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STATUTORY INSTRUMENTS

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**2010 No. 2584**

**The Building Society Insolvency (Scotland) Rules 2010**

**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.

(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(1) 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.

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(1) 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.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).

### **Taking possession and realisation of the building society's assets**

35. Apply rule 4.22 of the 1986 Rules(2).

### **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.

(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(3).

(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.

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(2) Rule 4.22 was inserted by paragraph 19 of Schedule 1(I) to [S.I. 1987/1921](#).

(3) 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](#).

### **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.

(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(4) 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;

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(4) Rule 4.19 was amended by paragraph 17(1) of Schedule 1(I) to [S.I. 1987/1921](#).

- (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.

(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(5).

### Creditors' claim that remuneration is excessive

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

(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(6) of the Insolvency Act; and
- (b) consents to act as the building society liquidator.

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

(6) 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.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).

(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(7).

(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)(8) 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.

(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.

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

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

**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.