STATUTORY INSTRUMENTS

1986 No. 341 (S. 25)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Winding-up of Insurance Companies Rules) 1986

Made - - - -	*25th February* 1986
Laid before Parliament	*10th March* 1986
Coming into Operation	*31st March* 1986

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 16 of the Administration of Justice (Scotland) Act 1933 **(a)** section 663(2) of the Companies Act 1985 **(b)** and section 59 of the Insurance Companies Act 1982 **(c)**, and of all other powers competent to them in that behalf, enact and declare:—

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Winding-up of Insurance Companies Rules) 1986 and shall come into operation on 31st March 1986.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

Interpretation

2.—(1) In these rules, unless the context or subject matter otherwise requires —

"the Act of 1923" means the Industrial Assurance Act 1923 **(d)**;

"the Act of 1985" means the Companies Act 1985;

"the Act of 1982" means the Insurance Companies Act 1982;

"company" means an insurance company which is being wound up;

"excess of long term business assets" means the amount, if any, by which the value as at the date of the winding-up order of the assets representing the fund or funds maintained by the company in respect of its long term business exceeds the value as at that date of the liabilities of the company attributable to that business;

"excess of the other business assets" means the amount, if any, by which the value as at the date of the winding-up order 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 exceeds the value as at the date of the liabilities of the company (other than liabilities in respect of share capital) which are not attributable to that business;

"general business policy" means a policy the effecting of which by the company constitutes the carrying on of general business;

(a) 1933 c.41. **(b)** 1985 c.6. **(c)** 1982 c.50.
(d) 1923 c.8.

"the Industrial Assurance Acts" means the Act of 1923 and the Industrial Assurance and Friendly Societies Act 1929(**a**);

"Insurance company" means an insurance company to which Part II of the Act of 1982 applies;

"linked liability" means any liability under a policy the effecting of which constitutes the carrying on of long term insurance 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 shall be deemed to be a linked policy even if the policy holder has elected to convert his rights under the policy so that at the date of the winding-up order there are no longer linked liabilities under the policy;

"long term policy" means a policy the effecting of which by the company constitutes the carrying on of long term business;

"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 rules 202 to 218 of the Rules of Court of the Court of Session(**b**);

"stop order" in relation to a company means an order of the court, made under section 56(2) of the Act of 1982, ordering the liquidator to stop carrying on the long term business of the company;

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

(2) Unless the context otherwise requires words or expressions contained in these rules have the same meaning as in the principal rules, the Act of 1985 or the Act of 1982 respectively.

Application

3.—(1) These rules apply to proceedings for the winding-up of an insurance company which commence on or after the date on which these rules come into operation.

(2) These rules supplement the principal rules which continue to apply to the proceedings in the winding-up of an insurance company under the Act of 1985 as they apply to proceedings in the winding-up of any company under that Act but in the event of conflict between these rules and the principal rules these rules prevail.

Intimation to Policyholders Protection Board

4. Any proceedings under section 531 of the Act of 1985 for the appointment of a liquidator shall be intimated to the Policyholders Protection Board, who may lodge answers and be heard in those proceedings.

(**a**) 1929 c.28. (**b**) S.I. 1965/321; relevant amending instrument is S.I. 1977/1621.

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 sections 55(3) and (4) of the Act of 1982 are available for meeting the liabilities of the company attributable to its long term business shall, under section 550 of the Act of 1985, 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 section 55(3) and (4) of the Act of 1982 are available for meeting the liabilities of the company attributable to its other business shall, under section 550 of the Act of 1985, 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 the amounts which have fallen due for payment before the date of the winding-up order, 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 the policy shall be determined in accordance with Schedule 1.

Valuation of long term policies

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

(2) In relation to a claim under a policy which has fallen due for payment before the date of the winding-up 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 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 Act of 1923 and to whom no such policy has been issued before the date of the winding-up order (whether or not it was applied for) as if such a policy had been issued immediately before the date of the winding-up order —

(a) for the minimum amount determined in accordance with section 24(2) of the Act of 1923; or

(b) if the liquidator is satisfied that it was the practice of the company during the 5 years immediately before the date of the winding-up order to issue policies under the said section 24 in excess of the minimum amounts so determined, for the amount determined in accordance with that practice.

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

(2) In relation to a claim under a policy which has fallen due for payment on or after the date of the winding-up order 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 repects 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 Schedule 5.

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

Attribution of assets and liabilities to the long term business

9.—(1) This rule applies in the case of a company carrying on long term business if at the date of the winding-up order 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 the long term business of a company and those liabilities shall for the purposes of the winding-up be deemed as at the date of the winding-up order to be so attributable or not as the case may be.

(3) In making his determination under this rule, the liquidator may determine that some liabilities are attributable to the company's long term business and that others are not or he may determine that a part of a liability is attributable to the long term business of the company and that the remainder of that liability is not and he may use one method for some of the liabilities and the other method for the remainder of them.

10.—(1) This rule applies in the case of a company carrying on long term business if at the date of the winding-up order 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 date of the winding-up order to represent those funds or not in accordance with the determination of the liquidator.

(3) For the purpose 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 objective of the liquidator shall, in the first instance, be so far as possible to reduce any deficit that may exist, at the date of the winding-up order 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 long term business of the company 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 long term business of the company bears to the aggregate amount of the liabilities not so attributable.

(5) For the purpose 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 under section 17 of the Act of 1982 as at the date of the winding-up order 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 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. 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 liabilties and expenses likely to be incurred in connection with the transfer of the long term business of the company 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.

Actuarial advice

12.—(1) Before —

(a) determining the value of a policy in accordance with Schedules 1 to 5 (other than paragraph 2 of Schedule 1);

(b) identifying long term assets and liabilities 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; or

(d) determining the terms on which he will accept payment of overdue premiums under rule 22(1) and the amount and nature of any recompense under rule 22(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 —

(a) no distribution may be made out of and no transfer to another insurance company may be made of any part of the excess of the long term business assets which has been transferred to the other business; and

(b) no distribution may be made out of and no transfer to another insurance company may be made of 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 a manner as the court shall direct.

Special bank account

14.—(1) The liquidator of a company carrying on long term business in whose case no stop order has been made may open any special bank account which he is authorised to open by the Secretary of State and he may pay into such an account any moneys which form part of the assets representing the fund or funds maintained by the company in repect of its long term business.

(2) All payments out of any such special bank account shall be made by cheque payable to order and every cheque shall have marked or written on the face of it the name of the company and shall be signed by the liquidator or by any special manager appointed under section 56(3) of the Act of 1982 and, if it is for a sum greater than an amount to be determined for this purpose by the Committee of Inspection, it shall be countersigned by a person nominated by the Committee of Inspection.

Custody of assets

15.—(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 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 except with the consent of the Secretary of State.

Maintenance of accounting, valuation and other records

16. 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 minute books and accounting, valuation and other records as will enable such other insurance company upon the transfer being effected to comply with the requirements of the provisions of the Act of 1982 relating to accounts and statements of insurance companies.

Additional powers in relation to the long term business

17. 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 56(2) of the Act of 1982, 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 (or such longer period as the Secretary of State may allow), the whole or a specified proportion of investments of a specified class or description held by the liquidator when the requirement is imposed.

Accounts and audit

18.—(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 shall specify, with such accounts as he may specify and audited in such manner as he may require and with such infomation 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 long term business of the company and to report thereon in such manner as the Secretary of State may specify.

(3) The liquidator of such a company shall, at the expiration of six months from the date of the winding-up order and at the expiration of every six months thereafter, prepare a summary of his receipts and payments in the course of carrying on the long term business of the company during that period, procure that the summary be examined and verified by a person qualified under section 389 of the Act of 1985 to audit the accounts of companies and transmit to the Secretary of State one copy of the summary verified as aforesaid.

(4) The liquidator shall make available a copy of the summary for inspection by any person.

Special manager

19.—(1) An application for the appointment of a special manager shall be made by note in the winding-up process.

(2) An interlocutor appointing a special manager shall specify his powers and a period within which caution must be lodged.

(3) On such an interlocutor being pronounced, the liquidator shall send to the Secretary of State —

(a) a certified copy of the interlocutor; and

(b) a summary of the nature and value of the assets under or likely to be under the control of the special manager.

(4) If, at any time after the liquidator has sent the documents mentioned in paragraph (3) to the Secretary of State, the liquidator is of the opinion that the amount of caution to be found by the special manager should be increased or reduced, he shall send a revised summary of the nature and value of the assets under or likely to be under the control of the special manager to the Secretary of State.

(5) The special manager shall lodge a bond of caution with such officers or persons, and in such manner, as the Secretary of State may from time to time direct.

(6) The Secretary of State shall fix the amount and nature of such caution and may, from time to time, increase or reduce the amount thereof.

(7) The Secretary of State shall lodge in the winding-up process a certificate that the special manager has lodged a bond of caution to his satisfaction, and shall send a copy of the certificate to the special manager, the clerk of court and the liquidator.

(8) The cost of lodging a bond of caution by a special manager, including any premiums which he might have to pay to a guarantee society shall be borne by the special manager personally and shall not form a charge against the assets of the company as an expense in the winding-up.

(9) If a special manager fails —

(a) to lodge the required bond of caution within the period specified in the interlocutor appointing him, or any extension of that period;

(b) to continue his bond of caution; or

(c) to lodge an amended bond of caution when required,

the court may, on the motion of the liquidator, recall the interlocutor appointing him.

(10) The remuneration of a special manager shall be fixed from time to time by the court in such amount which the court considers to be appropriate in the circumstances.

(11) A special manager shall account to the liquidator and the accounts of the special manager shall be verified; and, when approved by the liquidator, the total of the receipts and payments shall be added by the liquidator to his accounts.

Caution for long term and other business

20. Where a company carries on long term business and —

(a) no stop order has been made; and

(b) a special manager has been appointed,

paragraphs (6) to (8) of rule 19 shall apply separately to the long term business of the company and to its other business.

Claims

21.—(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 any 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 debt 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

22.—(1) The liquidator may in the course of carrying on the long term business of the company 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 long term business of the company, and having regard to the general practice of insurers, recompense 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

23.—(1) 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) 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 rules 8(2) or (3), as the case may be, and he shall give that notice in such manner as the court may direct.

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

(4) Paragraph (2) of this rule has effect as though references 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 Act of 1923 and to the value of that entitlement under rule 8.

Dividends to creditors

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

(2) The procedure for payment of dividends to creditors in a winding-up applies separately in relation to the two separate companies assumed for the purpose of rule 5.

(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 date of the winding-up order

or, in the case of claims under long term policies, which have fallen due for payment on or after the date of the winding-up order.

Apportionment of costs payable out of the assets

25.—(1) The procedure for distribution of the assets of the company 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) But where any fee, expense, cost, charge, disbursement 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

26.—(1) When a stop order has been made in relation to the company the petitioner or noter shall, on the same day send —

(a) to the liquidator;

(b) to the Register of Companies for Scotland; and

(c) to such other person as the court may direct,

a certified copy of the interlocutor making the stop order.

(2) The liquidator shall forthwith give notice of the order in Form 1 in Schedule 6 to the Secretary of State for Trade and Industry, who shall cause the notice to be gazetted.

(3) The liquidator shall forthwith send notice of the order in Form 2 of Schedule 6 to such local paper as the Secretary of State for Trade and Industry may from time to time direct, or, in default of such direction, as he may select.

Emslie,
Lord President,
I.P.D.

Edinburgh.
25th February 1986.

SCHEDULE 1 Rules 6 and 12

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 date of the winding-up order where the event giving rise to the liability to make the payments occurred before the date of the winding-up order.

(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 not dealt with by paragraph 1.

(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, should have been repayable on early termination of the policy had the policy terminated on the date of the winding-up order, 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 Rules 7(3) and 12

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

General

1.—(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 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 may consider appropriate after taking into acount —

(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) a reserve for options,

(iii) a reserve for expenses, and

(iv) if further fixed premiums fall due to be paid under the policy on or after the date of the winding-up order, the present value of the modified net premiums;

and for the purpose of this Schedule a premium is a fixed premium if the amount of it is determined by the terms of the policy and it cannot be varied.

(2) 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 minumum benefits guaranteed under those terms the court shall determine rates of interest, mortality and disability under paragraph (1) which will result in the inclusion in the present value of the ordinary benefits and in the present value of the modified net premiums of such margin, if any as the court may consider appropriate to provide for that right or expectation in respect of the period after the date of the winding-up order.

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 date of the winding-up order 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 date of the winding-up order) and for this purpose "option" includes a right to surrender the policy.

(2) The present value of the ordinary benefits shall be the value at the date of the winding-up order 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.

Reserve for options

3. The amount of the reserve for options shall be the amount which, in the opinion of the liquidator, arrived at on appropriate assumptions in regard to all relevant factors, is necessary to be provided at the date of the winding-up order (in additon 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.

Reserve for expenses

4.—(1) The amount of the reserve for expenses is the amount which, in the opinion of the liquidator, is necessary to be provided at the date of the winding-up order for meeting future expenses.

(2) In this paragraph "future expenses" means such part of the expenses likely to be incurred after that date in the fulfilling by the liquidator or by any transferee from the liquidator of the long term business of the company of the obligations of that business as is appropriate to the policy and which cannot

be met out of the amounts, if any, by which the actual premiums payable under that policy after that date exceed the amounts of the modified net premiums which correspond to those actual premiums.

Net premiums

5.—(1) For the purpose of determining the present value of the modified net premiums a net premium shall be determined in relation to each actual premium paid or payable under the policy in such a way that —

(a) the net premiums, if they had been payable when the corresponding actual premiums were or are payable, would, on the basis of the rates of interest, mortality and disability referred to in paragraph 1, have been sufficient when the policy was issued to provide for the benefits under the policy according to the contingencies on which they are payable, exclusive of any addition for profits, expenses or other charges, and

(b) the ratio between the amounts of any two net premiums is the same as the ratio between the two actual premiums to which they correspond (any actual premium which includes a loading for unusual risks assumed by the company in respect of part only of the term of the policy being treated for this purpose as if it did not include that loading).

(2) For the purposes of this paragraph, where at any time after the policy was issued the terms of the policy have been varied (otherwise than by the surrender of the policy in consideration of the issue of a new policy), it shall be assumed that the policy when it was issued provided for those variations to take effect at the time when they did in fact take effect.

Modified net premiums

6.—(1) A modified net premium shall be determined in relation to each net premium by making an addition to each net premium such that —

(a) the additions, if each was payable when the corresponding actual premium was or is payable, would, on the basis of the rates of interest, mortality and disablility referred to in paragraph 1, have been sufficient to compensate for the acquisition expenses relating to the policy; and

(b) the ratio between the amounts of any two modified net premiums is the same as the ratio between the amounts of the two net premiums to which they correspond.

(2) For this purpose the acquisition expenses relating to the policy shall be taken to be 3.5 per cent (or the defined percentage if it be lower than 3.5 per cent) of the relevant capital sum under the contract and for this purpose —

(a) "the defined percentage" is the percentage arrived at by taking (for all policies which in the opinion of the liquidator have the same or similar characteristics to the policy in question, and which he considers appropriate to be taken notice of for this purpose), the average of the percentages of the relevant capital sums under those policies that represent the aquisition expenses for which, after allowing for the effects of taxation, allowance is made in the premiums actually payable; and

(b) "the relevant capital sum" in relation to any policy is —

(i) for whole life assurances, the sum assured,

(ii) for policies where a sum is payable on maturity (including policies where a sum is also payable on earlier death), the sum payable on maturity,

(iii) for temporary assurances, the sum assured on the date of the winding-up order,

(iv) for deferred annuity policies, the capitalised value on the date on which the first payment is due to be made of the payments under the policy calculated on the basis of the rates of interest, mortality and disability referred to in paragraph 1 or, if the terms of the policy include a right on the part of the policy holder to surrender the policy on that date for a cash payment greater than the said capitalised value, the amount of that cash payment, and

(v) for capital redemption policies, the sum payable at the end of the contract period.

(3) Where the amount of a modified net premium calculated in accordance with sub-paragraphs (1) and (2) is greater than the amount of the actual premium to which it corresponds then the amount of that modified net premium shall be the amount of that actual premium and not the amount calculated in accordance with sub-paragraphs (1) and (2).

Present value of the modified net premiums

7. The present value of the modified net premiums shall be the value as at the date of the winding-up order, calculated on the basis of the rates of interest, mortality and disability referred to in paragraph 1, of the modified net premiums payable after that date on the assumption that they are payable as and when the corresponding actual premiums are payable.

Value of the policy

8.—(1) Subject to sub-paragraph (2) —

(a) if no further fixed premiums fall due to be paid under the policy on or after the date of the winding-up order, the value of the policy shall be the aggregate of —

(i) the present value of the ordinary benefits,

(ii) the reserve for options,

(iii) the reserve for expenses, and

(iv) 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 ordinary benefits, such amount (if any) as the court may determine to reflect that right or expectation in respect of the period ending with the date of the winding-up order;

(b) if further fixed premiums fall due to be so paid and the aggregate value referred to in subparagraph *(a)* exceeds the present value of the modified net premiums, the value of the policy shall be the amount of that excess; and

(c) if further fixed premiums fall due to be so paid and that aggregate does not exceed the present value of the modified net premiums, the policy shall have no value.

(2) Where the policy holder has a right conferred upon him by the terms of the policy of by the Industrial Assurance Acts whereby the policy holder can

secure a guaranteed cash payment within the period of 12 months beginning with the date of the winding-up order, 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

Rules 7(3) and 12

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 paragraph 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 date of the winding-up order 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 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 date of the winding-up order 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 date of the winding-up order shall be determined by reference to the net realisable value of the assets credited to that fund on the 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 case, the value of a unit on the date of the winding-up 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 date of the winding-up order 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 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; or

(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 date of the winding-up order, 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 date of the winding-up order, 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 parts 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 may consider 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 which would have been ascribed to those liabilities had the policy matured on the date of the winding-up order.

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 Rules 7(3) and 12

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

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

SCHEDULE 5 Rules 8(3) and 12

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 winding-up order;

(b) in paragraph 3 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) in paragraph 4(2) of Schedule 2 for the words "likely to be incurred" there shall be substituted the words "which were likely to have been incurred" and for the words "cannot be met" there shall be substituted the words "could not have been met";

(d) paragraph 8(2) of Schedule 2 shall be omitted; and

(e) paragraph 1(2) of Schedule 3 shall be omitted.

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.

3.—(1) This paragraph applies in the case of a linked policy where —

(a) the terms of the policy include a guarantee that the amount assured will on maturity of the policy be worth a minimum amount calculable in money terms; or

(b) the terms of the policy include a right on the part of the policy holder to surrender the policy and a guarantee that the payment on surrender will be worth a minimum amount calculable in money terms and that right is exercisable on or after the date of the stop order.

(2) Where this paragraph applies the value of the policy shall be the greater of the following two amounts:—

(a) the value the policy would have had at the date of the stop order had the policy been a non-linked policy, that is to say, had the linked liabilities provided by the policy not been so provided but the policy had otherwise been on the same terms; and

(b) the value the policy would have had at the date of the stop order had the policy not included any guarantees of payments on maturity or surrender worth a minimum amount calculable in money terms.

Rule 26(2)

SCHEDULE 6

FORM 1

NOTICE FOR EDINBURGH GAZETTE

NOTICE OF ORDER PRONOUNCED UNDER SECTION 56(2) OF THE INSURANCE COMPANIES ACT 1982 FOR CESSATION OF LONG TERM BUSINESS.

Name of Company Address of Registered Office

In the Court of Session

Serial letter and number of cause Date of Interlocutor

Date of Winding-up Order

FORM 2 Rule 26(3)

NOTICE FOR NEWSPAPER

NOTICE OF ORDER PRONOUNCED UNDER SECTION 56(2) OF THE INSURANCE COMPANIES ACT 1982 FOR CESSATION OF LONG TERM BUSINESS.

In the Court of Session

Name of Company

Date of Winding-up Order

Date of Interlocutor

Liquidator

EXPLANATORY NOTE

(*This Note does not form part of the Act of Sederunt.*)

This Act of Sederunt supplements rules 202 to 218 of the Rules of the Court of Session in relation to the winding-up of insurance companies in Scotland. They replace the provisions of the Insurance Companies Act 1958 (c.72) relating to the valuation in a winding-up of long term and general business policies and they provide for the carrying on by the liquidator of the long term business of the company, unless and until the court otherwise orders, and for the separate winding-up of the long term and any other business of the company.

More particularly the Act of Sederunt provides for—

(a) any necessary identification of the assets and liabilities of the company's long term business and those of its other business;

(b) methods of valuation of long term business policies for the purpose of determining the amount of any excess of assets over liabilities in the company's long term business;

(c) methods of valuation of long term business policies for the purposes of proof in the winding-up of the long term business where the court orders the liquidator to stop carrying on the long term business; and

(d) methods of valuation of general business policies which apply both for the purpose of determining the amount of any excess of assets over liabilities in the general business of a composite insurance company and for the purposes of proof in the winding-up of a general business company or of the general business of a composite insurance company.

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