



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XV

THE FINANCIAL SERVICES COMPENSATION SCHEME

Modifications etc. (not altering text)

- C1** Pt. XV (ss. 212-224) excluded (27.4.2002) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) Order 2001 \(S.I. 2001/544\)](#), art. 9J (as inserted by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2002 \(S.I. 2002/682\)](#), arts. 1(2), 4) Pt. XV (ss. 212-224) modified (2.7.2002) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Transitional Provisions\) \(Credit Unions\) Order 2002 \(S.I. 2002/1501\)](#), art. 5
- C2** Pt. 15 modified (29.9.2008 at 8.00 a.m.) by [The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), art. 29 (with art. 30(6))
- C3** Pt. 15 modified (7.10.2008 at 9.30 a.m.) by [The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2644\)](#), art. 14 (with art. 15(8))
- C4** Pt. 15 modified (8.10.2008 at 12.15 p.m.) by [The Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2674\)](#), art. 15 (with art. 16(8))

The scheme manager

212 The scheme manager.

- (1) The Authority must establish a body corporate (“the scheme manager”) to exercise the functions conferred on the scheme manager by or under this Part.
- (2) The Authority must take such steps as are necessary to ensure that the scheme manager is, at all times, capable of exercising those functions.
- (3) The constitution of the scheme manager must provide for it to have—
 - (a) a chairman; and

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- (b) a board (which must include the chairman) whose members are the scheme manager’s directors.
- (4) The chairman and other members of the board must be persons appointed, and liable to removal from office, by the Authority (acting, in the case of the chairman, with the approval of the Treasury).
- (5) But the terms of their appointment (and in particular those governing removal from office) must be such as to secure their independence from the Authority in the operation of the compensation scheme.
- (6) The scheme manager is not to be regarded as exercising functions on behalf of the Crown.
- (7) The scheme manager’s board members, officers and staff are not to be regarded as Crown servants.

The scheme

213 The compensation scheme.

- (1) The Authority must by rules establish a scheme for compensating persons in cases where relevant persons are unable, or are likely to be unable, to satisfy claims against them.
- (2) The rules are to be known as the Financial Services Compensation Scheme (but are referred to in this Act as “the compensation scheme”).
- (3) The compensation scheme must, in particular, provide for the scheme manager—
 - (a) to assess and pay compensation, in accordance with the scheme, to claimants in respect of claims made in connection with regulated activities carried on (whether or not with permission) by relevant persons; and
 - (b) to have power to impose levies on authorised persons, or any class of authorised person, for the purpose of meeting its expenses (including in particular expenses incurred, or expected to be incurred, in paying compensation, borrowing or insuring risks).
- (4) The compensation scheme may provide for the scheme manager to have power to impose levies on authorised persons, or any class of authorised person, for the purpose of recovering the cost (whenever incurred) of establishing the scheme.
- (5) In making any provision of the scheme by virtue of subsection (3)(b), the Authority must take account of the desirability of ensuring that the amount of the levies imposed on a particular class of authorised person reflects, so far as practicable, the amount of the claims made, or likely to be made, in respect of that class of person.
- (6) An amount payable to the scheme manager as a result of any provision of the scheme made by virtue of subsection (3)(b) or (4) may be recovered as a debt due to the scheme manager.
- (7) Sections 214 to 217 make further provision about the scheme but are not to be taken as limiting the power conferred on the Authority by subsection (1).
- (8) In those sections “specified” means specified in the scheme.

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(9) In this Part (except in sections 219, 220 or 224) “relevant person” means a person who was—

- (a) an authorised person at the time the act or omission giving rise to the claim against him took place; or
- (b) an appointed representative at that time.

(10) But a person who, at that time—

- (a) qualified for authorisation under Schedule 3, and
- (b) fell within a prescribed category,

is not to be regarded as a relevant person in relation to any activities for which he had permission as a result of any provision of, or made under, that Schedule unless he had elected to participate in the scheme in relation to those activities at that time.

Modifications etc. (not altering text)

- C5** S. 213(3)(a) excluded (31.10.2004) by The Financial Services and Markets Act 2000 (Transitional Provisions) (Mortgages) Order 2004 (S.I. 2004/2615), arts. 1(2), 5, **Sch. para. 8**
- C6** S. 213(3)(a) excluded (14.1.2005) by The Financial Services and Markets Act 2000 (Transitional Provisions) (General Insurance Intermediaries) Order 2004 (S.I. 2004/3351), arts. 1(2), **6**
- C7** S. 213(9) excluded (2.7.2002) by The Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (S.I. 2002/1501), **art. 5(1)**

Commencement Information

- II** S. 213 wholly in force at 18.6.2001; s. 213 not in force at Royal Assent see s. 431(2); s. 213(10) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 213 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**

Provisions of the scheme

214 General.

(1) The compensation scheme may, in particular, make provision—

- (a) as to the circumstances in which a relevant person is to be taken (for the purposes of the scheme) to be unable, or likely to be unable, to satisfy claims made against him;
- (b) for the establishment of different funds for meeting different kinds of claim;
- (c) for the imposition of different levies in different cases;
- (d) limiting the levy payable by a person in respect of a specified period;
- (e) for repayment of the whole or part of a levy in specified circumstances;
- (f) for a claim to be entertained only if it is made by a specified kind of claimant;
- (g) for a claim to be entertained only if it falls within a specified kind of claim;
- (h) as to the procedure to be followed in making a claim;
- (i) for the making of interim payments before a claim is finally determined;
- (j) limiting the amount payable on a claim to a specified maximum amount or a maximum amount calculated in a specified manner;
- (k) for payment to be made, in specified circumstances, to a person other than the claimant.

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- (2) Different provision may be made with respect to different kinds of claim.
- (3) The scheme may provide for the determination and regulation of matters relating to the scheme by the scheme manager.
- (4) The scheme, or particular provisions of the scheme, may be made so as to apply only in relation to—
 - (a) activities carried on,
 - (b) claimants,
 - (c) matters arising, or
 - (d) events occurring,
 in specified territories, areas or localities.
- (5) The scheme may provide for a person who—
 - (a) qualifies for authorisation under Schedule 3, and
 - (b) falls within a prescribed category,
 to elect to participate in the scheme in relation to some or all of the activities for which he has permission as a result of any provision of, or made under, that Schedule.
- (6) The scheme may provide for the scheme manager to have power—
 - (a) in specified circumstances,
 - (b) but only if the scheme manager is satisfied that the claimant is entitled to receive a payment in respect of his claim—
 - (i) under a scheme which is comparable to the compensation scheme, or
 - (ii) as the result of a guarantee given by a government or other authority, to make a full payment of compensation to the claimant and recover the whole or part of the amount of that payment from the other scheme or under that guarantee.

Commencement Information

I2 S. 214 wholly in force at 18.6.2001; s. 214 not in force at Royal Assent see s. 431(2); s. 214(5) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pt. 2; s. 214 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.

PROSPECTIVE

[^{F1}214A Contingency funding

- (1) The Treasury may make regulations (“contingency fund regulations”) permitting the scheme manager to impose levies under section 213 for the purpose of maintaining contingency funds from which possible expenses may be paid.
- (2) Contingency fund regulations may make provision about the establishment and management of contingency funds; in particular, the regulations may make provision about—
 - (a) the number and size of funds;
 - (b) the circumstances and timing of their establishment;
 - (c) the classes of person from whom contributions to the funds may be levied;

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- (d) the amount and timing of payments into and out of funds (which may include provision for different levies for different classes of person);
 - (e) refunds;
 - (f) the ways in which funds' contents may be invested (including (i) the extent of reliance on section 223A, and (ii) the application of investment income);
 - (g) the purposes for which funds may be applied, but only so as to determine whether a fund is to be used (i) for the payment of compensation, (ii) for the purposes of co-operating with a bank liquidator in accordance with section 99 of the Banking Act 2009, or (iii) for contributions under section 214B;
 - (h) procedures to be followed in connection with funds, including the keeping of records and the provision of information.
- (3) The compensation scheme may include provision about contingency funds provided that it is not inconsistent with contingency fund regulations.]

Textual Amendments

F1 S. 214A inserted (prosp.) by [Banking Act 2009 \(c. 1\)](#), **ss. 170(1), 263(1)(2)** (with s. 247)

VALID FROM 17/02/2009

214B Contribution to costs of special resolution regime

- (1) This section applies where—
- (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), and
 - (b) the Treasury think that the bank, building society or credit union was, or but for the exercise of the stabilisation power would have become, unable to satisfy claims against it.
- (2) Where this section applies—
- (a) the Treasury may require the scheme manager to make payments in connection with the exercise of the stabilisation power, and
 - (b) payments shall be treated as expenditure under the scheme for all purposes (including levies, contingency funds and borrowing).
- (3) The Treasury shall make regulations—
- (a) specifying what expenses the scheme manager may be required to incur under subsection (2),
 - (b) providing for independent verification of the nature and amount of expenses incurred in connection with the exercise of the stabilisation power (which may include provision about appointment and payment of an auditor), and
 - (c) providing for the method by which amounts to be paid are to be determined.
- (4) The regulations must ensure that payments required do not exceed the amount of compensation that would have been payable under the scheme if the stabilisation power had not been exercised and the bank had been unable to satisfy claims against it; and for that purpose the amount of compensation that would have been payable does not include—

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- (a) amounts that would have been likely, at the time when the stabilisation power was exercised, to be recovered by the scheme from the bank, or
 - (b) any compensation actually paid to an eligible depositor of the bank.
- (5) The regulations must provide for the appointment of an independent valuer (who may be the person appointed as valuer under section 54 of the Banking Act 2009 in respect of the exercise of the stabilisation power) to calculate the amounts referred to in subsection (4)(a); and the regulations—
- (a) must provide for the valuer to be appointed by the Treasury or by a person designated by the Treasury,
 - (b) must include provision enabling the valuer to reconsider a decision,
 - (c) must provide a right of appeal to a court or tribunal,
 - (d) must provide for payment of the valuer,
 - (e) may replicate or apply a provision of section 54 or 55, and
 - (f) may apply or include any provision that is or could be made under that section.
- (6) Payments required to be made by the scheme by virtue of section 61 of the Banking Act 2009 (special resolution regime: compensation) shall be treated for the purposes of subsection (4) as if required to be made under this section.
- (7) The regulations may include provision for payments (including payments under those provisions of the Banking Act 2009) to be made—
- (a) before verification in accordance with subsection (3)(b), and
 - (b) before the calculation of the limit imposed by subsection (4), by reference to estimates of that limit and subject to any necessary later adjustment.
- (8) The regulations may include provision—
- (a) about timing;
 - (b) about procedures to be followed;
 - (c) for discretionary functions to be exercised by a specified body or by persons of a specified class;
 - (d) about the resolution of disputes (which may include provision conferring jurisdiction on a court or tribunal).
- (9) The compensation scheme may include provision about payments under and levies in connection with this section, provided that it is not inconsistent with this section or regulations under it.

Modifications etc. (not altering text)

- C8** S. 214B applied (with modifications) (17.2.2009 for certain purposes and 21.2.2009 otherwise) by Banking Act 2009 (c. 1), ss. 83(2)(h)(i), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

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VALID FROM 08/04/2010

^{F2}
^{F2} **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.]

Textual Amendments

F2 Ss. 214B-214D substituted (8.4.2010) for s. 214B by [Financial Services Act 2010 \(c. 28\)](#), **ss. 16(1), 26**

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Modifications etc. (not altering text)

- C9** Ss. 214B-214D applied (with modifications) (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 16(2), 26(1)**

VALID FROM 08/04/2010

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—
 - (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—

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- (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).]

Textual Amendments

F2 Ss. 214B-214D substituted (8.4.2010) for s. 214B by [Financial Services Act 2010 \(c. 28\)](#), **ss. 16(1)**, 26

Modifications etc. (not altering text)

C10 Ss. 214B-214D applied (with modifications) (8.4.2010) by [Financial Services Act 2010 \(c. 28\)](#), **ss. 16(2)**, 26(1)

215 Rights of the scheme in relevant person’s insolvency.

- (1) The compensation scheme may, in particular, make provision—
- (a) as to the effect of a payment of compensation under the scheme in relation to rights or obligations arising out of the claim against a relevant person in respect of which the payment was made;
 - (b) for conferring on the scheme manager a right of recovery against that person.

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- (2) Such a right of recovery conferred by the scheme does not, in the event of the relevant person’s insolvency, exceed such right (if any) as the claimant would have had in that event.
- (3) If a person other than the scheme manager [^{F3}makes an administration application under Schedule B1 to the 1986 Act or [^{F4}Schedule B1 to] the 1989 Order] in relation to a company or partnership which is a relevant person, the scheme manager has the same rights as are conferred on the Authority by section 362.

[^{F5}(3A) In subsection (3) the reference to making an administration application includes a reference to—

- (a) appointing an administrator under paragraph 14 or 22 of Schedule B1 to the 1986 Act [^{F6}or paragraph 15 or 23 of Schedule B1 to the 1989 Order], or
- (b) filing with the court a copy of notice of intention to appoint an administrator under [^{F7}any] of those paragraphs.]

(4) If a person other than the scheme manager presents a petition for the winding up of a body which is a relevant person, the scheme manager has the same rights as are conferred on the Authority by section 371.

(5) If a person other than the scheme manager presents a bankruptcy petition to the court in relation to an individual who, or an entity which, is a relevant person, the scheme manager has the same rights as are conferred on the Authority by section 374.

(6) Insolvency rules may be made for the purpose of integrating any procedure for which provision is made as a result of subsection (1) into the general procedure on the administration of a company or partnership or on a winding-up, bankruptcy or sequestration.

(7) “Bankruptcy petition” means a petition to the court—

- (a) under section 264 of the 1986 Act or Article 238 of the 1989 Order for a bankruptcy order to be made against an individual;
- (b) under section 5 of the 1985 Act for the sequestration of the estate of an individual; or
- (c) under section 6 of the 1985 Act for the sequestration of the estate belonging to or held for or jointly by the members of an entity mentioned in subsection (1) of that section.

(8) “Insolvency rules” are—

- (a) for England and Wales, rules made under sections 411 and 412 of the 1986 Act;
- (b) for Scotland, rules made by order by the Treasury, after consultation with the Scottish Ministers, for the purposes of this section; and
- (c) for Northern Ireland, rules made under Article 359 of the 1989 Order and section 55 of the ^{M1}Judicature (Northern Ireland) Act 1978.

(9) “The 1985 Act”, “the 1986 Act”, “the 1989 Order” and “court” have the same meaning as in Part XXIV.

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Textual Amendments

- F3** Words in s. 215(3) substituted (15.9.2003) by [Enterprise Act 2002 \(c. 40\), ss. 248\(3\), 279, Sch. 17 para. 54\(2\)](#); [S.I. 2003/2093, art. 2\(1\)](#), Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by [S.I. 2003/2332, art. 2](#)))
- F4** Words in s. 215(3) substituted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\), arts. 1\(3\), 3\(3\), Sch. 2 para. 57\(2\)](#); [S.R. 2006/21, art. 2](#) (subject to [S.R. 2006/22, arts. 2-7](#))
- F5** S. 215(3A) inserted (15.9.2003) by [Enterprise Act 2002 \(c. 40\), ss. 248\(3\), 279, Sch. 17 para. 54\(3\)](#); [S.I. 2003/2093, art. 2\(1\)](#), Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by [S.I. 2003/2332, art. 2](#)))
- F6** Words in s. 215(3A)(a) inserted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\), arts. 1\(3\), 3\(3\), Sch. 2 para. 57\(3\)\(a\)](#); [S.R. 2006/21, art. 2](#) (subject to [S.R. 2006/22, arts. 2-7](#))
- F7** Word in s. 215(3A)(b) substituted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\), arts. 1\(3\), 3\(3\), Sch. 2 para. 57\(3\)\(b\)](#); [S.R. 2006/21, art. 2](#) (subject to [S.R. 2006/22, arts. 2-7](#))

Modifications etc. (not altering text)

- C11** S. 215(3)(4)(6) applied (with modifications) (6.4.2001 for E.W.S and 13.9.2004 for N.I.) by [S.I. 2001/1090, regs. 1, 6](#); [S.R. 2004/307, reg. 6](#)

Commencement Information

- I3** S. 215 wholly in force at 18.6.2001; s. 215 not in force at Royal Assent see s. 431(2); s. 215(6)(8)(9) in force at 25.2.2001 by [S.I. 2001/516, art. 2\(a\)](#), [Sch. Pt. 1](#); s. 215 in force in so far as not already in force at 18.6.2001 by [S.I. 2001/1820, art. 2](#), [Sch.](#)

Marginal Citations

- M1** 1978 c. 23.

216 Continuity of long-term insurance policies.

- (1) The compensation scheme may, in particular, include provision requiring the scheme manager to make arrangements for securing continuity of insurance for policyholders, or policyholders of a specified class, of relevant long-term insurers.
- (2) “Relevant long-term insurers” means relevant persons who—
 - (a) have permission to effect or carry out contracts of long-term insurance; and
 - (b) are unable, or likely to be unable, to satisfy claims made against them.
- (3) The scheme may provide for the scheme manager to take such measures as appear to him to be appropriate—
 - (a) for securing or facilitating the transfer of a relevant long-term insurer’s business so far as it consists of the carrying out of contracts of long-term insurance, or of any part of that business, to another authorised person;
 - (b) for securing the issue by another authorised person to the policyholders concerned of policies in substitution for their existing policies.
- (4) The scheme may also provide for the scheme manager to make payments to the policyholders concerned—
 - (a) during any period while he is seeking to make arrangements mentioned in subsection (1);

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- (b) if it appears to him that it is not reasonably practicable to make such arrangements.
- (5) A provision of the scheme made by virtue of section 213(3)(b) may include power to impose levies for the purpose of meeting expenses of the scheme manager incurred in—
- (a) taking measures as a result of any provision of the scheme made by virtue of subsection (3);
 - (b) making payments as a result of any such provision made by virtue of subsection (4).

217 Insurers in financial difficulties.

- (1) The compensation scheme may, in particular, include provision for the scheme manager to have power to take measures for safeguarding policyholders, or policyholders of a specified class, of relevant insurers.
- (2) “Relevant insurers” means relevant persons who—
- (a) have permission to effect or carry out contracts of insurance; and
 - (b) are in financial difficulties.
- (3) The measures may include such measures as the scheme manager considers appropriate for—
- (a) securing or facilitating the transfer of a relevant insurer’s business so far as it consists of the carrying out of contracts of insurance, or of any part of that business, to another authorised person;
 - (b) giving assistance to the relevant insurer to enable it to continue to effect or carry out contracts of insurance.
- (4) The scheme may provide—
- (a) that if measures of a kind mentioned in subsection (3)(a) are to be taken, they should be on terms appearing to the scheme manager to be appropriate, including terms reducing, or deferring payment of, any of the things to which any of those who are eligible policyholders in relation to the relevant insurer are entitled in their capacity as such;
 - (b) that if measures of a kind mentioned in subsection (3)(b) are to be taken, they should be conditional on the reduction of, or the deferment of the payment of, the things to which any of those who are eligible policyholders in relation to the relevant insurer are entitled in their capacity as such;
 - (c) for ensuring that measures of a kind mentioned in subsection (3)(b) do not benefit to any material extent persons who were members of a relevant insurer when it began to be in financial difficulties or who had any responsibility for, or who may have profited from, the circumstances giving rise to its financial difficulties, except in specified circumstances;
 - (d) for requiring the scheme manager to be satisfied that any measures he proposes to take are likely to cost less than it would cost to pay compensation under the scheme if the relevant insurer became unable, or likely to be unable, to satisfy claims made against him.
- (5) The scheme may provide for the Authority to have power—

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- (a) to give such assistance to the scheme manager as it considers appropriate for assisting the scheme manager to determine what measures are practicable or desirable in the case of a particular relevant insurer;
 - (b) to impose constraints on the taking of measures by the scheme manager in the case of a particular relevant insurer;
 - (c) to require the scheme manager to provide it with information about any particular measures which the scheme manager is proposing to take.
- (6) The scheme may include provision for the scheme manager to have power—
- (a) to make interim payments in respect of eligible policyholders of a relevant insurer;
 - (b) to indemnify any person making payments to eligible policyholders of a relevant insurer.
- (7) A provision of the scheme made by virtue of section 213(3)(b) may include power to impose levies for the purpose of meeting expenses of the scheme manager incurred in—
- (a) taking measures as a result of any provision of the scheme made by virtue of subsection (1);
 - (b) making payments or giving indemnities as a result of any such provision made by virtue of subsection (6).
- (8) “Financial difficulties” and “eligible policyholders” have such meanings as may be specified.

Annual report

218 Annual report.

- (1) At least once a year, the scheme manager must make a report to the Authority on the discharge of its functions.
- (2) The report must—
 - (a) include a statement setting out the value of each of the funds established by the compensation scheme; and
 - (b) comply with any requirements specified in rules made by the Authority.
- (3) The scheme manager must publish each report in the way it considers appropriate.

Information and documents

VALID FROM 17/02/2009

^{F8} Authority's power to require information

- ^{F8} 218A**
- (1) The Authority may make rules enabling the Authority to require authorised persons to provide information, which may then be made available to the scheme manager by the Authority.

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- (2) A requirement may be imposed only if the Authority thinks the information is of a kind that may be of use to the scheme manager in connection with functions in respect of the scheme.
- (3) A requirement under this section may apply—
 - (a) to authorised persons generally or only to specified persons or classes of person;
 - (b) to the provision of information at specified periods, in connection with specified events or in other ways.
- (4) In addition to requirements under this section, a notice under section 165 may relate to information or documents which the Authority thinks are reasonably required by the scheme manager in connection with the performance of functions in respect of the scheme; and section 165(4) is subject to this subsection.
- (5) Rules under subsection (1) shall be prepared, made and treated in the same way as (and may be combined with) the Authority's general rules.]]

Textual Amendments

- F8** S. 218A inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\)](#), [ss. 176\(1\), 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), Sch.

219 Scheme manager's power to require information.

- (1) The scheme manager may, by notice in writing given to the relevant person in respect of whom a claim is made under the scheme or to a person otherwise involved, require that person—
 - (a) to provide specified information or information of a specified description; or
 - (b) to produce specified documents or documents of a specified description.
- (2) The information or documents must be provided or produced—
 - (a) before the end of such reasonable period as may be specified; and
 - (b) in the case of information, in such manner or form as may be specified.
- (3) This section applies only to information and documents the provision or production of which the scheme manager considers—
 - (a) to be necessary for the fair determination of the claim; or
 - (b) to be necessary (or likely to be necessary) for the fair determination of other claims made (or which it expects may be made) in respect of the relevant person concerned.
- (4) If a document is produced in response to a requirement imposed under this section, the scheme manager may—
 - (a) take copies or extracts from the document; or
 - (b) require the person producing the document to provide an explanation of the document.
- (5) If a person who is required under this section to produce a document fails to do so, the scheme manager may require the person to state, to the best of his knowledge and belief, where the document is.

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- (6) If the relevant person is insolvent, no requirement may be imposed under this section on a person to whom section 220 or 224 applies.
- (7) If a person claims a lien on a document, its production under this Part does not affect the lien.
- (8) “Relevant person” has the same meaning as in section 224.
- (9) “Specified” means specified in the notice given under subsection (1).
- (10) A person is involved in a claim made under the scheme if he was knowingly involved in the act or omission giving rise to the claim.

Modifications etc. (not altering text)

- C12** S. 219 extended (1.12.2001) by S.I. 2001/2967, arts. 1(2), 7(a), 12(4)(a); S.I. 2001/3538, art. 2(1)
- C13** S. 219(2)(4)(5)(7) applied (7.10.2008 at 9.30 a.m.) by The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2644), art. 16 (with art. 15(8))
- C14** S. 219(2)(4)(5)(7) applied (8.10.2008 at 10.10 a.m.) by The Transfer of Rights and Liabilities to ING Order 2008 (S.I. 2008/2666), art. 13(3)
- C15** S. 219(2)(4)(5)(7) applied (8.10.2008 at 12.15 p.m.) by The Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2674), art. 17(3) (with art. 16(8))

220 Scheme manager’s power to inspect information held by liquidator etc.

- (1) For the purpose of assisting the scheme manager to discharge its functions in relation to a claim made in respect of an insolvent relevant person, a person to whom this section applies must permit a person authorised by the scheme manager to inspect relevant documents.
- (2) A person inspecting a document under this section may take copies of, or extracts from, the document.
- (3) This section applies to—
 - (a) the administrative receiver, administrator, liquidator or trustee in bankruptcy of an insolvent relevant person;
 - (b) the permanent trustee, within the meaning of the ^{M2}Bankruptcy (Scotland) Act 1985, on the estate of an insolvent relevant person.
- (4) This section does not apply to a liquidator, administrator or trustee in bankruptcy who is—
 - (a) the Official Receiver;
 - (b) the Official Receiver for Northern Ireland; or
 - (c) the Accountant in Bankruptcy.
- (5) “Relevant person” has the same meaning as in section 224.

Modifications etc. (not altering text)

- C16** S. 220 extended (1.12.2001) by S.I. 2001/2967, arts. 1(2), 8, 12(4)(c); S.I. 2001/3538, art. 2(1)

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Marginal Citations

M2 1985 c. 66.

221 Powers of court where information required.

- (1) If a person (“the defaulter”)—
 - (a) fails to comply with a requirement imposed under section 219, or
 - (b) fails to permit documents to be inspected under section 220,
 the scheme manager may certify that fact in writing to the court and the court may enquire into the case.
- (2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement (or to permit the documents to be inspected), it may deal with the defaulter (and, in the case of a body corporate, any director or officer) as if he were in contempt [^{F9}; and “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership.].
- (3) “Court” means—
 - (a) the High Court;
 - (b) in Scotland, the Court of Session.

Textual Amendments

F9 Words in s. 221(2) inserted (6.4.2001 for E.W.S. and 13.9.2004 for N.I.) by S.I. 2001/1090, regs. 1, 9, Sch. 5 para. 21; S.R. 2004/307, reg. 9, Sch. 4 para. 17

Modifications etc. (not altering text)

C17 S. 221 extended (1.12.2001) by S.I. 2001/2967, arts. 1(2), 7(b), 8, 12(4)(b)(c); S.I. 2001/3538, art. 2(1)

Miscellaneous

VALID FROM 17/02/2009

221A Delegation of functions

- (1) The scheme manager may arrange for any of its functions to be discharged on its behalf by another person (a “scheme agent”).
- (2) Before entering into arrangements the scheme manager must be satisfied that the scheme agent—
 - (a) is competent to discharge the function, and
 - (b) has been given sufficient directions to enable the agent to take any decisions required in the course of exercising the function in accordance with policy determined by the scheme manager.

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- (3) Arrangements may include provision for payments to be made by the scheme manager to the scheme agent (which payments are management expenses of the scheme manager).

222 Statutory immunity.

- (1) Neither the scheme manager nor any person who is, or is acting as, its board member, officer or member of staff is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the scheme manager's functions.
- (2) Subsection (1) does not apply—
- if the act or omission is shown to have been in bad faith; or
 - so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the ^{M3}Human Rights Act 1998.

Modifications etc. (not altering text)

C18 S. 222 modified (29.9.2008 at 8.00 a.m.) by [The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), **art. 32** (with art. 30(6))

C19 S. 222 modified (7.10.2008 at 9.30 a.m.) by [The Heritable Bank plc Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2644\)](#), **art. 17** (with art. 15(8))

C20 S. 222 modified (8.10.2008 at 10.10 a.m.) by [The Transfer of Rights and Liabilities to ING Order 2008 \(S.I. 2008/2666\)](#), **art. 14**

C21 S. 222 modified (8.10.2008 at 12.15 p.m.) by [The Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2674\)](#), **art. 18** (with art. 16(8))

Marginal Citations

M3 1998 c. 42.

223 Management expenses.

- (1) The amount which the scheme manager may recover, from the sums levied under the scheme, as management expenses attributable to a particular period may not exceed such amount as may be fixed by the scheme as the limit applicable to that period.
- (2) In calculating the amount of any levy to be imposed by the scheme manager, no amount may be included to reflect management expenses unless the limit mentioned in subsection (1) has been fixed by the scheme.
- (3) “Management expenses” means expenses incurred, or expected to be incurred, by the scheme manager in connection with its functions under this Act other than those incurred—
- in paying compensation;
 - as a result of any provision of the scheme made by virtue of section 216(3) or (4) or 217(1) or (6).

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Commencement Information

- I4** S. 223 wholly in force at 1.12.2001; s. 223 not in force at Royal Assent see s. 431(2); s. 223 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, Sch.; s. 223 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

PROSPECTIVE

[^{F10}223A Investing in National Loans Fund

- (1) Sums levied for the purpose of maintaining a contingency fund may be paid to the Treasury.
- (2) The Treasury may receive sums under subsection (1) and may set terms and conditions of receipts.
- (3) Sums received shall be treated as if raised under section 12 of the National Loans Act 1968 (and shall therefore be invested as part of the National Loans Fund).
- (4) Interest accruing on the invested sums may be credited to the contingency fund (subject to any terms and conditions set under subsection (2)).
- (5) The Treasury shall comply with any request of the scheme manager to arrange for the return of sums for the purpose of making payments out of a contingency fund (subject to any terms and conditions set under subsection (2)).]

Textual Amendments

- F10** S. 223A inserted (prosp.) by Banking Act 2009 (c. 1), ss. 172, 263(1)(2) (with s. 247)

VALID FROM 17/02/2009

[^{F11}223B Borrowing from National Loans Fund

- (1) The scheme manager may request a loan from the National Loans Fund for the purpose of funding expenses incurred or expected to be incurred under the scheme.
- (2) The Treasury may arrange for money to be paid out of the National Loans Fund in pursuance of a request under subsection (1).
- (3) The Treasury shall determine—
 - (a) the rate of interest on a loan, and
 - (b) other terms and conditions.
- (4) The Treasury may make regulations—
 - (a) about the amounts that may be borrowed under this section;
 - (b) permitting the scheme manager to impose levies under section 213 for the purpose of meeting expenses in connection with loans under this section (and the regulations may have effect despite any provision of this Act);

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- (c) about the classes of person on whom those levies may be imposed;
 - (d) about the amounts and timing of those levies.
- (5) The compensation scheme may include provision about borrowing under this section provided that it is not inconsistent with regulations under this section.]]

Textual Amendments

F11 S. 223B inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\)](#), [ss. 173, 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), Sch.

VALID FROM 17/02/2009

^{F12} Payments in error

^{F12}223C

- (1) Payments made by the scheme manager in error may be provided for in setting a levy by virtue of section 213, 214A, 214B or 223B.
- (2) This section does not apply to payments made in bad faith.]]

Textual Amendments

F12 S. 223C inserted (17.2.2009 for certain purposes and 21.2.2009 otherwise) by [Banking Act 2009 \(c. 1\)](#), [ss. 177, 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), Sch.

224 Scheme manager's power to inspect documents held by Official Receiver etc.

- (1) If, as a result of the insolvency or bankruptcy of a relevant person, any documents have come into the possession of a person to whom this section applies, he must permit any person authorised by the scheme manager to inspect the documents for the purpose of establishing—
 - (a) the identity of persons to whom the scheme manager may be liable to make a payment in accordance with the compensation scheme; or
 - (b) the amount of any payment which the scheme manager may be liable to make.
- (2) A person inspecting a document under this section may take copies or extracts from the document.
- (3) In this section “relevant person” means a person who was—
 - (a) an authorised person at the time the act or omission which may give rise to the liability mentioned in subsection (1)(a) took place; or
 - (b) an appointed representative at that time.
- (4) But a person who, at that time—
 - (a) qualified for authorisation under Schedule 3, and
 - (b) fell within a prescribed category,

is not to be regarded as a relevant person for the purposes of this section in relation to any activities for which he had permission as a result of any provision of, or made

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under, that Schedule unless he had elected to participate in the scheme in relation to those activities at that time.

- (5) This section applies to—
- (a) the Official Receiver;
 - (b) the Official Receiver for Northern Ireland; and
 - (c) the Accountant in Bankruptcy.

Modifications etc. (not altering text)

C22 S. 224 extended (1.12.2001) by S.I. 2001/2967, arts. 1(2), 8, 12(4)(c); S.I. 2001/3538, art. 2(1)

C23 S. 224(3) excluded (2.7.2002) by The Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (S.I. 2002/1501), art. 5(1)

Commencement Information

I5 S. 224 wholly in force at 1.12.2001; s. 224 not in force at Royal Assent see s. 431(2); s. 224(4) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), Sch. Pt. 2; s. 224 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

VALID FROM 17/02/2009

224A Functions under the Banking Act 2009

A reference in this Part to functions of the scheme manager (including a reference to functions conferred by or under this Part) includes a reference to functions conferred by or under the Banking Act 2009.

Status:

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Changes to legislation:

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