

2003 No. 2108 (S. 7)

INSOLVENCY, SCOTLAND

COMPANIES

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

<i>Made</i>	<i>8th August 2003</i>
<i>Laid before Parliament</i>	<i>13th August 2003</i>
<i>Coming into force</i>	<i>15th September 2003</i>

The Secretary of State, in exercise of the powers conferred upon her by section 277(1) of the Enterprise Act 2002(a) hereby makes the following Order:—

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(b) 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 disappplied, 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;”.

(a) 2002 c.40.

(b) S.I. 1986/1915: amended by S.I. 1987/1921, 1999/1820, 2002/2709 and 2003/2109.

- (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)(a), 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).”.

- (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)”.

(a) Rule 1.23 was substituted by S.I. 2002/2709.

(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)(a), 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(b) 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.

NIGEL GRIFFITHS
Parliamentary Under-Secretary of State
For Small Business and Enterprise,
Department of Trade and Industry

8th August 2003

(a) Form 4.30(Scot) was inserted by S.I. 2003/2109.
(b) S.I. 1986/1917.

The Insolvency Act 1986

Notice in respect of order under Section 176A
Pursuant to section 176A(5) of the Insolvency Act 1986

R7.13B

To the Registrar of Companies
To the Accountant in Bankruptcy

Company Number

Name of Company

I/We _____

Insert full name and
address of office holder

attach a copy of a court order made under section 176A of the Insolvency Act 1986

Signed _____

Dated _____

Contact Details:

You do not have to give any contact information in the box opposite but if you do, it will help Companies House to contact you if there is a query on the form. The contact information that you give will be visible to searchers of the public record

	Tel
DX Number	DX Exchange

When you have completed and signed form please send it to the Registrar of Companies at:

**Companies House, 37 Castle Terrace, Edinburgh EH1 2EB
DX 235 Edinburgh / LP 4, Edinburgh 2**

and to the Accountant in Bankruptcy at:

**Accountant in Bankruptcy, George House, 126 George Street, Edinburgh
EH2 4HH
LP 1, Edinburgh 20**

Part 2

STATEMENT as to the affairs of the company on the

Please do not write in this margin

Please complete legibly, preferably in black type, or bold block lettering

		Estimated Realisable Values £
ASSETS		
Assets not specifically secured (as per List "A")	_____	
Assets specifically secured (as per List "B")		£
Estimated realisable value		
Less: Amount due to secured creditors		
Estimated Surplus	_____	
Estimated Total Assets available for preferential creditors, holders of floating charges and unsecured creditors _____		
LIABILITIES		
Preferential creditors (as per List "C")	_____	
Estimated balance of assets available for holders of floating charges and unsecured creditors _____		
Estimated prescribed part of net property where applicable (to carry forward) _____		
Holders of floating charges (as per List "D") _____		
Estimated surplus/deficiency as regards holders of floating charges _____		
Estimated prescribed part of net property where applicable (brought down) _____		
Unsecured Creditors		£
Trade accounts (as per List "E")	_____	
Bills payable (as per List "F")	_____	
Contingent or other liabilities (as per List "G")	_____	
Estimated deficiency after floating charge where applicable (brought down)	_____	
Total unsecured creditors	_____	
Estimated Surplus/Deficiency as regards creditors		
Issued and Called-up Capital _____		
Estimated Surplus/Deficiency as regards members		

These figures must be read subject to the following:-

*delete as appropriate

[(a) There is no unpaid capital liable to be called up]

[(b) The nominal amount of unpaid capital liable to be called up is £ _____ estimated to produce £ _____ which is/is not charged in favour of the holder of the floating charge(s)]

The estimates are subject to the expenses of the liquidation and to any surplus or deficiency on trading pending realisation of the Assets.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Insolvency (Scotland) Rules 1986 (S.I. 1986/1915) (“the Rules”) and the Receivers (Scotland) Regulations 1986 (S.I. 1986/1917) (“the Regulations”) in consequence of the introduction of a share of assets for unsecured creditors known as the “prescribed part” by section 176A of the Insolvency Act 1986 (c.45) (“the 1986 Act”), as inserted by section 252 of the Enterprise Act 2002 (c.40). These amendments concern the provision of information for creditors, the powers for receivers to deal with the prescribed part and applications to disapply the prescribed part.

Part 1 of the Order amends the Rules. Article 3 inserts a definition of “prescribed part”. Articles 4, 6 and 9 insert new provision for the directors, liquidator or administrator (as the case may be) to provide the creditors with an estimate of the value of the prescribed part and of the company’s net property; whether or not the Insolvency Practitioner proposes to apply to the court under section 176A(5) of the 1986 Act for section 176A(2) to be disapplied; and to report to the creditors the amount paid, if any, to unsecured creditors by virtue of the application of section 176A. Article 5 inserts a provision governing the disposal of the prescribed part by a receiver. Article 7 inserts provisions of general application governing the making of applications under section 176A(5) and the notification of orders made under that section. Article 8 amends Rule 7.31 (fees, expenses, etc) to providing that the fees, costs, charges and other expenses associated with the prescribed part shall be met out of the prescribed part. Article 10 inserts into Schedule 5 of the Rules a new Form 4.31 (Scot) (Notice in respect of order under section 176A), and substitutes a new page for page 2 of the existing Form 4.4 (Scot).

Part 2 of the Order amends the Regulations. Article 11 inserts provision for the receiver to provide creditors with an estimate of the value of the prescribed part and of the company’s net property, and to state whether (and, if so, why) he intends to apply to the court under section 176A(5) of the 1986 Act for section 176A(2) to be disapplied. Article 11(2) substitutes a new page for page 2 of the existing Form 5 (Scot) as set out in the Schedule to the Regulations.

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