

**2009 No. 350**

**BANKS AND BANKING, SCOTLAND**

**BANK INSOLVENCY**

**The Bank Administration (Scotland) Rules 2009**

<i>Made</i> - - - -	<i>23rd February 2009</i>
<i>Laid before Parliament</i>	<i>24th February 2009</i>
<i>Coming into force</i> - -	<i>25th February 2009</i>

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

## PART 1

### Introduction

#### Citation

1. These Rules may be cited as the Bank Administration (Scotland) Rules 2009.

#### Commencement

2. These Rules come into force on 25th February 2009.

#### Extent

3. These Rules extend to Scotland only.

#### Interpretation

4.—(1) The following expressions used in these Rules take their meaning from the Banking Act 2009(b) (in accordance with section 11 of the Interpretation Act 1978(c) – construction of subordinate legislation) or are as expressly defined below—

- (a) “bank” (s. 2);
- (b) “bank administration” (s. 141(4)(a));
- (c) “bank administration order” (s. 141(1));
- (d) “bank administrator” (s. 141(1));
- (e) “the court” (the Court of Session)– s. 166(1));
- (f) “the FSA” (the Financial Services Authority– s. 166(2));
- (g) “Objective 1” (support for commercial purchaser or bridge bank– s. 138(1));
- (h) “Objective 1 Achievement Notice” (s. 139(4));
- (i) “Objective 2” (normal administration– s. 140(1));

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(a) 1986 c.45. Subsections (1B) and (2D) were inserted by section 160 of the Banking Act 2009 c.1.  
(b) 2009 c.1.  
(c) 1978 c.30.

- (j) “residual bank” (s. 136(2));
- (k) “resolution fund order” (s. 49(3));
- (l) “the 1986 Act” means the Insolvency Act 1986;
- (m) “the 1986 Rules” means the Insolvency (Scotland) Rules 1986(a); and
- (n) “the 2009 Act” means the Banking Act 2009.

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

**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(b));
- (b) “the Objective 1 Stage” means the period during which a bank administration order is in force before the Bank of England gives an Objective 1 Achievement Notice; and
- (c) “the Objective 2 Stage” means the period during which a bank administration order is in force after the Bank of England gives an Objective 1 Achievement Notice.

## **Overview**

**6.** The purpose of these Rules is to prescribe a procedure in Scotland for the appointment of a bank administrator, and the operation of bank administration, under Part 3 of the 2009 Act.

## **Forms**

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

- (a) applies a provision of the 1986 Rules which requires the use of a prescribed form; or
- (b) makes provision similar to that made by a provision of the 1986 Rules which requires the use of a prescribed form.

(2) The form prescribed for the purposes of the 1986 Rules is to be used, with any modification that the person using the form thinks desirable to reflect the nature of bank administration.

# **PART 2**

## **Application for Bank Administration Order**

### **Introduction**

**8.** This Part makes specific provision for a number of aspects of applications for bank administration orders. Part 4 applies a number of provisions of the 1986 Rules to applications for bank administration orders (with specified modifications).

### **Content of application**

**9.** An application by the Bank of England for a bank administration order in respect of a bank must specify—

- (a) the full name of the bank;

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(a) S.I. 1986/1915. The Insolvency (Scotland) Rules have been amended by a number of instruments.  
(b) 2000 c.8.

- (b) any other trading names of the bank;
- (c) the address of the bank's registered office;
- (d) an email address for the bank;
- (e) the address of the Bank of England; and
- (f) the identity of the person (or persons) nominated for appointment as bank administrator.

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

#### **Statement of proposed bank administrator**

11. An application must be accompanied by a statement by each proposed bank administrator—
- (a) specifying the name and address of the person proposed to be appointed;
  - (b) giving that person's consent to act;
  - (c) giving details of that person's qualification to act as an insolvency practitioner; and
  - (d) giving details of any prior professional relationship that person (or any other proposed bank administrator) has had with the bank.

#### **Lodging**

12. The application, and its accompanying documents, must be lodged with the court.

#### **Service**

13. The Bank of England shall serve the application—
- (a) on the bank;
  - (b) on the person (or each of the persons) nominated for appointment as bank administrator;
  - (c) on any person whom the Bank of England knows to be entitled to appoint an administrator under paragraph 14 of Schedule B1 to the 1986 Act or a receiver of the whole (or substantially the whole) of the bank's property;
  - (d) on any person who has given notice to the FSA in respect of the bank under section 120 of the 2009 Act (bank insolvency: notice of preliminary steps of other insolvency procedures); and
  - (e) if a property transfer instrument was made or is to be made under section 11(2)(b) of the 2009 Act (transfer to commercial purchaser), on each transferee as referred to in that instrument.

14. Service must be effected as soon as is reasonably practicable, having regard in particular to the need to give the bank's representatives a reasonable opportunity to attend the hearing of the application.

#### **Other notification**

15. As soon as is reasonably practicable after lodging the application the Bank of England must notify—
- (a) any enforcement officer or other officer whom the Bank of England knows to be charged with effecting an execution, any diligence or other legal process against the bank or its property;
  - (b) any person whom the Bank of England knows to have executed diligence against the bank or its property; and
  - (c) the FSA.

### **Notice of order**

**16.** If the court makes a bank administration order, it shall send four certified copies of it to the Bank of England.

**17.** The Bank of England shall as soon as is reasonably practicable send—

- (a) one certified copy to the bank administrator;
- (b) one certified copy to the FSA; and
- (c) one certified copy to the FSCS.

### **Expenses**

**18.** If the court makes a bank administration order, the following are payable as an expense of the bank administration:—

- (a) the Bank of England's expenses of making the application and complying with the requirements of these Rules; and
- (b) any other expenses allowed by the court.

## **PART 3**

### **Process of Bank Administration**

#### **Introduction**

**19.** This Part makes specific provision for a number of aspects of bank administration. Part 4 applies a number of provisions of the 1986 Rules to bank administration (with specified modifications).

#### **Bank administrator's proposals: Objective 1 Stage**

**20.—(1)** This rule makes provision about the statement of proposals which the bank administrator is required to make in the Objective 1 Stage under section 147 of the 2009 Act.

**(2)** In addition to the information required by section 147 the statement must include—

- (a) details of the court where the proceedings are and the court reference number;
- (b) the full name, any other trading names, the registered office and registered number of the bank;
- (c) details of the appointment of the bank administrator (including the date);
- (d) in the case of joint bank administrators, details of the apportionment of functions;
- (e) the names of the directors and secretary of the bank and details of any shareholdings in the bank they have;
- (f) an account of the circumstances giving rise to the application for the appointment of the bank administrator;
- (g) if a statement of the bank's affairs has been submitted, a copy or summary of it with the comments of the bank administrator, if any;
- (h) if an order limiting the disclosure of the statement of affairs has been made under rule 2.22 of the 1986 Rules (as applied by rule 39 below), a statement of that fact, as well as—
  - (i) details of who provided the statement of affairs;
  - (ii) the date of the order for limited disclosure; and
  - (iii) the details or a summary of the details that are not subject to that order;

- (i) if a full statement of affairs is not provided, the names, addresses and debts of the creditors including details of any security held (or, in the case of depositors, a single statement of their aggregate debt);
  - (j) if no statement of affairs has been provided, details of the financial position of the bank at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the bank entered bank administration), a list of the bank's creditors including their names, addresses and details of their debts, including any security held, and an explanation as to why there is no statement of affairs;
  - (k) the basis upon which it is proposed that the remuneration of the bank administrator(s) should be fixed under rule 2.39 of the 1986 Rules(a) (as applied by rule 39 below);
  - (l) how the bank administrator proposes to pursue Objective 1;
  - (m) whether the bank administrator proposes to pursue Objective 2(a) or Objective 2(b);
  - (n) if the bank administrator proposes to pursue Objective 2(a), how it is envisaged the purpose of the bank administration will be achieved in the Objective 2 Stage;
  - (o) if the bank administrator proposes to pursue Objective 2(b)—
    - (i) how it is envisaged the purpose of the bank administration will be achieved in the Objective 2 Stage; and
    - (ii) how it is proposed that the bank administration shall end (winding-up or voluntary arrangement, in accordance with section 154 of the 2009 Act);
  - (p) the manner in which the affairs and business of the bank have been managed and financed since the date of the appointment of the bank administrator (including the reasons for and terms of any disposal of assets); and
  - (q) the manner in which the affairs and business of the bank will be managed and financed if the proposals of the bank administrator are approved.
- (3) The statement—
- (a) may exclude information, the disclosure of which could seriously prejudice the commercial interests of the bank; and
  - (b) must include a statement of any exclusion.

### **Bank administrator's proposals: Objective 2 Stage**

**21.—**(1) This rule makes provision about the statement of proposals which the bank administrator is required to make under paragraph 49 of Schedule B1 to the 1986 Act(b) as it applies during the Objective 2 Stage (in accordance with Table 1 in section 145 of the 2009 Act).

- (2) The statement must include—
- (a) details of the court where the proceedings are and the court reference number;
  - (b) the full name, any other trading names, the registered office and registered number of the bank;
  - (c) details of the appointment of the bank administrator (including the date);
  - (d) in the case of joint bank administrators, details of the apportionment of functions;
  - (e) the names of the directors and secretary of the bank and details of any shareholdings in the bank they have;
  - (f) an account of the circumstances giving rise to the application for the appointment of the bank administrator;
  - (g) if a statement of the bank's affairs has been submitted, a copy or summary of it with the comments of the bank administrator, if any;

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(a) Rule 2.39 was amended by rule 8(1) of S.I. 2006/734.

(b) Paragraph 49 of Schedule B1 was amended by paragraph 100(a) of Schedule 1(2) to S.I. 2008/948.

- (h) if an order limiting the disclosure of the statement of affairs has been made under rule 2.22 of the 1986 Rules (as applied by rule 39 below), a statement of that fact, as well as—
    - (i) details of who provided the statement of affairs;
    - (ii) the date of the order for limited disclosure; and
    - (iii) the details or a summary of the details that are not subject to that order;
  - (i) if a full statement of affairs is not provided, the names, addresses and debts of the creditors including details of any security held (or, in the case of depositors, a single statement of their aggregate debt);
  - (j) if no statement of affairs has been provided, details of the financial position of the bank at the latest practicable date (which must, unless the court otherwise orders, be a date not earlier than that on which the bank entered bank administration), a list of the bank's creditors including their names, addresses and details of their debts, including any security held, and an explanation as to why there is no statement of affairs;
  - (k) the basis upon which it is proposed that the remuneration of the bank administrator should be fixed under rule 2.39 of the 1986 Rules (as applied by rule 39 below);
  - (l) details of whether (and why) the bank administrator proposes to apply to the court under section 176A(5) of the 1986 Act<sup>(a)</sup> (omission of distribution to unsecured creditors: as applied by Table 2 in section 145 of the 2009 Act)(unless the bank administrator intends to propose a company voluntary arrangement);
  - (m) an estimate of the value of the prescribed part for the purposes of section 176A of the 1986 Act (unless the bank administrator intends to propose a company voluntary arrangement) certified as being made to the best of the bank administrator's knowledge and belief;
  - (n) an estimate of the value of the bank's net property (unless the bank administrator intends to propose a company voluntary arrangement) certified as being made to the best of the bank administrator's knowledge and belief;
  - (o) whether the bank administrator proposes to pursue Objective 2(a) or Objective 2(b);
  - (p) if the bank administrator proposes to pursue Objective 2(a), how it is envisaged the purpose of the bank administration will be achieved;
  - (q) if the bank administrator proposes to pursue Objective 2(b)—
    - (i) how it is envisaged the purpose of the bank administration will be achieved; and
    - (ii) how it is proposed that the bank administration shall end (winding-up or voluntary arrangement, in accordance with section 154 of the 2009 Act);
  - (r) if the bank administrator has decided not to call a meeting of creditors, the reasons for that decision;
  - (s) the manner in which the affairs and business of the bank have been managed and financed since the date of the appointment of the bank administrator (including the reasons for and terms of any disposal of assets);
  - (t) the manner in which the affairs and business of the bank will be managed and financed if the proposals of the bank administrator are approved; and
  - (u) any other information which the bank administrator thinks necessary to enable creditors to decide whether or not to vote for the approval of the proposals.
- (3) In the case of bank administration following transfer to a bridge bank under section 12(2) of the 2009 Act—
- (a) the statement under paragraph 49 of Schedule B1 must state whether any payment is to be made to the bank from a scheme under a resolution fund order; or

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<sup>(a)</sup> Section 176A was inserted by section 252 of the Enterprise Act 2002 (c.40).

- (b) if that information is unavailable when the statement under paragraph 49 of Schedule B1 is made, the bank administrator must issue a supplemental statement as soon as reasonably practicable after the information becomes available.

(4) The statement—

- (a) may exclude information, the disclosure of which could seriously prejudice the commercial interests of the bank; and
- (b) must include a statement of any exclusion.

**22.** If the bank administrator thinks that the statement made under section 147 of the 2009 Act in accordance with rule 20 contains information required by rule 21(2), the statement under paragraph 49 of Schedule B1 to the 1986 Act (as applied by Table 1 in section 145 of the 2009 Act) may consist of the statement under section 147, with such additions, modifications and supplemental information as the bank administrator thinks necessary—

- (a) to comply with rule 21(2); and
- (b) to bring the statement under section 147 up to date.

**23.** Where the court orders an extension of the period of time under paragraph 49(5) of Schedule B1 on an application by the bank administrator under paragraph 107 (as applied by Table 1 in section 145 of the 2009 Act), the bank administrator must notify the persons set out in paragraph 49(4) as soon as is reasonably practicable after the making of the order.

**24.** Where the bank administrator has made a statement under paragraph 52(1) of Schedule B1 to the 1986 Act (as applied by Table 1 in section 145 of the 2009 Act) and has not called an initial meeting of creditors, the proposals issued in accordance with rule 21 above will be deemed to have been approved by the creditors (if no meeting has been requisitioned under paragraph 52(2) within the period set out in rule 7.6 of the 1986 Rules(a) – as applied by rule 39 below).

**25.** Where the bank administrator intends to apply to the court (or file or lodge a notice under paragraph 80(2) of Schedule B1 to the 1986 Act in accordance with section 153 of the 2009 Act) for the bank administration to cease before the statement of proposals is sent to creditors in accordance with paragraph 49 of Schedule B1 to the 1986 Act, the bank administrator(s) must, at least 10 days before making the application (or filing or lodging the notice), send to all known creditors of the bank a report containing the information required by rule 21(2).

**26.—(1)** Any bank administrator who wishes to publish a notice under paragraph 49(6) of Schedule B1 to the 1986 Act must publish the notice once in a newspaper which the bank administrator thinks most appropriate for ensuring that the notice comes to the attention of the bank’s members.

(2) The notice must—

- (a) state the full name of the bank;
- (b) state the full name and address of each bank administrator of the bank;
- (c) give details of the appointment of the bank administrator; and
- (d) specify an address to which members can write for a copy of the statement of proposals.

(3) The notice must be published as soon as is reasonably practicable after the bank administrator sends the statement of proposals to the bank’s creditors but no later than 8 weeks (or such other period as may be agreed by the creditors or as the court may order) from the date that the bank entered bank administration.

### **Reports to creditors**

**27.—(1)** “A progress report” means a report which includes—

- (a) details of the court where the proceedings are and the relevant court reference number;

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(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) full details of the bank's name, address of registered office and registered number;
- (c) full details of the name and address and date of appointment of the bank administrator, including any changes in office-holder;
- (d) in the case of joint bank administrators, details of the apportionment of functions;
- (e) details of any extensions of the initial period of appointment;
- (f) details of progress during the period of the report, including a receipts and payments account (as detailed in paragraph (2) below);
- (g) details of any assets that remain to be realised;
- (h) details of any amounts received from a scheme under a resolution fund order; and
- (i) any other information likely to be relevant to the creditors.

(2) A receipts and payments account must state what assets of the bank have been realised, for what value, and what payments have been made to creditors or others.

(3) The account must be in the form of an abstract showing receipts and payments during the period of the report; and where the bank administrator has ceased to act, the receipts and payments account shall include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A of the 1986 Act (prescribed part).

(4) During the Objective 1 Stage, a progress report must include details of—

- (a) the extent of the business of the bank that has been transferred;
- (b) any property, rights or liabilities that have been transferred, or which the bank administrator expects to be transferred, under a power in Part 1 of the 2009 Act (special resolution regime);
- (c) any requirements imposed on the residual bank, for the purpose of the pursuit of Objective 1, under a power under that Part; and
- (d) the arrangements for managing and financing the bank during the Objective 1 Stage.

(5) In complying with paragraph (4)(c) and (d) a report—

- (a) may exclude information, the disclosure of which could seriously prejudice the commercial interests of the bank; and
- (b) must include a statement of any exclusion.

**28.** A progress report must be produced for—

- (a) the first period of 6 months of the bank administration;
- (b) every subsequent period of 6 months; and
- (c) when the bank administrator ceases to act, the period from the date of the previous report (or, if there was none, from the beginning of the bank administration) until the administrator ceases to act.

**29.—**(1) The bank administrator must send a copy of each progress report within 28 days of the end of the period covered by that report, to—

- (a) the creditors of the bank;
- (b) the court;
- (c) the Bank of England;
- (d) the FSA;
- (e) the FSCS; and
- (f) the registrar of companies.

(2) Instead of complying with paragraph (1)(a) the bank administrator may publish the progress report on its internet website (and take appropriate steps to draw attention to it).

(3) The court may, on the application of the bank administrator—

- (a) extend the period specified in paragraph (1) above;

(b) make any other order about the content of a progress report.

**30.**—(1) A bank administrator who fails to comply with rule 28 or 29 is liable to a fine and, for continued contravention, to a daily default fine.

(2) For that purpose, failure to comply with rule 28 or 29 shall be treated in the same way as failure to comply with rule 2.38 of the 1986 Rules.

### **Removal of bank administrator in Objective 1 Stage**

**31.**—(1) With regard to any application for removal of a bank administrator made by the Bank of England during the Objective 1 Stage (in accordance with the modifications for the application of paragraph 91 of Schedule B1 to the 1986 Act in Table 1 in section 145 of the 2009 Act), the rules for service of notice of the application shall be as for the application to appoint a bank administrator under Part 2 of these Rules.

(2) Both the person proposed to be appointed as a replacement and the existing bank administrator are entitled to be served and heard.

### **Appointment of provisional bank administrator**

**32.** If the court makes an order appointing one or more provisional bank administrators the court shall—

- (a) notify the Bank of England;
- (b) send a copy of the order to the person appointed (by email if possible); and
- (c) send a copy of the order to any administrative receiver of the bank.

**33.**—(1) As soon as is reasonably practicable after appointment any provisional bank administrator must send a copy of the order of appointment—

- (a) the bank;
- (b) the FSA; and
- (c) the registrar of companies (in Form 4.9(Scot), with such variations, if any, as the circumstances may require).

(2) Notice to the bank must be given by effecting service to its registered office.

**34.** The Bank of England may disclose the fact and terms of an order appointing any provisional bank administrator to any person whom the Bank of England thinks has a sufficient business interest.

### **Additional joint bank administrator**

**35.**—(1) The process for the appointment of an additional joint bank administrator is the same as for the initial appointment of a bank administrator.

(2) The existing bank administrator (or each of them) is entitled to a copy of the application and may—

- (a) lodge written answers; and
- (b) be heard at any hearing fixed by the court.

(3) An application for the appointment of an additional joint bank administrator may be made during the Objective 1 Stage only by the Bank of England.

(4) Rule 39 below applies rules 2.19 and 2.55 of the 1986 Rules.

### **End of administration: successful rescue**

**36.**—(1) This rule supplements section 153 of the 2009 Act (end of bank administration where bank administrator satisfied that Objective 2(a) has been achieved).

(2) The notice of the bank administrator under paragraph 80 of Schedule B1 to the 1986 Act (as applied by section 153 of the 2009 Act)—

- (a) must be lodged with the court in Form 2.23B (subject to rule 7(2) above); and
- (b) must be accompanied by a final progress report.

(3) The notice takes effect when the court discharges the bank administration order on the application of the bank administrator.

(4) Before applying for discharge the bank administrator must send a copy of the notice under paragraph 80 of Schedule B1 to the 1986 Act and the progress report to—

- (a) the Bank of England;
- (b) the FSA;
- (c) the FSCS; and
- (d) the registrar of companies.

(5) Notice under paragraph (4)(b) and (c) above must be given at least 7 days' before the hearing of the application for approval of the notice.

(6) The bank administrator shall be taken to have complied with the requirements of paragraph 80(5) of Schedule B1 to the 1986 Act if, within 5 business days of lodging the notice under paragraph 80 of Schedule B1 to the 1986 Act with the court, the bank administrator publishes once in the same newspaper in which the bank administrator's notice of appointment was published, and once in the Edinburgh Gazette, a notice specifying—

- (a) the full name of the bank and any other trading names;
- (b) the name and address of the bank administrator;
- (c) the date of the notice under paragraph 80 of Schedule B1 to the 1986 Act; and
- (d) an address to which creditors of the bank can write for a copy of the notice under paragraph 80 of Schedule B1 to the 1986 Act and the final progress report.

(7) The application of the bank administrator for discharge must certify compliance with the requirements of paragraph 80 of Schedule B1 to the 1986 Act and of the preceding paragraphs of this rule.

(8) If the court is satisfied that the conditions in section 153(1) of the 2009 Act have been met it shall—

- (a) discharge the bank administration order; and
- (b) notify the bank administrator who shall notify the registrar of companies.

#### **End of administration: dissolution**

**37.—**(1) This rule supplements section 154(2)(a) of the 2009 Act (bank administrator giving notice under paragraph 84 of Schedule B1 to the 1986 Act that there are no more assets for distribution, and moving to dissolution).

(2) The notice of the bank administrator under paragraph 84 of Schedule B1 to the 1986 Act—

- (a) must be lodged with the court in Form 2.26B (subject to rule 7(2) above); and
- (b) must be accompanied by a final progress report.

(3) The notice shall not take effect until the court discharges the bank administration order on the application of the bank administrator.

(4) Before applying for discharge the bank administrator must send a copy of the notice under paragraph 84 of Schedule B1 to the 1986 Act and the final progress report to—

- (a) the registrar of companies; and
- (b) each person who received notice of the appointment of the bank administrator.

(5) After the expiry of the period mentioned in paragraph 84(6) of Schedule B1 to the 1986 Act (and subject to extension under paragraph 84(7) of Schedule B1 to the 1986 Act) if the court discharges the bank administration order under paragraph 84 of Schedule B1 to the 1986 Act—

- (a) the notice takes effect as specified in paragraph 84(6) of Schedule B1 to the 1986 Act and;
- (b) the court shall notify the bank administrator, who shall notify the registrar of companies.

(6) If the court makes an order under paragraph 84(7) of Schedule B1 to the 1986 Act it shall notify the bank administrator in Form 2.27 (subject to rule 7(2) above), who shall notify the registrar of companies.

**38.** Proceedings under sections 213 and 214 of the Insolvency Act 1986 (fraudulent and wrongful trading) shall be conducted in accordance with section 215 of that Act subject to the modifications specified in section 145 of the 2009 Act.

## PART 4

### Application of Insolvency (Scotland) Rules 1986

#### **General application**

**39.** The provisions of the 1986 Rules listed in the Table in rule 42 apply for the purposes of bank administration and applications for bank administration.

**40.** For that purpose the rules apply with—

- (a) the general modifications set out in rule 41;
- (b) any specific modification set out in the Table in rule 42; and
- (c) any other necessary modification.

#### **General modifications**

**41.** The general modifications are that—

- (a) a reference to an administrator or a liquidator is to be treated as a reference to a bank administrator;
- (b) a reference to administration or liquidation is to be treated as a reference to bank administration;
- (c) a reference to a provisional liquidator is to be treated as a reference to a provisional bank administrator;
- (d) a reference to a winding-up order is to be treated as a reference to a bank administration order;
- (e) a reference to a petition for a winding-up order is to be treated as a reference to an application for a bank administration order;
- (f) a reference to insolvency proceedings is to be treated as a reference to bank administration (or proceedings for bank administration);
- (g) a reference to the responsible insolvency practitioner is to be treated as a reference to the bank administrator or provisional bank administrator;
- (h) all references to the EC Regulation or to the appointment of a member State liquidator are to be ignored;
- (i) a reference to the company is to be treated as a reference to the bank;
- (j) a reference in the rules to a paragraph of Schedule B1 to the 1986 Act is to be treated as a reference to that paragraph as applied and modified by section 145 of the 2009 Act; and
- (k) a reference to the 1986 Act includes a reference to Part 3 of the 2009 Act.

#### **Table of applications and specific modifications**

**42.** This rule contains the Table of applied 1986 Rules.

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
2.19	Notification and advertisement of administrator's appointment	Ignore paragraphs 2(a), (b), and (c).
2.20(a)	Notice requiring statement of affairs	
2.21	Statements of affairs and statements of concurrence	
2.22	Limited disclosure	On an application for disclosure under paragraph (4) any of the following may appear and be heard, or make representations:—  (a) the bank administrator;  (b) the Bank of England;  (c) the FSA.
2.23	Release from duty to submit statement of affairs; extension of time	On an application under paragraph (2) for release or extension of time any of the following may appear and be heard, or make written representations:—  (a) the bank administrator;  (b) the Bank of England;  (c) the FSA.
2.24	Expenses of statement of affairs	
2.25(b)	<i>Administrator's proposals</i>	<i>Rule 2.25 is not applied. Equivalent provision is made in Part 3 of these Rules.</i>
2.26	General (Meetings)	In the application of paragraph (1) of rule 7.2, the FSA and the FSCS shall be treated as entitled to attend the meeting.  Ignore the application of rules 7.1 and 7.4.
2.27	Meetings to consider administrator's proposals	(1) Rule 2.27 applies in the Objective 2 Stage.

- (a) Rule 2.20 was amended by paragraph 6(3) of Schedule 1(I) to S.I. 1987/1921.  
(b) Rule 2.25 was amended by rule 6 of S.I. 2006/734.

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
		(2) The bank administrator shall give the FSA and the FSCS at least 14 days notice of any meeting referred to in paragraph (1) of rule 2.27.
2.28	Correspondence instead of creditors meetings	
2.29	Applicable law	
2.31	Meetings requisitioned by creditors	Treat the reference to the administrator's statement of proposals as a reference to the bank administrator's statement of proposals in accordance with rule 24 above.
2.33	Hire-purchase, conditional sale and hiring agreements	
2.34	Revision of administrator's proposals	In paragraph 1(c) ignore the reference to the person making the appointment.
2.35	Notices to creditors	
2.36	Application of provisions in Part 3 (Receivers)	<p><i>(A creditors' committee cannot be established until the Objective 2 Stage - see the modifications for the application of paragraphs 50 to 58 of Schedule B1 of the Insolvency Act 1986 in Table 1 in section 145 of the 2009 Act).</i></p> <p>In the application of paragraph (2) of rule 3.8—</p> <p>(a) notice of the application must be given to the FSA and the FSCS; and</p> <p>(b) the FSA and the FSCS may appear and be heard.</p>
2.37	Disposal of secured property, etc.	<p>If an application is made during the Objective 1 Stage, then in addition to the requirements of rule 2.37—</p> <p>(a) the bank administrator must notify the Bank of England of the time and place of the hearing;</p>

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
		<p>(b) the Bank of England may appear; and</p> <p>(c) if an order is made the bank administrator must send a copy of the order to the Bank of England as soon as reasonably practicable.</p>
2.38	<i>Progress reports</i>	<i>Rule 2.38 is not applied. Equivalent provision is made in Part 3 of these Rules.</i>
2.39(a)	Determination of outlays and remuneration	<p>(1) In the Objective 1 Stage the Bank of England shall fix the bank administrators' remuneration in accordance with rule 2.39(4).</p> <p>(2) In the Objective 2 Stage, rule 2.39 shall apply (but pending action under paragraphs (2), (3) and (6) arrangements established by the Bank of England in the Objective 1 Stage shall continue to apply).</p>
2.39A(b)	Appeal against fixing of remuneration	<p>(1) In respect of remuneration fixed by the Bank of England—</p> <p>(a) Rule 2.39A applies as if references to the creditors' committee and creditors were references to the Bank of England; and</p> <p>(b) the court shall have regard to Objective 1.</p> <p>(2) In respect of any application under rule 2.39A—</p> <p>(a) notice of the application must be given to the FSA; and</p> <p>(b) the FSA may appear and be heard.</p> <p>Rule 2.39A (5), (6) and (7) applies only during the</p>

- (a) Rule 2.39 was amended by rule 8(1) of S.I. 2006/734.  
(b) Rule 2.39A was amended by rule 8(1) of S.I. 2006/734.

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
		Objective 2 Stage.
2.39B(a)	Expenses of the administration	<p>In addition to the matters listed in rule 2.39B, expenses in connection with a provisional bank administration are payable in the following order of priority—</p> <p>(a) the cost of any security provided by the provisional bank administrator takes priority equally with security provided by the bank administrator;</p> <p>(b) the remuneration of the provisional bank administrator ranks next; and</p> <p>(c) any deposit lodged on an application for the appointment of a provisional bank administrator ranks next.</p>
2.40	Distributions to creditors	<i>(Distributions in the case of bank administration following transfer to a bridge bank under section 12(2) of the 2009 Act and during the Objective 1 Stage require the Bank of England's consent – see the modification for the application of paragraph 65 of Schedule B1 to the Insolvency Act 1986 in Table 1 in section 145 of the 2009 Act.)</i>
2.41(b)	Distributions to creditors	<p><i>(Distributions in the case of bank administration following transfer to a bridge bank under section 12(2) of the 2009 Act and during the Objective 1 Stage require the Bank of England's consent – see the modification for the application of paragraph 65 of Schedule B1 to the Insolvency Act 1986 in Table 1 in section 145 of the 2009 Act.)</i></p> <p>(1) In respect of an application</p>

(a) Rule 2.39B was inserted by rule 5 of S.I. 2008/662.

(b) Rule 2.41 was amended by rule 9(1) of S.I. 2006/734, and rule 6 of S.I. 2008/662.



<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
		<p>under s.49(6) of the Bankruptcy (Scotland) Act 1985(a) (as applied)—</p> <p>(a) notice of the application must be given to the FSA and the FSCS and, during the Objective 1 Stage, the Bank of England; and</p> <p>(b) the FSA, the FSCS and the Bank of England during the Objective 1 Stage, may appear and be heard.</p> <p>(2) The bank administrator shall give 28 days notice of any proposed payment of distribution or dividend and notice of any payment of distribution or dividend to—</p> <p>(a) the FSA and the FSCS; and</p> <p>(b) during the Objective 1 Stage of a bank administration following transfer to a bridge bank under section 12(2) of the 2009 Act, the Bank of England.</p> <p>(3) In the case of notice of any payment of distribution or dividend in a bank administration following transfer to a bridge bank under section 12(2) of the 2009 Act and during the Objective 1 Stage, the notice shall include details of any payment made from a scheme under a resolution fund order.</p> <p>(4) If the bank administrator is unable to declare any dividend or any further dividend, the bank administrator must, in addition to notifying the creditors of this fact, notify—</p> <p>(a) the FSA;</p> <p>(b) the FSCS; and</p>

(a) 1985 c.66. Section 49(6) was amended by section 31 of Part 1 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
		(c) the Bank of England; in a case where it consented to a distribution under these Rules.
2.41A	Payments of Dividends	<i>(Distributions in the case of bank administration following transfer to a bridge bank under section 12(2) of the 2009 Act and during the Objective 1 Stage require the Bank of England's consent – see the modification for the application of paragraph 65 of Schedule B1 to the Insolvency Act 1986 in Table 1 in section 145 of the 2009 Act).</i>
2.42	Final progress report	In the case of a bank administration following transfer to a bridge bank under section 12(2) of the 2009 Act the final progress report—  (1) must not be made until the bank administrator is satisfied that any payment to be made to the bank from a scheme under a resolution fund order has been made; and  (2) must state whether any payment has been received and, if so, its amount.
2.45	<i>Notice of end of administration</i>	<i>Rule 2.45 is not applied. Equivalent provision is made by Part 3 of these Rules.</i>
2.46	Application to court	The references to paragraph 79 are to be treated as references to paragraph 80 of Schedule B1 to the 1986 Act (as applied by section 153(2) of the 2009 Act).
2.48	<i>Moving from administration to dissolution</i>	<i>Rule 2.48 is not applied. Equivalent provision is made by Part 3 of these Rules.</i>
2.49	Grounds for resignation	During the Objective 1 Stage the Bank of England's consent, as well as the court's leave, is required for resignation under paragraph (2).

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
2.50	Notice of intention to resign	The Bank of England and the FSA are added to the list of those entitled to notice under paragraph (1).
2.51	Notice of resignation	
2.52	Administrator deceased	
2.53	Application to replace	<p>Rule 2.53 is applied during the Objective 2 Stage only (and ignoring references to paragraph 95 of Schedule B1).</p> <p><i>(For equivalent provisions about application for removal by the Bank of England during the Objective 1 Stage (in accordance with the modifications for the application of paragraph 91 of Schedule B1 to the Insolvency Act 1986 in Table 1 in section 145 of the 2009 Act) see Part 3 of these Rules.</i></p>
2.54	Application to replace	
2.55	Joint or concurrent appointments	
2.56	Application to court to remove administrator from office	<p>An application may be made during the Objective 1 Stage only with the consent of the Bank of England – see the modifications for the application of paragraph 88 of Schedule B1 to the Insolvency Act 1986 in Table 1 in section 145 of the 2009 Act.</p> <p>(1) An application must state either—</p> <p>(a) that the Bank of England has consented to its being made; or</p> <p>(b) that the Objective 1 Stage has ended.</p> <p>(2) The FSA is added to the list of those on whom an application under paragraph (1) must be served.</p>

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
4.1(a)	<i>Appointment of provisional liquidator</i>	<i>Rule 4.1 is not applied. Equivalent provision is made by Part VII of Chapter 74 of Schedule 2 to the Act of Sederunt (Rules of the Court of Session 1994)1994(b).</i>
4.2(c)	<i>Order of Appointment</i>	<i>Rule 4.2 is not applied. Equivalent provision is made by Part 3 of these Rules.</i>
4.3	Caution	
4.4	Failure to find or to maintain caution	
4.5(d)	Remuneration	
4.6(e)	Termination of Appointment	An application for termination may be made by— the provisional bank administrator, or the Bank of England only.
7.13A	Application under section 176A(5) to disapply section 176A	
7.13B	Notice of order under section 176A(5)	
7.14 to 7.20(f)	Proxies	<i>(In rule 7.20, the reference to section 375 of the Companies Act 1985(g) is now a reference to section 323 of the Companies Act 2006(h))</i>  For rule 7.20(2), substitute—  “The copy resolution must be signed or subscribed by or on behalf of the bank in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995(a) or certified by the secretary or director of the bank to be a true copy.”

- (a) Rule 4.1 was amended by paragraph 9 of Schedule 1(I) to S.I. 1987/1921.  
(b) S.I. 1994/1443. Part VIII of Chapter 74 was inserted by rule 3 of S.S.I. 2009/63.  
(c) Rule 4.2 was amended by paragraph 141(5) of Schedule 2(II) to S.I. 1999/1820.  
(d) Rule 4.5 was amended by paragraph 10 of Schedule 1(I) to S.I. 1987/1921.  
(e) Rule 4.6 was amended by paragraph 11 of Schedule 1(I) to S.I. 1987/1921, and rule 13(b) of S.I. 2006/734.  
(f) Rules 7.14 to 7.20 were amended by paragraphs 42 to 46 of Schedule 1(I) to S.I. 1987/1921.  
(g) 1985 c.6. Section 375 was repealed by paragraph 1 of Schedule 16 to the Companies Act 2006 c.46.  
(h) 2006 c.46.

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
7.21 <b>(b)</b>	Giving of notices, etc.	
7.22 <b>(c)</b>	Sending by post	Rule 7.22 applies subject to express provision about service made in these Rules.
7.23	Certificate of giving notice, etc.	
7.24	Validity of proceedings	
7.25	Evidence of proceedings at meetings	
7.26 <b>(d)</b>	Right to list of creditors and copy documents	<p>(1) The following have the right, at all reasonable times, to inspect documents in respect of bank administration proceedings:—</p> <p>(a) a person who is or was a director or officer of the bank;</p> <p>(b) a member of the bank;</p> <p>(c) any person stating himself in writing to be a creditor of the bank;</p> <p>(d) any person stating himself in writing to be a contributor in respect of the bank;</p> <p>(e) the Bank of England, and</p> <p>(f) the FSA; and</p> <p>(g) the FSCS.</p> <p>(2) A right of inspection may be exercised on a person's behalf by anyone authorised by him in writing.</p> <p>(3) A right of inspection in terms of paragraph 1 is not exercisable in the case of documents, or parts of documents, as to which the court directs (either generally or specifically) that they are not to be made open to inspection without the court's</p>

(a) 1995 c.7.

(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 S.I. 2003/2109.

<i>Rule</i>	<i>Subject</i>	<i>Specific Modifications</i>
		leave; and an application for such leave may be made by—  (a) the bank administrator(s) or provisional bank administrator(s); or  (b) any party appearing to the court to have an interest.  (4) References to “a creditor who has a right to inspect documents” in rule 7.26(2) shall include a reference to the persons listed in paragraph (1) above.
7.27(a)	Confidentiality of documents	
7.28	Insolvency practitioner’s caution	
7.29 and Schedule 4 of the Insolvency Act 1986	Punishment of offences	
7.31(b)	Fees, expenses, etc.	
7.32	Power of court to cure defects in procedure	
7.33(c)	Sederunt book	
7.34(d)	Disposal of company’s books, papers and other records	
7.35(e)	Information about time spent on a case-administration and company voluntary arrangements	

*Steve McCabe*

*Dave Watts*

Two of the Lords Commissioners  
of Her Majesty’s Treasury

23rd February 2009

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- (a) Rule 7.27 was amended by paragraph 50 of Schedule 1(I) to S.I. 1987/1921.  
(b) Rule 7.31 was amended by article 8 of S.I. 2003/2108.  
(c) 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.  
(d) 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.  
(e) Rule 7.35 was inserted by rule 15 of S.I. 2006/734.

## EXPLANATORY NOTE

*(This note is not part of the Rules)*

These Rules set out the procedure for the bank administration process under Part 3 of the Banking Act 2009 in Scotland.

The main features of bank administration are that:

- (a) it is used where part of the business of a bank is sold to a commercial purchaser or transferred to a bridge bank in accordance with section 12 of the Banking Act;
- (b) the court appoints a bank administrator on the application of the Bank of England;
- (c) the bank administrator ensures that the non-sold or non-transferred part of the bank provides services or facilities to enable the commercial purchaser or bridge bank to operate effectively;
- (d) the bank administrator has two objectives (Objective 1 – supporting the private purchaser or bridge bank; and Objective 2 – normal administration); and
- (e) in other respects the process is the same as for normal administration under the Insolvency Act 1986, subject to specified modifications.

Part 2 of the Rules sets out special provisions about applications for bank administration.

Part 3 of the Rules sets out special provisions about the bank administration process.

Part 4 of the Rules applies specified provisions of the Insolvency (Scotland) Rules 1986 for general purposes in connection with bank administration, subject to a number of general and specific modifications.

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**BANKS AND BANKING, SCOTLAND**

**BANK INSOLVENCY**

The Bank Administration (Scotland) Rules 2009

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