
STATUTORY INSTRUMENTS

2010 No. 2581

The Building Society Insolvency
(England and Wales) Rules 2010

PART 7

PROOF OF DEBTS

Meaning of “prove”

58.—(1) Apply rule 4.73 of the 1986 Rules.

(2) In paragraph (5), for “or a Government Department” substitute “, a Government Department or the FSCS”.

(3) Ignore paragraphs (2) and (8)(1).

Supply of forms

59. Apply rule 4.74 of the 1986 Rules(2).

Contents of proof

60. Apply rule 4.75 of the 1986 Rules(3).

Claim established by witness statement

61. Apply rule 4.77 of the 1986 Rules. Ignore paragraph (3).

Cost of proving

62.—(1) Apply rule 4.78 of the 1986 Rules(4).

(2) In paragraph (1) leave out “or 4.76–CVL”.

Building society liquidator to allow inspection of proofs

63. Apply rule 4.79 of the 1986 Rules.

New building society liquidator appointed

64. Apply rule 4.81 of the 1986 Rules.

(1) Paragraph (8) was added by [S.I. 2003/1730](#).
(2) Rule 4.74 was substituted by [S.I. 2004/584](#).
(3) Paragraph (1) was substituted by [S.I. 2004/584](#).
(4) Paragraph (2) was amended by [S.I. 2008/737](#).

Admission and rejection of proofs for dividend

65. Apply rule 4.82 of the 1986 Rules.

Appeal against decision on proof

66.—(1) Apply rule 4.83 of the 1986 Rules.

(2) For paragraph (6) substitute—

“(6) The building society liquidator is not personally liable for costs incurred by any person in respect of an application under this rule unless the court makes an order to that effect.”.

Withdrawal or variation of proof

67. Apply rule 4.84 of the 1986 Rules.

Expunging of proof by the court

68. Apply rule 4.85 of the 1986 Rules.

Estimate of quantum

69. Apply rule 4.86 of the 1986 Rules.

Negotiable instruments, etc.

70. Apply rule 4.87 of the 1986 Rules.

Secured creditors

71. Apply rule 4.88 of the 1986 Rules.

Discounts

72. Apply rule 4.89 of the 1986 Rules.

Mutual credits and set-off

73.—(1) This rule applies where, before the building society goes into building society insolvency, there have been mutual credits, mutual debts or other mutual dealings between the society and any creditor of the society proving or claiming to prove for a debt in the building society insolvency.

(2) The reference in paragraph (1) to mutual credits, mutual debts or other mutual dealings does not include—

- (a) any debt arising out of an obligation incurred at a time when the creditor had notice that—
 - (i) a meeting of creditors had been summoned under section 98 of the Insolvency Act,
 - (ii) a petition for the winding up of the building society was pending, or
 - (iii) an application for a building society insolvency order in respect of the building society was pending;
- (b) any debt which has been acquired by a creditor on assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into—

- (i) after the commencement of building society insolvency,
 - (ii) at a time when the creditor had notice that a meeting of creditors had been summoned under section 98,
 - (iii) at a time when the creditor had notice that a winding up petition was pending, or
 - (iv) at a time when the creditor had notice that an application for a building society insolvency order in respect of the building society was pending;
- (c) any mutual dealings between the building society and a creditor who is also a shareholding member of the building society in respect of shares held by that person in the building society.
- (3) An account shall be taken of what is due from each party to the other in respect of the mutual dealings, and the sums due from one party shall be set off against the sums due from the other.
- (4) A sum shall be regarded as being due to or from the building society for the purposes of paragraph (3) whether—
- (a) it is payable at present or in the future;
 - (b) the obligation by virtue of which it is payable is certain or contingent; or
 - (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.
- (5) Rule 4.86 of the 1986 Rules shall apply for the purposes of this rule to any obligation to or from the building society which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.
- (6) Rules 75 to 77 shall apply for the purposes of this rule in relation to any sums due to the building society which—
- (a) are payable in a currency other than sterling,
 - (b) are of a periodical nature, or
 - (c) bear interest.
- (7) Rule 251 shall apply for the purposes of this rule to any sum due to or from the building society which is payable in the future.
- (8) Subject to rule 74, only the balance (if any) of the account owed to the creditor is provable in the liquidation. Alternatively the balance (if any) owed to the building society shall be paid to the building society liquidator as part of the assets except where all or part of the balance results from a contingent or prospective debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective debt) shall be paid if and when that debt becomes due and payable.
- (9) In this rule, “obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

Disapplication of set-off for eligible depositors

- 74.—(1) This rule applies if the FSA Rules allow the FSCS to make gross payments of compensation.
- (2) In respect of protected deposits Rule 73 shall apply and, for the purpose of determining the sums due from the building society to an eligible depositor under rule 73(3)—
- (a) where the total of the sums held by the building society for the eligible depositor in respect of protected deposits is no more than the prescribed limit, then paragraph (3) applies; and
 - (b) where the sums held exceed the prescribed 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 building society, and the sum due to the eligible depositor from the building society in respect of the protected deposits will be the total of the sums held by the building society for that depositor in respect of those 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 that total exceeds the prescribed limit, and
- (b) the sums due from the building society to the eligible depositor in respect of the protected deposits will be—
 - (i) the amount by which that total exceeds the prescribed limit, set off in accordance with rule 73(3); and
 - (ii) the sums held by the building society for the eligible depositor in respect of protected deposits up to the prescribed limit.

(5) Any arrangements with regard to set-off between the building society and the eligible depositor in existence before the commencement of building society insolvency shall be subject to this rule, insofar as they relate to protected deposits.

(6) In this rule—

“the 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⁽⁵⁾;

“prescribed limit” means the amount prescribed as the maximum compensation payable in respect of protected deposits under Part 15 of the Financial Services and Markets Act 2000; and

“protected deposit” means a protected deposit within the meaning given by the FSA Rules but does not include a share in the society held by an eligible depositor.

Debt in foreign currency

75. Apply rule 4.91 of the 1986 Rules⁽⁶⁾. In paragraph (1), leave out from “or, if” to the end.

Payments of a periodical nature

76. Apply rule 4.92 of the 1986 Rules. In paragraph (1), leave out from “or, if” to the end⁽⁷⁾.

Interest

77. Apply rule 4.93 of the 1986 Rules. In paragraph (1), leave out from “or, if” to the end⁽⁸⁾.

Debt payable at future time

78.—(1) Apply rule 4.94 of the 1986 Rules⁽⁹⁾.

(2) Leave out from “or, if” to “entered administration”.

⁽⁵⁾ 2000 c 8.

⁽⁶⁾ Rule 4.91 was amended by S.I. 2003/1730 and S.I. 2005/527.

⁽⁷⁾ Paragraph (1) was amended by S.I. 2005/527.

⁽⁸⁾ Rule 4.93 was amended by S.I. 1987/1919 and 2005/527.

⁽⁹⁾ Rule 4.94 was amended by S.I. 2005/527.