
STATUTORY INSTRUMENTS

2009 No. 806

**The Building Society Special
Administration (Scotland) Rules 2009**

PART 3

Process of Building Society Special Administration

Introduction

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

Building society special administrator's proposals: Objective 1 Stage

19.—(1) This rule makes provision about the statement of proposals which the building society special administrator is required to make in the Objective 1 Stage under section 147 of the Banking 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 registered name, any other trading names and the principal office of the building society;
 - (c) details of the appointment of the special administrator (including the date);
 - (d) in the case of joint special administrators, details of the apportionment of functions;
 - (e) the names of the directors and secretary and chief executive of the society and details of any shares they hold in the society;
 - (f) an account of the circumstances giving rise to the application for the appointment of the special administrator;
 - (g) if a statement of the society's affairs has been submitted, a copy or summary of it with the comments of the special 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 38 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—
 - (i) the names, addresses and debts of the creditors including details of any security held (or, where the debt is a current account or a deposit account, a single statement of their aggregate debt); and

- (ii) details of the shares issued by the society (including the types of shares issued and the number of each type in issue);
- (j) if no statement of affairs has been provided—
 - (i) details of the financial position of the society at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the society entered special administration);
 - (ii) a list of the society’s creditors including their names, addresses and details of their debts, including any security held (or, where the debt is a current account or a deposit account, a single statement of their aggregate debt);
 - (iii) details of the shares issued by the society (including the types of shares issued and the number of each type in issue); and
 - (iv) an explanation as to why there is no statement of affairs.
- (k) the basis upon which it is proposed that the remuneration of the special administrator(s) should be fixed under rule 2.39 of the 1986 Rules⁽¹⁾ (as applied by rule 38 below);
- (l) how the special administrator proposes to pursue Objective 1;
- (m) whether the special administrator proposes to pursue Objective 2(a) or Objective 2(b);
- (n) if the special administrator proposes to pursue Objective 2(a), how it is envisaged the purpose of the special administration will be achieved in the Objective 2 Stage;
- (o) if the special administrator proposes to pursue Objective 2(b)—
 - (i) how it is envisaged the purpose of the special administration will be achieved in the Objective 2 Stage; and
 - (ii) how it is proposed that the special administration shall end (winding-up or voluntary arrangement, in accordance with section 154 of the Banking Act⁽²⁾);
- (p) the manner in which the affairs and business of the society have been managed and financed since the date of the appointment of the special administrator (including the reasons for and terms of any disposal of assets); and
- (q) the manner in which the affairs and business of the society will be managed and financed if the proposals of the special administrator are approved.
- (3) The statement—
 - (a) may exclude information, the disclosure of which could seriously prejudice the commercial interests of the society; and
 - (b) must include a statement of any exclusion.

Building society special administrator’s proposals: Objective 2 Stage

20.—(1) This rule makes provision about the statement of proposals which the special administrator is required to make under paragraph 49 of Schedule B1 to the Insolvency Act⁽³⁾ as it applies during the Objective 2 Stage (in accordance with Table 1 in section 145 of the Banking Act).

- (2) The statement must include—
 - (a) details of the court where the proceedings are and the court reference number;
 - (b) the registered name, any other trading names, and the principal office of the society;
 - (c) details of the appointment of the special administrator (including the date);

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

⁽²⁾ The Building Societies (Insolvency and Special Administration) Order 2009 modifies the application of section 154.

⁽³⁾ Paragraph 49 of Schedule B1 was amended by paragraph 100(a) of Schedule 1(2) to [S.I. 2008/948](#).

- (d) in the case of joint special administrators, details of the apportionment of functions;
- (e) the names of the directors and secretary and chief executive of the society and details of any shares they hold in the society;
- (f) an account of the circumstances giving rise to the application for the appointment of the special administrator;
- (g) if a statement of the society's affairs has been submitted, a copy or summary of it with the comments of the special 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 38 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—
 - (i) the names, addresses and debts of the creditors including details of any security held (or, where the debt is a current account or a deposit account, 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);
- (j) if no statement of affairs has been provided—
 - (i) details of the financial position of the society at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the society entered special administration);
 - (ii) a list of the society's creditors including their names, addresses and details of their debts, including any security held (or, where the debt is a current account or a deposit account, a single statement of their aggregate debt);
 - (iii) details of the shares issued by the society (including the types of shares issued and the number of each type in issue); and
 - (iv) an explanation as to why there is no statement of affairs.
- (k) the basis upon which it is proposed that the remuneration of the special administrator should be fixed under rule 2.39 of the 1986 Rules (as applied by rule 38 below);
- (l) details of whether (and why) the special administrator proposes to apply to the court under section 176A(5) of the Insolvency Act⁽⁴⁾ (omission of distribution to unsecured creditors: as applied by Table 2 in section 145 of the Banking Act)(unless the special administrator intends to propose a voluntary arrangement);
- (m) an estimate of the value of the prescribed part for the purposes of section 176A of the Insolvency Act (unless the special administrator intends to propose a voluntary arrangement) certified as being made to the best of the special administrator's knowledge and belief;
- (n) an estimate of the value of the society's net property (unless the special administrator intends to propose a voluntary arrangement) certified as being made to the best of the special administrator's knowledge and belief;
- (o) whether the special administrator proposes to pursue Objective 2(a) or Objective 2(b);
- (p) if the special administrator proposes to pursue Objective 2(a), how it is envisaged the purpose of the special administration will be achieved;

(4) Section 176A was inserted by section 252 of the [Enterprise Act 2002 \(c.40\)](#).

- (q) if the special administrator proposes to pursue Objective 2(b)–
 - (i) how it is envisaged the purpose of the special administration will be achieved; and
 - (ii) how it is proposed that the special administration shall end (winding-up or voluntary arrangement, in accordance with section 154 of the Banking Act);
 - (r) if the special 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 society have been managed and financed since the date of the appointment of the special administrator (including the reasons for and terms of any disposal of assets);
 - (t) the manner in which the affairs and business of the society will be managed and financed if the proposals of the special administrator are approved; and
 - (u) any other information which the special administrator thinks necessary to enable creditors to decide whether or not to vote for the approval of the proposals.
- (3) In the case of special administration following transfer to a bridge bank under section 12(2) of the Banking Act–
- (a) the statement under paragraph 49 of Schedule B1 must state whether any payment is to be made to the society from a scheme under a resolution fund order; or
 - (b) if that information is unavailable when the statement under paragraph 49 of Schedule B1 is made, the special 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 society; and
 - (b) must include a statement of any exclusion.
- 21.** If the special administrator thinks that the statement made under section 147 of the Banking Act in accordance with rule 19 contains information required by rule 20(2), the statement under paragraph 49 of Schedule B1 to the Insolvency Act (as applied by Table 1 in section 145 of the Banking Act) may consist of the statement under section 147, with such additions, modifications and supplemental information as the special administrator thinks necessary–
- (a) to comply with rule 20(2); and
 - (b) to bring the statement under section 147 up to date.
- 22.** Where the court orders an extension of the period of time under paragraph 49(5) of Schedule B1 on an application by the special administrator under paragraph 107 (as applied by Table 1 in section 145 of the Banking Act), the special administrator must notify the persons set out in paragraph 49(4) as soon as is reasonably practicable after the making of the order.
- 23.** Where the special administrator has made a statement under paragraph 52(1) of Schedule B1 to the Insolvency Act (as applied by Table 1 in section 145 of the Banking Act) and has not called an initial meeting of creditors, the proposals issued in accordance with rule 20 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⁽⁵⁾ – as applied by rule 38 below).
- 24.** Where the special administrator intends to apply to the court (or file or lodge a notice under paragraph 80(2) of Schedule B1 to the Insolvency Act in accordance with section 153 of the Banking Act) for the special administration to cease before the statement of proposals is sent to creditors in accordance with paragraph 49 of Schedule B1 to the Insolvency Act, the special administrator(s)

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

must, at least 10 days before making the application (or filing or lodging the notice), send to all known creditors of the society a report containing the information required by rule 20(2).

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

(2) The notice must—

- (a) state the registered name of the society;
- (b) state the full name and address of each special administrator of the society;
- (c) give details of the appointment of the special 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 special administrator sends the statement of proposals to the society’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 society entered special administration.

Reports to creditors

26.—(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 society’s registered name and principal office ;
- (c) full details of the name and address and date of appointment of the special administrator, including any changes in office-holder;
- (d) in the case of joint special 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 society 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 special 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 Insolvency Act (prescribed part).

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

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

27. A progress report must be produced for—

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

28.—(1) The special 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 and shareholding members of the society;
- (b) the court;
- (c) the Bank of England;
- (d) the FSA; and
- (e) the FSCS.

(2) Instead of complying with paragraph (1)(a) the special 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 special administrator—

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

29.—(1) A special administrator who fails to comply with rule 27 or 28 is liable to a fine and, for continued contravention, to a daily default fine.

(2) For that purpose, failure to comply with rule 27 or 28 shall be treated in the same way as failure to comply with rule 2.38 of the 1986 Rules.

Removal of special administrator in Objective 1 Stage

30.—(1) With regard to any application for removal of a special 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 Banking Act), the rules for service of notice of the application shall be as for the application to appoint a special administrator under Part 2 of these Rules.

(2) Both the person proposed to be appointed as a replacement and the existing special administrator are entitled to a copy of the application and to be heard at any hearing fixed by the court.

Appointment of provisional special administrator

31. If the court makes an order appointing one or more provisional special 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 building society.

32.—(1) As soon as is reasonably practicable after appointment any provisional special administrator must give notice of the order of appointment to—

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

(2) Notice to the society under paragraph (1)(a) must be given by effecting service to its principal office.

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

Additional joint special administrator

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

(2) The existing special 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 special administrator may be made during the Objective 1 Stage only by the Bank of England.

(4) Rule 38 below applies rules 2.19 and 2.55 of the 1986 Rules.

End of administration: successful rescue

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

(2) The notice of the special administrator under paragraph 80 of Schedule B1 to the Insolvency Act (as applied by section 153 of the Banking Act)(6)—

- (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 special administration order on the application of the special administrator.

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

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

(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 special administrator shall be taken to have complied with the requirements of paragraph 80(5) of Schedule B1 to the Insolvency Act if, within 5 business days of lodging the notice under paragraph 80 of Schedule B1 to the Insolvency Act with the court, the special administrator

(6) The Building Societies (Insolvency and Special Administration) Order 2009 modifies the application of paragraph 80 of Schedule B1.

publishes once in the same newspaper in which the special administrator's notice of appointment was published, and once in the Edinburgh Gazette, a notice specifying—

- (a) the registered name of the building society and any other trading names;
- (b) the name and address of the special administrator;
- (c) the date of the notice under paragraph 80 of Schedule B1 to the Insolvency Act; and
- (d) an address to which creditors and shareholding members of the society can write for a copy of the notice under paragraph 80 of Schedule B1 to the Insolvency Act and the final progress report.

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

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

- (a) discharge the special administration order; and
- (b) notify the special administrator who shall notify the FSA.

End of administration: dissolution

36.—(1) This rule supplements section 154(2)(a) of the Banking Act (special administrator giving notice that there are no more assets for distribution, and moving to dissolution)(7).

- (2) The notice of the special administrator under paragraph 30 of Schedule 1 to the 2009 Order—
 - (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 special administration order on the application of the special administrator.

(4) Before applying for discharge the special administrator must send a copy of the notice referred to in paragraph (2) and the final progress report to—

- (a) the FSA; and
- (b) each person who received notice of the appointment of the special administrator.

(5) After the expiry of the period mentioned in paragraph 30(7) of Schedule 1 to the 2009 Order (and subject to extension under paragraph 30(8) of that Schedule) if the court discharges the special administration order—

- (a) the notice takes effect as specified in paragraph 30(7) of that Schedule; and
- (b) the court shall notify the special administrator, who shall notify the FSA.

(6) If the court makes an order under paragraph 30(8) of Schedule 1 to the 2009 Order it shall notify the special administrator in Form 2.27 (subject to rule 7(2) above), who shall notify the FSA.

37. Proceedings under sections 213 and 214 of the Insolvency Act (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 Banking Act.