

SCHEDULE 1

Article 3

Modified application of Parts 2 and 3 of the Banking Act 2009 to building societies

PART 1

General mode of application

General mode of application and interpretation

1. This Schedule specifies modifications to Part 2 (Bank Insolvency) and Part 3 (Bank Administration) of the 2009 Act as they apply in relation to building societies by virtue of section 90C of the 1986 Act.

2.—(1) Parts 2 and 3 of the 2009 Act apply to building societies with the following general modifications (in addition to the general modifications set out in section 90C(2) of the 1986 Act)—

- (a) for “company” in each place where it appears (except in section 151) substitute “building society”;
- (b) a reference to depositors includes a reference to holders of shares in the society;
- (c) a reference to a provision in Part 1 (Special Resolution Regime) of the 2009 Act is a reference to that provision as applied to building societies with any modifications by section 84 of the 2009 Act (application of Part 1: general);
- (d) a reference to a provision in Part 2 or 3 of the 2009 Act is a reference to that provision as applied in relation to building societies by section 90C of the 1986 Act with any modifications specified in that section or this Schedule.

3. Where a provision of Part 2 or 3 of the 2009 Act applies a provision of the Insolvency Act 1986 or the Companies Act 2006⁽¹⁾, the provision so applied has effect in relation to building societies with the following modifications—

- (a) for “articles” substitute “rules”;
- (b) for “company” substitute “building society”;
- (c) for “registered office” substitute “principal office”;
- (d) for “registrar of companies” or “registrar” substitute “FSA”;
- (e) for “resolution for voluntary winding up” substitute “resolution passed under section 88(1) of the Building Societies Act 1986”;
- (f) every reference to a company registered in Scotland has effect as a reference to a building society whose principal office is situated in Scotland;
- (g) every reference to the officers, or to a particular officer, of a company has effect as a reference to the officers, or to the corresponding officer, of the building society and as including a person holding himself out as such an officer;
- (h) every reference to a voluntary arrangement under Part 1 of the Insolvency Act 1986 has effect as a reference to a voluntary arrangement under that Part as applied in relation to building societies by section 90A of, and Schedule 15A to, the Building Societies Act 1986;

(1) 2006 c. 46.

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- (i) any requirement to send a notice or other document, or make a report, to the registrar of companies, has effect as a requirement to send that notice or document, or make that report, to the FSA and for the FSA to place it on the public file of the society concerned.
4. In Parts 2 and 3 of the 2009 Act, and in any provision of the Insolvency Act 1986 applied by those Parts, “contributory”, in relation to a building society—
- (a) means every person liable to contribute to the assets of the society in the event of its being wound up, and
 - (b) 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
 - (c) includes persons who are liable to pay or contribute to the payment of—
 - (i) any debt or liability of the building society being wound up, or
 - (ii) any sum for the adjustment of rights of members among themselves, or
 - (iii) the expenses of the winding up,but does not include persons liable to contribute by virtue of a declaration by the court under section 213 (imputed responsibility for fraudulent trading) or 214 (wrongful trading) of the Insolvency Act 1986.
5. Expressions used in this Schedule (including in text inserted or substituted by this Schedule) have the same meaning as in the Building Societies Act 1986.

PART 2

Modified application of Part 2 of the 2009 Act

6. This Part sets out modifications to Part 2 of the 2009 Act (Bank Insolvency) as it applies in relation to building societies by virtue of section 90C of the 1986 Act.

Introduction

- 7. Ignore section 91 of the 2009 Act (interpretation: “bank”).
- 8. Subsections (5) and (6) of section 93 of the 2009 Act (interpretation: other expressions) do not apply in relation to any expression defined in this Schedule.

Building society insolvency order

- 9. In section 95 of the 2009 Act (application), in subsection (1), ignore paragraph (c).
- 10. In section 96 of the 2009 Act (grounds for applying)—
 - (a) in subsection (1), ignore paragraph (b);
 - (b) ignore subsections (4) and (5).
- 11. In section 97 of the 2009 Act (grounds for making)—
 - (a) ignore subsection (2);
 - (b) in subsection (3), ignore “or (2)”.
- 12. In section 98 of the 2009 Act (commencement), in subsection (2)(a), for “section 120” substitute “section 90D of the Building Societies Act 1986”.

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Process of building society liquidation

13.—(1) In section 103 of the 2009 Act (general powers, duties and effect), in subsection (4) ignore paragraph (h).

(2) In that section, the table (Insolvency Act 1986) applies with the modifications set out in this paragraph.

(3) For the entry for section 154 substitute—

“Section 154	Adjustment of rights of contributories	Any surplus is to be distributed in accordance with the rules of the society.”.
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(4) Ignore the entry for section 187 (transfer of assets to employees).

(5) Ignore the entries for sections 216 (restriction on re-use of names) and 217 (personal liability for debts).

(6) For the entries for sections 218 and 219 substitute—

“Section 218	Prosecution of officers and members of company	<ul style="list-style-type: none"> (a) the section does not apply in relation to offences committed by members of a building society acting in that capacity. (b) In subsection (3), treat the second reference to the official receiver as a reference to the Secretary of State. (c) Ignore subsections (4), (5) and (6). (d) Where a report is made to the Secretary of State under subsection (3), the Secretary of State may refer the matter to the FSA for further enquiry. (e) On such a reference to it the FSA shall exercise its power under section 55(1) of the Building Societies Act 1986 to appoint one or more competent persons to investigate and report on the matter.
Section 219	Obligations under section 218	<ul style="list-style-type: none"> (a) The section does not apply in relation to offences committed by members of a building society acting in that capacity. (b) Subsection (1) of section 219 does not apply. (c) Subsections (2), (2A) and (2B) of section 219 apply in relation to the powers referred to in the entry above for section 218. (d) In subsections (3) and (4) of section 219 the references to the Secretary of State shall have effect as references to the FSA.”.

(7) For the entry for sections 423 – 425 substitute—

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“Sections 423 – 425	Transactions defrauding creditors	<p>(a) Sections 423-425 apply only where a building society insolvency order is made.</p> <p>(b) Anything done by the building society in connection with the exercise of a stabilisation power under Part 1 of this Act as applied to building societies by section 84 of this Act is not a transaction at an undervalue for the purposes of section 423.”.</p>
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Termination of process, &c.

- 14. In section 113 of the 2009 Act (voluntary arrangement)—
 - (a) in subsection (1), at the end insert “as applied in relation to building societies by section 90A of, and Schedule 15A to, the Building Societies Act 1986”;
 - (b) in subsection (2), ignore paragraph (b)(v);
 - (c) in subsection (6) at the end insert “and with the modifications made by Schedule 15A to the Building Societies Act 1986”.
- 15. In section 114 of the 2009 Act (administration)—
 - (a) in subsection (1), for “(under paragraph 38 of Schedule B1 to the Insolvency Act 1986)” substitute “(under section 9 of the Insolvency Act 1986 as applied in relation to building societies by section 90A of, and Schedule 15A to, the Building Societies Act 1986)”;
 - (b) in subsection (4), for “the rescue of the bank as a going concern” substitute “the survival of the building society, and the whole or any part of its undertaking, as a going concern”.
- 16. In section 115 of the 2009 Act (dissolution)—
 - (a) in subsection (2), ignore paragraph (b)(v);
 - (b) in subsection (4), for “registrar of companies” substitute “FSA”;
 - (c) in subsection (7), for “the registrar of companies shall register it” substitute “the FSA shall place it on the public file of the society concerned”;
 - (d) In subsection (8), for “the day of the registration of the notice” substitute “the day on which the notice is placed on the public file of the society”.
- 17. In section 116 of the 2009 Act (dissolution: supplemental), in subsections (1) and (2) the references to the Secretary of State have effect as references to the FSA.
- 18. Sections 1012 to 1023 and 1034 of the Companies Act 2006 (provisions as to property of dissolved company) apply in relation to the property of a building society dissolved under section 115 of the 2009 Act (as applied by this Schedule) as they apply to the property of a dissolved company.

Other processes

- 19. Ignore sections 117 (insolvency as alternative order) and 118 (voluntary winding-up) of the 2009 Act.
- 20.—(1) Ignore section 119 of the 2009 Act (exclusion of other procedures); this paragraph, and section 88(1)(b) of the 1986 Act(2), make equivalent provision.

(2) Section 88 of the 1986 Act is amended by article 4 of this Order.

(2) A petition for the winding-up of a building society shall be dismissed on the making of a building society insolvency order in respect of the building society.

(3) Where a building society is in building society insolvency, no order may be made for the winding-up of the building society.

21. Ignore sections 120 (notice to FSA of preliminary steps) and 121 (disqualification of directors) of the 2009 Act.

Miscellaneous

22. In section 124 of the 2009 Act (transfer of accounts), after subsection (2) insert—

“(2A) The arrangements may—

- (a) cancel shares in the building society;
- (b) confer rights and impose liabilities in place of cancelled shares (whether by way of actual or deemed shares in a transferee building society or by way of other rights and liabilities in relation to a transferee bank).”.

23. Ignore sections 130 (building societies), 131 (credit unions), 132 (partnerships) and 133 (Scottish partnerships) of the 2009 Act.

PART 3

Modified application of Part 3 of the 2009 Act

24. This Part sets out modifications to Part 3 of the 2009 Act (Bank Administration) as it applies in relation to building societies by virtue of section 90C of the 1986 Act.

Introduction

25. In section 140 of the 2009 Act (objective 2: “normal” administration) the references in subsections (1) and (2) to the residual building society’s creditors as a whole include references to all holders of shares in the society.

Process

26. In section 145 of the 2009 Act (general powers, duties and effect), in subsection (4) omit paragraph (d).

27.—(1) In section 145, table 1 (Schedule B1 to the Insolvency Act 1986) applies with the modifications set out in this paragraph.

(2) For the entries for paras. 59 to 64, see paragraph 29 below;

(3) For the entry for para. 65, substitute—

“Para. 65	Distribution	(a) In sub para. (1) the reference to a creditors includes a reference to a shareholding member. (b) In the case of building society special administration following transfer to a bridge bank, until the Bank of England has given an Objective 1 Achievement Notice a bank administrator may make
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		a distribution only with the Bank of England’s consent. (c) Ignore sub para. (3).”.
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(4) For the entry for para. 75, substitute—

“Para. 75	Misfeasance	(a) In addition to applications that may anyway be made under para. 75, an application may be made by the building society special administrator or the Bank of England. (b) An application may not be made by a borrowing member.”.
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(5) For the entry for para. 80 (termination: successful rescue) substitute—

“Para. 80	Termination: successful rescue	<i>See section 153</i> (a) In sub-paragraph (4) the reference to every creditor of whose claim and address he is aware includes a reference to every shareholding member. (b) In sub-paragraph (5) the reference to a creditor includes a reference to a shareholding member.”.
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(6) Ignore the entry for para. 84 (termination: no more assets for distribution): paragraph 30 below makes equivalent provision;

(7) For the entry for para. 111 (interpretation) substitute—

“Para. 111	Interpretation	Ignore sub-paragraphs (1A) and (1B)”.
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28.—(1) In section 145, table 2 (other provisions of the Insolvency Act 1986) applies with the modifications set out in this paragraph.

(2) For the entry for section 168(4) (and para. 13 of Schedule 4) substitute—

“Section 168(4) (and para. 13 of Schedule 4)	Discretion in managing and distributing assets	(a) In the case of building society special administration following transfer to a bridge bank, until the Bank of England has given an Objective 1 Achievement Notice distribution may be made only (i) with the Bank of England’s consent or (ii) out of assets which have been designated as realisable by agreement between the bank administrator and the Bank of England. (b) In subsection (4) the references to creditors includes a reference to shareholding members.”.
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(3) For the entry for sections 423 – 425 substitute—

“Section 423 – 425	Transactions defrauding creditors	(a) Sections 423-425 apply only where a building society special administration order is made. (b) In considering granting leave under section 424(1) the court must have regard to Objective 1 of section 137. (c) In considering making an order in reliance on section 425 the court must have regard to Objective 1 of section 137.”.
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General powers of administrator

29.—(1) This paragraph modifies the application of paragraphs 59 to 64 of Schedule B1 to the Insolvency Act 1986 (general powers of administrator); the modifications have effect in addition to those set out for those paragraphs in table 1 in section 145 of the 2009 Act.

(2) Subject to sub-paragraph (3), paragraphs 59 to 64 of Schedule B1 have effect as if they required the building society special administrator, in exercising powers under those paragraphs—

- (a) to ensure compliance with the provisions of the Building Societies Act 1986, and
- (b) not to appoint to be a director any person who is not a fit and proper person to hold that position.

(3) Sub-paragraph (2)(a) does not apply in relation to section 5, 6 or 7 of the Building Societies Act 1986.

No more assets for distribution

30.—(1) This paragraph makes provision equivalent to paragraph 84 of Schedule B1 to the Insolvency Act 1986 (termination: no more assets for distribution).

(2) A building society special administrator who thinks that the building society has no property which might permit a distribution to its creditors and shareholding members must send a notice to that effect to the FSA.

(3) The court may on the application of the building society special administrator disapply sub-paragraph (2) in respect of the building society.

(4) On receipt of a notice under sub-paragraph (2) the FSA must place it on the public file of the building society and record in that file the date on which it was placed there.

(5) The appointment of the building society special administrator ceases to have effect on the date on which the notice under sub-paragraph (2) is placed in the public file of the society.

(6) A building society special administrator who sends a notice under sub-paragraph (2) must as soon as is reasonably practicable—

- (a) file a copy of the notice with the court, and
- (b) send a copy of the notice to each creditor and shareholding member whose address is known.

(7) The building society is dissolved at the end of the period of three months beginning with the date on which the notice under sub-paragraph (2) was placed in its public file.

(8) On an application in respect of a building society by the building society special administrator or another interested person the court may—

- (a) extend the period specified in sub-paragraph (7),
- (b) suspend that period, or

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(c) disapply sub-paragraph (7).

(9) Where an order is made under sub-paragraph (8) in respect of a building society the building society special administrator shall as soon as is reasonably practicable notify the FSA.

(10) A building society special administrator who fails without reasonable excuse to comply with sub-paragraph (6) commits an offence.

(11) An offence under sub-paragraph (10) shall be treated for all purposes as an offence under paragraph 84(9) of Schedule B1 to the Insolvency Act 1986.

Property of society dissolved under paragraph 30

31. Sections 1012 to 1023 and 1034 of the Companies Act 2006 (provisions as to property of dissolved company) shall apply in relation to the property of a building society dissolved under paragraph 30 of this Schedule as they apply in relation to the property of a dissolved company.

Multiple transfers

32.—(1) In section 152 of the 2009 Act (property transfer from temporary public ownership), in subsection (1)—

(a) for paragraph (a) substitute—

“(a) make an order under section 85 (temporary public ownership) in respect of a building society, and”;

(b) in paragraph (b) for “(or from another bank which is or was in the same group as the bank)” substitute “(or from a bank which is or was in the same group as the building society)”.

(2) Where the Treasury make an order under section 85 in respect of a building society, and later make a property transfer order from a bank which was in the same group as the building society, Part 3 of the 2009 Act, and any subordinate legislation made under that Part, applies to the transferor bank without the modifications made by section 90C of the Building Societies Act 1986 and this Order.

Termination

33. In section 154 of the 2009 Act (winding-up or voluntary arrangement)—

(a) in subsection (2), in paragraph (a), the reference to paragraph 84 of Schedule B1 to the Insolvency Act 1986 has effect as a reference to paragraph 30 of this Schedule;

(b) in that subsection, in paragraph (b), at the end insert “as applied in relation to building societies by section 90A of, and Schedule 15A to, the Building Societies Act 1986”;

(c) in subsection (3), at the end insert “and with the modifications made by Schedule 15A to the Building Societies Act 1986”.

Miscellaneous

34. Ignore section 155 of the 2009 Act (disqualification of directors).

35.—(1) Ignore section 157 of the 2009 Act (other processes); this paragraph makes equivalent provision.

(2) Before exercising an insolvency power in respect of a residual building society the FSA must give notice to the Bank of England, which may participate in any proceedings arising out of the exercise of the power.

(3) In sub-paragraph (2)—

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- (a) “residual building society” means a building society all or part of whose business has been transferred to a commercial purchaser or to a bridge bank in accordance with section 11 or section 12 of the 2009 Act respectively (as applied with modifications by section 84 of the 2009 Act), and
- (b) “insolvency power” means—
 - (i) the FSA’s power to apply to the court for an administration order (see paragraph 11(1) of Schedule 15A to the Building Societies Act 1986), and
 - (ii) the FSA’s power to present a petition for the winding-up of a building society (see sections 37(1) and 89(2) of the Building Societies Act 1986).

36. Ignore sections 158 (building societies), 159 (credit unions), 163 (partnerships) and 164 (Scottish partnerships) of the 2009 Act.

37. Subsections (4) and (5) of section 166 of the 2009 Act (interpretation: general) do not apply to expressions defined in this Schedule.