

**EXPLANATORY MEMORANDUM TO**  
**THE BANK ADMINISTRATION (SCOTLAND) (AMENDMENT) RULES 2010**

**2010 No. 2578 (S.5)**

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

The instrument makes amendments to the Bank Administration (Scotland) Rules 2009 (S.I. 2009/350) (“the BAP (S) Rules”) which provide special insolvency rules for the bank administration procedure established in Part 3 of the Banking Act 2009 (“the 2009 Act”) in Scotland. The changes are necessary to reflect changes that have been made by the Insolvency Service to the underlying general insolvency rules (the Insolvency (Scotland) Rules 1986 (SI 1986/1915) (the “1986 Rules (S)”), on which the BAP (S) Rules are based.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.

4. **Legislative Context**

- 4.1 The instrument is the second use (in relation to Scotland) of the powers conferred on the Treasury under section 411 (1B) of the Insolvency Act 1986 (the “1986 Act”) as inserted by section 160 of the 2009 Act to make rules to give effect to the bank administration procedure.
- 4.2 Part 3 of the 2009 Act 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 bank (i.e. the part remaining) may be put into bank administration. This procedure is based, with modifications where required, on the provisions of administration set out in Schedule B1 to the 1986 Act.
- 4.3 This instrument makes amendments to the BAP (S) Rules which give effect to that procedure. Those rules are based, with necessary modifications, on the rules set out in Part 2 of the 1986 Rules (S) with rules in Parts 4 and 7 applied as necessary. They follow the order of the 1986 (S) Rules.
- 4.4 The amendments in this instrument arise in consequence of amendments that have been made by the Insolvency Service to the 1986 Rules (S), and other minor and technical changes that have been identified since the BAP (S) Rules came into force last year as a result of the consultation carried out in relation to the Building Society Special Administration Rules 2010 (BSSA Rules).

- 4.5 This instrument is laid along with The Bank Insolvency (Scotland) (Amendment) Rules 2010; The Bank Insolvency (England and Wales) (Amendment) Rules 2010 and the Bank Administration (England and Wales) (Amendment) Rules 2010

## **5. Territorial Extent and Application**

This instrument applies to Scotland only.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- 7.1 Part 3 of the 2009 Act provides that where the Bank of England makes, or intends to make, a partial sale or transfer to a commercial purchaser or bridge bank under the powers in Part 1 of the 2009 Act, the residual bank may be placed into bank administration. That process is based on the procedure of administration set out in Schedule B1 to the 1986 Act.
- 7.2 The current BAP (S) Rules were made in March 2009. They are based on the rules for administration set out in Part 2 of the 1986 Rules (S), give effect to the bank administration procedure and many of the existing rules for the process of administration have been applied with little or no modification. New rules and modifications to existing rules have been introduced in order to facilitate the achievement of the unique objectives of the bank administration procedure and to reflect the role of the Bank of England in exercising a partial transfer.
- 7.3 The Insolvency Service has brought forward a number of amendments to the 1986 Rules (S) and to the Insolvency Rules 1986 for England and Wales ( SI 1996/1925 – the “1986 Rules ( E &W”) ) to modernise and consolidate those instruments. The BAP (S) Rules, along with their English and Welsh equivalents cross-refer to these underlying insolvency rules to a significant extent. The Government’s view is that the insolvency rules for banks should be as similar as possible to the general rules, in order that they be familiar to insolvency practitioners, banks, and their professional advisers. Therefore as the 1986 Rules (S) have been amended, it has been necessary to review and make certain consequential amendments to the BAP(S) Rules.
- 7.4 However in 2009 we consulted upon and finalised the BSSA Rules based on the 1986 Rules (E & W) as amended in 2009 and not 2010. As the bank administration rules in Great Britain are, where possible, to be kept in line with the BSSA Rules, we consider that the BAP (S) Rules should not apply the 1986 Rules (S) as amended by the 2010 modernising amendments (that is the amendments brought in by SI 2010/688 which came into force on 6<sup>th</sup> April 2010). This instrument therefore takes the 2009 amendments to the 1986 Rules

(S) on board (i.e. amendments up to and including those as at 1<sup>st</sup> October 2009 when they were amended by SI 2009/2375), but does not apply the 2010 amendments or any subsequent amendments to them.

- 7.5 The more significant of the minor and technical changes that are being made are:
- 7.6 Rule 5 (inserting new provision rule 22A) - this amendment corrects a lacuna in the BAP (S) Rules. It clarifies that the Financial Services Authority (FSA) and the Financial Services Compensation Scheme (FSCS) are to receive a copy of the statement of proposals. The requirement to send out the statement to creditors etc is found in paragraph 49 of Schedule B1 of the 1986 Act, which makes no mention of sending the proposal out to the FSA and the FSCS.
- 7.7 Rule 11 (inserting new rule 35A) – it is possible that on the exercise of a stabilisation power under Part 1 of the 2009 Act, not all protected deposits are transferred under the exercise of the power and that some depositors still might claim for compensation to the FSCS. From 31st December 2010, FSA Rules will provide that the FSCS pay such claims in full without setting off any claim the bank might have against the claimant. The FSCS will then be assigned the claim. Therefore this new rule provides that when the administrator gives notice of a distribution, usual set-off is disapplied so that the amount of the deposit up to the compensation statutory limit cannot be set off against any liability the depositor owes to the bank. This will allow the FSCS, if assigned the claim after the date of the distribution notice, to be able to claim for the gross amount of compensation paid out.
- 7.8 Rule 12 (amending rule 36) – these changes reflect the fact that section 21(7) of the Financial Services Act 2010 has corrected Part 3 of the 2009 Act, so that paragraph 79 rather than paragraph 80 of Schedule B1 is applied - and that corresponding changes have been made to section 153 of the 2009 Act.
- 7.9 Rule 13 (amending rule 14) makes changes to the modifications to the provisions applied by the table in that rule due to the coming into force of section 323 of the Companies Act 2006.

## **8. Consultation outcome**

- 8.1 These rules implement minor and technical changes made in 2009 to the 1986 Rules (S) which have been consulted on separately by the Insolvency Service; and other minor and technical changes to ensure consistency with the BSSA Rules which were consulted on separately by the Treasury in 2009. The Treasury has therefore not run a separate public consultation on these rules.
- 8.2 The Treasury has sought the views of the Banking Liaison Panel (BLP), who have a statutory role under section 10 of the 2009 Act to advise the Treasury about secondary legislation made under Parts 1-3. The BLP had no comments on these rules.

## **9. Guidance**

No guidance is being issued on the instrument since it is largely based on existing insolvency rules and practice which will be familiar to insolvency practitioners and their advisers.

## **10. Impact**

10.1 The bank administration procedure set out in Part 3 of the 2009 Act may only be instituted in connection with the powers to effect a partial transfer of a bank's business to a bridge bank or private sector purchaser. The definition of a bank is given in section 2 of the 2009 Act and the procedure to which these rules give effect could not be used in relation to other businesses, charities or voluntary bodies.

10.2 As these changes are minor and technical, the Treasury's view is that they will not have a substantive impact on business. An Impact Assessment has been prepared for this instrument.

## **11. Regulating small business**

The bank administration procedure set out in Part 3 of the 2009 Act may only be used in relation to a partial transfer of a bank's business to a bridge bank or private sector purchaser. For these purposes, bank is defined in section 2 of the 2009 Act.

## **12. Monitoring & review**

The Treasury will ensure that arrangements for review are consistent with better regulation policy going forward. The post implementation review arrangements for these Rules are that they will be reviewed as and when necessary to take account of any changes arising from the Insolvency Service's insolvency rules modernisation project; and that they are kept under review by the Banking Liaison Panel (BLP) established under section 10 of the 2009 Act, and the Treasury.

## **13. Contact**

Chris Rusbridge at HM Treasury, Tel: 020 7270 4552 or email: [christopher.rusbridge@hmtreasury.gsi.gov.uk](mailto:christopher.rusbridge@hmtreasury.gsi.gov.uk), can answer any queries regarding the instrument.

<b>Title:</b> <b>Amendments to insolvency and administration rules for banks</b> <b>Lead department or agency:</b> Treasury <b>Other departments or agencies:</b> The Rules will be formally made by the Ministry of Justice	<b>Impact Assessment (IA)</b>
	<b>IA No:</b>
	<b>Date:</b> 01/01/2010
	<b>Stage:</b> Enactment
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
	<b>Contact for enquiries:</b> Chris Rusbridge, HM Treasury, 020 7270 4552

## Summary: Intervention and Options

### What is the problem under consideration? Why is government intervention necessary?

The problem under consideration is how to resolve a failing bank, minimising impact on depositors and financial stability. The bank insolvency procedure (BIP) can be used to wind up a bank if it fails. It has features that assist with the protection of the bank's depositors. The bank administration procedure (BAP) is used to wind up an insolvent 'residual company' that is left over after the resolution of a failed bank using a partial transfer under the special resolution regime. The BIP and BAP have statutory Rules setting out procedure for the bank liquidator / administrator. The Insolvency Services had brought forward modifications to the underlying insolvency rules on which these rules are based, which need to be reflected in the bank rules.

### What are the policy objectives and the intended effects?

The policy objective is to bring the bank rules into line with the general insolvency rules made by the Insolvency Service. This will ensure that BIP and BAP rules will be familiar to insolvency practitioners, banks and their professional advisers.

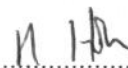
### What policy options have been considered? Please justify preferred option (further details in Evidence Base)

The Treasury has considered the alternative option of not making these amendment rules. The effect of this would be that the insolvency rules for banks would be inconsistent with the general insolvency rules. On balance, the Treasury considers that it is desirable to have the rules in place.

<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	It will be reviewed on an ongoing basis
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**SELECT SIGNATORY Sign-off** For enactment stage Impact Assessments:

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.**

Signed by the responsible Minister: .....  ..... Date: 3/9/2010

## Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

### Description and scale of key monetised costs by 'main affected groups'

There are no significant ongoing or one-off direct costs associated with these measures.

### Other key non-monetised costs by 'main affected groups'

There are no significant ongoing or one-off direct costs associated with these measures.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

It is not feasible to quantify the benefits of these amendment rules as distinct from the benefits of the benefits of the procedures as a whole.

### Other key non-monetised benefits by 'main affected groups'

It is not feasible to quantify the benefits of these rules as distinct from the benefits of the procedures as a whole. Benefits for the BIP and BAP are set out in the original impact assessments. However, by minimising the differences between with the general rules and those provided for banks, these instruments will minimise resource costs for insolvency practitioners, banks and their professional advisers (for example, cost associated with familiarising themselves with the new rules).

### Key assumptions/sensitivities/risks

Discount rate (%)

These rules will only be used where a bank fails, and costs and benefits will only materialise in that case. As any such costs and benefits will depend on the size and complexity of the insolvency, they are not possible to quantify in the abstract.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope Yes/No
New AB:	AB savings:	Policy cost savings:	Net:	

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England and Wales				
From what date will the policy be implemented?	15/09/2010				
Which organisation(s) will enforce the policy?	Treasury, Bank of England, FSA, Judiciary				
What is the annual change in enforcement cost (£m)?	N/A				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded: N/A		Non-traded: N/A		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: N/A		Benefits: N/A		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro N/A	< 20 N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties<sup>1</sup></b> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	
Justice system <a href="#">Justice Impact Test guidance</a>	No	
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	

<sup>1</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Impact Assessment for key policy changes brought about by the project to modernise and consolidate the Insolvency Rules 1986 and other insolvency secondary legislation, available from <a href="http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=557d3737c80d45fa81ceacc5a9858a3b">www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=557d3737c80d45fa81ceacc5a9858a3b</a>
2	Impact Assessment for the Banking Bill, available from <a href="http://webarchive.nationalarchives.gov.uk/20100407010852/http://www.hm-treasury.gov.uk/d/banking_bill_ia081008.pdf">http://webarchive.nationalarchives.gov.uk/20100407010852/http://www.hm-treasury.gov.uk/d/banking_bill_ia081008.pdf</a>
3	
4	

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<b>Annual recurring cost</b>	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<b>Total annual costs</b>	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<b>Transition benefits</b>	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<b>Annual recurring benefits</b>	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<b>Total annual benefits</b>	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

\* For non-monetised benefits please see summary pages and main evidence base section



## **Evidence Base (for summary sheets)**

The policy objective is to bring the bank rules into line with the general insolvency rules made by the Insolvency Service, which have been consulted on separately. The impact assessment for the insolvency rules modernisation project is available from the BERR website ([www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=557d3737c80d45fa81ceacc5a9858a3b](http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=557d3737c80d45fa81ceacc5a9858a3b)).

Ensuring that the BIP and BAP rules are consistent with the general insolvency rules will help to ensure that they are familiar to insolvency practitioners, banks and their professional advisers. By minimising the differences between with the general rules and those provided for banks, these instruments will minimise resource costs for insolvency practitioners, banks and their professional advisers (for example, cost associated with familiarising themselves with the new rules).

Further than that, it is not feasible to quantify the benefits of these amendment rules as distinct from the benefits of the procedures as a whole. As set out in the original impact assessment, the BIP and BAP bring non-monetised benefits to depositors and the wider economy in the event of the failure of a bank. The impact assessment for the BIP and BAP is available in the Impact Assessment for the Banking Act 2009, which is available from the National Archives website ([http://webarchive.nationalarchives.gov.uk/20100407010852/http://www.hm-treasury.gov.uk/d/banking\\_bill\\_ia081008.pdf](http://webarchive.nationalarchives.gov.uk/20100407010852/http://www.hm-treasury.gov.uk/d/banking_bill_ia081008.pdf))

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

**Basis of the review:** [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

The Treasury will ensure that arrangements for review are consistent with better regulation policy going forward. The rules will be reviewed as and when necessary to take account of any changes arising from the Insolvency Service's insolvency rules modernisation project. The rules are also kept under review by the Banking Liaison Panel (BLP) established under section 10 of the Banking Act 2009, and the Treasury.

**Review objective:** [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

Treasury's is likely to review the rules to ensure that they remain consistent with the general insolvency rules made by the Insolvency Service on which these rules are based. The Banking Liaison Panel have a statutory role to advise the Treasury about the impact of secondary legislation made under the Banking Act on financial markets.

**Review approach and rationale:** [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

The Treasury will evaluate the effectiveness of rules as appropriate if it becomes necessary to do; for example if problems are identified during the course of the resolution of a failing bank, or if the BLP identify issues of concern to financial markets, or if the general insolvency rules made by the Insolvency Service changes. The nature and scope of the review will depend on the issue that has been identified.

**Baseline:** [The current (baseline) position against which the change introduced by the legislation can be measured]

N/A

**Success criteria:** [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

The main criterion for success for these rules is that the BIP and BAP can be used effectively in the event that it is necessary to do so.

**Monitoring information arrangements:** [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

The main review mechanism is ongoing scrutiny by the Banking Liaison Panel, as described above.

**Reasons for not planning a PIR:** [If there is no plan to do a PIR please provide reasons here]