

## SCHEDULE 1

Regulation 29

## Modifications to the law of insolvency

**Interpretation**

1. In this Schedule, a reference to backing assets is a reference to the backing assets of an authorised bank, other than backing assets that have been returned to the bank or an appointed insolvency practitioner under regulation 11(2)(b) or 23(3)(b).

## PART 1

## Modifications to primary legislation

**Modifications to the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989**

2. The provisions of the Insolvency Act 1986(1) and the Insolvency (Northern Ireland) Order 1989(2) apply in relation to an authorised bank—

- (a) with any reference to “property” or “asset” modified so that it does not include a reference to the bank’s backing assets; and
- (b) with the modifications specified in the following table;

but sub-paragraph (a) does not apply to the reference to “assets” in section 123(2) of the Insolvency Act 1986 or article 103(2) of the Insolvency (Northern Ireland) Order 1989.

<i>Provision of Insolvency Act 1986</i>	<i>Provision of Insolvency (Northern Ireland) Order 1989</i>	<i>Subject</i>	<i>Modification</i>
Section 4	Article 17	Company Voluntary Proposal Decisions of meetings	A meeting may not approve any proposal or modification which affects— <ul style="list-style-type: none"> <li>(a) the rights of the noteholders under regulations 9(1)(b) and 22;</li> <li>(b) the rights of the Bank of England in relation to the backing assets; or</li> <li>(c) the backing assets.</li> </ul>
—	Article 52	Receivers and managers – General powers	A receiver may do anything necessary or expedient for the purpose of ensuring that an authorised bank complies with the directions referred to in regulation 23(1).
Section 55	—	Receivers (Scotland) Powers	A receiver may do anything necessary or expedient for the purpose of ensuring that an authorised bank complies with the directions referred to in regulation 23(1).

(1) 1986 c.45.

(2) S.I. 1989/2405 (N.I. 19).

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Scottish and Northern Ireland Banknote Regulations 2009 No. 3056

<i>Provision of Insolvency Act 1986</i>	<i>Provision of Insolvency (Northern Ireland) Order 1989</i>	<i>Subject</i>	<i>Modification</i>
Section 126	Article 106	Liquidation – power to stay or restrain proceedings against company	This section and article do not prevent the Bank of England from bringing or continuing any action or proceedings under or by virtue of these Regulations in relation to the backing assets.
Section 128	Article 108	Liquidation – avoidance of attachments	This section and article do not apply to anything done by the Bank of England in relation to the backing assets.
Section 130(2) and (3)	Article 110(2) and (3)	Liquidation – Consequences of Winding-up order	These subsections and paragraphs do not apply to any action or proceedings brought by the Bank of England under or by virtue of these Regulations in relation to the backing assets.
Section 143	Article 121	Liquidation – General Functions	A liquidator must also ensure that an authorised bank complies with the directions referred to in regulation 23(1).
Section 144	–	Liquidation – custody of company’s property	The reference in this section to “things in action” does not include a reference to an account designated by the Bank of England for the purposes of regulation 6(2)(c).
Section 165	Article 140	Liquidators – Voluntary winding up	A liquidator— (a) must also ensure that an authorised bank complies with the directions referred to in regulation 23(1); and (b) may do anything necessary or expedient to ensure such compliance.
Sections 167	Article 142	Liquidators – Winding up by the court	A liquidator— (a) must also ensure that an authorised bank complies with the directions referred to in regulation 23(1); and (b) may do anything necessary or expedient to ensure such compliance.
Section 436	Article 2	Expressions used generally	The definition of “property” shall be modified in accordance with paragraph 2(a) of this Schedule.
Part 3 of Schedule A1(3)	Part 3 of Schedule A1(4)	Company Voluntary Arrangements – Effects of Moratorium	Nothing in Part 3 shall prevent the Bank of England from— (a) taking any step; or

(3) Schedule A1 was inserted by section 1 of, and paragraphs 1 and 4 of Schedule 1 to, the Insolvency Act 2000 (c. 39).

(4) Schedule A1 was inserted by article 3 of, and schedule 1 to, the Insolvency (Northern Ireland) Order 2002 (S.I. 2002/3152 (N.I. 6)).

<i>Provision of Insolvency Act 1986</i>	<i>Provision of Insolvency (Northern Ireland) Order 1989</i>	<i>Subject</i>	<i>Modification</i>
			(b) bringing or continuing an action or proceedings brought under or by virtue of these Regulations;  against an authorised bank in relation to its backing assets.
Paragraph 43 of Schedule B1(5)	Paragraph 44 of Schedule B1(6)	Administration – Moratorium on other legal process	Nothing in this paragraph shall prevent the Bank of England from— (a) taking any step; or (b) bringing or continuing an action or proceedings brought under or by virtue of these Regulations;  against an authorised bank in relation to its backing assets.
Paragraph 59 of Schedule B1	Paragraph 60 of Schedule B1	Administration – General powers of administrators	An administrator may do anything necessary or expedient for the purpose of ensuring that an authorised bank complies with the directions referred to in regulation 23(1).
Paragraphs 67 and 68 of Schedule B1	Paragraphs 68 and 69 of Schedule B1	Administration – General duties of administrators	An administrator must ensure that an authorised bank complies with the directions referred to in regulation 23(1).

### Modifications to the Companies Act 2006

**3.—(1)** Section 899 of the Companies Act 2006(7) (Court sanction for compromise or arrangement) applies in relation to an authorised bank with the modifications specified in paragraph (2).

(2) The court may not sanction any composition between an authorised bank and its creditors, or any arrangement of an authorised bank's affairs, if the composition or arrangement would affect—

- (a) the rights of the noteholders under regulations 9(1)(b) and 22;
- (b) the rights of the Bank of England in relation to the backing assets; or
- (c) the backing assets.

### Modifications to the Banking Act 2009

**4.** The provisions of the Act specified in the following table apply in relation to an authorised bank with the modifications specified in the table.

(5) Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c. 45).

(6) Schedule B1 was inserted by article 3(2) of, and Schedule 1 to, the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)).

(7) 2006 c.46.

<i>Provision</i>	<i>Subject</i>	<i>Modification</i>
Section 103	Bank insolvency – General Powers, duties and effect	<p>(1) A bank liquidator—</p> <ul style="list-style-type: none"> <li>(a) must also ensure that an authorised bank complies with the directions referred to in regulation 23(1);</li> <li>(b) may do anything necessary or expedient to ensure such compliance;</li> <li>(c) may only exercise the powers conferred by this section in relation to the backing assets for the purpose of securing such compliance.</li> </ul> <p>(2) The provisions of the Insolvency Act 1986 specified in this section apply subject to the additional modifications to those provisions specified in paragraph 2 of this Schedule.</p>
Section 104	Bank insolvency – Additional general powers	The reference to “property” does not include a reference to the backing assets.
Section 134	Northern Ireland	Where a provision of the Insolvency (Northern Ireland) Order 1989 is an equivalent enactment for the purposes of this section, then that provision shall apply subject to the additional modifications to the Insolvency (Northern Ireland) Order 1989 specified in paragraph 2 of this Schedule.
Section 145	Bank administration – General powers, duties and effect	<p>(1) A bank administrator—</p> <ul style="list-style-type: none"> <li>(a) must ensure that the insolvent bank complies with the directions referred to in regulation 23(1);</li> <li>(b) may do anything necessary or expedient to ensure such compliance;</li> <li>(c) may only exercise the powers conferred by this section in relation to the backing assets for the purpose of securing such compliance.</li> </ul> <p>(2) The provisions of the Insolvency Act 1986 specified in this section apply subject to the additional modifications to those provisions specified in paragraph 2 of this Schedule.</p>
Section 167	Northern Ireland	Where a provision of the Insolvency (Northern Ireland) Order 1989 is an equivalent enactment for the purposes of this section, then that provision shall apply subject to the additional modifications to the Insolvency (Northern Ireland) Order 1989 specified in paragraph 2 of this Schedule.

## PART 2

### Modifications to secondary legislation

#### **Modifications to the Insolvency (Scotland) Rules 1986**

5. The provisions of the Insolvency (Scotland) Rules 1986<sup>(8)</sup> apply in relation to an authorised bank with any reference to “asset”, “property”, “estate”, “sum” or “fund” modified so that it does not include a reference to the backing assets.

#### **Modifications to the Insolvency Rules (Northern Ireland) 1991**

6. The provisions of the Insolvency Rules (Northern Ireland) 1991<sup>(9)</sup> apply in relation to an authorised bank with any reference to “insolvent estate”, “property” or “asset” modified so that it does not include a reference to the backing assets.

#### **Modifications to the Bank Administration Rules (Northern Ireland) 2009**

7. The provisions of the Bank Administration Rules (Northern Ireland) 2009<sup>(10)</sup> apply in relation to an authorised bank—

- (a) with any reference to “insolvent estate”, “property” or “asset” modified so that it does not include a reference to the backing assets; and
- (b) with any reference to the “1991 Rules” modified so that it is a reference to the Insolvency Rules (Northern Ireland) 1991 as modified by paragraph 6 of this Schedule.

#### **Modifications to the Bank Insolvency (No. 2) Rules (Northern Ireland) 2009**

8. The provisions of the Bank Insolvency (No. 2) Rules (Northern Ireland) 2009<sup>(11)</sup> apply in relation to an authorised bank—

- (a) with any reference to “insolvent estate”, “property” or “asset” modified so that it does not include a reference to the backing assets; and
- (b) with any reference to the “1991 Rules” modified so that it is a reference to the Insolvency Rules (Northern Ireland) 1991 as modified by paragraph 6 of this Schedule.

#### **Modifications to the Bank Administration (Scotland) Rules 2009**

9. The provisions of the Bank Administration (Scotland) Rules 2009<sup>(12)</sup> apply in relation an authorised bank—

- (a) with any reference to “asset”, “property” or “fund” modified so that it does not include a reference to the backing assets; and
- (b) with any reference to the “1986 Rules” modified so that it is a reference to the Insolvency (Scotland) Rules 1986 as modified by paragraph 5 of this Schedule.

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<sup>(8)</sup> S.I. 1986/1915.

<sup>(9)</sup> S.R. 1991 No. 364, amended by the Insolvency (Amendment) Rules (Northern Ireland) 1994 (S.R. 1994 No. 26), the Insolvency (Amendment) Rules (Northern Ireland) 1995 (S.R. 1995 No. 291), the Insolvency (Amendment) Rules (Northern Ireland) 2000 (S.R. 2000 No. 247), the Insolvency (Amendment) Rules (Northern Ireland) 2002 (S.R. 2002 No.261), the Insolvency (Amendment) Rules (Northern Ireland) 2003 (S.R. 2003 No. 549), the Insolvency (Amendment) Rules (Northern Ireland) 2006 (S.R. 2006 No. 47), the Insolvency (Amendment) Rules (Northern Ireland) 2008 (S.R. 2008 No. 118) and the Financial Services and Markets Act 2000 (Consequential Amendments) Order 2004 (S.I. 2004/355).

<sup>(10)</sup> S.I. 2009/63.

<sup>(11)</sup> S.I. 2009/122.

<sup>(12)</sup> S.I. 2009/350.

## Modifications to the Bank Insolvency (Scotland) Rules 2009

10. The provisions of the Bank Insolvency (Scotland) Rules 2009(13) apply in relation to an authorised bank—

- (a) with any reference to “asset”, “property”, “sum” or “fund” modified so that it does not include a reference to the backing assets; and
- (b) with any reference to the “1986 Rules” modified so that it is a reference to the Insolvency (Scotland) Rules 1986 as modified by paragraph 5 of this Schedule.

## SCHEDULE 2

Regulations 30 and 31

Similar processes and laws in the Republic of Ireland

### PART 1

A compromise or arrangement between a bank and its creditors

Company examinership

Receivership

Liquidation

The appointment of a provisional liquidator

### PART 2

Section 7 of the Central Bank Act 1971(14)

## SCHEDULE 3

Regulation 33(2)

Imposition of penalties

### Notice of proposal

1.—(1) Before imposing a penalty under regulation 33 on an authorised bank, the Bank of England must give written notice to the bank—

- (a) stating that it proposes to impose the penalty and the amount of the proposed penalty;
- (b) setting out the provision of the Regulations or the rules which the Bank of England considers has been breached;
- (c) specifying the acts or omissions which, in the Bank of England’s opinion, constitute the breach and any other facts which, in the Bank of England’s opinion, justify the imposition of the penalty and its amount;
- (d) specifying the date by which the Bank of England proposes to require the penalty to be paid to it;

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(13) S.I. 2009/351.

(14) No. 24 of 1971.

- (e) specifying the period (of not less than 30 days from the date on which the notice is received by the authorised bank) within which the bank may make representations regarding the proposed penalty.

(2) The Bank of England must not give notice under sub-paragraph (1) in respect of a contravention of a provision of these Regulations or the rules more than two years after the Bank of England first had knowledge of the facts giving rise to the breach.

(3) The Bank of England must consider any representations made during the period mentioned in sub-paragraph (1)(e).

### **Variation of proposal**

2.—(1) The Bank of England may vary a proposal to impose a penalty only if—

- (a) the authorised bank consents to the variation,
- (b) the variation consists of a reduction in the amount of the proposed penalty or a deferral of the date by which the Bank of England proposes to require the penalty to be paid, or
- (c) the Bank of England gives written notice to the authorised bank setting out the proposed variation and the reasons for it.

(2) Where the Bank of England gives notice under sub-paragraph (1)(c), the notice must also specify the period (of not less than 30 days from the date the notice is received by the authorised bank) within which the bank may make representations regarding the proposed variation.

(3) The Bank of England must consider any representations made during the period mentioned in sub-paragraph (2).

### **Decision notice**

3.—(1) As soon as practicable after imposing a penalty, the Bank of England must give written notice to the authorised bank—

- (a) stating that it has imposed the penalty and the amount of the penalty;
- (b) setting out the provision of the Regulations or the rules which the Bank of England is satisfied has been breached;
- (c) specifying the acts or omissions which, in the Bank of England's opinion, constitute the breach and any other facts which, in the Bank of England's opinion, justify the imposition of the penalty and its amount;
- (d) specifying the manner in which, and the date by which, the Bank of England requires the penalty to be paid.

(2) The date mentioned in sub-paragraph (1)(d) must be at least 3 months after the date on which the notice is given to the authorised bank.

### **Maximum penalty**

4.—(1) The total amount of the penalties imposed on an authorised bank by the Bank of England in a calendar year must not exceed 10% of the mean average value of the estimated amount of the bank's banknotes in circulation at any time in the previous calendar year.

(2) For the purposes of paragraph (1), the Bank of England must estimate the amount of a bank's banknotes in circulation at any time by reference to—

- (a) information received from Her Majesty's Revenue and Customs under section 218(3) of the Act (information); or

- (b) information or a report provided by the bank in accordance with rules made under regulation 13, 14 or 15.

#### **Statement of policy on penalties**

5. The Bank of England must publish a statement of policy, with which it must comply, in respect of—

- (a) the process it will follow when it imposes a penalty under these Regulations; and
- (b) the amount of any such penalty.

#### **Service of notices**

6.—(1) The Bank of England may send a notice to the authorised bank by post.

(2) Where the Bank of England has sent a notice by pre-paid post to the registered office of the authorised bank, it shall be deemed to have been received by the bank on the second business day after posting unless the bank can prove that it did not receive the notice on that day.

(3) In this paragraph, “business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(15) in any part of the United Kingdom.

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(15) 1971 c. 80.