EXPLANATORY MEMORANDUM TO

THE BANK ADMINISTRATION (ENGLAND AND WALES) (AMENDMENT) RULES 2010

2010 No. 2583

1. This explanatory memorandum has been prepared by Her Majesty's 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

2.1 The instrument makes amendments to the Bank Administration (England and Wales) Rules 2009 (2009/357) ("the BAP Rules") which provide special insolvency rules for the bank administration procedure established in Part 3 of the Banking Act 2009 ("the Act") in England and Wales. The changes are necessary to reflect changes that have been made by the Insolvency Service to the underlying general insolvency rules, on which the BAP rules are based.

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 of the powers of the Lord Chancellor under section 411 (1B) of the Insolvency Act 1986 as introduced by section 160 of the Act to make rules, with the concurrence of Her Majesty's Treasury and the Lord Chief Justice, to give effect to the bank administration procedure.

4.2 Part 3 of the Act provides that where the Bank of England has made or intends to effect a partial sale or transfer to a commercial purchaser or bridge bank, the residual bank may be put into bank administration. This procedure is based, with modifications where required, on the provisions of administration set out in Schedule B1 to the Insolvency Act 1986.

4.3 This instrument makes amendments to the rules that give effect to that procedure. The original rules are based, with necessary modifications, on the rules set out in Part 2 of the Insolvency Rules 1986; with rules in Parts 4, 7, 8, 9, 11, 12 and 13 applied in relation to the powers of a bank administrator, court procedure and practice, dividend payments, and miscellaneous and general provisions. These rules follow the order of the Insolvency Rules 1986 ("the 1986 Rules").

4.4 The amendments to the BAP Rules are required to provide that reference to the 1986 Rules means the 1986 Rules amended up to August 2009 (S.I. 2009/2472) (this is to enable the BAP Rules to work despite future amendments to the 1986 Rules). They have the following features:

4.4.1 they reflect amendments made based on amendments that have been made by the Insolvency Service to the 1986 Rules up to August 2009;

4.4.2 they provide for the statement of proposals to be sent to the Financial Services Authority (FSA) and the Financial Services Compensation Scheme (FSCS);

4.4.3 they provide for the disapplication of set-off for protected depositors;

4.4.4 they make modifications to reflect the substitution of paragraph 79 for paragraph 80 in the table of applied provisions set out in section 145 of the Act; and

4.4.5 they make other minor and technical changes that have been identified since the BAP Rules came into force last year as a result of the consultation carried out in relation to the Building Society Special Administration Rules 2010 ("the BSSA Rules") which are laid at the same as this instrument.

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

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

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

7.1 Part 3 of the Act provides that where the Bank of England makes, or intends to make, a partial sale or transfer to a commercial purchaser or bridge bank under the powers in Part 1 of that Act, the residual bank may be placed into bank administration. That process is based on the procedure of administration set out in Schedule B1 to the Insolvency Act 1986.

7.2 The current BAP rules were made in March 2009. They are based on the rules for administration set out in Part 2 of the 1986 Rules to give effect to the bank administration procedure and many of the existing rules for the process of administration have been applied with little or no modification. New rules and modifications to existing rules have been introduced in order to facilitate the achievement of the unique objectives of the bank administration procedure and to reflect the role of the Bank of England in exercising a partial transfer.

7.3 The Insolvency Service has brought forward a number of amendments to the 1986 Rules to modernise and consolidate that instrument. The Government's view is that the insolvency rules for banks should be as similar as possible to the general rules, in order that the BAP Rules should be familiar to insolvency practitioners, banks, and their professional advisers. As the 1986 Rules continue to be modified,

though, it has been necessary to review whether consequential amendments need to be made to the BAP Rules.

7.4 The Insolvency Service has introduced modernisation amendments to the Insolvency Rules 1986 during 2009 and 2010 after the BAP Rules came into force. Meanwhile the Treasury has been consulting on and finalising the BSSA Rules (which are closely modelled on the 2009 Rules and apply the 1986 Rules as amended in 2009 and not 2010. As the BAP Rules are, where possible, to be kept in line with the BSSA Rules, we consider that the BAP Rules should not apply the 1986 Rules as amended by the 2010 modernising amendments and future amendments, as the amount of legislation needed becomes unworkable. This instrument is therefore necessary to make sure that the BAP Rules remain effective now that the 2010 modernisation amendments have been made. However the 2009 amendments to the 1986 Rules are taken on board (see rule 18).

7.5 The more significant of the minor and technical changes that are being made are:

7.5.1 Rule 8 (inserting new provision rule 30A) - this amendment corrects a lacuna in the BA Rules. It clarifies that the FSA and the FSCS are to receive a copy of the statement of proposals. The requirement to send out the statement to creditors etc is found in paragraph 49 of Schedule B1 of the Insolvency Act 1986, which makes no mention of sending the proposal out to the FSA and the FSCS.

7.5.2 Rule 15 (inserting new rule 47A) – it is possible that on the exercise of a stabilisation power under Part 1 of the Act, not all protected deposits are transferred under the exercise of the power and that some depositors still might claim for compensation to the FSCS. From 31st December 2010, FSA Rules will provide that the FSCS pay such claims in full without setting off any claim the bank might have against the claimant. The FSCS will then be assigned the claim. Rule 2.85 of the 1986 Rules provides that set-off does not apply to assignments of claims up to the point the distribution notice is made but does apply after that time. Therefore this new rule provides that when the administrator gives notice of a distribution, the usual set off provisions are disapplied so that the amount of the deposit up to the compensation statutory limit cannot be set off against any liability the depositor owes to the bank. This will allow the FSCS, if assigned the claim after the date of the distribution notice, to be able to claim for the gross amount of compensation paid out.

7.5.3 Rule 16 (amending rule 48) – these changes reflect the fact that section 21 of the Financial Services Act 2010 amends Part 3 of the Act, so that paragraph 79 rather than paragraph 80 of Schedule B1 is applied; and that corresponding changes have been made to section 153 of the Act.

7.5.4 Rule 17 (amending rule 52) – this change brings the rule in line with the BSSA Rules. Rule 7.30 of the 1986 Rules is not applied by the BAP Rules, instead it is replaced by rule 52 of the BAP Rules. This

addition ensures that all the applicable provisions of rule 7.30 are contained in rule 52.

8. Consultation outcome

8.1 These rules implement minor and technical changes to the 1986 Rules which have been consulted on separately by the Insolvency Service; and other minor and technical changes to ensure consistency with the BSSA Rules, which 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 Act to advise the Treasury about secondary legislation made under Parts 1-3. As the changes are minor and technical, the BLP did not make comment. The Treasury has also sought the views of the Insolvency Rules Committee (IRC). The IRC made certain minor and technical suggestions, which have been incorporated.

9. Guidance

9.1 No guidance is being issued on the instrument since it is largely based on existing insolvency rules and practice which will be familiar to insolvency practitioners and their advisers.

10. Impact

10.1 The bank administration procedure set out in Part 3 of the Act may only be instituted in connection with the powers to effect a partial transfer of a bank's business to a bridge bank or private sector purchaser. The definition of a bank is given in section 2 of the Act and the procedure to which these rules give effect could not be used in relation to other businesses, charities or voluntary bodies.

10.2 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

11.1 The bank administration procedure set out in Part 3 of the Act may only be used in relation to a partial transfer of a bank's business to a bridge bank or private sector purchaser. For these purposes, bank is defined in section 2 of the Act.

12. Monitoring & review

12.1 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 BLP established under section 10 of the Banking Act 2009, 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** **Lead department or agency:** Treasury **Other departments or agencies:** The Rules will be formally made by the Ministry of Justice	**Impact Assessment (IA)** **IA No:** **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

SELECT SIGNATORY Sign-off 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: ..... 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]