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STATUTORY INSTRUMENTS

2009 No. 806 (S. 3)

BUILDING SOCIETIES, SCOTLAND

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

Made - - - - 3.07 p.m.. on 29th March 2009

Coming into force 4.00 p.m.. on 29th March 2009

Laid before Parliament - 30th March 2009

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

PART 1

Introduction

Citation

1. These Rules may be cited as the Building Society Special Administration (Scotland) Rules 2009.

Commencement

2. These Rules come into force at 4.00pm on 29th March 2009.

Extent

3. These Rules extend to Scotland only.

Interpretation

4.—(1) In these Rules—

- (a) “the 1986 Rules” means the Insolvency (Scotland) Rules 1986(b);
- (b) “the 2009 Order” means the Building Societies (Insolvency and Special Administration) Order 2009(c);
- (c) “the Banking Act” means the Banking Act 2009;
- (d) “the Building Societies Act” means the Building Societies Act 1986(d);
- (e) “building society” means a building society incorporated (or deemed to be incorporated) under the Building Societies Act;
- (f) “building society special administration”, “building society special administration order” and “building society special administrator” have the same meaning as in the Building Societies Act (see sections 90C(2) and 119(1) of that Act)(e);

(a) 1986 c.45. Subsections (1B) and (2D) were inserted by section 160 of the Banking Act 2009 c.1 and subsection (3A) was inserted by the Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805).

(b) S.I. 1986/1915. The Insolvency (Scotland) Rules have been amended by a number of instruments.

(c) S.I. 2009/ 805

(d) 1986 c.53.

(e) Those sections were amended by the Building Societies (Insolvency and Special Administration) Order 2009.

- (g) “contributory”, in relation to a building society—
 - (i) means every person liable to contribute to the assets of the society in the event of its being wound up, and
 - (ii) for the purposes of all proceedings for determining, and all proceedings prior to the determination of, the persons who are deemed to be contributories, includes any person alleged to be a contributory, and
 - (iii) includes persons who are liable to pay or contribute to the payment of any debt or liability of the building society, or any sum for the adjustment of rights of members among themselves, or the expenses of the winding up,
 but does not include persons liable to contribute by virtue of a declaration by the court under section 213 (responsibility for fraudulent trading) or 214 (wrongful trading) of the Insolvency Act;
- (h) “the Insolvency Act” means the Insolvency Act 1986;
- (i) “principal office” means—
 - (i) the place which is specified in a building society’s memorandum sent to the FSA under paragraph 1(1)(c) of Schedule 2 to the Building Societies Act as the address of its principal office, or
 - (ii) if notice has been given by a building society to the FSA under paragraph 11(2) of that Schedule (change of principal office), the place specified in that notice or, as the case may be, in the last such notice;
- (j) “registered name”, in relation to a building society, means the name of the society which is for the time being registered with the FSA;
- (k) “society”, “special administration”, “special administration order” and “special administrator” mean respectively building society, building society special administration, building society special administration order and building society special administrator;
- (l) the following expressions have the same meaning as in Part 1 or Part 3 of the Banking Act—
 - (i) “the court” (the Court of Session)— s. 166(1));
 - (ii) “the FSA” (the Financial Services Authority— s. 166(2));
 - (iii) “Objective 1” (support for commercial purchaser or bridge bank— s. 138(1));
 - (iv) “Objective 1 Achievement Notice” (s. 139(4));
 - (v) “Objective 2” (normal administration— s. 140(1));
 - (vi) “residual building society” (s. 136(2));
 - (vii) “resolution fund order” (s. 49(3));
- (m) any reference to Part 1 of the Banking Act (Special Resolution Regime), or to any provision in that Part, is a reference to that Part or provision as applied, with modifications, by section 84 of that Act;
- (n) any reference to Part 3 of the Banking Act (Bank Administration), or to any provision in that Part, is a reference to that Part or provision as applied and modified by section 90C of the Building Societies Act and by any order made under section 158 of the Banking Act.

(2) Other expressions used in these Rules, where used in relation to building societies, have the same meaning as in the Building Societies Act.

(3) Any notice or document sent electronically pursuant to these Rules shall be treated as having been sent or given to the person if—

- (a) it is sent by email to the person’s last known email address; and
- (b) the email contains a prompt asking the person for an electronic receipt saying that the email has been read.

5. In these Rules–

- (a) “the FSCS” means the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000^(a));
- (b) “the Objective 1 Stage” means the period during which a building society special administration order is in force before the Bank of England gives an Objective 1 Achievement Notice; and
- (c) “the Objective 2 Stage” means the period during which a building society special administration order is in force after the Bank of England gives an Objective 1 Achievement Notice.

Overview

6. The purpose of these Rules is to prescribe a procedure in Scotland for the appointment of a building society special administrator, and the operation of building society special administration, under Part 3 of the Banking Act.

Forms

7.—(1) This rule applies where a provision of these Rules–

- (a) applies a provision of the 1986 Rules which requires the use of a prescribed form; or
- (b) makes provision similar to that made by a provision of the 1986 Rules which requires the use of a prescribed form.

(2) The form prescribed for the purposes of the 1986 Rules is to be used, with any modification that the person using the form thinks desirable to reflect the nature of building society special administration.

PART 2

Application for Building Society Special Administration Order

Introduction

8. This Part makes specific provision for a number of aspects of applications for building society special administration orders. Part 4 applies a number of provisions of the 1986 Rules to applications for building society special administration orders (with specified modifications).

Content of application

9. An application by the Bank of England for a building society special administration order in respect of a building society must specify–

- (a) the registered name of the society;
- (b) any other trading names of the society;
- (c) the address of the society’s principal office;
- (d) an email address for the society;
- (e) the address of the Bank of England; and
- (f) the identity of the person (or persons) nominated for appointment as building society special administrator.

(a) 2000 c.8.

10. If the building society has notified the Bank of England of an address for service which is, because of special circumstances, to be used in place of the principal office, that address shall be specified under rule 9(c).

Statement of proposed building society special administrator

11. An application must be accompanied by a statement by each proposed building society special administrator–

- (a) specifying the name and address of the person proposed to be appointed;
- (b) giving that person’s consent to act;
- (c) giving details of that person’s qualification to act as an insolvency practitioner; and
- (d) giving details of any prior professional relationship that person (or any other proposed special administrator) has had with the building society.

Lodging

12. The application, and its accompanying documents, must be lodged with the court.

Notification

13. The Bank of England shall give notice of the application to–

- (a) the building society;
- (b) the FSA;
- (c) the person (or each of the persons) nominated for appointment as special administrator;
- (d) any person whom the Bank of England knows to be entitled to appoint a receiver of the whole (or substantially the whole) of the society’s property;
- (e) any person who has given notice to the FSA in respect of the society under section 90D of the Building Societies Act (notice to the Authority of preliminary steps)(a);
- (f) each transferee referred to in any property transfer instrument made or to be made under section 11(2)(b) of the Banking Act (transfer to commercial purchaser);
- (g) any enforcement officer or other officer whom the Bank of England knows to be charged with effecting an execution, any diligence or other legal process against the building society or its property; and
- (h) any person whom the Bank of England knows to have executed diligence against the society or its property.

14. Notice of the application must be given under rule 13 as soon as is reasonably practicable after lodging the application.

Notice of order

15. If the court makes a building society special administration order, it shall send four certified copies of it to the Bank of England.

16. The Bank of England shall as soon as is reasonably practicable send–

- (a) one certified copy to the building society special administrator;
- (b) one certified copy to the FSA; and
- (c) one certified copy to the FSCS.

(a) Section 90D was inserted by the Building Societies (Insolvency and Special Administration) Order 2009.

Expenses

17. If the court makes a building society special administration order, the following are payable as an expense of the special administration:—

- (a) the Bank of England's expenses of making the application and complying with the requirements of these Rules; and
- (b) any other expenses allowed by the court.

PART 3

Process of Building Society Special Administration

Introduction

18. This Part makes specific provision for a number of aspects of building society special administration. Part 4 applies a number of provisions of the 1986 Rules to special administration (with specified modifications).

Building society special administrator's proposals: Objective 1 Stage

19.—(1) This rule makes provision about the statement of proposals which the building society special administrator is required to make in the Objective 1 Stage under section 147 of the Banking Act.

(2) In addition to the information required by section 147 the statement must include—

- (a) details of the court where the proceedings are and the court reference number;
- (b) the registered name, any other trading names and the principal office of the building society;
- (c) details of the appointment of the special administrator (including the date);
- (d) in the case of joint special administrators, details of the apportionment of functions;
- (e) the names of the directors and secretary and chief executive of the society and details of any shares they hold in the society;
- (f) an account of the circumstances giving rise to the application for the appointment of the special administrator;
- (g) if a statement of the society's affairs has been submitted, a copy or summary of it with the comments of the special administrator, if any;
- (h) if an order limiting the disclosure of the statement of affairs has been made under rule 2.22 of the 1986 Rules (as applied by rule 38 below), a statement of that fact, as well as—
 - (i) details of who provided the statement of affairs;
 - (ii) the date of the order for limited disclosure; and
 - (iii) the details or a summary of the details that are not subject to that order;
- (i) if a full statement of affairs is not provided—
 - (i) the names, addresses and debts of the creditors including details of any security held (or, where the debt is a current account or a deposit account, a single statement of their aggregate debt); and
 - (ii) details of the shares issued by the society (including the types of shares issued and the number of each type in issue);
- (j) if no statement of affairs has been provided—

- (i) details of the financial position of the society at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the society entered special administration);
 - (ii) a list of the society's creditors including their names, addresses and details of their debts, including any security held (or, where the debt is a current account or a deposit account, a single statement of their aggregate debt);
 - (iii) details of the shares issued by the society (including the types of shares issued and the number of each type in issue; and
 - (iv) an explanation as to why there is no statement of affairs.
 - (k) the basis upon which it is proposed that the remuneration of the special administrator(s) should be fixed under rule 2.39 of the 1986 Rules^(a) (as applied by rule 38 below);
 - (l) how the special administrator proposes to pursue Objective 1;
 - (m) whether the special administrator proposes to pursue Objective 2(a) or Objective 2(b);
 - (n) if the special administrator proposes to pursue Objective 2(a), how it is envisaged the purpose of the special administration will be achieved in the Objective 2 Stage;
 - (o) if the special administrator proposes to pursue Objective 2(b)–
 - (i) how it is envisaged the purpose of the special administration will be achieved in the Objective 2 Stage; and
 - (ii) how it is proposed that the special administration shall end (winding-up or voluntary arrangement, in accordance with section 154 of the Banking Act^(b));
 - (p) the manner in which the affairs and business of the society have been managed and financed since the date of the appointment of the special administrator (including the reasons for and terms of any disposal of assets); and
 - (q) the manner in which the affairs and business of the society will be managed and financed if the proposals of the special administrator are approved.
- (3) The statement–
- (a) may exclude information, the disclosure of which could seriously prejudice the commercial interests of the society; and
 - (b) must include a statement of any exclusion.

Building society special administrator's proposals: Objective 2 Stage

20.—(1) This rule makes provision about the statement of proposals which the special administrator is required to make under paragraph 49 of Schedule B1 to the Insolvency Act^(c) as it applies during the Objective 2 Stage (in accordance with Table 1 in section 145 of the Banking Act).

- (2) The statement must include–
- (a) details of the court where the proceedings are and the court reference number;
 - (b) the registered name, any other trading names, and the principal office of the society;
 - (c) details of the appointment of the special administrator (including the date);
 - (d) in the case of joint special administrators, details of the apportionment of functions;
 - (e) the names of the directors and secretary and chief executive of the society and details of any shares they hold in the society;
 - (f) an account of the circumstances giving rise to the application for the appointment of the special administrator;

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

(b) The Building Societies (Insolvency and Special Administration) Order 2009 modifies the application of section 154.

(c) Paragraph 49 of Schedule B1 was amended by paragraph 100(a) of Schedule 1(2) to S.I. 2008/948.

- (g) if a statement of the society's affairs has been submitted, a copy or summary of it with the comments of the special administrator, if any;
- (h) if an order limiting the disclosure of the statement of affairs has been made under rule 2.22 of the 1986 Rules (as applied by rule 38 below), a statement of that fact, as well as—
 - (i) details of who provided the statement of affairs;
 - (ii) the date of the order for limited disclosure; and
 - (iii) the details or a summary of the details that are not subject to that order;
- (i) if a full statement of affairs is not provided—
 - (i) the names, addresses and debts of the creditors including details of any security held (or, where the debt is a current account or a deposit account, a single statement of their aggregate debt);
 - (ii) details of the shares issued by the society (including the types of shares issued and the number of each type in issue);
- (j) if no statement of affairs has been provided—
 - (i) details of the financial position of the society at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the society entered special administration);
 - (ii) a list of the society's creditors including their names, addresses and details of their debts, including any security held (or, where the debt is a current account or a deposit account, a single statement of their aggregate debt);
 - (iii) details of the shares issued by the society (including the types of shares issued and the number of each type in issue; and
 - (iv) an explanation as to why there is no statement of affairs.
- (k) the basis upon which it is proposed that the remuneration of the special administrator should be fixed under rule 2.39 of the 1986 Rules (as applied by rule 38 below);
- (l) details of whether (and why) the special administrator proposes to apply to the court under section 176A(5) of the Insolvency Act^(a) (omission of distribution to unsecured creditors: as applied by Table 2 in section 145 of the Banking Act)(unless the special administrator intends to propose a voluntary arrangement);
- (m) an estimate of the value of the prescribed part for the purposes of section 176A of the Insolvency Act (unless the special administrator intends to propose a voluntary arrangement) certified as being made to the best of the special administrator's knowledge and belief;
- (n) an estimate of the value of the society's net property (unless the special administrator intends to propose a voluntary arrangement) certified as being made to the best of the special administrator's knowledge and belief;
- (o) whether the special administrator proposes to pursue Objective 2(a) or Objective 2(b);
- (p) if the special administrator proposes to pursue Objective 2(a), how it is envisaged the purpose of the special administration will be achieved;
- (q) if the special administrator proposes to pursue Objective 2(b)—
 - (i) how it is envisaged the purpose of the special administration will be achieved; and
 - (ii) how it is proposed that the special administration shall end (winding-up or voluntary arrangement, in accordance with section 154 of the Banking Act);
- (r) if the special administrator has decided not to call a meeting of creditors, the reasons for that decision;

(a) Section 176A was inserted by section 252 of the Enterprise Act 2002 (c.40).

- (s) the manner in which the affairs and business of the society have been managed and financed since the date of the appointment of the special administrator (including the reasons for and terms of any disposal of assets);
 - (t) the manner in which the affairs and business of the society will be managed and financed if the proposals of the special administrator are approved; and
 - (u) any other information which the special administrator thinks necessary to enable creditors to decide whether or not to vote for the approval of the proposals.
- (3) In the case of special administration following transfer to a bridge bank under section 12(2) of the Banking Act—
- (a) the statement under paragraph 49 of Schedule B1 must state whether any payment is to be made to the society from a scheme under a resolution fund order; or
 - (b) if that information is unavailable when the statement under paragraph 49 of Schedule B1 is made, the special administrator must issue a supplemental statement as soon as reasonably practicable after the information becomes available.
- (4) The statement—
- (a) may exclude information, the disclosure of which could seriously prejudice the commercial interests of the society; and
 - (b) must include a statement of any exclusion.

21. If the special administrator thinks that the statement made under section 147 of the Banking Act in accordance with rule 19 contains information required by rule 20(2), the statement under paragraph 49 of Schedule B1 to the Insolvency Act (as applied by Table 1 in section 145 of the Banking Act) may consist of the statement under section 147, with such additions, modifications and supplemental information as the special administrator thinks necessary—

- (a) to comply with rule 20(2); and
- (b) to bring the statement under section 147 up to date.

22. Where the court orders an extension of the period of time under paragraph 49(5) of Schedule B1 on an application by the special administrator under paragraph 107 (as applied by Table 1 in section 145 of the Banking Act), the special administrator must notify the persons set out in paragraph 49(4) as soon as is reasonably practicable after the making of the order.

23. Where the special administrator has made a statement under paragraph 52(1) of Schedule B1 to the Insolvency Act (as applied by Table 1 in section 145 of the Banking Act) and has not called an initial meeting of creditors, the proposals issued in accordance with rule 20 above will be deemed to have been approved by the creditors (if no meeting has been requisitioned under paragraph 52(2) within the period set out in rule 7.6 of the 1986 Rules^(a) – as applied by rule 38 below).

24. Where the special administrator intends to apply to the court (or file or lodge a notice under paragraph 80(2) of Schedule B1 to the Insolvency Act in accordance with section 153 of the Banking Act) for the special administration to cease before the statement of proposals is sent to creditors in accordance with paragraph 49 of Schedule B1 to the Insolvency Act, the special administrator(s) must, at least 10 days before making the application (or filing or lodging the notice), send to all known creditors of the society a report containing the information required by rule 20(2).

25.—(1) Any special administrator who wishes to publish a notice under paragraph 49(6) of Schedule B1 to the Insolvency Act must publish the notice once in a newspaper which the special administrator thinks most appropriate for ensuring that the notice comes to the attention of the society's members.

- (2) The notice must—

(a) Rule 7.6 was amended by paragraph 38 of Schedule 1(I) to S.I. 1987/1921 and paragraph 8 of Schedule 2(1) to S.I. 2003/2111.

- (a) state the registered name of the society;
- (b) state the full name and address of each special administrator of the society;
- (c) give details of the appointment of the special administrator; and
- (d) specify an address to which members can write for a copy of the statement of proposals.

(3) The notice must be published as soon as is reasonably practicable after the special administrator sends the statement of proposals to the society's creditors but no later than 8 weeks (or such other period as may be agreed by the creditors or as the court may order) from the date that the society entered special administration.

Reports to creditors

26.—(1) “A progress report” means a report which includes—

- (a) details of the court where the proceedings are and the relevant court reference number;
- (b) full details of the society's registered name and principal office ;
- (c) full details of the name and address and date of appointment of the special administrator, including any changes in office-holder;
- (d) in the case of joint special administrators, details of the apportionment of functions;
- (e) details of any extensions of the initial period of appointment;
- (f) details of progress during the period of the report, including a receipts and payments account (as detailed in paragraph (2) below);
- (g) details of any assets that remain to be realised;
- (h) details of any amounts received from a scheme under a resolution fund order; and
- (i) any other information likely to be relevant to the creditors.

(2) A receipts and payments account must state what assets of the society have been realised, for what value, and what payments have been made to creditors or others.

(3) The account must be in the form of an abstract showing receipts and payments during the period of the report; and where the special administrator has ceased to act, the receipts and payments account shall include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A of the Insolvency Act (prescribed part).

(4) During the Objective 1 Stage, a progress report must include details of—

- (a) the extent of the business of the society that has been transferred;
- (b) any property, rights or liabilities that have been transferred, or which the special administrator expects to be transferred, under a power in Part 1 of the Banking Act (special resolution regime);
- (c) any requirements imposed on the residual society, for the purpose of the pursuit of Objective 1, under a power under that Part; and
- (d) the arrangements for managing and financing the society during the Objective 1 Stage.

(5) In complying with paragraph (4)(c) and (d) a report—

- (a) may exclude information, the disclosure of which could seriously prejudice the commercial interests of the society; and
- (b) must include a statement of any exclusion.

27. A progress report must be produced for—

- (a) the first period of 6 months of the special administration;
- (b) every subsequent period of 6 months; and
- (c) when the special administrator ceases to act, the period from the date of the previous report (or, if there was none, from the beginning of the special administration) until the administrator ceases to act.

28.—(1) The special administrator must send a copy of each progress report within 28 days of the end of the period covered by that report, to—

- (a) the creditors and shareholding members of the society;
- (b) the court;
- (c) the Bank of England;
- (d) the FSA; and
- (e) the FSCS.

(2) Instead of complying with paragraph (1)(a) the special administrator may publish the progress report on its internet website (and take appropriate steps to draw attention to it).

(3) The court may, on the application of the special administrator—

- (a) extend the period specified in paragraph (1) above;
- (b) make any other order about the content of a progress report.

29.—(1) A special administrator who fails to comply with rule 27 or 28 is liable to a fine and, for continued contravention, to a daily default fine.

(2) For that purpose, failure to comply with rule 27 or 28 shall be treated in the same way as failure to comply with rule 2.38 of the 1986 Rules.

Removal of special administrator in Objective 1 Stage

30.—(1) With regard to any application for removal of a special administrator made 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 1986 Act in Table 1 in section 145 of the Banking Act), the rules for service of notice of the application shall be as for the application to appoint a special administrator under Part 2 of these Rules.

(2) Both the person proposed to be appointed as a replacement and the existing special administrator are entitled to a copy of the application and to be heard at any hearing fixed by the court.

Appointment of provisional special administrator

31. If the court makes an order appointing one or more provisional special administrators the court shall—

- (a) notify the Bank of England;
- (b) send a copy of the order to the person appointed (by email if possible); and
- (c) send a copy of the order to any administrative receiver of the building society.

32.—(1) As soon as is reasonably practicable after appointment any provisional special administrator must give notice of the order of appointment to—

- (a) the society; and
- (b) the FSA (in Form 4.9(Scot), with such variations, if any, as the circumstances may require).

(2) Notice to the society under paragraph (1)(a) must be given by effecting service to its principal office.

33. The Bank of England may disclose the fact and terms of an order appointing any provisional special administrator to any person whom the Bank of England thinks has a sufficient business interest.

Additional joint special administrator

34.—(1) The process for the appointment of an additional joint special administrator is the same as for the initial appointment of a special administrator.

(2) The existing special administrator (or each of them) is entitled to a copy of the application and may—

- (a) lodge written answers; and
- (b) be heard at any hearing fixed by the court.

(3) An application for the appointment of an additional joint special administrator may be made during the Objective 1 Stage only by the Bank of England.

(4) Rule 38 below applies rules 2.19 and 2.55 of the 1986 Rules.

End of administration: successful rescue

35.—(1) This rule supplements section 153 of the Banking Act (end of special administration where special administrator satisfied that Objective 2(a) has been achieved).

(2) The notice of the special administrator under paragraph 80 of Schedule B1 to the Insolvency Act (as applied by section 153 of the Banking Act)(a)—

- (a) must be lodged with the court in Form 2.23B (subject to rule 7(2) above); and
- (b) must be accompanied by a final progress report.

(3) The notice takes effect when the court discharges the special administration order on the application of the special administrator.

(4) Before applying for discharge the special administrator must send a copy of the notice under paragraph 80 of Schedule B1 to the Insolvency Act and the progress report to—

- (a) the Bank of England;
- (b) the FSA; and
- (c) the FSCS.

(5) Notice under paragraph (4)(b) and (c) above must be given at least 7 days' before the hearing of the application for approval of the notice.

(6) The special administrator shall be taken to have complied with the requirements of paragraph 80(5) of Schedule B1 to the Insolvency Act if, within 5 business days of lodging the notice under paragraph 80 of Schedule B1 to the Insolvency Act with the court, the special administrator publishes once in the same newspaper in which the special administrator's notice of appointment was published, and once in the Edinburgh Gazette, a notice specifying—

- (a) the registered name of the building society and any other trading names;
- (b) the name and address of the special administrator;
- (c) the date of the notice under paragraph 80 of Schedule B1 to the Insolvency Act; and
- (d) an address to which creditors and shareholding members of the society can write for a copy of the notice under paragraph 80 of Schedule B1 to the Insolvency Act and the final progress report.

(7) The application of the special administrator for discharge must certify compliance with the requirements of paragraph 80 of Schedule B1 to the Insolvency Act and of the preceding paragraphs of this rule.

(8) If the court is satisfied that the conditions in section 153(1) of the Banking Act have been met it shall—

- (a) discharge the special administration order; and
- (b) notify the special administrator who shall notify the FSA.

(a) The Building Societies (Insolvency and Special Administration) Order 2009 modifies the application of paragraph 80 of Schedule B1.

End of administration: dissolution

36.—(1) This rule supplements section 154(2)(a) of the Banking Act (special administrator giving notice that there are no more assets for distribution, and moving to dissolution)(a).

(2) The notice of the special administrator under paragraph 30 of Schedule 1 to the 2009 Order—

- (a) must be lodged with the court in Form 2.26B (subject to rule 7(2) above); and
- (b) must be accompanied by a final progress report.

(3) The notice shall not take effect until the court discharges the special administration order on the application of the special administrator.

(4) Before applying for discharge the special administrator must send a copy of the notice referred to in paragraph (2) and the final progress report to—

- (a) the FSA; and
- (b) each person who received notice of the appointment of the special administrator.

(5) After the expiry of the period mentioned in paragraph 30(7) of Schedule 1 to the 2009 Order (and subject to extension under paragraph 30(8) of that Schedule) if the court discharges the special administration order—

- (a) the notice takes effect as specified in paragraph 30(7) of that Schedule; and
- (b) the court shall notify the special administrator, who shall notify the FSA.

(6) If the court makes an order under paragraph 30(8) of Schedule 1 to the 2009 Order it shall notify the special administrator in Form 2.27 (subject to rule 7(2) above), who shall notify the FSA.

37. Proceedings under sections 213 and 214 of the Insolvency Act (fraudulent and wrongful trading) shall be conducted in accordance with section 215 of that Act subject to the modifications specified in section 145 of the Banking Act.

PART 4

Application of Insolvency (Scotland) Rules 1986

General application

38. The provisions of the 1986 Rules listed in the Table in rule 42 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;

(a) The Building Societies (Insolvency and Special Administration) Order 2009 modifies the application of section 154.

- (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;
- (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(a)	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;

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

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
		(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(a)	<i>Administrator's proposals</i>	<i>Rule 2.25 is not applied. Equivalent provision is made in Part 3 of these Rules.</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	

(a) Rule 2.25 was amended by rule 6 of S.I. 2006/734.

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
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)	<p><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></p> <p>In the application of paragraph (2) of rule 3.8—</p> <p>(a) notice of the application must be given to the FSA and the FSCS; and</p> <p>(b) the FSA and the FSCS may appear and be heard.</p>
2.37	Disposal of secured property, etc.	<p>If an application is made during the Objective 1 Stage, then in addition to the requirements of rule 2.37—</p> <p>(a) the special administrator must notify the Bank of England of the time and place of the hearing;</p> <p>(b) the Bank of England may appear; and</p> <p>(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.</p>
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(a)	Determination of outlays and remuneration	<p>(1) In the Objective 1 Stage the Bank of England shall fix the special administrators' remuneration in accordance with rule 2.39(4).</p> <p>(2) In the Objective 2 Stage, rule 2.39 shall apply (but pending</p>

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

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
		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(a)	Appeal against fixing of remuneration	<p>(1) In respect of remuneration fixed by the Bank of England–</p> <p>(a) Rule 2.39A applies as if references to the creditors’ committee and creditors were references to the Bank of England; and</p> <p>(b) the court shall have regard to Objective 1.</p> <p>(2) In respect of any application under rule 2.39A–</p> <p>(a) notice of the application must be given to the FSA; and</p> <p>(b) the FSA may appear and be heard.</p> <p>Rule 2.39A (5), (6) and (7) applies only during the Objective 2 Stage.</p>
2.39B(b)	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> <p>(a) the cost of any security provided by the provisional special administrator takes priority equally with security provided by the special administrator;</p> <p>(b) the remuneration of the provisional special administrator ranks next; and</p> <p>(c) any deposit lodged on an application for the appointment of a provisional special administrator ranks next.</p>
2.40	Distributions to creditors	<i>(Distributions in the case of special</i>

- (a) Rule 2.39A was amended by rule 8(1) of S.I. 2006/734.
(b) Rule 2.39B was inserted by rule 5 of S.I. 2008/662.

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
		<p><i>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(a.)</i></p> <p>References to creditors include references to shareholding members.</p>
2.41(b)	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> <p>(1) Except in paragraphs (2)(a) and (4)(c), references to creditors include references to shareholding members.</p> <p>(2) In respect of an application under s.49(6) of the Bankruptcy (Scotland) Act 1985(c) (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>

- (a) The Building Societies (Insolvency and Special Administration) Order 2009 modifies the application of paragraph 65.
(b) Rule 2.41 was amended by rule 9(1) of S.I. 2006/734, and rule 6 of S.I. 2008/662.
(c) 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).

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
		<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> <p>(b) the FSCS; and</p> <p>(c) the Bank of England; in a case where it consented to a distribution under these Rules.</p>
2.41A	Payments of Dividends	<p><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></p> <p>References to creditors include references to shareholding members.</p>
2.42	Final progress report	<p>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–</p> <p>(1) must not be made until the special administrator is satisfied that any payment to be made to the</p>

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
		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)(a).
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 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	Rule 2.53 is applied during the Objective 2 Stage only (and ignoring references to paragraph 95 of Schedule B1). <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>

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

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
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(a)	<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 of Sederunt (Rules of the Court of Session 1994)1994(b).</i>
4.2(c)	<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	Cautions	
4.4	Failure to find or to maintain caution	
4.5(d)	Remuneration	
4.6(e)	Termination of Appointment	An application for termination may be made by– the provisional special administrator, or the Bank of England only.

- (a) Rule 4.1 was amended by paragraph 9 of Schedule 1(I) to S.I. 1987/1921.
(b) S.I. 1994/1443. Part VIII of Chapter 74 was inserted by rule 3 of S.S.I. 2009/63.
(c) Rule 4.2 was amended by paragraph 141(5) of Schedule 2(II) to S.I. 1999/1820.
(d) Rule 4.5 was amended by paragraph 10 of Schedule 1(I) to S.I. 1987/1921.
(e) 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.

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
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(a)	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(b) or certified by the secretary or director of the corporation to be a true copy.”
7.21(c)	Giving of notices, etc.	
7.22(d)	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	
7.25	Evidence of proceedings at meetings	
7.26(e)	Right to list of creditors and copy documents	(1) The following have the right, at all reasonable times, to inspect documents in respect of special administration proceedings:– (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

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

(b) 1995 c.7.

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

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

(e) 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.

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
		<p>writing to be a contributory in respect of the society;</p> <p>(e) the Bank of England, and</p> <p>(f) the FSA; and</p> <p>(g) the FSCS.</p> <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> <p>(a) the special administrator(s) or provisional special administrator(s); or</p> <p>(b) any party appearing to the court to have an interest.</p> <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>
7.27(a)	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(b)	Fees, expenses, etc.	
7.32	Power of court to cure defects in	

- (a) Rule 7.27 was amended by paragraph 50 of Schedule 1(I) to S.I. 1987/1921.
(b) Rule 7.31 was amended by article 8 of S.I. 2003/2108.

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
	procedure	
7.33(a)	Sederunt book	
7.34(b)	Disposal of society's books, papers and other records	
7.35(c)	Information about time spent on a case-administration and voluntary arrangements	

29th March 2009

Bob Blizzard
Alistair Darling

Two of the Lords Commissioners of Her Majesty's Treasury

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- (a) 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.
- (b) 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.
- (c) Rule 7.35 was inserted by rule 15 of S.I. 2006/734.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules set out the procedure for the building society special administration process under Part 3 of the Banking Act 2009 (c.1) (“the Banking Act”) in Scotland. Part 3 of the Banking Act is applied in relation to building societies by section 90C of the Building Societies Act 1986 (c.53) and by the Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805

The main features of building society special administration are that:

- (a) it is used where part of the business of a building society is sold to a commercial purchaser or transferred to a bridge bank in accordance with section 12 of the Banking Act;
- (b) the court appoints a building society special administrator on the application of the Bank of England;
- (c) the special administrator ensures that the non-sold or non-transferred part of the building society provides services or facilities to enable the commercial purchaser or bridge bank to operate effectively;
- (d) the special administrator has two objectives (Objective 1 – supporting the private purchaser or bridge bank; and Objective 2 – normal administration); and
- (e) in other respects the process is the same as for administration under Schedule B1 to the Insolvency Act 1986, subject to specified modifications.

Part 2 of the Rules sets out special provisions about applications for building society special administration.

Part 3 of the Rules sets out special provisions about the building society special administration process.

Part 4 of the Rules applies specified provisions of the Insolvency (Scotland) Rules 1986 for general purposes in connection with building society special administration, subject to a number of general and specific modifications.

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Corrected reprint

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This Statutory Instrument has been printed in substitution of the SI of the same number and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2009 No. 806 (S. 3)

BUILDING SOCIETIES, SCOTLAND

The Building Society Special Administration (Scotland)
Rules 2009

£5.50

