STATUTORY RULES OF NORTHERN IRELAND

2014 No. 40

BUILDING SOCIETIES

INSOLVENCY

The Building Society Special Administration Rules (Northern Ireland) 2014

Made - - - - 13th February 2014

Coming into operation 13th March 2014

The Department of Justice makes the following Rules in the exercise of powers conferred by Article 359(1D), (2), (2D), (3) and (3A) of the Insolvency (Northern Ireland) Order 1989 [F1].

The Department of Finance and Personnel concurs in the making of the Rules.

The Lord Chief Justice of Northern Ireland concurs in the making of the Rules in so far as they affect court procedure.

The Department of Justice has not consulted the Committee existing for the purposes of Article 360 of the Insolvency (Northern Ireland) Order 1989: this is the first set of Rules made in relation to building society insolvency and the duty to consult does not therefore apply to these Rules by virtue of Article 16 of the Building Societies (Insolvency and Special Administration) Order 2009 [F2].

F1 S.I. 1989/2405 (N.I. 19). Article 359 was amended by section 160 of the Banking Act 2009 (2009 c. 1) (applied by section 167) and by the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), **Article 15(1)** and Schedule 18, paragraph 142. Paragraph 3(A) was inserted by S.I. 2009/805.

F2 S.I. 2009/805, amended by S.I. 2010/1189 and S.I. 2013/496.

PART 1

Introduction

Citation

1. These Rules may be cited as the Building Society Special Administration Rules (Northern Ireland) 2014.

Commencement

2. These Rules shall come into operation on 13th March 2014.

Application of Rules

3. These Rules apply in relation to a building society undergoing the procedure in Part 3 of the Banking Act 2009 [F3], as applied and modified by section 90C of the Building Societies Act 1986 [F4].

F3 2009 c.1.
F4 1986 c.53; section 90C was inserted by Article 2 of the Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805).

Interpretation

4.—(1) In these Rules—

"the 1989 Order" means the Insolvency (Northern Ireland) Order 1989;

"the 1991 Rules" means the Insolvency Rules (Northern Ireland)1991 [F5] including all amendments to them up to and including those made by the Insolvency (Amendment) Rules (Northern Ireland) 2013 [F6];

"the 2009 Order" means the Building Societies (Insolvency and Special Administration) Order 2009;

"the 2014 Rules" means these Rules;

"an affidavit" means an affidavit as provided for by Article 165 of the 1989 Order;

"the appropriate regulator", in relation to a building society, means—

(a) if the building society is a PRA-authorised person (within the meaning of the Financial Services and Markets Act 2000), the Prudential Regulation Authority and, where relevant, the Financial Conduct Authority; and

(b) in any other case, the Financial Conduct Authority;

"the Banking Act" means the Banking Act 2009 (and includes those provisions as applied by Part 3 of Schedule 1 to the 2009 Order;

"the Building Societies Act" means the Building Societies Act 1986 [F7];

"building society" means a building society incorporated (or deemed to be incorporated) under the Building Societies Act;

"building society special administration", "building society special administration order" and "building society special administrator" have the same meaning as in the Building Societies Act (see sections 90C(2) and 119(1) of that Act) [F8];

"business day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Northern Ireland under or by virtue of the Banking and Financial Dealings Act 1971 [F9];

"contributory", in relation to a building society—

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

(ii) 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

(iii) 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 Article 177 (fraudulent trading) or 178 (wrongful trading) of the 1989 Order;

"the Department" means the Department of Enterprise, Trade and Investment [F10];

"principal office" means—

(a) the place which is specified in a building society's memorandum sent to the appropriate regulator under paragraph 1(1)(c) of Schedule 2 to the Building Societies Act as the address of its principal office, or

(b) if notice has been given by a building society to the appropriate regulator 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;

"registered name", in relation to a building society, means the name of the society which is for the time being registered with the appropriate regulator; and

"society", "special administration", "special administration order" and "special administrator" mean respectively building society, building society special administration, building society special administration order and building society special administrator;

(2) (a) the following expressions have the same meaning as in Part 1 or Part 3 of the Banking Act—

[F11(ai) "the Bank of England" (s. 256B(1)),]

(i) "bridge bank" (s. 136(2)),

(ii) "the court" (the High Court– s. 166(1)),

(iii) "the FCA" (the Financial Conduct Authority—s 166(2)),

(iv) "Objective 1" (support for commercial purchaser or bridge bank– ss. 137 and 138),

(v) "Objective 1 Achievement Notice" (s. 139(4)),

(vi) "Objective 2" (normal administration– ss. 137 & 140),

(vii) "the PRA" (the Prudential Regulation Authority—s 166(2)),

(viii) "private sector purchaser" (s. 136(2)),

(ix) "property transfer instrument" (s. 33),

(x) "residual building society" (s. 136(2)) [F12],

(xi) "resolution fund order" (s. 49(3)).

(b) any reference to Part 1 of the Banking Act (Special Resolution Regime), or to any provision in that Part, is a reference to that Part or to that provision as applied, with modifications, by section 84 of that Act;

(c) any reference to Part 3 of the Banking Act (Bank Administration), or to any provision in that Part, is a reference to that Part or to that provision as applied by section 167 of that Act and as applied and modified by section 90C of the Building Societies Act and by any order made under section 158 of the Banking Act [F13]; and

(d) any reference to any provision of the Building Societies (Insolvency and Special Administration) Order 2009 is a reference to that provision as applied by Article 17 of that Order.

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

F5 The Insolvency Rules (Northern Ireland) 1991 (S.R. 1991 No. 364), as amended by S.R. 1994 No. 26, S.R. 1995 No. 291, S.R. 2000 No. 247, S.R. 2002 No. 261, S.R. 2003 No. 549, S.R. 2006 No. 47, S.R. 2008 No. 118, S.R. 2009 No. 404, S.R. 2011 No. 151, **S.I.** 2004/355 and S.R. 2013 No. 278.
F6 S.R. 2013 No. 278.
F7 1986 c.53.
F8 Section 90C was inserted, and section 119(1) amended, by S.I. 2009/805.
F9 1971 c.80.
F10 Formerly the Department of Economic Development, see the Departments (Northern Ireland) Order 1999 (S.I. 1999/283 (N.I. 1)).
F11 Rule 4(2)(a)(ai) inserted (1.3.2017) by The Bank of England and Financial Services (Consequential Amendments) Regulations 2017 (S.I. 2017/80), reg. 1, **Sch. para. 41**
F12 In the application of Parts 2 and 3 of the Banking Act 2009 to building societies, references to "bank" (with certain exceptions) have effect as references to "building society": see section 90C(2) of the Building Societies Act 1986, inserted by S.I. 2009/805.
F13 Section 90C was inserted by S.I. 2009/805, which also modifies the application of Part 3 in relation to building societies. S.I. 2009/805 was modified by S.I. 2010/1189 and S.I. 2013/496.

5. In these Rules—

(a) "the FSCS" means the scheme manager of the Financial Services Compensation Scheme (established under Part 15 of the Financial Services and Markets Act 2000 [F14]);

(b) "the Objective 1 Stage" means the period during which a building society special administration order is in force before the Bank of England gives an Objective 1 Achievement Notice;

(c) "the Objective 2 Stage" means the period during which a building society special administration order is in force after the Bank of England gives an Objective 1 Achievement Notice;

(d) a reference to personal service is a reference to personal service in accordance with Order 65 of the Rules of the Court of Judicature (Northern Ireland) 1980 [F15];

(e) a reference to an affidavit (including a reference implied by the application of an enactment) is a reference to an affidavit, if made by a special administrator, stating that the affidavit is made in that capacity and giving the address at which the special administrator works; and

(f) a reference to "the purpose of the special administration" is a reference to the objectives of building society administration in section 137 of the Banking Act.

F14 2000 c.8.
F15 S.R. 1980 No. 346, as amended by the Constitutional Reform Act 2005 (c.4), **section 59** and Schedule 11.

Overview

6. The purpose of these Rules is to prescribe a procedure for the appointment of a special administrator, and the operation of special administration, under Part 3 of the Banking Act in Northern Ireland.

Forms

7.—(1) This rule applies where a provision of these rules—

(a) applies a provision of the 1991 Rules which requires the use of a prescribed form, or

(b) makes provision similar to that made by a provision of those Rules which requires the use of a prescribed form.

(2) The form prescribed for the purposes of those Rules is to be used with any modification that the person using the form thinks desirable to reflect the nature of building society insolvency.

PART 2

Application for Building Society Special Administration Order

Introduction

8. This Part makes specific provision for a number of aspects of applications for special administration orders; Part 5 applies a number of provisions of the 1991 Rules to applications for special administration orders (with specified modifications).

Content of application

9. An application by the Bank of England for a special administration order in respect of a building society shall specify—

(a) the registered name of the society;

(b) any other trading names of the society;

(c) the address of the society's principal office;

(d) an e-mail address for the society;

(e) the address of the Bank of England; and

(f) the identity of the person (or persons) nominated for appointment as building society special administrator.

10. If the society has notified the Bank of England of an address for service which is, because of special circumstances, to be used in place of the principal office, that address shall be specified under Rule 9(c).

Statement of proposed special administrator

11. An application shall be accompanied by a statement by the proposed special administrator—

(a) specifying the name and address of any person proposed to be appointed;

(b) giving that person's consent to act;

(c) giving details of the person's qualification to act as an insolvency practitioner; and

(d) giving details of any prior professional relationship that the person has had with the society.

Bank of England affidavit

12.—(1) An application for a special administration order in respect of a society shall be accompanied by an affidavit made on behalf of the Bank of England—

(a) certifying that the conditions for applying for a special administration order, set out in section 143 of the Banking Act, are met in respect of the society;