

SCHEDULE 4

Article 11(5)

Modified application of insolvency rules in relation to relevant societies

PART 1

Interpretation

1. In this Schedule—

“applied provisions”—

- (a) in Part 2, means the Parts of the Insolvency Rules 1986 which are applied by article 11(1) and (3);
- (b) in Part 3, means the Parts of the Insolvency (Scotland) Rules 1986 which are applied by article 11(2) and (4);

“member-depositor”, in relation to a relevant society, means any member of the society to whom an amount is owed in respect of the member’s shares where—

- (a) the society is an authorised deposit taker; and
- (b) the amount concerned is owed in respect of a deposit;

“Schedule A1” means Schedule A1 to the 1986 Act as applied in relation to a relevant society;

“Schedule B1” means Schedule B1 to the 1986 Act as applied in relation to a relevant society; and

“the scheme manager” means the body corporate established by the Financial Services Authority under section 212 of FSMA (the manager of the Financial Services Compensation Scheme) as originally enacted⁽¹⁾.

2. In this Schedule—

- (a) a reference to the FCA is a reference to the FCA in its capacity as the authority responsible for the registration of a relevant society under the 1965 Act; and
- (b) a reference to the society’s regulator—
 - (i) in relation to a relevant society which is or has been a PRA-authorised person (within the meaning given in section 2B(5) of FSMA), is a reference to—
 - (aa) the FCA in its capacity as regulator (within the meaning given in section 3A of FSMA⁽²⁾) of the society; and
 - (bb) the Prudential Regulation Authority;
 - (ii) in relation to any other relevant society which is or has been an authorised person, to the FCA in its capacity as regulator of the society.

PART 2

Modified application of the Insolvency Rules 1986

3. This Part modifies the Parts of the Insolvency Rules 1986 which are applied by article 11(1) and (3) in relation to a relevant society which the courts in England and Wales have jurisdiction to wind up.

(1) Section 212 was amended by the Financial Services Act 2012, Schedule 10, paragraphs 1 and 2.

(2) Sections 2B and 3A were substituted by the Finance Act 2012, section 6(1), which substituted new Part 1A of FSMA.

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4. Unless the context otherwise requires and subject to any further modification in this Part, the applied provisions have effect with the following general modifications—

- (a) a reference to Part 1 or any provision of Part 1, 2, 4, 6, 7 or 17 of the 1986 Act is a reference to that Part or provision as applied in relation to a relevant society;
- (b) an expression defined in the 1986 Act (but not an expression modified by this paragraph) has the meaning given in that Act as read with any modification made by this Order;
- (c) a reference to an administrative receiver is a reference to an administrative receiver within the meaning given in Schedule A1(3) in relation to a relevant society whose registered office is situated in England or Wales;
- (d) a reference to the articles of a company is a reference to the rules of a relevant society;
- (e) a reference to a class of creditors includes a reference to a single class of members of a relevant society that consists of the member-depositors of the society, but only in so far as the member-depositors are owed amounts in respect of deposits;
- (f) a reference to a company includes a reference to a relevant society;
- (g) a reference to a company's creditors, other than in a reference to a class of creditors, does not include a reference to a member of a relevant society to whom an amount is owed by the society if, but only in so far as, the amount concerned is owed in respect of the member's shares;
- (h) a reference to the directors of a company is a reference to the members of the committee of a relevant society;
- (i) a reference to a floating charge is a reference to a floating charge within the meaning given in Schedule A1(4) in relation to a relevant society whose registered office is situated in England or Wales;
- (j) a reference to a meeting of a company or of the members of a company is a reference to a general meeting of a relevant society and, in relation to a society whose rules allow the members to appoint delegates for meetings of the society or its members, includes a reference to a general meeting for which delegates have been appointed;
- (k) a reference to an officer of a company is a reference to an officer of a relevant society; and
- (l) a reference to the registrar of companies is a reference to the FCA.

5. The applied provisions have effect as if they provided that a person appointed for the purpose by the FCA is entitled—

- (a) to attend any meeting of creditors of a relevant society summoned for the purposes of Part 1 or 2 of the 1986 Act (as applied in relation to a relevant society);
- (b) to attend any meeting of a committee established under paragraph 57 of Schedule B1; and
- (c) to make representations as to any matter for decision at such a meeting.

6. The applied provisions have effect with the further modifications set out in this Part and with any other necessary modification.

Proposal by directors for company voluntary arrangement

7. In Rule 1.6 (additional disclosure for assistance of nominee), in paragraph (2)(a) the reference to any other company is a reference to any company or any other relevant society.

(3) For the meaning of "administrative receiver" see paragraph 1 of Schedule A1 as modified by paragraph 6(a) of Schedule 1 to this Order.

(4) For the meaning of "floating charge" see the modification of Schedule A1 made by paragraph 7 of Schedule 1 to this Order.

Consideration of proposals where moratorium obtained

8. In Rule 1.48 (summoning of meetings), in paragraph (3) the reference to all persons who are, to the best of the nominee's belief, members of the company is a reference to every member of the society.

Appointment of administrator by holder of floating charge

9. In Rule 2.16 (notice of appointment), in paragraph (5)(b) the reference to the date on which the floating charge was registered is a reference to the date on which—

- (a) the FCA issued an acknowledgement under section 1(3) of the 1967 Act (charges on assets of English and Welsh societies)(5) of the application for the recording of the charge made in accordance with section 1(2) of that Act; or
- (b) the debenture creating the charge was registered under section 9 of the Agricultural Credits Act 1928(6) as applied by section 14 of that Act.

Process of administration

10. Rule 2.30 (limited disclosure) has effect as if it provided that on an application for disclosure under paragraph (4) a person appointed for the purpose by the FCA may appear and be heard, or make written representations.

11. Rule 2.31 (release from duty to submit statement of affairs; extension of time) has effect as if it provided that on an application under paragraph (2) for release or extension of time a person appointed for the purpose by the FCA (in addition to the administrator) may appear and be heard, or make written representations.

Meetings and reports

12. In the following Rules a reference to a creditors' meeting includes a reference to a members' meeting—

- (a) Rule 2.34 (meetings to consider administrator's proposals);
- (b) Rule 2.35 (creditors' meetings generally);
- (c) Rule 2.36 (the chairman at meetings);
- (d) Rule 2.43 (resolutions); and
- (e) Rule 2.46 (notice to creditors).

13. Rule 2.35 has effect as if—

- (a) paragraph (3) required the administrator, in fixing the venue for the meeting, to have regard to the convenience—
 - (i) in the case of a members' meeting, of the members; and
 - (ii) of any person appointed for the purpose of attending the meeting by the FCA, by the society's regulator or, in the case of a relevant society which is a relevant person, by the scheme manager; and
- (b) paragraph (4) required 14 days' notice of a members' meeting to be given to all the members.

(5) Section 1 was amended by S.I. 1996/1738, 2001/2617, 2001/3649 and 2013/496.

(6) 1928 c. 43. Section 9 was amended by the Land Charges Act 1972 (c. 61), Schedule 3, paragraph 7, and by S.I. 2011/2436.

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14. Rule 2.37 (meeting requisitioned by creditors) has effect as if it required the expenses of summoning and holding a members' meeting requested under paragraph 52(2) or 56(1) of Schedule B1 to be paid out of the assets of the society as an expense of the administration.

15. Rule 2.43 has effect as if—

- (a) in paragraph (1) the words “(in value)” were omitted; and
- (b) paragraph (2) were omitted.

16. In Rule 2.45 (revision of the administrator's proposals)—

- (a) in paragraph (3) ignore the words “Subject to paragraph 54(3),”; and
- (b) ignore paragraphs (4) and (5).

17. In Rule 2.47 (reports to creditors), in paragraphs (1)(g) and (4) the reference to the creditors includes a reference to the members of the society.

18. In Rule 2.48 (correspondence instead of creditors' meetings)—

- (a) in paragraph (1)—
 - (i) the reference to a resolution by the creditors includes a reference to a resolution by the members of the society;
 - (ii) in the case of a members' resolution the reference to every creditor who is entitled to be notified of a creditors' meeting is a reference to every member;
- (b) in paragraph (2), in relation to correspondence with the members, ignore the reference to the statement on entitlement to vote required by Rule 2.38; and
- (c) in paragraphs (6) and (9) a reference to a creditors' meeting includes a reference to a members' meeting.

19. Rule 2.49 (venue and conduct of company meeting) has effect as if—

- (a) paragraphs (1) to (4) and (7) were omitted; and
- (b) in paragraph (5A) for sub-paragraph (a) there were substituted—
 - “(a) in the case of a relevant society (within the meaning given in section 74(1) of the Industrial and Provident Societies Act 1965(7)), in accordance with the law of England and Wales;”.

Distributions to creditors

20. Rule 2.68 (distributions to creditors: introduction) has effect in relation to a distribution, or a proposal to make a distribution, to member-depositors as if paragraph (2) required the administrator to give the notice referred to also to those members.

21. Rule 2.69 (debts of insolvent society to rank equally) has effect as if the first reference to debts included a reference to any amount owed by the society in respect of a member's shares where—

- (a) the society is an authorised deposit taker; and
- (b) the amount concerned is owed in respect of a deposit.

22. Rule 2.85 (mutual credits and set off) has effect as if in addition to the matters excluded from “mutual dealings” in paragraph (2) that paragraph excluded any mutual dealings between a relevant society and a member of the society to whom an amount is owed by the society if, but only in so far as, the amount concerned is owed in respect of the member's shares.

23. Rule 2.95 (notice of proposed distribution) has effect as if—

(7) The definition of “relevant society” is inserted by article 17(5) of this Order.

- (a) paragraph (1) required the administrator also to give notice where the administrator is proposing to make a distribution to member-depositors; and
- (b) paragraph (2)—
 - (i) required the notice to be sent also to every member-depositor and the FCA;
 - (ii) provided that for the purposes of that notice the reference to unsecured creditors included a reference to member-depositors.

24. In Rule 2.97 (declaration of dividend) member-depositors are to be regarded as a single class of creditors for the purposes of paragraph (1).

25. Rule 2.98 (notice of declaration of dividend) has effect as if—

- (a) the persons who are entitled to receive notice under paragraph (1) included—
 - (i) every member-depositor; and
 - (ii) the FCA; and
- (b) paragraph (2)—
 - (i) required that notice to give particulars of any distribution to member-depositors; and
 - (ii) provided that the member-depositors are unsecured creditors for the purpose of sub-paragraph (c).

26. In Rule 2.99 (payment of dividends and related matters), in paragraph (2) the reference to any creditor includes a reference to any member-depositor.

27. Rule 2.100 (notice of no dividend, or no further dividend) has effect as if—

- (a) it required the administrator to send a copy of any notice to the FCA, to the society's regulator and, in the case of a relevant society which is a relevant person, to the scheme manager; and
- (b) the reference to creditors included a reference to member-depositors.

28. Rule 2.103 (disqualification from dividend) has effect as if it required notice of the application and a copy of the order made on the application to be given to the FCA, to the society's regulator and, in the case of a relevant society which is a relevant person, to the scheme manager.

Ending administration

29. In Rule 2.112 (applications for extension of administration) the reference to the creditors in paragraph (4) and the second reference to the creditors in paragraph (5) include a reference to the members of the society.

30. In Rule 2.113 (notice of end of administration), in paragraphs (6) and (7) the reference to a creditor includes a reference to a member of the society.

Replacing administrator

31. Rule 2.120 (notice of intention to resign) has effect as if the persons who are entitled to receive notice of the administrator's intention to resign included the FCA, the society's regulator and, in the case of a relevant society which is a relevant person, the scheme manager.

32.—(1) Rule 2.122 (application to court to remove administrator from office) and Rule 2.125 (application to replace administrator) have effect as if the persons who are entitled to receive notice of the matter concerned included the FCA, the society's regulator and, in the case of a relevant society which is a relevant person, the scheme manager.

- (2) Sub-paragraph (1) does not apply in relation to—

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- (a) the FCA, if the FCA made the application for the administration order; or
- (b) the society's regulator, if the society's regulator made the application.

Quorum at meetings

33. Rule 12A.21 (quorum at meeting of creditors)(8) has effect in relation to a relevant society as if—

- (a) in paragraphs (1) and (4) the reference to any meeting of creditors included a reference to any meeting of members of the society; and
- (b) paragraph (2) provided that a quorum, in the case of a meeting of members—
 - (i) is to be determined according to the rules of the society which lay down a quorum for a general meeting of the society; or
 - (ii) if there are no such rules, is at least two members who are entitled to vote, or both of them if their number does not exceed two.

Forms

34. In Rule 12A.30 (forms for use in insolvency proceedings)—

- (a) any form prescribed for use by paragraph (1) which is used for the purposes of Part 1 or 2 of the 1986 Act is to be read with the modifications set out in this Order (so far as applicable for the form concerned); and
- (b) the requirement in paragraph (2) to use a form with such variations as the circumstances may require includes a requirement to use it with such variations as are necessary to take account of applicable modifications.

“Prescribed part”

35. In Rule 13.13 (expressions used generally in the Insolvency Rules 1986), in paragraph (15) (the definition of “prescribed part”) the reference to the Insolvency Act 1986 (Prescribed Part) Order 2003(9) is a reference to that Order as applied in relation to a relevant society by article 12 of, and paragraph 1 of Schedule 5 to, this Order.

PART 3

Modified application of the Insolvency (Scotland) Rules 1986

36. This Part modifies the Parts of the Insolvency (Scotland) Rules 1986 which are applied by article 11(2) and (4) in relation to a relevant society which a sheriff court in Scotland has jurisdiction to wind up.

37. Unless the context otherwise requires and subject to any further modification in this Part, the applied provisions have effect with the general modifications set out in paragraphs 4 and 5 (read as if set out in this paragraph), except that—

- (a) sub-paragraph (c) of paragraph 4 is omitted for this purpose; and
- (b) a reference to a floating charge is a reference to a floating charge within the meaning given in Schedule A1(10) in relation to a relevant society whose registered office is situated in Scotland.

(8) Part 12A (provisions of general effect) was inserted by [S.I. 2010/686](#).

(9) [S.I. 2003/2097](#).

(10) For the meaning of “floating charge” see the modification of Schedule A1 made by paragraph 7 of Schedule 1 to this Order.

38. The applied provisions have effect with the further modifications set out in this Part and with any other necessary modification.

Proposal by directors for company voluntary arrangement

39. In Rule 1.6 (additional disclosure for assistance of nominee), in paragraph (2)(a) the reference to any other company is a reference to any company or any other relevant society.

Consideration of proposals where moratorium obtained

40. In Rule 1.40 (summoning of meetings; procedure at meetings etc.), in paragraph (3) the reference to all persons who are, to the best of the nominee's belief, members of the company is a reference to every member of the society.

Appointment of administrator by holder of floating charge

41. In Rule 2.10 (notice of appointment), in paragraph (5)(b) the reference to the date on which the floating charge was registered is a reference to the date—

- (a) stated in the FCA's acknowledgement issued under section 4(3) of the 1967 Act (filing of information relating to charges)(**11**) on which the delivery of a copy of the instrument creating the charge was effected; or
- (b) on which the charge was registered under Part 2 of the Agricultural Credits (Scotland) Act 1929(**12**).

Process of administration

42. Rule 2.22 (limited disclosure) has effect as if it provided that on an application for disclosure under paragraph (4) a person appointed for the purpose by the FCA may appear and be heard, or make written representations.

43. Rule 2.23 (release from duty to submit statement of affairs; extension of time) has effect as if it provided that on an application under paragraph (2) for release or extension of time a person appointed for the purpose by the FCA may appear and be heard, or make written representations.

Meetings

44. In the following Rules a reference to a creditors' meeting includes a reference to a members' meeting—

- (a) Rule 2.27 (meetings to consider administrator's proposals);
- (b) Rule 2.27A (suspension and adjournment);
- (c) Rule 2.28 (correspondence instead of creditors' meetings), except paragraph (9); and
- (d) Rule 2.35 (notices to creditors).

45. Rule 2.27 has effect as if in paragraph (3) the reference to the creditors included a reference to the members of the society.

46. In Rule 2.28—

- (a) in paragraphs (3), (4) and (10), in the case of a members' resolution, a reference to the creditors is a reference to the members of the society; and

(11) Section 4 was amended by the Companies (Floating Charges and Receivers) (Scotland) Act 1972 (c. 67), section 10(iv), by the Companies Consolidation (Consequential Provisions) Act 1985 (c.9), section 26(4), and by S.I. 1996/1738, 2001/2617, 2001/3649 and 2013/496.

(12) 1929 c. 13.

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- (b) in paragraph (6), in relation to correspondence with the members ignore the reference to the statement of claim and account or voucher referred to in Rule 2.26C.
- 47. In Rule 2.29 (applicable law (company meetings)) ignore paragraph (a).
- 48. In Rule 2.34 (revision of the administrator's proposals)—
 - (a) in paragraph (2) ignore the words "Subject to paragraph 54(3),"; and
 - (b) ignore paragraphs (3) and (4).
- 49. In Rule 2.35, in paragraph (1)(a), in the case of a members' meeting the reference to every creditor who received notice of the meeting is a reference to every member of the society.

Distributions to creditors

50. In Rules 2.40 (distributions to creditors: introduction) and Rule 2.41A (payments of dividends) a reference to creditors includes a reference to member-depositors, but only in so far as the member-depositors are owed amounts in respect of deposits.

51. Rule 2.41 (distributions to creditors) has effect in relation to a proposal to make a distribution to member-depositors as if—

- (a) for paragraph (1) there were substituted—
 - “(1) Subject to the modifications set out below and to any other necessary modifications, Chapter 9 of Part 4 (distribution of company's assets by liquidator), except Rule 4.67 (order of priority of expenses of liquidation), applies with regard to a proposal to make a distribution to the member-depositors of a relevant society as it applies with regard to claims to a dividend out of the assets of a company in liquidation.”.
- (b) for paragraph (2) there were substituted—
 - “(2) Subject to paragraphs (2A), (2B) and (5) below, in the application in relation to a relevant society of Chapter 9 of Part 4 or of any provision of the Bankruptcy Act as applied by Rule 4.16 or Rule 4.68 (application of the Bankruptcy Act)—
 - (a) a reference to the articles of a company is a reference to the rules of the society;
 - (b) a reference to a company is a reference to the society;
 - (c) a reference to a creditor does not include a reference to a member of the society to whom an amount is owed by the society if, but only in so far as, the amount concerned is owed in respect of the member's shares;
 - (d) a reference to the date of commencement of winding up is a reference to the date on which the society entered administration;
 - (e) a reference to the liquidation is a reference to the administration;
 - (f) a reference to the liquidation committee is a reference to the creditors' committee in the administration; and
 - (g) a reference to the liquidator is a reference to the administrator of the society.

(2A) In Rule 4.66 (order of priority in distribution)—

- (a) in paragraph (1) a reference to ordinary debts includes a reference to any amount owed by the society in respect of a member's shares where—
 - (i) the society is an authorised deposit taker; and
 - (ii) the amount concerned is owed in respect of a deposit; and

- (b) in paragraph (2) the reference to section 242 (gratuitous alienations (Scotland)) is a reference to that section as applied in relation to a relevant society by an order made under section 255 of the Enterprise Act 2002(13).
- (2B) In section 52 of the Bankruptcy Act (estate to be distributed in respect of accounting periods)(14), in subsection (3) a reference to a creditor includes a reference to a member-depositor of a relevant society, but only in so far as the member is owed an amount in respect of deposits.”;
- (c) in paragraph (4) the reference to the administrator’s statement of proposals, as approved by the creditors, is a reference to that statement, as approved by the creditors and members of the society; and
- (d) at the end there were added—
 - “(6) In this Rule—
 - “member-depositor”, in relation to a relevant society, means any member of the society to whom an amount is owed in respect of the member’s shares where—
 - (a) the society is an authorised deposit taker; and
 - (b) the amount concerned is owed in respect of a deposit; and
 - “relevant society” has the meaning given in section 74(1) of the Industrial and Provident Societies Act 1965(15).”.

Ending administration

52. In Rule 2.45 (notice of end of administration), in paragraph (4)(d) the reference to a creditor includes a reference to a member of the society.

Replacing administrator

53. Rule 2.50 (notice of intention to resign) has effect as if the persons who are entitled to receive notice of the administrator’s intention to resign included the FCA, the society’s regulator and, in the case of a relevant society which is a relevant person, the scheme manager.

54.—(1) Rule 2.53 (application to replace administrator) and Rule 2.56 (application to court to remove administrator from office) have effect as if the persons who are entitled to receive notice of the matter concerned included the FCA, the society’s regulator and, in the case of a relevant society which is a relevant person, the scheme manager.

(2) Sub-paragraph (1) does not apply in relation to—

- (a) the FCA, if the FCA made the application for the administration order; or
- (b) the society’s regulator, if the society’s regulator made the application.

Quorum at meetings

55. Rule 7.6 (meetings requisitioned) has effect as if it required the expenses of summoning and holding a members’ meeting requested under paragraph 52(2) or 56(1) of Schedule B1 to be paid out of the assets of the society as an expense of the administration.

(13) 2002 c. 40.

(14) Section 52 applies with regard to a proposal to make a distribution to member-depositors by virtue of the application of paragraph (3) of Rule 2.41. Section 52 was amended by the Bankruptcy (Scotland) Act 1993 (c. 6), section 11(3) and Schedule 1, paragraph 21, and section 11(4) and Schedule 2; by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), Schedule 1, paragraphs 1 and 44, and section 226(2) and Schedule 6; and by S.I. 2003/2109.

(15) The definition of “relevant society” is inserted by article 17(5) of this Order.

Status: This is the original version (as it was originally made).

56. Rule 7.7 (quorum) has effect in relation to a relevant society as if—

- (a) paragraph (1) provided that a quorum, in the case of a meeting of members of the society—
 - (i) is to be determined according to the rules of the society which lay down a quorum for a general meeting of the society; or
 - (ii) if there are no such rules, is at least two members who are entitled to vote, or both of them if their number does not exceed two; and
- (b) in paragraph (3) the reference to any meeting of creditors included a reference to any meeting of members of the society.

57. Rule 7.12 (resolutions) has effect in relation to a meeting of members of the society as if the words “in value” were omitted.

Forms

58. In Rule 7.30 (forms for use in insolvency proceedings)—

- (a) any form prescribed for use by this Rule which is used for the purposes of Part 1 or 2 of the 1986 Act is to be read with the modifications set out in this Order (so far as applicable for the form concerned); and
- (b) the reference to the use of a form with such variations as circumstances require includes a reference to its use with such variations as are necessary to take account of applicable modifications.