

2001 No. 4040 (S.21)

**INSOLVENCY, SCOTLAND
COMPANIES**

The Insurers (Winding Up) (Scotland) Rules 2001

Made - - - - - *20th December 2001*
Laid before Parliament *20th December 2001*
Coming into force - - - *18th January 2002*

The Secretary of State, in exercise of the powers conferred upon her by section 411 of the Insolvency Act 1986(a) and section 379 of the Financial Services and Markets Act 2000(b), hereby makes the following Rules:—

Citation, commencement and revocation

- 1.—(1) These Rules may be cited as the Insurers (Winding Up) (Scotland) Rules 2001 and shall come into force on 18th January 2002.
- (2) The Insurance Companies (Winding Up) (Scotland) Rules 1986(c) are revoked.

Interpretation

- 2.—(1) In these Rules, unless the context otherwise requires—
- “the 1923 Act” means the Industrial Assurance Act 1923(d);
 - “the 1985 Act” means the Companies Act 1985(e);
 - “the 1986 Act” means the Insolvency Act 1986;
 - “the 2000 Act” means the Financial Services and Markets Act 2000;
 - “the Authority” means the Financial Services Authority;
 - “company” means an insurer which is being wound up;
 - “contract of general insurance” and “contract of long-term insurance” have the meaning given by article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(f);
 - “excess of the long-term business assets” means the amount, if any, by which the value of the assets representing the fund or funds maintained by the company in respect of its long-term business as at the liquidation date exceeds the value as at that date of the liabilities of the company attributable to that business;

(a) 1986 c. 45.
(b) 2000 c. 8.
(c) S.I. 1986/1918.
(d) 1923 c. 8.
(e) 1985 c. 6.
(f) S.I. 2001/544, amended by S.I. 2001/3544.

“excess of the other business assets” means the amount, if any, by which the value of the assets of the company which do not represent the fund or funds maintained by the company in respect of its long-term business as at the liquidation date exceeds the value as at that date of the liabilities of the company (other than liabilities in respect of share capital) which are not attributable to that business;

“Financial Services Compensation Scheme” means the scheme established under section 213 of the 2000 Act;

“general business” means the business of effecting or carrying out a contract of general insurance;

“the Industrial Assurance Acts” means the 1923 Act and the Industrial Assurance and Friendly Societies Act 1948(a);

“insurer” has the meaning given by article 2 of the Financial Services and Markets Act 2000 (Insolvency) (Definition of “Insurer”) Order 2001(b);

“linked liability” means any liability under a policy the effecting of which constitutes the carrying on of long-term business the amount of which is determined by reference to—

(a) the value of property of any description (whether or not specified in the policy),

(b) fluctuations in the value of such property,

(c) income from any such property, or

(d) fluctuations in an index of the value of such property;

“linked policy” means a policy which provides for linked liabilities, and a policy which when made provided for linked liabilities is deemed to be a linked policy even if the policy holder has elected to convert his rights under the policy so that at the liquidation date there are no longer linked liabilities under the policy;

“liquidation date” means the date of the winding-up order or the date on which a resolution for the winding up of the company is passed by the members of the company (or the policyholders in the case of a mutual insurance company) and, if both a winding-up order and a winding-up resolution have been made, the earlier date;

“long-term business” means the business of effecting or carrying out any contract of long-term insurance;

“non-linked policy” means a policy which is not a linked policy;

“other business”, in relation to a company carrying on long-term business, means such of the business of the company as is not long-term business;

“the principal rules” means the Insolvency (Scotland) Rules 1986(c);

“stop order”, in relation to a company, means an order of the court, made under section 376(2) of the 2000 Act, ordering the liquidator to stop carrying on the long-term business of the company;

“unit” in relation to a policy means any unit (whether or not described as a unit in the policy) by reference to the numbers and the value of which the amount of the liabilities under the policy at any time is measured.

(2) Unless the context otherwise requires, words or expressions contained in these Rules bear the same meaning as in the principal rules, the 1986 Act, the 2000 Act or any statutory modification thereof respectively.

Application

3.—(1) These Rules apply in relation to an insurer which the courts in Scotland have jurisdiction to wind up.

(2) These Rules apply to proceedings for the winding up of such an insurer which commence on or after the date on which these Rules come into force.

(3) These Rules supplement the principal rules which also apply to the proceedings in the winding up of such an insurer under the 1986 Act as they apply to proceedings in the winding up of any company under that Act; but in the event of a conflict between these Rules and the principal rules these Rules prevail.

(a) 1948 c. 39.

(b) S.I. 2001/2634.

(c) S.I. 1986/1915, amended by S.I. 1999/1820.

Financial Services Compensation Scheme

4. In any proceedings for the appointment of a liquidator by the court under—
 - (a) section 139(4) of the 1986 Act (appointment of liquidator where conflict between creditors and contributories), or
 - (b) section 140 of that Act (appointment of liquidator following administration or voluntary arrangement),

the manager of the Financial Services Compensation Scheme shall be entitled to appear and make representations as to the person to be appointed.

Separation of long-term and other business in winding up

5.—(1) This rule applies in the case of a company carrying on long-term business.

(2) The assets of the company which, in accordance with regulation 3 of the Financial Services and Markets Act 2000 (Treatment of Assets of Insurers on Winding Up) Regulations 2001(a), are available for meeting the liabilities of the company attributable to its long-term business shall be applied in discharge of those liabilities as though those assets and those liabilities were the assets and liabilities of a separate company.

(3) The assets of the company which, in accordance with the aforementioned Regulations, are available for meeting the liabilities of the company attributable to its other business shall be applied in discharge of those liabilities as though those assets and those liabilities were the assets and liabilities of a separate company.

Valuation of general business policies

6. Except in relation to amounts which have fallen due for payment before the liquidation date and liabilities referred to in paragraph 2(1)(b) of Schedule 1, the holder of a general business policy shall be accepted as a creditor in relation to his policy, without submitting or lodging a claim, for an amount equal to the value of the policy and for this purpose the value of a policy shall be determined in accordance with Schedule 1.

Valuation of long-term policies

7.—(1) This rule applies in relation to a company's long-term business where no stop order has been made.

(2) In relation to a claim under a policy which has fallen due for payment before the liquidation date, a policy holder shall be accepted as a creditor, without submitting or lodging a claim, for such amount as appears from the records of the company to be due in respect of that claim.

(3) In all other respects a policy holder shall be accepted as a creditor in relation to his policy, without submitting or lodging a claim, for an amount equal to the value of the policy and for this purpose the value of a policy of any class shall be determined in the manner applicable to policies of that class provided by Schedules 2, 3 and 4.

(4) This rule applies in relation to a person entitled to apply for a free paid-up policy under section 24 of the 1923 Act (provisions as to forfeited policies) and to whom no such policy has been issued before the liquidation date (whether or not it was applied for) as if such a policy had been issued immediately before the liquidation date—

- (a) for the minimum amount determined in accordance with section 24(2) of the 1923 Act, or
- (b) if the liquidator is satisfied that it was the practice of the company during the five years immediately before the liquidation date to issue policies under that section in excess of the minimum amounts so determined, for the amount determined in accordance with that practice.

Valuation of long-term policies: stop order made

8.—(1) This rule applies in relation to a company's long-term business where a stop order has been made.

(a) S.I. 2001/2968.

(2) In relation to a claim under a policy which has fallen due for payment on or after the liquidation date and before the date of the stop order, a policy holder shall be accepted as a creditor, without submitting or lodging a claim, for such amount as appears from the records of the company and of the liquidator to be due in respect of that claim.

(3) In all other respects a policy holder shall be accepted as a creditor in relation to his policy, without submitting or lodging a claim, for an amount equal to the value of the policy and for this purpose the value of a policy of any class shall be determined in the manner applicable to the policies of that class provided by Schedule 5.

(4) Paragraph (4) of rule 7 applies for the purposes of this rule as if references to the liquidation date (other than that in sub-paragraph (b) of that paragraph) were references to the date of the stop order.

Attribution of liabilities to company's long-term business

9.—(1) This rule applies in the case of a company carrying on long-term business if at the liquidation date there are liabilities of the company in respect of which it is not clear from the accounting and other records of the company whether they are or are not attributable to the company's long-term business.

(2) The liquidator shall, in such manner and according to such accounting principles as he shall determine, identify the liabilities referred to in paragraph (1) as attributable or not attributable to a company's long-term business and those liabilities shall for the purposes of the winding up be deemed as at the liquidation date to be so attributable or not as the case may be.

(3) For the purposes of paragraph (2) the liquidator may—

(a) determine that some liabilities are attributable to the company's long-term business and that others are not (the first method); or

(b) determine that a part of a liability shall be attributable to the company's long-term business and that the remainder of the liability is not (the second method),

and he may use the first method for some of the liabilities and the second method for the remainder of them.

(4) Notwithstanding anything in the preceding paragraphs of this rule, the court may order that the determination of which (if any) of the liabilities referred to in paragraph (1) are attributable to the company's long-term business and which (if any) are not shall be made in such manner and by such methods as the court may direct or the court may itself make the determination.

Attribution of assets to company's long-term business

10.—(1) This rule applies in the case of a company carrying on long-term business if at the liquidation date there are assets of the company in respect of which—

(a) it is not clear from the accounting and other records of the company whether they do or do not represent the fund or funds maintained by the company in respect of its long-term business, and

(b) it cannot be inferred from the source of the income out of which those assets were provided whether they do or do not represent those funds.

(2) Subject to paragraph (6) the liquidator shall determine which (if any) of the assets referred to in paragraph (1) are attributable to those funds and which (if any) are not and those assets shall, for the purposes of the winding up, be deemed as at the liquidation date to represent those funds or not in accordance with the liquidator's determination.

(3) For the purposes of paragraph (2) the liquidator may—

(a) determine that some of those assets shall be attributable to those funds and that others of them shall not (the first method); or

(b) determine that a part of the value of one of those assets shall be attributable to those funds and that the remainder of that value shall not (the second method),

and he may use the first method for some of those assets and the second method for others of them.

(4)

- (a) In making the attribution the liquidator's objective shall in the first instance be so far as possible to reduce any deficit that may exist, at the liquidation date and before any attribution is made, either in the company's long-term business or in its other business.
- (b) If there is a deficit in both the company's long-term business and its other business the attribution shall be in the ratio that the amount of the one deficit bears to the amount of the other until the deficits are eliminated.
- (c) Thereafter the attribution shall be in the ratio which the aggregate amount of the liabilities attributable to the company's long-term business bears to the aggregate amount of the liabilities not so attributable.

(5) For the purposes of paragraph (4) the value of a liability of the company shall, if it falls to be valued under rule 6 or 7, have the same value as it has under that rule but otherwise it shall have such value as would have been included in relation to it in a balance sheet of the company prepared in accordance with the 1985 Act as at the liquidation date; and, for the purpose of determining the ratio referred to in paragraph (4) but not for the purpose of determining the amount of any deficit therein referred to, the net balance of the shareholders' funds shall be included in the liabilities not attributable to the company's long-term business.

(6) Notwithstanding anything in the preceding paragraphs of this rule, the court may order that the determination of which (if any) of the assets referred to in paragraph (1) are attributable to the fund or funds maintained by the company in respect of its long-term business and which (if any) are not shall be made in such manner and by such methods as the court may direct or the court may itself make the determination.

Excess of long-term business assets

11.—(1) Where the company is one carrying on long-term business, for the purpose of determining the amount, if any, of the excess of the long-term business assets, there shall be included amongst the liabilities of the company attributable to its long-term business an amount determined by the liquidator in respect of liabilities and expenses likely to be incurred in connection with the transfer of the company's long-term business as a going concern to another insurance company being liabilities not included in the valuation of the long-term policies made in pursuance of rule 7.

(2) Where the liquidator is carrying on the long-term business of an insurer with a view to that business being transferred as a going concern to a person or persons ("the transferee") who may lawfully carry out those contracts (or substitute policies being issued by another insurer), the liquidator may, in addition to any amounts paid by the Financial Services Compensation Scheme for the benefit of the transferee to secure such a transfer or to procure substitute policies being issued, pay to the transferee or other insurer all or part of such funds or assets as are attributable to the long-term business being transferred or substituted.

Actuarial advice

12.—(1) Before—

- (a) determining the value of a policy in accordance with Schedules 1 to 5 (other than paragraph 3 of Schedule 1);
- (b) identifying long-term liabilities and assets in accordance with rules 9 and 10;
- (c) determining the amount (if any) of the excess of the long-term business assets in accordance with rule 11;
- (d) determining the terms on which he will accept payment of overdue premiums under rule 20(1) or the amount and nature of any recompense under rule 20(2);

the liquidator shall obtain and consider advice thereon (including an estimate of any value or amount required to be determined) from an actuary.

(2) Before seeking, for the purpose of valuing a policy, the direction of the court as to the assumption of a particular rate of interest or the employment of any rates of mortality or disability, the liquidator shall obtain and consider advice thereon from an actuary.

Utilisation of excess of assets

13.—(1) Except at the direction of the court, no distribution may be made out of and no transfer to another insurer may be made of —

- (a) any part of the excess of the long-term business assets which has been transferred to the other business; or
- (b) any part of the excess of the other business assets, which has been transferred to the long-term business.

(2) Before giving a direction under paragraph (1) the court may require the liquidator to advertise the proposal to make a distribution or a transfer in such manner as the court shall direct.

Custody of assets

14.—(1) The Secretary of State may, in the case of a company carrying on long-term business in whose case no stop order has been made, require that the whole or a specified proportion of the assets representing the fund or funds maintained by the company in respect of its long-term business shall be held by a person approved by him for the purpose as trustee for the company.

(2) No assets held by a person as trustee for a company in compliance with a requirement imposed under this rule shall, so long as the requirement is in force, be released except with the consent of the Secretary of State but they may be transposed by the trustee into other assets by any transaction or series of transactions on the written instructions of the liquidator.

(3) The liquidator may not, except with the consent of the Secretary of State, grant any security over assets which are held by a person as trustee for the company in compliance with a requirement imposed under this rule.

Maintenance of accounting, valuation and other records

15. The liquidator of a company carrying on long-term business in whose case no stop order has been made shall, with a view to the long-term business of the company being transferred to another insurance company, maintain such accounting, valuation and other records as will enable such other insurer upon the transfer being effected to comply with the requirements of any rules made by the Authority under Part X of the 2000 Act relating to accounts and statements of insurers.

Additional powers in relation to long-term business

16. The liquidator of a company carrying on long-term business shall, so long as no stop order has been made, have power to do all such things as may be necessary to the performance of his duties under section 376(2) of the 2000 Act (continuation of contracts of long-term insurance where insurer in liquidation) but the Secretary of State may require him—

- (a) not to make investments of a specified class or description,
- (b) to realise, before the expiration of a specified period, the whole or a specified proportion of investments of a specified class or description held by the liquidator.

Accounts and audit

17.—(1) The liquidator of a company carrying on long-term business in whose case no stop order has been made shall supply the Secretary of State, at such times or intervals as he may specify, with such accounts as he may specify and audited in such manner as he may require and with such information about specified matters and verified in such specified manner as he may require.

(2) The liquidator of such a company shall, if required to do so by the Secretary of State, instruct an actuary to investigate the financial condition of the company's long-term business and to report thereon in such manner as the Secretary of State may specify.

Caution for long-term and other business

18. Where a company carries on long-term business and—

- (a) no stop order has been made; and

(b) a special manager has been appointed, rule 4.70 of the principal rules (caution) applies separately to the company's long-term business and to its other business.

Claims

19.—(1) This rule applies to a company carrying on long-term business.

(2) The liquidator may, in relation to the long-term business of the company and to its other business, fix different days on or before which the creditors of the company, who are required to submit or lodge claims, are to do so and he may fix one of those days without at the same time fixing the other.

(3) In submitting or lodging a claim, a creditor may claim the whole or part of such claim as attributable to the long-term business of the company or to its other business or he may make no such attribution.

(4) When he accepts any claim, in whole or in part, the liquidator shall state in writing how much of what he accepts is attributable to the long-term business of the company and how much to the other business of the company.

Failure to pay premiums

20.—(1) The liquidator may in the course of carrying on the company's long-term business and on such terms as he thinks fit accept payment of a premium even though the payment is tendered after the date on which under the terms of the policy it was finally due to be paid.

(2) The liquidator may in the course of carrying on the company's long-term business, and having regard to the general practice of insurers, compensate a policy holder whose policy has lapsed in consequence of a failure to pay any premium by issuing a free paid-up policy for reduced benefits or otherwise as the liquidator thinks fit.

Notice of valuation of policy

21.—(1) Before paying a dividend in respect of claims other than under contracts of long-term insurance, the liquidator shall give notice of the value of each general business policy, as determined by him in accordance with rule 6, to the persons appearing from the records of the company or otherwise to be entitled to an interest in that policy and he shall do so in such manner as the court may direct.

(2) Before paying a dividend in respect of claims under contracts of long-term insurance and where a stop order has not been made in relation to the company, the liquidator shall give notice to the persons appearing from the records of the company or otherwise to be entitled to a payment under or to an interest in a long-term policy of the amount of that payment or the value of that policy as determined by him in accordance with rule 7(2) or (3), as the case may be.

(3) If a stop order is made in relation to the company, the liquidator shall give notice to all the persons appearing from the records of the company or otherwise to be entitled to a payment under or to an interest in a long-term policy of the amount of that payment or the value of that policy as determined by him in accordance with rule 8(2) or (3), as the case may be, and he shall give that notice in such manner as the court may direct.

(4) Any person to whom notice is so given shall be bound by the value so determined unless and until the court otherwise orders.

(5) Paragraphs (2) and (3) of this rule have effect as though references therein to persons appearing to be entitled to an interest in a long-term policy and to the value of that policy included, respectively, references to persons appearing to be entitled to apply for a free paid-up policy under section 24 of the 1923 Act and to the value of that entitlement under rule 7 (in the case of paragraph (2) of this rule) or under rule 8 (in the case of paragraph (3) of this rule).

(6) Where the liquidator summons a meeting of creditors in respect of liabilities of the company attributable either to its long-term business or other business, he may adopt any valuation carried out in accordance with rules 6, 7 or 8 as the case may be or, if no such valuation has been carried out by the time of the meeting, he may conduct the meeting using such estimates of the value of policies as he thinks fit.

Dividends to creditors

22.—(1) This rule applies in the case of a company carrying on long-term business.

(2) The procedure for payment of dividends to creditors under Chapter 9 of Part 4 of the principal rules (distribution of company's assets by liquidator) applies separately in relation to the two separate companies assumed for the purposes of rule 5 above.

(3) The court may, at any time before the making of a stop order, permit a dividend to be declared and paid on such terms as it thinks fit in respect only of debts which fell due for payment before the liquidation date or, in the case of claims under long-term policies, which have fallen due for payment on or after the liquidation date.

Meetings of creditors

23.—(1) In the case of a company carrying on long-term business, Chapter 4 (meetings of creditors) and rule 4.31 (final meeting) of Part 4 and Chapters 1 and 2 of Part 7 (meetings and proxies and company representation) of the principal rules apply to each separate general meeting of the creditors summoned under the 1986 Act or the principal rules.

(2) In relation to any such separate meeting—

(a) rule 7.6(6) of the principal rules (meetings requisitioned) has effect as if the reference therein to assets of the company was a reference to the assets available under the above-mentioned Regulations for meeting the liabilities of the company owed to the creditors summoned to the meeting, and

(b) rule 7.12 of the principal rules (resolutions) applies as if the reference therein to value in relation to a creditor who is not, by virtue of rule 6, 7 or 8, required to submit or lodge a claim, was a reference to the value most recently notified to him under rule 21 above or, if the court has determined a different value in accordance with rule 21(4), as if it were a reference to that different value.

Apportionment of expenses of liquidation

24.—(1) Rule 4.67 of the principal rules (appointment and remuneration) applies separately to the assets of the long-term business of the company and to the assets of the other business of the company.

(2) Where any fee, expense, cost, charge, outlay or remuneration does not relate exclusively to the assets of the company's long-term business or to the assets of the company's other business, the liquidator shall apportion it amongst those assets in such manner as he shall determine.

Notice of stop order

25.—(1) When a stop order has been made in relation to the company, the clerk of court shall, on the same day, send—

- (a) to the liquidator,
- (b) to the registrar of companies for Scotland, and
- (c) to such other person as the court may direct,

a certified copy of the stop order.

(2) The liquidator shall forthwith after receiving a certified copy give notice of the order in the Form in Schedule 6—

- (a) in the Edinburgh Gazette, and
- (b) in the newspaper in which the winding-up order was advertised.

20th December 2001

Patricia Hewitt
Secretary of State for Trade and Industry

SCHEDULE 1

Rule 6

RULES FOR VALUING GENERAL BUSINESS POLICIES

1.—(1) This paragraph applies in relation to periodic payments under a general business policy which fall due for payment after the liquidation date where the event giving rise to the liability to make the payments occurred before the liquidation date.

(2) The value to be attributed to such periodic payments shall be determined on such actuarial principles and assumptions in regard to all relevant factors as the court shall direct.

2.—(1) This paragraph applies in relation to liabilities under a general business policy which arise from events which occurred before the liquidation date but which have not—

- (a) fallen due for payment before the liquidation date; or
- (b) been notified to the company before the liquidation date.

(2) The value to be attributed to such liabilities shall be determined on such actuarial principles and assumptions in regard to all relevant factors as the court shall direct.

3.—(1) This paragraph applies in relation to liabilities under a general business policy not dealt with by paragraphs 1 or 2.

(2) The value to be attributed to those liabilities shall—

- (a) if the terms of the policy provide for a repayment of premium upon the early termination of the policy or the policy is expressed to run from one definite date to another or the policy may be terminated by any of the parties with effect from a definite date, be the greater of the following two amounts:
 - (i) the amount (if any) which under the terms of the policy would have been repayable on early termination of the policy had the policy terminated on the liquidation date, and
 - (ii) where the policy is expressed to run from one definite date to another or may be terminated by any of the parties with effect from a definite date, such proportion of the last premium paid as is proportionate to the unexpired portion of the period in respect of which that premium was paid; and
- (b) in any other case, be a just estimate of that value.

SCHEDULE 2

Rule 7

RULES FOR VALUING NON-LINKED LIFE POLICIES, NON-LINKED DEFERRED ANNUITY POLICIES, NON-LINKED ANNUITIES IN PAYMENT, UNITISED NON-LINKED POLICIES AND CAPITAL REDEMPTION POLICIES

General

1. In valuing a policy—

- (a) where it is necessary to calculate the present value of future payments by or to the company, interest shall be assumed at such fair and reasonable rate or rates as the court may direct;
- (b) where relevant, the rates of mortality and the rates of disability to be employed shall be such rates as the court considers appropriate after taking into account:
 - (i) relevant published tables of rates of mortality and rates of disability, and
 - (ii) the rates of mortality and the rates of disability experienced in connection with similar policies issued by the company;
- (c) there shall be determined:
 - (i) the present value of the ordinary benefits,
 - (ii) the present value of additional benefits;
 - (iii) the present value of options, and
 - (iv) if further premiums fall due to be paid under the policy on or after the liquidation date, the present value of the premiums;

and for the purposes of this Schedule if the ordinary benefits only take into account premiums paid to date, the present value of future premiums shall be taken as nil.

Present value of the ordinary benefits

2.—(1) Ordinary benefits are the benefits which will become payable to the policy holder on or after the liquidation date without his having to exercise any option under the policy (including any bonus or addition to the sum assured or the amount of annuity declared before the liquidation date) and for this purpose “option” includes a right to surrender the policy.

(2) Subject to sub-paragraph (3), the present value of the ordinary benefits shall be the value at the liquidation date of the reversion in the ordinary benefits according to the contingency upon which those benefits are payable calculated on the basis of the rates of interest, mortality and disability referred to in paragraph 1.

(3) For accumulating with profits policies—

- (a) where the benefits are not expressed in the form of units in a with-profits fund, the value of the ordinary benefits is the amount that would have been payable, excluding any discretionary additions, if the policyholder had been able to exercise a right to terminate the policy at the liquidation date; and
- (b) where the benefits are expressed in the form of units in a with-profits fund, the value of the ordinary benefits is the number of units held by the policy holder at the liquidation date valued at the unit price in force at that time or, if that price is not calculated on a daily basis, such price as the court may determine having regard to the last published unit price and any change in the value of assets attributable to the fund since the date of the last published unit price.

(4) Where—

- (a) sub-paragraph (3) applies, and
- (b) paragraph 3(1) of Schedule 3 applies to the calculation of the unit price (or as the case may be) the fund value,

the value shall be adjusted on the basis set out in paragraph 3(3) to (5) of Schedule 3.

(5) Where sub-paragraph (3) applies, the value may be further adjusted by reference to the value of the assets underlying the unit price (or as the case may be) the value of the fund, if the liquidator considers such an adjustment to be necessary.

Present value of additional benefits

3.—(1) Where under the terms of the policy or on the basis of the company's established practice the policy holder has a right to receive or an expectation of receiving benefits additional to the minimum benefits guaranteed under those terms, the court shall determine rates of interest, bonus (whether reversionary, terminal or any other type of bonus used by the company), mortality and disability to provide for the present value (if any) of that right or expectation.

(2) In determining what (if any) value to attribute to any such expectations the court shall have regard to the premium payable in relation to the minimum guaranteed benefits and the amount (if any) an insurer is required to provide in respect of those expectations in any rules made by the Authority under Part X of the 2000 Act.

Present value of options

4. The amount of the present value of options shall be the amount which, in the opinion of the liquidator, is necessary to be provided at the liquidation date (in addition to the amount of the present value of the ordinary benefits) to cover the additional liabilities likely to arise upon the exercise on or after that date by the policy holder of any option conferred upon him by the terms of the policy or, in the case of an industrial assurance policy, by the Industrial Assurance Acts other than an option whereby the policy holder can secure a guaranteed cash payment within the period of 12 months beginning with that date.

Present value of premiums

5. The present value of the premiums shall be the value at the liquidation date of the premiums which fall due to be paid by the policy holder after the liquidation date calculated on the basis of the rates of interest, mortality and disability referred to in paragraph 1.

Value of the policy

6.—(1) Subject to sub-paragraph (2)—

- (a) if no further premiums fall due to be paid under the policy on or after the liquidation date, the value of the policy shall be the aggregate of:
 - (i) the present value of the ordinary benefits;
 - (ii) the present value of options; and
 - (iii) the present value of additional benefits;
- (b) if further premiums fall due to be so paid and the aggregate value referred to in sub-paragraph (a) exceeds the present value of the premiums, the value of the policy shall be the amount of that excess; and
- (c) if further premiums fall due to be so paid and that aggregate does not exceed the present value of the premiums, the policy shall have no value.

(2) Where the policy holder has a right conferred upon him by the terms of the policy or by the Industrial Assurance Acts whereby the policy holder can secure a guaranteed cash payment within the period of 12 months beginning with the liquidation date, the liquidator shall determine the amount which in his opinion it is necessary to provide at that date to cover the liabilities which will accrue when that option is exercised (on the assumption that it will be exercised) and the value of the policy shall be that amount if it exceeds the value of the policy (if any) determined in accordance with sub-paragraph (1).

SCHEDULE 3

Rule 7

RULES FOR VALUING LIFE POLICIES AND DEFERRED ANNUITY POLICIES WHICH ARE LINKED POLICIES

1.—(1) Subject to sub-paragraph (2) the value of the policy shall be the aggregate of the value of the linked liabilities (calculated in accordance with paragraphs 2 or 4) and the value of other than linked liabilities (calculated in accordance with paragraph 5) except where that aggregate is a negative amount in which case the policy shall have no value.

(2) Where the terms of the policy include a right whereby the policy holder can secure a guaranteed cash payment within the period of 12 months beginning with the liquidation date then, if the amount which in the opinion of the liquidator is necessary to be provided at that date to cover any liabilities which will accrue when that option is exercised (on the assumption that it will be exercised) is greater than the value determined under sub-paragraph (1) of this paragraph, the value of the policy shall be that greater amount.

2.—(1) Where the linked liabilities are expressed in terms of units the value of those liabilities shall, subject to paragraph 3, be the amount arrived at by taking the product of the number of units of each class of units allocated to the policy on the liquidation date and the value of each such unit on that date and then adding those products.

(2) For the purposes of sub-paragraph (1)—

- (a) where under the terms of the policy the value of a unit at any time falls to be determined by reference to the value at that time of the assets of a particular fund maintained by the company in relation to that and other policies, the value of a unit on the liquidation date shall be determined by reference to the net realisable value of the assets credited to that fund on that date (after taking account of disposal costs, any tax liabilities resulting from the disposal of assets insofar as they have not already been provided for by the company and any other amounts which under the terms of those policies are chargeable to the fund), and
- (b) in any other case, the value of a unit on the liquidation date shall be the value which would have been ascribed to each unit credited to the policy holder, after any deductions which may be made under the terms of the policy, for the purpose of determining the benefits payable under the policy on the liquidation date had the policy matured on that date.

3.—(1) This paragraph applies where—

- (a) paragraph 2(2)(a) applies and the company has a right under the terms of the policy either to make periodic withdrawals from the fund referred to in that paragraph or to retain any part of the income accruing in respect of the assets of that fund,
- (b) paragraph 2(2)(b) applies and the company has a right under the terms of the policy to receive the whole or any part of any distributions made in respect of the units referred to in that paragraph, or
- (c) paragraph 2(2)(a) or paragraph 2(2)(b) applies and the company has a right under the terms of the policy to make periodic cancellations of a proportion of the number of units credited to the policy.

(2) Where this paragraph applies, the value of the linked liabilities calculated in accordance with paragraph 2(1) shall be reduced by an amount calculated in accordance with sub-paragraph (3) of this paragraph.

(3) The said amount is—

- (a) where this paragraph applies by virtue of head (a) or (b) of sub-paragraph (1), the value as at the liquidation date, calculated on actuarial principles, of the future income of the company in respect of the units in question arising from the rights referred to in head (a) or (b) of sub-paragraph (1) as the case may be, or
- (b) where this paragraph applies by virtue of head (c) of sub-paragraph (1), the value as at the liquidation date, calculated on actuarial principles, of the liabilities of the company in respect of the units which fall to be cancelled in the future under the right referred to in head (c) of sub-paragraph (1).

- (4) In calculating any amount in accordance with sub-paragraph (3) there shall be disregarded—
- (a) such part of the rights referred to in the relevant head of sub-paragraph (1) which in the opinion of the liquidator constitutes appropriate provision for future expenses and mortality risks, and
 - (b) such part of those rights (if any) which the court considers to constitute appropriate provision for any right or expectation of the policy holder to receive benefits additional to the benefits guaranteed under the terms of the policy.
- (5) In determining the said amount—
- (a) interest shall be assumed at such rate or rates as the court may direct, and
 - (b) where relevant, the rates of mortality and the rates of disability to be employed shall be such rates as the court considers appropriate after taking into account:
 - (i) relevant published tables of rates of mortality and rates of disability, and
 - (ii) the rates of mortality and the rates of disability experienced in connection with similar policies issued by the company.
4. Where the linked liabilities are not expressed in terms of units the value of those liabilities shall be the value (subject to adjustment for any amounts which would have been deducted for taxation) which would have been ascribed to those liabilities had the policy matured on the liquidation date.
- 5.—(1) The value of any liabilities other than linked liabilities including reserves for future expenses, options and guarantees shall be determined on actuarial principles and appropriate assumptions in regard to all relevant factors including the assumption of such rate or rates of interest, mortality and disability as the court may direct.
- (2) In valuing liabilities under this paragraph credit shall be taken for those parts of future premiums which do not fall to be applied in the allocation of further units to the policy and for any rights of the company which have been disregarded under paragraph 3(4)(a) in valuing the linked liabilities.

SCHEDULE 4

Rule 7

RULES FOR VALUING LONG-TERM POLICIES WHICH ARE NOT DEALT WITH IN SCHEDULES 2 OR 3

The value of a long-term policy not covered by Schedule 2 or 3 shall be the value of the benefits due to the policy holder determined on such actuarial principles and assumptions in regard to all relevant factors as the court shall determine.

SCHEDULE 5

Rule 8

RULES FOR VALUING LONG-TERM POLICIES WHERE A STOP ORDER HAS BEEN MADE

1. Subject to paragraphs 2 and 3, in valuing a policy Schedules 2, 3 or 4 shall apply according to the class of that policy as if those Schedules were herein repeated but with a view to a fresh valuation of each policy on appropriate assumptions in regard to all relevant factors and subject to the following modifications—
- (a) references to the stop order shall be substituted for references to the liquidation date,
 - (b) in paragraph 4 of Schedule 2 for the words “whereby the policy holder can secure a guaranteed cash payment within the period of 12 months beginning with that date” there shall be substituted the words “to surrender the policy which can be exercised on that date”,
 - (c) paragraph 6(2) of Schedule 2 shall be deleted, and
 - (d) paragraph 1(2) of Schedule 3 shall be deleted.
- 2.—(1) This paragraph applies where the policy holder has a right conferred upon him under the terms of the policy or by the Industrial Assurance Acts to surrender the policy and that right is exercisable on the date of the stop order.
- (2) Where this paragraph applies and the amount required at the date of the stop order to provide for the benefits payable upon surrender of the policy (on the assumption that the policy is surrendered on the date of the stop order) is greater than the value of the policy determined in accordance with paragraph 1, the value of the policy shall, subject to paragraph 3, be the said amount so required.
- (3) Where any part of the surrender value is payable after the date of the stop order, sub-paragraph (2) shall apply but the value therein referred to shall be discounted at such rate of interest as the court may direct.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules supplement the Insolvency (Scotland) Rules 1986 in relation to the winding up of insurers in Scotland. They revoke, and re-make with modifications, the Insurance Companies (Winding Up) (Scotland) Rules 1986.

Rule 6 and Schedule 1 provide for the valuation rules in relation to a company's general business policies. Rules 7 and 8 and Schedules 2 to 5 provide for the valuation rules in relation to a company's long-term business policies. They introduce new requirements in relation to the valuation of unitised with profits policies, specify that the interest rate or rates used to calculate the present value of future payments must be fair and reasonable and change the basis of valuation from a modified net premium basis to a gross premium basis.

Rules 9 and 10 make provision for the attribution of liabilities and assets to a company's long-term business in cases of doubt. Rule 12 requires a liquidator to obtain actuarial advice before taking certain courses of action.

Rule 14 allows the Secretary of State to require that assets of a company, representing its long-term business, be held by a trustee. Rules 16 and 17 oblige the liquidator to comply with certain requirements imposed on him by the Secretary of State in relation, for example, to refraining from making certain investments and to the provision of information and accounts.

Rule 20 allows a liquidator to accept late payment of premiums and to compensate policy holders whose policies have lapsed. Rule 25 stipulates various notice requirements where a stop order has been made.

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