

EXPLANATORY MEMORANDUM TO
THE BUILDING SOCIETY SPECIAL ADMINISTRATION RULES
(NORTHERN IRELAND) 2014

2014 No. 40

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment (as the Department with lead responsibility for insolvency matters in Northern Ireland) on behalf of the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 359(1D), (2), (2D), (3) and (3A) of the Insolvency (Northern Ireland) Order 1989 as applied by the Building Societies (Insolvency and Special Administration) Order 2009 (“the 2009 Order”) and is subject to the negative resolution procedure.

2. Purpose

- 2.1. These Rules set out the procedure for the building society special administration process (BSSAP) set out in Part 3 of the Banking Act 2009 (“the Act”) as applied by the 2009 Order.

3. Background

- 3.1. The Act, which received Royal Assent on 12 February 2009, replaced the powers to resolve failing banks conferred by the Banking (Special Provisions) Act 2008.
- 3.2. Part 3 of the Act, as applied to building societies, provides that where the Bank of England has made or intends to effect a partial sale or transfer to a commercial purchaser or bridge bank, the residual building society may be put into building society special administration. BSSAP is based, with modifications where required, on the provisions of administration set out in Schedule B1 to the Insolvency (Northern Ireland) Order 1989.
- 3.3. These insolvency rules are needed to make detailed provision on the procedure to be followed if a building society is undergoing BSSAP. A number of the provisions of these Rules are made by reference to the Insolvency Rules (Northern Ireland) 1991, which set out procedural rules for insolvency processes of companies. There are no procedural rules for insolvency processes of building societies.
- 3.4. These Rules are mainly based on the rules for administration set out in Part 2 of the Insolvency Rules (Northern Ireland) 1991, although certain rules in the Introductory Provisions and Parts 4, 7, 8, 9 and 12 are also applied. Many of the existing rules for the process of administration have been applied with little or no modification.
- 3.5. Some modifications to existing rules have been introduced to facilitate the achievement of the unique objectives of the BSSAP and to reflect the role of the Bank of England in exercising a partial transfer.

- 3.6. In keeping with ordinary administration, only an insolvency practitioner may be appointed as building society special administrator.
- 3.7. The objectives of a building society special administrator are to provide support services or facilities to a commercial purchaser or bridge bank to allow the transferred part to operate successfully (Objective 1) and to administer the society in such a way to achieve the best result for creditors and shareholding members (Objective 2).
- 3.8. Due to its role within the Special Resolution Regime set out in Part 1 of the Act, only the Bank of England may apply to the court for a building society special administration order and the rules provide for a hearing to be held quickly. This will be essential to help ensure successful resolution through a partial transfer to a commercial purchaser or bridge bank.
- 3.9. The rules also add detail to the appointment of a provisional building society special administrator in any period between the submission of an application for a building society special administration order and the court hearing for the making of such an order.
- 3.10. In order to facilitate the achievement of Objective 1 of the building society special administration procedure, the Bank of England will have an important role to play in the process and will be responsible for agreeing the administrator's initial proposals. The Bank of England will also fulfil the sort of functions usually carried out by a creditors' committee.
- 3.11. Once there is no requirement for the residual society to continue providing services or facilities to a commercial purchaser or a bridge bank, the process will continue in much the same way as an ordinary administration under Schedule B1 to the Insolvency (Northern Ireland) Order 1989, with appropriate modifications for building societies.
- 3.12. This instrument is the first use of the powers by the Department of Justice under Article 359 of the Insolvency (Northern Ireland) Order 1989 as amended by sections 160 and 167 of the Act and by the 2009 Order, to make rules to give effect to the building society special administration procedure in Northern Ireland, with the concurrence of the Department of Finance and Personnel and the Lord Chief Justice of Northern Ireland.

4. Consultation

- 4.1. Drafts of the equivalent instrument for England and Wales were consulted on with the Bank of England, the FSA (which was the predecessor to the FCA and PRA), the Financial Services Compensation Scheme, the Insolvency Service and the Chancellor of the High Court. The Northern Ireland draft was considered by the Northern Ireland Courts and Tribunals Service.
- 4.2. As this is the first set of Rules to be made in relation to the BSSAP, in accordance with section 160 of the Act, the Insolvency Rules Advisory Committee has not been consulted.

5. Equality Impact

- 5.1. The special administration procedure set out in Part 3 of the Act and the 2009 Order may only be instituted in connection with the powers to effect a

partial transfer of a building society's business to a bridge bank or private sector purchaser.

5.2. An Equality Impact Assessment has not been prepared for this instrument. It is considered that it fully complies with section 75 of the Northern Ireland Act 1998.

6. Regulatory Impact

6.1. The special administration procedure may only be used in relation to a partial transfer of a building society's business to a bridge bank or private sector purchaser. The definition of a building society is given in section 84 of the Act and the procedure to which these rules give effect could not be used in relation to other businesses, charities or voluntary bodies.

6.2. The Bank of England will have an important role to play in effecting a partial transfer and the operation of a bridge bank. Part 3 of the Act and these Rules have been developed in consultation with the Bank of England and the Financial Services Authority (as it was then). The Act and the 2009 Order extend to the whole of the United Kingdom. An impact assessment was prepared for the equivalent Rules brought into operation in England and Wales in November 2010. As these Rules are aimed at implementing the same regime in Northern Ireland, it was not considered that a separate impact assessment was required. No impact on small business is anticipated.

7. Financial Implications

7.1. N/A

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department has considered its obligations under section 24 of the Northern Ireland Act 1998 and is satisfied that the Rules are not incompatible with the Convention rights, are not incompatible with EU law, do not discriminate against a person or class of person on the grounds of religious belief or political opinion; and do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The Act and the 2009 Order extend to the whole of the United Kingdom. These Rules follow the formats in the equivalent rules for England and Wales and complete the details of the mechanism to be brought into play in Northern Ireland. Equivalent Rules have also been made for Scotland. Given the current financial instability, it is vital that powers to resolve failing banks, building societies and other financial institutions in all parts of the UK continue to be exercised effectively.

11. Additional Information

11.1. Not applicable.