



Financial Services Act 2010

2010 CHAPTER 28

Financial Services Compensation Scheme

16 Contribution to costs of special resolution regime

(1) In the Financial Services and Markets Act 2000, for section 214B substitute—

“214B Contribution to costs of special resolution regime

- (1) This section applies if—
 - (a) a stabilisation power under Part 1 of the Banking Act 2009 has been exercised in respect of a bank, building society or credit union within the meaning of that Part (“the institution”); and
 - (b) the Treasury think that the institution was or was likely to have been, or but for the exercise of the power would have become, unable to satisfy claims against it.
- (2) The Treasury may require the scheme manager to make payments (to the Treasury or any other person) in respect of expenses of a prescribed description incurred (by the Treasury or that person) in connection with the exercise of the power.
- (3) Subsection (2) is subject to section 214C (limit on amount of special resolution regime payments).
- (4) In subsection (2) “expenses” includes interest at a specified rate on the difference, at any time, between—
 - (a) the total amount of expenses (including interest) incurred at or before that time; and
 - (b) the total amount recovered, or received from the scheme manager, in respect of the institution, at or before that time, by—
 - (i) the Treasury; and

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- (ii) any other person who has incurred expenses in connection with the exercise of the power that are of a description prescribed under subsection (2).
- (5) Any payment made by the scheme manager under subsection (2) is to be treated for the purposes of this Part as an expense under the compensation scheme.
- (6) In this section and section 214C “specified rate” means a rate specified by the Treasury.
- (7) Different rates may be specified under different provisions or for different periods.
- (8) A rate may be specified by reference to a rate set (from time to time) by any person.

214C Limit on amount of special resolution regime payments

- (1) The total amount of special resolution regime payments required to be made in respect of a person (“the institution”) may not exceed—
 - (a) notional net expenditure (see subsection (3)), minus
 - (b) actual net expenditure (see subsection (4)).
- (2) A “special resolution regime payment” is—
 - (a) a payment under section 214B(2); or
 - (b) a payment required to be made by the scheme manager by virtue of section 61 of the Banking Act 2009 (special resolution regime: compensation).
- (3) Notional net expenditure is—
 - (a) the total amount of expenses that would have been incurred under the compensation scheme in respect of the institution if the stabilisation power had not been exercised and the institution had been unable to satisfy claims against it, minus
 - (b) the total amount that would have been likely, at the time when the power was exercised, to be recovered by the scheme manager in respect of the institution in those circumstances.
- (4) Actual net expenditure is—
 - (a) the total amount of expenses (other than special resolution regime payments) actually incurred by the scheme manager in respect of the institution, minus
 - (b) the total amount actually recovered by the scheme manager in respect of the institution.
- (5) In subsection (3)(a) “expenses” includes interest at a specified rate on the difference, at any time, between—
 - (a) the total amount of expenses (including interest) that would have been incurred as mentioned in subsection (3)(a) at or before that time; and
 - (b) the total amount that would have been likely to have been recovered as mentioned in subsection (3)(b) at or before that time.

- (6) In subsection (4)(a) “expenses” includes interest at a specified rate on the difference, at any time, between—
- (a) the total amount of expenses (including special resolution regime payments and interest) actually incurred by the scheme manager in respect of the institution at or before that time; and
 - (b) the total amount actually recovered by the scheme manager in respect of the institution at or before that time.
- (7) In paragraph (b) of subsections (3) to (6) references to amounts recovered (or likely to have been recovered) by the scheme manager do not include any levy received (or likely to have been received) by it.

214D Contributions under section 214B: supplementary

- (1) This section supplements sections 214B and 214C.
- (2) The scheme manager must determine—
- (a) the amounts of expenses (other than interest) that would have been incurred as mentioned in section 214C(3)(a); and
 - (b) the time or times at which those amounts would have been likely to have been incurred.
- (3) The Treasury, or a person designated by the Treasury, must in accordance with regulations appoint a person (“the valuer”) to determine—
- (a) the amounts that would have been likely, at the time when the stabilisation power was exercised, to be recovered as mentioned in section 214C(3)(b); and
 - (b) the time or times at which those amounts would have been likely to be recovered.
- The person appointed under this subsection may be the person appointed as valuer under section 54 of the Banking Act 2009 in respect of the exercise of the stabilisation power.
- (4) Regulations may enable the Treasury to specify principles to be applied by—
- (a) the scheme manager when exercising functions under subsection (2); or
 - (b) the valuer when exercising functions under subsection (3).
- (5) The regulations may in particular enable the Treasury to require the scheme manager or valuer—
- (a) to use, or not to use, specified methods;
 - (b) to take specified matters into account in a specified manner; or
 - (c) not to take specified matters into account.
- (6) Regulations—
- (a) must provide for independent verification of expenses within section 214B(2);
 - (b) may provide for the independent verification of other matters; and
 - (c) may contain provision about the appointment and payment of an auditor.
- (7) Regulations—

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- (a) must contain provision enabling the valuer to reconsider a decision;
 - (b) must provide a right of appeal to a court or tribunal against any decision of the valuer;
 - (c) may provide for payment of the valuer; and
 - (d) may apply (with or without modifications) or make provision corresponding to—
 - (i) any provision of sections 54 to 56 of the Banking Act 2009; or
 - (ii) any provision made, or that could be made, by virtue of any of those sections.
- (8) Regulations may make provision for payments under section 214B(2) to be made—
- (a) before any verification required by the regulations is undertaken, and
 - (b) before the limit imposed by section 214C is calculated,
- subject to any necessary later adjustment.
- (9) If they do so they must provide that the amount of any payment required by virtue of subsection (8) must not be such as to give rise to an expectation that an amount will be required to be repaid to the scheme manager (once any necessary verification has been undertaken and the limit imposed by section 214C has been calculated).
- (10) Regulations may—
- (a) make provision supplementing section 214B or 214C or this section;
 - (b) make further provision about the method by which amounts to be paid under section 214B(2) are to be determined;
 - (c) make provision about timing;
 - (d) make provision about procedures to be followed;
 - (e) provide for discretionary functions to be exercised by a specified body or by persons of a specified class; and
 - (f) make provision about the resolution of disputes (which may include provision conferring jurisdiction on a court or tribunal).
- (11) “Regulations” means regulations made by the Treasury.
- (12) Any payment made by the Treasury by virtue of this section is to be met out of money provided by Parliament.
- (13) The compensation scheme may make provision about payments under section 214B(2) and levies in connection with such payments (except provision inconsistent with any provision made by or under section 214B or 214C or this section).”
- (2) Sections 214B to 214D of the Financial Services and Markets Act 2000 (as substituted by subsection (1)) apply to any case where a stabilisation power was exercised before the commencement of this section as if the references in sections 214B(4) and 214C(5) and (6) of that Act to any time were to any time on or after 19 November 2009.

17 Power to require FSCS manager to act in relation to other schemes

In the Financial Services and Markets Act 2000, after Part 15 insert—

“PART 15A

POWER TO REQUIRE FSCS MANAGER TO ACT IN RELATION TO OTHER SCHEMES

Introduction

224B Meaning of “relevant scheme” etc

- (1) The following provisions apply for the purposes of this Part.
- (2) “Relevant scheme” means a scheme or arrangement (other than the FSCS) for the payment of compensation (in certain cases) to customers of persons who provide financial services or carry on a business connected with the provision of such services.
- (3) References to the manager of a relevant scheme are to the person who administers it or (if there is no such person) the person responsible for making payments under it.
- (4) “The FSCS” means the Financial Services Compensation Scheme (see section 213(2)).
- (5) “The FSCS manager” means the scheme manager as defined by section 212(1).
- (6) “Expense” includes anything that, if incurred in relation to the FSCS, would amount to an expense for the purposes of the FSCS.
- (7) “Notice” means a notice in writing.
- (8) In subsection (2)—
 - (a) “customers” includes customers outside the United Kingdom;
 - (b) “persons” includes persons outside the United Kingdom;
 - (c) references to the provision of financial services include the provision outside the United Kingdom of such services.
- (9) This Part applies to cases where the manager of the relevant scheme is the Treasury or any other Minister of the Crown as it applies to cases where that manager is any other person.

Power to require FSCS manager to act

224C Power to require FSCS manager to act on behalf of manager of relevant scheme

- (1) This section applies if compensation is payable under a relevant scheme.
- (2) The Treasury may by notice require the FSCS manager to exercise (on behalf of the manager of the relevant scheme) specified functions in respect of specified claims for compensation under the relevant scheme.
- (3) A notice may be given only with the consent of the manager of the relevant scheme.

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- (4) In subsection (2) “specified” means specified, or of a description specified, in the notice.
- (5) Claims or descriptions of claims may be specified by reference to the persons or description of persons whose claims they are.

224D Cases where FSCS manager may decline to act

- (1) This section applies where a notice under section 224C(2) (a “section 224C notice”) has been given in respect of a relevant scheme.
- (2) The FSCS manager is not under a duty to comply with the section 224C notice if, as soon as reasonably practicable after receiving it, the FSCS manager gives a notice to the Treasury stating that a ground set out in section 224E applies.
- (3) Where a notice under subsection (2) is given, the FSCS manager may recover from the manager of the relevant scheme an amount equal to the total expenses incurred by the FSCS manager in connection with the relevant scheme in the period—
 - (a) beginning with the giving of the section 224C notice; and
 - (b) ending with the giving of the notice under subsection (2).
- (4) The duty to comply with the section 224C notice ceases if, after starting to comply with it, the FSCS manager gives a notice to the Treasury and the manager of the relevant scheme stating that a ground set out in section 224E applies.
- (5) Where a notice under subsection (4) is given, the FSCS manager must give the Treasury such information connected with the FSCS manager’s exercise of functions in relation to the relevant scheme as the Treasury may reasonably require.
- (6) Any notice under this section—
 - (a) may be given only if, before giving it, the FSCS manager has taken reasonable steps to deal with anything that is causing the ground or grounds in question to apply; and
 - (b) must contain details of those steps.

224E Grounds for declining to act

- (1) This section sets out the grounds referred to in section 224D(2) and (4).
- (2) The first ground is that the FSCS manager is not satisfied that it will be able to obtain any information required in order to comply with the section 224C notice.
- (3) The second ground is that the FSCS manager is not satisfied that it will be able to obtain any advice or other assistance from the manager of the relevant scheme that is required in order to comply with the section 224C notice.
- (4) The third ground is—
 - (a) that the FSCS manager has not received an amount at least equal to the total expenses it expects to incur in connection with its relevant scheme functions; and

- (b) either—
 - (i) that there are no arrangements for the provision of funds to the FSCS manager to enable it to exercise those functions and meet those expenses; or
 - (ii) that the FSCS manager considers that any such arrangements are unsatisfactory.
- (5) The fourth ground is that the FSCS manager considers that complying with the section 224C notice would detrimentally affect the exercise of its functions under the FSCS.
- (6) The fifth ground is—
 - (a) that there is no undertaking from the manager of the relevant scheme not to bring proceedings against the FSCS manager; or
 - (b) that the FSCS manager considers that the terms of any such undertaking are unsatisfactory.
- (7) The sixth ground is—
 - (a) that there are no arrangements for the reimbursement of any expenses incurred by the FSCS manager in connection with any proceedings brought against it in respect of its relevant scheme functions (including expenses incurred in meeting any award of damages made against it); or
 - (b) that the FSCS manager considers that any such arrangements are unsatisfactory.
- (8) In subsection (6) references to an undertaking of the kind mentioned there are to an undertaking not to bring proceedings in respect of the FSCS manager’s relevant scheme functions except proceedings in respect of an act or omission of the FSCS manager that is alleged to have been in bad faith.
- (9) In this section “proceedings” includes proceedings outside the United Kingdom.

Rules

224F Rules about relevant schemes

- (1) The Authority may by rules make provision in connection with the exercise by the FSCS manager of functions in respect of relevant schemes.
- (2) The provision that may be made by the rules includes any provision corresponding to provision that could be contained in the FSCS; but this is subject to subsections (3) and (4).
- (3) The rules may confer on the FSCS manager a power to impose levies on authorised persons (or any class of authorised persons) for the purpose of meeting its management expenses incurred in connection with its functions in respect of relevant schemes.
- (4) But if the rules confer such a power they must provide that the power may be exercised in relation to expenses incurred in connection with a relevant scheme only if the FSCS manager has tried its best to obtain reimbursement of the expenses from the manager of the relevant scheme.

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- (5) The rules may apply any provision of the FSCS, with or without modifications.
- (6) An amount payable to the FSCS manager as a result of any provision of the rules made by virtue of subsection (3) may be recovered as a debt due to the FSCS manager.
- (7) References to the FSCS manager’s “management expenses” are to its expenses incurred otherwise than in paying compensation.”