



Banking Act 2009

2009 CHAPTER 1

PART 4

FINANCIAL SERVICES COMPENSATION SCHEME

169 Overview

This Part makes a number of amendments in connection with the Financial Services Compensation Scheme provided for by Part 15 of the Financial Services and Markets Act 2000.

170 Contingency funding

- (1) After section 214 of the Financial Services and Markets Act 2000 (compensation scheme: general) insert—

“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;
 - (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;

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- (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.”
- (2) At the end of section 213(7) (compensation scheme: further provision) add “(except where limitations are expressly stated)”.
- (3) In section 218 (compensation scheme: annual report)—
- (a) in subsection (1) after “to the Authority” insert “and the Treasury”, and
 - (b) at the end of subsection (2)(b) add “or in contingency fund regulations.”

171 Special resolution regime

- (1) After section 214A of the Financial Services and Markets Act 2000 (contingency funding – inserted by section 170 above) insert—

“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.

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- (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—
 - (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.”
- (2) At the end of section 223(3) of the Financial Services and Markets Act 2000 (management expenses) add “;
- (c) under section 214B.”.

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172 Investing in National Loans Fund

After section 223 of the Financial Services and Markets Act 2000 (management expenses) insert—

“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)).”

173 Borrowing from National Loans Fund

After section 223A of the Financial Services and Markets Act 2000 (investing in National Loans Fund – inserted by section 172 above) insert—

“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);
 - (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.”

174 Procedure for claims

- (1) After section 214(1) of the Financial Services and Markets Act 2000 (the compensation scheme: powers) insert—

“(1A) Rules by virtue of subsection (1)(h) may, in particular, allow the scheme manager to treat persons who are or may be entitled to claim under the scheme as if they had done so.

(1B) A reference in any enactment or instrument to a claim or claimant under this Part includes a reference to a deemed claim or claimant in accordance with subsection (1A).

(1C) Rules by virtue of subsection (1)(j) may, in particular, allow, or be subject to rules which allow, the scheme manager to settle a class of claim by payment of sums fixed without reference to, or by modification of, the normal rules for calculation of maximum entitlement for individual claims.”

- (2) In section 417(1) (definitions) at the appropriate place insert—

““claim”, in relation to the Financial Services Compensation Scheme under Part XV, is to be construed in accordance with section 214(1B);”.

175 Rights in insolvency

- (1) This section amends section 215 of the Financial Services and Markets Act 2000 (rights of scheme following insolvency).

- (2) For section 215(1) substitute—

“(1) The compensation scheme may make provision—

- (a) about the effect of a payment of compensation under the scheme on rights or obligations arising out of matters in connection with which the compensation was paid;
- (b) giving the scheme manager a right of recovery in respect of those rights or obligations.”

- (3) In section 215(2) for “the relevant person’s insolvency” substitute “a person’s insolvency”.

- (4) The heading of section 215 becomes “Rights of the scheme in insolvency”.

176 Information

- (1) Before section 219 of the Financial Services and Markets Act 2000 (scheme manager’s power to require information) insert—

“218A Authority’s power to require information

(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.

(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.

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- (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.”
- (2) Section 219 is amended as follows.
- (3) In subsection (1) for “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” substitute “require a person”.
- (4) After subsection (1) insert—
- “(1A) A requirement may be imposed only—
- (a) on a person (P) against whom a claim has been made under the scheme,
 - (b) on a person (P) who is unable or likely to be unable to satisfy claims under the scheme against P,
 - (c) on a person (“the Third Party”) whom the scheme manager thinks was knowingly involved in matters giving rise to a claim against another person (P) under the scheme, or
 - (d) on a person (“the Third Party”) whom the scheme manager thinks was knowingly involved in matters giving rise to the actual or likely inability of another person (P) to satisfy claims under the scheme.
- (1B) For the purposes of subsection (1A)(b) and (d) whether P is unable or likely to be unable to satisfy claims shall be determined in accordance with provision to be made by the scheme (which may, in particular—
- (a) apply or replicate, with or without modifications, a provision of an enactment;
 - (b) confer discretion on a specified person).”

(5) In subsection (3) for paragraphs (a) and (b) substitute “to be necessary (or likely to be necessary) for the fair determination of claims which have been or may be made against P”.

(6) After subsection (3) insert—

“(3A) Where a stabilisation power under Part 1 of the Banking Act 2009 has been exercised in respect of a bank, the scheme manager may by notice in writing require the bank or the Bank of England to provide information that the scheme manager requires for the purpose of applying regulations under section 214B(3) above.”

(7) In subsection (6) for “the relevant person” substitute “P”.

(8) Omit subsection (8).

(9) Omit subsection (10).

177 Payments in error

After section 223B of the Financial Services and Markets Act 2000 (borrowing from National Loans Fund – inserted by section 173 above) insert—

“223C Payments in error

(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.”

178 Regulations

In section 429(2) of the Financial Services and Markets Act 2000 (parliamentary control of subordinate legislation: affirmative resolution) after “90B” insert “, 214A, 214B”.

179 Delegation of functions

(1) Before section 222 of the Financial Services and Markets Act 2000 (scheme manager: statutory immunity) insert—

“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.

(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).”

(2) In section 222(1) of that Act after “officer” insert “, scheme agent”.

180 Functions under this Act

At the end of Part 15 of the Financial Services and Markets Act 2000 add—

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“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.”