

EXPLANATORY MEMORANDUM TO
THE BUILDING SOCIETY SPECIAL ADMINISTRATION (SCOTLAND) RULES
2009

2009 No. 806 (S.3)

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Purpose of the instrument**
 - 2.1 The instrument introduces rules for the building society special administration procedure set out in Part 3 of the Banking Act 2009 (“the Act”) as applied by the Building Societies (Insolvency and Special Administration) Order 2009 (“the Order”).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 Because of the unique circumstances surrounding the instrument, it has not in this case been possible to comply with the 21-day rule and the instrument came into force on 29th March 2009.
 - 3.2 The Act replaces the powers to resolve failing banks conferred by the Banking (Special Provisions) Act 2008. The operative provisions of that Act cease to be exercisable on 21 February 2009. The Banking Act 2009 received Royal Assent on 12 February 2009. These Rules have been made without complying with the 21 day rule as the Treasury consider it necessary to have Part 3 of the Banking Act, including appropriate Rules, implemented for building societies so that building society special administration is available in relation to the Dunfermline Building Society.
 - 3.3 The instrument is the first use of the powers of the Treasury under section 411 (1B)(b), (2), (2D), (3) and (3A) of the Insolvency Act 1986, as amended by section 160 of the Act and by the Order, to make building society special administration rules in relation to Scotland.
4. **Legislative Context**
 - 4.2 Part 3 of the Act as applied to building societies provides that where the Bank of England has made or intends to effect a partial sale or transfer to a commercial purchaser or bridge bank, the residual building society may be put into building society special administration (“special administration”).
 - 4.3 The special administration procedure is based, with modifications where appropriate, on the provisions of administration set out in Schedule B1 to the Insolvency Act 1986.

- 4.4 These Rules give effect to that procedure and are based, with necessary modifications, on the rules set out in Parts 2 and 7 of the Insolvency (Scotland) Rules 1986.
- 4.5 These Rules are similar in structure and content to the Bank Administration (Scotland) Rules 2009 (S.I. 2009/350). However there are a number of differences which reflect the different legislative regime that applies to building societies.
- 4.6 The Act of Sederunt (Rules of the Court of Session Amendment No. 6) (Building Society Special Administration etc.) 2009 was also made on 29th March 2009, amending the rules of the Court of Session in connection with special administration in Scotland.

5. Territorial Extent and Application

- 5.1 This instrument extends to Scotland.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 Part 3 of the Act as applied to building societies provides that where the Bank of England makes, or intends to make, a partial sale or transfer to a commercial purchaser or bridge bank under the powers in Part 1 of that Act, the residual building society may be placed into special administration. That process is based on the procedure of administration set out in Schedule B1 to the Insolvency Act 1986. The Order applies Part 3 of the Act to building societies.
- 7.2 These Rules, like the Bank Administration (Scotland) Rules 2009, are based on the rules for administration set out in Part 2 of the Insolvency (Scotland) Rules 1986, and many of the existing rules for the process of administration have been applied with little or no modification.
- 7.3 New rules and modifications to existing rules have been introduced in order to facilitate the achievement of the unique objectives of the special administration procedure and to reflect the role of the Bank of England in exercising a partial transfer.
- 7.4 In keeping with ordinary administration, only an insolvency practitioner may be appointed as building society special administrator.
- 7.5 The objectives of a building society special administrator are to provide support services or facilities to a commercial purchaser or bridge bank and to administer the company in such a way to achieve the best result for creditors and shareholding members.

- 7.6 Because of its role within the Special Resolution Regime set out in Part 1 of the Act, only the Bank of England may apply to the court for a building society administration special order and the rules provide for a hearing to be held quickly. This will be essential to help ensure successful resolution through a partial transfer to a commercial purchaser or bridge bank. The rules also add detail to the appointment of a provisional building society special administrator in any period between the submission of an application for a building society special administration order and the court hearing for the making of such an order.
- 7.7 In order to facilitate the achievement of objective 1 of the building society special administration procedure, the Bank of England will have an important role to play in the process and will be responsible for agreeing the administrator's proposals. The Bank of England will also fulfil the sort of functions usually carried out by a creditors' committee.
- 7.8 Once there is no requirement for the residual society to continue providing services or facilities to a commercial purchaser or a bridge bank, the process will continue in much the same way as an ordinary administration under Schedule B1 to the Insolvency Act 1986, with appropriate modifications for building societies.

8. Consultation outcome

- 8.1 Due to the need to implement this instrument promptly in connection with the resolution of the Dunfermline Building Society, no public consultation was carried out.

9. Guidance

- 9.1 No guidance is being issued on the instrument since it is largely based on existing insolvency rules and practice which will be familiar to insolvency practitioners and their advisers.

10. Impact

- 10.1 The special administration procedure set out in Part 3 of the Act and the Order may only be instituted in connection with the powers to effect a partial transfer of a building society's business to a bridge bank or private sector purchaser. The definition of a building society is given in section 84 of the Act and the procedure to which these rules give effect could not be used in relation to other businesses, charities or voluntary bodies.
- 10.2 The Bank of England will have an important role to play in effecting a partial transfer and the operation of a bridge bank. Part 3 of the Act and these Rules have been developed in consultation with the Bank of England and the Financial Services Authority.
- 10.4 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1. The special administration procedure may only be used in relation to a partial transfer of a building society's business to a bridge bank or private sector purchaser. No impact on small business is therefore anticipated.

12. Monitoring & review

12.1 Building society special administration can only be used in relation to a partial transfer. Partial transfers are one of the special resolution regime tools introduced by Part 1 of the Act, and the Banking Liaison Panel created in accordance with section 10 of the Act will monitor the impact of this new regime.

13. Contact

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