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STATUTORY INSTRUMENTS

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**2010 No. 2581**

The Building Society Insolvency  
(England and Wales) Rules 2010

PART 9

THE BUILDING SOCIETY LIQUIDATOR

CHAPTER 1

GENERAL

**Remuneration of building society liquidator**

**84.**—(1) This rule applies where—

- (a) the liquidation committee has ceased to exist as mentioned in rule 42(2),
- (b) the committee has not been reformed at a meeting of creditors held under rule 42, 45 or 46, and
- (c) the committee has not been reformed at a meeting of contributories held under rule 118.

(2) Where this rule applies the creditors may, at the first or any subsequent meeting of creditors, pass a resolution as to the terms on which, in accordance with rule 99, the building society liquidator is to be remunerated.

(3) Where such a resolution is passed—

- (a) it supersedes any resolution as to the remuneration of the building society liquidator passed by the liquidation committee before the first meeting of creditors, and
- (b) the building society liquidator shall be paid under the resolution passed by the liquidation committee under rule 18(5) in respect of the performance of the building society liquidator's functions before the day on which the creditors' resolution is passed and under the creditors' resolution in respect of the performance of the building society liquidator's functions on and after that day.

**Replacement of building society liquidator by creditors**

**85.**—(1) Apply rule 4.100 of the 1986 Rules(1).

(2) For paragraph (1) substitute—

“(1) This rule applies where a person is appointed as building society liquidator by a meeting of creditors.”.

(3) For paragraph (4) substitute—

“(4) The chair of the meeting shall—

- (a) send the certificate to the new building society liquidator,

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(1) Paragraphs (3) to (5) were substituted by [S.I. 1987/1919](#).

- (b) send a copy of the certificate to the Bank of England and the FSA, and
- (c) file a copy of the certificate in court .”.

#### **Authentication of building society liquidator’s appointment**

**86.** Apply rule 4.105 of the 1986 Rules(2)). Leave out from “or (as” to “the Act”.

#### **Appointment to be advertised and registered**

**87.**—(1) This rule applies where the building society liquidator is appointed by a meeting of the creditors or by the Bank of England under rule 107.

(2) The building society liquidator shall, after receiving the certificate of appointment, as soon as reasonably practicable give notice of that appointment. Such notice—

- (a) shall be gazetted; and
- (b) may be advertised in such other manner as the building society liquidator thinks fit.

(3) The expense of giving notice under this rule shall be borne in the first instance by the building society liquidator; but the building society liquidator is entitled to be reimbursed as an expense of the building society insolvency.

(4) The building society liquidator shall immediately notify the appointment to the FSA.

### CHAPTER 2

#### RESIGNATION AND REMOVAL

#### **Creditors’ meeting to be notified of the building society liquidator’s resignation**

**88.**—(1) Apply rule 4.108 of the 1986 Rules(3).

(2) For paragraph (1), substitute—

“(1) Before resigning office, the building society liquidator must obtain the consent of the Bank of England and must call a meeting of creditors to notify them of this.

(1A) The notice summoning the meeting shall indicate that this is the purpose, or one of the purposes, of the meeting and shall draw the attention of the creditors to rule 96 with respect to the building society liquidator’s release.

(1B) The notice in paragraph (1A) shall enclose a copy of the Bank of England’s consent.”.

(3) For paragraph (2) substitute—

“(2) Copies of the notice and of the account mentioned in paragraph (3) shall be sent to the court, the Bank of England and the FSA.”.

#### **Action following acceptance of resignation**

**89.**—(1) This rule applies where a meeting is summoned to notify the creditors of the building society liquidator’s resignation.

(2) The meeting shall resolve whether to give the building society liquidator their release.

(3) If the meeting resolves not to release the building society liquidator , the building society liquidator shall be given a copy of that resolution and rule 96 applies.

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(2) Rule 4.105 was amended by [S.I. 2003/1730](#).

(3) Paragraphs (6) and (7) were added by [S.I.1987/1919](#).

(4) After the meeting the building society liquidator shall file the notice of resignation in court and shall send copies of the notice to the Bank of England and the FSA.

(5) The building society liquidator's resignation is effective as from the date on which the court receives the notice of that resignation, and the court shall endorse that date on the notice.

### **Advertisement of resignation**

**90.** Apply rule 4.112 of the 1986 Rules.

### **Meeting of creditors to remove building society liquidator**

**91.**—(1) Apply rule 4.113 of the 1986 Rules.

(2) In paragraph (1), for “section 174(4)” substitute “section 109 of the Banking Act 2009”.

(3) In paragraph (2), for “official receiver” substitute “Bank of England and the FSA”.

(4) For paragraph (4) substitute—

“(4) Where the meeting passes a resolution that—

- (a) the building society liquidator be removed,
- (b) a new building society liquidator be appointed, or
- (c) the building society liquidator not be given their release,

the building society liquidator shall be given a copy of that resolution and if it has been resolved to remove the building society liquidator, the building society liquidator shall be given a certificate to that effect.”.

(5) For paragraph (5) substitute—

“(5) If the creditors have resolved to appoint a new building society liquidator, the certificate of that appointment shall also be sent to the FSA and rule 4.100 shall apply.”.

### **Court's power to regulate meetings under rule 89**

**92.** Apply rule 4.115 of the 1986 Rules. Leave out “or 4.114–CVL”.

### **Procedure on removal**

**93.**—(1) Apply rule 4.116 of the 1986 Rules.

(2) For “official receiver”, wherever it appears, substitute “out-going building society liquidator”.

(3) For paragraph (3) substitute—

“(3) A copy of the certificate so endorsed shall be sent by the court to the outgoing building society liquidator and to any new building society liquidator appointed.”.

(4) Ignore paragraph (4).

### **Advertisement of removal**

**94.** Apply rule 4.118 of the 1986 Rules.

### **Removal of building society liquidator by the court**

**95.**—(1) Apply rule 4.119 of the 1986 Rules(4).

(2) After paragraph (1) insert—

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(4) Paragraph 5 of rule 4.119 was amended by [S.I. 2008/737](#).

- “(1A) If the liquidation committee has not yet passed a full payment resolution, the court shall dismiss any application under paragraph (1) where the application is made by someone other than the Bank of England, the FSA or the liquidation committee.”.
- (3) In paragraph (2), for “at least 7 days’ notice” substitute—
- “(a) if the application is made before the passing of a full payment resolution, such notice as is reasonable in all the circumstances, and
  - (b) if the application is made after the passing of a full payment resolution, at least 7 days’ notice.”.
- (4) In paragraph (4), leave out “, at least 14 days before the hearing,”.
- (5) After paragraph (4) insert—
- “(4A) The notice and copies mentioned in paragraph (4) shall be sent—
- (a) if the application is made before the passing of a full payment resolution, within such time so as to give the building society liquidator notice of the hearing as is reasonable in all the circumstances, and
  - (b) if the application is made after the passing of a full payment resolution, at least 14 days before the hearing.”.
- (6) In paragraph (6)—
- (a) in sub-paragraph (a), for “official receiver” substitute “Bank of England and the FSA” and at the end insert “and”, and
  - (b) leave out “and” at the end of sub-paragraph (b), and sub-paragraph (c).

### **Release of resigning or removed building society liquidator**

- 96.**—(1) Apply rule 4.121 of the 1986 Rules.
- (2) In paragraph (1), for “accepted by” substitute “notified to”.
- (3) For rule 4.109 substitute “rule 89 of the 2010 Rules”.
- (4) In paragraph (3)—
- (a) in sub paragraph (a) for “receive his resignation” substitute “be notified of his resignation”; and
  - (b) leave out “or” at the end of sub-paragraph (a) and at the end of sub-paragraph (b) insert “or” and—
  - “(c) the building society liquidator resigns, and the Bank of England has refused his release.”.
- (5) For paragraph (4) substitute—
- “(4) When the Secretary of State gives the release, he shall certify it accordingly, file the certificate in court and send a copy to the FSA.”.

## CHAPTER 3

### RELEASE ON COMPLETION OF WINDING UP

#### **Final meeting**

- 97.**—(1) The building society liquidator shall give at least 14 days’ notice of the final meeting of the liquidation committee to be held under section 115 of the Banking Act to the following—
- (a) the FSA,
  - (b) the FSCS,

- (c) the Bank of England,
  - (d) the Treasury, and
  - (e) the members of the liquidation committee.
- (2) The building society liquidator's final report to be laid before the meeting under that section shall contain an account of the liquidator's administration of the winding up, including—
- (a) details as to how Objective 1 was achieved having regard, in particular, to the expenses of the building society liquidator in connection with that Objective,
  - (b) a summary of the building society liquidator's receipts and payments,
  - (c) a statement that the building society liquidator has reconciled his account with that which is held by the Secretary of State in respect of the winding up, and
  - (d) a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A (prescribed part) of the 1986 Act<sup>(5)</sup>.
- (3) At the same time that notice of the final meeting is sent out, the building society liquidator shall file the final report in court and send it to the FSA.
- (4) The building society liquidator shall give notice to all creditors and contributories that the final report is available, either on request to the building society liquidator or from the FSA, and shall cause that notice to be gazetted and to be advertised by such other method as the liquidator sees fit at least 14 days before the final meeting is held.
- (5) At the final meeting, the liquidation committee may question the building society liquidator with respect to any matter contained in the final report, and may resolve against the building society liquidator being released.
- (6) The building society liquidator shall give notice to the court that the final meeting has been held and the notice shall state whether or not he has been given his release.
- (7) Where the liquidation committee does not resolve against the building society liquidator's release, the building society liquidator vacates office at the end of the meeting and has his release when the notice in paragraph (6) is filed in court.
- (8) If there is no quorum present at the final meeting, the building society liquidator shall report to the court that a final meeting was summoned in accordance with section 115 of the Banking Act, but there was no quorum present; and the final meeting is then deemed to have been held, and the liquidation committee not to have resolved against the building society liquidator being released.
- (9) If the liquidation committee resolves against the building society liquidator having his release then rule 96 applies.

### **Rule as to reporting**

**98.** Apply rule 4.125A(6) of the 1986 Rules. For "Rule 4.124 or 4.125" substitute "Rule 97 of the 2010 Rules".

## CHAPTER 4 REMUNERATION

### **Fixing of remuneration**

- 99.**—(1) Apply rule 4.127 of the 1986 Rules<sup>(7)</sup>.
- (2) In paragraph (3), leave out from the beginning to "receiver".

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<sup>(5)</sup> Section 176A was inserted by the Enterprise Act 2002 (c.40), section 252.

<sup>(6)</sup> Rule 4.125A was inserted by S.I. 2004/584.

<sup>(7)</sup> Paragraph (6) was substituted by S.I. 2004/584.

(3) For paragraph (5) substitute—

“(5) If, under rule 42(2) of the 2010 Rules, the liquidation committee ceases to exist at the end of the first meeting of creditors, the terms on which the building society liquidator is to be remunerated determined by the initial liquidation committee under rule 18 of the 2010 Rules can be re-determined by a resolution of a meeting of creditors, and paragraph (4) applies to the determination of the creditors as it does to the determination of the liquidation committee.”.

(4) In paragraph (6), for the words from the beginning to “his” substitute “Where the building society liquidator’s”.

### **Building society liquidator’s entitlement to remuneration where it is not fixed under rule 99**

**100.**—(1) Apply rule 4.127A(8) of the 1986 Rules.

(2) In paragraph (1), for the words from “liquidator” to “his” substitute “building society liquidator’s”.

(3) In paragraph (2), after “Schedule 6” add “to the 1986 Rules as applied by the Schedule to the 2010 Rules”.

### **Building society liquidator’s remuneration where he realises assets on behalf of chargeholder**

**101.**—(1) Apply rule 4.127B(9) of the 1986 Rules.

(2) In paragraph (1), for the words from “liquidator” to “and” substitute “building society liquidator”.

(3) In paragraphs (2) and (3), after “Schedule 6” add “to the 1986 Rules as applied by the Schedule to the 2010 Rules”.

### **Other matters affecting remuneration**

**102.** Apply rule 4.128 of the 1986 Rules(10).

### **Recourse of building society liquidator to meeting of creditors**

**103.** Apply rule 4.129 of the 1986 Rules.

### **Recourse to the court**

**104.** Apply rule 4.130 of the 1986 Rules(11).

### **Creditors’ claim that remuneration is excessive**

**105.**—(1) Apply rule 4.131 of the 1986 Rules.

(2) In paragraph (1) at the end insert “The FSCS may also apply to the Court for such an order on those grounds”.

### **Primacy of Objective 1**

**106.** Nothing done under a rule in this Chapter may prejudice the achievement of Objective 1.

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(8) Rule 4.127A was inserted by [S.I. 2004/584](#).

(9) Rule 4.127B was inserted by [S.I. 2004/584](#).

(10) Paragraph (1) was revoked by [S.I. 2004/584](#).

(11) Paragraph (4) was amended by [S.I. 1987/1919](#) and [S.I. 2008/737](#).

## CHAPTER 5 SUPPLEMENTARY PROVISIONS

### **Replacement building society liquidator**

**107.**—(1) Where the building society liquidator vacates office for any reason (including death) other than by removal by a meeting of creditors in accordance with rule 91, the Bank of England shall appoint a new building society liquidator as soon as practicable.

(2) Where a building society liquidator has been removed by a meeting of creditors and no resolution has been passed by that meeting to appoint a new building society liquidator, the Bank of England shall appoint a new building society liquidator as soon as practicable.

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

- (a) is qualified to act as an insolvency practitioner in accordance with section 390 of the Insolvency Act, and
- (b) consents to act as the building society liquidator.

(4) The building society liquidator shall send a copy of the certificate of appointment to the FSA.

### **Building society liquidator deceased**

**108.**—(1) Unless notice of the death of the building society liquidator has been given under paragraph (2) or (3), it is the duty of the building society liquidator’s personal representatives, where the building society liquidator has died, to give notice of that fact to the Bank of England and the liquidation committee, specifying the date of the death.

(2) If the deceased building society liquidator was a partner in a firm, notice may be given to the Bank of England, the FSA and the liquidation committee by a partner in the firm who is qualified to act as an insolvency practitioner, or is a member of any body recognised by the Secretary of State for the authorisation of insolvency practitioners.

(3) Notice of the death may also be given by any person producing the relevant death certificate or a copy of it to the Bank of England, the FSA and the liquidation committee.

(4) The Bank of England shall give notice to the court, for the purpose of fixing the date of the deceased building society liquidator’s release.

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

**109.**—(1) Apply rule 4.134 of the 1986 Rules. For paragraph (2) substitute—

“(2) The building society liquidator shall immediately give notice of his doing so to the Bank of England.

(3) The Bank of England shall file a copy of this notice in court.”.

### **Resignation of the building society liquidator**

**110.**—(1) This rule applies where the building society liquidator was appointed by the court (in the building society insolvency order) or by the Bank of England.

(2) The building society liquidator can only resign—

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

(3) Before calling a meeting of creditors under rule 88 to receive notice of the building society liquidator's resignation, the building society liquidator must write to the Bank of England notifying it of the intention to resign.

(4) The Bank of England shall notify the building society 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 shall set out its reasons in writing.

(5) The building society liquidator, if not content with the Bank of England's response, may apply to the court for directions under section 168(3) of the Insolvency Act.

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

**111.**—(1) This rule applies where the building society liquidator was appointed by a meeting of creditors.

(2) Apply rule 4.137 of the 1986 Rules<sup>(12)</sup>.

(3) For “official receiver”, wherever it appears, substitute “Bank of England” and for “receive his resignation” substitute “be notified of his resignation”.

#### **Building society liquidator's duties on vacating office**

**112.** Apply rule 4.138 of the 1986 Rules<sup>(13)</sup>. Ignore paragraph (3).

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

**113.**—(1) Apply rule 4.149 of the 1986 Rules.

(2) In paragraph (2)—

(a) leave out “either”, and

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

“(c) it is shown to the court's satisfaction that the transaction was entered into by the building society liquidator for the purpose of achieving Objective 1.”.

#### **Rule against solicitation**

**114.**—(1) Apply rule 4.150 of the 1986 Rules<sup>(14)</sup>.

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<sup>(12)</sup> Rule 4.137 was substituted by [S.I. 1987/1919](#).

<sup>(13)</sup> Rule 4.138 was amended by [S.I. 1987/1919](#) and [S.I. 2004/584](#).

<sup>(14)</sup> Paragraph (1) was amended by [S.I. 2008/737](#).