

2010 No. 1189

BUILDING SOCIETIES

**The Building Societies (Insolvency and Special Administration)
(Amendment) Order 2010**

Made - - - - - *6th April 2010*

Coming into force in accordance with article 1(2)

The Treasury, in exercise of the powers conferred by sections 130, 158 and 259(1) of the Banking Act 2009(a), make the following Order.

In accordance with sections 130(3) and 158(3) of that Act, a draft of this Order has been laid before and approved by resolution of each House of Parliament.

Citation and commencement

1.—(1) This Order may be cited as the Building Societies (Insolvency and Special Administration) (Amendment) Order 2010.

(2) It comes into force on the day after the day on which it is made.

Amendment of the Building Societies (Insolvency and Special Administration) Order 2009

2.—(1) The Building Societies (Insolvency and Special Administration) Order 2009(b) is amended as follows.

(2) In Schedule 1 (modified application of Parts 2 and 3 of the Banking Act 2009 to building societies)—

(a) in paragraph 13, after sub-paragraph (4) insert—

“(4A) For the entry for section 195 substitute—

“Section 195	Meetings to ascertain wishes of creditors or contributories	(a) The power to have regard to the wishes of creditors and contributories is subject to Objective 1 in section 99. (b) In subsection (3), for “the number of votes conferred on each contributory by the Companies Act or the articles”, substitute “the value of the shares each contributory holds in the building society”. ”;
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(a) 2009 c.1.
(b) S.I. 2009/805.

- (b) in paragraph 16, at the end insert—
 - “(e) after subsection (8) insert—
 - “(9) Sections 1012 to 1023 and 1034 of the Companies Act 2006 (provisions as to property of dissolved company) apply in relation to the property of a building society dissolved under this section as they apply to the property of a dissolved company.”;
- (c) for paragraph 17 substitute—
 - “**17.** In section 116 of the 2009 Act (dissolution: supplemental)—
 - (a) in subsections (1) and (2) the references to the Secretary of State have effect as references to the FSA;
 - (b) for subsection (4) substitute—
 - “(4) On giving a direction under subsection (1) the FSA shall place it on the public file of the society concerned.”;
 - (c) ignore subsection (5).”;
 - (d) omit paragraph 18;
 - (e) in paragraph 27, for sub-paragraph (5) substitute—
 - “(5) For the entry for para. 80 (termination: successful rescue) substitute—

“Para. 79	Termination: successful rescue	(a) Ignore sub-para. (2). (b) <i>See section 153.</i> ”;
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- (f) in paragraph 30, at the end insert—
 - “(12) Sections 1012 to 1023 and 1034 of the Companies Act 2006 (provisions as to property of dissolved company) apply in relation to the property of a building society dissolved under this paragraph as they apply in relation to the property of a dissolved company.”;
- (g) omit paragraph 31;
- (h) before paragraph 33 (under the heading “Termination”) insert—
 - “**32A.** In section 153 of the 2009 Act (successful rescue), for subsections (2) and (3) substitute—
 - “(2) The building society special administrator shall make an application under paragraph 79 of Schedule B1 to the Insolvency Act 1986 (court ending administration on achievement of objectives).
 - (3) A building society special administrator who makes an application in accordance with subsection (2) must send a copy to the FSA.”;
 - (3) In Schedule 2 (modified application of subordinate legislation), in paragraph 3, after sub-paragraph (e) insert—
 - “(ea) after article 8 insert—
 - “**8A.**—(1) The Pension Protection Fund (Entry Rules) Regulations 2005(a) apply with the following modifications.
 - (2) In regulation 9(1) and (2) (confirmation of scheme status by insolvency practitioner), the references to “company” are to be read as references to “building society”;
 - (3) In regulation 10(3) (confirmation of scheme status by Board), the reference to “company” is to be read as a reference to “building society”.”;
- (eb) after article 9 insert—

(a) S.I. 2005/590; relevant amending instruments are S.I. 2005/993, S.I. 2005/2153, S.I. 2009/317 and S.I. 2009/451.

“9A.—(1) The Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005**(a)** apply with the following modifications.

(2) In regulation 9(1) and (2) (confirmation of scheme status by insolvency practitioner), the references to “company” are to be read as references to “building society”;

(3) In regulation 10(3) (confirmation of scheme status by Board), the reference to “company” is to be read as a reference to “building society”.”;

Consequential amendment: Pension Protection Fund (Entry Rules) Regulations 2005

3.—(1) The Pension Protection Fund (Entry Rules) Regulations 2005 are amended as follows.

(2) In regulation 5 (prescribed insolvency events), in paragraph (1)(c), at the end insert “, where a building society insolvency order is made under Part 2 of the Banking Act 2009 (bank insolvency) (as applied in relation to building societies by an order under section 130 of the Banking Act 2009) or where a building society special administration order is made under Part 3 of that Act (bank administration) (as applied in relation to building societies by an order made under section 158 of the Banking Act 2009)”.

(3) In regulation 6 (circumstances in which insolvency proceedings in relation to the employer are stayed or come to an end), in paragraph (1), after sub-paragraph (c) insert—

“(d) in a case where the employer is a building society, where—

- (i) the appointment of a building society special administrator under Part 3 of the Banking Act 2009 (bank administration) (as applied in relation to building societies by an order under section 158 of that Act) in respect of the building society ceases to have effect; or
- (ii) the building society insolvency procedure is stayed under section 130 of the 1986 Act (as applied by section 103 of the Banking Act 2009 and an order made under section 130 of that Act), or the building society insolvency order is rescinded or discharged, except in circumstances where the court has made an administration order in accordance with section 114 of the Banking Act 2009 (as applied by an order made under section 130 of that Act).”.

Consequential amendment: Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005

4.—(1) The Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005 are amended as follows.

(2) In regulation 5 (prescribed insolvency events), in paragraph (1)(c), at the end insert “, where a building society insolvency order is made under Part 2 of the Banking Act 2009 (bank insolvency) (as applied in relation to building societies by an Order under section 130 of that Act) or where a building society special administration order is made under Part 3 of that Act (bank administration) (as applied in relation to building societies by an Order made under section 158 of that Act)”.

(3) In regulation 6 (circumstances in which insolvency proceedings in relation to the employer are stayed or come to an end), in paragraph (1), after sub-paragraph (c) insert—

“(d) in a case where the employer is a building society, where—

- (i) the appointment of a building society special administrator under Part 3 of the Banking Act 2009 (bank administration) (as applied in relation to building societies by an order under section 158 of that Act) in respect of the building society ceases to have effect, or

(a) S.R. 2005 No. 126; relevant amending provisions are S.R. 2005 No. 194, S.R. 2005 No. 364, S.R. 2006 No. 61, S.I. 2009/317 and S.R. 2005 No. 78.

- (ii) the building society insolvency procedure is stayed under Article 110 of the Insolvency Order (as applied by sections 103 and 134 of the Banking Act 2009^(a) and an order made under section 130 of that Act), or the building society insolvency order is rescinded or discharged, except in circumstances where the court has made an administration order in accordance with section 114 of the Banking Act 2009 (as applied by an order made under section 130 of that Act).”.

Dave Watts
Tony Cunningham

6th April 2010

Two of the Lords Commissioners of Her Majesty's Treasury

^(a) Article 110 of the Insolvency (Northern Ireland) Order 1989 (No. 2405 (N.I. 19)) is the equivalent provision to section 130 of the Insolvency Act 1986 (c. 45) (consequences of winding up order) and is therefore applied by sections 103 (general powers, duties and effect) and 134 (Northern Ireland) of the Banking Act 2009.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805) (“the Principal Order”), which applies Parts 2 (Bank Insolvency) and 3 (Bank Administration) of the Banking Act 2009 (c.1) (“the Banking Act”) to building societies.

Article 2(2)(a) amends the provision of the Principal Order which modifies the application of section 195 of the Insolvency Act 1986 (c.45), so that in meetings of contributories in a building society insolvency, regard is had to the value of the shares held by each contributory.

Article 2(2)(b), (d), (f) and (g) amend provisions of the Principal Order relating to the application of sections 1012 to 1023 and 1034 of the Companies Act 2006 (which relate to the property of a dissolved company) to building society insolvency and special administration.

Article 2(2)(c) substitutes the provision of the Principal Order which modifies the application of section 116 of the Banking Act (dissolution: supplemental). The new provision modifies section 116(4), requiring the FSA to place a direction deferring the date of dissolution of a society on the public file of the society concerned.

Article 2(2)(e) substitutes the provision of the Principal Order relating to the entry in the table in section 145 of the Banking Act for paragraph 80 of Schedule B1 to the Insolvency Act 1986. The new provision applies paragraph 79 of Schedule B1, which provides for the court to end administration on application of the administrator. Article 2(2)(h) inserts a new provision in the Principal Order which makes a similar modification to section 153 of the Banking Act.

Article 2(3) amends the provision of the Principal Order which modifies the application of the Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 (S.I. 2009/317). The amendments relate to the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/590) and the Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005 (S.R. 2005/126) and ensure that references to “company” in regulations 9 and 10 of those Regulations have effect as references to “building society”.

Articles 3 and 4 make consequential amendments to the Pension Protection Fund (Entry Rules) Regulations 2005 and the Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005. The amendments provide that the making of a building society insolvency or special administration order are prescribed insolvency events for the purposes of those Regulations, and that in specified circumstances building society insolvency or special administration proceedings are stayed or come to an end for the purposes of the Regulations.

An impact assessment has not been prepared for this instrument as no impact on the costs of business is foreseen.

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STATUTORY INSTRUMENTS

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