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STATUTORY INSTRUMENTS

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**2016 No. 1024**

**The Insolvency (England and Wales) Rules 2016**

**PART 9**

**DEBT RELIEF ORDERS**

**CHAPTER 3**

Verifying the application and determining the debtor's income and property

**Prescribed verification checks: conditions in paragraphs 1 to 8 of Schedule 4ZA of the Act**

**9.6.**—(1) For the purposes of section 251D(4) and (5) and the conditions in paragraphs 1 to 8 of Schedule 4ZA(1) of the Act, the prescribed verification checks are those searches or enquiries specified in this rule.

(2) For the purpose of verifying a debtor's connection with England and Wales on the application date, verification checks made in, or with, one or more of the following—

- (a) the electoral registers for the areas in England and Wales in which the debtor claims to reside or to carry on business or to have resided or carried on business at the date of the application;
- (b) the individual insolvency register;
- (c) the bankruptcy restrictions register;
- (d) the debt relief restrictions register;
- (e) a credit reference agency.

(3) Verification checks made in one or more of the registers specified in paragraph (4), for the purpose of verifying that a debtor—

- (a) is not, on the determination date—
  - (i) an undischarged bankrupt,
  - (ii) subject to a bankruptcy restrictions order or undertaking,
  - (iii) subject to a debt relief restrictions order or undertaking,
  - (iv) subject to an IVA; or
- (b) has not been the subject of a debt relief order in the period of six years ending with the determination date.

(4) The registers referred to in paragraph (3) are—

- (a) the individual insolvency register;
- (b) the bankruptcy restrictions register; and
- (c) the debt relief restrictions register.

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(1) Paragraph 3 of Schedule 4ZA is substituted by paragraph 62 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24).

(5) Verification checks made in, or with, one or more of the sources specified in paragraph (6) for the purpose of verifying—

- (a) that the debtor is not subject to an interim order on the determination date;
- (b) whether a creditor's bankruptcy petition has been presented against the debtor before the determination date;
- (c) whether the debtor has made a bankruptcy application before the determination date;
- (d) whether proceedings in relation to any such bankruptcy application have finally been disposed of before the determination date;
- (e) where a creditor's bankruptcy petition has been presented against the debtor before the determination date, the status of the proceedings in relation to the petition and whether the person who presented the petition has consented to the making of the application for a debt relief order.

(6) The sources are—

- (a) the individual insolvency register;
- (b) county or other court records;
- (c) a credit reference agency.

(7) Verification checks made with a credit reference agency, for the purpose of verifying that each of the following does not exceed the prescribed amount—

- (a) the amount of the debtor's overall indebtedness;
- (b) the amount of the debtor's monthly surplus income; or
- (c) the total value of the debtor's property.

#### **Determination of debtor's monthly surplus income**

**9.7.—**(1) For the purposes of this Part, the income of a debtor comprises every payment in the nature of income which is from time to time made to the debtor or to which the debtor from time to time becomes entitled, including any payment in respect of the carrying on of a business or in respect of an office or employment and any payment under a pension scheme.

(2) In determining the monthly surplus income of a debtor, the official receiver must take into account any contribution made by a member of the debtor's family to the amount necessary for the reasonable domestic needs of the debtor and the debtor's family.

#### **Determination of value of the debtor's property (paragraph 8 of Schedule 4ZA)**

**9.8.—**(1) The official receiver in determining the total value of the debtor's property for the purposes of determining whether the condition in paragraph 8 of Schedule 4ZA is met must treat as a debtor's property for the purposes of this Part—

- (a) all property belonging to or vested in the debtor on the determination date; and
- (b) any property which by virtue of any of the following provisions of this Part is comprised in or is treated as falling within the preceding sub-paragraph.

(2) For the purposes of this Part—

- (a) property, in relation to a debtor, includes references to any power exercisable by the debtor over or in relation to property except in so far as the power is exercisable over or in relation to property which is not or is deemed not for the time being to be the property of the debtor and cannot be exercised for the benefit of the debtor;
- (b) a power exercisable over or in relation to property is deemed for the purposes of this Part to vest in the person entitled to exercise it at the time of the transaction or event by virtue

of which it is exercisable by that person (whether or not it becomes so exercisable at that time);

- (c) property belonging to or vested in the debtor so belongs or vests in the debtor subject to the rights of any person other than the debtor (whether as a secured creditor of the debtor or otherwise).

(3) In determining the value of the debtor's property the descriptions of property set out in rule 9.9 must be excluded.

### **Property to be excluded in determining the value of a debtor's property**

**9.9.**—(1) For the purposes of determining the value of a person's property under rule 9.8, the official receiver must disregard—

- (a) a single domestic motor vehicle belonging to or vested in the debtor if—
  - (i) it has been especially adapted for use by the debtor because of a physical impairment that has a substantial and long-term adverse effect on the debtor's ability to carry out normal day-to-day activities, subject to paragraph (2), or
  - (ii) the maximum potential realisable value of the vehicle is less than £1,000 (the prescribed amount);
- (b) subject to paragraph (3), such tools, books and other items of equipment as are necessary to the debtor for use personally in the debtor's employment, business or vocation;
- (c) subject to paragraph (3), such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the debtor and the debtor's family;
- (d) property held by the debtor on trust for any other person;
- (e) the right of nomination to a vacant ecclesiastical benefice;
- (f) a tenancy which is an assured tenancy or an assured agricultural occupancy, within the meaning of Part 1 of the Housing Act 1988(2), and the terms of which inhibit an assignment as mentioned in section 127(5) of the Rent Act 1977(3);
- (g) a protected tenancy, within the meaning of the Rent Act 1977, in relation to which, by virtue of any provision of Part 9 of that Act, no premium can lawfully be required as a condition of assignment;
- (h) a tenancy of a dwelling-house by virtue of which the debtor is, within the meaning of the Rent (Agriculture) Act 1976(4), a protected occupier of the dwelling-house, and the terms of which inhibit an assignment as mentioned in section 127(5) of the Rent Act 1977;
- (i) a secure tenancy, within the meaning of Part 4 of the Housing Act 1985(5), which is not capable of being assigned, except in the cases mentioned in section 91(3) of that Act; and
- (j) any right of the debtor under an approved pension arrangement (as defined by section 11 of the Welfare Reform and Pensions Act 1999 (6)).

(2) The amount the official receiver must disregard under paragraph (1)(a)(i) is limited to the value of a reasonable replacement where it appears to the official receiver that the realisable value of the vehicle to be disregarded exceeds the cost of a reasonable replacement for it.

(3) The amount the official receiver must disregard under paragraph (1)(b) or (c) is limited to the value of a reasonable replacement where it appears to the official receiver that the realisable value

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(2) 1998 c.50.

(3) 1977 c.42.

(4) 1976 c.80.

(5) 1985 c.68.

(6) 1999 c 30; section 11 is amended by S.I. 2006/745.

of the whole or a part of the property to be disregarded exceeds the cost of a reasonable replacement for that property or that part.

(4) A vehicle or other property is a reasonable replacement if it is reasonably adequate for meeting the needs met by the other vehicle or other property.