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STATUTORY RULES OF NORTHERN IRELAND

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**2014 No. 41**

**BUILDING SOCIETIES**

**INSOLVENCY**

**The Building Society Insolvency Rules (Northern Ireland) 2014**

*Made - - - - 13th February 2014*

*Coming into operation 13th March 2014*

The Department of Justice makes the following Rules in the exercise of powers conferred by Article 359(1C), (2), (2C), (3) and (3A) of the Insolvency (Northern Ireland) Order 1989<sup>(1)</sup>.

The Department of Finance and Personnel concurs in the making of the Rules.

The Lord Chief Justice of Northern Ireland concurs in the making of the Rules in so far as they affect court procedure.

The Department of Justice has not consulted the Committee existing for the purposes of Article 360 of the Insolvency (Northern Ireland) Order 1989: this is the first set of Rules made in relation to building society insolvency and the duty to consult does not therefore apply to these Rules by virtue of Article 16 of the Building Societies (Insolvency and Special Administration) Order 2009<sup>(2)</sup>.

**PART 1**

**INTRODUCTORY PROVISIONS**

**Citation and commencement**

**1.** These Rules may be cited as the Building Society Insolvency Rules (Northern Ireland) 2014 and shall come into operation on 13th March 2014.

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(1) [S.I. 1989/2405 \(N.I. 19\)](#). Article 359 was amended by the Banking Act 2009 (c.1), section 125, as applied by section 134, and by the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 ([S.I. 2010/976](#)), Article 15(1) and Schedule 18, paragraph 142. Paragraph 3(A) was inserted by [S.I. 2009/805](#).

(2) [S.I. 2009/805](#), amended by [S.I. 2010/1189](#) and [S.I. 2013/496](#).

## Application of Rules

2. These Rules apply in relation to a building society undergoing the procedure in Part 2 of the Banking Act 2009(3), as applied and modified by section 90C of the Building Societies Act 1986(4) and by any order made under section 130 of the Banking Act, known as building society insolvency.

## Construction and interpretation

3.—(1) In these Rules—

“the 1989 Order” means the Insolvency (Northern Ireland) Order 1989;

“the 1991 Rules” means the Insolvency Rules (Northern Ireland) 1991(5) including all amendments to them up to and including those made by the Insolvency (Amendment) Rules (Northern Ireland) 2013(6);

“the 2009 Order” means the Building Societies (Insolvency and Special Administration) Order 2009;

“the 2014 Rules” means these Rules;

“an affidavit” means an affidavit as provided for by Article 165 of the 1989 Order;

“the appropriate regulator” in relation to a building society means—

(a) if the building society is a PRA-authorized person (within the meaning of the Financial Services and Markets Act 2000(7)), the Prudential Regulation Authority and the Financial Conduct Authority (except in rules 20, 74, 95(2) and 180 when it means the Prudential Regulation Authority or the Financial Conduct Authority);

(b) in any other case, the Financial Conduct Authority;

“the Banking Act” means the Banking Act 2009;

“the Building Societies Act” means the Building Societies Act 1986;

“building society” or “society” means a building society incorporated under the Building Societies Act;

“building society insolvency”, “building society insolvency order” and “building society liquidator” have the same meaning as in the Building Societies Act (see section 90C(2));

“business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Northern Ireland under or by virtue of the Banking and Financial Dealings Act 1971(8);

“contributory”, in relation to a building society and subject as provided in Rule 40—

(i) means every person liable to contribute to the assets of the society in the event of its being wound up, and

(ii) for the purposes of all proceedings for determining, and all proceedings prior to the determination of, the persons who are deemed to be contributories, includes any person alleged to be a contributory, and

(iii) includes persons who are liable to pay or contribute to the payment of any debt or liability of the society, or any sum for the adjustment of rights of members among themselves, or the expenses of the winding up,

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(3) 2009 c.1.

(4) 1986 c.53; section 90C was inserted by Article 2 of the Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805).

(5) S.R. 1991 No. 364, as amended by S.R. 1994 No. 26, S.R. 1995 No. 291, S.R. 2000 No. 247, S.R. 2002 No. 261, S.R. 2003 No. 549, S.R. 2006 No. 47, S.R. 2008 No. 118, S.R. 2009 No. 404, S.R. 2011 No. 151, S.I. 2004/355 and S.R. 2013 No.278.

(6) S.R. 2013 No. 278.

(7) 2000 c.8.

(8) 1971 c.80.

but does not include persons liable to contribute by virtue of a declaration by the court under Article 177 (responsibility for fraudulent trading) or Article 178 (wrongful trading) of the 1989 Order.

“the Department” means the Department of Enterprise, Trade and Investment<sup>(9)</sup>;

“eligible depositor” means a depositor who is eligible for compensation under the FSCS;

“the FSCS” means the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000) or, where appropriate, the scheme manager of that scheme;

“liquidation committee” means the committee established pursuant to section 100 of the Banking Act;

“Objective 1” has the same meaning as in Part 2 of the Banking Act (section 99(2));

“personal service” means personal service in accordance with Order 65 of the Rules of the Court of Judicature (Northern Ireland) 1980<sup>(10)</sup>;

“principal office” means—

- (a) the place which is specified in the building society’s memorandum sent to the Financial Conduct Authority under paragraph 1(1)(c) of Schedule 2 to the Building Societies Act as the address of its principal office; or
- (b) if notice has been given by the society to the Financial Conduct Authority under paragraph 11(2) of that Schedule (change of principal office), the place specified in that notice or, as the case may be, in the last such notice;

“registered name”, in relation to a building society, means the name of the society which is for the time being registered with the Financial Conduct Authority; and

“sealed” means sealed with the seal of the court under which the application was made.

(2) Other expressions used in these Rules, where used in relation to building societies, have the same meaning as in the Building Societies Act.

(3) In these Rules—

- (a) any reference to Part 2 of the Banking Act (Bank Insolvency), or to any provision in that Part, is a reference to that Part or provision as applied and modified by section 90C of the Building Societies Act and by any order made under section 130 of the Banking Act;
- (b) any reference to any provision in Part 2 of the Banking Act is a reference to that provision as applied by section 134 of that Act;
- (c) any reference to any provision of the 1989 Order, which is not applied by Part 2 of the Banking Act, is a reference to that provision as applied and modified by section 90A of, and Schedule 15A to, the Building Societies Act;
- (d) any reference to any provision of the 1989 Order which is applied by Part 2 of the Banking Act is a reference to that provision as applied and modified by section 90C of the Building Societies Act and by any order made under section 130 of the Banking Act; and
- (e) any reference to any provision of the Building Societies (Insolvency and Special Administration) Order 2009 is a reference to that provision as applied by Article 17 of that Order.

(4) These Rules consist of—

- (a) the Rules set out in full;

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<sup>(9)</sup> Formerly the Department of Economic Development, see the Departments (Northern Ireland) Order 1999 (S.I. 1999/283 (N.I. 1)).

<sup>(10)</sup> S.R. 1980 No. 346, as amended by the Constitutional Reform Act 2005 (c.4), section 59 and Schedule 11.

- (b) in the case of a rule applying a rule in the Introductory Provisions and in Parts 4, 7, 8, 9, 11 and 12 of the 1991 Rules, the rule so applied with—
    - (i) the modifications set out in paragraph (5),
    - (ii) the modifications contained in the rule applying it, and
    - (iii) any other necessary modification;
  - (c) the Schedule, which applies the relevant schedules of the 1991 Rules.
- (5) The modifications are that where applicable, a reference to—
- (a) any provision of the 1989 Order which is applied by Part 2 of the Banking Act is a reference to that provision as applied and modified by section 90C of the Building Societies Act and by any order made under section 130 of the Banking Act;
  - (b) any provision of the 1989 Order which is not applied by Part 2 of the Banking Act is a reference to that provision as applied and modified by section 90A of, and Schedule 15A to, the Building Societies Act;
  - (c) the 1991 Rules (or “the 2014 Rules”) is a reference to these Rules;
  - (d) the articles is a reference to the rules of the building society;
  - (e) the chairman is a reference to the chair;
  - (f) the commencement of winding up is a reference to the commencement of building society insolvency;
  - (g) a company is a reference to a building society;
  - (h) a contributory is a reference to a contributory in relation to a building society within the meaning of these Rules;
  - (i) ex parte is a reference to without notice;
  - (j) going into liquidation is a reference to entering building society insolvency;
  - (k) insolvency proceedings is a reference to building society insolvency proceedings;
  - (l) the official receiver should be ignored unless otherwise stated;
  - (m) the officers, or a particular officer of a company, is a reference to the officers, or the corresponding officer, of the building society and includes persons holding themselves out as such an officer;
  - (n) a petition for winding up is a reference to an application for building society insolvency under section 95 of the Banking Act;
  - (o) a petitioner is a reference to an applicant;
  - (p) the provisional liquidator is a reference to the provisional building society liquidator;
  - (q) the registrar of companies or the registrar is a reference to the Financial Conduct Authority;
  - (r) the registered office is a reference to the principal office within the meaning of these Rules;
  - (s) winding up is a reference to building society insolvency;
  - (t) winding up by the court is a reference to a building society being placed into building society insolvency by the court; and
  - (u) a winding-up order is a reference to a building society insolvency order.
- (6) Expressions used—
- (a) both in a rule set out in full and in Part 2 of the Banking Act; or
  - (b) both in a modification to a rule from the 1991 Rules applied by these Rules and in Part 2 of the Banking Act;
- have the same meaning as in Part 2 of the Banking Act.

(7) Expressions used—

- (a) both in a rule set out in full and in the Building Societies Act; or
- (b) both in a modification to a rule from the 1991 Rules applied by these Rules and in the Building Societies Act;

have the same meaning as in the Building Societies Act.

(8) Where a rule applies a rule of the 1991 Rules and modifies that rule by inserting or substituting text—

- (a) any reference in the modified rule to the 2014 Rules is a reference to these Rules;
- (b) expressions inserted or substituted have the same meaning as in these Rules.

(9) Where a rule in the 1991 Rules (Rule A) contains a reference to another such rule (Rule B) and—

- (a) both Rule A and Rule B are applied by these Rules; or
- (b) Rule A is applied by and the provision in Rule B to which Rule A refers is substantially repeated in these Rules;

the reference in Rule A shall be treated, for the purpose of these Rules, as being, respectively, to the rule in these Rules that applies Rule B or the provision in these Rules that substantially repeats the provision in Rule B.

(10) Where a rule (Rule A) refers to another rule (Rule B), and Rule B applies a rule of the 1991 Rules (Rule C) with or without modifications, the reference in Rule A includes a reference to Rule C as applied by Rule B.

(11) Any notice or document required to be sent electronically pursuant to these Rules shall be treated as having been sent to the person if—

- (a) it is sent by email to the person's last known email address; and
- (b) the email contains a prompt asking the person for an electronic receipt saying that the email has been read.

(12) Where these Rules provide for an affidavit (either expressly, or through the application of the 1991 Rules as modified) if the affidavit is made by a building society liquidator, or a provisional building society liquidator, the affidavit shall state that it is made in that capacity and shall include the address at which the liquidator works.

## **Overview**

**4.** The purpose of these Rules is to provide a procedure for the appointment of a building society liquidator and the operation of building society insolvency under Part 2 of the Banking Act in Northern Ireland.

## **Forms**

**5.—(1)** This rule applies where a provision of these rules—

- (a) applies a provision of the 1991 Rules which requires the use of a prescribed form, or
- (b) makes provision similar to that made by a provision of those Rules which requires the use of a prescribed form.

(2) The form prescribed for the purposes of those Rules is to be used with any modification that the person using the form thinks desirable to reflect the nature of building society insolvency.

## **Time**

6.—(1) Where by any provision of the 1989 Order, the Banking Act or these Rules, the time for doing anything is limited, the court may extend the time, either before or after it has expired, on such terms, if any, as it thinks fit.

(2) If the court's consideration of whether to extend the time for doing anything takes place before a full payment resolution has been passed, the court shall only extend the time if it considers that the resulting delay will not significantly prejudice the achievement of Objective 1.

## **PART 2**

### **APPLICATION FOR ORDER**

#### **Filing of application**

7.—(1) The application for a building society insolvency order, verified by an affidavit in accordance with rule 11, shall be filed in court.

(2) There shall be filed with the application—

- (a) one copy for service on the society;
- (b) one copy to be attached to the proof of service; and
- (c) further copies to be sent to the persons under rule 10.

(3) The court shall fix the venue, date and time for the hearing of the application and in doing so shall have regard to—

- (a) the desirability of the application being heard as soon as is reasonably practicable; and
- (b) the need to give the society a reasonable opportunity to attend.

(4) Each of the copies issued to the applicant shall be sealed and be endorsed with the venue, date and time for the hearing.

(5) Any application filed in relation to a building society in respect of which there is in force a voluntary arrangement under Part II of the 1989 Order shall be filed in accordance with this rule but a copy of that application shall also be sent to the court to which the nominee's report under Article 15(2) of the 1989 Order was submitted, if that is not the same court.

#### **Service of application**

8.—(1) The applicant shall serve the building society with a sealed copy of the application.

(2) The application shall be served on the society at its principal office.

(3) Service of the application at the principal office may be effected in any of the following ways—

- (a) it may be handed to a person who there and then acknowledges that they are, or to the best of the server's knowledge, information and belief, are a director or other officer, or employee, of the society; or
- (b) it may be handed to a person who there and then acknowledges that they are authorised to accept service of documents on the society's behalf; or
- (c) in the absence of such person as is mentioned in sub-paragraphs (a) and (b), it may be deposited at or about the principal office in such a way that it is likely to come to the notice of a person attending the office.

(4) If for any reason it is impracticable to effect service as provided by paragraph (2) or (3), the application may be served in such other manner as the court may approve or direct.

(5) Application for permission of the court under paragraph (4) may be made without notice to the society, stating in an affidavit what steps have been taken to comply with paragraph (2) or (3), and the reasons why it is impracticable to effect service as there provided.

(6) If the society or its legal representatives fail to attend the hearing, the court may make the building society insolvency order in its absence if satisfied that the application has been served in accordance with this rule.

### **Proof of service**

9. Apply rule 4.009 of the 1991 Rules.

### **Other persons to receive copies of application**

10.—(1) The applicant shall send two copies of the application to—

- (a) the proposed building society liquidator;
- (b) the Bank of England (if it is not the applicant);
- (c) the appropriate regulator (if it is not the applicant);
- (d) the FSCS;
- (e) any person who has given notice to the appropriate regulator in respect of the society under section 90D of the Building Societies Act(11);
- (f) if there is in force for the society a voluntary arrangement under Part II of the 1989 Order, the supervisor of that arrangement; and
- (g) if an administrative receiver has been appointed in relation to the society, that receiver;

in accordance with paragraph (2).

(2) One copy shall be sent electronically as soon as practicable and the other (a sealed copy) shall be sent by first class post on the business day on which the application is served on the society.

(3) Any of the persons in sub-paragraph (1) will have the right to attend and be heard at the hearing of the application.

### **Verification of application**

11.—(1) This rule applies where an application has been filed at the court under rule 7.

(2) An affidavit shall be attached to the application to state that the statements in the application are true, or are true to the best of the applicant's knowledge, information and belief.

(3) The affidavit shall identify the person making the statement and shall include the capacity in which that person makes the statement and the basis for that person's knowledge of the matters set out in the application.

(4) The affidavit is, unless proved otherwise, evidence of the statements in the application.

### **Persons entitled to copy of application**

12.—(1) Every contributory or creditor of the building society is entitled to a copy of the application on request from the applicant.

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(11) 1986 c.53; section 90D was inserted by Article 6 of the Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805) and amended by S.I. 2013/496.

(2) The applicant shall respond to any request for a copy of the application as soon as reasonably practicable after the application has been made on payment of the appropriate fee.

### **Certificate of compliance**

**13.**—(1) Apply rule 4.014 of the 1991 Rules.

(2) In paragraph (1) for “at least 5 days before the hearing of the petition” substitute “as soon as reasonably practicable before the hearing of the application”.

(3) For paragraph (3) substitute—

“(3) An affidavit made by the proposed building society liquidator to the effect that—

(a) the person is qualified to act as an insolvency practitioner in accordance with Article 349 of the Order; and

(b) the person consents to act as the building society liquidator;

shall be filed in court with the certificate.”.

### **Dismissal or withdrawal of application**

**14.**—(1) Apply rule 4.015 of the 1991 Rules.

(2) In paragraph (1)—

(a) omit “at least 5 days”;

(b) omit sub paragraph (a).

### **Affidavit in opposition**

**15.**—(1) If the society intends to oppose an application, it may file an affidavit in opposition in court.

(2) An affidavit under paragraph (1) shall be filed before the hearing of the application and a copy shall be served on the applicant before the hearing.

(3) The affidavit may be served on the applicant by personal service or by electronic means.

(4) The affidavit shall also be sent to the persons in rule 10(1) before the hearing.

(5) The fact that the society has not filed an affidavit under this rule shall not prevent it from being heard at the hearing.

### **Making, transmission and advertisement of order**

**16.**—(1) The court shall not make a building society insolvency order unless the person nominated to be appointed as the building society liquidator in the application for the order has filed in court an affidavit under rule 13.

(2) When the building society insolvency order has been made the court shall immediately send five sealed copies (or such larger number as the building society liquidator may have requested) to the building society liquidator.

(3) The court shall also, if practicable, immediately send a copy of the order to the building society liquidator electronically.

(4) The building society liquidator shall serve a sealed copy of the order on the society at its principal office and, where the building society liquidator knows the society’s email address, shall send an electronic copy to the society.

(5) The building society liquidator shall send two copies of the order to—



- (a) the Bank of England;
  - (b) the appropriate regulator;
  - (c) the FSCS;
  - (d) if there is in force for the society a voluntary arrangement under Part II of the 1989 Order, the supervisor of that arrangement; and
  - (e) if an administrative receiver has been appointed in relation to the society, that receiver;
- in accordance with paragraph (6).

(6) One copy shall be sent electronically as soon as practicable and the other (a sealed copy) shall be sent by first class post on the business day on which the order is served on the society.

(7) The building society liquidator—

- (a) shall cause notice of the order to be gazetted as soon as reasonably practicable, and
- (b) may advertise notice of the order in such other manner as the building society liquidator thinks fit.

#### **Authentication of building society liquidator's appointment**

17. A sealed copy of the court's order may in any proceedings be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of the building society liquidator in the building society insolvency.

#### **Initial duties of building society liquidation committee**

18.—(1) As soon as reasonably practicable after the making of a building society insolvency order, the liquidation committee shall meet the building society liquidator for the purpose of discussing which of the Objectives, or combination of Objectives, mentioned in section 102(1) of the Banking Act, the committee should recommend the building society liquidator to pursue.

(2) The liquidation committee shall make its recommendation to the building society liquidator at the meeting.

(3) The Bank of England shall confirm the liquidation committee's recommendation in writing as soon as practicable after the meeting.

(4) As soon as practicable after the making of a building society insolvency order, the liquidation committee shall also pass a resolution as to the terms on which, in accordance with rule 99, the building society liquidator is to be remunerated.

(5) Until a full payment resolution has been passed, the building society liquidation committee—

- (a) shall take decisions and pass resolutions by a simple majority; and
- (b) for the purpose of taking decisions and passing resolutions, may communicate by any means that its members consider convenient.

#### **Expenses of voluntary arrangement**

19. Apply rule 4.022 of the 1991 Rules.

## PART 3

### PROVISIONAL BUILDING SOCIETY LIQUIDATOR

#### **Appointment of provisional building society liquidator**

**20.**—(1) An application to the court for the appointment of a provisional building society liquidator under Article 115 of the 1989 Order may be made—

- (a) by the Bank of England,
- (b) by the appropriate regulator, (with the consent of the Bank of England).

(2) The application shall be supported by an affidavit stating—

- (a) the grounds upon which it is proposed that the provisional building society liquidator should be appointed;
- (b) that the person to be appointed has consented to act;
- (c) that the person to be appointed is qualified to act as an insolvency practitioner;
- (d) whether to the applicant's knowledge—
  - (i) there has been proposed or is in force for the society a voluntary arrangement under Part II of the 1989 Order, or
  - (ii) an administrative receiver is acting in relation to the society;
- (e) the applicant's estimate of the value of the assets in respect of which the provisional building society liquidator is to be appointed; and
- (f) the functions the applicant wishes to be carried out by the provisional building society liquidator in relation to the society's affairs.

(3) The court may on the application, if satisfied that sufficient grounds are shown for the appointment, make it on such terms as it thinks fit.

#### **Notice of appointment**

**21.**—(1) Where a provisional building society liquidator has been appointed, the court shall notify the applicant and the person appointed.

(2) Unless the court otherwise directs, on receipt of the notification under paragraph (1), the provisional liquidator shall give notice of that appointment as soon as reasonably practicable.

(3) The notice in paragraph (2)—

- (a) shall be gazetted; and
- (b) may be advertised in such other manner as the provisional liquidator thinks fit.

#### **Order of appointment**

**22.**—(1) The order of appointment shall specify the functions to be carried out by the provisional building society liquidator in relation to the society's affairs.

(2) The court shall, immediately after the order is made, send four sealed copies of the order (or such larger number as the provisional building society liquidator may have requested), to the provisional building society liquidator.

(3) The court shall also, if practicable, immediately send a copy of the order to the provisional building society liquidator electronically.

(4) The provisional building society liquidator shall serve a sealed copy of the order on the society at its principal office and, where the provisional building society liquidator knows the society's email address, shall send an electronic copy to the society.

(5) The provisional building society liquidator shall send two copies of the order to—

- (a) the Bank of England;
- (b) the appropriate regulator;
- (c) the FSCS;
- (d) if there is in force for the society a voluntary arrangement under Part II of the 1989 Order, the supervisor of that arrangement; and
- (e) if an administrative receiver has been appointed in relation to the society, that administrative receiver;

in accordance with paragraph (6).

(6) One copy shall be sent electronically as soon as practicable and the other (a sealed copy) shall be sent by first class post on the business day on which the order is served on the society.

### **Security**

**23.** Apply rule 4.031 of the 1991 Rules(12).

### **Failure to give or keep up security**

**24.** Apply rule 4.032 of the 1991 Rules.

### **Remuneration**

**25.—**(1) Apply rule 4.033 of the 1991 Rules(13).

(2) Omit paragraph (5).

### **Termination of appointment**

**26.—**(1) Apply rule 4.034 of the 1991 Rules.

(2) After paragraph (2) insert—

“(3) On the making of a building society insolvency order the appointment of the provisional building society liquidator shall terminate.”.

## **PART 4**

### **STATEMENT OF AFFAIRS AND OTHER INFORMATION**

#### **Notice requiring statement of affairs**

**27.—**(1) Apply rule 4.035 of the 1991 Rules.

(2) For “official receiver”, substitute “building society liquidator”.

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(12) Rule 4.031 was amended by [S.R. 2008 No. 118](#).

(13) Rule 4.033 was amended by [S.R. 2008 No. 118](#).

### **Verification and filing**

- 28.**—(1) Apply rule 4.036 of the 1991 Rules.  
(2) For “the official receiver” substitute “the building society liquidator”.  
(3) For paragraph (6), substitute—  
    “(6) The building society liquidator shall file the statement of affairs in court and shall send a copy of it to the appropriate regulator.”.  
(4) Omit paragraph (7).

### **Limited disclosure**

- 29.**—(1) Apply rule 4.039 of the 1991 Rules.  
(2) In paragraph (1), for “official receiver”, substitute “building society liquidator”.  
(3) After paragraph (1), insert—  
    “(1A) The building society liquidator may also apply to the court for an order of limited disclosure in respect of those depositors of the society who, at the time of the making of the statement of affairs, still have a claim against the society in respect of their deposits.”.

### **Release from duty to submit statement of affairs; extension of time**

- 30.**—(1) Apply rule 4.040 of the 1991 Rules(14).  
(2) For “official receiver” substitute “building society liquidator.”

### **Expenses of statement of affairs**

- 31.**—(1) Apply rule 4.041 of the 1991 Rules(15).  
(2) For “official receiver”, substitute “building society liquidator”.

### **Submission of accounts**

- 32.**—(1) Apply rule 4.043 of the 1991 Rules.  
(2) For “official receiver”, substitute “building society liquidator”.

### **Further disclosure**

- 33.**—(1) Apply rule 4.046 of the 1991 Rules.  
(2) For “official receiver”, substitute “building society liquidator”.

## **PART 5**

### **INFORMATION TO CREDITORS AND CONTRIBUTORIES**

#### **Report by building society liquidator**

- 34.**—(1) The building society liquidator shall, at least once after the making of the building society insolvency order, make a report with respect to the proceedings in the building society insolvency and the state of the society’s affairs.

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(14) Paragraph (9) was amended by [S.R. 2008 No. 118](#).

(15) Rule 4.041 was amended by [S.R. 2008 No. 118](#).

(2) Regardless of whether the liquidation committee has passed a full payment resolution, the first report under paragraph (1) shall be, within eight weeks of the commencement of the building society insolvency, made publicly available and the building society liquidator shall send a copy of it to any creditor or contributory on request.

- (3) The building society liquidator shall include in the report under paragraph (1)—
- (a) a statement that the proceedings are being held in the High Court and the relevant court reference number;
  - (b) the full registered name of the society, any other trading names of the society, and the address of its principal office;
  - (c) details relating to the building society liquidator's appointment, including the date of appointment, and where there are joint liquidators, details of—
    - (i) which functions (if any) are to be exercised by the persons appointed acting jointly, and
    - (ii) which functions (if any) are to be exercised by any or all of the persons appointed.
  - (d) the names of the directors, chief executive and secretary of the society and details of any shares in the society that they have;
  - (e) an account of the circumstances giving rise to the building society insolvency;
  - (f) if a statement of affairs has been submitted, a copy of that statement;
  - (g) if a statement of affairs has yet to be submitted—
    - (i) the names, addresses and details of any debts owed to the creditors, including details of any security held (or, in the case of depositors who still are creditors of the society at the time the report is made, a single statement of their aggregate debt),
    - (ii) details of the shares issued by the society (including the types of shares issued and the number of each type in issue), and
    - (iii) details of the financial position of the society at the latest practicable date (which must, unless the court orders otherwise, be a date not earlier than the commencement of building society insolvency);
  - (h) the basis upon which it has been proposed under rule 42, or, if the full payment resolution has yet to be passed, rule 18, that the building society liquidator's remuneration be fixed;
  - (i) to the best of the building society liquidator's knowledge and belief—
    - (i) an estimate of the value of the prescribed part (within the meaning of Article 150A of the 1989 Order) regardless of whether—
      - (aa) the building society liquidator proposes to make an application to the court under Article 150A(5) of that Order, or
      - (bb) Article 150A(3) applies, and
    - (ii) an estimate of the value of the society's net property;
  - (j) whether, and if so, why, the building society liquidator proposes to make an application to court under Article 150A(5) of the 1989 Order;
  - (k) a summary of—
    - (i) how Objective 1 is being or has been achieved and an estimate of the costs to the building society liquidator of achieving it,
    - (ii) the manner in which the affairs and business of the society not involved in the achievement of Objective 1 have, since the commencement of the building society insolvency, been managed and financed, including, where any assets have been

disposed of, the reasons for such disposals and the terms upon which such disposals were made, and

(iii) how the affairs and business of the society will continue to be managed and financed; and

(l) an explanation of how it is envisaged the Objectives of the building society liquidator will be achieved, including whether a dividend will be paid and an estimate as to the amount of this dividend and how it is proposed that the building society liquidation shall end.

(4) Nothing in this rule is to be taken as requiring either estimate mentioned in paragraph (3)(i) to include any information the disclosure of which could seriously prejudice the commercial interests of the society. If such information is excluded from the calculation the estimate shall be accompanied by a statement to that effect.

(5) The building society liquidator shall file with the court a copy of any report sent under this rule.

#### **Meaning of “creditors”**

35. Apply rule 4.048 of the 1991 Rules.

#### **Report where statement of affairs lodged**

36.—(1) Apply rule 4.049 of the 1991 Rules.

(2) For “official receiver”, substitute “building society liquidator”.

#### **Statement of affairs dispensed with**

37.—(1) Apply rule 4.050 of the 1991 Rules.

(2) For “official receiver”, substitute “building society liquidator”.

#### **General rule as to reporting**

38.—(1) Apply rule 4.051 of the 1991 Rules.

(2) In paragraph (1), for “official receiver” substitute “building society liquidator”.

#### **Building society insolvency stayed**

39.—(1) Apply rule 4.052 of the 1991 Rules.

(2) In paragraph (1), for “official receiver” substitute “building society liquidator”.

## **PART 6**

### **MEETINGS OF CREDITORS AND CONTRIBUTORIES**

#### **Meaning of “contributories”**

40. For the purposes of this Part, “contributories” does not include the borrowing members of the society (see paragraph 5(2) of Schedule 2 to the Building Societies Act).

### **First meeting**

**41.**—(1) Once the liquidation committee passes a full payment resolution the building society liquidator shall—

- (a) immediately summon a meeting of the society’s creditors and a meeting of the society’s contributories; and
- (b) fix a venue, date and time for the meetings;

and the date must be within three months of the date on which the full payment resolution was passed.

(2) When the venue, date and time of the meetings have been fixed the building society liquidator shall give notice of the meetings to—

- (a) the court;
- (b) every creditor who is known to the building society liquidator or is identified in the society’s statement of affairs;
- (c) every person appearing (by the society’s books or otherwise) to be a contributory of the society; and
- (d) each member of the liquidation committee.

(3) The building society liquidator—

- (a) shall gazette the notice of the meeting as soon as reasonably practicable; and
- (b) may advertise it in such other manner as the building society liquidator thinks fit.

(4) In giving the notice mentioned in paragraph (2) the building society liquidator shall, if practicable, indicate whether the present intention of the FSCS is to resign from the liquidation committee at the meeting.

(5) Notice to the court and the members of the liquidation committee shall be given immediately; notice to creditors and contributories shall be given, and the advertisements placed to appear, at least 21 days before the date fixed for the meeting.

(6) The notice to creditors shall specify a time and date, not more than four days before the date fixed for the meeting, by which they must lodge proofs and (if applicable) proxies, in order to be entitled to vote at the meeting.

(7) The FSCS is entitled to be represented at the meeting and Schedule 1 to the 1991 Rules, as applied by rule 282, has effect with respect to its voting rights at such a meeting.

(8) Meetings summoned under this rule are known respectively as “the first meeting of creditors” and “the first meeting of contributories”, and jointly as “the first meetings in the building society liquidation”.

### **Business at first meetings of creditors and contributories**

**42.**—(1) At the first meeting of creditors the FSCS shall state whether or not it is resigning from the liquidation committee.

(2) At that meeting those creditors present (or represented by proxy) may—

- (a) where the FSCS has not resigned, elect two or four individuals as new members of the liquidation committee;
- (b) where the FSCS has resigned, elect three or five individuals as new members of the liquidation committee;

in place of the members nominated by the Bank of England and the appropriate regulator.

(3) In accordance with section 100(6)(e) of the Banking Act, the liquidation committee ceases to exist at the end of the meeting if no individuals are elected as mentioned or if the resulting committee

would have fewer than three members or an even number of members. The maximum number of committee members shall be five.

- (4) At the first meeting of creditors, no resolutions shall be taken other than the following—
- (a) if an application has been made to the court by the creditors under rule 95 for the court to direct the building society liquidator to summon a meeting of creditors for the purpose of removing the building society liquidator, and the court has directed that a resolution may be passed to that effect at the first meeting of creditors—
    - (i) a resolution to remove the building society liquidator (or a resolution to remove one or more of the building society liquidators if joint liquidators were originally appointed), and
    - (ii) a resolution to appoint a named insolvency practitioner to be building society liquidator or two or more insolvency practitioners as joint liquidators;
  - (b) if no individuals have been elected to form a liquidation committee under paragraph (2), a resolution specifying the terms on which the liquidator is to be remunerated, or to defer consideration of that matter;
  - (c) where two or more persons are appointed jointly to act as building society liquidator, a resolution specifying which acts are to be done by both of them, all of them or by only one;
  - (d) a resolution to adjourn the meeting for no more than three weeks; and
  - (e) any other resolutions which the chair thinks it right to allow for special reasons.
- (5) At the first meeting of contributories, no resolutions shall be taken other than the following—
- (a) if no individuals have been elected to form a liquidation committee under paragraph (2), a resolution to form a liquidation committee (and rule 118 shall then apply);
  - (b) a resolution to adjourn the meeting for no more than three weeks; and
  - (c) any other resolutions which the chair thinks it right to allow for special reasons.
- (6) The FSCS shall be entitled to be a member of any liquidation committee formed where the liquidation committee has ceased to exist at the end of the first meeting of the creditors.

### **General power to call meetings**

**43.**—(1) Apply rule 4.061 of the 1991 Rules.

(2) Where the building society liquidator has been directed to summon a meeting of creditors under Article 164 of the 1989 Order (as applied by section 109 of the Banking Act) for the purpose of removing the building society liquidator, the building society liquidator shall give notice of the meeting to the Bank of England and the appropriate regulator.

### **The chair at meetings**

**44.**—(1) Meetings shall be chaired by the building society liquidator or a person nominated in writing by the building society liquidator.

(2) A person nominated under paragraph (1) shall be—

- (a) qualified to act as an insolvency practitioner in accordance with Article 349 of the 1989 Order; or
- (b) an employee of the building society liquidator or of the building society liquidator's firm who is experienced in insolvency matters.



### **Requisitioned meetings: general**

45.—(1) Apply rule 4.064 of the 1991 Rules.

(2) In paragraph (5)(a) for “the amounts for which they may vote at any meeting” substitute “the value of the shares held by them in the society”.

### **Requisitioned meetings: reforming the liquidation committee**

46.—(1) Rule 4.064 of the 1991 Rules also applies where—

- (a) the liquidation committee has ceased to exist at the end of the first meeting of creditors under rule 42 and no further steps have been taken to re-establish that committee; and
- (b) the building society liquidator has been requested, by no less than one-tenth in value of the society’s creditors, to summon a meeting for the purpose of re-establishing the liquidation committee.

(2) Where a meeting is requisitioned to re-establish the liquidation committee, the time periods set out in rule 4.064 may be expedited by the building society liquidator at the request of the society’s creditors.

(3) The building society liquidator shall give notice of the meeting to the appropriate regulator and Bank of England.

(4) Rule 42(1) and (2) shall apply at this meeting as if it were the first meeting of creditors.

### **Attendance at meetings of building society’s personnel**

47. Apply rule 4.065 of the 1991 Rules.

### **Notice of meetings by advertisement only**

48. Apply rule 4.066 of the 1991 Rules.

### **Venue**

49. Apply rule 4.067 of the 1991 Rules.

### **Expenses of summoning meetings**

50. Apply rule 4.068 of the 1991 Rules.

### **Resolutions**

51.—(1) Apply rule 4.070 of the 1991 Rules.

(2) In paragraph (2) for “the number of votes conferred on each contributory by the company’s articles” substitute “the value of the shares each contributory holds in the society”.

### **Chair of meeting as proxy-holder**

52. Apply rule 4.071 of the 1991 Rules.

### **Suspension and adjournment**

53.—(1) Apply rule 4.072 of the 1991 Rules.

(2) In paragraph (4) omit “or, as the case may be, 4.121-CVL(3),”.

**Entitlement to vote (creditors)**

- 54.—(1) Apply rule 4.073 of the 1991 Rules.  
(2) Omit paragraph (ii) of paragraph (1)(a).  
(3) Omit paragraph (9).  
(4) In paragraph (10), omit the reference to paragraph (9).

**Entitlement to vote (contributories)**

55. Apply rule 4.075 of the 1991 Rules.

**Admission and rejection of proof (creditors' meetings)**

- 56.—(1) Apply rule 4.076 of the 1991 Rules.  
(2) For paragraph (6) substitute—  
    “(6) The chair is not personally liable for costs incurred by any person in respect of an application under this rule unless the court makes an order to that effect.”.

**Record of proceedings**

57. Apply rule 4.077 of the 1991 Rules.

**PART 7**

**PROOF OF DEBTS**

**Meaning of “prove”**

- 58.—(1) Apply rule 4.079 of the 1991 Rules.  
(2) In paragraph (5), for “or a Government Department” substitute “, a Government Department or the FSCS”.  
(3) Omit paragraphs (2), (6) and (8).

**Supply of forms**

59. Apply rule 4.080 of the 1991 Rules.

**Contents of proof**

60. Apply rule 4.081 of the 1991 Rules.

**Claim established by affidavit**

- 61.—(1) Apply rule 4.083 of the 1991 Rules.  
(2) Omit paragraph (3).

**Cost of proving**

- 62.—(1) Apply rule 4.084 of the 1991 Rules.  
(2) In paragraph (1) omit “or 4.082-CVL”.

### **Building society liquidator to allow inspection of proofs**

63. Apply rule 4.085 of the 1991 Rules.

### **New building society liquidator appointed**

64. Apply rule 4.087 of the 1991 Rules.

### **Admission and rejection of proofs for dividend**

65. Apply rule 4.088 of the 1991 Rules.

### **Appeal against decision on proof**

66.—(1) Apply rule 4.089 of the 1991 Rules.

(2) For paragraph (7) substitute—

“(7) The building society liquidator is not personally liable for costs incurred by any person in respect of an application under this rule unless the court makes an order to that effect.”.

### **Withdrawal or variation of proof**

67. Apply rule 4.090 of the 1991 Rules.

### **Expunging of proof by the court**

68. Apply rule 4.091 of the 1991 Rules.

### **Estimate of quantum**

69. Apply rule 4.092 of the 1991 Rules.

### **Negotiable instruments, etc.**

70. Apply rule 4.093 of the 1991 Rules.

### **Secured creditors**

71. Apply rule 4.094 of the 1991 Rules.

### **Discounts**

72. Apply rule 4.095 of the 1991 Rules.

### **Mutual credit and set-off**

73.—(1) This rule applies where, before the society goes into building society insolvency, there have been mutual credits, mutual debts or other mutual dealings between the society and any creditor of the society proving or claiming to prove for a debt in the building society insolvency.

(2) The reference in paragraph (1) to mutual credits, mutual debts or other mutual dealings does not include—

(a) any debt arising out of an obligation incurred at a time when the creditor had notice that—

(i) a meeting of creditors had been summoned under Article 84 of the 1989 Order,

- (ii) a petition for the winding up of the society was pending, or
  - (iii) an application for a building society insolvency order in respect of the society was pending;
  - (b) any debt which has been acquired by a creditor on assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into—
    - (i) after the commencement of building society insolvency,
    - (ii) at a time when the creditor had notice that a meeting of creditors had been summoned under Article 84,
    - (iii) at a time when the creditor had notice that a winding up petition was pending, or
    - (iv) at a time when the creditor had notice that an application for a building society insolvency order in respect of the society was pending;
  - (c) any mutual dealings between the society and a creditor who is also a shareholding member of the society in respect of shares held by that person in the society.
- (3) An account shall be taken of what is due from each party to the other in respect of the mutual dealings, and the sums due from one party shall be set off against the sums due from the other.
- (4) A sum shall be regarded as being due to or from the society for the purposes of paragraph (3) whether—
- (a) it is payable at present or in the future;
  - (b) the obligation by virtue of which it is payable is certain or contingent; or
  - (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.
- (5) Rule 4.084 of the 1991 Rules shall apply for the purposes of this rule to any obligation to or from the society which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.
- (6) Rules 75 to 77 shall apply for the purposes of this rule in relation to any sums due to the society which—
- (a) are payable in a currency other than sterling;
  - (b) are of a periodical nature; or
  - (c) bear interest.
- (7) Rule 251 shall apply for the purposes of this rule to any sum due to or from the society which is payable in the future.
- (8) Subject to rule 74 only the balance (if any) of the account owed to the creditor is provable in the liquidation. Alternatively the balance (if any) owed to the society shall be paid to the building society liquidator as part of the assets except where all or part of the balance results from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) shall be paid if and when that debt becomes due and payable.
- (9) In this rule, “obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

#### **Disapplication of set-off for eligible depositors**

74.—(1) This rule applies if the appropriate regulator’s rules allow the FSCS to make gross payments of compensation.

(2) In respect of protected deposits rule 73 shall apply and, for the purpose of determining the sums due from the society to an eligible depositor under rule 73(3)—

- (a) where the total of the sums held by the society for the eligible depositor in respect of protected deposits is no more than the prescribed limit, then paragraph (3) applies; and
- (b) where the sums held exceed the prescribed limit, then paragraph (4) applies.

(3) Where this paragraph applies, there shall be deemed to have been no mutual dealings, regardless of whether there are any sums due from the eligible depositor to the society, and the sum due to the eligible depositor from the society in respect of the protected deposits will be the total of the sums held by the society for that depositor in respect of those deposits.

(4) Where this paragraph applies then—

- (a) any mutual dealings shall be treated as being mutual dealings only in relation to the amount by which that total exceeds the prescribed limit, and
- (b) the sums due from the society to the eligible depositor in respect of the protected deposits will be—
  - (i) the amount by which that total exceeds the prescribed limit, set off in accordance with rule 73(3); and
  - (ii) the sums held by the society for the eligible depositor in respect of protected deposits up to the prescribed limit.

(5) Any arrangements with regard to set-off between the society and the eligible depositor in existence before the commencement of building society insolvency shall be subject to this rule, insofar as they relate to protected deposits.

(6) In this rule—

“the appropriate regulator’s rules” means the rules, as amended from time to time, made under section 213 of the Financial Services and Markets Act 2000 by—

- (a) if the building society is a PRA-authorized person (within the meaning of that Act), the Prudential Regulation Authority or the Financial Conduct Authority; and
- (b) in any other case, the Financial Conduct Authority;

“prescribed limit” means the amount prescribed as the maximum compensation payable in respect of protected deposits under Part 15 of the Financial Services and Markets Act 2000; and

“protected deposit” means a protected deposit within the meaning given by the appropriate regulator’s rules but does not include a share in the society held by an eligible depositor.

### **Debt in foreign currency**

75.—(1) Apply rule 4.097 of the 1991 Rules.

(2) In paragraph (1), omit from “or, if” to the end.

### **Payments of a periodical nature**

76.—(1) Apply rule 4.098 of the 1991 Rules.

(2) In paragraph (1), omit from “or, if” to the end.

### **Interest**

77.—(1) Apply rule 4.099 of the 1991 Rules.

(2) In paragraph (1), omit from “or, if” to the end.

**Debt payable at future time**

- 78.—(1) Apply rule 4.100 of the 1991 Rules.  
(2) Omit from “or, if” to “entered administration”.

**PART 8**

**SECURED CREDITORS**

**Value of security**

79. Apply rule 4.101 of the 1991 Rules.

**Surrender for non-disclosure**

- 80.—(1) Apply rule 4.102 of the 1991 Rules.  
(2) Omit paragraph (3).

**Redemption by liquidator**

81. Apply rule 4.103 of the 1991 Rules.

**Test of security’s value**

82. Apply rule 4.104 of the 1991 Rules.

**Realisation of security by creditor**

83. Apply rule 4.105 of the 1991 Rules.

**PART 9**

**THE BUILDING SOCIETY LIQUIDATOR**

**SECTION A**

**GENERAL**

**Remuneration of building society liquidator**

- 84.—(1) This rule applies where—
- (a) the liquidation committee has ceased to exist as mentioned in rule 42(3);
  - (b) the committee has not been reformed at a meeting of creditors held under rule 42, 45 or 46; and
  - (c) the committee has not been reformed at a meeting of contributories held under rule 118.
- (2) Where this rule applies the creditors may, at the first or any subsequent meeting of creditors, pass a resolution as to the terms on which, in accordance with rule 99, the building society liquidator is to be remunerated.
- (3) Where such a resolution is passed—

- (a) it supersedes any resolution as to the remuneration of the building society liquidator passed by the liquidation committee before the first meeting of creditors; and
- (b) the building society liquidator shall be paid under the resolution passed by the liquidation committee under rule 18(5) in respect of the performance of the building society liquidator's functions before the day on which the creditors' resolution is passed and under the creditors' resolution in respect of the performance of the building society liquidator's functions on and after that day.

#### **Replacement of building society liquidator by creditors**

- 85.**—(1) Apply rule 4.106 of the 1991 Rules.
- (2) For paragraph (1) substitute—
- “(1) This rule applies where a person is appointed as building society liquidator by a meeting of creditors.”.
- (3) For paragraph (4) substitute—
- “(4) The chair of the meeting shall—
- (a) send the certificate to the new building society liquidator;
  - (b) send a copy of the certificate to the Bank of England and the appropriate regulator; and
  - (c) file a copy of the certificate in court.”.

#### **Authentication of building society liquidator's appointment**

- 86.**—(1) Apply rule 4.112 of the 1991 Rules.
- (2) Omit from “or (as the case may be)” to “the Order,”.

#### **Appointment to be advertised and registered**

- 87.**—(1) This rule applies where the building society liquidator is appointed by a meeting of the creditors or by the Bank of England under rule 107.
- (2) The building society liquidator shall, after receiving the certificate of appointment, as soon as reasonably practicable give notice of that appointment.
- (3) The notice in paragraph (2)—
- (a) shall be gazetted; and
  - (b) may be advertised in such other manner as the building society liquidator thinks fit.
- (4) The expense of giving notice under this rule shall be borne in the first instance by the building society liquidator, but the building society liquidator is entitled to be reimbursed as an expense of the building society insolvency.
- (5) The building society liquidator shall immediately notify his appointment to the appropriate regulator.

### **SECTION B**

#### **RESIGNATION AND REMOVAL**

#### **Creditors' meeting to be notified of building society liquidator's resignation**

- 88.**—(1) Apply rule 4.115 of the 1991 Rules.
- (2) For paragraph (1), substitute—

“(1) Before resigning office, the building society liquidator shall obtain the consent of the Bank of England and shall call a meeting of creditors to notify them of this.”

(3) After paragraph (1) insert—

“(1A) The notice summoning the meeting shall indicate that this is the purpose, or one of the purposes, of the meeting and shall draw the attention of the creditors to rule 96 with respect to the building society liquidator’s release.

(1B) The notice in paragraph (1A) shall enclose a copy of the Bank of England’s consent.”.

(4) For paragraph (2) substitute—

“(2) Copies of the notice and of the account mentioned in paragraph (3) shall be sent to the court, the Bank of England and the appropriate regulator.”.

#### **Action following acceptance of resignation**

**89.**—(1) This rule applies where a meeting is summoned to notify the creditors of the building society liquidator’s resignation.

(2) The meeting shall resolve whether to release the building society liquidator.

(3) If the meeting resolves not to release the building society liquidator, the building society liquidator shall be given a copy of that resolution and rule 96 applies.

(4) After the meeting the building society liquidator shall file the notice of resignation in court and shall send copies of the notice to the Bank of England and the appropriate regulator.

(5) The building society liquidator’s resignation is effective as from the date on which the court receives the notice of that resignation, and the court shall endorse that date on the notice.

#### **Advertisement of resignation**

**90.** Apply rule 4.119 of the 1991 Rules.

#### **Meeting of creditors to remove building society liquidator**

**91.**—(1) Apply rule 4.120 of the 1991 Rules.

(2) In paragraph (1), for “Article 148(4)”, substitute “section 109 of the Banking Act”.

(3) In paragraph (2), for “official receiver” substitute “Bank of England and the appropriate regulator”.

(4) For paragraph (4) substitute—

“(4) Where the meeting passes a resolution that—

- (a) the building society liquidator be removed;
- (b) a new building society liquidator be appointed; or
- (c) the building society liquidator not be given their release;

the building society liquidator shall be given a copy of that resolution.”.

(5) For paragraph (5), substitute—

“(5) If it has been resolved to remove the building society liquidator, the building society liquidator shall be given a certificate to that effect.”.

(6) For paragraph (6) substitute—



“(6) If the creditors have resolved to appoint a new building society liquidator, the certificate of that appointment shall also be sent to the appropriate regulator and rule 4.106 shall apply.”.

#### **Court’s power to regulate meetings under rule 89**

**92.**—(1) Apply rule 4.122 of the 1991 Rules.

(2) Omit “or 4.121-CVL”.

#### **Procedure on removal**

**93.**—(1) Apply rule 4.123 of the 1991 Rules.

(2) For “official receiver”, wherever it appears, substitute “out-going building society liquidator”.

(3) For paragraph (3) substitute—

“(3) A copy of the certificate so endorsed shall be sent by the court to the outgoing building society liquidator and to any new building society liquidator appointed.”.

(4) Omit paragraph (4).

#### **Advertisement of removal**

**94.** Apply rule 4.125 of the 1991 Rules.

#### **Removal of building society liquidator by the court**

**95.**—(1) Apply rule 4.126 of the 1991 Rules(16).

(2) After paragraph (1) insert—

“(1A) If the liquidation committee has not yet passed a full payment resolution, the court shall dismiss any application under paragraph (1) where the application is made by someone other than the Bank of England, the appropriate regulator or the liquidation committee.”.

(3) In paragraph (2), for “at least 7 days’ notice” substitute—

“(a) if the application is made before the passing of a full payment resolution, such notice as is reasonable in all the circumstances; and

(b) if the application is made after the passing of a full payment resolution, at least 7 days’ notice.”.

(4) In paragraph (5)—

(i) omit “, at least 14 days before the hearing,”,

(ii) for “the official receiver” substitute “the Bank of England and the appropriate regulator”.

(5) After paragraph (5) insert—

“(5A) The notice and copies mentioned in paragraph (5) shall be sent—

(a) if the application is made before the passing of a full payment resolution, within such time as is reasonable in all the circumstances to give the building society liquidator notice of the hearing; and

(b) if the application is made after the passing of a full payment resolution, at least 14 days before the hearing.”.

(6) In paragraph (7)—

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(16) Paragraph (6) was amended by [S.R. 2008 No. 118](#).

- (a) in sub-paragraph (a), for “official receiver” substitute “Bank of England and the appropriate regulator” and at the end insert “and”;
- (b) omit “and” at the end of sub-paragraph (b); and
- (c) omit sub-paragraph (c).

### **Release of resigning or removed building society liquidator**

- 96.**—(1) Apply rule 4.128 of the 1991 Rules.
- (2) In paragraph (1)—
- (a) for “accepted by”, substitute “notified to”;
  - (b) for “rule 4.116”, substitute “rule 89 of the 2014 Rules”.
- (3) In paragraph (3)—
- (a) in sub-paragraph (a)
    - (i) for “receive his resignation”, substitute “be notified of his resignation”; and
    - (ii) omit “or” at the end;
  - (b) at the end of sub-paragraph (b), insert—
    - “, or
    - (c) the building society liquidator resigns, and the Bank of England has refused his release.”.
- (4) For paragraph (4), substitute—
- “(4) When the Department gives the release, it shall certify it accordingly, file the certificate in court and send a copy to the appropriate regulator.”.

## **SECTION C**

### **RELEASE ON COMPLETION OF WINDING UP**

#### **Final meeting**

- 97.**—(1) The building society liquidator shall give at least 14 days’ notice of the final meeting of the liquidation committee to be held under section 115 of the Banking Act to the following—
- (a) the appropriate regulator;
  - (b) the FSCS;
  - (c) the Bank of England;
  - (d) the Treasury; and
  - (e) the members of the liquidation committee.
- (2) The building society liquidator’s final report to be laid before the meeting under that section shall contain an account of the liquidator’s administration of the winding up, including—
- (a) details as to how Objective 1 was achieved having regard, in particular, to the expenses of the building society liquidator in connection with that Objective;
  - (b) a summary of the building society liquidator’s receipts and payments;
  - (c) a statement that the building society liquidator has reconciled his account with that which is held by the Department in respect of the winding up; and

- (d) a statement as to the amount paid to unsecured creditors by virtue of the application of Article 150A of the 1989 Order (prescribed part)(17).
- (3) At the same time that notice of the final meeting is sent out, the building society liquidator shall file the final report in court and send it to the appropriate regulator.
- (4) The building society liquidator shall give notice to all creditors and contributories that the final report is available, either on request to the building society liquidator or from the appropriate regulator, and shall cause that notice to be gazetted or to be advertised by such other method as the building society liquidator sees fit at least 14 days before the final meeting is held.
- (5) At the final meeting, the liquidation committee may question the building society liquidator with respect to any matter contained in the final report and may resolve against the building society liquidator being released.
- (6) The building society liquidator shall give notice to the court that the final meeting has been held and the notice shall state whether or not the meeting resolved to release the building society liquidator.
- (7) Where the liquidation committee does not resolve against the building society liquidator's release, the building society liquidator vacates office at the end of the meeting and is released when the notice in paragraph (6) is filed in court.
- (8) If there is no quorum present at the final meeting, the building society liquidator shall report to the court that a final meeting was summoned in accordance with section 115 of the Banking Act, but there was no quorum present, and the final meeting is then deemed to have been held, and the liquidation committee not to have resolved against the building society liquidator being released.
- (9) If the liquidation committee resolves against the building society liquidator being released then rule 96 applies.

### **Rule as to reporting**

- 98.**—(1) Apply rule 4.132A(18) of the 1991 Rules.
- (2) In paragraph (1) for “rule 4.131 or 4.132” substitute “rule 97 of the 2014 Rules”.

## SECTION D REMUNERATION

### **Fixing of remuneration**

- 99.**—(1) Apply rule 4.134 of the 1991 Rules.
- (2) In paragraph (3), omit from “Where” to “receiver,”.
- (3) For paragraph (5) substitute—
- “(5) If under rule 42(3) of the 2014 Rules the liquidation committee ceases to exist at the end of the first meeting of creditors, the terms on which the building society liquidator is to be remunerated, determined by the initial liquidation committee under rule 18 of the 2014 Rules, can be re-determined by a resolution of a meeting of creditors and paragraph (4) applies to the determination of the creditors as it does to the determination of the liquidation committee.”.
- (4) In paragraph (6), for “Where” to “his”, substitute “Where the building society liquidator’s”.

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(17) Article 150A was inserted by the Insolvency (Northern Ireland) Order 1989 (Prescribed Part) Order (S.R. 2006 No. 25).

(18) Rule 4.132A was inserted by S.R. 2006 No. 47.

**Building society liquidator’s entitlement to remuneration where it is not fixed under rule 99**

100.—(1) Apply rule 4.134A of the 1991 Rules.

(2) In paragraph (1), for the words from “liquidator” to “his” substitute “building society liquidator’s”.

(3) In paragraph (2), after “Schedule 4” add “to the 1991 Rules as applied by the Schedule to the 2014 Rules”.

**Building society liquidator’s remuneration where he realises assets on behalf of chargeholder**

101.—(1) Apply rule 4.134B of the 1991 Rules.

(2) In paragraph (1), for the words from “liquidator” to “and” substitute “building society liquidator”.

(3) In paragraphs (2) and (3), after “Schedule 4” add “to the 1991 Rules as applied by the Schedule to the 2014 Rules”.

**Other matters affecting remuneration**

102. Apply rule 4.135 of the 1991 Rules.

**Recourse of building society liquidator to meeting of creditors**

103. Apply rule 4.136 of the 1991 Rules.

**Recourse to the court**

104. Apply rule 4.137 of the 1991 Rules.

**Creditors’ claim that remuneration is excessive**

105.—(1) Apply rule 4.138 of the 1991 Rules.

(2) In paragraph (1), at the end insert “The FSCS may also apply to the court for such an order on those grounds”.

**Primacy of Objective 1**

106. Nothing done under a rule in this Section may prejudice the achievement of Objective 1.

SECTION E

SUPPLEMENTARY PROVISIONS

**Replacement building society liquidator**

107.—(1) Where the building society liquidator vacates office for any reason (including death) other than by removal by a meeting of creditors in accordance with rule 91, the Bank of England shall appoint a new building society liquidator as soon as practicable.

(2) Where a building society liquidator has been removed by a meeting of creditors and no resolution has been passed by that meeting to appoint a new building society liquidator, the Bank of England shall appoint a new building society liquidator as soon as practicable.

(3) The Bank of England shall file in court the document appointing the new building society liquidator (“the certificate of appointment”) together with statements to the effect that the new building society liquidator—

- (a) is qualified to act as an insolvency practitioner in accordance with Article 349 of the 1989 Order; and
  - (b) consents to act as the building society liquidator.
- (4) The building society liquidator shall send a copy of the certificate of appointment to the appropriate regulator.

#### **Building society liquidator deceased**

**108.**—(1) Unless notice of the death of the building society liquidator has been given under paragraph (2) or (3), it is the duty of the building society liquidator’s personal representatives, where the building society liquidator has died, to give notice of that fact to the Bank of England and the liquidation committee, specifying the date of the death.

(2) If the deceased building society liquidator was a partner in a firm, notice may be given to the Bank of England, the appropriate regulator and liquidation committee by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Department or the Secretary of State for the authorisation of insolvency practitioners.

(3) Notice of the death may also be given by any person producing the relevant death certificate or a copy of it to the Bank of England, the appropriate regulator and the liquidation committee.

(4) The Bank of England shall give notice to the court, for the purpose of fixing the date of the deceased building society liquidator’s release.

#### **Loss of qualification as insolvency practitioner**

**109.**—(1) Apply rule 4.141 of the 1991 Rules.

(2) For paragraph (2) substitute—

“(2) The building society liquidator shall immediately give notice of doing so to the Bank of England.”.

(3) For paragraph (3) substitute—

“(3) The Bank of England shall file a copy of this notice in court”.

#### **Resignation of the building society liquidator**

**110.**—(1) This rule applies where the building society liquidator was appointed by the court (in the building society insolvency order), or by the Bank of England.

(2) The building society liquidator can only resign—

(a) after the liquidation committee has passed a full payment resolution; and

(b) with the consent of the Bank of England.

(3) Before calling a meeting of creditors under rule 88 to receive notice of the building society liquidator’s resignation, the building society liquidator shall write to the Bank of England notifying it of the intention to resign.

(4) The Bank of England shall notify the building society liquidator in writing within 21 days as to whether it consents to the resignation. If the Bank of England does not consent to the resignation, it shall set out its reasons in writing.

(5) The building society liquidator, if not content with the Bank of England’s response, may apply to the court for directions under Article 143(3) of the 1989 Order.

### **Notice to Bank of England of intention to vacate office**

**111.**—(1) This rule applies where the building society liquidator was appointed by a meeting of creditors.

(2) Apply rule 4.144 of the 1991 Rules.

(3) For “official receiver”, wherever it appears, substitute “Bank of England”.

(4) In paragraph (1) for “receive his resignation” substitute “be notified of his resignation”.

### **Building society liquidator’s duties on vacating office**

**112.**—(1) Apply rule 4.145 of the 1991 Rules.

(2) Omit paragraph (3).

### **Power of court to set aside certain transactions**

**113.**—(1) Apply rule 4.157 of the 1991 Rules.

(2) In paragraph (2)—

(a) omit “either”;

(b) omit “or” at the end of sub-paragraph (a); and

(c) after sub-paragraph (b) insert—

“, or

(c) it is shown to the court’s satisfaction that the transaction was entered into by the building society liquidator for the purpose of achieving Objective 1.”.

### **Rule against solicitation**

**114.** Apply rule 4.158 of the 1991 Rules.

## **PART 10**

### **THE LIQUIDATION COMMITTEE**

#### **Application of rules in this Part**

**115.** The rules in this Part apply only in relation to the liquidation committee established after a full payment resolution has been passed.

#### **Membership of committee**

**116.**—(1) Apply rule 4.160 of the 1991 Rules.

(2) For paragraph (1) substitute—

“(1) Subject to rule 42(2) and (5) of the 2014 Rules, rule 4.162, as applied by rule 118 of the 2014 Rules, and rule 4.179, as applied by rule 134 of the 2014 Rules, the liquidation committee shall consist of either three or five creditors of the company, elected by the meeting of creditors held under rule 42 of those Rules.”.

(3) Omit paragraphs (2), (4) and (7).

### **Formalities of establishment**

117. Apply rule 4.161 of the 1991 Rules.

### **Committee established by contributories**

118.—(1) Apply rule 4.162 of the 1991 Rules.

(2) For paragraph (1) substitute—

“(1) This rule applies where the outcome of the creditors’ meeting summoned by the building society liquidator under rule 42 of the 2014 Rules is (by virtue of rule 42(3)) that the liquidation committee ceases to exist at the end of the meeting.”.

(3) In paragraph (2), for “that Article” substitute “Article 120 of the Order”.

(4) In paragraph (4) for “at least three and not more than five”, substitute “three or five”.

### **Obligations of liquidator to committee**

119. Apply rule 4.163 of the 1991 Rules.

### **Meetings of the committee**

120.—(1) Apply rule 4.164 of the 1991 Rules.

(2) In paragraph (2)(a), after “representative” insert “or the FSCS”.

### **The chair at meetings**

121. Apply rule 4.165 of the 1991 Rules.

### **Quorum**

122. Subject to rule 4.179(6A) of the 1991 Rules, as inserted by rule 134(3) a meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least two members are present or represented.

### **Committee-members’ representatives**

123. Apply rule 4.167 of the 1991 Rules.

### **Resignation**

124. Apply rule 4.168 of the 1991 Rules.

### **Termination of membership**

125. Apply rule 4.169 of the 1991 Rules.

### **Removal**

126. Apply rule 4.170 of the 1991 Rules.

### **Vacancy (creditor members)**

127. Apply rule 4.171 of the 1991 Rules.

**Vacancy (contributory members)**

128. Apply rule 4.172 of the 1991 Rules.

**Voting rights and resolutions**

129.—(1) Apply rule 4.173 of the 1991 Rules.

(2) In paragraph (1) omit “creditor”.

**Resolutions by post**

130.—(1) Apply rule 4.175 of the 1991 Rules.

(2) In paragraph (3), after “committee” insert “or the FSCS”.

**Liquidator’s reports**

131. Apply rule 4.176 of the 1991 Rules.

**Expenses of members, etc.**

132. Apply rule 4.177 of the 1991 Rules.

**Dealings by committee-members and others**

133. Apply rule 4.178 of the 1991 Rules.

**Composition of committee when creditors paid in full**

134.—(1) Apply rule 4.179 of the 1991 Rules.

(2) In paragraph (6)—

(a) at the beginning, insert “Subject to paragraph (6A)”;

(b) after “under paragraph (1)”, insert “or since the FSCS has ceased to be on the committee”.

(3) After paragraph (6), insert—

“(6A) The liquidation committee continues to exist and can act so long as it consists of at least the FSCS.”.

**Committee’s functions vested in Department**

135.—(1) Apply rule 4.180 of the 1991 Rules.

(2) Omit paragraph (2).

**Formal defects**

136. Apply rule 4.181 of the 1991 Rules.



## PART 11

### COLLECTION AND DISTRIBUTION OF BUILDING SOCIETY'S ASSETS BY BUILDING SOCIETY LIQUIDATOR

#### **General duties of building society liquidator**

137. Apply rule 4.188 of the 1991 Rules.

#### **General qualification on powers**

138. In exercising any power conferred on the building society liquidator by this Part before a full payment resolution has been passed, the building society liquidator shall exercise it consistently with Objective 1.

#### **Manner of distributing assets**

139. Apply rule 4.189 of the 1991 Rules.

#### **Debts of insolvent building society to rank equally**

140. Apply rule 4.190 of the 1991 Rules.

#### **Supplementary provisions as to dividend**

141. Apply rule 4.191 of the 1991 Rules.

#### **Division of unsold assets**

142. Apply rule 4.193 of the 1991 Rules.

#### **General powers of the liquidator**

143.—(1) Apply rule 4.194 of the 1991 Rules.

(2) In paragraph (1), omit “under Article 142(1)(a), or”.

#### **Enforced delivery up of building society's property**

144. Apply rule 4.195 of the 1991 Rules.

#### **Final distribution**

145.—(1) Apply rule 4.196 of the 1991 Rules.

(2) In paragraphs (1) and (2), for “Part 11”, substitute “Part 21 of the 2014 Rules”.

## PART 12

### DISCLAIMER

#### **Liquidator's notice of disclaimer**

146. Apply rule 4.197 of the 1991 Rules.

**Communication of disclaimer to persons interested**

147. Apply rule 4.198 of the 1991 Rules.

**Additional notices**

148. Apply rule 4.199 of the 1991 Rules.

**Duty to keep court informed**

149. Apply rule 4.200 of the 1991 Rules.

**Application by interested party under Article 152(4)**

150. Apply rule 4.201 of the 1991 Rules.

**Interest in property to be declared on request**

151. Apply rule 4.202 of the 1991 Rules.

**Disclaimer presumed valid and effective**

152.—(1) Apply rule 4.203 of the 1991 Rules.

(2) For “Chapter”, substitute “Part”.

**Application for exercise of court’s powers under Article 155**

153. Apply rule 4.204 of the 1991 Rules.

**PART 13**

**SETTLEMENT OF LIST OF CONTRIBUTORIES**

**Preliminary**

154. Apply rule 4.205 of the 1991 Rules.

**Primacy of Objective 1**

155. Where the building society liquidator considers that the carrying out of a duty imposed by a rule in this Part would prejudice the achievement of Objective 1, the building society liquidator shall postpone the carrying out of that duty until the building society liquidator considers that the carrying out of the duty would no longer be likely to prejudice the achievement of that Objective.

**Duty of liquidator to settle list**

156. Apply rule 4.206 of the 1991 Rules.

**Form of list**

157. Apply rule 4.207 of the 1991 Rules.

**Procedure for settling list**

158. Apply rule 4.208 of the 1991 Rules.

**Application to court for variation of the list**

159. Apply rule 4.209 of the 1991 Rules.

**Variation of, or addition to, the list**

160. Apply rule 4.210 of the 1991 Rules.

**Costs not to fall on building society liquidator**

161. The building society liquidator is not personally liable for any costs incurred by a person in respect of an application to set aside or vary the building society liquidator's act or decision in settling the list of contributories, or varying or adding to the list, unless the court makes an order to that effect.

## PART 14

### CALLS

**Calls by building society liquidator**

162. Apply rule 4.212 of the 1991 Rules.

**Control by building society liquidation committee**

163. Apply rule 4.213 of the 1991 Rules.

**Application to court for leave to make a call**

164. Apply rule 4.214 of the 1991 Rules.

**Making and enforcement of the call**

165. Apply rule 4.215 of the 1991 Rules.

## PART 15

### SPECIAL MANAGER

**Appointment and remuneration**

166. Apply rule 4.216 of the 1991 Rules.

**Security**

167. Apply rule 4.217 of the 1991 Rules.

**Failure to give or keep up security**

168. Apply rule 4.218 of the 1991 Rules.

**Accounting**

169. Apply rule 4.219 of the 1986 Rule.

**Termination of appointment**

170. Apply rule 4.220 of the 1991 Rules.

**PART 16**

**ORDER OF PAYMENT AS TO COSTS, ETC. OUT OF ASSETS**

**General rule as to priority**

171.—(1) Apply rule 4.228(19) of the 1991 Rules.

(2) In paragraph (3)—

(a) omit sub-paragraphs (a)(iii) and (iv), (b), and (d);

(b) in sub-paragraph (c), omit the words from “or Article 361A” to “regulations”; and

(c) in sub-paragraph (la), omit the words from “in any case” to “examination”.

**Litigation expenses and property subject to a floating charge-general provisions**

172. Apply rule 4.228A(20) of the 1991 Rules.

**Litigation expenses and property subject to a floating charge-requirement for approval or authorisation**

173. Apply rule 4.228B of the 1991 Rules.

**Litigation expenses and property subject to a floating charge-request for approval or authorisation**

174. Apply rule 4.228C of the 1991 Rules.

**Litigation expenses and property subject to a floating charge-grant of approval or authorisation**

175. Apply rule 4.228D of the 1991 Rules.

**Litigation expenses and property subject to a floating charge-application to court by the building society liquidator**

176. Apply rule 4.228E of the 1991 Rules.

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(19) Rule 4.228 was amended by S.R. 2008 No. 118.

(20) Rules 4.228A to E were inserted by S.R. 2008 No. 118.

**Saving for powers of the court**

177. Apply rule 4.230 of the 1991 Rules.

**PART 17**

**MISCELLANEOUS RULES**

**SECTION A**

**RETURN OF CAPITAL**

**Application to court for order authorising return of capital**

178. Apply rule 4.231 of the 1991 Rules.

**Procedure for return of capital**

179. Apply rule 4.232 of the 1991 Rules.

**SECTION B**

**CONCLUSION OF BUILDING SOCIETY INSOLVENCY**

**Appropriate regulator's directions under section 116 of the Banking Act**

180. Where the appropriate regulator gives a direction under section 116 of the Banking Act (application by an interested person for postponement of dissolution) the appropriate regulator shall send a copy of the direction to that applicant<sup>(21)</sup>.

**Procedure following appeal under section 116 of the Banking Act**

181. Following an appeal under section 116(2) of the Banking Act (against a decision of the appropriate regulator under that section) the court shall send two sealed copies of its order to the person in whose favour the appeal was determined and that person shall send one of the copies to the regulator in question.

**PART 18**

**COURT PROCEDURE AND PRACTICE**

**CHAPTER 1**

**APPLICATIONS (GENERAL)**

**Preliminary**

182. This Part applies to any application made to the court under Part 2 of the Banking Act or these Rules except an application under section 95 of the Banking Act for a building society insolvency order.

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(21) The Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805) modifies the application of section 116.

### **Interpretation**

183. Apply rule 7.06 of the 1991 Rules.

### **Form and contents of application**

184. Apply rule 7.07 of the 1991 Rules

### **Application under Article 150A(5) to disapply Article 150A**

- 185.—(1) Apply rule 7.07A(22) of the 1991 Rules.  
(2) In paragraph (1), omit “administrator or receiver”.  
(3) Omit paragraph (2)(a).

### **Filing and service of application**

186. Apply rule 7.08 of the 1991 Rules.

### **Notice of application under Article 150A(5)**

- 187.—(1) Apply rule 7.08A(23) of the 1991 Rules.  
(2) Omit from “save that notice” to “State liquidator”.

### **Other hearings without notice**

188. Apply rule 7.09 of the 1991 Rules.

### **Hearing of application**

189. Apply rule 7.03 of the 1991 Rules.

### **Use of affidavit evidence**

190. Apply rule 7.10 of the 1991 Rules.

### **Filing and service of affidavits**

191. Apply rule 7.11 of the 1991 Rules.

### **Use of reports**

192.—(1) Unless the application involves other parties, or the court orders otherwise, a report may be filed in court instead of an affidavit by—

- (a) the building society liquidator,
- (b) the provisional building society liquidator, or
- (c) the special manager.

(2) In any case where a report is filed instead of an affidavit, the report shall be treated for the purposes of rule 191 and any hearing before the court as if it were an affidavit.

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(22) Rule 7.07A was inserted by S.R. 2006 No. 47.

(23) Rule 7.08A was inserted by S.R. 2006 No. 47.

### **Adjournment of hearing: directions**

- 193.**—(1) Apply rule 7.13 of the 1991 Rules.  
(2) In paragraph (2)(c)(iii), for “rule 7.12(1)(b)” substitute “rule 192(1) of the 2014 Rules”.

## **CHAPTER 3**

### **SHORTHAND WRITERS**

### **Nomination and appointment of shorthand writers**

- 194.**—(1) Apply rule 7.14 of the 1991 Rules.  
(2) In paragraph (2) omit “113” and “263 or 337”.  
(3) Omit paragraph (3).

### **Remuneration**

- 195.** Apply rule 7.16 of the 1991 Rules.

## **CHAPTER 4**

### **ENFORCEMENT PROCEDURES**

### **Enforcement of court orders**

- 196.** Apply rule 7.19 of the 1991 Rules.

### **Orders enforcing compliance with the Rules**

**197.**—(1) The court may on application of the building society liquidator, or the provisional building society liquidator as the case may be, make such orders as it thinks necessary for the enforcement of obligations falling on any person in accordance with—

- (a) Article 121(2) of the 1989 Order (“General functions in winding up by the High Court”); or
- (b) Article 199 of the 1989 Order (“Duty to cooperate with office holder”).

(2) An order of the court under this rule may provide that all the costs of and incidental to the application for it shall be borne by the person against whom the order is made.

### **Warrants (general provisions)**

**198.**—(1) A warrant issued by the court under any provision of the 1989 Order shall be addressed to such officer of the court as the warrant specifies, or to any constable.

- (2) In this Chapter references to property include books, papers and records.

### **Warrants under Article 200**

- 199.**—(1) Apply rule 7.22 of the 1991 Rules.  
(2) In paragraph (1), omit “or 337 (the equivalent in bankruptcy),”.

## CHAPTER 5

### COURT RECORDS AND RETURNS

#### **Title of proceedings**

**200.** Every proceeding under Part 2 of the Banking Act shall, with any necessary additions, be titled “IN THE MATTER OF ..... (naming the building society to which the proceedings relate) AND IN THE MATTER OF THE BANKING ACT 2009”.

#### **Court records**

**201.** Apply rule 7.24 of the 1991 Rules.

#### **Inspection of records**

**202.** Apply rule 7.25 of the 1991 Rules.

#### **File of court proceedings and inspection**

**203.**—(1) The Court shall open and maintain a file for each building society insolvency and (subject to the direction of the Master) all documents relating to that building society insolvency shall be placed on that file.

(2) Where a file has been opened under paragraph (1), the following have the right, at all reasonable times, to inspect that file—

- (a) the building society liquidator;
- (b) any person stating in writing that they are a creditor of the society to which the building society insolvency relates;
- (c) a member of the society;
- (d) any person who is, or at any time has been, a director or officer of the society to which the building society insolvency relates;
- (e) any person who is a contributory of the society to which the building society insolvency relates;
- (f) the Bank of England;
- (g) the appropriate regulator; and
- (h) the FSCS.

(3) The right of inspection conferred on any person by paragraph (2) may be exercised on their behalf by a person properly authorised by them.

(4) Any person may, with permission of the court, inspect the file.

(5) The right of inspection conferred by this rule is not exercisable in respect of documents, or parts of documents, which the court has directed (either generally or specially) are not to be open to inspection without the court’s permission.

(6) An application for a direction of the court under paragraph (5) may be made by the building society liquidator or by any party appearing to the court to have an interest in the building society insolvency.

(7) If for the purposes of powers conferred by the 1989 Order, the Banking Act or these Rules the Department wishes to inspect the file on a building society insolvency and requests the court to transmit the file to it, the court shall comply with the request or, if the file is for the time being in use for the court’s own purposes, as soon as the file is no longer in such use.



(8) Rule 202 applies in respect of the court’s records on any building society insolvency as it applies in respect of court records of general insolvency proceedings.

## CHAPTER 6

### COSTS AND TAXATION

#### Application of Rules of the Court of Judicature

**204.** Apply rule 7.29 of the 1991 Rules.

#### Requirement to tax costs

**205.**—(1) Apply rule 7.30 of the 1991 Rules~~(24)~~.

(2) In paragraph (1) for sub-paragraphs (a) and (b) substitute—  
“in relation to, or as an expense of a building society insolvency,”.

(3) In paragraph (2) omit “or creditors”;

(4) In paragraph (5) for “trustee in bankruptcy or a liquidator” substitute “building society liquidator”;

(5) Omit paragraph (6).

#### Measurement of remuneration by Taxing Master

**206.**—(1) — Apply rule 7.31 of the 1991 Rules.

(2) In paragraph (1), for “insolvency proceedings”, substitute “a building society insolvency”.

(3) Omit paragraph (9)

#### Procedure where taxation required

**207.** Apply rule 7.32 of the 1991 Rules.

#### Costs paid otherwise than out of the insolvent estate

**208.** Apply rule 7.34 of the 1991 Rules.

#### Award of costs against responsible insolvency practitioner

**209.**—(1) Apply rule 7.35 of the 1991 Rules.

(2) For “Without prejudice” to “the official receiver or” substitute “Where”.

#### Application for costs

**210.**—(1) Apply rule 7.36 of the 1991 Rules.

(2) In paragraph (1) for “insolvency” substitute “building society insolvency”.

(3) In paragraph (2), omit “, and, in a winding up by the court or bankruptcy, on the official receiver”;

(4) In paragraph (3), omit “and, where appropriate, the official receiver”.

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(24) Rule 7.30(1) was amended by [S.R. 2008 No. 118](#).

### **Costs and expenses of witnesses**

- 211.**—(1) Apply rule 7.37 of the 1991 Rules.  
(2) In paragraph (1), omit “the bankrupt or”.  
(3) Omit paragraph (2).

### **Certificate of taxation**

**212.** Order 62, rule 22 of the Rules of the Court of Judicature (Northern Ireland) 1980<sup>(25)</sup> applies in respect of the certification of such measurement as it applies in respect of the issue of a certificate of taxation, with the necessary modifications.

## **CHAPTER 7**

### **PERSONS INCAPABLE OF MANAGING THEIR AFFAIRS**

#### **Introductory**

- 213.** Apply rule 7.38 of the 1991 Rules.

#### **Appointment of another person to act**

- 214.**—(1) Apply rule 7.39 of the 1991 Rules.  
(2) Omit paragraph (3)(c).

#### **Affidavit in support of application**

- 215.**—(1) Apply rule 7.40 of the 1991 Rules.  
(2) In paragraph (1) omit from the beginning to “receiver”.  
(3) Omit paragraph (2).

#### **Service of notices following appointment**

- 216.** Apply rule 7.41 of the 1991 Rules.

## **CHAPTER 8**

### **APPEALS IN BUILDING SOCIETY INSOLVENCY PROCEEDINGS**

#### **Appeals and review of court orders**

**217.**—(1) The High Court may review, rescind or vary any order made by it in the exercise of its jurisdiction under Part 2 of the Banking Act.

(2) An appeal from a decision of a Master of the High Court lies, with the permission of the Master or a judge of the High Court, to a single judge of the High Court, and a second appeal lies, with the permission of the Court of Appeal to the Court of Appeal.

(3) An appeal of a decision of first instance of a judge of the High Court lies, with the permission of the judge or the Court of Appeal, to the Court of Appeal.

#### **Procedure on appeal**

- 218.** Apply rule 7.42 of the 1991 Rules.

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(25) S.R. 1980 No. 346, as amended by the Constitutional Reform Act 2005 (c.4), section 59 and Schedule 11.

### **Appeal against a decision of the Department**

- 219.**—(1) Apply rule 7.44 of the 1991 Rules.  
(2) Omit paragraph (2).

## **CHAPTER 9**

### **GENERAL**

### **Principal court Rules and practice to apply**

**220.** The Rules of the Court of Judicature (Northern Ireland) 1980<sup>(26)</sup> and the practice and procedure of the High Court (including any practice direction) apply to building society insolvency proceedings in the High Court, with any necessary modifications, except so far as is inconsistent with these Rules.

### **Right of attendance**

- 221.**—(1) Apply rule 7.47 of the 1991 Rules.  
(2) For “company” substitute “building society”.

### **Restriction on concurrent proceedings and remedies**

**222.** Where in a building society insolvency, the court makes an order staying any action, execution or legal process against the property of the society, service of the order may be effected by delivering a sealed copy to the address for service of the plaintiff or other person having the carriage of the proceedings to be stayed.

### **Security in court**

- 223.** Apply rule 7.53 of the 1991 Rules.

### **Payment into court**

- 224.** Order 22 of the Rules of the Court of Judicature (Northern Ireland) 1980 applies.

### **Discovery**

- 225.**—(1) Apply rule 7.54 of the 1991 Rules.  
(2) After paragraph (2) insert—  
    “(3) Before the passing of a full payment resolution the court shall only grant an order on an application under paragraph (1) if satisfied that granting the order is unlikely to prejudice the achievement of Objective 1.”.

### **Office copies of documents**

- 226.** Apply rule 7.55 of the 1991 Rules.

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(26) [S.R. 1980 No. 346](#), as amended by the Constitutional Reform Act 2005 (c.4), section 59 and Schedule 11.

## PART 19

### PROXIES AND COMPANY REPRESENTATION

#### **Definition of “proxy”**

- 227.**—(1) Apply rule 8.1 of the 1991 Rules.
- (2) In paragraph (2) omit “, company”.
- (3) In paragraph (4), for “chairman of the meeting” to “official receiver” substitute: “chair of the meeting or the building society liquidator”.

#### **Issue and use of forms**

- 228.** Apply rule 8.2 of the 1991 Rules.

#### **Use of proxies at meetings**

- 229.**—(1) Apply rule 8.3 of the 1991 Rules.
- (2) Omit paragraph (2).

#### **Retention of proxies**

- 230.** Apply rule 8.4 of the 1991 Rules.

#### **Right of inspection**

- 231.**—(1) Apply rule 8.5 of the 1991 Rules.
- (2) In paragraph (1)(b) for “ a company’s members or” substitute “the building society’s” and for “company or of its” substitute “building society’s”.
- (3) For paragraph (2) substitute—
- “(2) The reference in paragraph (1) to creditors is to those creditors who have proved their debts but does not include a person whose proof has been wholly rejected for purposes of voting, dividend or otherwise.”.
- (4) Omit paragraph (3)(b).

#### **Proxy-holder with financial interest**

- 232.** Apply rule 8.6 of the 1991 Rules.

## PART 20

### EXAMINATION OF PERSONS CONCERNED IN BUILDING SOCIETY INSOLVENCY

#### **Preliminary**

- 233.**—(1) The rules in this Part relate to applications to the court for an order under Article 200 of the 1989 Order (“Inquiry into company’s dealings, etc.”).
- (2) The following definitions apply—
- (a) the person in respect of whom an order is applied for is “the respondent”;

- (b) “the applicable Article” is Article 200 of the 1989 Order; and
- (c) the building society is “the insolvent”.

#### **Form and contents of application**

234. Apply rule 9.2 of the 1991 Rules.

#### **Order for examination, etc**

235. Apply rule 9.3 of the 1991 Rules.

#### **Procedure for examination**

236. Apply rule 9.4 of the 1991 Rules.

#### **Record of examination**

237. Apply rule 9.5 of the 1991 Rules.

#### **Cost of proceedings**

- 238.—(1) Apply rule 9.6 of the 1991 Rules.
- (2) In paragraph (2)(a) omit “or 338(1)” and in paragraph (2)(b) omit “or 338(2)”.
  - (3) Omit sub-paragraph (3)(b).
  - (4) Omit paragraph (5).

## **PART 21**

### **DECLARATION AND PAYMENT OF DIVIDEND**

#### **Preliminary**

239.—(1) The rules in this Part relate to the declaration and payment of dividends in a building society insolvency.

- (2) In this Part—
  - “creditors” means those creditors of the society of whom the building society liquidator is aware, or who are identified in the society’s statement of affairs, and
  - “the insolvent” means the building society.

#### **Notice of intended dividend**

- 240.—(1) Apply rule 11.02 of the 1991 Rules.
- (2) Omit paragraph (1)(b) .

#### **Final admission/rejection of proofs**

- 241.—(1) Apply rule 11.03 of the 1991 Rules.
- (2) Omit paragraph (4).

**Postponement or cancellation of dividend**

242. Apply rule 11.04 of the 1991 Rules.

**Decision to declare dividend**

243. Apply rule 11.05 of the 1991 Rules.

**Notice of declaration**

244.—(1) Apply rule 11.06 of the 1991 Rules.

(2) Omit paragraph (1)(b).

(3) In paragraph (2), after (b) add—

“(ba) expenses incurred by the building society liquidator in the achievement of Objective 1 under section 99 of the Banking Act;”.

**Notice of no, or no further, dividend**

245. Apply rule 11.07 of the 1991 Rules.

**Proof altered after payment of dividend**

246. Apply rule 11.08 of the 1991 Rules.

**Secured creditors**

247. Apply rule 11.09 of the 1991 Rules.

**Disqualification from dividend**

248. Apply rule 11.10 of the 1991 Rules.

**Assignment of right to dividend**

249. Apply rule 11.11 of the 1991 Rules.

**Preferential creditors**

250. Apply rule 11.12 of the 1991 Rules.

**Debt payable at future time**

251.—(1) Apply rule 11.13 of the 1991 Rules.

(2) For paragraph (3) substitute—

“(3) In paragraph (2) “relevant date” means the date of the commencement of the building society insolvency.”.

## PART 22

### MISCELLANEOUS AND GENERAL

#### **Power of Department to regulate certain matters**

**252.**—(1) As provided for in Article 359 of and paragraph 27 of Schedule 5 to the 1989 Order(27), the Department or the Department of Finance and Personnel may, subject to that Order and to these Rules, make regulations with respect to any matter provided for in these Rules relating to the carrying out of the functions of a building society liquidator or provisional building society liquidator, including, without prejudice to the generality of the above, provision with respect to the following matters arising in building society insolvency—

- (a) the preparation and keeping by building society liquidators and provisional building society liquidators of books, accounts and other records, and their production to such persons as may be authorised or required to inspect them;
  - (b) the auditing of building society liquidators' accounts;
  - (c) the manner in which building society liquidators are to act in relation to the society's books, papers and other records, and the manner of their disposal by the building society liquidator or others;
  - (d) the supply by the building society liquidator to creditors and contributories and to the liquidation committee of copies of documents relating to the building society insolvency and the affairs of the society (on payment, in such cases as may be specified in the regulations, of the appropriate fee);
  - (e) the manner in which insolvent estates are to be distributed by the building society liquidator, including provision with respect to unclaimed funds and dividends;
  - (f) the manner in which monies coming into the hands of the building society liquidator are to be handled and invested and the payment of interest on sums which, in pursuance of regulations made under this sub-paragraph, have been paid into the Insolvency Account.(28)
- (2) Regulations made under paragraph (1) may—
- (a) confer a discretion on the court;
  - (b) make non-compliance with any of the regulations a criminal offence;
  - (c) make different provision for different cases, including different provision for different areas; and
  - (d) contain such incidental, supplemental and transitional provisions as may appear to the Department or the Department of Finance and Personnel as necessary or expedient.

#### **Costs, expenses, etc**

**253.**—(1) All fees, costs, charges and other expenses incurred in the course of building society insolvency, except for any money paid by the FSCS to eligible depositors in pursuance of Objective 1, and any expense incurred by the FSCS in this process, are to be regarded as expenses of the building society insolvency.

(2) The costs associated with the prescribed part (within the meaning of Article 150A of the 1989 Order) shall be paid out of that prescribed part.

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(27) Article 359 of the 1989 Order (S.I. 1989/2405 (N.I. 19)), which introduces Schedule 5, was amended by sections 125 and 134 of the Banking Act 2009 to extend the powers in the Schedule to Rules made under Part 2 of that Act.

(28) The Insolvency Account is referred to at Article 358 of the Insolvency (Northern Ireland) Order 1989.

### **Provable debts**

**254.**—(1) Subject to paragraphs (2) and (3), in a building society insolvency all claims by creditors are provable as debts against the society, whether they are present or future, certain or contingent, ascertained or sounding only in damages.

(2) Any obligation arising under a confiscation order made under Articles 4 or 5 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990<sup>(29)</sup> or under Parts 2, 3 or 4 of the Proceeds of Crime Act 2002<sup>(30)</sup> is not provable.

(3) The following are not provable except at a time when all other claims of creditors in the building society insolvency proceedings (other than any of a kind mentioned in this paragraph) have been paid in full with interest under Article 160(2) of the 1989 Order—

- (a) any claim arising by virtue of section 382(1)(a) of the Financial Services and Markets Act 2000, not being a claim arising by virtue of section 382(1)(b) of that Act; or
- (b) any claim which by virtue of the 1989 Order or any other enactment is a claim the payment of which in the building society insolvency is to be postponed.

(4) Nothing in this rule prejudices any enactment or rule of law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

### **Notices**

**255.**—(1) Apply rule 12.04 of the 1991 Rules.

(2) Omit references to the official receiver.

### **Quorum at meeting of creditors or contributories**

**256.**—(1) Apply rule 12.05 of the 1991 Rules.

(2) For paragraph (3) substitute—

“(3) For the purposes of this rule, the reference to the creditors or contributories necessary to constitute a quorum is to those persons present or represented by proxy by any person (including the chair).”.

### **Evidence of proceedings at meetings**

**257.** Apply rule 12.06 of the 1991 Rules.

### **Documents issuing from the Department**

**258.** Apply rule 12.07 of the 1991 Rules.

### **Insolvency practitioner’s security**

**259.**—(1) Apply rule 12.09 of the 1991 Rules.

(2) For paragraph (2) substitute—

“(2) It is the duty of the liquidation committee in a building society insolvency to review from time to time the adequacy of the building society liquidator’s security.”.

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<sup>(29)</sup> S.I. 1990/2588 (N.I. 17).

<sup>(30)</sup> 2002 c. 29.



### **Time**

**260.** Apply rule 12.10 of the 1991 Rules as regards time for anything required or authorised to be done by these Rules.

### **Service by post**

**261.** Apply rule 12.11 of the 1991 Rules.

### **General provisions as to service**

**262.** Order 65 of the Rules of the Court of Judicature (Northern Ireland) 1980 (service of documents) applies as regards any matter relating to the service of documents and the giving of notice in building society insolvency proceedings except in cases where a rule makes provision as to the service of a document or the giving of a notice.

### **Service outside the jurisdiction**

**263.** Apply rule 12.13 of the 1991 Rules.

### **Confidentiality of documents**

**264.**—(1) Apply rule 12.14 of the 1991 Rules.  
(2) In paragraph (2) omit “or a creditors’ committee”.

### **Notices sent simultaneously to the same person**

**265.** Apply rule 12.15 of the 1991 Rules.

### **Right to copy documents**

**266.** Apply rule 12.16 of the 1991 Rules.

### **Charge for copy documents**

**267.** Apply rule 12.17 of the 1991 Rules.

### **Non-receipt of notice of meeting**

**268.** Apply rule 12.18 of the 1991 Rules.

### **Right to have list of creditors**

**269.**—(1) Where one or more creditors have the right under these Rules to inspect documents on the court file, they may require the building society liquidator to send them a list of the society’s creditors and the amounts of their respective debts.

(2) Paragraph (1) does not apply if a statement of the society’s affairs has been filed in court or filed with the appropriate regulator.

(3) The building society liquidator must respond to the request in paragraph (1) but may charge the appropriate fee for doing so.

### **False claim of status as creditor, etc.**

**270.** Apply rule 12.20 of the 1991 Rules.

### **The Gazette**

271. Apply rule 12.21 of the 1991 Rules.

### **Punishment of offences**

272. Apply rule 12.22 of the 1991 Rules.

### **Notice of order under Article 150A(5)**

273.—(1) Apply rule 12.23 of the 1991 Rules.

(2) In paragraphs (2), (3) and (5) for “liquidator, administrator or receiver, as the case may be”, substitute “building society liquidator”.

(3) In paragraph (6), for “The liquidator, administrator or receiver” substitute “The building society liquidator”.

## **PART 23**

### **INTERPRETATION**

#### **Introductory**

274. This Part of the Rules has effect for their interpretation and application; and any definition given in this Part (and in any provision of the 1991 Rules applied by this Part) applies except, and in so far as, the context requires otherwise.

#### **Expressions used generally**

275.—(1) Apply rule 0.2 of the 1991 Rules.

(2) For the definition “insolvency proceedings” after “Order” insert “, the Banking Act 2009”.

#### **“Give notice”, etc.**

276.—(1) Apply rule 0.3 of the 1991 Rules.

(2) In paragraph (3) after “personal service of a document”, add “which means the same as service by hand”.

#### **Notice, etc to solicitors**

277. Apply rule 0.4 of the 1991 Rules.

#### **Notice to joint building society liquidators**

278. Where two or more persons are acting jointly as the building society liquidator, delivery of a document to one of them is to be treated as delivery to them all.

#### **“Insolvent estate”**

279. References to “the insolvent estate” are to the assets of the building society.

**“Responsible insolvency practitioner”, etc.**

**280.** In relation to a building society insolvency, “the responsible insolvency practitioner” means the person acting in the building society insolvency as building society liquidator or provisional building society liquidator.

**“The appropriate fee”**

**281.** “The appropriate fee” means 15 pence per A4 or A5 page, and 30 pence per A3 page.

**The Schedule**

**282.** The Schedule which applies relevant schedules to the 1991 Rules to these Rules, with modifications, has effect.

Sealed with the Official Seal of the Department of Justice on 13th February 2014



*David Ford*  
Minister of Justice

I concur

*Declan Morgan*  
The Lord Chief Justice of Northern Ireland

The Department of Finance and Personnel concurs  
Sealed with the Official Seal of the Department of Finance and Personnel on 13th February 2014



*John McKibbin*  
A senior officer of the Department of Finance  
and Personnel

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE

Rule 282

The following Schedules to the 1991 Rules are applied to these Rules.

- (a) Schedule 1—
  - (i) Omit all references to Rule 4.078.
  - (ii) For paragraph 1 substitute—
    - “1. This Schedule applies where a building society insolvency order (see section 90C of the Building Societies Act 1986) has been made in respect of a building society.”;
- (b) Schedule 2;
- (c) Schedule 3; and
- (d) Schedule 4.

## EXPLANATORY NOTE

*(This note is not part of the Rules)*

1. These Rules set out the procedure for the building society insolvency process under Part 2 of the Banking Act 2009 (c. 1).

The main features of building society insolvency are that, in the event of a building society becoming insolvent, it enables those depositors who are eligible for compensation under the Financial Services Compensation Scheme (FSCS) to either receive compensation for their unpaid deposits as soon as possible after the society goes into building society.

This is the first objective of the insolvency process.

The procedure can only be initiated by the Bank of England or the Financial Conduct Authority or the Prudential Regulation Authority (the appropriate regulator) by application to the court. The court then makes a building society insolvency order, appointing a building society liquidator. In the initial stages, the building society liquidator is accountable to a liquidation committee comprising the appropriate regulator, the Bank of England and the FSCS.

Once the building society liquidator considers that the first objective is achieved, the liquidation committee will pass a resolution to that effect and the building society insolvency will move to the second objective which is to wind up the affairs of the society so as to achieve the best results for the creditors as a whole.

The Rules are based on the Insolvency Rules (Northern Ireland) 1991 (S.R.1991 No. 364) (“the 1991 Rules”) and certain provisions of the 1991 Rules are applied to these Rules, subject to a number of general and specific modifications.

Part 1 contains general provisions.

Part 2 sets out the application process for a building society insolvency order.

Part 3 sets out the procedure for appointing a provisional building society liquidator.

Parts 4 to 8 set out the procedure concerning the statement of affairs, creditors and contributories.

Part 9 sets out provisions concerning the building society liquidator.

Part 10 sets out provisions concerning the liquidation committee.

Parts 11 to 17 set out provisions relating to the building society's assets and other miscellaneous provisions.

Part 18 sets out court procedure and practice.

Part 19 sets out provisions on proxies.

Part 20 sets out provisions concerning the examination of persons concerned in building society insolvency.

Part 21 sets out provisions relating to the declaration and payment of dividend.

Parts 22 and 23 set out miscellaneous and general and interpretative provisions relating to the procedure.

An Impact Assessment relating to the rules for building society insolvency and special administration may be obtained from the Financial Regulatory Strategy Team, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ. It is also available on HM Treasury's website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).