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STATUTORY INSTRUMENTS

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**2010 No. 2579**

**BANKS AND BANKING, ENGLAND AND WALES  
INSOLVENCY, ENGLAND AND WALES**

**The Bank Insolvency (England and  
Wales) (Amendment) Rules 2010**

*Made - - - - 20th October 2010*  
*Laid before Parliament 25th October 2010*  
*Coming into force - - 15th November 2010*

The Lord Chancellor makes the following Rules in exercise of the powers conferred by sections 411(1A)(a), (2), (2C) and (3) of the Insolvency Act 1986(1) (“the 1986 Act”).

The Treasury concur in the making of the Rules.

The Chancellor of the High Court (by the authority of the Lord Chief Justice under section 411(7) of the 1986 Act) concurs in the making of the Rules in so far as they affect court procedure.

Before making these Rules, the Lord Chancellor consulted the committee existing for the purposes of section 413 of the 1986 Act.

**Citation, commencement, extent and interpretation**

1. These Rules may be cited as the Bank Insolvency (England and Wales) (Amendment) Rules 2010, shall come into force on 15th November 2010 and extend to England and Wales only.

2. In these Rules, “the 1986 Rules” means the Insolvency Rules 1986(2).

**Amendments to the Bank Insolvency (England and Wales) Rules 2009**

3. The Bank Insolvency (England and Wales) Rules 2009(3) are amended as follows.

4. In rule 3—

(a) in paragraph (2)—

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(1) 1986 c. 45. Section 411 is amended by section 125 of the Banking Act 2009.  
(2) S.I. 1986/1925 as amended by S.I. 1987/1919, 1989/397, 1991/495, 1993/602, 1995/586, 1999/359, 1999/1022, 2001/763, 2002/1307, 2002/2712, 2004/584, 2004/1070, 2005/527, 2006/1272, 2007/1974, 2008/737, 2009/642 and 2009/2472.  
(3) S.I. 2009/356.

- (i) in the definition of “the 1986 Rules”, after “1986” insert “including all the amendments to them up to and including those made by the Insolvency (Amendment) (No. 2) Rules 2009(4)”, and
  - (ii) at the end of the definition of “sealed”, for the colon, substitute a semi colon;
  - (b) in paragraph (8), for “a reference to Rule C as applied to Rule B”, substitute “a reference to Rule C as applied by Rule B”;
  - (c) in paragraph (9), after the first “to”, insert “be”, and for “by these Rules” substitute “pursuant to these Rules”; and
  - (d) in paragraph (10), for “the rules”, substitute “these Rules”.
- 5.** In rule 5, in paragraph (1)—
- (a) for “Rule” substitute “rule”; and
  - (b) for “the Insolvency Rules 1986”, substitute “the 1986 Rules”.
- 6.** In the heading to rule 6, for “Limits”, substitute “limits”.
- 7.** In rule 7, in paragraph (2)(c), for “those” substitute “the”.
- 8.** In rule 10—
- (a) in paragraph (1)—
    - (i) for “send a sealed copy”, substitute “send 2 copies”, and
    - (ii) in sub-paragraph (e), omit “on”; and
  - (b) in paragraph (2), for “1” substitute “one” and after “the other”, insert “(a sealed copy)”.
- 9.** In rule 11, in paragraph (3), for “should” substitute “shall” in each place where it occurs.
- 10.** In rule 13, in paragraph (3), for “a copy of the advertisement”, substitute “a copy or”.
- 11.** In rule 15—
- (a) in paragraph (1), omit “or a director of the bank”; and
  - (b) for paragraph (5), substitute—
 

“(5) The fact that the bank has not filed a statement under this rule shall not prevent it being heard at the hearing.”.
- 12.** In rule 16—
- (a) in paragraph (3), for “sealed copy”, substitute “copy”;
  - (b) in paragraph (5)—
    - (i) for “a sealed copy”, substitute “2 copies”,
    - (ii) at the end of sub-paragraph (a) omit “(electronically or otherwise), and”, and
    - (iii) at the end of sub-paragraph (b), substitute a semicolon for the full stop and add—
      - “(c) if there is in force for the bank a voluntary arrangement under Part 1 of the 1986 Act, the supervisor of that arrangement; and
      - (d) if an administrative receiver has been appointed in relation to the bank, that receiver,
  - (c) after paragraph (5), insert—
 

in accordance with paragraph (5A);”;

“(5A) 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 bank.”; and

(d) for paragraph (6) substitute—

“(6) The bank 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 bank liquidator thinks fit.”.

**13.** In rule 18, in paragraphs (1), (3) and (4), for “will” substitute “shall”.

**14.** In rule 20, omit paragraph (1).

**15.** In rule 21, make the existing provision paragraph (1) and after it insert—

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

(a) shall be gazetted; and

(b) may be advertised in such other manner as the provisional bank liquidator thinks fit.”.

**16.** In rule 22—

(a) in paragraph (3), for “sealed copy”, substitute “copy”;

(b) in paragraph (5)—

(i) for “a sealed copy”, substitute “2 copies”,

(ii) in sub-paragraph (a), omit “(electronically or otherwise), and”,

(iii) at the end of sub-paragraph (b), omit “and”, and

(iv) at the end of sub-paragraph (c) substitute a semicolon for the full stop and add “and”; and

(v) after sub-paragraph (c), add—

“(d) if there is in force for the bank a voluntary arrangement under Part 1 of the 1986 Act, the supervisor of that arrangement,

in accordance with paragraph (6).”; and

(c) after paragraph (5), insert—

“(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 bank.”.

**17.** In rule 27—

(a) in paragraph (1), for “Bank of England”, substitute “bank liquidator”; and

(b) omit paragraph (2).

**18.** In rule 28, after “1986 Rules.”, insert “For “official receiver” substitute “bank liquidator””.

**19.** In rule 29, in paragraph (1) and in inserted paragraph (1A) to rule 4.35 of the 1986 Rules, for “Bank of England” substitute “bank liquidator”.

**20.** In rule 31, for “Bank of England” substitute “bank liquidator”.

21. In rule 32, for “Bank of England” substitute “bank liquidator”.
22. In rule 33, for “Bank of England” substitute “bank liquidator”.
23. In rule 34—
  - (a) in paragraph (2), after “website”, insert “and the bank liquidator shall send a copy of it to any creditor or contributory on request.”; and
  - (b) in paragraph (3)—
    - (i) in sub-paragraph (g)(i), for “debts of the creditors”, substitute “debts owed to the creditors”, and
    - (ii) in sub-paragraph (l), for “purpose of the bank liquidation”, substitute “objectives of the bank liquidator”.
24. In rule 36, for “Bank of England” substitute “bank liquidator”.
25. In rule 37, after “1986 Rules.” insert “In paragraphs (2) and (3), for “official receiver” substitute “bank liquidator”.”.
26. In rule 38—
  - (a) in paragraph (1), after “1986 Rules.” add “For “official receiver” substitute “bank liquidator”.”; and
  - (b) omit paragraphs (2) and (3).
27. In rule 39—
  - (a) in paragraph (1), after “1986 Rules.” add “For “official receiver” substitute “bank liquidator”.”; and
  - (b) omit paragraphs (2) and (3).
28. In rule 40—
  - (a) after paragraph (2)(d), omit “and shall advertise” to the end; and
  - (b) insert—

“(2A) The bank liquidator—

    - (a) shall gazette the notice of the meetings as soon as reasonably practicable; and
    - (b) may advertise it in such other manner as the bank liquidator thinks fit.”.
29. In rule 45—
  - (a) in paragraph (1)(a), for “re establish” substitute “re-establish”; and
  - (b) in paragraph (2), for “on the request” substitute “at the request”.
30. In the heading to rule 60, for “affidavit”, substitute “witness statement”.
31. In rule 72—
  - (a) make the opening sentence into paragraph (1) and renumber the rest of the rule accordingly;
  - (b) in renumbered paragraph (3), for “1”, substitute “one”;
  - (c) in renumbered paragraph (4), for “paragraph (2)” substitute “paragraph 3”;
  - (d) in renumbered paragraph (5), for “of this Rule” substitute “of this rule”; and
  - (e) in renumbered paragraph (6), for “Rule” substitute “rule”.
32. In rule 73—
  - (a) for paragraph (2), substitute—

- “(2) Rule 72 shall apply but, for the purpose of determining the sums due from the bank to the eligible depositor in respect of protected deposits under rule 72(3)—
- (a) where the total of sums held by the bank for the depositor in respect of protected deposits is no more than the amount prescribed as the maximum compensation payable in respect of protected deposits under Part 15 of the Financial Services and Markets Act 2000 (“the limit”), then paragraph (3) applies; and
  - (b) where the sums exceed the limit, then paragraph (4) applies.”;
- (b) in paragraph (3)—
- (i) for “Where paragraph (2)(a) applies,” substitute “Where this paragraph applies”, and
  - (ii) omit “eligible”;
- (c) in paragraph (4)—
- (i) for “Where paragraph (2)(b) applies,” substitute “Where this paragraph applies”;
  - (ii) in sub-paragraph (a), for “that total” substitute “the total of sums due to the depositor”, and
  - (iii) in paragraph (b)—
    - (aa) for “eligible depositor” where it first occurs, insert “the depositor in respect of the protected deposits”, and
    - (bb) for sub-paragraphs (i) and (ii), substitute—
      - “(i) the amount by which that total exceeds the limit, set off against the amounts due to the bank from the depositor in accordance with rule 72(3), and
      - (ii) the sums held by the bank for the depositor in respect of protected deposits up to the limit.”;
- (d) in paragraph (5)—
- (i) for “set off”, substitute “set-off”, and
  - (ii) at the end insert “in so far as they relate to protected deposits.”; and
- (e) for paragraph (6) substitute—
- “(6) In this rule—
- “eligible depositor” has the meaning given by section 93(3) of the 2009 Act;
  - “FSA Rules” means the FSA’s Compensation Sourcebook, as amended from time to time, made under section 213 of the Financial Services and Markets Act 2000(5); and
  - “protected deposit” means a protected deposit within the meaning given by FSA Rules.”.
- 33.** In rule 83(1)(b), for “41 rules 44 and 45”, insert “41, 44 or 45”.
- 34.** In rule 86, for paragraph (2) substitute—
- “(2) The bank liquidator shall, after receiving the certificate of appointment, give notice of that appointment as soon as reasonably practicable. Such notice —
- (a) shall be gazetted; and
  - (b) may be advertised in such other manner as the bank liquidator thinks fit.”.
- 35.** In rule 87, in paragraph (2), in new paragraph (1B), after “in” insert “paragraph”.
- 36.** In rule 88—

- (a) in each of paragraphs (2), (4) and (5), for “will” substitute “shall”; and
  - (b) for paragraph (3), substitute—
    - “(3) If the meeting resolves not to release the bank liquidator, the bank liquidator shall be given a copy of that resolution and rule 95 applies.”; and
  - (c) in paragraph (5), for “his” substitute “that”.
- 37.** In rule 90—
- (1) in paragraph (4)—
    - (a) for “In paragraph (4)”, substitute “For paragraph (4)”, and
    - (b) in the substituted paragraph (4) to rule 4.113 of the 1986 Rules, for “will” in each place substitute “shall”.
  - (2) In paragraph (5), in the substituted paragraph (5) to rule 4.113, for “his”, substitute “that”.
- 38.** In rule 92, in the substituted paragraph (3) to rule 4.116 of the 1986 Rules, omit “, if a new” to the end, and substitute “to any new bank liquidator appointed”.
- 39.** In rule 94, in paragraph (2), renumber the inserted paragraph (2A) to rule 4.119 of the 1986 Rules as paragraph (1A).
- 40.** In rule 95, in paragraph (3), for “Bank Insolvency Rules 2009” substitute “2009 Rules”.
- 41.** In rule 96, for paragraph (4), substitute—
  - “(4) The bank liquidator shall give notice to all creditors and contributories that the final report is available, either on request to the bank liquidator or at Companies House, and shall cause that notice to be gazetted (and may advertise the notice by such other method as the bank liquidator sees fit) at least 14 days before the final meeting is held.”.
- 42.** In rule 97, for “Ignore the reference to rule 4.124” substitute “For “Rule 4.124 or 4.125” substitute “Rule 96 of the 2009 Rules””.
- 43.** In rule 98, in paragraph (3), in the substituted paragraph (5) to rule 4.127 of the 1986 Rules, for “the remuneration of the bank liquidator fixed,” substitute “the terms on which the bank liquidator is to be remunerated determined”.
- 44.** In rule 99, in paragraph (3), for “Schedule 1 to the Bank Insolvency Rules 2009” substitute “the Schedule to the 2009 Rules”.
- 45.** In rule 100, in paragraph (3), for “Schedule 1 to the Bank Insolvency Rules 2009” substitute “the Schedule to the 2009 Rules”.
- 46.** In rule 106—
- (a) for paragraph (2), substitute—
    - “(2) Where a bank liquidator has been removed by a meeting of creditors, and no resolution has been passed by that meeting to appoint a new bank liquidator, the Bank of England shall appoint a new bank liquidator as soon as practicable.”;
  - (b) in paragraph (3), for “the appointment document”, substitute “the certificate of appointment”;
  - (c) in paragraph (4), for “appointment document” substitute “certificate of appointment”; and
  - (d) omit paragraph (5).
- 47.** In rule 114, omit “under rule 41”.
- 48.** In rule 115, in paragraph (2), for the substituted paragraph (1) of rule 4.152 of the 1986 Rules, substitute—

“(1) Subject to rule 41(1) of the 2009 Rules and rule 4.154 as applied by rule 117 of the 2009 Rules, the liquidation committee shall consist of either 3 or 5 creditors of the bank, elected by the meeting of creditors held under rule 41 of the 2009 Rules.”.

49. In rule 116, omit the second sentence.
50. In rule 117, in the substituted paragraph (1) of rule 4.154 of the 1986 Rules, omit “Bank Insolvency”.
51. In rule 122, omit the second sentence.
52. In rule 133, in paragraph (2), in the substituted paragraph (4) of rule 4.171 of the 1986 Rules, for “Bank Insolvency Rules 2009” substitute “2009 Rules”.
53. In rule 154, for “he” substitute “the bank liquidator”.
54. In rule 159, omit “For Chapter” to the end.
55. In the heading to rule 161, before “liquidator” insert “bank”.
56. In the heading to rule 179, for “s” substitute “section”.
57. In the heading to rule 180, for “s” substitute “section”.
58. In rule 185, omit the second sentence.
59. In rule 188, after “under” insert “Part 2 of”.
60. In rule 189, add, after “1986 Rules.” “In paragraph (1), leave out from the second “and” to the end of the paragraph.”.
61. In rule 199, after “1986 Rules.” insert “In paragraph (2)(c)(iii), for “Rule 7.9(1)(b)” substitute “Rule 198(1) of the 2009 Rules””.
62. In rule 200, in paragraph (3), before “290” insert “251N”.
63. In rule 205, before “or 366” insert “251N”.
64. In rule 209, for paragraph (8), substitute—

“(8) Rule 208 applies in respect of the file in any bank insolvency as it applies in respect of court records.”.
65. Omit rule 210.
66. In rule 217, after paragraph (4), insert—

“(5) Ignore paragraph (3A).”.
67. In rule 218, in paragraph (2), after “bankrupt or” insert “the debtor or”.
68. In rule 224, omit paragraph (4).
69. In rule 226, omit “the reference to the official receiver and”.
70. In rule 227, in paragraph (2), omit the first “and”.
71. In rule 229, omit “by personal service” to the end and substitute “to the address for service of the claimant or other person having carriage of the proceedings to be stayed”.
72. In rule 234, for paragraph (3), substitute—

“(3) In paragraph (4), for “chairman of the meeting” to “official receiver” substitute “chair of the meeting or the bank liquidator.””.
73. In rule 238, omit paragraph (2).
74. For rule 240, substitute—

- “240. Apply rule 8.7 of the 1986 Rules. In paragraph (1) omit “of creditors or”.”.
75. In rule 244, after “Rules.” insert “In paragraph (4), omit “or 366”.”.
76. In rule 260, at the end of paragraph (1), for the semi colon, substitute a full stop.
77. In rule 261—
- (a) in paragraph (1), for “objective 1” substitute “Objective 1”, and
  - (b) in paragraph (2), for “Prescribed Part” substitute “prescribed part” each time it occurs.
78. In rule 264, in paragraph (2), for the substituted paragraph (3) of rule 12.4A of the 1986 Rules substitute—
- “(3) For the purposes of this rule the reference to creditors or contributories necessary to constitute a quorum is to those persons present or represented by proxy by any person (including the chair) including, in the case of contributories, persons duly represented under section 323 of the 2006 Act.”.
79. In rule 266, omit the second sentence.
80. In rule 271, in paragraph (2)(b), for “CPR Rules 6.41 to 6.4” substitute “CPR Rules 6.40(3) to 6.46”.
81. In rule 281, omit the second sentence.
82. In rule 285, insert, after “1986 Rules.”, “In paragraph (3), leave out from “except” to the end of the paragraph.”.
83. In rule 292, in paragraph (4), for “Bank Insolvency Rules 2009” substitute “2009 Rules”.
84. In the first line of the Schedule, for “schedules”, substitute “Schedules”.

20th October 2010

*Kenneth Clarke, C*  
Lord Chancellor

We concur

21st October 2010

*James Duddridge*  
*Michael Fabricant*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

I concur

7th September 2010

*Sir Andrew Morritt*  
The Chancellor of the High Court



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## EXPLANATORY NOTE

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

These Rules amend the Bank Insolvency (England and Wales) Rules 2009 (S.I. 2009/356) (“the Bank Insolvency Rules”) to—

- (a) provide that the reference to the Insolvency Rules 1986 (S.I. 1986/1925) in the Bank Insolvency Rules includes all amendments to the Insolvency Rules 1986 up to and including those made by the Insolvency (Amendment) Rules 2009 (S.I. 2009/642) and the Insolvency (Amendment) (No.2) Rules 2009 (S.I. 2009/2472) (“the 2009 amending instruments”) (rule 4);
- (b) reflect amendments made to the Insolvency Rules 1986 by the 2009 amending instruments (rules 49, 51, 60, 62, 63, 65-67, 74, 75, 78 and 82);
- (c) make other minor amendments to the Bank Insolvency Rules; and
- (d) correct minor drafting errors.

An Impact Assessment on the effect of the amendments to the Bank Insolvency (England and Wales) Rules 2009 (S.I. 2009/356) has been prepared and 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)).