

2010 No. 2586 (S. 7)

BANKS AND BANKING, SCOTLAND
INSOLVENCY, SCOTLAND

The Bank Insolvency (Scotland) (Amendment) Rules 2010

<i>Made</i> - - - -	<i>21st October 2010</i>
<i>Laid before Parliament</i>	<i>25th October 2010</i>
<i>Coming into force</i> - -	<i>15th November 2010</i>

The Treasury make the following Rules in exercise of the powers conferred by section 411(1A)(b), (2), (2C) and (3) of the Insolvency Act 1986(a).

Citation and commencement

1. These Rules may be cited as the Bank Insolvency (Scotland) (Amendment) Rules 2010 and come into force on 15th November 2010.

Amendments to the Bank Insolvency (Scotland) Rules 2009

2. The Bank Insolvency (Scotland) Rules 2009 (b) are amended as follows.

3. In rule 3—

(a) in paragraph (2)—

(i) in the definition of “the 1986 Rules”, after “1986” where it appears on the second occasion insert “as they have effect as at 1st October 2009”(c);

(ii) in the definition of “the FSA Rules” after “Sourcebook” insert “as amended from time to time”; and

(b) in paragraph (8), for “Rule C as applied to Rule B”, substitute “Rule C as applied by Rule B”.

4. After rule 5, in the sub-heading for Part 2, for “APPLICATION FOR ORDER” substitute “BANK INSOLVENCY ORDER”.

5. In rule 8(4)(e)—

(a) at the end of paragraph (ii) omit “and”; and

(b) after paragraph (iii), insert—

(a) 1986 c.45. Sections 411(1A) and (2C) were inserted by section 125 of the Banking Act 2009 (c.1).

(b) S.I. 2009/351.

(c) The Insolvency (Scotland) Rules 1986 (S.I. 1986/1915) were amended by S.I. 2009/2375 (S.11) which came into force on 1st October 2009.

- “(iv) if there is in force for the bank a voluntary arrangement under Part 1 of the 1986 Act, the supervisor of that arrangement; and
- (v) if an administrative receiver has been appointed in relation to the bank, that receiver.”.

6. In rule 9(1), (3) and (4), for “will” substitute “shall”.

7. In rule 12(3)—

- (a) at the end of sub-paragraph (c) omit “and”; and
- (b) after sub-paragraph (c) insert—

“(ca) if there is in force for the bank a voluntary arrangement under Part 1 of the 1986 Act, give notice of his appointment to the supervisor of that arrangement; and”.

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

9. In rule 21—

- (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”.

10. In rule 30—

- (a) in paragraph (3) for “Where paragraph (2)(a) applies” substitute “Where this paragraph applies”;
- (b) in paragraph (4)—
 - (i) for “Where paragraph (2)(b) applies” substitute “Where this paragraph applies”; and
 - (ii) in sub-paragraph (b) after the first reference to “eligible depositor” insert “in respect of the protected deposits”; and
- (c) in paragraph (5) after “this rule” insert “in so far as they relate to protected deposits”.

11. In rule 41(1), for “109”, substitute “107”.

12. In rule 42—

- (a) in paragraph (2), for “will” substitute “shall”;
- (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 43 applies.”; and
- (c) in paragraph (5), for “his” substitute “that”.

13. In rule 43(2)(c), after “36” insert “or 42”.

14. In rule 50—

- (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 paragraphs (3), (4) and (5), for “the appointment document”, substitute “the certificate of appointment”; and
- (c) omit paragraph (6).

15. For rule 58(2), substitute—
- “(2) For rule 4.41(1) substitute—
- “(1) Subject to rule 24 of the 2009 Rules and rule 4.43 as applied by rule 60 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 23 of the 2009 Rules.”.”.
16. After rule 59(1), insert—
- “(2) In paragraph (3), omit—
- “(i) or authorisation”; and
- (ii) from “or any representative” to “Act.”.”
17. In rule 65—
- (a) number the existing rule as paragraph (1); and
- (b) after paragraph (1) insert—
- “(2) In paragraph (2), omit from “or authorisation” to “Act.”.”.
18. In rule 101(2), for “on request of the bank’s creditors” substitute “at the request of the bank’s creditors”.
19. In rule 102—
- (a) number the existing rule as paragraph (1); and
- (b) after paragraph (1) insert—
- “(2) For the purposes of this rule, the reference to the creditor 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 Companies Act 2006(a).”.
20. In rule 111—
- (a) number the existing rule as paragraph (1); and
- (b) after paragraph (1) insert—
- “(2) In rule 7.14(4), for “chairman of the meeting”, substitute “chair of the meeting or the bank liquidator.”.”.
21. Omit rule 115(2).
22. For rule 117(2), substitute—
- “(2) For rule 7.20(1), substitute—
- “Where a person is authorised under section 323 of the Companies Act 2006 to represent a corporation at a meeting of the company or its contributories, that person shall produce to the chair of the meeting a copy of the resolution from which that authority derives.”.”.

James Duddridge
Michael Fabricant

21st October 2010

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) 2006 c.46.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Bank Insolvency (Scotland) Rules 2009 (S.I. 2009/351)(the “Rules”) to—

- (a) provide that references to the Insolvency (Scotland) Rules 1986 (S.I. 1986/1915)(the “1986 Rules”) are to the 1986 Rules as amended as at 1st October 2009. The 1986 Rules were amended by the Insolvency (Scotland) Amendment (No. 2) Rules 2009 (S.I. 2009/2375) with effect from that date (rule 3(2));
- (b) modify the application of the 1986 Rules in consequence of the repeal of section 375 of the Companies Act 1985 (rules 17, 19 and 22);
- (c) make other minor amendments to the Rules; and
- (d) correct minor drafting errors.

An Impact Assessment on the effect of the amendments to the Bank Insolvency (Scotland) Rules (S.I. 2009/351) 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).

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