

**2010 No. 2578 (S. 5)**

**BANKS AND BANKING, SCOTLAND**  
**INSOLVENCY, SCOTLAND**

**The Bank Administration (Scotland) (Amendment) Rules 2010**

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

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

**Citation and commencement**

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

**Amendments to the Bank Administration (Scotland) Rules 2009**

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

3. In rule 4(1)—

- (a) in the introductory words, omit the text in brackets; and
- (b) at the end of sub-paragraph (m), insert “as they have effect as at 1st October 2009 (c)”.

4. In rule 5—

- (a) at the end of paragraph (b) omit “and”;
- (b) at the end of paragraph (c) omit the full stop; and
- (c) after paragraph (c) insert—
  - “(d) “eligible depositor” has the meaning given by section 93(3) of the 2009 Act;
  - (e) “FSA Rules” means the FSA’s Compensation Sourcebook, as amended from time to time, made under section 213 of the Financial Services and Markets Act 2000(d);
  - (f) “protected deposit” means a protected deposit within the meaning given in the FSA Rules”; and

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(a) 1986 c. 45; subsections (1B) and (2D) of section 411 were inserted by section 160 of the Banking Act 2009 (c.1).  
(b) S.I. 2009/350.  
(c) The Insolvency (Scotland) Rules 1986 (S.I. 1986/1915) were amended by S.I. 2009/2375 (S.11) which came into force on 1st October 2009.  
(d) 2000 c.8.

(g) “purpose of bank administration” is a reference to the objectives of bank administration in section 137 of the 2009 Act;”.

5. After rule 22, insert—

“**22A.** Where the statement of proposals is sent to creditors, in accordance with paragraph 49(4)(b) of Schedule B1 to the 1986 Act (as applied by Table 1 in section 145(6) of the 2009 Act), it must be sent to the FSA and the FSCS at the same time.”.

6. In rule 25, omit “(or file or lodge a notice under paragraph 80(2) of Schedule B1 to the 1986 Act in accordance with section 153 of the 2009 Act)” and “(or filing or lodging the notice)”.

7. In rule 27(4)(c), for “that Part” substitute “Part 1”.

8. At the end of rule 29(2) insert “and send a copy of it to any creditor on request”.

9. For rule 32 substitute—

“If the court makes an order appointing one or more provisional bank administrator, as soon as reasonably practicable, the court shall send a copy of the order to each of the persons appointed (and one additional copy by email if possible).”

10. In rule 33—

(a) at the end of the introductory words in paragraph (1) insert “to”;

(b) after paragraph (1)(a) insert—

“(aa) any administrative receiver of the bank”;

(c) at the end of paragraph (1)(b) omit “and”; and

(d) after paragraph (1)(b) insert—

“(ba) the FSCS, and”.

11. After rule 35, insert—

**“Rights of eligible depositor and set-off**

**35A.**—(1) This rule applies if—

(a) FSA Rules allow the FSCS to make gross payments of compensation in respect of protected deposits; and

(b) all or part of a creditor’s claim against the bank is in respect of protected deposits.

(2) In determining the sums due from the bank to an eligible depositor or from the eligible depositor to the bank for the purpose of any right or claim of set-off available to the bank against the eligible depositor—

(a) where the total of the sums held by the bank for any eligible depositor in respect of protected deposits is no more than the amount prescribed as the maximum compensation payable in respect of protected deposits under Part 15 of the Financial Services and Markets Act 2000(a) (“the limit”), paragraph (3) applies; and

(b) where the sums held by the bank exceed the limit, then paragraph (4) applies.

(3) Where this paragraph applies, regardless of whether there are any sums due from the eligible depositor to the bank, the bank shall not be entitled to exercise or claim any right of set-off available to it against or in respect of those sums held by the bank for the eligible depositor in respect of the protected deposits; and the sum due to the eligible depositor from the bank will be the total of the sums held by the bank for that eligible depositor in respect

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(a) 2000 c.8.

of the protected deposits which sum shall be deemed free from any right or claim of set off by the bank.

(4) Where this paragraph applies—

- (a) the bank shall be entitled to exercise any right or claim of set-off available to it only in respect of any sums held by the bank for that eligible depositor in excess of the limit, which sums shall be subject to any right or claim of set-off available to the bank; and
- (b) the sums due from the bank to the eligible depositor in respect of protected deposits will be—
  - (i) the amount by which that total exceeds the limit, subject to any right or claim of set-off available to the bank; and
  - (ii) the sums held by the bank for the eligible depositor in respect of protected deposits up to the limit.

(5) Any arrangements with regard to set-off between the bank and the eligible depositor in existence before commencement of the bank administration shall be subject to this rule in so far as they relate to protected deposits.”

**12.** In rule 36—

(a) for paragraph (2), substitute—

“(2) The bank administrator’s application under paragraph 79 of Schedule B1 to the 1986 Act (as applied by section 153 of the Banking Act 2009<sup>(a)</sup>) (“the application”) shall have attached to it a progress report for the period from the date of the previous report (or, if there was none, from the beginning of the bank administration) and a statement indicating what the bank administrator thinks should be the next steps for the bank.”;

(b) omit paragraph (3);

(c) for paragraph (4), substitute—

“(4) Before making the application, the bank administrator must send a copy of the application and the progress report to—

- (a) the Bank of England,
- (b) the FSA,
- (c) the FSCS, and
- (d) the registrar of companies.”;

(d) in paragraph (5)—

- (i) for “Notice under paragraphs (4)(b) and (c) must be given” substitute “Copies under paragraphs (4)(b) and (c) must be sent”; and
- (ii) omit “for approval of the notice”;

(e) for paragraph (6), substitute—

“(6) Within 5 business days of lodging the application with the court, the bank administrator must advertise once in the Edinburgh Gazette a notice undertaking to provide a copy of the application to any creditor of the bank. This notice may also be published in such other manner as the bank administrator thinks fit.”; and

(f) for paragraph (7), substitute—

“(7) The application must certify compliance with the preceding paragraphs of this rule.”.

**13.** In the table in rule 42,—

- (a) in the entry for rule 2.19, omit the words in the third column;
- (b) omit the entry for rule 2.45;

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<sup>(a)</sup> Section 153 of the 2009 Act is amended by section 21(7) of the Financial Services Act 2010.

- (c) in the entry for rule 2.46, for the words in the third column, substitute “Rule 2.46 is not applied – but equivalent provision is made by Part 3 of these Rules.”; and
- (d) after the entry for rule 4.6, insert the following row—

<i>Rule</i>	<i>Subject</i>	<i>Specific Modification</i>
7.7	Quorum	In paragraph (2) for “section 375 of the Companies Act 1985” substitute “section 323 of the Companies Act 2006(a)”.

- (e) in the entry for rule 7.20, for the first paragraph in the third column, substitute “In rule 7.20(1) for the words from “section” to “chairman” substitute “section 323 of the Companies Act 2006 to represent a corporation at a meeting of contributories, that person shall produce to the chair”.

21st October 2010

*James Duddridge*  
*Michael Fabricant*  
Two of the Lords Commissioners of Her Majesty’s Treasury

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(a) 2006 c.46.

## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules amend the Bank Administration (Scotland) Rules 2009 (S.I. 2009/350) (the “Rules”) as follows—

- (f) in rule 3, to provide that references to the Insolvency (Scotland) Rules 1986 (S.I. 1986/1915) (“the 1986 Rules”) are to the 1986 Rules as amended as at 1st October 2009. The 1986 Rules were amended by the Insolvency (Scotland) Amendment (No. 2 ) Rules 2009 (S.I. 2009/2375) with effect from that date;
- (g) in rule 5, to provide that the statement of proposals, should be sent to the Financial Services Authority and Scheme Manager of the Financial Services Compensation Scheme at the same time as it is sent to creditors;
- (h) in rule 11, to provide for set-off of protected deposits in relation to the Financial Services Compensation Scheme;
- (i) in rules 6 and 12 to reflect the substitution of paragraph 79 for paragraph 80 in section 145 of the Banking Act 2009 and the corresponding amendment to section 153 of that Act in consequence of the Financial Services Act 2010, section 21(6) and (7); and
- (j) to make other minor amendments to the Rules.

An Impact Assessment on the effect of the amendments to the Bank Administration (Scotland) Rules (S.I. 2009/350) has been prepared and maybe obtained from the Financial Regulatory Strategy Team, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ. It is also available on HM Treasury’s website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).

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STATUTORY INSTRUMENTS

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