
Changes to legislation: There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 12. (See end of Document for details)

SCHEDULES

SCHEDULE 12

Section 58

WRITE-DOWN ORDERS

PART 1

WRITE-DOWN ORDERS: MAIN PROVISIONS

- 1 (1) Part 24 of FSMA 2000 (insolvency) is amended as follows.
- (2) In section 360 (application of Part 2 of 1986 Act or Part 3 of 1989 Order (administration) to insurers), at the end insert—
 - “(4) Subsection (5) applies where, by virtue of an order under this section, a person may be appointed as administrator of an insurer.
 - (5) While a write-down order under section 377A has effect in relation to an insurer, a person may not be appointed as administrator of the insurer without the consent of the PRA.”
- (3) Omit section 377 (reducing the value of contracts instead of winding up).
- (4) Before section 378 (treatment of assets on winding up) insert—

“377A Write-down orders

- (1) A “write-down order” is an order of the court directing that the value of one or more of an insurer’s liabilities is reduced on such terms as may be specified in the order.
- (2) The court may make a write-down order in relation to an insurer if it is satisfied that—
 - (a) the insurer is, or is likely to become, unable to pay its debts (within the meaning given to that expression by section 123 of the 1986 Act or Article 103 of the 1989 Order), and
 - (b) making the order is reasonably likely to lead to a better outcome for the insurer’s policyholders and other creditors (taken as a whole) than not making the order.
- (3) A write-down order—
 - (a) takes effect on the later of—
 - (i) the date specified in the order, and
 - (ii) the date on which the appointment of a person to act as the manager of the order first takes effect (see section 377G(7));
 - (b) ceases to have effect in accordance with section 377H;
 - (c) may be revoked or varied in accordance with section 377I.

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- (4) A write-down order may not be made in relation to an insurer—
- (a) which is in administration (within the meaning of Schedule B1 to the 1986 Act or Schedule B1 to the 1989 Order), or
 - (b) which is in liquidation by virtue of—
 - (i) a resolution for voluntary winding up, or
 - (ii) a winding-up order under section 125 of the 1986 Act or Article 105 of the 1989 Order.
- (5) A write-down order may not reduce the value of an excluded liability (within the meaning given by section 377B).
- (6) A liability, to the extent of its reduction by a write-down order under this section, is to be treated as extinguished unless and until revived by section 377H or 377I.
- (7) In this section, “creditor” includes a contingent or prospective creditor.

377B Excluded liabilities

- (1) Each of the following is an “excluded liability”—
- (a) a liability with an original maturity of less than 7 days;
 - (b) an amount payable in respect of goods delivered, or a service provided, on or after the date on which the write-down order is made;
 - (c) an amount in respect of remuneration or expenses of a person appointed under section 377G to act as the manager of the write-down order (including amounts incurred before, as well as after, the person’s appointment in connection with the order or the application for the order);
 - (d) an amount secured on property of any kind, other than an amount secured by a charge which, as created, was a floating charge;
 - (e) an amount payable in respect of wages or salary arising under a contract of employment;
 - (f) a contribution or other sum payable in respect of an occupational pension scheme;
 - (g) an amount payable in respect of redundancy payments;
 - (h) an amount payable under a contract or other instrument involving financial services.
- (2) In this section—
- “contract or other instrument involving financial services” has the meaning given by Schedule ZA2 to the 1986 Act, but does not include an agreement which is, or forms part of, an arrangement involving the issue of a capital market investment (see paragraph 6 of that Schedule);
- “floating charge” has the meaning given by section 251 of the 1986 Act or paragraph (1) of Article 5 of the 1989 Order;
- “redundancy payment” means—
- (a) a redundancy payment under Part 11 of the Employment Rights Act 1996 or Part 12 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)), or

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(b) a payment made to a person who agrees to the termination of their employment in circumstances where they would have been entitled to a redundancy payment under that Part if dismissed;

“wages or salary” includes—

- (a) a sum payable in respect of a period of holiday;
- (b) a sum payable in respect of a period of absence through illness or other good cause;
- (c) a sum payable in lieu of holiday.

377C Application for a write-down order

- (1) An application to the court for a write-down order in relation to an insurer may be made only by—
 - (a) the Treasury;
 - (b) the PRA;
 - (c) the insurer;
 - (d) a shareholder of the insurer;
 - (e) a policyholder or other creditor (including a contingent or prospective creditor) of the insurer.
- (2) An application for a write-down order may not be withdrawn without the permission of the court.
- (3) A person other than the PRA or the Treasury—
 - (a) must obtain the consent of the PRA before making an application for a write-down order;
 - (b) must notify the PRA before seeking the court’s permission to withdraw an application for a write-down order.
- (4) Consent under subsection (3)—
 - (a) must be in writing, and
 - (b) must be filed with the court with the relevant application.
- (5) The PRA must consult the FCA before—
 - (a) making an application for a write-down order, or
 - (b) giving or refusing consent for a person to make an application for a write-down order.

377D Powers of the FCA and PRA to participate in proceedings

- (1) This section applies if an application is made to the court for a write-down order.
- (2) The FCA and the PRA are entitled to be heard—
 - (a) at any hearing relating to the application, and
 - (b) if an order is made, at any hearing relating to the order.
- (3) Any notice or other document required to be sent to a creditor of the insurer—
 - (a) in relation to the application, or

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- (b) if an order is made, in relation to the order, must also be sent to the FCA and the PRA.

377E Powers of the court

On an application for a write-down order, the court may—

- (a) if, on hearing the application, it is satisfied of the matters in section 377A(2), make a write-down order in the terms sought, or in such other terms as the court thinks appropriate;
- (b) dismiss the application;
- (c) adjourn the hearing conditionally or unconditionally;
- (d) make any other order which the court thinks appropriate.

377F Duty to notify creditors

- (1) This section applies where a write-down order is made in relation to an insurer.
- (2) As soon as reasonably practicable after the order is made, the insurer must notify the FCA, the PRA and each affected person that the order has been made.
- (3) An “affected person” is a person of a description specified in rules made by the PRA for the purposes of this section.
- (4) Notification under this section—
 - (a) must include such other information as may be specified in rules made by the PRA for the purposes of this section, and
 - (b) must be given in such form and manner as may be specified in rules made by the PRA for the purposes of this section.
- (5) Failure to notify an affected person in accordance with this section, or rules made by the PRA for the purposes of this section, does not affect the validity of the write-down order in relation to that person or any other person.

377G The manager

- (1) The court may by order appoint one or more eligible persons to act as the manager of a write-down order (“the manager”).
- (2) An order under subsection (1) may—
 - (a) be made at the same time as the write-down order or at a later date (but see section 377A(3)(a));
 - (b) appoint a person in addition to or instead of a person who is for the time being appointed;
 - (c) give such directions about the carrying out of the person’s functions as the manager as the court thinks appropriate.
- (3) The court may by order terminate the appointment of a person who is for the time being appointed to act as the manager of a write-down order.

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- (4) Sections 377C and 377D apply to an application to the court for an order under subsection (1) or (3) as they apply to an application for a write-down order but—
- (a) if the application is for the appointment of a person in addition to, or instead of, a person for the time being appointed, section 377C(1) applies as if the persons mentioned included a person for the time being appointed;
 - (b) section 377C(2) does not apply.
- (5) The court may appoint a person to act as the manager of a write-down order only if—
- (a) the PRA has provided the court with a statement that the person is suitably qualified, and
 - (b) the person has provided the court with a statement that the person consents so to act.
- (6) Where it is proposed that more than one person should act as the manager, the statement under subsection (5)(b) must specify—
- (a) which of the functions of the manager (if any) are to be exercised by the persons acting jointly, and
 - (b) which of the functions of the manager (if any) are to be exercised by any or all of the persons.
- (7) The appointment of a person to act as the manager—
- (a) takes effect at the time specified in the order by which the person is appointed, and
 - (b) ceases to have effect at the time specified in the order by which the person's appointment is terminated (whether by being replaced by another person or otherwise).
- (8) Schedule 19A makes further provision about the manager of a write-down order.

377H Write-down order ceasing to have effect

- (1) A reduction in the value of a liability of an insurer under a write-down order ceases to have effect—
- (a) on such date as may be specified in the order (and different dates may be specified in relation to different liabilities or liabilities of different types), or
 - (b) if earlier, or if no such date is specified, the date on which a termination event happens (or, if more than one termination event happens, the earliest of those dates).
- (2) In the following table—
- (a) the first column specifies each event which is a termination event for the purposes of this section, and
 - (b) the second column specifies, in relation to each termination event, the date on which the event happens for the purposes of this section.

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<i>Event</i>	<i>Date event happens</i>
The write-down order being— (a) revoked, or (b) varied so as to remove the liability in question from its scope, by an order under section 377I	(a) The date specified in the order under section 377I as the date on which the revocation or variation is to take effect, or (b) if no date is specified, the date on which the order under section 377I is made
The insurer ceasing to have permission under Part 4A to carry out contracts of insurance	The date on which the withdrawal of permission takes effect
The transfer of the liability in question pursuant to an insurance business transfer scheme which has effect in accordance with an order under section 111(1)	The date on which the transfer takes effect
The making of a winding-up order against the insurer	The date on which the order is made
The voluntary winding up of the insurer	The date on which the liquidator is appointed
The coming into force of a voluntary arrangement (under Part 1 of the 1986 Act or Part 2 of the 1989 Order) in relation to the insurer	The date on which the voluntary arrangement comes into force
The insurer entering administration	The date on which the appointment of an administrator takes effect.

- (3) Where a write-down order is varied, this section applies as if references to the write-down order were to the order as varied.

377I Variation or revocation of a write-down order

- (1) The court may, by order—
- (a) revoke a write-down order, or
 - (b) vary (or further vary) a write-down order.
- (2) Section 377A(2)(b) applies to the making of an order under this section as it applies to the making of the write-down order.
- (3) In varying (or further varying) a write-down order the court may, in particular—
- (a) remove one or more of the insurer’s liabilities from the scope of the order (but removing all such liabilities from the scope of the order takes effect as a termination of the order);
 - (b) bring one or more of the insurer’s liabilities within the scope of the order (on such terms as the court may specify);
 - (c) further reduce the value of one or more of the insurer’s liabilities;

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- (d) increase the value of one or more of the insurer’s liabilities to any amount less than the value the liability had before the write-down order took effect;
 - (e) vary any term specified in the order, including the period for which a reduction in the value of a liability has effect;
 - (f) make any other order that the court thinks appropriate.
- (4) Sections 377C to 377F apply to an application for an order under this section as they apply to an application for a write-down order but with the following modifications—
- (a) section 377C(1) applies as if the list of persons entitled to make an application included—
 - (i) the FCA;
 - (ii) the scheme manager of the Financial Services Compensation Scheme (see section 212(1));
 - (iii) a person appointed under section 377G to act as the manager of the write-down order;
 - (b) if the person making the application is the scheme manager of the Financial Services Compensation Scheme, section 377C(3) does not apply.
- (5) The scheme manager of the Financial Services Compensation Scheme must consult the FCA and the PRA before making an application to vary or revoke a write-down order.
- (6) Where a provisional liquidator of the insurer has been appointed under section 135 of the 1986 Act or Article 115 of the 1989 Order, a person appointed to act as the manager of a write-down order must obtain the consent of the provisional liquidator before making an application for an order under this section.

377J Further provision about write-down orders

In Schedule 19B—

- (a) Part 1 makes provision about the enforcement of a liability of an insurer while a write-down order has effect;
- (b) Part 2 makes provision about the disposal of an insurer’s assets and the making of certain payments by an insurer while a write-down order has effect;
- (c) Part 3 makes provision about the treatment of an insurer’s liabilities for the purposes of certain provisions relating to insolvency while a write-down order has effect;
- (d) Part 4 makes provision about interest payable in respect of liabilities reduced under a write-down order or prevented from being enforced while a write-down order has effect.”

Commencement Information

II Sch. 12 para. 1 in force at 29.8.2023, see s. 86(2)(e)

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PART 2

THE MANAGER OF A WRITE-DOWN ORDER

2 After Schedule 19 to FSMA 2000 (competition information), insert—

“SCHEDULE
19A

Section 377G

THE MANAGER OF A WRITE-DOWN ORDER

Application of Schedule

- 1 (1) This Schedule applies where—
 - (a) a write-down order has been made under section 377A in relation to an insurer, and
 - (b) one or more persons have been appointed under section 377G to act as the manager of the order.
- (2) Where only one person acts as the manager, a reference in this Schedule to “the manager” is to that person.
- (3) Where two or more persons act jointly as the manager—
 - (a) a reference in this Schedule to the manager is a reference to those persons acting jointly;
 - (b) where an offence of omission is committed by the manager, each of the persons appointed to act jointly—
 - (i) commits the offence, and
 - (ii) may be proceeded against and punished individually.
- (4) Where persons act jointly in respect of only some of the functions of the manager, sub-paragraph (3) applies only in relation to those functions.
- (5) Where two or more persons act concurrently as the manager, a reference in this Schedule to the manager is a reference to any of the persons appointed (or any combination of them).
- (6) In this Schedule, “creditor” includes a contingent or prospective creditor.

Status of the manager

- 2 The manager is an officer of the court.

Monitoring the insurer’s affairs

- 3 (1) The manager must monitor the insurer’s affairs for the purpose of forming a view as to whether—
 - (a) it remains the case that the write-down order is reasonably likely to lead to a better outcome for the insurer’s policyholders and other creditors (taken as a whole) than if the write-down order were not in effect, or
 - (b) that will remain the case, or once again be the case, if the directors of the insurer were to take certain action or refrain from taking certain action.

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- (2) If the manager forms the view mentioned in sub-paragraph (1)(b), the manager may make such recommendations to the directors of the insurer as the manager thinks appropriate.
- (3) In forming a view mentioned in sub-paragraph (1), the manager is entitled to rely on information provided by the insurer, unless the manager has reason to doubt its accuracy.
- (4) If directed to do so by the FCA or the PRA, the manager must provide a report to that regulator on such matters relating to the insurer's affairs, and at such intervals, as that regulator may specify.

Application by manager to revoke or vary a write-down order

- 4 (1) This paragraph applies if the manager forms the view that it is in the interests of the insurer's policyholders and other creditors (taken as a whole) for the write-down order to be—
 - (a) revoked, or
 - (b) varied in one or more respects.
- (2) The manager must apply to the court for such orders (whether under section 377I or otherwise) as the manager thinks likely to achieve the best outcome for the insurer's policyholders and other creditors (taken as a whole).
- (3) In forming the view mentioned in sub-paragraph (1), the manager may have regard, among other things—
 - (a) to whether recommendations under paragraph 3(2) have been made (and if so, whether they have been acted upon);
 - (b) to whether recommendations, or further recommendations, under paragraph 3(2) could be made (and if so, the likelihood that they will be acted upon).

Provision of information and assistance to the manager

- 5 (1) The manager may require a relevant person to provide such information or assistance as the manager may reasonably require for the purpose of carrying out the manager's functions.
- (2) Each of the following is a "relevant person" for these purposes—
 - (a) a director of the insurer, or of a body corporate in the same group as the insurer;
 - (b) an employee of the insurer, or of a body corporate in the same group as the insurer;
 - (c) a person providing a service to the insurer, or to a body corporate in the same group as the insurer;
 - (d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c).
- (3) A relevant person must comply with a requirement under this paragraph to provide information as soon as is practicable.

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- (4) The obligation imposed by sub-paragraph (3) is enforceable, on the application of the manager—
- (a) by an injunction, or
 - (b) in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

Application by manager for directions

- 6 The manager may apply to the court for directions about the carrying out of the manager’s functions.

Challenges to the manager’s actions

- 7 (1) Any of the following persons may apply to the court on the ground that an act, omission or decision of the manager has unfairly harmed the interests of the applicant—
- (a) a director of the insurer;
 - (b) a shareholder of the insurer;
 - (c) a policyholder or other creditor of the insurer;
 - (d) any other person affected by the write-down order.
- (2) Any of the following persons may apply to the court on the ground that an act, omission or decision of the manager is not in the interests of the insurer’s policyholders and other creditors (taken as a whole)—
- (a) the FCA;
 - (b) the PRA;
 - (c) the scheme manager of the Financial Services Compensation Scheme (see section 212(1));
 - (d) a provisional liquidator of the insurer.
- (3) Before making an application under sub-paragraph (2)—
- (a) the FCA must consult the PRA;
 - (b) the PRA must consult the FCA;
 - (c) the scheme manager of the Financial Services Compensation Scheme must notify the FCA and the PRA.
- (4) On an application under this paragraph the court may—
- (a) confirm, reverse or modify any act or decision of the manager,
 - (b) give the manager directions, or
 - (c) make such other order as the court thinks appropriate (but may not, under this paragraph, order the manager to pay any compensation).
- (5) Where an application under this paragraph relates to a failure by the manager to apply to the court for the variation or termination of the write-down order, the court may treat the application as an application for an order under section 377I made by a person entitled to apply for an order under that section.”

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Commencement Information

I2 Sch. 12 para. 2 in force at 29.8.2023, see s. 86(2)(e)

PART 3

FURTHER PROVISION ABOUT WRITE-DOWN ORDERS

3 After Schedule 19A to FSMA 2000 (the manager of a write-down order), inserted by Part 2 of this Schedule, insert—

“SCHEDULE
19B

Section 377J

FURTHER PROVISION ABOUT WRITE-DOWN ORDERS

PART 1

RESTRICTIONS ON ENFORCEMENT

Application of this Part of this Schedule

- 1 (1) This Part of this Schedule applies in relation to an insurer—
 - (a) during the period—
 - (i) beginning with the date on which an application is made for a write-down order in relation to the insurer, and
 - (ii) ending with the date on which the order is made or the application is withdrawn or dismissed;
 - (b) during the period—
 - (i) beginning with the date on which a write-down order is made in relation to the insurer, and
 - (ii) ending with the last day of the period of six months beginning with the day on which the write-down order takes effect (see section 377A(3)(a));
 - (c) during such further period as the court may order.
- (2) This Part of this Schedule ceases to apply—
 - (a) where the court orders that it should cease to apply (and in accordance with the terms of the order), or
 - (b) where the write-down order ceases to have effect (because, in accordance with section 377H, each reduction in the value of a liability of the insurer ceases to have effect).
- (3) The court—
 - (a) may make an order under sub-paragraph (1)(c) or (2)(a) only on an application by a person mentioned in sub-paragraph (4);
 - (b) may not specify in an order under sub-paragraph (1)(c) a period longer than six months (but may make one or more further such orders).

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- (4) The persons are—
- (a) a person entitled to make an application for a write-down order in relation to the insurer (see section 377C(1));
 - (b) a person appointed under section 377G to act as the manager of the write-down order;
 - (c) a provisional liquidator of the insurer;
 - (d) the FCA.
- (5) Before making an application for an order under this Part of this Schedule—
- (a) a person other than the PRA or the Treasury must consult the PRA;
 - (b) the PRA must consult the FCA.

Moratorium on proceedings

- 2 (1) Where this Part of this Schedule applies in relation to an insurer, except with the permission of the court—
- (a) no step may be taken to enforce security over the insurer’s property;
 - (b) no step may be taken to repossess goods in the insurer’s possession under a hire-purchase agreement;
 - (c) a landlord may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the insurer;
 - (d) in Scotland, a landlord may not exercise a right of irritancy in relation to premises let to the insurer;
 - (e) no legal process (including legal proceedings, execution, distress or diligence) may be instituted, carried out or continued against the insurer or its property.
- (2) Where the court gives permission for something to be done that would otherwise be prevented by this paragraph, it may impose a condition on, or a requirement in connection with, the permission.
- (3) In this paragraph, “landlord” includes a person to whom rent is payable.

Exceptions

- 3 (1) This Part of this Schedule does not apply in relation to—
- (a) arrangements entered into after the date on which this Part of this Schedule first applied in relation to the insurer;
 - (b) employment tribunal proceedings or any legal process arising out of such proceedings;
 - (c) proceedings, not within paragraph (b), involving a claim between an employer and a worker.
- (2) Nothing in this Part of this Schedule—
- (a) prevents the FCA or the PRA from exercising a function it has in relation to the insurer or any other person;
 - (b) prevents a consumer from taking steps to enforce a money award or direction under section 229 or 404B.

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- (3) Nothing in this Part of this Schedule affects the operation of—
- (a) Part 7 of the Companies Act 1989 (financial markets and insolvency);
 - (b) the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469);
 - (c) the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979);
 - (d) the Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226).
- (4) The Treasury may by regulations amend sub-paragraph (3).
- (5) In this paragraph—
- “agency worker” has the meaning given by section 13(2) of the Employment Relations Act 1999;
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions;
- “employer”—
- (a) in relation to an agency worker, has the meaning given by section 13(2) of the Employment Relations Act 1999;
 - (b) otherwise, has the meaning given by section 230(4) of the Employment Rights Act 1996;
- “worker” means an individual who is—
- (a) a worker within the meaning of section 230(3) of the Employment Rights Act 1996, or
 - (b) an agency worker.

PART 2

DEALING WITH ASSETS ETC

Application of this Part of this Schedule

- 4 This Part of this Schedule applies while a write-down order has effect in relation to one or more liabilities of an insurer.

Dealing with assets

- 5 The insurer may not dispose of, or otherwise deal with, any of its assets (whether in the United Kingdom or elsewhere) except—
- (a) in the ordinary way of the insurer’s business, or
 - (b) with the consent of the PRA.

Paying variable remuneration

- 6 The insurer may not pay variable remuneration that is not regulated by a collective bargaining agreement, except with the consent of the PRA.

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Distributions

- 7 The insurer may not make a distribution, within the meaning of Part 23 of the Companies Act 2006, except with the consent of the PRA.

PART 3

TREATMENT OF WRITTEN-DOWN LIABILITIES FOR CERTAIN PURPOSES

Application of this Part of this Schedule

- 8 (1) This Part of this Schedule applies in relation to a liability of an insurer while the value of the liability is reduced under a write-down order.
- (2) Where the write-down order is varied, this Part of this Schedule applies as if references to the write-down order were to the order as varied.

Relevant insolvency provisions

- 9 (1) In determining the value of the liability for the purposes of a relevant insolvency provision, no account is to be taken of the contingent or prospective value of the liability, or interest on the liability, arising from any expectation that the write-down order will be varied, further varied or cease to have effect (whether in relation to the liability or generally).
- (2) The relevant insolvency provisions are—
- (a) section 123 of the 1986 Act or Article 103 of the 1989 Order, or any statutory provision which applies that section or that Article;
 - (b) Article 11 of [Commission Delegated Regulation \(EU\) 2015/35](#) of 10 October 2014 supplementing [Directive 2009/138/EC](#) of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency 2);
 - (c) PRA rules applicable to non-directive insurers, within the meaning given by the Rulebook made by the PRA under this Act (as that Rulebook has effect from time to time).
- (3) The Treasury may by regulations amend sub-paragraph (2).

Reinsurance contracts

- 10 (1) This paragraph applies where—
- (a) the liability is a liability under a contract of insurance the insurer carries out as principal (“contract A”), and
 - (b) the insurer enters into a reinsurance contract under which contract A, or any liability under contract A, is reinsured (“contract B”).
- (2) In determining the value of the liability for the purposes of contract B, no account is to be taken of the reduction in value of the liability under the write-down order.

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PART 4

INTEREST

- 11 (1) This Part of this Schedule applies where—
- (a) the value of a liability of an insurer is reduced under a write-down order,
 - (b) while the write-down order has effect in relation to the liability, an amount of the liability is due and payable (or would be due and payable but for the write-down order), and
 - (c) the amount remains due and payable after the reduction ceases to have effect.
- (2) The amount carries statutory interest, within the meaning of the Late Payment of Commercial Debts (Interest) Act 1998, for the period—
- (a) beginning with the date on which the write-down order took effect or, if later, the date on which the amount became due and payable (or would have become due and payable but for the write-down order), and
 - (b) ending with the day on which the amount is paid.
- (3) Where a write-down order is varied, this section applies as if references to the write-down order were to the order as varied.”

Commencement Information

I3 Sch. 12 para. 3 in force at 29.8.2023, see s. 86(2)(e)

PART 4

WRITE-DOWN ORDERS: FINANCIAL SERVICES COMPENSATION SCHEME

- 4 Part 15 of FSMA 2000 (the Financial Services Compensation Scheme) is amended as follows.

Commencement Information

I4 Sch. 12 para. 4 in force at 29.8.2023, see s. 86(2)(e)

- 5 After section 217 (insurers in financial difficulties) insert—

“217ZA Insurers subject to write-down orders

- (1) The compensation scheme must include provision requiring the scheme manager to take specified measures for safeguarding policyholders affected by write-down orders.
- (2) A person (“P”) is a policyholder affected by a write-down order if—
 - (a) P is a policyholder of an insurer in respect of whom a write-down order has effect, and

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- (b) the value of any thing to which P is (or may become) entitled, in P’s capacity as a policyholder of the insurer, is reduced under the write-down order.
- (3) Measures specified by virtue of subsection (1) must, in particular, require financial assistance to be given to insurers subject to write-down orders for the purpose mentioned in subsection (4).
- (4) The purpose is to enable payments to be made to affected policyholders in respect of the reduction in value of their entitlements (or contingent entitlements), as mentioned in subsection (2)(b).
- (5) Financial assistance given under this section—
 - (a) must not be used for any purpose other than the purpose mentioned in subsection (4);
 - (b) is not to be taken into account, to any extent, in valuing the assets of the insurer for any purpose.
- (6) Measures taken by the scheme manager by virtue of this section are in addition to any measures the scheme manager may take under powers provided by virtue of section 217(1).
- (7) In this section and section 217ZB—
 - “insurer” means a relevant person who has permission to carry out contracts of insurance;
 - “write-down order” means an order under section 377A (as it has effect in accordance with section 377H).

217ZB Recovery of financial assistance under section 217ZA

- (1) The compensation scheme may make provision giving the scheme manager a right of recovery in respect of financial assistance given to an insurer by virtue of section 217ZA.
- (2) Any right of recovery the scheme manager has in respect of financial assistance given to an insurer by virtue of subsection (1) must not be exercised against a policyholder of the insurer.
- (3) Subsection (4) applies where, by virtue of subsection (1), the scheme manager has a right of recovery in respect of financial assistance given to an insurer.
- (4) In valuing the insurer’s liabilities for the purposes of a relevant insolvency provision, no account is to be taken of any expectation that the right will be exercised.
- (5) In subsection (4), “relevant insolvency provision” has the same meaning as in paragraph 9 of Schedule 19B (treatment of written-down liabilities for purposes of relevant insolvency provisions).”

Commencement Information

I5 Sch. 12 para. 5 in force at 29.8.2023, see s. 86(2)(e)

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- 6 In section 219 (scheme manager’s power to require information), in subsection (1A), after paragraph (b) insert—
- “(ba) on a person (P) who is an insurer who has been given financial assistance under section 217ZA.”.

Commencement Information

I6 Sch. 12 para. 6 in force at 29.8.2023, see s. 86(2)(e)

- 7 After section 220 (scheme manager’s power to inspect information held by liquidator etc), insert—

“220A Power to inspect information held by write-down manager

- (1) For the purpose of assisting the scheme manager to discharge its functions under section 217ZA or 217ZB in relation to an insurer, a person to whom this section applies must permit a person authorised by the scheme manager to inspect relevant documents.
- (2) This section applies to a person appointed under section 377G to act as the manager of a write-down order which has effect in relation to the insurer.
- (3) A person inspecting a document under this section may take copies of, or extracts from, the document.”

Commencement Information

I7 Sch. 12 para. 7 in force at 29.8.2023, see s. 86(2)(e)

PART 5

CONSEQUENTIAL AMENDMENTS

FSMA 2000

- 8 FSMA 2000 is amended as follows.

Commencement Information

I8 Sch. 12 para. 8 in force at 29.8.2023, see s. 86(2)(e)

- 9 (1) Section 348 (restrictions on disclosure of confidential information by FCA, PRA etc) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) Where the primary recipient is a person appointed under section 377G to act as the manager of a write-down order, subsection (2)(b) has effect as if the reference to the discharge of functions of the FCA, PRA or Secretary of State were to the functions of that person.”
- (3) In subsection (5), after paragraph (d) insert—

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“(da) a person appointed under section 377G to act as the manager of a write-down order;”.

Commencement Information

I9 Sch. 12 para. 9 in force at 29.8.2023, see s. 86(2)(e)

10 In section 429 (Parliamentary control of statutory instruments), in subsection (2B), after paragraph (c) insert—

“(d) provision made under paragraph 3(4) or 9(3) of Schedule 19B;”.

Commencement Information

I10 Sch. 12 para. 10 in force at 29.8.2023, see s. 86(2)(e)

11 In Schedule 1ZB (the PRA), in paragraph 33(2) (exemption from liability in damages), for “and 284” insert “, 284 and 377G”.

Commencement Information

I11 Sch. 12 para. 11 in force at 29.8.2023, see s. 86(2)(e)

Commencement Information

I8 Sch. 12 para. 8 in force at 29.8.2023, see s. 86(2)(e)

I9 Sch. 12 para. 9 in force at 29.8.2023, see s. 86(2)(e)

I10 Sch. 12 para. 10 in force at 29.8.2023, see s. 86(2)(e)

I11 Sch. 12 para. 11 in force at 29.8.2023, see s. 86(2)(e)

Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

12 In Part 1 of Schedule 1 to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (S.I. 2001/2188) (disclosure of confidential information whether or not subject to retained EU law restrictions), at the end of the table insert—

“A person appointed under section 377G of the Act to act as the manager of a write-down order	That person’s functions in relation to the write-down order”.
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Commencement Information

I12 Sch. 12 para. 12 in force at 29.8.2023, see s. 86(2)(e)

Changes to legislation:

There are currently no known outstanding effects for the Financial Services and Markets Act 2023, SCHEDULE 12.