14A and 1.15 shall apply with regard to meetings as mentioned in paragraph (1) above as they apply to meetings of the company and of creditors which are summoned under section 3.

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Summoning of meetings; procedure at meetings etc.

1.40.—(1) Where the nominee summons meetings of creditors and the company pursuant to paragraph 29(1) of Schedule A1 to the Act, each of those meetings shall be summoned for a date that is not more than 28 days from the date on which the moratorium came into force.

(2) Notices calling the creditors' meetings shall be sent by the nominee to all creditors specified in the statement of affairs and any other creditors of the company of whose address he is aware at least 14 days before the day fixed for the meeting.

(3) Notices calling the company meeting shall be sent by the nominee to all persons who are, to the best of the nominee's belief, members of the company at least 14 days before the day fixed for the meeting.

(4) Each notice sent under this Rule shall specify the court in which the documents relating to the obtaining of the moratorium were lodged and state the effect of paragraphs (1), (2) and (3) of Rule 1.43 (requisite majorities (creditors)); and with each notice there shall be sent—

- (a) a copy of the directors' proposal;
- (b) a copy of the statement of the company's affairs or, if the nominee thinks fit, a summary of it (the summary to include a list of creditors and the amount of their debts); and
- (c) the nominee's comments on the proposal.

Entitlement to vote (creditors)

1.41.—(1) Subject as follows, every creditor who has notice of the creditors' meeting is entitled to vote at the meeting or any adjournment of it.

(2) Votes are calculated according to the amount of the creditor's debt as at the beginning of the moratorium, after deducting any amounts paid in respect of that debt after that date.

(3) A creditor may vote in respect of a debt for an unliquidated amount or any debt whose value is not ascertained and for the purposes of voting (but not otherwise) his debt shall be valued at £1 unless the chairman agrees to put a higher value on it.

Procedure for admission of creditors claims for voting purposes

1.42.—(1) Subject as follows, at any creditors' meeting the chairman shall ascertain the entitlement of persons wishing to vote and shall admit or reject their claims accordingly.

(2) The chairman may admit or reject a claim in whole or in part.

(3) The chairman's decision on any matter under this Rule or under paragraph (3) of Rule 1.41 is subject to appeal to the court by any creditor or member of the company.

(4) If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

(5) If on an appeal the chairman's decision is reversed or varied, or votes are declared invalid, the court may order another meeting to be summoned, or make such order as it thinks just.

The court's power to make an order under this paragraph is exercisable only if it considers that the circumstances giving rise to the appeal give rise to unfair prejudice or material irregularity.

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(6) An application to the court by way of appeal against the chairman's decision shall not be made after the end of the period of 28 days beginning with the first day on which the report required by paragraph 30(3) of Schedule A1 to the Act has been made to the court.

(7) The chairman is not personally liable for any expenses incurred by any person in respect of an appeal under this Rule.

Requisite majorities (creditors)

1.43.—(1) Subject as follows, at the creditors' meeting for any resolution to pass approving any proposal or modification there must be a majority in excess of three-quarters in value of the creditors present in person or by proxy and voting on the resolution.

(2) The same applies in respect of any other resolution proposed at the meeting, but substituting one-half for three-quarters.

(3) At a meeting of the creditors for any resolution to pass extending (or further extending) a moratorium, or to bring a moratorium to an end before the end of the period of any extension, there must be a majority in excess of three-quarters in value of the creditors present in person or by proxy and voting on the resolution. For this purpose a secured creditor is entitled to vote in respect of the amount of his claim without deducting the value of his security.

Proceedings to obtain agreement on the proposal

1.44.—(1) If the chairman thinks fit, the creditors' meeting and the company meeting may be held together.

(2) The chairman may, and shall if it is so resolved at the meeting in question, adjourn that meeting, but any adjournment shall not be to a day which is more than 14 days after the date on which the moratorium (including any extension) ends.

(3) If the meetings are adjourned under paragraph (2), notice of the fact shall be given by the nominee forthwith to the court.

(4) If following the final adjournment of the creditors' meeting the proposal (with or without modifications) has not been approved by the creditors, it is deemed rejected.

Implementation of the arrangement

1.45.—(1) Where a decision approving the arrangement has effect under paragraph 36 of Schedule A1 to the Act, the directors shall forthwith do all that is required for putting the supervisor into possession of the assets included in the arrangement.

(2) Subject to paragraph (3), Rules 1.17, 1.18, 1.18A and 1.20 to 1.23 apply.

(3) The provisions referred to in paragraph (2) are modified as follows—

(a) in paragraph (4) of Rule 1.17 the reference to section 4(6) is to be read as a reference to paragraph 30(3) of Schedule A1 to the Act;

(b) in paragraph (5) of Rule 1.17 the reference to section 4A is to be read as a reference to paragraph 36 of Schedule A1 to the Act;

(c) in paragraph (1) of Rule 1.18A the reference to section 4A(6) is to be read as a reference to paragraph 36(5) of Schedule A1 to the Act;

(d) in paragraph (1) of Rule 1.20 the reference to section 6 is to be read as a reference to paragraph 38 of Schedule A1 to the Act and the references in paragraphs (2) and (4) to the administrator or liquidator shall be ignored;

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- (e) in paragraph (3) of Rule 1.20 the reference to section 6(4)(b) is to be read as a reference to paragraph 38 (4)(b) of Schedule A1 to the Act; and
- (f) in sub-paragraph (a) of paragraph (1) of Rule 1.22 the reference to section 4A is to be read as a reference to paragraph 36 of Schedule A1 to the Act.”.