
STATUTORY INSTRUMENTS

2009 No. 350

The Bank Administration (Scotland) Rules 2009

PART 3

Process of Bank Administration

Introduction

19. This Part makes specific provision for a number of aspects of bank administration. Part 4 applies a number of provisions of the 1986 Rules to bank administration (with specified modifications).

Bank administrator's proposals: Objective 1 Stage

20.—(1) This rule makes provision about the statement of proposals which the bank administrator is required to make in the Objective 1 Stage under section 147 of the 2009 Act.

(2) In addition to the information required by section 147 the statement must include—

- (a) details of the court where the proceedings are and the court reference number;
- (b) the full name, any other trading names, the registered office and registered number of the bank;
- (c) details of the appointment of the bank administrator (including the date);
- (d) in the case of joint bank administrators, details of the apportionment of functions;
- (e) the names of the directors and secretary of the bank and details of any shareholdings in the bank they have;
- (f) an account of the circumstances giving rise to the application for the appointment of the bank administrator;
- (g) if a statement of the bank's affairs has been submitted, a copy or summary of it with the comments of the bank administrator, if any;
- (h) if an order limiting the disclosure of the statement of affairs has been made under rule 2.22 of the 1986 Rules (as applied by rule 39 below), a statement of that fact, as well as—
 - (i) details of who provided the statement of affairs;
 - (ii) the date of the order for limited disclosure; and
 - (iii) the details or a summary of the details that are not subject to that order;
- (i) if a full statement of affairs is not provided, the names, addresses and debts of the creditors including details of any security held (or, in the case of depositors, a single statement of their aggregate debt);
- (j) if no statement of affairs has been provided, details of the financial position of the bank at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the bank entered bank administration), a list of the bank's

- creditors including their names, addresses and details of their debts, including any security held, and an explanation as to why there is no statement of affairs;
- (k) the basis upon which it is proposed that the remuneration of the bank administrator(s) should be fixed under rule 2.39 of the 1986 Rules⁽¹⁾ (as applied by rule 39 below);
 - (l) how the bank administrator proposes to pursue Objective 1;
 - (m) whether the bank administrator proposes to pursue Objective 2(a) or Objective 2(b);
 - (n) if the bank administrator proposes to pursue Objective 2(a), how it is envisaged the purpose of the bank administration will be achieved in the Objective 2 Stage;
 - (o) if the bank administrator proposes to pursue Objective 2(b)—
 - (i) how it is envisaged the purpose of the bank administration will be achieved in the Objective 2 Stage; and
 - (ii) how it is proposed that the bank administration shall end (winding-up or voluntary arrangement, in accordance with section 154 of the 2009 Act);
 - (p) the manner in which the affairs and business of the bank have been managed and financed since the date of the appointment of the bank administrator (including the reasons for and terms of any disposal of assets); and
 - (q) the manner in which the affairs and business of the bank will be managed and financed if the proposals of the bank administrator are approved.
- (3) The statement—
- (a) may exclude information, the disclosure of which could seriously prejudice the commercial interests of the bank; and
 - (b) must include a statement of any exclusion.

Bank administrator's proposals: Objective 2 Stage

21.—(1) This rule makes provision about the statement of proposals which the bank administrator is required to make under paragraph 49 of Schedule B1 to the 1986 Act⁽²⁾ as it applies during the Objective 2 Stage (in accordance with Table 1 in section 145 of the 2009 Act).

- (2) The statement must include—
- (a) details of the court where the proceedings are and the court reference number;
 - (b) the full name, any other trading names, the registered office and registered number of the bank;
 - (c) details of the appointment of the bank administrator (including the date);
 - (d) in the case of joint bank administrators, details of the apportionment of functions;
 - (e) the names of the directors and secretary of the bank and details of any shareholdings in the bank they have;
 - (f) an account of the circumstances giving rise to the application for the appointment of the bank administrator;
 - (g) if a statement of the bank's affairs has been submitted, a copy or summary of it with the comments of the bank administrator, if any;
 - (h) if an order limiting the disclosure of the statement of affairs has been made under rule 2.22 of the 1986 Rules (as applied by rule 39 below), a statement of that fact, as well as—
 - (i) details of who provided the statement of affairs;

(1) Rule 2.39 was amended by rule 8(1) of [S.I. 2006/734](#).

(2) Paragraph 49 of Schedule B1 was amended by paragraph 100(a) of Schedule 1(2) to [S.I. 2008/948](#).

- (ii) the date of the order for limited disclosure; and
 - (iii) the details or a summary of the details that are not subject to that order;
 - (i) if a full statement of affairs is not provided, the names, addresses and debts of the creditors including details of any security held (or, in the case of depositors, a single statement of their aggregate debt);
 - (j) if no statement of affairs has been provided, details of the financial position of the bank at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the bank entered bank administration), a list of the bank's creditors including their names, addresses and details of their debts, including any security held, and an explanation as to why there is no statement of affairs;
 - (k) the basis upon which it is proposed that the remuneration of the bank administrator should be fixed under rule 2.39 of the 1986 Rules (as applied by rule 39 below);
 - (l) details of whether (and why) the bank administrator proposes to apply to the court under section 176A(5) of the 1986 Act⁽³⁾ (omission of distribution to unsecured creditors: as applied by Table 2 in section 145 of the 2009 Act)(unless the bank administrator intends to propose a company voluntary arrangement);
 - (m) an estimate of the value of the prescribed part for the purposes of section 176A of the 1986 Act (unless the bank administrator intends to propose a company voluntary arrangement) certified as being made to the best of the bank administrator's knowledge and belief;
 - (n) an estimate of the value of the bank's net property (unless the bank administrator intends to propose a company voluntary arrangement) certified as being made to the best of the bank administrator's knowledge and belief;
 - (o) whether the bank administrator proposes to pursue Objective 2(a) or Objective 2(b);
 - (p) if the bank administrator proposes to pursue Objective 2(a), how it is envisaged the purpose of the bank administration will be achieved;
 - (q) if the bank administrator proposes to pursue Objective 2(b)—
 - (i) how it is envisaged the purpose of the bank administration will be achieved; and
 - (ii) how it is proposed that the bank administration shall end (winding-up or voluntary arrangement, in accordance with section 154 of the 2009 Act);
 - (r) if the bank administrator has decided not to call a meeting of creditors, the reasons for that decision;
 - (s) the manner in which the affairs and business of the bank have been managed and financed since the date of the appointment of the bank administrator (including the reasons for and terms of any disposal of assets);
 - (t) the manner in which the affairs and business of the bank will be managed and financed if the proposals of the bank administrator are approved; and
 - (u) any other information which the bank administrator thinks necessary to enable creditors to decide whether or not to vote for the approval of the proposals.
- (3) In the case of bank administration following transfer to a bridge bank under section 12(2) of the 2009 Act—
- (a) the statement under paragraph 49 of Schedule B1 must state whether any payment is to be made to the bank from a scheme under a resolution fund order; or

(3) Section 176A was inserted by section 252 of the Enterprise Act 2002 (c.40).

- (b) if that information is unavailable when the statement under paragraph 49 of Schedule B1 is made, the bank administrator must issue a supplemental statement as soon as reasonably practicable after the information becomes available.

(4) The statement—

- (a) may exclude information, the disclosure of which could seriously prejudice the commercial interests of the bank; and
- (b) must include a statement of any exclusion.

22. If the bank administrator thinks that the statement made under section 147 of the 2009 Act in accordance with rule 20 contains information required by rule 21(2), the statement under paragraph 49 of Schedule B1 to the 1986 Act (as applied by Table 1 in section 145 of the 2009 Act) may consist of the statement under section 147, with such additions, modifications and supplemental information as the bank administrator thinks necessary—

- (a) to comply with rule 21(2); and
- (b) to bring the statement under section 147 up to date.

23. Where the court orders an extension of the period of time under paragraph 49(5) of Schedule B1 on an application by the bank administrator under paragraph 107 (as applied by Table 1 in section 145 of the 2009 Act), the bank administrator must notify the persons set out in paragraph 49(4) as soon as is reasonably practicable after the making of the order.

24. Where the bank administrator has made a statement under paragraph 52(1) of Schedule B1 to the 1986 Act (as applied by Table 1 in section 145 of the 2009 Act) and has not called an initial meeting of creditors, the proposals issued in accordance with rule 21 above will be deemed to have been approved by the creditors (if no meeting has been requisitioned under paragraph 52(2) within the period set out in rule 7.6 of the 1986 Rules⁽⁴⁾ – as applied by rule 39 below).

25. Where the bank administrator intends to apply to the court (or file or lodge a notice under paragraph 80(2) of Schedule B1 to the 1986 Act in accordance with section 153 of the 2009 Act) for the bank administration to cease before the statement of proposals is sent to creditors in accordance with paragraph 49 of Schedule B1 to the 1986 Act, the bank administrator(s) must, at least 10 days before making the application (or filing or lodging the notice), send to all known creditors of the bank a report containing the information required by rule 21(2).

26.—(1) Any bank administrator who wishes to publish a notice under paragraph 49(6) of Schedule B1 to the 1986 Act must publish the notice once in a newspaper which the bank administrator thinks most appropriate for ensuring that the notice comes to the attention of the bank's members.

(2) The notice must—

- (a) state the full name of the bank;
- (b) state the full name and address of each bank administrator of the bank;
- (c) give details of the appointment of the bank administrator; and
- (d) specify an address to which members can write for a copy of the statement of proposals.

(3) The notice must be published as soon as is reasonably practicable after the bank administrator sends the statement of proposals to the bank's creditors but no later than 8 weeks (or such other period as may be agreed by the creditors or as the court may order) from the date that the bank entered bank administration.

(4) Rule 7.6 was amended by paragraph 38 of Schedule 1(I) to [S.I. 1987/1921](#), and paragraph 8 of Schedule 2(I) to [S.I. 2003/2111](#).

Reports to creditors

27.—(1) “A progress report” means a report which includes—

- (a) details of the court where the proceedings are and the relevant court reference number;
- (b) full details of the bank’s name, address of registered office and registered number;
- (c) full details of the name and address and date of appointment of the bank administrator, including any changes in office-holder;
- (d) in the case of joint bank administrators, details of the apportionment of functions;
- (e) details of any extensions of the initial period of appointment;
- (f) details of progress during the period of the report, including a receipts and payments account (as detailed in paragraph (2) below);
- (g) details of any assets that remain to be realised;
- (h) details of any amounts received from a scheme under a resolution fund order; and
- (i) any other information likely to be relevant to the creditors.

(2) A receipts and payments account must state what assets of the bank have been realised, for what value, and what payments have been made to creditors or others.

(3) The account must be in the form of an abstract showing receipts and payments during the period of the report; and where the bank administrator has ceased to act, the receipts and payments account shall include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A of the 1986 Act (prescribed part).

(4) During the Objective 1 Stage, a progress report must include details of—

- (a) the extent of the business of the bank that has been transferred;
- (b) any property, rights or liabilities that have been transferred, or which the bank administrator expects to be transferred, under a power in Part 1 of the 2009 Act (special resolution regime);
- (c) any requirements imposed on the residual bank, for the purpose of the pursuit of Objective 1, under a power under that Part; and
- (d) the arrangements for managing and financing the bank during the Objective 1 Stage.

(5) In complying with paragraph (4)(c) and (d) a report—

- (a) may exclude information, the disclosure of which could seriously prejudice the commercial interests of the bank; and
- (b) must include a statement of any exclusion.

28. A progress report must be produced for—

- (a) the first period of 6 months of the bank administration;
- (b) every subsequent period of 6 months; and
- (c) when the bank administrator ceases to act, the period from the date of the previous report (or, if there was none, from the beginning of the bank administration) until the administrator ceases to act.

29.—(1) The bank administrator must send a copy of each progress report within 28 days of the end of the period covered by that report, to—

- (a) the creditors of the bank;
- (b) the court;
- (c) the Bank of England;

- (d) the FSA;
- (e) the FSCS; and
- (f) the registrar of companies.

(2) Instead of complying with paragraph (1)(a) the bank administrator may publish the progress report on its internet website (and take appropriate steps to draw attention to it).

(3) The court may, on the application of the bank administrator—

- (a) extend the period specified in paragraph (1) above;
- (b) make any other order about the content of a progress report.

30.—(1) A bank administrator who fails to comply with rule 28 or 29 is liable to a fine and, for continued contravention, to a daily default fine.

(2) For that purpose, failure to comply with rule 28 or 29 shall be treated in the same way as failure to comply with rule 2.38 of the 1986 Rules.

Removal of bank administrator in Objective 1 Stage

31.—(1) With regard to any application for removal of a bank administrator made by the Bank of England during the Objective 1 Stage (in accordance with the modifications for the application of paragraph 91 of Schedule B1 to the 1986 Act in Table 1 in section 145 of the 2009 Act), the rules for service of notice of the application shall be as for the application to appoint a bank administrator under Part 2 of these Rules.

(2) Both the person proposed to be appointed as a replacement and the existing bank administrator are entitled to be served and heard.

Appointment of provisional bank administrator

32. If the court makes an order appointing one or more provisional bank administrators the court shall—

- (a) notify the Bank of England;
- (b) send a copy of the order to the person appointed (by email if possible); and
- (c) send a copy of the order to any administrative receiver of the bank.

33.—(1) As soon as is reasonably practicable after appointment any provisional bank administrator must send a copy of the order of appointment—

- (a) the bank;
- (b) the FSA; and
- (c) the registrar of companies (in Form 4.9(Scot), with such variations, if any, as the circumstances may require).

(2) Notice to the bank must be given by effecting service to its registered office.

34. The Bank of England may disclose the fact and terms of an order appointing any provisional bank administrator to any person whom the Bank of England thinks has a sufficient business interest.

Additional joint bank administrator

35.—(1) The process for the appointment of an additional joint bank administrator is the same as for the initial appointment of a bank administrator.

(2) The existing bank administrator (or each of them) is entitled to a copy of the application and may—

- (a) lodge written answers; and
- (b) be heard at any hearing fixed by the court.

(3) An application for the appointment of an additional joint bank administrator may be made during the Objective 1 Stage only by the Bank of England.

(4) Rule 39 below applies rules 2.19 and 2.55 of the 1986 Rules.

End of administration: successful rescue

36.—(1) This rule supplements section 153 of the 2009 Act (end of bank administration where bank administrator satisfied that Objective 2(a) has been achieved).

(2) The notice of the bank administrator under paragraph 80 of Schedule B1 to the 1986 Act (as applied by section 153 of the 2009 Act)—

- (a) must be lodged with the court in Form 2.23B (subject to rule 7(2) above); and
- (b) must be accompanied by a final progress report.

(3) The notice takes effect when the court discharges the bank administration order on the application of the bank administrator.

(4) Before applying for discharge the bank administrator must send a copy of the notice under paragraph 80 of Schedule B1 to the 1986 Act and the progress report to—

- (a) the Bank of England;
- (b) the FSA;
- (c) the FSCS; and
- (d) the registrar of companies.

(5) Notice under paragraph (4)(b) and (c) above must be given at least 7 days' before the hearing of the application for approval of the notice.

(6) The bank administrator shall be taken to have complied with the requirements of paragraph 80(5) of Schedule B1 to the 1986 Act if, within 5 business days of lodging the notice under paragraph 80 of Schedule B1 to the 1986 Act with the court, the bank administrator publishes once in the same newspaper in which the bank administrator's notice of appointment was published, and once in the Edinburgh Gazette, a notice specifying—

- (a) the full name of the bank and any other trading names;
- (b) the name and address of the bank administrator;
- (c) the date of the notice under paragraph 80 of Schedule B1 to the 1986 Act; and
- (d) an address to which creditors of the bank can write for a copy of the notice under paragraph 80 of Schedule B1 to the 1986 Act and the final progress report.

(7) The application of the bank administrator for discharge must certify compliance with the requirements of paragraph 80 of Schedule B1 to the 1986 Act and of the preceding paragraphs of this rule.

(8) If the court is satisfied that the conditions in section 153(1) of the 2009 Act have been met it shall—

- (a) discharge the bank administration order; and
- (b) notify the bank administrator who shall notify the registrar of companies.

End of administration: dissolution

37.—(1) This rule supplements section 154(2)(a) of the 2009 Act (bank administrator giving notice under paragraph 84 of Schedule B1 to the 1986 Act that there are no more assets for distribution, and moving to dissolution).

(2) The notice of the bank administrator under paragraph 84 of Schedule B1 to the 1986 Act—

(a) must be lodged with the court in Form 2.26B (subject to rule 7(2) above); and

(b) must be accompanied by a final progress report.

(3) The notice shall not take effect until the court discharges the bank administration order on the application of the bank administrator.

(4) Before applying for discharge the bank administrator must send a copy of the notice under paragraph 84 of Schedule B1 to the 1986 Act and the final progress report to—

(a) the registrar of companies; and

(b) each person who received notice of the appointment of the bank administrator.

(5) After the expiry of the period mentioned in paragraph 84(6) of Schedule B1 to the 1986 Act (and subject to extension under paragraph 84(7) of Schedule B1 to the 1986 Act) if the court discharges the bank administration order under paragraph 84 of Schedule B1 to the 1986 Act—

(a) the notice takes effect as specified in paragraph 84(6) of Schedule B1 to the 1986 Act and;

(b) the court shall notify the bank administrator, who shall notify the registrar of companies.

(6) If the court makes an order under paragraph 84(7) of Schedule B1 to the 1986 Act it shall notify the bank administrator in Form 2.27 (subject to rule 7(2) above), who shall notify the registrar of companies.

38. Proceedings under sections 213 and 214 of the Insolvency Act 1986 (fraudulent and wrongful trading) shall be conducted in accordance with section 215 of that Act subject to the modifications specified in section 145 of the 2009 Act.