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STATUTORY INSTRUMENTS

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**2010 No. 2580**

The Building Society Special Administration  
(England and Wales) Rules 2010

PART 3

Process of Building Society Special Administration

**Introduction**

**27.** This Part makes specific provision for a number of aspects of building society special administration; Part 5 applies a number of provisions of the Insolvency Rules 1986 to building society special administration (with specified modifications).

**Building society special administrator's proposals: Objective 1 Stage**

**28.**—(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 2009.

- (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 address of the principal office of the building society,
  - (c) details of the special administrator's appointment (including the date),
  - (d) in the case of joint special administrators, details of the apportionment of functions,
  - (e) the names of the directors, 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 special administrator's comments, if any,
  - (h) if an order limiting the disclosure of the statement of affairs has been made under Rule 2.30 of the Insolvency Rules 1986 (as applied by Rule 60 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, in the case of depositors, 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 submitted—
  - (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, in the case of depositors, 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 special administrator’s remuneration should be fixed under Rule 2.106 of the Insolvency Rules 1986 (as applied by Rule 60),
- (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 2009<sup>(1)</sup>),
- (p) the manner in which the affairs and business of the society have been managed and financed since the date of the special administrator’s appointment (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 special administrator’s proposals are approved.
- (3) The statement—
  - (a) may exclude information, the disclosure of which could seriously prejudice the commercial interests of the society or of the bridge bank or private sector purchaser, and
  - (b) must include a statement of any exclusion.

### **Building society special administrator’s proposals: Objective 2 Stage**

**29.**—(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 1986<sup>(2)</sup> as it applies during the Objective 2 Stage (in accordance with Table 1 in section 145(6) of the Banking Act 2009).

- (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 special administrator’s appointment (including the date),

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(1) S.I. 2009/805 modifies the application of section 154.

(2) Paragraph 49 of Schedule B1 was amended by S.I. 2008/948.

- (d) in the case of joint special administrators, details of the apportionment of functions,
- (e) the names of the directors, 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 special administrator's comments, if any,
- (h) if an order limiting the disclosure of the statement of affairs has been made under Rule 2.30 of the Insolvency Rules 1986 (as applied by Rule 60 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, in the case of depositors, 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 submitted—
  - (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, in the case of depositors, 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 special administrator's remuneration should be fixed under Rule 2.106 of the Insolvency Rules 1986 (as applied by Rule 60 below),
- (l) details of whether (and why) the special administrator proposes to apply to the court under section 176A(5) of the Insolvency Act 1986<sup>(3)</sup> (omission of distribution to unsecured creditors: as applied by Table 2 in section 145(6) of the Banking Act 2009) (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 (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)—

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

- (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 2009),
  - (r) if the special administrator has decided not to call a meeting of creditors, the reasons,
  - (s) the manner in which the affairs and business of the society have been managed and financed since the date of the special administrator's appointment (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 special administrator's proposals 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 2009—
- (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 is made, the special administrator must issue a supplemental statement when the information is 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.

**30.** If the special administrator thinks that the statement made under section 147 of the Banking Act 2009 in accordance with Rule 28 contains information required by Rule 29(2), the statement under paragraph 49 of Schedule B1 to the Insolvency Act 1986 (as applied by Table 1 in section 145(6) of the Banking Act 2009) 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 29(2), and
- (b) to bring the statement under section 147 up to date.

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

**32.** 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(6) of the Banking Act 2009), 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.

**33.** Where the special administrator has made a statement under paragraph 52(1) of Schedule B1 (as applied by Table 1 in section 145(6) of the Banking Act 2009) and has not called an initial meeting of creditors, the proposals issued in accordance with Rule 29 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 2.37(1) of the Insolvency Rules 1986 – as applied by Rule 60 below).

**34.** Where the special administrator intends to apply to the court under paragraph 79 of Schedule B1 (as applied by the 2009 Order)(4) for the special administration to cease before the statement

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(4) [S.I. 2009/805](#), as amended by [S.I. 2010/1189](#), modifies the application of paragraph 79 of Schedule B1.

of proposals is sent to creditors in accordance with paragraph 49 of Schedule B1, the special administrator must, at least 10 days before making the application, send to all known creditors of the society a report containing the information required by Rule 29(2).

**35.**—(1) Where the special administrator wishes to publish a notice under paragraph 49(6) of Schedule B1 (as applied by Table 1 in section 145(6) of the Banking Act 2009), the notice shall be advertised in such manner as the special administrator thinks fit.

(2) The notice must—

- (a) state the full name of the society,
- (b) state the full name and address of the special administrator,
- (c) give details of the special administrator’s appointment, 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**

**36.**—(1) “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, principal office and other trading names,
- (c) full details of the special administrator’s name and address and date of appointment, 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 1986 (share of assets for unsecured creditors).

(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 2009 (Special Resolution Regime),
- (c) any requirements imposed on the residual building society, for the purpose of the pursuit of Objective 1, under a power in Part 1, 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 or of the bridge bank or private sector purchaser, and
  - (b) must include a statement of any exclusion.

**37.** 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.

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

- (a) the creditors and shareholding members,
- (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) and send a copy of it to any creditors and shareholding members on request.

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

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

**39.—**(1) A special administrator who fails to comply with Rules 37 and 38 is liable to a fine and, for continued contravention, to a daily default fine.

(2) For that purpose, failure to comply with Rules 37 and 38 shall be treated in the same way as failure to comply with Rule 2.47 of the Insolvency Rules 1986.

### **Removal of special administrator in Objective 1 Stage**

**40.—**(1) This Rule is about an 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 Insolvency Act 1986 in Table 1 in section 145(6) of the Banking Act 2009).

(2) The rules for service of notice of the application, other notification of the application and for the hearing shall be as for the application to appoint a special administrator under Part 2 of these Rules.

(3) But both the person proposed to be appointed as a replacement and the existing special administrator are entitled to be served and heard.

### **Appointment of provisional special administrator**

**41.** An application to the court for the appointment of a provisional special administrator under section 135 of the Insolvency Act 1986 (as applied by Table 2 in section 145(6) of the Banking Act 2009) may be made by the Bank of England.

- 42.** The application must be supported by a witness statement stating—
- (a) why the Bank of England thinks that a provisional special administrator should be appointed,
  - (b) that the person to be appointed has consented to act,
  - (c) that the person to be appointed is qualified to act as an insolvency practitioner,
  - (d) whether, to the Bank of England’s knowledge, a voluntary arrangement under Part 1 of the Insolvency Act 1986 (as applied in relation to building societies by section 90A of, and Schedule 15A to, the Building Societies Act 1986) has been proposed or is in force in respect of the society,
  - (e) whether, to the Bank of England’s knowledge, an administrative receiver is acting in respect of the society, and
  - (f) the Bank of England’s estimate of the value of the assets in respect of which the provisional special administrator is to be appointed.

**43.** If satisfied that sufficient grounds are shown for the appointment, the court may make it on such terms as it thinks fit.

**44.** An order appointing a provisional special administrator must specify the functions to be carried out in relation to the society’s affairs.

**45.** If the court makes an order appointing a provisional special administrator, as soon as reasonably practicable the court shall send four sealed copies of the order to the person appointed (and one additional copy by email if possible).

**46.—(1)** As soon as is reasonably practicable after appointment a provisional special administrator must send a copy of the order of appointment to—

- (a) the society,
- (b) any administrative receiver of the society,
- (c) the FSA (together with the form specified in Rule 4.26(3)(ii) of the Insolvency Rules 1986, with such variations, if any, as the circumstances may require), and
- (d) the FSCS.

(2) Notice to the society must be given by service in accordance with Rule 18 above.

(3) Unless the court otherwise directs, on receipt of the order of appointment, as soon as reasonably practicable, the provisional special administrator shall give notice of that appointment. Such notice—

- (a) shall be gazetted; and
- (b) may be advertised in such other manner as the provisional special administrator thinks fit.

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

#### **Additional joint special administrator**

**48.—(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) file written representations, and
- (b) be heard at the hearing.

(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 60 below applies Rules 2.127 and 2.128 of the Insolvency Rules 1986 (notification and advertisement of appointment of joint administrator).

### **Disapplication of set-off for protected deposits**

49.—(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 building society is in respect of protected deposits.

(2) In respect of protected deposits Rule 2.85 of the Insolvency Rules 1986 (as applied by Rule 60 below) shall apply and, for the purpose of determining the sums due from the building society to an eligible depositor under rule 2.85(3)—

- (a) where the total of the sums held by the building society for the eligible depositor in respect of protected deposits is no more than the prescribed limit then paragraph (3) applies; and
- (b) where the sums held exceed the prescribed limit, then paragraph (4) applies.

(3) Where this paragraph applies, there shall be deemed to have been no mutual dealings, regardless of whether there are any sums due from the depositor to the building society, and the sum due to the eligible depositor from the building society in respect of the protected deposits will be the total of the sums held by the building society for that depositor in respect of those deposits.

(4) Where this paragraph applies then—

- (a) any mutual dealings shall be treated as being mutual dealings only in relation to the amount by which the total of the sums due to the eligible depositor exceeds the prescribed limit, and
- (b) the sums due from the building society to the eligible depositor in respect of protected deposits will be—
  - (i) the amount by which that total exceeds the prescribed limit, set off in accordance with rule 2.85(3); and
  - (ii) the sums held by the bank for the eligible depositor in respect of protected deposits up to the prescribed limit.

(5) Any arrangements with regard to set-off between the building society and the eligible depositor in existence before the date of the notice referred to in rule 2.85(1) shall be subject to this rule in so far as they relate to protected deposits.

(6) In this rule—

- “eligible depositor” has the meaning given to it by section 93(3) of the Banking Act 2009;
- “FSA Rules” mean the FSA’s Compensation Sourcebook, as amended from time to time, made under section 213 of the Financial Services and Markets Act 2000(5);
- “prescribed limit” means the amount prescribed as the maximum compensation payable in respect of protected deposits under Part 15 of the Financial Services and Markets Act 2000; and
- “protected deposit” means a protected deposit within the meaning given by the FSA Rules held by the building society at the date of the notice referred to in rule 2.85(1) but does not include a share in the society held by an eligible depositor.



### **End of special administration: successful rescue**

**50.**—(1) This Rule supplements section 153 of the Banking Act 2009 (successful rescue)(6).

(2) The special administrator’s application under paragraph 79 of Schedule B1 to the Insolvency Act (as applied by section 153 of the Banking Act 2009(7)) (the “application”) must 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 special administration) and a statement indicating what the administrator thinks should be the next step for the society.

(3) Before making the application the special administrator must send a copy of the application and the progress report referred to in paragraph 2 to—

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

(4) Notice under paragraph (3)(b) and (c) must be sent at least 7 days before the hearing of the application.

(5) Within 5 business days of filing the application with the court, the special administrator must gazette a notice undertaking to provide a copy of the application to any creditor or shareholding member of the society.

(6) The notice in paragraph (5) may also be published in such other manner as the special administrator thinks fit.

(7) The application must certify compliance with the preceding paragraphs of this Rule.

(8) If the court is satisfied that the conditions in section 153(1) of the Banking Act 2009 have been met it shall—

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

### **End of special administration: dissolution**

**51.**—(1) This Rule supplements section 154(2)(a) of the Banking Act 2009.

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

- (a) must be filed with the court in Form 2.35B (the form specified in rule 2.118 of the Insolvency Rules 1986 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 special administrator’s appointment.

(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,

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(6) Paragraph 32A of S.I. 2009/805, inserted by S.I. 2010/1189, modifies the application of section 153 of the Banking Act 2009.

(7) S.I. 2009/805, as amended by S.I. 2010/1189, modifies the application of paragraph 79 of Schedule B1.

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(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 2.36B (the form specified in rule 2.118 of the 1986 Rules subject to Rule 7(2) above), who shall notify the FSA.