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STATUTORY INSTRUMENTS

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**2018 No. 833**

**FINANCIAL SERVICES AND  
MARKETS, ENGLAND AND WALES  
INSOLVENCY, ENGLAND AND WALES**

The Financial Market Infrastructure  
Administration (England and Wales) Rules 2018

<i>Made</i>	- - - -	<i>10th July 2018</i>
<i>Laid before Parliament</i>		<i>12th July 2018</i>
<i>Coming into force</i>	- -	<i>4th August 2018</i>

The Lord Chancellor makes the following Rules in the exercise of powers under section 411(1B) (a) of the Insolvency Act 1986<sup>(1)</sup>, as applied by section 121(3) of the Financial Services (Banking Reform) Act 2013<sup>(2)</sup>, and section 411(2) of the Insolvency Act 1986.

The Lord Chancellor has consulted the Committee existing for the purposes of section 413 of the Insolvency Act 1986.

The Treasury concur in the making of the Rules.

The Chancellor of the High Court (by the authority of the Lord Chief Justice under section 411(7) of the Insolvency Act 1986<sup>(3)</sup>) concurs in the making of the Rules in so far as they affect court procedure.

**PART 1**

**Introductory provision and application**

**Citation, commencement and extent**

**1.—(1)** These Rules may be cited as the Financial Market Infrastructure Administration (England and Wales) Rules 2018, and come into force on 4th August 2018.

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<sup>(1)</sup> 1986 c. 45. Subsection (1B) was inserted by the Banking Act 2009 (c. 1), section 160(1) and (2).

<sup>(2)</sup> 2013 c. 33.

<sup>(3)</sup> Subsection (7) was inserted by the Constitutional Reform Act 2005 (c. 4), section 15(1) and Schedule 4.

(2) These Rules extend to England and Wales only, and apply in relation to infrastructure companies which the courts of England and Wales have jurisdiction to wind up.

## Interpretation

2.—(1) In these Rules—

“the 1986 Act” means the Insolvency Act 1986;

“the 2000 Act” means the Financial Services and Markets Act 2000(4);

“the 2013 Act” means the Financial Services (Banking Reform) Act 2013;

“the Bank” means the Bank of England;

“business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales;

“the court”, except in the reference to the County Court in rule 12(3)(1), means the High Court;

“designated service provider” means a company designated under section 112(4) of the 2013 Act;

“the FCA” means the Financial Conduct Authority;

“FMI administration” means the procedure for which provision is made by Part 6 of the 2013 Act(5) (special administration for operators of certain infrastructure systems);

“FMI administration application” means an application by the Bank for an FMI administration order in respect of an infrastructure company;

“the Insolvency Rules” means the Insolvency (England and Wales) Rules 2016(6);

“operator of a securities settlement system” means a company which, in relation to the securities settlement system concerned, is an infrastructure company by virtue of falling within section 112(2)(b) of the 2013 Act(7);

“Payment Systems Regulator” means the body established under section 40 of the 2013 Act;

“personal service” is a reference to personal service in accordance with Part 6 of the Civil Procedure Rules 1998(8);

“the PRA” means the Prudential Regulation Authority;

“PRA-authorised person” has the meaning given by section 2B(5)(9) of the 2000 Act; and

“Schedule B1” means Schedule B1 to the 1986 Act(10).

(2) In these Rules the following expressions have the same meaning as in Part 6 of the 2013 Act(11)—

(a) “FMI administration order”;

(b) “FMI administrator”;

(c) “infrastructure company”;

(d) “operator”, in relation to a recognised payment system(12);

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(4) 2000 c. 8.

(5) Schedule 6 to the 2013 Act (conduct of FMI administration) was amended by S.I. 2017/400 and by S.I. 2018/208.

(6) S.I. 2016/1024, as amended by 2017/1115.

(7) Section 112(2)(b) was substituted by S.I. 2017/1064. The substituted definition is subject to a savings provision in regulation 7(3)(b) of S.I. 2017/1064.

(8) S.I. 1998/3132 as amended by S.I. 2004/3419. There are other amendments, but they are not relevant.

(9) Section 2B was substituted with the rest of Part 1A of the 2000 Act by the Financial Services Act 2012 (c.21), section 6(1).

(10) Schedule B1 was inserted by the Enterprise Act 2002 (c.40), section 248(2) and Schedule 16.

(11) See sections 112, 113 and 114 of the 2013 Act.

(12) The words “inter-bank” were omitted from the definitions of “operator” and “recognised payment system” by the Digital Economy Act 2017 (c. 30), section 113 and Schedule 9.

- (e) “recognised payment system”; and
- (f) “securities settlement system”.

(3) In these Rules the following expressions have the meaning given in rule 1(2) of the Insolvency Rules—

- (a) “Article 1.2 undertaking”;
- (b) “deliver” and “deliver to the creditors”;
- (c) “enforcement agent”;
- (d) “file with the court”;
- (e) “IP number”;
- (f) “main proceedings”;
- (g) “non-EC proceedings”;
- (h) “secondary proceedings”
- (i) “territorial proceedings”
- (j) “venue”; and
- (k) “witness statement”.

## PART 2

### Application for an FMI Administration Order

#### Contents of application for an FMI administration order

**3.—**(1) An FMI administration application by the Bank of England must be headed “FMI administration application” and immediately below the heading must—

- (a) identify the infrastructure company to which it relates; and
- (b) indicate whether the infrastructure company is—
  - (i) the operator of a recognised payment system;
  - (ii) the operator of a securities settlement system; or
  - (iii) a designated service provider which provides services to an operator falling within paragraph (i) or (ii).

(2) The FMI administration application must contain—

- (a) the full name and any trading name of the infrastructure company;
- (b) the address of the infrastructure company’s registered office;
- (c) any address for service of which the infrastructure company has notified the Bank;
- (d) an email address for the infrastructure company;
- (e) if the company is registered under the Companies Act 2006(13), a statement—
  - (i) specifying any issued and called-up share capital, the number of shares into which the capital is divided, the nominal value of each share and the amount of capital paid up or treated as paid up; or
  - (ii) that the infrastructure company is a company limited by guarantee;
- (f) particulars of the principal business carried on by the infrastructure company;

- (g) a statement whether the infrastructure company is an Article 1.2 undertaking;
  - (h) a statement whether the FMI administration will be main, secondary, territorial or non-EC proceedings, and that the reasons for the statement are set out in the witness statement in support of the application made under rule 5;
  - (i) a statement either—
    - (i) that for the reasons set out in the witness statement the Bank believes that the infrastructure company is, or is likely to be, unable to pay its debts; or
    - (ii) that on a petition presented by the Secretary of State under section 124A of the 1986 Act<sup>(14)</sup> (petition for winding up on grounds of public interest), it would be just and equitable (disregarding the objective of the FMI administration) to wind up the infrastructure company;
  - (j) the name and address of the person (or persons) nominated for appointment as FMI administrator;
  - (k) the address for service of the Bank; and
  - (l) a statement that the Bank requests the court—
    - (i) to make an FMI administration order;
    - (ii) to appoint as the FMI administrator the person (or persons) nominated for appointment;
    - (iii) to make such ancillary order as the Bank may request and such other order as the court thinks appropriate.
- (3) The application must be authenticated by the Bank or the Bank’s solicitor and dated.

#### **Statement of proposed FMI administrator**

4.—(1) An FMI administration application must be accompanied by a statement by the person nominated for appointment as FMI administrator which contains—

- (a) identification details of the infrastructure company;
  - (b) the person’s name and address;
  - (c) particulars of the person’s qualification to act as FMI administrator<sup>(15)</sup>;
  - (d) the person’s IP number;
  - (e) the name of the recognised professional body (within the meaning given in section 391 of the 1986 Act<sup>(16)</sup>) which is the source of the person’s authorisation;
  - (f) a statement that the person consents to act as FMI administrator;
  - (g) a statement whether or not the person has had any prior professional relationship with the infrastructure company, and if so, a short summary of that relationship; and
  - (h) a statement that the person is of the opinion that the objective of FMI administration set out in section 115 of the 2013 Act is reasonably likely to be achieved by one or both of the means specified in section 115.
- (2) The statement must be authenticated and dated by the proposed FMI administrator.

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<sup>(14)</sup> Section 124A was inserted by the Companies Act 1989 (c. 40), section 60(3), and was amended by S.I. 2001/3649 and by the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), Schedule 2, paragraph 27.

<sup>(15)</sup> By virtue of section 390(2) of the 1986 Act, as applied by Part 6 of the 2013 Act, a person is not qualified to act as an FMI administrator unless they are fully authorised to act as an insolvency practitioner or partially authorised to act as an insolvency practitioner only in relation to companies (see the 2013 Act, Schedule 6, Table 2, entry for sections 390 to 391T substituted by S.I. 2017/400).

<sup>(16)</sup> Section 391 was substituted by the Small Business, Enterprise and Employment Act 2015 (c. 26), section 137(1), subsequent to its earlier substitution by the Deregulation Act 2015 (c. 20), section 17(4).

(3) Where the Bank proposes the appointment of two or more persons to act jointly or concurrently as the FMI administrator, each one must make a separate statement.

### **Bank of England witness statement**

**5.—(1)** An FMI administration application must be accompanied by a witness statement made by or on behalf of the Bank which contains—

- (a) a statement of the infrastructure company’s financial position (to the best of the Bank’s knowledge and belief), specifying its assets and liabilities, including contingent and prospective liabilities, and including—
  - (i) where the Bank makes a statement under rule 3(2)(i)(i), a statement of the reasons why the Bank believes that the infrastructure company is, or is likely to become, unable to pay its debts;
  - (ii) where the Bank makes a statement under rule 3(2)(i)(ii), a statement that the Secretary of State has certified, or is to certify, to the court the matter referred to in section 117(2) of the 2013 Act;
- (b) details of any security which the Bank knows or believes to be held by a creditor of the infrastructure company;
- (c) a statement whether any security confers power to appoint an administrative receiver or an administrator under paragraph 14 of Schedule B1 (holder of qualifying floating charge);
- (d) a statement that an administrative receiver has been appointed, if that is the case;
- (e) a statement whether the Bank has received notice under section 122(1)(a) or (2)(b), 123(3) (a) or 124(a) of the 2013 Act, exhibiting a copy of the notice, if there is one;
- (f) details of any other insolvency proceedings in relation to the infrastructure company;
- (g) details of any FMI transfer scheme (within the meaning given by paragraph 4(1) of Schedule 7 to the 2013 Act) which the Bank intends to approve;
- (h) if more than one person is nominated for appointment as FMI administrator, a statement of the matters relating to the exercise of their functions set out in paragraph 100(2) of Schedule B1 (joint or concurrent exercise of functions);
- (i) the reasons for the statement that the FMI administration proceedings will be main, secondary, territorial or non-EC proceedings; and
- (j) particulars of any other matter which the Bank considers may help the court to decide whether to make the FMI administration order.

(2) Where the infrastructure company is a designated service provider, the witness statement must identify the recognised payment system or securities settlement system (or, if there is more than one such system, each one) in relation to which the infrastructure company provides services.

(3) The witness statement must—

- (a) identify the person who makes the statement;
- (b) state the capacity in which that person makes the statement; and
- (c) state the basis for that person’s knowledge of, or belief in, the matters set out in the statement.

### **Filing of application with the court and venue for hearing**

**6.—(1)** An FMI administration application must be filed with the court together with the witness statement and the statement of the proposed FMI administrator (“accompanying documents”).

(2) The court must fix a venue for the hearing of the FMI administration application.

- (3) In fixing the venue the court must have regard to—
- (a) the desirability of the application being heard as soon as is reasonably practicable; and
  - (b) the need to give the representatives of the infrastructure company a reasonable opportunity to attend the hearing.
- (4) There must also be filed with the court, at the same time as the FMI administration application or at any time after that, a sufficient number of copies of the application and accompanying documents for service under rule 7.
- (5) Each filed copy of the FMI administration application must—
- (a) have applied to it the seal of the court;
  - (b) be endorsed with—
    - (i) the date and time of filing; and
    - (ii) the venue for the hearing of the FMI administration application; and
  - (c) be issued to the Bank for service under rule 7.

### **Service of FMI administration application**

7.—(1) The Bank must serve a sealed and endorsed copy of the FMI administration application and accompanying documents—

- (a) on the infrastructure company;
  - (b) where the infrastructure company is a designated service provider, on the operator of the recognised payment system or securities settlement system (or, if there is more than one system or operator, on each such system or operator) in relation to which the infrastructure company provides services;
  - (c) on each person nominated for appointment as FMI administrator;
  - (d) on any person who, to the knowledge of the Bank, is entitled to appoint an administrative receiver or an administrator under paragraph 14 of Schedule B1; and
  - (e) on any person who has given the Bank notice under section 122(1)(a) or (2)(b), 123(3)(a) or 124(a) of the 2013 Act.
- (2) The service of documents under paragraph (1) must be effected as soon as is reasonably practicable, having regard, in particular, to the need to give representatives of the infrastructure company a reasonable opportunity to attend the hearing.
- (3) The service of documents on a person under paragraph (1) must be effected—
- (a) by personal service at an address that the person has notified to the Bank as an address for service;
  - (b) where the person has not notified an address for service, by personal service at the person's registered office;
  - (c) where the person has not notified an address for service and has no registered office, by personal service at the person's usual or last known principal place of business in England and Wales; or
  - (d) in such other manner and at such other place as the court may direct.
- (4) If the Bank knows of an email address that is habitually used for business purposes by a person on whom documents are required by this rule to be served, the Bank must as soon as is reasonably practicable (in addition to personal service) send by email an electronic copy of a sealed and endorsed copy of the FMI administration application issued for service under rule 6 and of the accompanying documents.

(5) The service of the FMI administration application and accompanying documents must be verified by a certificate of service which—

- (a) identifies the application and the infrastructure company;
- (b) identifies the accompanying documents by reference to the date on which each statement was made and the person who made it;
- (c) specifies—
  - (i) the date of the application;
  - (ii) the court in which the application was made and the court reference number;
  - (iii) whether the copy of the application served was a sealed copy;
  - (iv) the person served;
  - (v) the manner of service and the date of service; and
- (d) is verified by a statement of truth made in accordance with Part 22 of the Civil Procedure Rules 1998<sup>(17)</sup>.

(6) The certificate of service, together with a copy of the documents served, must be filed with the court as soon as is reasonably practicable before the hearing of the FMI administration application.

#### **Notice of filing of FMI administration application**

**8.—**(1) As soon as is reasonably practicable after filing an FMI administration application, the Bank must deliver a notice that the application has been made—

- (a) to the FCA;
- (b) where the infrastructure company is a PRA-authorized person, to the PRA;
- (c) to any enforcement agent or other officer who, to the knowledge of the Bank, is charged with distress or other legal process against the infrastructure company or its property;
- (d) to any person who, to the knowledge of the Bank, has distrained against the infrastructure company or its property; and
- (e) where the infrastructure company is the operator of a recognised payment system, or a designated service provider which provides services to such an operator, to the Payment Systems Regulator.

(2) In paragraph (1) “distress” and “property” have the meaning given in section 436(1) of the 1986 Act.

#### **Hearing of FMI administration application**

**9.—**(1) At the hearing of an FMI administration application, any of the following may appear or be represented—

- (a) the Bank;
- (b) the Treasury;
- (c) the FCA;
- (d) where the infrastructure company is a PRA-authorized person, the PRA;
- (e) where the infrastructure company is the operator of a recognised payment system, or a designated service provider which provides services to such an operator, the Payment Systems Regulator;
- (f) the infrastructure company;

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<sup>(17)</sup> S.I. 1998/3132, as amended by S.I. 2004/3419. There are other amendments, but they are not relevant.

- (g) a director of the infrastructure company;
  - (h) the person (or a person) nominated for appointment as FMI administrator;
  - (i) any person who has given notice in respect of the infrastructure company under section 122(1)(a) or (2)(b), 123(3)(a) or 124(a) of the 2013 Act; and
  - (j) with the permission of the court, any other person who appears to have an interest in the FMI administration application which justifies appearance.
- (2) If the court makes an FMI administration order, the following are payable as an expense of the FMI administration—
- (a) the Bank’s costs of making the application; and
  - (b) any other costs, whether incurred by the Bank or by any other person, which are allowed by the court.

### **The FMI administration order**

**10.**—(1) Where the court makes an FMI administration order, the court’s order must be headed “FMI administration order” and must contain the following—

- (a) the name of the court in which the order is made;
- (b) the name and title of the judge making the order;
- (c) identification details for the infrastructure company;
- (d) the address for service of the Bank (as the applicant);
- (e) details of any other parties (including the infrastructure company) appearing and of persons by whom those parties are represented;
- (f) an order that while the order is in force the affairs, business and property of the infrastructure company are to be managed by the FMI administrator;
- (g) the name of the person appointed as the FMI administrator and that person’s IP number;
- (h) an order that that person is appointed as FMI administrator of the infrastructure company;
- (i) the date of the order (and, if the court so orders, the time);
- (j) a statement that the court is satisfied either that the Council Regulation (EC) No. 1346/2000 on insolvency proceedings(18) does not apply or that it does;
- (k) where that Council Regulation does apply, a statement whether the FMI administration proceedings are main, secondary or territorial proceedings; and
- (l) such other provisions as the court thinks just.

(2) Where two or more FMI administrators are appointed, the order must also specify (as required by paragraph 100(2) of Schedule B1)—

- (a) which functions, if any, are to be exercised by those persons acting jointly; and
- (b) which functions, if any, are to be exercised by any or all of those persons.

### **Notice of FMI administration order**

**11.**—(1) If the court makes an FMI administration order, it must as soon as is reasonably practicable deliver to the Bank—

- (a) four sealed copies of the order if the infrastructure company is the operator of a securities settlement system or a designated service provider which provides services to such an operator;

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(18) OJ L 160, 30.6.2000, p. 1-18.



- (b) five sealed copies of the order if the infrastructure company is the operator of a recognised payment system or a designated service provider which provides services to such an operator.
- (2) The Bank must as soon as is reasonably practicable deliver a sealed copy of the order—
  - (a) to the infrastructure company;
  - (b) to the FMI administrator;
  - (c) to the FCA;
  - (d) where the infrastructure company is a PRA-authorised person, to the PRA; and
  - (e) where the infrastructure company is the operator of a recognised payment system, or a designated service provider which provides services to such an operator, to the Payment Systems Regulator.

## PART 3

### Application of the Insolvency Rules

#### Application of the Insolvency Rules

**12.**—(1) The provisions of the Insolvency Rules listed in the table in paragraph (4) apply for the purposes of FMI administration and FMI administration applications.

- (2) The applied provisions of the Insolvency Rules have effect for that purpose—
  - (a) with any specific modifications set out in the table in paragraph (4);
  - (b) unless the context otherwise requires and subject to any specific modification, with the general modifications set out in paragraph (3); and
  - (c) with any other necessary modifications.
- (3) The general modifications are that—
  - (a) a reference to an administrator is a reference to the FMI administrator;
  - (b) a reference to administration is a reference to FMI administration;
  - (c) a reference to an administration application is a reference to an FMI administration application;
  - (d) a reference to an administration order is a reference to an FMI administration order;
  - (e) a reference to the court is a reference to the High Court;
  - (f) except in Part 3 of the Insolvency Rules, a reference to insolvency proceedings is a reference to proceedings commenced by an FMI administration application;
  - (g) a reference to proceedings under the 1986 Act (or under any Part or provision of that Act) includes a reference to proceedings commenced by an FMI administration application;
  - (h) a reference to an insolvency practitioner is a reference to the FMI administrator;
  - (i) a reference to the company is a reference to the infrastructure company;
  - (j) a reference to the Insolvency Rules, or to a numbered rule of the Insolvency Rules, is a reference to the Insolvency Rules, or to the numbered rule, as applied (with any modification) by this rule;
  - (k) a reference to the 1986 Act, a numbered section of that Act or a numbered paragraph of Schedule B1 is a reference to that Act, that section or that paragraph as applied (with any modification) by Part 6 of the 2013 Act; and

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(l) all references to the Official Receiver, the County Court and the provisional liquidator are to be ignored.

(4) This paragraph contains the table of applied provisions of the Insolvency Rules.

<i>Applied rule</i>	<i>Subject-matter</i>	<i>Specific modifications</i>
<b>Introductory rules</b>		
Introductory rule 6 (and Schedule 3)	Punishment of offences	Schedule 3 has effect only so far as it sets out the punishment for contravention of rules 1.56(3), 3.70(2) and 18.6(5).
<b>Part 1 (Interpretation, time and rules about documents)</b>		
<b>Chapter 2: Interpretation</b>		
1.2	Defined terms	(a) For the definition of “office-holder”, there is taken to be substituted “the FMI administrator”.  (b) Ignore the provision made for the interpretation of “certificate of service” and “serve” and “service” (in Schedule 4 to the Insolvency Rules (service of documents)) so far as it has effect in relation to an application to the court for an administration order in respect of a company.
1.3 (and Schedule 5)	Calculation of time periods	
<b>Chapter 3: Form and content of documents</b>		
1.4 to 1.9	Form and content of documents	
<b>Chapters 4 to 7: Standard contents of notices and documents</b>		
1.10 to 1.34	Standard contents of notices and documents	
<b>Chapter 8: Applications to the court</b>		
1.35	Standard contents and authentication of applications to the court	(a) This rule does not apply to an FMI administration application (for which the procedure is set out in Part 2 of these Rules), but does apply to—  (i) any other application made to the court under Part 6 of the 2013 Act; or  (ii) any application made under the 1986 Act, as applied by that Part, or under the Insolvency Rules, as applied by these Rules.  (b) In paragraph (2) treat a reference to the 1986 Act (as applied by Part 6 of the 2013 Act) as a reference to that Act (as so applied) and to Part 6 of the 2013 Act.
<b>Chapter 9: Delivery of documents and opting out (sections 246C, 248A of the 1986 Act)(19)</b>		

(19) Sections 246(C) and 248A were inserted in the 1986 Act by the Small Business, Enterprise and Employment Act 2015, section 124(1), (3) and (4), and were applied for the purposes of FMI administration by S.I. 2018/208.

<i>Applied rule</i>	<i>Subject-matter</i>	<i>Specific modifications</i>
1.36 to 1.53, except 1.49 (use of website by office-holder to deliver a particular document (section 246B of the 1986 Act)(20))	Delivery of documents and creditors' opt out from receiving documents	
<b>Chapter 10: Inspection of documents, copies and provision of information</b>		
1.54 to 1.58	Inspection of documents, copies and provision of information	
<b>Part 3 (Administration)</b>		
<b>Chapter 1: Interpretation for Part 3</b>		
3.1	Interpretation (meaning of "pre-administration costs" and "unpaid pre-administration costs")	
<b>Chapter 5: Notice of administrator's appointment</b>		
3.27	Publication of administrator's appointment	<p>(a) Where the infrastructure company is a designated service provider, a notice under paragraph (3) must be delivered also to the operator of the recognised payment system or securities settlement system (or, if there is more than one such system, to each one) in relation to which the infrastructure company provides services.</p> <p>(b) For the heading specified for the notice of appointment in paragraph (4) there is taken to be substituted "Notice of FMI administrator's appointment".</p>
<b>Chapter 6: Statement of affairs</b>		
3.28	Interpretation (meaning of "nominated person" and "relevant person")	
3.29	Statement of affairs: notice requiring and delivery to the administrator (paragraph 47(1) of Schedule B1)	

(20) Section 246B was inserted in the 1986 Act by S.I. 2010/18, but is not applied for the purposes of FMI administration.

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<i>Applied rule</i>	<i>Subject-matter</i>	<i>Specific modifications</i>
3.30	Statement of affairs: content (paragraph 47 of Schedule B1)	
3.31	Statement of affairs: statement of concurrence	
3.32	Statement of affairs: filing	Upon delivering a copy of the statement of affairs and of any statement of concurrence to the registrar of companies, the FMI administrator must deliver identical copies to the Bank.
3.33	Statement of affairs: release from requirement and extension of time	
3.34	Statement of affairs: expenses	
<b>Chapter 7: Administrator's proposals</b>		
3.35	Administrator's proposals: additional content	<p>(a) In paragraph (1)—</p> <p>(i) in sub-paragraph (j)(i) treat the reference to the purpose of administration as a reference to the objective in section 115 of the 2013 Act<sup>(21)</sup>;</p> <p>(ii) in sub-paragraph (j)(ii) ignore the words from “, including” to the end;</p> <p>(iii) ignore sub-paragraph (k); and</p> <p>(iv) in sub-paragraph (n) treat the reference to creditors as a reference to the Bank.</p> <p>(b) Ignore paragraphs (6), (7) and (8).</p> <p>(c) In paragraph (10)(b) treat the reference to paragraph 53 of Schedule B1 as a reference to paragraph 49 of Schedule B1 as applied by Part 6 of the 2013 Act.</p>
3.36	Administrator's proposals: statement of pre-administration costs	In paragraph (c) for the words from “an objective” to the end there is taken to be substituted “the objective in section 115 of the 2013 Act”.
3.37	Advertising administrator's proposals and notices of extension of time for delivery of proposals	A notice under paragraph (2) must be delivered also to the Bank.

(21) Section 115 was amended by the Digital Economy Act 2017 (c.30), Schedule 9(2), paragraph 43 and by S.I 2017/1064.

<i>Applied rule</i>	<i>Subject-matter</i>	<i>Specific modifications</i>
	(paragraph 49 of Schedule B1)	
<b>Chapter 8: Limited disclosure of statements of affairs and proposals</b>		
3.44 to 3.48	Limited disclosure of statements of affairs and proposals	Rule 3.45 of the Insolvency Rules does not apply in relation to the disclosure to the Bank, in accordance with rule 3.32 of the Insolvency Rules, of the statement of the company's affairs or a statement of concurrence.
<b>Chapter 9: Disposal of charged property</b>		
3.49	Disposal of charged property	<p>(a) Notice under paragraph (3) (of the venue of the hearing of an application under paragraph (1)) must be delivered also to the Bank.</p> <p>(b) The Bank is entitled to appear at the hearing of the application.</p> <p>(c) The court must deliver to the FMI administrator three sealed copies of the order made on the application and one of them must be delivered to the Bank.</p>
<b>Chapter 10: Expenses of the administration</b>		
3.50	Expenses	
3.51	Order of priority	
3.52	Pre-administration costs	<p>(a) In paragraph (1) treat the reference to the creditors' committee as a reference to the Bank.</p> <p>(b) Ignore paragraphs (2) to (4) and (6) to (9).</p> <p>(c) The FMI administrator must deliver notice of an application under paragraph (5) to the Bank at least 14 days before the hearing of the application, and the Bank is entitled to appear at the hearing.</p> <p>(d) The court may, if it appears to be a proper case, order the costs of the application, including the Bank's costs, to be paid as an expense of the FMI administration.</p>
<b>Chapter 11: Extension and ending of administration</b>		
3.53	Interpretation (meaning of "final progress report")	
3.57	Application for order ending administration (paragraph 79 of Schedule B1)	<p>(a) Ignore paragraphs (1)(c) and (2).</p> <p>(b) Where the Bank intends to make the application, the FMI administrator must prepare the progress report and the statement of next steps at the request of the Bank.</p>

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<i>Applied rule</i>	<i>Subject-matter</i>	<i>Specific modifications</i>
		<p>(c) For the purpose of that application, in paragraph (1) treat the first reference to the administrator as a reference to the Bank.</p> <p>(d) Where the FMI administrator makes the application, the application must be accompanied also by a copy of the consent given by the Bank under paragraph 79(2) of Schedule B1.</p> <p>(e) At least five business days before the application is filed with the court the applicant must deliver notice of intention to make the application together with the progress report—</p> <p>(i) where the Bank is the applicant, to the FMI administrator;</p> <p>(ii) where the FMI administrator is the applicant, to the Bank;</p> <p>(iii) to the creditors of the infrastructure company;</p> <p>(iv) to the FCA;</p> <p>(v) where the infrastructure company is a PRA- authorised person, to the PRA; and</p> <p>(vi) where the infrastructure company is the operator of a recognised payment system, or a designated service provider which provides services to such an operator, to the Payment Systems Regulator.</p> <p>(f) The application must be accompanied by a statement that notice has been delivered to the creditors and by copies of any response from creditors to that notice.</p> <p>(g) Where the court makes an order ending the FMI administration, the court must deliver a copy of the order to the Bank and the FMI administrator, and the applicant must notify all other persons to whom notice of intention to make the application was delivered that the order has been made.</p>
3.59	Notice of court order ending the administration	Where the order is made on an application by the Bank under paragraph 79 of Schedule B1, treat the first reference to the administrator as a reference to the Bank.
3.61	Moving from administration to	

<i>Applied rule</i>	<i>Subject-matter</i>	<i>Specific modifications</i>
	dissolution (paragraph 84 of Schedule B1)	
<b>Chapter 12: Replacing the administrator</b>		
3.62	Grounds for resignation	In paragraph (1)(b) after “insolvency practitioner” there is taken to be inserted “in relation to companies”.
3.63	Notice of intention to resign	<p>(a) For paragraph (1) there is taken to be substituted —</p> <p>“(1) The FMI administrator must deliver a copy of a notice of the intention to resign which is delivered to the Bank in accordance with paragraph 87 of Schedule B1(22)—</p> <p>(a) to any continuing FMI administrator (person appointed to act jointly or concurrently with the person who delivers the notice);</p> <p>(b) to the creditors of the infrastructure company;</p> <p>(c) to the FCA;</p> <p>(d) where the infrastructure company is a PRA- authorised person, to the PRA; and</p> <p>(e) where the infrastructure company is the operator of a recognised payment system, or a designated service provider which provides services to such an operator, to the Payment Systems Regulator.”.</p> <p>(b) Ignore paragraph (2)(c).</p> <p>(c) For paragraph (4) there is taken to be substituted —</p> <p>“(4) Each copy of the notice must be delivered—</p> <p>(a) in a case falling within rule 3.62(1), not later than five business days’ before the resignation date specified in the notice given to the court under paragraph 87(2)(a) of Schedule B1;</p> <p>(b) in a case falling within rule 3.62(2), not later than five business days’ before the hearing of the application for the court’s permission to resign.”.</p>

(22) The modification of paragraph 87 provides that the FMI administrator may not resign without giving the Bank 28 days’ notice of the intention to do so (see the 2013 Act, Schedule 6, entry for paragraph 87).

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<i>Applied rule</i>	<i>Subject-matter</i>	<i>Specific modifications</i>
3.64	Notice of resignation (paragraph 87) of Schedule B1)	For paragraph (1)(b) there is taken to be substituted —  “(b) the Bank and every person to whom a copy of the notice of intention to resign delivered to the Bank in accordance with paragraph 87 of Schedule B1 was delivered under rule 3.63.”.
3.65	Application to court to remove administrator from office	Where an application for an order under paragraph 88 of Schedule B1 is made by a person other than the Bank—  (i) the application must state that it is made with the consent of the Bank; and  (ii) each copy of the application delivered under paragraph (2) must be delivered together with a copy of that consent.
3.66	Notice of vacation of office when administrator ceases to be qualified to act	
3.67	Deceased administrator	A person who files a notice under paragraph (1) with the court must deliver a copy of the notice to the Bank.
3.68	Application to replace administrator	(a) Ignore references to paragraph 95 of Schedule B1.  (b) Ignore paragraph (2)(a).  (c) In paragraph (4) treat the reference to rules 3.12, 3.13 and 3.15(1) and (2) of the Insolvency Rules as a reference to rules 9 and 11 of these Rules.
3.69	Appointment of replacement or additional administrator	In paragraph (a) ignore sub-paragraphs (i) to (v).
3.70	Administrator’s duties on vacating office	
<b>Part 12 (Court procedure and practice)</b>		
<b>Chapter 1: General</b>		
12.1	Court rules and practice to apply	
12.2	Performance of functions by the Court	
<b>Chapter 3: Making applications to court: general</b>		



<i>Applied rule</i>	<i>Subject-matter</i>	<i>Specific modifications</i>
12.6	Preliminary	Chapter 3 does not apply to an FMI administration application (for which the procedure is set out in Part 2 of these Rules), but does apply to—  (i) any other application made to the court under Part 6 of the 2013 Act; or  (ii) any application made under the 1986 Act, as applied by that Part, or under the Insolvency Rules, as applied by these Rules
12.7	Filing of application	
12.8	Fixing the venue	
12.9	Service or delivery of application	
12.10	Hearing in urgent case	
12.11	Directions	
12.12	Hearing and determination without notice	
12.13	Adjournment of the hearing of an application	
<b>Chapter 4: Making applications to court: specific applications</b>		
12.17 to 12.22	Sub-division B: Applications for private examination – section 236 of the 1986 Act (inquiry into company’s dealings)	Ignore references to sections 251N and 366 of the 1986 Act.
12.23 to 12.26	Sub-division C: persons unable to manage own property or affairs	
<b>Chapter 5: Obtaining information and evidence</b>		
12.27 to 12.29	Obtaining information and evidence	
<b>Chapter 7: The court file</b>		
12.39	The court file	(a) Paragraph (1) also applies where documents are filed with the court under rule 6 or 7 of these Rules (filing of FMI administration application and other documents).  (b) The right conferred by paragraph (3) is also exercisable—  (i) by the Bank;

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<i>Applied rule</i>	<i>Subject-matter</i>	<i>Specific modifications</i>
		(ii) by the FCA;  (iii) where the infrastructure company is a PRA- authorised person, by the PRA; and  (iv) where the infrastructure company is the operator of a recognised payment system, or a designated service provider which provides services to such an operator, by the Payment Systems Regulator.
12.40	Office copies of documents	
<b>Chapter 8: Costs</b>		
12.41 to 12.50	Costs of and in connection with insolvency proceedings	
<b>Chapter 9: Enforcement procedures</b>		
12.51	Enforcement of court orders	
12.52	Orders enforcing compliance	
12.53	Warrants (general provisions)	
12.55	Warrants under section 236 of the 1986 Act (inquiry into company's dealings)	
<b>Chapter 10: Appeals</b>		
12.58	Application of Chapter 10	
12.59	Appeals and reviews of court orders in corporate insolvency	
12.61	Procedure on appeal	
<b>Chapter 11: Court orders, formal defects and shorthand writers</b>		
12.63 to 12.65	Court orders, formal defects and shorthand writers	
<b>Part 14 (Claims by and distributions to creditors in administration)</b>		
<b>Chapter 1: Application and interpretation</b>		
14.1	Application of Part 14 and interpretation	
<b>Chapter 2: Creditors' claims in administration</b>		
14.2	Provable debts	
14.3	Proving a debt	

<i>Applied rule</i>	<i>Subject-matter</i>	<i>Specific modifications</i>
14.4	Requirements for proof	
14.5	Costs of proving	
14.6	Allowing inspection of proofs	
14.7	Admission and rejection of proofs for dividend	
14.8	Appeal against decision on proof	
14.9	Office-holder not liable for costs under rule 14.8	
14.10	Withdrawal or variation of proof	
14.11	Exclusion of proof by the court	
14.12	Debts of insolvent company to rank equally	
14.13	Division of unsold assets	
14.14	Estimate of value of debt	
14.15	Secured creditor: value of security	
14.16	Secured creditor: surrender for non-disclosure	
14.17	Secured creditor: redemption by office-holder	
14.18	Secured creditor: test of security's value	
14.19	Realisation or surrender of security by creditor	
14.20	Discounts	
14.21	Debts in foreign currency	
14.22	Payments of a periodical nature	
14.23	Interest	

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<i>Applied rule</i>	<i>Subject-matter</i>	<i>Specific modifications</i>
14.24	Mutual dealings and set-off	
<b>Chapter 3: distribution to creditors in administration</b>		
14.26	Application of Chapter 3 to a particular class of creditors and to distributions	
14.28	Gazette notice of intended first dividend or distribution	
14.29	Individual notices to creditors etc. of intended dividend or distribution	Ignore paragraph (3).
14.30	Contents of notice of intention to declare a dividend or make a distribution	
14.31	Further contents of notice to creditors owed small debts etc.	
14.32	Admission or rejection of proofs following last date for proving	
14.33	Postponement or cancellation of dividend	
14.34	Declaration of dividend	
14.35	Notice of declaration of a dividend	Ignore paragraph (4).
14.37	Contents of last notice about dividend	
14.38	Sole or final dividend	<p>For the purpose of paragraph (1)(b)(iii), where the amount outstanding consists of, or includes, the FMI administrator's own remuneration and expenses, the payment of such remuneration and expenses may be made only—</p> <p>(i) in accordance with the directions (if any) of the Bank; and</p> <p>(ii) if the Bank is satisfied that the payment will not prejudice the objective in section 115 of the 2013 Act.</p>
14.39	Provisions as to dividends	

<i>Applied rule</i>	<i>Subject-matter</i>	<i>Specific modifications</i>
14.40	Supplementary provisions as to dividends and distributions	
14.41	Secured creditors	
14.42	Disqualification from dividend	
14.43	Assignment of right to dividend	
14.44	Debt payable at future time	
14.45	Non-payment of dividend	
<b>Part 15 (Decision making)</b>		
<b>Chapter 1: Application of Part</b>		
15.1	Application of Part 15	
<b>Chapter 2: Decision procedures</b>		
15.2	Interpretation	
15.3	The prescribed decision procedures	
15.4	Electronic voting	
15.5	Virtual meetings	
15.6	Physical meetings	
15.7	Deemed consent (section 246ZF of the 1986 Act)(23)	
<b>Chapter 3: Notices, voting and venues for decisions</b>		
15.8	Notices to creditors of decision procedure	
15.9	Voting in a decision procedure	
15.10	Venue for decision procedure	
15.11	Notices of decision procedures or of seeking deemed consent: when and to whom delivered	

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(23) Section 246(ZF) was inserted, together with section 246(ZE), by the Small Business, Enterprise and Employment Act 2015, section 124(1) and (2). Both sections were applied for the purposes of FMI administration by [S.I. 2018/208](#).

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<i>Applied rule</i>	<i>Subject-matter</i>	<i>Specific modifications</i>
15.12	Notice of decision procedure by advertisement only	
15.13	Gazetting and advertisement of meeting	
15.14	Notice to company officers in respect of meetings	
15.15	Non-receipt of notice of decision	
15.16	Decisions on remuneration and conduct	
<b>Chapter 6: Constitution of meetings</b>		
15.20	Quorum at meeting	
15.21	Chair at meetings	
15.22	The chair - attendance, interventions and questions	
<b>Chapter 7: Adjournment and suspension of meetings</b>		
15.23	Adjournment by chair	
15.25	Adjournment in absence of chair	
15.26	Proofs in adjournment	
15.27	Suspension	
<b>Chapter 8: Creditors' voting rights and majorities</b>		
15.28	Creditors' voting rights	
15.30	Claim made in proceedings in other member States	
15.31	Calculation of voting rights	Ignore sub paragraphs (1)(b) to (e) and paragraph (6).
15.32	Calculation of voting rights: special cases	
15.33	Procedure for admitting creditors' claims for voting	
15.34	Requisite majorities	
15.35	Appeals against decisions of the	

<i>Applied rule</i>	<i>Subject-matter</i>	<i>Specific modifications</i>
	convener or chair under Chapter 8	
<b>Chapter 9: Exclusions from meetings</b>		
15.36	Action where person excluded	
15.37	Indication to excluded person	
15.38	Complaint	
<b>Chapter 10: Contributories' voting rights and majorities</b>		
15.39	Contributories' voting rights and requisite majorities	
<b>Chapter 11: Records</b>		
15.40	Record of a decision	
<b>Chapter 12: Company meetings</b>		
15.41	Company meetings	
<b>Part 16 (Proxies and corporate representation)</b>		
16.1	Application of Part 16 and interpretation (meaning of "the chair")	
16.2	Specific and continuing proxies	
16.3	Blank proxy	
16.4	Use of proxies	
16.5	Use of proxies by the chair	
16.6	Right of inspection and retention of proxies	
16.7	Proxy-holder with financial interest	
16.9	Instrument conferring authorisation to represent corporation	
<b>Part 18 (reporting and remuneration of office-holders)</b>		
<b>Chapter 1: Introductory</b>		
18.1	Scope of Part 18	
<b>Chapter 2: Progress reports</b>		
18.2	Reporting by the office-holder	
18.3	Contents of progress reports in administration	Ignore paragraphs (2), (5) and (6).

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<i>Applied rule</i>	<i>Subject-matter</i>	<i>Specific modifications</i>
18.4	Information about remuneration	
18.5	Information about pre-administration costs	
18.6	Progress reports in administration: timing	<p>A copy of a report delivered under paragraph (4) must be delivered also—</p> <p>(i) to the Bank;</p> <p>(ii) to the FCA;</p> <p>(iii) where the infrastructure company is a PRA- authorised person, to the PRA; and</p> <p>(iv) where the infrastructure company is the operator of a recognised payment system, or a designated service provider which provides services to such an operator, to the Payment Systems Regulator.</p>
18.9	Creditors' and members' requests for further information in administration	<p>The right to request further information about remuneration or expenses is also exercisable—</p> <p>(i) by the Bank;</p> <p>(ii) by the FCA;</p> <p>(iii) where the infrastructure company is a PRA- authorised person, by the PRA; and</p> <p>(iv) where the infrastructure company is the operator of a recognised payment system, or a designated service provider which provides services to such an operator, by the Payment Systems Regulator.</p>
18.10	Reporting distribution of property to creditors under rule 14.3	
<b>Chapter 4: Remuneration and expenses in administration</b>		
18.16	Remuneration: principles	<p>(a) The Bank must fix the FMI administrator's remuneration on one or a combination of the bases set out in paragraph (2)(a)(i), (b) or (c).</p> <p>(b) For that purpose in paragraphs (4) and (6) treat the reference to the creditors as a reference to the Bank.</p> <p>(c) Ignore paragraph (5).</p>



<i>Applied rule</i>	<i>Subject-matter</i>	<i>Specific modifications</i>
		(d) The FMI administrator must share with creditors the basis or bases on which remuneration has been fixed under paragraph (a) above.
18.17	Remuneration of joint office-holders	Any dispute about the apportionment of remuneration must be referred initially to the Bank, and if a reference to the Bank does not resolve the dispute, may be referred to the court for settlement by order.
18.18	Remuneration: procedure for initial determination in an administration	(a) It is for the Bank to determine the basis of remuneration.  (b) Ignore paragraphs (3) and (4).
18.24	Remuneration: administrator seeking increase etc.	Ignore paragraph (a).
18.28	Remuneration: recourse by administrator to the court	(a) Ignore paragraphs (2) to (5).  (b) For paragraphs (6), (7) and (8) there is taken to be substituted—  “(6) The FMI administrator must deliver a notice of the application to the Bank at least 14 days before the hearing.  (7) The Bank may nominate a person to represent the Bank and be heard on the application.  (8) The court may, if it appears to be a proper case, order the costs of the application, including the costs of the Bank (if it nominates a person to represent it), to be paid as an expense of the estate.”.
18.29	Remuneration: review at request of administrator	For paragraph (2) there is taken to be substituted—  “(2) A request under paragraph (1) must be made to the Bank, which must determine whether or not to approve the change requested.”.
18.30	Remuneration: exceeding the fee estimate	For paragraph (2) there is taken to be substituted—  “(2) A request for approval to draw remuneration in excess of the total amount set out in the fees estimate <sup>(24)</sup> must be made to the Bank.  (2A) Where there are joint FMI administrators, it is for them to agree between themselves how the approved amount of excess remuneration payable should be apportioned.

(24) For the meaning of “fees estimate” in rule 18.29 of the Insolvency Rules see rule 1.2 of those Rules.

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<i>Applied rule</i>	<i>Subject-matter</i>	<i>Specific modifications</i>
		(2B) Any dispute arising between them must be referred initially to the Bank, and if a reference to the Bank does not resolve the dispute, may be referred to the court for settlement by order.  (2C) Where the Bank refuses a request under paragraph (2) or the FMI administrator considers the approved amount of excess remuneration to be insufficient, the FMI administrator may apply to the court for an order approving the withdrawal of remuneration in excess of the total amount set out in the fees estimate.”.
18.31	Remuneration: new administrator	
18.32	Remuneration: apportionment of set fees	(a) In paragraph (4) the relevant person is the Bank.  (b) An application under paragraph (9) is to be made to the court.
18.34	Remuneration and expenses: application to court by a creditor or member on grounds that remuneration or expenses are excessive	
18.36	Applications under rule 18.34 where the court has given permission for the application	
18.37	Applications under rule 18.34 where the court’s permission is not required for the application	

## PART 4

### Review of the Rules

#### Review

- 13.—**(1) The Lord Chancellor must from time to time—
- (a) carry out a review of the regulatory provision contained in these Rules; and
  - (b) publish a report setting out the conclusions of the review.
- (2) The first report must be published before the end of the period of five years beginning with the date on which these Rules come into force for any purpose.
- (3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a review carried out under these Rules must in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision in these Rules;
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this rule, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

5th July 2018

*David Gauke*  
Lord Chancellor

We concur

10th July 2018

*Andrew Stephenson*  
*Craig Whittaker*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

I concur

5th July 2018

*Geoffrey Vos*  
The Chancellor of the High Court

## EXPLANATORY NOTE

*(This note is not part of these Rules)*

These Rules give effect to Part 6 of the Financial Services (Banking Reform) Act 2013 (c. 33) (“the 2013 Act”). Part 6 provides for a special process for the administration of operators of certain financial market infrastructure systems (known as “FMI administration”), and restricts the powers of persons other than the Bank of England in relation to the insolvency of infrastructure companies. These Rules set out the procedure for FMI administration.

These Rules are to come into force on 4th August 2018.

An infrastructure company is—

- the operator of a recognised payment system (other than a recognised central counterparty as defined by section 285 of the Financial Services and Markets Act 2000 (c. 8));
- a recognised CSD operating a securities settlement system (this definition of an infrastructure company was inserted by the Central Securities Depositories Regulations 2017 (S.I. 2017/1064) and is subject to the saving provision set out in regulation 7(3)(b) of S.I. 2017/1064); or
- a company which provides services to an operator of either description and is designated by the Treasury, the Treasury being satisfied that an interruption in the provision of those services would have a serious adverse effect on the effective operation of the recognised payment system or securities settlement system in question.

The main features of FMI administration are that—

- (a) the High Court appoints the FMI administrator by order on the application of the Bank of England;
- (b) the High Court may make an FMI administration order if satisfied—
  - (i) that the infrastructure company is unable, or likely to be unable, to pay its debts; or
  - (ii) that it would be just and equitable to wind up the infrastructure company on a petition presented by the Secretary of State for winding up on grounds of public interest;
- (c) the FMI administrator must manage the affairs, business and property of the infrastructure company, and exercise and perform the FMI administrator’s functions, so as to achieve the objective in section 115 of the 2013 Act;
- (d) in the case of the operator of a recognised payment system or a securities settlement system, that objective includes ensuring that the system is and continues to be maintained and operated as an efficient and effective system;
- (e) in the case of a designated company (which provides services to such an operator), that objective includes ensuring that the services continue to be provided;
- (f) the means of achieving the objective are rescue of the infrastructure company as a going concern or transfer as a going concern of so much of the infrastructure company as it is appropriate to transfer for the purpose of achieving the objective; and
- (g) in other respects the process is the same as for normal company administration, and for that purpose specified provisions of Schedule B1 to the Insolvency Act 1986 (c. 45) are applied with modifications.

Part 2 of these Rules sets out the procedure for making an application for an FMI administration order.

Part 3 of these Rules sets out further procedure for FMI administration by applying specified provisions of the Insolvency (England and Wales) Rules 2016 ([S.I. 2016/1024](#)) with general and specific modifications.

Part 4 of these Rules requires the Lord Chancellor to review these Rules within 5 years after they come into force.

A full regulatory impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.