
STATUTORY INSTRUMENTS

2010 No. 2581

The Building Society Insolvency
(England and Wales) Rules 2010

PART 2

APPLICATION FOR ORDER

Filing of application

7.—(1) The application for a building society insolvency order, verified by witness statement in accordance with rule 11, shall be filed in court.

(2) There shall be filed with the application—

- (a) one copy for service on the building society,
- (b) one copy to be attached to the proof of service, and
- (c) further copies to be sent to the persons under rule 10.

(3) The court shall fix the venue, date and time for the hearing of the application and in doing so shall have regard to—

- (a) the desirability of the application being heard as soon as is reasonably practicable, and
- (b) the need to give the building society a reasonable opportunity to attend.

(4) Each of the copies issued to the applicant shall be sealed and be endorsed with the venue, date and time for the hearing.

(5) Any application filed in relation to a building society in respect of which there is in force a voluntary arrangement under Part 1 of the Insolvency Act shall be filed in accordance with this rule, but a copy of that application shall also be sent to the court to which the nominee's report under section 2 of the Insolvency Act was submitted, if that is not the same court.

Service of application

8.—(1) The applicant shall serve the building society with a sealed copy of the application.

(2) The application shall be served on the building society at its principal office.

(3) Service of the application at the principal office may be effected in any of the following ways—

- (a) it may be handed to a person who there and then acknowledges that they are, or, to the best of the server's knowledge, information and belief, are, a director or other officer, or employee, of the building society, or
- (b) it may be handed to a person who there and then acknowledges that they are authorised to accept service of documents on the building society's behalf, or

- (c) in the absence of such person as is mentioned in sub-paragraphs (a) and (b), it may be deposited at or about the principal office in such a way that it is likely to come to the notice of a person attending the office.
- (4) If for any reason it is impracticable to effect service as provided by paragraph (2) or (3), the application may be served in such other manner as the court may approve or direct.
- (5) Application for permission of the court under paragraph (4) may be made without notice to the building society, stating in a witness statement what steps have been taken to comply with paragraph (2) or (3), and the reasons why it is impracticable to effect service as there provided.
- (6) If the building society or its legal representatives fail to attend the hearing, the court may make the building society insolvency order in its absence if satisfied that the application has been served in accordance with this rule.

Proof of service

- 9. Apply rule 4.9 of the 1986 Rules.

Other persons to receive copy of application

- 10.—(1) The applicant shall send two copies of the application to—
 - (a) the proposed building society liquidator,
 - (b) the Bank of England (if it is not the applicant),
 - (c) the FSA (if it is not the applicant),
 - (d) the FSCS,
 - (e) any person who has given notice to the FSA in respect of the building society under section 90D of the Building Societies Act(1),
 - (f) if there is in force for the building society a voluntary arrangement under Part 1 of the Insolvency Act, the supervisor of that arrangement, and
 - (g) if an administrative receiver has been appointed in relation to the building society, that receiver,

in accordance with paragraph (2).

(2) One copy shall be sent electronically as soon as practicable and the other (a sealed copy) shall be sent by first class post on the business day on which the application is served on the building society.

(3) Any of the persons in sub-paragraph (1) will have the right to attend and be heard at the hearing of the application.

Verification of application

11.—(1) This applies where an application has been filed in court under rule 7.

(2) A witness statement shall be attached to the application to state that the statements in the application are true, or are true to the best of the applicant's knowledge, information and belief.

(3) The witness statement shall identify the person making the statement and shall include the capacity in which that person makes the statement and the basis for that person's knowledge of the matters set out in the application.

(4) The witness statement is, unless proved otherwise, evidence of the statements in the application.

(1) Section 90D was inserted by [S.I. 2009/805](#).

Persons entitled to copy of application

12.—(1) Every contributory or creditor of the building society is entitled to a copy of the application on request from the applicant.

(2) The applicant shall respond to any request for a copy of the application as soon as reasonably practicable after the application has been made on payment of the appropriate fee.

Certificate of compliance

13.—(1) Apply rule 4.14 of the 1986 Rules.

(2) In paragraph (1) the period for filing shall be as soon as reasonably practicable before the hearing of the application.

(3) In paragraph (2)(2), leave out the words “a copy or” to the end.

(4) After paragraph (2) insert—

“(2A) A witness statement made by the proposed building society liquidator to the effect that—

(a) the person is qualified to act as an insolvency practitioner in accordance with section 390 of the Insolvency Act, and

(b) the person consents to act as the building society liquidator,
shall be filed in court with the certificate.”.

Leave for the applicant to withdraw

14. Apply rule 4.15 of the 1986 Rules. Leave out “at least 5 days” and ignore sub-paragraph (a).

Witness statement in opposition

15.—(1) If the building society intends to oppose an application, the building society may (but need not) file a witness statement in opposition in court.

(2) A statement under paragraph (1) must be filed before the hearing of the application and a copy must be served on the applicant, before the hearing.

(3) The statement may be served on the applicant by personal service or by electronic means.

(4) The statement should also be sent to the persons in rule 10(1) before the hearing.

(5) The fact that the building society has not filed a statement under this rule shall not prevent the building society from being heard at the hearing.

Making, transmission and advertisement of order

16.—(1) The court shall not make a building society insolvency order unless the person nominated to be appointed as the building society liquidator in the application for the order has filed in court a witness statement under rule 13.

(2) When the building society insolvency order has been made the court shall immediately send five sealed copies (or such larger number as the building society liquidator may have requested) to the building society liquidator.

(3) The court shall also, if practicable, immediately send a copy of the order to the building society liquidator electronically.

(2) Paragraph (2) was amended by [S.I. 2009/642](#).

(4) The building society liquidator shall serve a sealed copy of the order on the building society at its principal office and, where the building society liquidator knows the building society's email address, shall send an electronic copy to the building society.

(5) The building society liquidator shall send two copies of the order to—

- (a) the Bank of England,
- (b) the FSA,
- (c) the FSCS,
- (d) if there is in force for the building society a voluntary arrangement under Part 1 of the Insolvency Act, the supervisor of that arrangement, and
- (e) if an administrative receiver has been appointed in relation to the building society, that administrative receiver,

in accordance with paragraph (6).

(6) One copy shall be sent electronically as soon as practicable and the other (a sealed copy) shall be sent by first class post on the business day on which the order is served on the building society.

(7) The building society liquidator—

- (a) shall cause notice of the order to be gazetted as soon as reasonably practicable, and
- (b) may advertise notice of the order in such other manner as the building society liquidator thinks fit.

Authentication of building society liquidator's appointment

17. A sealed copy of the court's order may in any proceedings be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of the building society liquidator in the building society insolvency.

Initial duties of building society liquidation committee

18.—(1) As soon as reasonably practicable after the making of a building society insolvency order, the liquidation committee shall meet the building society liquidator for the purpose of discussing which of the objectives, or combination of objectives, mentioned in section 102(1) of the Banking Act, the committee should recommend the building society liquidator to pursue.

(2) If the building society liquidator and every individual on the liquidation committee agree, the meeting may be held by audio or video conference.

(3) The liquidation committee shall make its recommendation to the building society liquidator at the meeting.

(4) The Bank of England shall confirm the liquidation committee's recommendation in writing as soon as practicable after the meeting.

(5) As soon as practicable after the making of a building society insolvency order, the liquidation committee shall also pass a resolution as to the terms on which, in accordance with rule 99, the building society liquidator is to be remunerated.

(6) Until a full payment resolution has been passed, the building society liquidation committee—

- (a) shall take decisions and pass resolutions by a simple majority, and
- (b) for the purpose of taking decisions and passing resolutions, may communicate by any means that its members consider convenient.

Expenses of voluntary arrangement

- 19.** Apply rule 4.21A of the 1986 Rules**(3)**.

(3) Rule 4.21A was inserted by [S.I. 1987/1919](#) and amended by [S.I. 2008/737](#).