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STATUTORY INSTRUMENTS

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**2009 No. 805**

**The Building Societies (Insolvency and  
Special Administration) Order 2009**

**Citation and interpretation**

1.—(1) This Order may be cited as the Building Societies (Insolvency and Special Administration) Order 2009.

(2) In this Order—

“the 1986 Act” means the Building Societies Act 1986<sup>(1)</sup>;

“the 2009 Act” means the Banking Act 2009.

**Application of Parts 2 and 3 of the 2009 Act to building societies**

2. After section 90B of the 1986 Act<sup>(2)</sup> (power to alter priorities on dissolution and winding up), insert—

**“Application of bank insolvency and administration legislation to building societies**

**90C.**—(1) Parts 2 (Bank Insolvency) and 3 (Bank Administration) of the Banking Act 2009 shall apply in relation to building societies with any modifications specified in an order made under section 130 or 158 of that Act and with the modifications specified in subsection (2) below.

(2) In the application of Parts 2 and 3 of that Act to building societies—

- (a) references to “bank” (except in the term “bridge bank” and the terms specified in paragraphs (b) and (c)) have effect as references to “building society”;
- (b) references to “bank insolvency”, “bank insolvency order”, “bank liquidation” and “bank liquidator” have effect as references to “building society insolvency”, “building society insolvency order”, “building society liquidation” and “building society liquidator”;
- (c) references to “bank administration”, “bank administration order” and “bank administrator” have effect as references to “building society special administration”, “building society special administration order” and “building society special administrator”.

3. Schedule 1 to this Order specifies modifications to Parts 2 and 3 of the 2009 Act as they apply in relation to building societies.

**Other insolvency processes**

4. In section 88 of the 1986 Act (voluntary winding-up), in subsection (1) at the end insert—

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<sup>(1)</sup> 1986 c. 53.

<sup>(2)</sup> Section 90B was inserted by the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (c.26), section 2, but section 2 had not been commenced at the time this order was made.

“, but a resolution may not be passed if—

- (a) the conditions in section 90D are not satisfied, or
- (b) the society is in building society insolvency or building society special administration.

(1A) A resolution under subsection (1) shall have no effect without the prior approval of the court.”.

5. After section 89 of the 1986 Act (winding-up by court: grounds and petitioners) insert—

**“Building society insolvency as alternative order**

**89A.**—(1) On a petition for a winding up order or an application for an administration order in respect of a building society the court may, instead, make a building society insolvency order (under section 94 of the Banking Act 2009 as applied by section 90C below).

- (2) A building society insolvency order may be made under subsection (1) only—
  - (a) on the application of the Authority made with the consent of the Bank of England, or
  - (b) on the application of the Bank of England.”.

6. After section 90C of the 1986 Act insert—

**“Notice to the Authority of preliminary steps**

**90D.**—(1) An application for an administration order in respect of a building society may not be determined unless the conditions below are satisfied.

(2) A petition for a winding up order in respect of a building society may not be determined unless the conditions below are satisfied.

(3) A resolution for voluntary winding up of a building society may not be passed unless the conditions below are satisfied.

(4) An administrator of a building society may not be appointed unless the conditions below are satisfied.

- (5) Condition 1 is that the Authority has been notified—
  - (a) by the applicant for an administration order, that the application has been made,
  - (b) by the petitioner for a winding up order, that the petition has been presented,
  - (c) by the building society, that a resolution for voluntary winding up may be passed, or
  - (d) by the person proposing to appoint an administrator, of the proposed appointment.

(6) Condition 2 is that a copy of the notice complying with Condition 1 has been filed with the court (and made available for public inspection by the court).

- (7) Condition 3 is that—
  - (a) the period of 2 weeks, beginning with the day on which the notice is received, has ended, or
  - (b) both—
    - (i) the Authority has informed the person who gave the notice that it does not intend to apply for a building society insolvency order (under section 95 of the Banking Act 2009 as applied by section 90C above), and

- (ii) the Bank of England has informed the person who gave the notice that it does not intend to apply for a building society insolvency order or to exercise a stabilisation power under Part 1 of the Banking Act 2009.
- (8) Condition 4 is that no application for a building society insolvency order is pending.
- (9) Arranging for the giving of notice in order to satisfy Condition 1 can be a step with a view to minimising the potential loss to a building society's creditors for the purpose of section 214 of the Insolvency Act 1986 (wrongful trading) or Article 178 (wrongful trading) of the Insolvency (Northern Ireland) Order 1989<sup>(3)</sup> as applied in relation to building societies by section 90 of, and Schedule 15 to, this Act.
- (10) Where the Authority receives notice under Condition 1—
  - (a) the Authority shall inform the Bank of England,
  - (b) the Authority shall inform the person who gave the notice, within the period in Condition 3(a), whether it intends to apply for a building society insolvency order, and
  - (c) if the Bank of England decides to apply for a building society insolvency order or to exercise a stabilisation power under Part 1 of the Banking Act 2009, the Bank shall inform the person who gave the notice, within the period in Condition 3(a).

### **Disqualification of directors**

**90E.**—(1) In this section “the Disqualification Act” means the Company Directors Disqualification Act 1986<sup>(4)</sup>.

- (2) In the Disqualification Act—
  - (a) a reference to liquidation includes a reference to building society insolvency and a reference to building society special administration,
  - (b) a reference to winding up includes a reference to making or being subject to a building society insolvency order and a reference to making or being subject to a building society special administration order,
  - (c) a reference to becoming insolvent includes a reference to becoming subject to a building society insolvency order and a reference to becoming subject to a building society special administration order, and
  - (d) a reference to a liquidator includes a reference to a building society liquidator and a reference to a building society special administrator.
- (3) For the purposes of the application of section 7(3) of the Disqualification Act (disqualification order or undertaking)<sup>(5)</sup> to a building society which is subject to a building society insolvency order, the responsible office-holder is the building society liquidator.
- (4) For the purposes of the application of that section to a building society which is subject to a building society special administration order, the responsible office-holder is the building society special administrator.
- (5) In the application of this section to Northern Ireland, references to the Disqualification Act are to the Company Directors Disqualification (Northern Ireland) Order 2002<sup>(6)</sup> and the reference in subsection (3) to section 7(3) of the Disqualification

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

(4) 1986 c. 46.

(5) Section 7(3) was amended by the Enterprise Act 2002 (c. 40), section 248(3) and Schedule 17, paragraphs 40, 42.

(6) S.I. 2002/3150 (N.I. 4).

Act is a reference to Article 10(4) of that Order (disqualification order or undertaking; and reporting provisions)(7).”.

### **Consequential amendments to the Building Societies Act 1986**

7. In section 86 of the 1986 Act (modes of dissolution and winding up), in subsection (1), after “a building society may not, except where it is dissolved by virtue of section 93(5), 94(10) or 97(9),” insert “or following building society insolvency or building society special administration.”.

8. In section 91 of the 1986 Act (power of court to declare dissolution of building society void)—

- (a) in subsection (1), after “or following a winding up,” insert “building society insolvency or building society special administration.”;
- (b) in subsection (2), after “or the liquidator,” insert “building society liquidator or building society special administrator.”.

9. In section 92 of the 1986 Act (supplementary), after “is being wound up or dissolved by consent,” insert “or is in building society insolvency or building society special administration.”.

10. In section 103 of the 1986 Act (cancellation of registration), in subsection (1), at the end of paragraph (b) insert “or”, and after paragraph (b) insert—

- “(c) that the society has been dissolved following building society insolvency or building society special administration.”.

11. In section 119 of the 1986 Act (interpretation), in subsection (1), after the definition of “building society” insert—

““building society insolvency”, “building society insolvency order” and “building society liquidator” shall be construed in accordance with Part 2 of the Banking Act 2009 as applied with modifications by section 90C above;

“building society special administration”, “building society special administration order” and “building society special administrator” shall be construed in accordance with Part 3 of the Banking Act 2009 as applied with modifications by section 90C above;”.

### **Amendments to other enactments**

12. In the Company Directors Disqualification Act 1986, after section 21B (bank administration)(8) insert—

#### **“Building society insolvency and special administration**

21C. Section 90E of the Building Societies Act 1986 provides for this Act to apply in relation to building society insolvency and building society special administration as it applies in relation to liquidation.”.

13. In section 411 of the Insolvency Act 1986 (company insolvency rules)(9), after subsection (3) insert—

“(3A) In this section references to Part 2 or 3 of the Banking Act 2009 include references to those Parts as applied to building societies (see section 90C of the Building Societies Act 1986).”.

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(7) Article 10(4) was amended by [S.I. 2005/1455 \(N.I. 10\)](#).

(8) Section 21B was inserted by the Banking Act 2009, section 155.

(9) [1986 c. 45](#). Section 411 was amended by the Constitutional Reform Act 2005 (c. 4), section 15(1) and Schedule 4, paragraphs 185 and 188; by the Banking Act 2009, sections 125 and 160, and by S.I.s [2002/1037](#) and [2007/2194](#).

**14.** In section 414 of the Insolvency Act 1986 (fees orders)(**10**), after subsection (8B) insert—  
“(8C) In subsections (8A) and (8B) the reference to Parts 2 and 3 of the Banking Act 2009 include references to those Parts as applied to building societies (see section 90C of the Building Societies Act 1986).”.

**15.** In section 220(3)(a) of the Financial Services and Markets Act 2000 (Compensation Scheme: information)(**11**) after “bank liquidator” insert “, building society liquidator”.

### **Rules**

**16.** Section 413(2) of the Insolvency Act 1986 (rules: duty to consult Insolvency Rules Committee)(**12**) shall not apply to the first set of rules made in relation to building society insolvency or to the first set of rules made in relation to building society special administration.

### **Northern Ireland**

**17.** In the application of this Order to Northern Ireland—

- (a) a reference to an enactment is to be treated as a reference to the equivalent enactment having effect in relation to Northern Ireland,
- (b) where this Order amends an enactment an equivalent amendment (incorporating any necessary modification) is made to the equivalent enactment having effect in relation to Northern Ireland, and
- (c) a reference to the Secretary of State is to be treated as a reference to the Department of Enterprise, Trade and Investment.

### **Application of subordinate legislation under Parts 2 and 3 of the 2009 Act**

**18.** Schedule 2 applies subordinate legislation made under Parts 2 and 3 of the 2009 Act in relation to building societies, with the modifications set out in that Schedule.

29th March 2009

*Bob Blizzard*  
*Alistair Darling*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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(10) Section 414 was amended by the Banking Act 2009, sections 126 and 161, and by [S.I. 2007/2194](#).

(11) [2000 c. 8](#); section 220 was amended by the Banking Act 2009, section 123.

(12) Section 413 was amended by the Constitutional Reform Act 2005, section 15(1) and Schedule 4, paragraphs 185 and 190. There are other amendments which are not relevant to this Order.