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STATUTORY INSTRUMENTS

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**2009 No. 351**

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

**PART 8**

**THE LIQUIDATOR**

*SECTION E – SUPPLEMENTARY PROVISIONS*

**Replacement bank liquidator**

**50.**—(1) Where the bank liquidator vacates his office for any reason (including death) other than by removal by a meeting of creditors in accordance with rule 36, the Bank of England shall appoint a new bank liquidator as soon as practicable.

(2) Where a bank liquidator has been removed by a meeting of creditors but 1 month has passed and there has been no resolution passed by a meeting of creditors to appoint a new bank liquidator, the Bank of England shall appoint a new bank liquidator as soon as practicable.

(3) The Bank of England shall lodge in court the document appointing the new bank liquidator (“the appointment document”) together with statements to the effect that the new bank liquidator—

- (a) is qualified to act as an insolvency practitioner in accordance with section 390(1) of the 1986 Act; and
- (b) consents to act as the bank liquidator.

(4) The Bank of England shall send a copy of the appointment document to the bank.

(5) The bank liquidator shall forward a copy of the appointment document to the registrar of companies and the Accountant in Bankruptcy.

(6) The bank liquidator shall as soon as reasonably practicable—

- (a) advertise the appointment in the Edinburgh Gazette; and
- (b) advertise the appointment in such manner as the bank liquidator thinks fit.

**Bank liquidator deceased**

**51.**—(1) Apply rule 4.36 of the 1986 Rules(2).

(2) In rule 4.36(1) after “court” insert “the Bank of England and liquidation committee”.

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(1) Section 390 was amended by paragraph 16(1) and (2) of Schedule 4(II) to the [Insolvency Act 2000 \(c.39\)](#); paragraph 18 of Schedule 5 to the [Adults with Incapacity \(Scotland\) Act 2000 \(asp 4\)](#); paragraph 4 of Schedule 21 to the [Enterprise Act 2002 \(c.40\)](#); paragraph 31(3)(c) of Schedule 6 and paragraph 1 of Schedule 7 to the [Mental Capacity Act 2005 \(c.9\)](#); paragraph 18(3) of Schedule 1 to [S.S.I. 2005/465](#); and paragraph 3(3) of Schedule 1 to [S.I. 2005/2078](#).

(2) Rule 4.36 was amended by paragraph 141(15) of Schedule 2(II) to [S.I. 1999/1820](#).

### **Loss of qualification as insolvency practitioner**

**52.**—(1) Apply rule 4.37 paragraphs (1) and (2)(3) of the 1986 Rules.

(2) In rule 4.37(2) after “Accountant in Bankruptcy” insert “and the Bank of England”.

### **Resignation of the bank liquidator**

**53.**—(1) This rule applies where the bank liquidator was appointed by the court or by the Bank of England under rule 50.

(2) The bank liquidator can only resign—

- (a) after the liquidation committee has passed a full payment resolution; and
- (b) with the consent of the Bank of England.

(3) Before calling a meeting of creditors under rule 41 to receive notice of the bank liquidator’s resignation, the bank liquidator must write to the Bank of England notifying it of the intention to resign.

(4) The Bank of England shall notify the bank liquidator in writing within 21 days as to whether it consents to the resignation. If the Bank of England does not consent to the resignation, it will set out its reasons in writing.

(5) The bank liquidator, if not content with the Bank of England’s response above, may apply to the court for directions in relation to any particular matter in the bank insolvency.

### **Notice to Bank of England of intention to vacate office**

**54.**—(1) This rule applies where the bank liquidator was appointed by a meeting of creditors.

(2) Where the bank liquidator intends to vacate office, whether by resignation or otherwise, he shall give notice of his intention to the Bank of England together with notice of any creditors’ meeting to be held in respect of his vacation of office, including any meeting to be notified of his resignation.

(3) The Bank of England must be given at least 21 days before any such creditors’ meeting.

(4) Where there remains any property of the bank which has not been realised, applied, distributed or otherwise fully dealt with in the bank insolvency, the bank liquidator shall include in his notice to the Bank of England details of the nature of that property, its value (or the fact that it has no value), its location, any action taken by the bank liquidator to deal with that property or any reason for his not dealing with it, and the current position in relation to it.

### **Power of court to set aside certain transactions**

**55.**—(1) Apply rule 4.38 of the 1986 Rules.

(2) In rule 4.38(2) of that Rule –

- (a) leave out “either”;
- (b) leave out “or” at the end of sub-paragraph (a); and
- (c) after sub-paragraph (b) insert—

“, or (c) it is shown to the court’s satisfaction that the transaction was entered into by the bank liquidator for the purpose of achieving Objective 1.”.

### **Rule against solicitation**

**56.** Apply rule 4.39 of the 1986 Rules.

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(3) Rule 4.37(2) was amended by paragraph 141(16) of Schedule 2(II) to [S.I. 1999/1820](#).

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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