
STATUTORY INSTRUMENTS

2009 No. 806

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

PART 4

Application of Insolvency (Scotland) Rules 1986

General application

38. The provisions of the 1986 Rules listed in the Table in rule 41 apply for the purposes of building society special administration and applications for special administration.

39. For that purpose the rules apply with—

- (a) the general modifications set out in rule 40;
- (b) any specific modification set out in the Table in rule 41; and
- (c) any other necessary modification.

General modifications

40. The general modifications are that—

- (a) a reference to an administrator or a liquidator is to be treated as a reference to a building society special administrator;
- (b) a reference to administration or liquidation is to be treated as a reference to building society special administration;
- (c) a reference to a provisional liquidator is to be treated as a reference to a provisional building society special administrator;
- (d) a reference to a winding-up order is to be treated as a reference to a building society special administration order;
- (e) a reference to a petition for a winding-up order is to be treated as a reference to an application for a building society special administration order;
- (f) a reference to insolvency proceedings is to be treated as a reference to building society special administration (or proceedings for special administration);
- (g) a reference to the responsible insolvency practitioner is to be treated as a reference to the building society special administrator or provisional special administrator;
- (h) all references to the EC Regulation or to the appointment of a member State liquidator are to be ignored;
- (i) a reference to the company is to be treated as a reference to the building society;
- (j) a reference to the officers, or to a particular officer, of a company is to be treated as a reference to the officers, or to the corresponding officer, of a building society and as including a person holding himself out as such an officer;

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- (k) a reference to a contributory is to be treated as a reference to a contributory within the meaning of these Rules (see rule 4(1)(g));
- (l) a reference to sending a document or notice to, or filing it with, the registrar of companies is to be treated as a reference to sending the document or notice to the FSA for placing on the public file of the society;
- (m) a reference to a voluntary arrangement under Part 1 of the Insolvency Act 1986 is to be treated as a reference to a voluntary arrangement under that Part as applied in relation to building societies by section 90A of, and Schedule 15A to, the Building Societies Act 1986;
- (n) a reference to a paragraph of Schedule B1 to the Insolvency Act is to be treated as a reference to that paragraph as applied and modified by section 145 of the Banking Act, by section 90C of the Building Societies Act and by any order made under section 158 of the Banking Act; and
- (o) a reference to the Insolvency Act includes a reference to Part 3 of the Banking Act.

Table of applications and specific modifications

41. This rule contains the Table of applied 1986 Rules.

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
2.19	Notification and advertisement of administrator's appointment	Ignore paragraphs (2)(a), (b), and (c).
2.20(1)	Notice requiring statement of affairs	
2.21	Statements of affairs and statements of concurrence	
2.22	Limited disclosure	On an application for disclosure under paragraph (4) any of the following may appear and be heard, or make representations:– (a) the special administrator; (b) the Bank of England; (c) the FSA.
2.23	Release from duty to submit statement of affairs; extension of time	On an application under paragraph (2) for release or extension of time any of the following may appear and be heard, or make written representations:– (a) the special administrator; (b) the Bank of England; (c) the FSA.
2.24	Expenses of statement of affairs	
2.25(2)	<i>Administrator's proposals</i>	<i>Rule 2.25 is not applied. Equivalent provision is made in Part 3 of these Rules.</i>

(1) Rule 2.20 was amended by paragraph 6(3) of Schedule 1(I) to [S.I. 1987/1921](#).

(2) Rule 2.25 was amended by rule 6 of [S.I. 2006/734](#).

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<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
2.26	General (Meetings)	In the application of paragraph (1) of rule 7.2, the FSA and the FSCS shall be treated as entitled to attend the meeting. Ignore the application of rules 7.1 and 7.4.
2.27	Meetings to consider administrator's proposals	(1) Rule 2.27 applies in the Objective 2 Stage. (2) The special administrator shall give the FSA and the FSCS at least 14 days notice of any meeting referred to in paragraph (1) of rule 2.27.
2.28	Correspondence instead of creditors meetings	
2.29	Applicable law	
2.31	Meetings requisitioned by creditors	Treat the reference to the administrator's statement of proposals as a reference to the special administrator's statement of proposals in accordance with rule 23 above.
2.33	Hire-purchase, conditional sale and hiring agreements	
2.34	Revision of administrator's proposals	In paragraph 1(c) ignore the reference to the person making the appointment.
2.35	Notices to creditors	
2.36	Application of provisions in Part 3 (Receivers)	<i>(A creditors' committee cannot be established until the Objective 2 Stage - see the modifications for the application of paragraphs 50 to 58 of Schedule B1 of the Insolvency Act 1986 in Table 1 in section 145 of the 2009 Act).</i> In the application of paragraph (2) of rule 3.8– (a) notice of the application must be given to the FSA and the FSCS; and (b) the FSA and the FSCS may appear and be heard.
2.37	Disposal of secured property, etc.	If an application is made during the Objective 1 Stage, then in addition to the requirements of rule 2.37–

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<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
		<ul style="list-style-type: none"> (a) the special administrator must notify the Bank of England of the time and place of the hearing; (b) the Bank of England may appear; and (c) if an order is made the special administrator must send a copy of the order to the Bank of England as soon as reasonably practicable.
2.38	<i>Progress reports</i>	<i>Rule 2.38 is not applied. Equivalent provision is made in Part 3 of these Rules.</i>
2.39(3)	Determination of outlays and remuneration	<ul style="list-style-type: none"> (1) In the Objective 1 Stage the Bank of England shall fix the special administrators' remuneration in accordance with rule 2.39(4). (2) In the Objective 2 Stage, rule 2.39 shall apply (but pending action under paragraphs (2), (3) and (6) of that rule the arrangements established by the Bank of England in the Objective 1 Stage shall continue to apply).
2.39A(4)	Appeal against fixing of remuneration	<ul style="list-style-type: none"> (1) In respect of remuneration fixed by the Bank of England— <ul style="list-style-type: none"> (a) Rule 2.39A applies as if references to the creditors' committee and creditors were references to the Bank of England; and (b) the court shall have regard to Objective 1. (2) In respect of any application under rule 2.39A— <ul style="list-style-type: none"> (a) notice of the application must be given to the FSA; and (b) the FSA may appear and be heard. <p>Rule 2.39A (5), (6) and (7) applies only during the Objective 2 Stage.</p>

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

(4) Rule 2.39A was amended by rule 8(1) of S.I. 2006/734.

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<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
2.39B(5)	Expenses of the administration	<p>In addition to the matters listed in rule 2.39B, expenses in connection with a provisional special administration are payable in the following order of priority–</p> <ul style="list-style-type: none"> (a) the cost of any security provided by the provisional special administrator takes priority equally with security provided by the special administrator; (b) the remuneration of the provisional special administrator ranks next; and (c) any deposit lodged on an application for the appointment of a provisional special administrator ranks next.
2.40	Distributions to creditors	<p><i>(Distributions in the case of special administration following transfer to a bridge bank under section 12(2) of the 2009 Act and during the Objective 1 Stage require the Bank of England’s consent – see the modification for the application of paragraph 65 of Schedule B1 to the Insolvency Act 1986 in Table 1 in section 145 of the 2009 Act(6).)</i></p> <p>References to creditors include references to shareholding members.</p>
2.41(7)	Distributions to creditors	<p><i>(Distributions in the case of special administration following transfer to a bridge bank under section 12(2) of the 2009 Act and during the Objective 1 Stage require the Bank of England’s consent – see the modification for the application of paragraph 65 of Schedule B1 to the Insolvency Act 1986 in Table 1 in section 145 of the 2009 Act.)</i></p> <ul style="list-style-type: none"> (1) Except in paragraphs (2) (a) and (4)(c), references to creditors include references to shareholding members.

(5) Rule 2.39B was inserted by rule 5 of S.I. 2008/662.

(6) The Building Societies (Insolvency and Special Administration) Order 2009 modifies the application of paragraph 65.

(7) Rule 2.41 was amended by rule 9(1) of S.I. 2006/734, and rule 6 of S.I. 2008/662.

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<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
		<p>(2) In respect of an application under s.49(6) of the Bankruptcy (Scotland) Act 1985⁽⁸⁾ (as applied)–</p> <p>(a) notice of the application must be given to the FSA and the FSCS and, during the Objective 1 Stage, the Bank of England; and</p> <p>(b) the FSA, the FSCS and the Bank of England during the Objective 1 Stage, may appear and be heard.</p> <p>(3) The special administrator shall give 28 days notice of any proposed payment of distribution or dividend and notice of any payment of distribution or dividend to–</p> <p>(a) the FSA and the FSCS; and</p> <p>(b) during the Objective 1 Stage of a special administration following transfer to a bridge bank under section 12(2) of the 2009 Act, the Bank of England.</p> <p>(4) In the case of notice of any payment of distribution or dividend in a special administration following transfer to a bridge bank under section 12(2) of the 2009 Act and during the Objective 1 Stage, the notice shall include details of any payment made from a scheme under a resolution fund order.</p> <p>(5) If the special administrator is unable to declare any dividend or any further dividend, the special administrator must, in addition to notifying the creditors and shareholding members of this fact, notify–</p> <p>(a) the FSA;</p>

⁽⁸⁾ 1985 c.66. Section 49(6) was amended by section 31 of Part 1 of the [Bankruptcy and Diligence etc. \(Scotland\) Act 2007](#) (asp 3).

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<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
		(b) the FSCS; and (c) the Bank of England; in a case where it consented to a distribution under these Rules.
2.41A	Payments of Dividends	<i>(Distributions in the case of bank administration following transfer to a bridge bank under section 12(2) of the 2009 Act and during the Objective 1 Stage require the Bank of England's consent – see the modification for the application of paragraph 65 of Schedule B1 to the Insolvency Act 1986 in Table 1 in section 145 of the 2009 Act).</i> References to creditors include references to shareholding members.
2.42	Final progress report	In the case of a special administration following transfer to a bridge bank under section 12(2) of the 2009 Act the final progress report– (1) must not be made until the special administrator is satisfied that any payment to be made to the society from a scheme under a resolution fund order has been made; and (2) must state whether any payment has been received and, if so, its amount.
2.45	<i>Notice of end of administration</i>	<i>Rule 2.45 is not applied. Equivalent provision is made by Part 3 of these Rules.</i>
2.46	Application to court	The references to paragraph 79 are to be treated as references to paragraph 80 of Schedule B1 to the 1986 Act (as applied by section 153(2) of the 2009 Act)(9).
2.48	<i>Moving from administration to dissolution</i>	<i>Rule 2.48 is not applied. Equivalent provision is made by Part 3 of these Rules.</i>
2.49	Grounds for resignation	During the Objective 1 Stage the Bank of England's consent, as well

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

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<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
		as the court's leave, is required for resignation under paragraph (2).
2.50	Notice of intention to resign	The Bank of England and the FSA are added to the list of those entitled to notice under paragraph (1).
2.51	Notice of resignation	
2.52	Administrator deceased	
2.53	Application to replace	<p>Rule 2.53 is applied during the Objective 2 Stage only (and ignoring references to paragraph 95 of Schedule B1).</p> <p><i>(For equivalent provisions about application for removal 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 Insolvency Act 1986 in Table 1 in section 145 of the 2009 Act) see Part 3 of these Rules.</i></p>
2.54	Application to replace	
2.55	Joint or concurrent appointments	
2.56	Application to court to remove administrator from office	<p>An application may be made during the Objective 1 Stage only with the consent of the Bank of England – see the modifications for the application of paragraph 88 of Schedule B1 to the Insolvency Act 1986 in Table 1 in section 145 of the 2009 Act.</p> <p>(1) An application must state either–</p> <p>(a) that the Bank of England has consented to its being made; or</p> <p>(b) that the Objective 1 Stage has ended.</p> <p>(2) The FSA is added to the list of those on whom an application under paragraph (1) must be served.</p>
4.1(10)	<i>Appointment of provisional liquidator</i>	<i>Rule 4.1 is not applied. Equivalent provision is made by Part VIII of Chapter 74 of Schedule 2 to the Act</i>

(10) Rule 4.1 was amended by paragraph 9 of Schedule 1(I) to [S.I. 1987/1921](#).

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<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
		<i>of Sederunt (Rules of the Court of Session 1994)1994(11).</i>
4.2(12)	<i>Order of Appointment</i>	<i>Rule 4.2 is not applied. Equivalent provision is made by Part 3 of these Rules.</i>
4.3	Caution	
4.4	Failure to find or to maintain caution	
4.5(13)	Remuneration	
4.6(14)	Termination of Appointment	An application for termination may be made by– the provisional special administrator, or the Bank of England only.
7.13A	Application under section 176A(5) to disapply section 176A	
7.13B	Notice of order under section 176A(5)	
7.14 to 7.20(15)	Proxies	In rule 7.20(1) ignore the reference to section 375 of the Companies Act and treat the reference to resolution as a reference to document. For rule 7.20(2), substitute– “The copy document must be signed or subscribed by or on behalf of the corporation in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995(16) or certified by the secretary or director of the corporation to be a true copy.”
7.21(17)	Giving of notices, etc.	
7.22(18)	Sending by post	Rule 7.22 applies subject to express provision about service made in these Rules.
7.23	Certificate of giving notice, etc.	
7.24	Validity of proceedings	

(11) S.I. 1994/1443. Part VIII of Chapter 74 was inserted by rule 3 of S.S.I. 2009/63.

(12) Rule 4.2 was amended by paragraph 141(5) of Schedule 2(II) to S.I. 1999/1820.

(13) Rule 4.5 was amended by paragraph 10 of Schedule 1(I) to S.I. 1987/1921.

(14) Rule 4.6 was amended by paragraph 11 of Schedule 1(I) to S.I. 1987/1921, and rule 13(b) of S.I. 2006/734.

(15) Rules 7.14 to 7.20 were amended by paragraphs 42 to 46 of Schedule 1(I) to S.I. 1987/1921.

(16) 1995 c.7.

(17) Rule 7.21 was amended by paragraph 47 of Schedule 1(I) to S.I. 1987/1921.

(18) Rule 7.22 was amended by paragraph 48 of Schedule 1(I) to S.I. 1987/1921.

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<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
7.25	Evidence of proceedings at meetings	
7.26(19)	Right to list of creditors and copy documents	<p>(1) The following have the right, at all reasonable times, to inspect documents in respect of special administration proceedings:—</p> <ul style="list-style-type: none"> (a) a person who is or was a director or officer of the society; (b) a member of the society; (c) any person stating himself in writing to be a creditor of the society; (d) any person stating himself in writing to be a contributory in respect of the society; (e) the Bank of England, and (f) the FSA; and (g) the FSCS. <p>(2) A right of inspection may be exercised on a person's behalf by anyone authorised by him in writing.</p> <p>(3) A right of inspection in terms of paragraph 1 is not exercisable in the case of documents, or parts of documents, as to which the court directs (either generally or specifically) that they are not to be made open to inspection without the court's leave; and an application for such leave may be made by—</p> <ul style="list-style-type: none"> (a) the special administrator(s) or provisional special administrator(s); or (b) any party appearing to the court to have an interest. <p>(4) References to “a creditor who has a right to inspect documents” in rule 7.26(2) shall include a reference to the persons listed in paragraph (1) above.</p>

(19) Rule 7.26 was amended by paragraph 49 of Schedule 1(I) to [S.I. 1987/1921](#), and regulation 28(2) of [S.I. 2003/2109](#).

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<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
7.27 (20)	Confidentiality of documents	In paragraph (1)(b) the reference to creditors includes a reference to shareholding members.
7.28	Insolvency practitioner's caution	
7.29 and Schedule 4 of the Insolvency Act 1986	Punishment of offences	
7.31 (21)	Fees, expenses, etc.	
7.32	Power of court to cure defects in procedure	
7.33 (22)	Sederunt book	
7.34 (23)	Disposal of society's books, papers and other records	
7.35 (24)	Information about time spent on a case-administration and voluntary arrangements	

(20) Rule 7.27 was amended by paragraph 50 of Schedule 1(I) to [S.I. 1987/1921](#).

(21) Rule 7.31 was amended by article 8 of [S.I. 2003/2108](#).

(22) Rule 7.33 was amended by paragraph 51 of Schedule 1(I) to [S.I. 1987/1921](#), and paragraph 10 of Schedule 2(1) to [S.I. 2003/2111](#).

(23) Rule 7.34 was amended by paragraph 52 of Schedule 1(I) to [S.I. 1987/1921](#), and rule 14 of [S.I. 2006/734](#).

(24) Rule 7.35 was inserted by rule 15 of [S.I. 2006/734](#).