

2010 No. 2584 (S. 6)

BUILDING SOCIETIES, SCOTLAND

INSOLVENCY, SCOTLAND

The Building Society Insolvency (Scotland) Rules 2010

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

PART 1

INTRODUCTORY PROVISIONS

Citation and commencement

- 1. These Rules may be cited as the Building Society Insolvency (Scotland) Rules 2010 and come into force on 15th November 2010.

Extent

- 2. These rules extend to Scotland only.

Application of rules, construction and interpretation

3.—(1) These Rules apply in relation to a building society undergoing the procedure in Part 2 of the Banking Act 2009(b), as applied and modified by section 90C of the Building Societies Act 1986(c) and by any order made under section 130 of the Banking Act, known as building society insolvency.

(2) In these Rules

“the 1986 Rules” means the Insolvency (Scotland) Rules 1986 as amended as at 1st October 2009(d);

“the 2009 Order” means the Building Societies (Insolvency and Special Administration) Order 2009(e);

“the 2010 Rules” means these Rules;

“the Banking Act” means the Banking Act 2009;

“Bankruptcy Act” means the Bankruptcy (Scotland) Act 1985(f);

“the Building Societies Act” means the Building Societies Act 1986(g);

“building society” means a building society incorporated under the Building Societies Act;

“contributory”, in relation to a building society and subject as provided in rule 23—

- (a) means every person liable to contribute to the assets of the society in the event of its being wound up, and

(a) 1986 c.45. Section 411 was amended by the Banking Act 2009 (c.1), section 125. Subsection (3A) was inserted by the Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805).

(b) 2009 c.1.

(c) 1986 c.53. Section 90C was inserted by S.I. 2009/805.

(d) S.I. 1986/1915 (S.139).

(e) S.I.2009/805. S.I. 2009/805 was amended by S.I. 2010/1189.

(f) 1985 c.66.

(g) 1986 c.53.

(b) 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

(c) 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;

“court” means the Court of Session;

“eligible depositor” means a depositor who is eligible for compensation under the FSCS;

“the FSA” means the Financial Services Authority;

“the 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)(a);

“the FSCS” means the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000) or, where appropriate, the scheme manager of that scheme;

“the Insolvency Act” means the Insolvency Act 1986(b);

“the liquidation committee” means the committee established pursuant to section 100 of the Banking Act;

“Objective 1” has the same meaning as in Part 2 of the Banking Act (section 99(2));

“principal office” means—

(d) the place which is specified in the 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

(e) if notice has been given by the 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;

“protected deposit” means a protected deposit within the meaning given by the FSA Rules but does not include a share in the society held by an eligible depositor;

“registered name” in relation to a building society means the name of the society which is for the time being registered with the FSA;

“release” and related expressions mean release within the meaning of section 111 of the Banking Act;

“Rules of the Court of Session” means Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994) 1994(c);

“set-off” includes (without limitation) claims of compensation, rights of retention and rights of balancing accounts on insolvency; and

“sums held by the building society” includes amounts due by the building society to the relevant eligible depositor.

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

(4) In these Rules—

(a) 2000 c.8.

(b) 1986 c.45.

(c) S.I. 1994/1443, last amended by S.S.I. 2010/205.

- (a) any reference to Part 2 of the Banking Act (Bank Insolvency), 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 130 of the Banking Act;
 - (b) any reference to any provision of the Insolvency Act that is not applied by Part 2 of the Banking Act, is a reference to that provision as applied and modified by section 90A, and Schedule 15A to, the Building Societies Act;
 - (c) any reference to any provision of the Insolvency Act that is applied by Part 2 of the Banking Act is a reference to that provision as applied and modified by section 90C of the Building Societies Act and by any order made under section 130 of the Banking Act.
- (5) These Rules consist of—
- (a) the rules set out in full;
 - (b) in the case of a rule applying a rule of the 1986 Rules, the rules as applied with—
 - (i) the modifications set out in paragraph (6);
 - (ii) the modifications contained in the rule applying it; and
 - (iii) any other necessary modification.
- (6) The modifications are that where applicable, a reference to—
- (a) any provision of the Insolvency Act that is applied by Part 2 of the Banking Act is a reference to that provision as applied and modified by section 90C of the Building Societies Act and by any order made under section 130 of the Banking Act;
 - (b) any provision of the Insolvency Act that is not applied by Part 2 of the Banking Act is a reference to that provision as applied and modified by section 90A of, and Schedule 15A to, the Building Societies Act;
 - (c) the liquidator is a reference to the building society liquidator;
 - (d) the provisional liquidator is a reference to the provisional building society liquidator;
 - (e) winding up is a reference to building society insolvency;
 - (f) winding up by the court is a reference to a building society being placed into building society insolvency by the court;
 - (g) the commencement of winding up is a reference to the commencement of building society insolvency;
 - (h) going into liquidation is a reference to entering building society insolvency;
 - (i) a winding-up order is a reference to a building society insolvency order;
 - (j) the chairman is a reference to the chair;
 - (k) insolvency proceedings is a reference to building society insolvency proceedings;
 - (l) a company is a reference to a building society;
 - (m) a petition is a reference to an application under section 95 of the Banking Act;
 - (n) a petitioner is a reference to an applicant;
 - (o) a responsible insolvency practitioner is a reference to a building society liquidator;
 - (p) the registered office is a reference to the principal office within the meaning of these Rules;
 - (q) the articles is a reference to the rules of the building society;
 - (r) the officers, or a particular officer of a company, is a reference to the officers, or the corresponding officer, of the building society and includes a person holding themselves out as such an officer;
 - (s) the registrar of companies or the registrar is a reference to the FSA; and
 - (t) contributory is a reference to a contributory in relation to a building society within the meaning of these Rules.
- (7) Expressions used—

- (a) both in a rule set out in full and in Part 2 of the Banking Act; or
- (b) both in a modification to a rule of the 1986 Rules applied by these Rules and in Part 2 of the Banking Act,

have the same meaning as in Part 2 of the Banking Act.

(8) Expressions used—

- (a) both in a rule set out in full and in the Building Societies Act, or
- (b) both in a modification to a rule of the 1986 Rules applied by these Rules and in the Building Societies Act,

have the same meaning as in the Building Societies Act.

(9) Where a rule applies a rule of the 1986 Rules and modifies that rule by inserting or substituting text—

- (a) any reference in the modified rule to the 2010 Rules is a reference to these Rules;
- (b) expressions inserted or substituted have the same meaning as in these Rules.

(10) Where a rule in the 1986 Rules (Rule A) contains a reference to another such rule (Rule B) and—

- (a) both Rule A and Rule B are applied by these Rules; or
- (b) Rule A is applied by and the provision in Rule B to which Rule A refers is substantially repeated in these Rules;

the reference in Rule A shall be treated, for the purpose of these Rules, as being, respectively, to the rule in these Rules that applies Rule B or the provision in these Rules that substantially repeats the provision in Rule B.

(11) Where a rule (Rule A) refers to another rule (Rule B) and Rule B applies a rule of the 1986 Rules (Rule C) with or without modifications, the reference in Rule A includes a reference to Rule C as applied by Rule B.

(12) Any notice or document sent electronically pursuant to these Rules shall be treated as having been sent 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.

(13) The 1986 Rules apply to building society insolvency, to the extent that these Rules do not make express provision, but only so far as consistent with Part 2 of the Banking Act, these Rules, the Rules of the Court of Session, and any other rule of law relating to building society insolvency.

Time limits

4.—(1) Where by any provision of the Insolvency Act, the Banking Act or these Rules, the time for doing anything is limited, the court may extend the time, either before or after it has expired, on such terms, if any, as it thinks fit.

(2) If the court's consideration of whether to extend the time for doing anything takes place before a full payment resolution has been passed, the court shall only extend the time if it considers that the resulting delay will not significantly prejudice the achievement of Objective 1.

Overview

5. The purpose of these Rules is to provide a procedure for the appointment of a building society liquidator and the operation of building society insolvency under Part 2 of the Banking Act in Scotland.

PART 2

BUILDING SOCIETY INSOLVENCY ORDER

Application for building society insolvency order

6. An application for a building society insolvency order under section 95 of the Banking Act shall be in accordance with Part 10 of Chapter 74 of the Rules of the Court of Session.

Persons entitled to copy of application

7.—(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.

(3) In paragraph (2), “the appropriate fee” means 15 pence per A4 or A5 page, and 30 pence per A3 page.

Appointment of building society liquidator by the court

8.—(1) This rule applies where an application for a building society insolvency order is made to the court under section 95 of the Banking Act.

(2) The court shall not make the order unless there is lodged in court a statement to the effect that—

- (a) the person proposed to be appointed as the building society liquidator is qualified to act as an insolvency practitioner in accordance with section 390(a) of the Insolvency Act; and
- (b) that person consents so to act.

(3) When the building society insolvency order has been made the court shall immediately send a certified copy of the order to—

- (a) the building society liquidator who shall also, where practicable, be sent an electronic copy of the certified copy order; and
- (b) the applicant.

(4) The building society liquidator shall immediately—

- (a) serve a copy of the order on the building society at its principal office and, where the building society liquidator has received an electronic copy of the order and knows the building society’s email address, send an electronic copy to the building society;
- (b) give notice of the appointment to the Accountant in Bankruptcy;
- (c) advertise the appointment once in the Edinburgh Gazette and such newspaper as the building society liquidator may select or as the court may otherwise direct; and
- (d) send (electronically or otherwise) a copy of the order to—
 - (i) the FSA, if it is not the applicant;
 - (ii) the Bank of England, if it is not the applicant;
 - (iii) the FSCS;
 - (iv) 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

(a) Section 390 was amended by paragraph 16(1) and (2) of Schedule 4(II) to the Insolvency Act 2000 (c.39); paragraph 18 of Schedule 5 to the Adults with Incapacity (Scotland) Act 2000 (asp 4); paragraph 4 of Schedule 21 to the Enterprise Act 2002 (c.40); paragraph 31(3)(c) of Schedule 6 and paragraph 1 of Schedule 7 to the Mental Capacity Act 2005 (c.9); paragraph 18(3) of Schedule 1 to S.S.I. 2005/465; paragraph 3(3) of Schedule 1 to S.I. 2005/2078; paragraphs 1, 6(1),(2) and (3) of Schedule 20, Part 1, to the Tribunal, Courts and Enforcement Act 2007; and S.I. 2009/1941, art.2(1).

- (v) if an administrative receiver has been appointed in relation to the building society, that receiver.

Initial duties of building society liquidation committee

9.—(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 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 reasonably practicable after the meeting.

(5) As soon as reasonably 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 46 the building society liquidator is to be remunerated.

(6) Until a full payment resolution has been passed, the 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.

Authentication of building society liquidator's appointment

10. Apply rule 4.20 of the 1986 Rules.

PART 3

PROVISIONAL LIQUIDATION

Appointment of provisional building society liquidator

11.—(1) Apply rule 4.1 of the 1986 Rules.

(2) For rule 4.1(1) substitute—

“(1) An application to the court for the appointment of a provisional building society liquidator under section 135 of the Insolvency Act may be made—

- (a) by the Bank of England; or
- (b) by the FSA, with the consent of the Bank of England.”.

Order of appointment of provisional building society liquidator

12.—(1) The order of appointment of the provisional building society liquidator shall specify the functions to be carried out by the provisional building society liquidator in relation to the building society's affairs.

(2) The applicant shall, immediately after the order is made, send a certified copy of the order to—

- (a) the provisional building society liquidator;
- (b) the Bank of England, if the Bank of England is not the applicant;
- (c) the FSA, if the FSA is not the applicant; and
- (d) the FSCS,

and may also send to those persons an electronic copy of the certified copy order.

- (3) The provisional building society liquidator shall immediately after the order is made—
- (a) serve a certified copy of it on the building society and each director of the building society;
 - (b) give notice of the appointment to the Accountant in Bankruptcy;
 - (c) give notice of the appointment to any receiver of the whole or any part of the property of the building society;
 - (d) if there is in force for the building society a voluntary arrangement under Part 1 of the Insolvency Act, give notice of the appointment to the supervisor of that arrangement; and
 - (e) advertise the appointment in accordance with the directions of the court.
- (4) Service on a director may be effected electronically by sending it to the director's work email address.

Caution

13. Apply rule 4.3 of the 1986 Rules.

Failure to find or to maintain caution

14. Apply rule 4.4 of the 1986 Rules.

Remuneration

15. Apply rule 4.5 of the 1986 Rules(a).

Termination of appointment

- 16.—(1) Apply rule 4.6(1)(b) and (2)(c) of the 1986 Rules.
- (2) In rule 4.6(1) ignore “Except in relation to winding up petitions under section 124A”.
- (3) After rule 4.6(2) insert—
- “(3) On the making of a building society insolvency order, the appointment of the provisional building society liquidator shall terminate.”.

PART 4

STATEMENT OF AFFAIRS

Notice requiring statement of affairs

- 17.—(1) Apply rule 4.7 of the 1986 Rules.
- (2) Insert new rule 4.7(5)—
- “(5) The building society liquidator shall, at the same time as sending a notice under paragraph (3), send a copy of such notice to the FSA.”.

Form of the statement of affairs

18. Apply rule 4.8 of the 1986 Rules.

(a) Rule 4.5 was amended by paragraph 10 of Schedule 1(I) to S.I. 1987/1921.

(b) Rule 4.6(1) was amended by rule 13(b) of S.I. 2006/734.

(c) Rule 4.6(2) was amended by paragraph 11 of Schedule 1(I) to S.I. 1987/1921.

Expenses of statement of affairs

19. Apply rule 4.9 of the 1986 Rules.

Limited disclosure

20. Without prejudice to any other means of restricting disclosure, the building society liquidator may also apply to the court for an order limiting disclosure of the names, addresses and claims of persons who were depositors of the building society and who, at the time of making the statement of affairs, still have a claim against the building society in respect of those deposits.

PART 5

INFORMATION TO CREDITORS AND CONTRIBUTORIES

Report by building society liquidator

21.—(1) The building society liquidator shall, at least once after the making of the building society insolvency order, make a report with respect to the proceedings in the building society insolvency and the state of the building society's affairs.

(2) Regardless of whether the liquidation committee has passed a full payment resolution, the first report under paragraph (1) shall be, within eight weeks of the commencement of the building society insolvency, made publicly available on the building society's website and the building society liquidator shall offer to send a copy of it to any creditor or contributory on request.

(3) The building society liquidator shall include in the report under paragraph (1)—

- (a) a statement that a petition has been presented to the court and the relevant court number;
- (b) the registered name of the building society, any other trading names of the building society, and the address of its principal office;
- (c) details relating to the building society liquidator's appointment, including the date of appointment, and where there are joint liquidators, details of—
 - (i) which functions (if any) are to be exercised by the persons appointed acting jointly, and
 - (ii) which functions (if any) are to be exercised by any or all of the persons appointed;
- (d) the names of the directors, chief executive and secretary of the building society and details of any shareholdings in the building society that they have;
- (e) an account of the circumstances giving rise to the building society insolvency;
- (f) if a statement of affairs has been submitted, a copy of that statement;
- (g) if a statement of affairs has yet to be submitted—
 - (i) the names, addresses and details of any debts owed to the creditors, including details of any security held (or in the case of depositors who are still creditors of the building society at the time the report is made, 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); and
 - (iii) details of the financial position of the building society at the latest practicable date (which must, unless the court orders otherwise, be a date not earlier than the commencement of building society insolvency);
- (h) the basis upon which it has been proposed under rule 25, or, if the full payment resolution has yet to be passed, rule 9, that the building society liquidator's remuneration be fixed;
- (i) to the best of the building society liquidator's knowledge and belief—

- (i) an estimate of the value of the prescribed part (within the meaning of section 176A of the Insolvency Act) regardless of whether—
 - (aa) the building society liquidator proposes to make an application to the court under section 176A(5) of that Act^(a); or
 - (bb) section 176A(3) of that Act applies;
- (ii) an estimate of the value of the building society’s net property;
- (j) whether, and if so, why, the building society liquidator proposes to make an application to the court under section 176A(5) of the Insolvency Act;
- (k) a summary of—
 - (i) how Objective 1 is being or has been achieved and an estimate of the costs to the building society liquidator of achieving it;
 - (ii) the manner in which the affairs and business of the building society not involved in the achievement of Objective 1 have, since the commencement of the building society insolvency, been managed and financed, including, where any assets have been disposed of, the reasons for such disposals and the terms upon which such disposals were made; and
 - (iii) how the affairs and business of the building society will continue to be managed and financed; and
- (l) an explanation of how it is envisaged the objectives of the building society liquidator will be achieved, including whether a dividend will be paid and an estimate as to the amount of this dividend and how it is proposed that the building society liquidation shall end.

(4) Nothing in this rule is to be taken as requiring either estimate mentioned in paragraph (3)(i) to include any information, the disclosure of which could seriously prejudice the commercial interests of the building society. If such information is excluded from the calculation, the estimate shall be accompanied by a statement to that effect.

(5) Any reference in this rule to creditors is to persons known to the building society liquidator to be creditors of the building society.

(6) Where a statement of affairs has been submitted to the building society liquidator, the building society liquidator may send out to creditors and contributories with the next convenient report to be made under paragraph (1) a summary of the statement and such observations (if any) as the building society liquidator thinks fit to make with respect to it.

(7) The building society liquidator shall insert a copy of any report sent under this rule in the sederunt book.

Information as to pending liquidations

22. Apply rule 4.11 of the 1986 Rules^(b).

PART 6

MEETINGS OF CREDITORS AND CONTRIBUTORIES

Meaning of “contributories”

23. For the purposes of this Part, “contributories” does not include the borrowing members of the society as defined at paragraph 5(2) of Schedule 2 to the Building Societies Act.

(a) Section 176A was inserted by section 252 of the Enterprise Act 2002 (c.40).
 (b) Rule 4.11 was amended by paragraph 13 of Schedule 1(I) to S.I. 1987/1921, and paragraph 141(6) of Schedule 2(II) to S.I. 1999/1820.

First meetings in the building society liquidation

24.—(1) Once the liquidation committee passes a full payment resolution the building society liquidator shall—

- (a) immediately summon a meeting of the building society’s creditors and contributories; and
- (b) fix a venue, date and time for the meeting,

and the date must be within three months of the date on which the full payment resolution was passed.

(2) When the venue, date and time of the meeting have been fixed, the building society liquidator shall give notice of the meeting to—

- (a) every creditor who is known to the building society liquidator or is identified in the building society’s statement of affairs,
- (b) every person appearing (by the building society’s books or otherwise) to be a contributory of the building society; and
- (c) each member of the liquidation committee,

and shall advertise the venue, date and time of the meeting in such manner as the building society liquidator thinks fit.

(3) In giving the notice mentioned in paragraph (2), the building society liquidator shall, if practicable, indicate whether the present intention of the FSCS is to resign from the liquidation committee at the meeting.

(4) Notice to the members of the liquidation committee shall be given immediately.

(5) Notice to creditors and contributories shall be given, and the advertisements placed to appear, at least 21 days before the date fixed for the meeting.

(6) The notice to creditors shall specify a time and date, not more than four days before the date fixed for the meeting, by which they must lodge claims and (if applicable) proxies, in order to be entitled to vote at the meeting.

(7) The FSCS is entitled to be represented at the meeting and Schedule 3 to the 1986 Rules has effect with respect to its voting rights at such a meeting.

(8) Meetings summoned under this rule are known respectively as “the first meeting of creditors” and “the first meeting of contributories”, and jointly as “the first meetings in the building society liquidation”.

Business at the first meeting of creditors and contributories

25.—(1) At the first meeting of creditors the FSCS shall state whether or not it is resigning from the liquidation committee.

(2) At the meeting those creditors present or represented by proxy may—

- (a) where the FSCS has not resigned, elect two or four individuals as new members of the liquidation committee;
- (b) where the FSCS has resigned, elect three or five individuals as new members of the liquidation committee,

in place of members nominated by the Bank of England and the FSA.

(3) In accordance with section 100(6)(e) of the Banking Act, the liquidation committee ceases to exist at the end of the meeting if no individuals are elected as mentioned or if the resulting committee would have fewer than three members or an even number of members. The maximum number of committee members will be five.

(4) At the first meeting of the creditors, no resolutions shall be taken other than the following—

- (a) if an application has been made to the court by creditors under rule 40 for the court to direct the building society liquidator to summon a meeting of creditors for the purpose of

removing the building society liquidator, and the court has directed that a resolution may be passed at the first meeting of creditors to that effect—

- (i) a resolution to remove the building society liquidator (or a resolution to remove one or more of the building society liquidators if joint liquidators were originally appointed); and
 - (ii) a resolution to appoint a named insolvency practitioner to be building society liquidator or two or more insolvency practitioners as joint building society liquidators;
- (b) if no individuals have been elected to form a liquidation committee under paragraph (2), a resolution specifying the terms on which the liquidator is to be remunerated, or to defer consideration of that matter;
 - (c) where two or more persons are appointed jointly to act as building society liquidator, a resolution specifying which acts are to be done by both of them, all of them or by only one;
 - (d) a resolution to adjourn the meeting for not more than three weeks;
 - (e) any other resolution which the chair considers it right to allow for special reason.
- (5) At the first meeting of contributories, no resolutions shall be taken other than the following—
- (a) if no individuals have been elected to form a liquidation committee under paragraph (2), a resolution to form a liquidation committee (and rule 61 shall then apply);
 - (b) a resolution to adjourn the meeting for not more than three weeks;
 - (c) any other resolutions which the chair thinks it right to allow for special reason.
- (6) The FSCS shall be entitled to be a member of any liquidation committee formed where the liquidation committee has ceased to exist at the end of the first meeting of the creditors.

Other meetings

26. Apply rule 4.13 of the 1986 Rules.

Attendance at meetings of building society's personnel

27. Apply rule 4.14 of the 1986 Rules.

PART 7

CLAIMS IN LIQUIDATION

Submission of claims

28. Apply rule 4.15 of the 1986 Rules(a).

Application of the Bankruptcy Act

- 29.—(1) Apply rule 4.16 of the 1986 Rules(b).
- (2) Ignore rule 4.16(3).

Claims in foreign currency

30.—(1) Apply rule 4.17 of the 1986 Rules(c).

(a) Rule 4.15 was amended by regulation 27(1) of S.I. 2003/2109.
(b) Rule 4.16 was amended by paragraph 15 of Schedule 1(I) to S.I. 1987/1921, and rule 3 of S.S.I. 2008/393.
(c) Rule 4.17 was amended by rule 4 of S.S.I. 2008/393.

(2) In rule 4.17(2) omit from “or, if” to the end.

Rights of eligible depositor and set-off

31.—(1) This rule applies if the FSA Rules allow the FSCS to make gross payments of compensation.

(2) In respect of protected deposits, in determining the sums due from the building society to an eligible depositor for the purpose of any right or claim of set-off available to the building society against the eligible depositor—

- (a) where the total of the sums held by the building society 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 “prescribed limit”), paragraph (3) applies; and
- (b) where the sums held by the building society exceed the prescribed limit, paragraph (4) applies.

(3) Where this paragraph applies, regardless of whether there are any sums due from the eligible depositor to the building society

- (a) the building society 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 building society for the eligible depositor in respect of the protected deposits; and
- (b) the sum due to the eligible depositor from the building society will be the total of the sums held by the building society for that eligible depositor in respect of protected deposits which sum shall be deemed free from any right or claim of set-off by the building society.

(4) Where this paragraph applies—

- (a) the building society shall be entitled to exercise any right or claim of set-off available to it only in respect of any sums held by the building society for that eligible depositor in excess of the prescribed limit, which sums shall be subject to any right or claim of set-off available to the building society; and
- (b) the sums due from the building society to the eligible depositor in respect of the protected deposits will be—
 - (i) the amount by which the total amount exceeds the prescribed limit subject to any right or claim of set-off available to the building society; and
 - (ii) the sums held by the building society 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 commencement of building society insolvency shall be subject to this rule in so far as they relate to protected deposits.

PART 8

THE LIQUIDATOR

SECTION A - APPOINTMENT BY CREDITORS AND FUNCTIONS OF LIQUIDATORS

Appointment by creditors

32.—(1) This rule applies where a person is appointed as building society liquidator by a meeting of creditors.

(a) 2000 c.8.

(2) The chair of the meeting shall certify the appointment of a person as building society liquidator by the meeting but not until the person to be appointed has provided him with a written statement to the effect that he is qualified to act as an insolvency practitioner in accordance with section 390(a) of the Insolvency Act, and that he consents so to act.

(3) The appointment of the building society liquidator takes effect upon the passing of the resolution for the appointment and the date of the appointment shall be stated in the certificate.

(4) The chair of the meeting shall send the certificate to the new building society liquidator who shall send a copy of the certificate to the Bank of England (if the Bank of England was the applicant for the building society insolvency order), or the FSA (if the FSA was that applicant).

Appointment to be advertised and registered

33.—(1) This rule applies where the building society liquidator is appointed by a meeting of the creditors under rule 32 or by the Bank of England under rule 51.

(2) The building society liquidator shall, after receiving the certificate of appointment, give notice of the appointment in such newspapers as the building society liquidator thinks most appropriate for ensuring that it comes to the notice of the building society's creditors and contributories.

(3) The expense of giving notice under this rule shall be borne in the first instance by the building society liquidator and such expense shall be treated as an expense of the building society insolvency.

(4) The building society liquidator shall immediately notify the appointment to the court, the FSA and the Accountant in Bankruptcy.

Hand-over of assets to building society liquidator

34. Apply rule 4.21 of the 1986 Rules.

Taking possession and realisation of the building society's assets

35. Apply rule 4.22 of the 1986 Rules(b).

General qualification on powers

36. The building society liquidator shall exercise any power conferred by this Part before a full payment resolution has been passed consistently with Objective 1.

SECTION B - REMOVAL AND RESIGNATION

Summoning of meeting for removal of building society liquidator

37.—(1) This rule applies where—

- (a) the court has made an order under rule 40 directing the building society liquidator to summon a meeting of creditors for the purpose of the building society liquidator's removal; and
- (b) the liquidation committee has passed a full payment resolution.

(2) A copy of the notice summoning the meeting shall be sent to the Bank of England and the FSA.

-
- (a) Section 390 was amended by paragraph 16(1) and (2) of Schedule 4(II) to the Insolvency Act 2000 (c.39); paragraph 18 of Schedule 5 to the Adults with Incapacity (Scotland) Act 2000 (asp 4); paragraph 4 of Schedule 21 to the Enterprise Act 2002 (c.40); paragraph 31(3)(c) of Schedule 6 and paragraph 1 of Schedule 7 to the Mental Capacity Act 2005 (c.9); paragraph 18(3) of Schedule 1 to S.S.I. 2005/465; paragraph 3(3) of Schedule 1 to S.I. 2005/2078; paragraphs 1, 6(1),(2) and (3) of Schedule 20, Part 1, to the Tribunal, Courts and Enforcement Act 2007; and S.I. 2009/1941, art.2(1).
 - (b) Rule 4.22 was inserted by paragraph 19 of Schedule 1(I) to S.I. 1987/1921.

(3) Where a meeting of creditors is summoned especially for the purpose of removing the building society liquidator, the notice summoning it shall draw attention to section 109 of the Banking Act with respect to the building society liquidator's release.

(4) At the meeting, a person other than the building society liquidator or the building society's liquidator's nominee may be elected to act as chair; but if the building society liquidator or the building society's liquidator's nominee is chair and a resolution has been proposed for the building society liquidator's removal, the chair shall not adjourn the meeting without the consent of at least one-half (in value) of the creditors present (in person or by proxy) and entitled to vote.

(5) Where a meeting is to be held or is proposed to be summoned for the purpose of removal of the building society liquidator, the court may, on the application of any creditor, give directions as to the mode of summoning it, the sending out and return of forms of proxy, the conduct of the meeting, and any other matter which appears to the court to require regulation or control under this rule.

(6) The Bank of England and the FSA shall have the opportunity to make representations at the meeting.

(7) Where, at a meeting held under this rule, the building society liquidator is removed, another building society liquidator may be appointed in accordance with rule 32.

Procedure on building society liquidator's removal

38.—(1) Apply rule 4.24 of the 1986 Rules(a).

(2) At the end of rule 4.24(1)(a) and (b) after "Accountant in Bankruptcy" where it appears insert "the FSA and the Bank of England."

Release of building society liquidator on removal

39. Where the building society liquidator has been removed by a creditors' meeting which has not resolved against the building society liquidator's release, the fact of that release shall be stated in the certificate of removal before a copy of it is sent, in accordance with rule 38, to the court, the Accountant in Bankruptcy, the FSA and the Bank of England.

Removal of building society liquidator by the court

40.—(1) This rule applies where application is made to the court for the removal of the building society liquidator, or for an order directing the building society liquidator to summon a meeting of creditors for the purpose of removing the building society liquidator.

(2) If the liquidation committee has not yet passed a full payment resolution, the court shall dismiss any application under paragraph (1) where the application is made by a person other than the Bank of England, the FSA or the liquidation committee.

(3) The court may require the applicant to make a deposit or give caution for the expenses to be incurred by the building society liquidator on the application.

(4) Subject to paragraph (2) and (3), the applicant shall send to the building society liquidator a notice of the hearing, stating date, time and place and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

(5) The notice and copies mentioned in paragraph (4) shall be sent—

- (a) if the application is made before the passing of a full payment resolution, so as to give the building society liquidator such notice of the hearing as is reasonable in all the circumstances; and
- (b) if the application is made after the passing of a full payment resolution, at least 14 days before the hearing.

(a) Rule 4.24 was amended by paragraph 19 of Schedule 1(I) to S.I. 1987/1921, and paragraph 141(9) of Schedule 2(II) to S.I. 1999/1820.

(6) Subject to any contrary order of the court, the expenses of the application are not payable as an expense of the building society liquidation.

(7) Where the court removes the building society liquidator—

- (a) it shall send three copies of the order of removal to the building society liquidator;
- (b) the order may include such provision as the court thinks fit with respect to matters arising in connection with the removal; and
- (c) if the court appoints a new liquidator, rule 8 of these Rules applies.

(8) The building society liquidator, on receipt of the three copies of the court orders under paragraph (7), shall send one copy of the order to each of the FSA, the Accountant in Bankruptcy and the Bank of England, together with a notice of ceasing to act as a building society liquidator.

Advertisement of removal

41. Apply rule 4.27 of the 1986 Rules.

Resignation of building society liquidator

42.—(1) Before resigning office in accordance with section 107 of the Banking Act, the building society liquidator must call a meeting of creditors to notify them of the proposed resignation and, where the building society liquidator was appointed by the Bank of England or by the court, obtain the consent of the Bank of England.

(2) The notice summoning the meeting shall—

- (a) indicate that this is the purpose, or one of the purposes of the meeting;
- (b) draw the creditors' attention to section 111 of the Banking Act and rule 44 with respect to the building society liquidator's release;
- (c) be accompanied by an account of the building society liquidator's administration of the building society insolvency, including a summary of his receipts and payments and a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A of the Insolvency Act (prescribed part); and
- (d) where the building society liquidator was appointed by the Bank of England or by the court, enclose a copy of the Bank of England's consent.

(3) Copies of the notice and of the account mentioned in paragraph (2) shall be sent to the court, the Bank of England and the FSA.

(4) Subject to paragraph (5), the building society liquidator may only proceed under this rule on the grounds of ill health or because—

- (a) the building society liquidator intends ceasing to be in practice as an insolvency practitioner; or
- (b) there is or has been some conflict of interest or change of personal circumstances which precludes or makes impracticable the further discharge by the building society liquidator of the duties of the building society liquidator.

(5) Where two or more persons are acting as the building society liquidator jointly, any one of them may resign (without prejudice to the continuation in office of the other or others) on the ground that, in the opinion of the person resigning and that of the other or others, it is no longer expedient that there should continue to be the present number of joint building society liquidators.

Action following acceptance of building society liquidator's resignation

43.—(1) This rule applies where a meeting is summoned to notify the creditors of the building society liquidator's resignation.

(2) The meeting shall resolve whether to release the building society liquidator.

(3) If the meeting resolves not to release the building society liquidator, the building society liquidator shall be given a copy of that resolution and rule 44 applies.

(4) After the meeting the building society liquidator shall lodge the notice of resignation in court and shall send copies of it to the Bank of England and the FSA.

(5) The building society liquidator's resignation is effective as from the date on which the court receives notice of that resignation, and the court shall endorse that date on the notice.

(6) Where the creditors have resolved to appoint a new building society liquidator in place of the one who has resigned, rules 4.19 to 4.21(a) of the 1986 Rules shall apply to the appointment of the new building society liquidator, except that the notice to be given by the new building society liquidator under rule 4.19(4) of the 1986 Rules shall also state that the preceding building society liquidator has resigned and whether that predecessor has been released.

(7) If there is no quorum present at the meeting summoned to notify the creditors of the building society liquidator's resignation, the meeting is deemed to have been held, a resolution is deemed to have been passed that the building society liquidator's resignation be accepted, and the creditors are deemed not to have resolved against the building society liquidator having release.

Release of resigning or removed building society liquidator

44.—(1) Where the building society liquidator's resignation is notified to a meeting of creditors which has not resolved against release, the building society liquidator has release from when the resignation is effective under rule 43.

(2) Where—

- (a) the building society liquidator is removed by the court following an application under rule 40;
- (b) the Bank of England has refused to consent to the building society liquidator's proposed resignation;
- (c) the meeting of creditors held under rule 37 or 43 resolves against release;
- (d) the building society liquidator ceases to be qualified to act as an insolvency practitioner; or
- (e) the meeting of the liquidation committee held under rule 45 resolves against the building society liquidator being released,

the building society liquidator must apply to the Accountant of Court for his release.

(3) Where the Accountant of Court gives release under this rule, the Accountant of Court shall certify it accordingly, and send the certificate to the Accountant in Bankruptcy, FSA and the Bank of England.

(4) A copy of the certificate shall be sent by the Accountant of Court to the former building society liquidator, whose release is effective from the date of the certificate.

SECTION C – RELEASE ON COMPLETION OF WINDING UP

Final meeting

45.—(1) The building society liquidator shall give at least 14 days' notice of the final meeting of the liquidation committee to be held under section 115 of the Banking Act to the following—

- (a) the FSA;
- (b) the FSCS;
- (c) the Bank of England;
- (d) the Treasury; and
- (e) the members of the liquidation committee.

(a) Rule 4.19 was amended by paragraph 17(1) of Schedule 1(I) to S.I. 1987/1921.

(2) The building society liquidator's final report to be laid before the meeting under section 115 of the Banking Act shall contain an account of the liquidator's administration of the winding up, including—

- (a) details as to how Objective 1 was achieved having regard, in particular, to the expenses of the building society liquidator in connection with that Objective;
- (b) a summary of the building society liquidator's receipts and payments;
- (c) a statement that the building society liquidator has reconciled the account with that which is held by the Secretary of State in respect of the winding up; and
- (d) a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A (prescribed part) of the Insolvency Act.

(3) At the same time that notice of the final meeting is sent out, the building society liquidator shall lodge the final report in court and send it to the FSA and the Accountant in Bankruptcy.

(4) The building society liquidator shall give notice to all creditors and contributories that the final report is available, either on request to the building society liquidator or from the FSA, and shall cause that notice to be advertised in the Edinburgh Gazette and to be advertised by such other method as the liquidator sees fit at least 14 days before the final meeting is held.

(5) At the final meeting, the liquidation committee may question the building society liquidator with respect to any matter contained in the final report, and may resolve against the building society liquidator being released.

(6) The building society liquidator shall give notice to the court, the FSA and the Accountant in Bankruptcy that the final meeting has been held and the notice shall state whether or not the liquidator has been released.

(7) Where the liquidation committee does not resolve against the building society liquidator's release, the building society liquidator vacates office and has release when the notice in paragraph (6) is lodged in court.

(8) If there is no quorum present at the final meeting, the building society liquidator shall report to the court that a final meeting was summoned in accordance with section 115 of the Banking Act, but there was no quorum present; and the final meeting is then deemed to have been held, and the liquidation committee not to have resolved against the building society liquidator being released.

(9) If the liquidation committee resolves against the building society liquidator having release then rule 44 of these Rules applies.

SECTION D - OUTLAYS AND REMUNERATION

Determination of amount of outlays and remuneration

46. Apply rule 4.32 of the 1986 Rules.

Recourse of liquidator to meeting of creditors

47. Apply rule 4.33 of the 1986 Rules.

Recourse to the court

48. Apply rule 4.34 of the 1986 Rules(a).

Creditors' claim that remuneration is excessive

49.—(1) Apply rule 4.35 of the 1986 Rules.

(a) Rule 4.34 was amended by paragraph 22 of Schedule 1(I) to S.I. 1987/1921.

(2) In paragraph (1), at the end insert “The FSCS may also apply to the court for such an order on those grounds.”

Primacy of Objective 1

50. Nothing done under this section of the Rules may prejudice the achievement of Objective 1.

SECTION E – SUPPLEMENTARY PROVISIONS

Replacement building society liquidator

51.—(1) Where the building society liquidator vacates office for any reason (including death) other than by removal by a meeting of creditors in accordance with rule 37, the Bank of England shall appoint a new building society liquidator as soon as practicable.

(2) Where a building society liquidator has been removed by a meeting of creditors and no resolution has been passed by that meeting to appoint a new building society liquidator, the Bank of England shall appoint a new building society liquidator as soon as practicable.

(3) The Bank of England shall lodge in court the document appointing the new building society liquidator (“the certificate of appointment”) together with statements to the effect that the new building society liquidator—

- (a) is qualified to act as an insolvency practitioner in accordance with section 390(a) of the Insolvency Act; and
- (b) consents to act as the building society liquidator.

(4) The Bank of England shall send a copy of the certificate of appointment to the building society.

(5) The building society liquidator shall forward a copy of the certificate of appointment to the FSA and the Accountant in Bankruptcy.

Building society liquidator deceased

52.—(1) Apply rule 4.36 of the 1986 Rules(b).

(2) In rule 4.36(1) after “court” insert “the Bank of England and liquidation committee”.

Loss of qualification as insolvency practitioner

53.—(1) Apply rule 4.37 paragraphs (1) and (2)(c) of the 1986 Rules.

(2) In rule 4.37(2) after “Accountant in Bankruptcy” insert “and the Bank of England”.

Resignation of the building society liquidator

54.—(1) This rule applies where the building society liquidator was appointed by the court or by the Bank of England under rule 51.

(2) The building society liquidator can only resign—

- (a) after the liquidation committee has passed a full payment resolution; and
- (b) with the consent of the Bank of England.

(a) Section 390 was amended by paragraph 16(1) and (2) of Schedule 4(II) to the Insolvency Act 2000 (c.39); paragraph 18 of Schedule 5 to the Adults with Incapacity (Scotland) Act 2000 (asp 4); paragraph 4 of Schedule 21 to the Enterprise Act 2002 (c.40); paragraph 31(3)(c) of Schedule 6 and paragraph 1 of Schedule 7 to the Mental Capacity Act 2005 (c.9); paragraph 18(3) of Schedule 1 to S.S.I. 2005/465; paragraph 3(3) of Schedule 1 to S.I. 2005/2078; paragraphs 1, 6(1),(2) and (3) of Schedule 20, Part 1, to the Tribunal, Courts and Enforcement Act 2007; and S.I. 2009/1941, art.2(1).

(b) Rule 4.36 was amended by paragraph 141(15) of Schedule 2(II) to S.I. 1999/1820.

(c) Rule 4.37(2) was amended by paragraph 141(16) of Schedule 2(II) to S.I. 1999/1820.

(3) Before calling a meeting of creditors under rule 42 to receive notice of the building society liquidator's resignation, the building society liquidator must write to the Bank of England notifying it of the intention to resign.

(4) The Bank of England shall notify the building society liquidator in writing within 21 days as to whether it consents to the resignation. If the Bank of England does not consent to the resignation, it will set out its reasons in writing.

(5) The building society liquidator, if not content with the Bank of England's response above, may apply to the court for directions in relation to any particular matter in the building society insolvency.

Notice to Bank of England of intention to vacate office

55.—(1) This rule applies where the building society liquidator was appointed by a meeting of creditors.

(2) Where the building society liquidator intends to vacate office, whether by resignation or otherwise, the building society liquidator shall give notice of his intention to the Bank of England together with notice of any creditors' meeting to be held in respect of his vacation of office, including any meeting to be notified of his resignation.

(3) The Bank of England must be given at least 21 days' notice before any such creditors' meeting.

(4) Where there remains any property of the building society which has not been realised, applied, distributed or otherwise fully dealt with in the building society insolvency, the building society liquidator shall include in his notice to the Bank of England details of the nature of that property, its value (or the fact that it has no value), its location, any action taken by the building society liquidator to deal with that property or any reason for his not dealing with it, and the current position in relation to it.

Power of court to set aside certain transactions

56.—(1) Apply rule 4.38 of the 1986 Rules.

(2) In rule 4.38(2) of that Rule—

- (a) leave out "either";
- (b) leave out "or" at the end of sub-paragraph (a); and
- (c) after sub-paragraph (b) insert—

“, or (c) it is shown to the court's satisfaction that the transaction was entered into by the building society liquidator for the purpose of achieving Objective 1.”.

Rule against solicitation

57. Apply rule 4.39 of the 1986 Rules.

PART 9

THE LIQUIDATION COMMITTEE

Application of rules

58. The rules in this Part apply only in relation to the liquidation committee established after a full payment resolution has been passed.

Membership of committee

59.—(1) Apply rule 4.41 of the 1986 Rules(a).

(2) For rule 4.41(1) substitute—

“(1) Subject to rule 25 of the 2010 Rules, and to rules 4.43 and 4.59 of the 1986 Rules as applied by rules 61 and 77 respectively of the 2010 Rules, the liquidation committee shall consist of either three or five creditors of the building society, elected by the meeting of creditors held under rule 24 of the 2010 Rules.”.

(3) Ignore paragraphs (3) and (6).

Formalities of establishment

60.—(1) Apply rule 4.42 of the 1986 Rules(b).

(2) In paragraph (3) omit “or authorisation” and from “or any representative” to “Act”.

Committee established by contributories

61.—(1) Apply rule 4.43 of the 1986 Rules(c).

(2) For rule 4.43(1) of that rule substitute—

“(1) This rule applies where the outcome of the creditors’ meeting summoned by the building society liquidator under rule 24 of the 2010 Rules is, by virtue of rule 25(3), that the liquidation committee ceases to exist at the end of the meeting”.

(3) In rule 4.43(2) omit “138 or”.

(4) In rule 4.43(4) omit “at least three and not more than five” and substitute “three or five”.

Obligations of liquidator to committee

62. Apply rule 4.44 of the 1986 Rules.

Meetings of the committee

63.—(1) Apply rule 4.45 of the 1986 Rules.

(2) In paragraph 2(a), after “representative” insert “or the FSCS”.

The chair at meetings

64. Apply rule 4.46 of the 1986 Rules.

Quorum

65.—(1) Apply rule 4.47 of the 1986 Rules.

(2) At the beginning of rule 4.47 insert “Subject to rule 4.59(5A)”

Committee members’ representatives

66.—(1) Apply rule 4.48 of the 1986 Rules(d).

(a) Rule 4.41 was amended by paragraph 23 of Schedule 1(I) to S.I. 1987/1921.

(b) Rule 4.42 was amended by paragraph 24 of Schedule 1(I) to S.I. 1987/1921, and paragraph 141(17) of Schedule 2(II) to S.I. 1999/1820. Rule 4.42(3) refers to section 375 of the Companies Act 1985 (c.6). That section was replaced by section 323 of the Companies Act 2006 (c.46) with effect from 1st October 2007.

(c) Rule 4.43 was amended by paragraph 25 of Schedule 1(I) to S.I. 1987/1921.

(d) Rule 4.48 was amended by paragraph 26 of Schedule 1(I) to S.I. 1987/1921. Rule 4.48 of the 1986 Rules refers to section 375 of the Companies Act 1985 (c.6). That section was replaced by section 323 of the Companies Act 2006 (c.46) with effect from 1st October 2007.

(2) In paragraph (2), omit from “or authorisation” to “Act”.

Resignation

67. Apply rule 4.49 of the 1986 Rules.

Termination of membership

68. Apply rule 4.50 of the 1986 Rules.

Removal

69. Apply rule 4.51 of the 1986 Rules.

Vacancy (creditor members)

70.—(1) Apply rule 4.52 of the 1986 Rules.

(2) At the end of paragraph (2) add “as applied by Rule 59 of the 2010 Rules”.

Vacancy (contributory members)

71.—(1) Apply rule 4.53 of the 1986 Rules(a).

(2) In paragraph (2) after “4.43(4) add “as applied by Rule 61 of the 2010 Rules” and after “4.59(4)” add “as applied by Rule 77 of the 2010 Rules”.

Voting rights and resolutions

72.—(1) Apply rule 4.54 of the 1986 Rules.

(2) In paragraph (1), leave out “creditor”.

(3) In paragraph (3) after “4.43(4) add “as applied by Rule 61 of the 2010 Rules” and after “4.59(4)” add “as applied by Rule 77 of the 2010 Rules”.

Resolutions by post

73.—(1) Apply rule 4.55 of the 1986 Rules(b).

(2) Ignore rule 4.55(3) and (4).

Liquidator’s reports

74.—(1) Apply rule 4.56 of the 1986 Rules.

(2) At the end of rule 4.56(1) insert “but does not apply to the FSCS”.

Expenses of members, etc

75. Apply rule 4.57(1) of the 1986 Rules.

Dealings by committee-members and others

76. Apply rule 4.58 of the 1986 Rules.

(a) Rule 4.53 was amended by paragraph 27 of Schedule 1(I) to S.I. 1987/1921.

(b) Rule 4.55 was amended by paragraph 28 of Schedule 1(I) to S.I. 1987/1921.

Composition of committee when creditors paid in full

- 77.—(1) Apply rule 4.59 of the 1986 Rules(a).
- (2) In paragraph (5)—
- (a) at the beginning, insert “Subject to paragraph (5A) below”;
 - (b) after “under paragraph (1)” insert “or since the FSCS has ceased to be on the committee”;
 - (c) at the end, insert “subject to paragraph (5A) below”.
- (3) After paragraph (5), insert—
- (4) “(5A) The liquidation committee continues to exist and can act so long as it consists of at least the FSCS.”.

Formal defects

78. Apply rule 4.59A of the 1986 Rules(b).

PART 10

DISTRIBUTION OF BUILDING SOCIETY ASSETS

Order of priority in distribution

79. Apply rule 4.66 of the 1986 Rules(c).

Order of priority of expenses of liquidation

80. Apply rule 4.67 of the 1986 Rules(d).

Application of the Bankruptcy Act

81. Apply rule 4.68 of the 1986 Rules(e).

PART 11

SPECIAL MANAGER

Appointment and remuneration

82. Apply rule 4.69 of the 1986 Rules.

Caution

83. Apply rule 4.70 of the 1986 Rules.

Failure to find or maintain caution

84. Apply rule 4.71 of the 1986 Rules.

(a) Rule 4.59 was amended by paragraph 141(18) of Schedule 2(II) to S.I. 1999/1820.
(b) Rule 4.59A was inserted by paragraph 29 of Schedule 1(I) to S.I. 1987/1921.
(c) Rule 4.66 was amended by paragraph 31 of Schedule 1(I) to S.I. 1987/1921.
(d) Rule 4.67 was amended by paragraph 32 of Schedule 1(I) to S.I. 1987/1921.
(e) Rule 4.68 was amended by regulation 27(2) of S.I. 2003/2109.

Accounting

85. Apply rule 4.72 of the 1986 Rules.

Termination of appointment

86. Apply rule 4.73 of the 1986 Rules.

PART 12

MISCELLANEOUS

FSA's directions under section 116 of the Banking Act

87. Where the FSA gives a direction under section 116 of the Banking Act (application by an interested person for postponement of dissolution) the FSA shall send a copy of the direction to that applicant for it(a).

Procedure following appeal under section 116 of the Banking Act

88. Following an appeal under section 116(2) of the Banking Act (against a decision of the FSA under the applicable section) the court shall send two certified copies of its order to the person in whose favour the appeal was determined; and that party shall send one of the copies to the FSA.

Limitation

89. Apply rule 4.76 of the 1986 Rules.

Dissolution after winding up

90. Apply rule 4.77 of the 1986 Rules. Ignore the reference to section 204 and for "registrar of companies" substitute "FSA".

PART 13

MEETINGS

Summoning of meetings

91. Apply rule 7.2 of the 1986 Rules.

Notice of meeting

92.—(1) Apply rule 7.3 of the 1986 Rules(b).

(2) Ignore rule 7.3(2) and (7).

(3) For rule 7.3(3) substitute "The convenor may also publish notice of the date, time and place of the meeting in such newspaper as he thinks most appropriate for ensuring that it comes to the notice of the persons who are entitled to attend the meeting."

(4) In rule 7.3(3A) omit "or, in cases" to "days" and ignore the reference to Rule 2.26A.

(a) S.I. 2009/805, amended by S.I.2010/1189, modifies the application of section 116.

(b) Rule 7.3 was amended by paragraph 35 of Schedule 1(I) to S.I. 1987/1921, paragraph 7 of Schedule 2 to S.I. 2003/2111 and rules 12 and 13 of S.I. 2009/662(S.1).

(5) In rule 7.3(4), for the words “section 171(2) or 172(2)”, substitute “sections 108 and 109 of the Banking Act”.

Chair of meetings

93.—(1) Meetings shall be chaired by the building society liquidator or a person nominated in writing by the building society liquidator.

(2) A person nominated under paragraph (1) must be—

- (a) qualified to act as an insolvency practitioner in accordance with section 390 of the Insolvency Act; or
- (b) an employee of the building society liquidator or of the building society liquidator’s firm who is experienced in insolvency matters.

Meetings requisitioned

94.—(1) Apply rule 7.6(1) to (8) of the 1986 Rules(a).

(2) For rule 7.6(1) substitute “Subject to paragraph (8), this rule applies to any request by a creditor or creditors to a building society liquidator for a meeting of creditors, separate meetings of creditors or contributories or for any other meeting under any other provision of the Insolvency Act as applied by the Banking Act, or these rules.”.

(3) In rule 7.6(3), (4) and (5) ignore “the administrator, or, as the case may be”.

Requisitioned meetings reforming the liquidation committee

95.—(1) Rule 7.6 of the 1986 Rules also applies where—

- (a) the liquidation committee has ceased to exist at the end of the first meeting of creditors under rule 25 and no further steps have been taken to re-establish that committee; and
- (b) the building society liquidator has been requested by no less than one-tenth in value of the building society’s creditors to summon a meeting for the purpose of re-establishing the liquidation committee.

(2) Where a meeting is requisitioned to reform the liquidation committee, the time periods set out in rule 7.6 of the 1986 Rules may be expedited by the building society liquidator at the request of the building society’s creditors.

(3) The building society liquidator shall give notice of the meeting to the FSA and the Bank of England.

(4) Rule 25(1), (2) and (3) shall then apply at this meeting as it were the first meeting of the creditors.

Quorum

96. — Apply rule 7.7 of the 1986 Rules(b). In paragraph (2) omit from the second “or” to “Act”.

Adjournment

97. Apply rule 7.8(1) to (6) of the 1986 Rules(c).

(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.

(b) Rule 7.7 was amended by paragraph 39 of Schedule 1(I) to S.I. 1987/1921.

(c) Rule 7.8 was amended by paragraph 40 of Schedule 1(I) to S.I. 1987/1921.

Entitlement to vote (creditors)

98. Apply rule 7.9(1) to (3) of the 1986 Rules(a).

Entitlement to vote (members and contributories)

99. Apply rule 7.10 of the 1986 Rules(b).

Chair of meeting as proxy holder

100. Apply rule 7.11(1) of the 1986 Rules.

Resolutions

101. Apply rule 7.12 of the 1986 Rules(c).

Report of meeting

102. Apply rule 7.13 of the 1986 Rules.

Application under section 176A(5) to disapply section 176A

103. Apply rule 7.13A of the 1986 Rules.

Notice of order under section 176A(5)

104.—(1) Apply rule 7.13B of the 1986 Rules.

(2) In rule 7.13B(1)(b) omit the words “receiver or”.

Definition of “proxy”

105.—(1) Apply rule 7.14 of the 1986 Rules(d).

(2) In rule 7.14(4) for “chairman of the meeting” substitute “chair of the meeting or the building society liquidator”.

Form of proxy

106. Apply rule 7.15 of the 1986 Rules.

Use of proxy at meeting

107. Apply rule 7.16 of the 1986 Rules(e).

Retention of proxies

108. Apply rule 7.17 of the 1986 Rules.

Right of inspection

109.—(1) Apply rule 7.18 of the 1986 Rules(f).

(a) Rule 7.9 was amended by paragraph 9 of Schedule 2 to S.I. 2003/2111.
(b) Rule 7.10 was amended by paragraph 17 of Schedule 1(2) to S.I. 2002/2709.
(c) Rule 7.12 was amended by paragraph 41 of Schedule 1(I) to S.I. 1987/1921.
(d) Rule 7.14 was amended by paragraph 42 of Schedule 1(I) to S.I. 1987/1921.
(e) Rule 7.16 was amended by paragraph 43 of Schedule 1(I) to S.I. 1987/1921.
(f) Rule 7.18 was amended by paragraph 44 of Schedule 1(I) to S.I. 1987/1921.

(2) In rule 7.18(1)(b) for the words “a company’s members or”, substitute “the company’s”.

(3) For rule 7.18 (2) substitute—

“(2) The reference in paragraph (1) to creditors is to those creditors whose claims have been accepted in whole or in part but does not include a person whose claim has been wholly rejected for purposes of voting, dividend or otherwise.”.

Proxy holder with financial interest

110. Apply rule 7.19 of the 1986 Rules(a).

PART 14

GENERAL PROVISIONS

Giving of notices, etc

111.—(1) Apply rule 7.21 of the 1986 Rules(b).

(2) In rule 7.21(1) for the words “the Act or the Rules” substitute “the Act as applied by the 2009 Act or these Rules”.

Service outside the United Kingdom

112. Where, for the purposes of building society insolvency proceedings, there is a requirement to effect service on a person outwith the United Kingdom, the court may, on application, order service to be effected in such manner as it thinks fit.

Sending by post

113. Apply rule 7.22 of the 1986 Rules(c).

Certificate of giving notice, etc.

114. Apply rule 7.23 of the 1986 Rules.

Validity of proceedings

115.—(1) Apply rule 7.24 of the 1986 Rules.

(2) For the words “the Act or the Rules”, substitute “the Act as applied by the 2009 Act or these Rules”.

Evidence of proceedings at meetings

116. Apply rule 7.25 of the 1986 Rules.

Right to list of creditors and copy documents

117.—(1) Apply rule 7.26 of the 1986 Rules(d).

(2) For rule 7.26(1) substitute “Paragraph (2) applies to building society insolvency proceedings.”.

(a) Rule 7.19 was amended by paragraph 45 of Schedule 1(I) to S.I. 1987/1921.

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

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

(d) Rule 7.26 was amended by paragraph 49 of Schedule 1(I) to S.I. 1987/1921, and regulation 28(2) of Part II of S.I. 2003/2109.

(3) Ignore rule 7.26(2A) where it first occurs referring to member State liquidator.

Confidentiality of documents

118. Apply rule 7.27 of the 1986 Rules(a).

Insolvency practitioner's caution

119.—(1) Apply rule 7.28 of the 1986 Rules.

(2) For rule 7.28(2) substitute—

“(2) It is the duty of the liquidation committee in a building society insolvency to review from time to time the adequacy of the building society liquidator’s caution”.

Forms for use in insolvency proceedings

120. The forms contained in Schedule 5(b) to the 1986 Rules shall be used, with such variations as circumstances require.

Fees, expenses, etc

121. Apply rule 7.31 of the 1986 Rules(c).

Power of court to cure defects in procedure

122. Apply rule 7.32 of the 1986 Rules.

Sederunt book

123.—(1) Apply rule 7.33 of the 1986 Rules(d).

(2) In rule 7.33 for the words “the Act or of the Rules”, substitute “the Act as applied by the 2009 Act and these Rules”.

Disposal of building society's books, papers and other records

124. Apply rule 7.34(1) and (3) of the 1986 Rules(e). In paragraph (3), ignore subparagraphs (b) and (c).

Information about time spent on a case

125. Apply rule 7.36 of the 1986 Rules(f).

21st October 2010

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

(a) Rule 7.27 was amended by paragraph 50 of Schedule 1(I) to S.I. 1987/1921.
(b) Schedule 5 was amended by rules 14 and 15 of S.I. 2009/662(S.1).
(c) Rule 7.31 was amended by article 8 of Part 1 of S.I. 2003/2108.
(d) 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.
(e) 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.
(f) Rule 7.36 was inserted by rule 5 of S.I. 2008/393.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules set out the procedure for the building society insolvency process under Part 2 of the Banking Act 2009 (as applied to building societies by the Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805, amended by S.I. 2010/1189).

The main features of building society insolvency are as follows. In the event of a building society becoming insolvent, it enables those depositors who are eligible for compensation under the Financial Services Compensation Scheme (“the FSCS”) to either—

- (a) receive compensation for their lost deposits as soon as possible after the building society goes into building society insolvency; or
- (b) have their account transferred to a different building society.

This is the first objective of the building society insolvency process.

The procedure can only be initiated by the Bank of England or the Financial Services Authority (“the FSA”) by application to the court. The court then makes a building society insolvency order, appointing a building society liquidator. In the initial stages, the building society liquidator is accountable to a liquidation committee formed of the FSA, the Bank of England and the FSCS.

Once the building society liquidator considers that the first objective is achieved, the liquidation committee will pass a resolution to that effect and the building society insolvency will move to the second objective which is to wind up the affairs of the building society so as to achieve the best results for the creditors as a whole.

The Rules are based on the Insolvency (Scotland) Rules 1986 and certain provisions of the 1986 Rules are applied to these Rules, subject to a number of general and specific modifications.

Part 1 contains introductory provisions.

Part 2 of these Rules sets out the application process for a building society insolvency order.

Part 3 sets out the procedure for appointing a provisional bank liquidator.

Part 4 sets out provisions relating to the statement of affairs.

Part 5 makes provision in relation to creditors and contributories.

Part 6 sets out the procedure concerning meetings of contributories.

Part 7 sets out procedure concerning claims.

Part 8 sets out provisions relating to the liquidator.

Part 9 sets out provisions concerning the liquidation committee.

Part 10 set out provisions relating to the distribution of building society assets.

Part 11 set out provisions concerning the special manager.

Part 12 set out miscellaneous provisions.

Part 13 sets out provisions relating to meetings.

Part 14 contains general provisions.

An Impact Assessment relating to the rules for building society insolvency and special administration has been prepared and may be 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).

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