

2010 No. 2583

BANKS AND BANKING, ENGLAND AND WALES
INSOLVENCY, ENGLAND AND WALES

The Bank Administration (England and Wales) (Amendment)
Rules 2010

<i>Made</i> - - - -	<i>20th October 2010</i>
<i>Laid before Parliament</i>	<i>25th October 2010</i>
<i>Coming into force</i> - -	<i>15th November 2010</i>

The Lord Chancellor makes the following Rules in the exercise of powers under section 411(1B)(a), (2), (2D) and (3) of the Insolvency Act 1986(a).

The Treasury concur in the making of the Rules.

The Chancellor of the High Court (by the authority of the Lord Chief Justice under section 411(7) of the Insolvency Act 1986) concurs in the making of the Rules in so far as they affect court procedure.

Before making these Rules, the Lord Chancellor consulted the committee existing for the purposes of section 413 of the 1986 Act.

Citation, commencement and extent

1. These Rules may be cited as the Bank Administration (England and Wales) (Amendment) Rules 2010, shall come into force on 15th November 2010.
2. These Rules extend to England and Wales only.

Amendments to the Bank Administration (England and Wales) Rules 2009

3. The Bank Administration (England and Wales) Rules 2009(b) are amended as follows.
4. In rule 4—
 - (a) in paragraph (1), omit all the text in brackets; and
 - (b) in paragraph (2), for “as in these rules” substitute “in these Rules”.
5. In rule 5—

(a) 1986 c. 45; section 411 is amended by section 160 of the Banking Act 2009 (2009 c. 1).
(b) S.I. 2009/357.

- (a) after sub-paragraph (c), insert—
 - “(ca) a reference to “the Insolvency Rules 1986”(a) is a reference to those Rules including all amendments to them up to and including those made by the Insolvency (Amendment) (No. 2) Rules 2009(b),”; and
 - (b) after sub-paragraph (f), insert—
 - “(g) the purpose of bank administration” is a reference to the objectives of bank administration in section 137 of the Banking Act 2009.”.
- 6.** In rule 12, in paragraph (2)—
- (a) for “maker”, substitute “making”, and
 - (b) for “should”, substitute “must” whenever it occurs.
- 7.** In rule 16, for “rule 15”, substitute “Rule 15”.
- 8.** After rule 30, insert—
- “**30A.** Where the statement of proposals is sent to creditors in accordance with paragraph 49(4)(b) of Schedule B1 (as applied by Table 1 in section 145(6) of the Banking Act 2009), it must be sent to the FSA and the FSCS at the same time.”.
- 9.** In rule 33, omit “(or file a notice under paragraph 80(2) of Schedule B1 in accordance with section 153 of the Banking Act 2009)” and “(or filing the notice)”.
- 10.** In rule 34, for paragraph (1) substitute—
- “(1) Where the bank administrator wishes to publish a notice under paragraph 49(6) of Schedule B1 (as applied by Table 1 in section 145(6) of the Banking Act 2009), the notice shall be advertised in such manner as the bank administrator thinks fit.”.
- 11.** In rule 35, in paragraph (4)(c), for “that Part” substitute “Part 1”.
- 12.** In rule 37, in paragraph (2), after “attention to it” insert “and send a copy of it to any creditor on request”.
- 13.** For rule 44, substitute—
- “**44.** If the court makes an order appointing a provisional bank administrator, as soon as reasonably practicable the court shall send 4 sealed copies of the order to the person appointed (and 1 additional copy by email if possible).”.
- 14.** In rule 45—
- (a) in paragraph (1)—
 - (i) after sub-paragraph (a) insert—
 - “(aa) any administrative receiver of the bank,”,
 - (ii) in sub-paragraph (b), omit “and”, and
 - (iii) after sub-paragraph (b), insert—
 - “(ba) the FSCS, and”; and
 - (b) after paragraph (2), insert—
 - “(3) Unless the court otherwise directs, on receipt of the order of appointment, as soon as reasonably practicable, the provisional bank administrator shall give notice of that appointment. Such notice—
 - (a) shall be gazetted; and

(a) S.I. 1986/1925 as amended by S.I. 1987/1919, 1989/397, 1991/495, 1993/602, 1995/586, 1999/359, 1999/1022, 2001/763, 2002/1307, 2002/2712, 2004/584, 2004/1070, 2005/527, 2006/1272, 2007/1974, 2008/737, 2009/642 and 2009/2472.

(b) S.I. 2009/2472.

- (b) may be advertised in such other manner as the provisional bank administrator thinks fit.”.

15. After rule 47, insert—

“Disapplication of set-off for protected deposits

47A.—(1) This rule applies if—

- (a) FSA Rules allow the FSCS to make gross payments of compensation in respect of protected deposits; and
- (b) all or part of a creditor’s claim against the bank is in respect of protected deposits.

(2) Rule 2.85 of the Insolvency Rules 1986 shall apply, but for the purpose of determining the sums due from the bank to an eligible depositor in respect of protected deposits under rule 2.85(3)—

- (a) where the total of the sums held by the bank for the depositor in respect of protected deposits is no more than the amount prescribed as the maximum compensation payable in respect of protected deposits under Part 15 of the Financial Services and Markets Act 2000 (“the limit”), then paragraph (3) applies; and
- (b) where the sums held exceed the limit, then paragraph (4) applies.

(3) Where this paragraph applies, there shall be deemed to have been no mutual dealings, regardless of whether there are any sums due from the depositor to the bank, and the sum due to the depositor from the bank will be the total of the sums held by the bank for that depositor in respect of the protected deposits.

(4) Where this paragraph applies then—

- (a) any mutual dealings shall be treated as being mutual dealings only in relation to the amount by which the total of the sums due to the depositor exceeds the limit, and
- (b) the sums due from the bank to the depositor in respect of the protected deposits will be—
 - (i) the amount by which that total exceeds the limit, set off against the amounts due to the bank from the depositor in accordance with rule 2.85(3); and
 - (ii) the sums held by the bank for the depositor in respect of protected deposits up to the limit.

(5) Any arrangements with regard to set-off between the bank and the eligible depositor in existence before the date of the notice referred to in rule 2.85(1) shall be subject to this rule in so far as they relate to protected deposits.

(6) In this rule—

“eligible depositor” has the meaning given to it by section 93(3) of the Banking Act 2009;

“FSA Rules” means the FSA’s Compensation Sourcebook, as amended from time to time, made under section 213 of the Financial Services and Markets Act 2000(a); and

“protected deposit” means a protected deposit within the meaning given by the FSA Rules held by the bank at the date of the notice referred to in rule 2.85(1).”.

(a) 2000 c.8.

16. In rule 48—

- (a) for paragraph (2), substitute—

“(2) The bank administrator’s application under paragraph 79 of Schedule B1 to the Insolvency Act 1986 (as applied by section 153 of the Banking Act 2009(a)) (“the application”) shall have attached to it a progress report for the period from the date of the previous report (or, if there was none, from the beginning of the bank administration) and a statement indicating what the bank administrator thinks should be the next steps for the bank.”;

- (b) omit paragraph (3);

- (c) for paragraph (4), substitute—

“(4) Before making the application, the bank administrator must send a copy of the application and the progress report to—

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

- (d) in paragraph (5)—

- (i) for “Notice under paragraphs (4)(b) and (c) must be given”, substitute “Copies under paragraphs (4)(b) and (c) must be sent”, and
- (ii) omit “for approval of the notice”;

- (e) for paragraph (6), substitute—

“(6) Within 5 business days of filing the application with the court, the bank administrator must gazette a notice undertaking to provide a copy of the application to any creditor of the bank. This notice may also be published in such other manner as the bank administrator thinks fit.”; and

- (f) for paragraph (7), substitute—

“(7) The application must certify compliance with the preceding paragraphs of this rule.”.

17. In rule 52, after paragraph (2), insert—

“(2A) No bank administration proceedings shall be filed in the Central Office of the High Court.”.

18. In rule 61, in the Table of applications and specific modifications—

- (a) in the entry for rule 2.27, omit the words in the third column;
- (b) in the entry for rule 2.85, in the third column insert “Where all or part of a creditor’s claim against the bank is in respect of protected deposits (see rule 47A(6)), rule 47A applies instead.”;
- (c) omit the entry for rule 2.113;
- (d) in the entry for rule 2.114, for the words in the third column, substitute “Rule 2.114 is not applied – but equivalent provision is made by Part 3 of these Rules.”;
- (e) omit the entries for rules 7.30 and 7.32;
- (f) in the entry for rule 7.47, omit the words in the third column;
- (g) in the entry for rule 8.7, for the words in the third column, substitute “In paragraph (1) omit “of creditors or””;
- (h) omit the entries for rules 11.1 to 11.13; and
- (i) in the entry for rule 12.4A, omit the words in the third column.

(a) As amended by section 21 of the Financial Services Act 2010 (2010 c. 28).

20th October 2010

Kenneth Clarke, C.
Lord Chancellor

We concur

James Duddridge
Michael Fabricant

21st October 2010

Two of the Lords Commissioners of Her Majesty's Treasury

I concur

Sir Andrew Morritt
The Chancellor of the High Court

7th September 2010

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Bank Administration (England and Wales) Rules 2009 (S.I. 2009/357) (“the Bank Administration Rules”) to—

- (j) provide that the reference to the Insolvency Rules 1986 (S.I. 1986/1925) in the Bank Administration Rules includes all amendments to the Insolvency Rules 1986 up to and including those made by the Insolvency (Amendment) Rules 2009 (S.I. 2009/642) and the Insolvency (Amendment) (No.2) Rules 2009 (S.I. 2009/2472) (“the 2009 amending instruments”) (rule 5);
- (k) provide for the statement of proposals to be sent to the FSA and the FSCS (rule 8);
- (l) provide for the disapplication of set-off for protected deposits up to the Financial Service Compensation Scheme’s statutory limit (rule 15);
- (m) modify rules 33, 48 and the table of applied provisions in rule 61 of the Bank Administration Rules to reflect the substitution of paragraph 79 for paragraph 80 in section 145 of the Banking Act 2009 and the corresponding amendment to section 153 of the Banking Act (made by section 21 of the Financial Services Act 2010); (rules 9, 16 and 18);
- (n) reflect amendments made to the Insolvency Rules 1986 by the 2009 amending instruments (rule 18); and
- (o) make other minor amendments to the Bank Administration Rules.

An Impact Assessment on the effect of the amendments to the Bank Administration (England and Wales) Rules 2009 (S.I. 2009/357) has been prepared and may be obtained from the Financial Regulatory Strategy team, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ. It is also available on HM Treasury’s website (www.hm-treasury.gov.uk).

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STATUTORY INSTRUMENTS

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