EXPLANATORY MEMORANDUM TO

THE BANK INSOLVENCY (SCOTLAND) (AMENDMENT) RULES 2010

2010 No. 2586 (S. 7)

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

The instrument makes amendments to the Bank Insolvency (Scotland) Rules 2009 (2009/351) ("the BIP(S) Rules"), which provide special insolvency rules for the bank insolvency procedure (BIP) established in Part 2 of the Banking Act 2009 ("the 2009 Act") in Scotland. The changes are necessary to reflect changes that have been made by the Insolvency Service to the general insolvency rules (the Insolvency (Scotland) Rules 1986 (SI 1986/1915) (the "1986 Rules (S)"), on which the BIP (S) Rules are based and to make some minor and technical amendments.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The instrument is the second use (in relation to Scotland) of the powers of the Treasury under section 411(1A) of the Insolvency Act 1986 (the "1986 Act") as introduced by section 125 of the 2009 Act to make rules to give effect to the bank insolvency procedure in Scotland.

4.2 Part 2 of the 2009 Act provides for a modified insolvency procedure for banks as defined in section 91 of the 2009 Act, which may be used as an alternative to the corporate insolvency processes set out in the 1986 Act. The bank insolvency procedure is based, with modifications where required, on the provisions for winding up companies set out in Part 4 of the 1986 Act.

4.3 This instrument makes amendments to the rules that give effect to that procedure. The BIP (S) Rules are based, with necessary modifications, on the rules set out in Part 4 of the 1986 Rules (S)); with rules in Parts 7 of those Rules applied in relation to meetings and general provisions. The BIP (S) Rules follow the order of the 1986 Rules (S).

4.4 The amendments to the BIP (S) Rules-

4.4.1 are required to provide that reference to the 1986 Rules (S) means those Rules as amended up to 1st October 2009 (the date on which amendments made by S.I. 2009/2375 came into force). (This is to enable the BIP (S) Rules to work despite future amendments to the 1986 Rules (S));

4.4.2 make other minor and technical changes that have been identified since the BIP(S) Rules came into force last year as a result of the consultation carried out in relation to the Building Society Insolvency Rules 2010 ("the BSI Rules") which are being laid at the same as this instrument; and

4.4.3 correct minor drafting errors.

4.5 This instrument is laid along with The Bank Administration (Scotland) (Amendment) Rules 2010; The Bank Insolvency (England and Wales) (Amendment) Rules 2010 and the Bank Administration (England and Wales) (Amendment) Rules 2010.

5. Territorial Extent and Application

5.1 This instrument applies to Scotland only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 Part 2 of the 2009 Act creates the bank insolvency procedure (BIP). The BIP is based on the process of compulsory liquidation set out in Part 4 of the 1986 Act.

7.2 The principle policy aims of the bank insolvency procedure are to ensure that where a bank fails, insolvency proceedings can be commenced quickly, and the interests of depositors entitled to payments from the Financial Services Compensation Scheme ("FSCS") are protected. To facilitate this, the first objective of the procedure is for the bank liquidator to work with the FSCS to ensure that either the accounts of eligible depositors are transferred to another financial institution quickly or that prompt compensation payouts are made by the FSCS. The Bank of England, the FSA and the FSCS must form an initial liquidation committee that will work with and oversee the bank liquidator. Once the first objective has been achieved, the Bank of England and FSA will step down from the liquidation committee. It will be left to creditors to decide whether to continue with a liquidation committee and the winding up will continue in much the same way as an ordinary liquidation with the bank liquidator seeking to achieve the best result for its creditors.

7.3 The BIP requires statutory insolvency rules to set out the detail of the process. The BIP (S) Rules are based, with necessary modifications, on the rules set out in Part 4 of the 1986 Rules (S); with rules in Part 7 of those Rules applied in relation to meetings and general provisions.

7.4 The Insolvency Service has brought forward a number of amendments to the 1986 Rules (S) to modernise and consolidate them. It is desirable for the insolvency rules for banks to be as similar as possible to the general rules, in order that the BIP (S) Rules should be familiar to insolvency practitioners, banks, and their professional advisers. As the 1986 Rules (S) continue to be modified though, it has been necessary to review whether consequential amendments need to be made to the BIP (S) Rules.

7.5 The Insolvency Service has introduced modernisation amendments to the 1986 Rules (S) during 2009 and 2010 after the BIP (S) Rules came into force. Meanwhile the Treasury has been consulting on and has finalised the BSI Rules and those Rules apply the 1986 Rules (S) as amended up until 1st October 2009. As the BIP (S) Rules are, where possible, to be kept in line with the BSI Rules, we consider that they should not apply the 1986 Rules (S) as amended by the 2010 modernising amendments (SI 2010/688) and future amendments, as the amount of legislation needed becomes unworkable. This instrument is therefore necessary to make sure that the BIP(S) Rules remain effective now that the 2010 modernisation amendments have been made (see the definition of "1986 Rules" in rule 4). Amendments to the 1986 Rules (S) made prior to 1st October 2009 will impact on BIP (S) Rules. This instrument also makes some minor changes to BIP (S) Rules that have been identified during consultation on the BSI Rules and comments from the Insolvency Rules Committee. See for example the amendments to rule 30 of the BIP (S) Rules (rule 10).

- ***Consolidation***

7.6 None.

8. Consultation outcome

8.1 These rules implement minor and technical changes to the 1986 Rules (S) which have been consulted on separately by the Insolvency Service; and other minor and technical changes to ensure consistency with the BSI Rules were consulted on separately by the Treasury in 2009. The Treasury has therefore not run a separate public consultation on these rules.

8.2 The Treasury has sought the views of the Banking Liaison Panel, who have a statutory role under section 10 of the 2009 Act to advise the Treasury about secondary legislation made under Parts 1 to 3. The BLP had no comments on these rules.

9. Guidance

Not applicable.

10. Impact

The BIP may only be instituted in connection with the insolvency of a bank as defined under section 2 of the 2009 Act and the procedure to which these rules give effect could not be used in relation to other businesses, charities or voluntary bodies. As these changes are minor and technical, the Treasury's view is that they will not have a substantive impact on business. An Impact Assessment has been prepared for this instrument.

11. Regulating small business

These Regulations apply to 'banks' as defined in section 91 of the 2009 Act, some of which may be small businesses.

12. Monitoring & review

The Treasury will ensure that arrangements for review are consistent with better regulation policy going forward. The post implementation review arrangements for these Rules are that they will be reviewed as and when necessary to take account of any changes arising from the Insolvency Service's insolvency rules modernisation project; and that they are kept under review by the Banking Liaison Panel (BLP) established under section 10 of the 2009 Act, and the Treasury.

13. Contact

Chris Rusbridge at HM Treasury Tel: 020 7270 4552 or email: christopher.rusbridge@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.

Title: **Amendments to insolvency and administration rules for banks**	Impact Assessment (IA)
Lead department or agency: Treasury	**IA No:**
Other departments or agencies: The Rules will be formally made by the Ministry of Justice	**Date:** 01/01/2010
	Stage: Enactment
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries: Chris Rusbridge, HM Treasury, 020 7270 4552

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The problem under consideration is how to resolve a failing bank, minimising impact on depositors and financial stability. The bank insolvency procedure (BIP) can be used to wind up a bank if it fails. It has features that assist with the protection of the bank' depositors. The bank administration procedure (BAP) is used to wind up an insolvent 'residual company' that is left over after the resolution of a failed bank using a partial transfer under the special resolution regime. The BIP and BAP have statutory Rules setting out procedure for the bank liquidator / administrator. The Insolvency Services had brought forward modifications to the underlying insolvency rules on which these rules are based, which need to be reflected in the bank rules.

What are the policy objectives and the intended effects?

The policy objective is to bring the bank rules into line with the general insolvency rules made by the Insolvency Service. This will ensure that BIP and BAP rules will be familiar to insolvency practitioners, banks and their professional advisers.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

The Treasury has considered the alternative option of not making these amendment rules. The effect of this would be that the insolvency rules for banks would be inconsistent with the general insolvency rules. On balance, the Treasury considers that it is desirable to have the rules in place.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed on an ongoing basis
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

<u>**SELECT SIGNATORY Sign-off**</u> For enactment stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: M Hoban .... Date: 3/9/2010

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Summary: Analysis and Evidence

Policy Option 1

Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: **N/A**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

Description and scale of key monetised costs by 'main affected groups'

There are no significant ongoing or one-off direct costs associated with these measures.

Other key non-monetised costs by 'main affected groups'

There are no significant ongoing or one-off direct costs associated with these measures.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

It is not feasible to quantify the benefits of these amendment rules as distinct from the benefits of the benefits of the procedures as a whole.

Other key non-monetised benefits by 'main affected groups'

It is not feasible to quantify the benefits of these rules as distinct from the benefits of the procedures as a whole. Benefits for the BIP and BAP are set out in the original impact assessments. However, by minimising the differences between with the general rules and those provided for banks, these instruments will minimise resource costs for insolvency practitioners, banks and their professional advisers (for example, cost associated with familiarising themselves with the new rules).

Key assumptions/sensitivities/risks | **Discount rate (%)** |

These rules will only be used where a bank fails, and costs and benefits will only materialise in that case. As any such costs and benefits will depend on the size and complexity of the insolvency, they are not possible to quantify in the abstract.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England and Wales		
From what date will the policy be implemented?			15/09/2010		
Which organisation(s) will enforce the policy?			Treasury, Bank of England, FSA, Judiciary		
What is the annual change in enforcement cost (£m)?			N/A		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** N/A	**Benefits:** N/A	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro** N/A	**< 20** N/A	**Small** N/A	**Medium** N/A	**Large** N/A
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	Impact	Page ref within IA
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[1] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Impact Assessment for key policy changes brought about by the project to modernise and consolidate the Insolvency Rules 1986 and other insolvency secondary legislation, available from www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=557d3737c80d45fa81ceacc5a9858a3b)
2	Impact Assessment for the Banking Bill, available from http://webarchive.nationalarchives.gov.uk/20100407010852/http://www.hm-treasury.gov.uk/d/banking_bill_ia081008.pdf
3	
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Annual recurring cost	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Total annual costs	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Transition benefits	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Annual recurring benefits	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Total annual benefits	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

The policy objective is to bring the bank rules into line with the general insolvency rules made by the Insolvency Service, which have been consulted on separately. The impact assessement for the insolvency rules modernisation project is available from the BERR website (www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=557d3737c80d45fa81ceacc5a9858a3b).

Ensuring that the BIP and BAP rules are consistent with the general insolvency rules will help to ensure that they are familiar to insolvency practitioners, banks and their professional advisers. By minimising the differences between with the general rules and those provided for banks, these instruments will minimise resource costs for insolvency practitioners, banks and their professional advisers (for example, cost associated with familiarising themselves with the new rules).

Further than that, it is not feasible to quantify the benefits of these amendment rules as distinct from the benefits of the procedures as a whole. As set out in the original impact assessment, the BIP and BAP bring non-monetised benefits to depositors and the wider economy in the event of the failure of a bank. The impact assessment for the BIP and BAP is available in the Impact Assessment for the Banking Act 2009, which is available from the National Archives website (http://webarchive.nationalarchives.gov.uk/20100407010852/http://www.hm-treasury.gov.uk/d/banking_bill_ia081008.pdf)

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];   The Treasury will ensure that arrangements for review are consistent with better regulation policy going forward. The rules will be reviewed as and when necessary to take account of any changes arising from the Insolvency Service's insolvency rules modernisation project. The rules are also kept under review by the Banking Liaison Panel (BLP) established under section 10 of the Banking Act 2009, and the Treasury.
Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]   Treasury's is likely to review the rules to ensure that they remain consistent with the general insolvency rules made by the Insolvency Service on which these rules are based. The Banking Liaison Panel have a statutory role to advise the Treasury about the impact of secondary legislation made under the Banking Act on financial markets.
Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]   The Treasury will evaluate the effectiveness of rules as appropriate if it becomes neccessary to do; for example if problems are identified during the course of the resolution of a failing bank, or if the BLP identify issues of concern to financial markets, or if the general insolvency rules made by the Insolvency Service changes. The nature and scope of the review will depend on the issue that has been identified.
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]   N/A
Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]   The main criterion for success for these rules is that the BIP and BAP can be used effectively in the event that it is neccessary to do so.
Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]   The mai n review mechanism is ongoing scrutiny by the Banking Liaison Panel, as described above.
Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]