

2015 No. 486

BANKS AND BANKING

The Deposit Guarantee Scheme Regulations 2015

Made - - - - *4th March 2015*

Laid before Parliament *5th March 2015*

Coming into force in accordance with regulation 1(2) and (3)

The Treasury are designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to financial services.

The Treasury, in exercise of the powers conferred by section 2(2) of that Act, make the following Regulations.

PART 1

Introductory Provisions

Citation and commencement

- 1.—(1) These Regulations may be cited as the Deposit Guarantee Scheme Regulations 2015.
(2) Subject to paragraph (3), the provisions of these Regulations come into force on 26th March 2015.
(3) Regulations 5 and 7 come into force on 3rd July 2015.

Interpretation

- 2.—(1) In these Regulations—
“compensation scheme rules” means rules made under section 213 of FSMA^(c);
“the compensation scheme” has the meaning given in section 213(2) of FSMA;

(a) S.I. 2012/1759.

(b) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under s. 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).

(c) Section 213 of FSMA was amended by the Financial Services Act 2012 (c. 21), section 38 and Schedule 10. Subsections (10) and (11) of section 213 were substituted for the original subsection (10) by S.I. 2011/1613.

“credit union” means—

- (a) a registered society (within the meaning given by section 1 of the Co-operative and Community Benefit Societies Act 2014^(a)) that is registered as a credit union; or
- (b) a society registered under the Credit Unions (Northern Ireland) Order 1985^(b) or a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969^(c) as a credit union;

“deposit guarantee schemes directive” means Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast), repealing directive 94/19/EC^(d);

“FSMA” means the Financial Services and Markets Act 2000^(e);

“non-UK deposit guarantee scheme” means a deposit guarantee scheme or an institutional protection scheme established in an EEA state other than the United Kingdom which is recognised by that state for the purposes of Article 4(1) of the deposit guarantee schemes directive.

(2) Except as provided by paragraph (1) or article 3—

- (a) any expression used in these Regulations which is defined in Article 2 (definitions) of the deposit guarantee schemes directive has the meaning given by that Article;
- (b) any other expression used in these Regulations which is defined in section 417 (definitions) of FSMA has the meaning given by that section.

Meaning of “compensation scheme member”

3.—(1) In these Regulations “compensation scheme member” means an institution that—

- (a) is not a member of a non-UK deposit guarantee scheme; and
- (b) falls into one of the categories of institution specified in paragraph (2).

(2) The categories of institution mentioned in paragraph (1)(b) are—

- (a) an institution that—
 - (i) is incorporated in or formed under the law of any part of the United Kingdom;
 - (ii) is not an insurer; and
 - (iii) has permission under Part 4A of FSMA to carry on the regulated activity^(f) of accepting deposits;
- (b) a building society within the meaning of section 119 of the Building Societies Act 1986^(g);
- (c) a credit union; or
- (d) an institution that—
 - (i) has its head office outside the United Kingdom;
 - (ii) is not an incoming firm or an insurer; and
 - (iii) has permission under Part 4A of FSMA to carry on the regulated activity of accepting deposits.

(a) 2014 c. 14.

(b) S.I. 1985/1205 (N.I. 12).

(c) 1969 c.24 (N.I.).

(d) OJ L173, 12.6.2014, p 149.

(e) 2000 c. 8.

(f) “regulated activity” is defined in section 417 of FSMA.

(g) 1986 c. 53.

- (3) For the purposes of this regulation—
- (a) “incoming firm” has the meaning given in section 193(1) (interpretation of Part 13) of FSMA(a); and
 - (b) “insurer” means an institution which is authorised under Part 4A of FSMA to carry on the regulated activity of effecting or carrying out contracts of insurance as principal.

PART 2

The compensation scheme

Designation of competent authority and designated authority

4.—(1) For the purposes of the deposit guarantee schemes directive the PRA(b) is the competent authority(c) and the designated authority(d).

(2) In exercising its functions under the deposit guarantee schemes directive as the competent authority and the designated authority the PRA must co-operate with EBA(e).

Notification to the scheme manager of problems with a compensation scheme member

5. The PRA must notify the scheme manager(f) in writing as soon as reasonably practicable if the PRA becomes aware that a compensation scheme member has financial difficulties which are likely to require the intervention of the scheme manager under compensation scheme rules in respect of eligible deposits(g).

Time limit for determining that a compensation scheme member is unable to repay deposits

6.—(1) If the relevant administrative authority is satisfied that a compensation scheme member has failed to repay a deposit(h) which is due and payable, the relevant administrative authority must make the determination referred to in point (8)(a) of Article 2(1) of the deposit guarantee schemes directive.

(2) The determination must be notified in writing to—

- (a) the compensation scheme member; and
- (b) (i) the scheme manager, or
(ii) if the scheme manager is the relevant administrative authority, the PRA,

as soon as reasonably practicable and in any event before the end of the period of five working days beginning with the day on which the relevant administrative authority becomes satisfied that the compensation scheme member has failed to repay a deposit which is due and payable.

(3) For the purposes of this regulation the “relevant administrative authority”—

- (a) is the scheme manager in relation to a compensation scheme member that is a credit union; and
- (b) is the PRA in relation to any other compensation scheme member.

(a) Section 193(1) was amended by S.I. 2011/1613; S.I. 2013/1773.

(b) “PRA” is defined in section 417 of FSMA.

(c) “competent authority” is defined in point (17) of Article 2(1) of the deposit guarantee schemes directive.

(d) “designated authority” is defined in point (18) of Article 2(1) of the deposit guarantee schemes directive.

(e) “EBA” is defined in section 417 of FSMA.

(f) “scheme manager” is defined in section 212(1) of FSMA.

(g) “eligible deposits” is defined in point (4) of Article 2(1) of the deposit guarantee schemes directive.

(h) “deposit” is defined in point (3) of Article 2(1) of the deposit guarantee schemes directive.

Maximum compensation payable in respect of deposits held with a compensation scheme member

7. The PRA must make compensation scheme rules which specify the maximum compensation payable in respect of eligible deposits held by a person with a compensation scheme member—

- (a) in relation to categories of eligible deposit which fall within Article 6(2) of the deposit guarantee schemes directive; and
- (b) in relation to all other categories of eligible deposit.

Determination by PRA whether contributions may be raised by the scheme manager

8. Before the available financial means(a) may be used for the purposes specified in Article 11(1) or 11(2) of the deposit guarantee schemes directive the PRA must—

- (a) determine for the purposes of the third paragraph of Article 10(4) of the deposit guarantee schemes directive whether the scheme manager may raise contributions under the compensation scheme; and
- (b) notify that determination in writing to the scheme manager and the Treasury.

Approval of increased levies for the purposes of the compensation scheme

9. If the PRA makes compensation scheme rules in respect of eligible deposits limiting the levy payable by a compensation scheme member in respect of a period specified in those compensation scheme rules, the PRA may on receiving a request in writing from the scheme manager approve a levy on a person that exceeds that limit.

Payment of compensation by the scheme manager on behalf of a non-UK scheme

10.—(1) The scheme manager must make a payment of compensation to a person in accordance with the instructions of a non-UK deposit guarantee scheme if—

- (a) that person has placed an eligible deposit with a credit institution(b) that is a member of that non-UK deposit guarantee scheme, through a branch(c) of that credit institution established in the United Kingdom;
- (b) a payment of compensation is due to that person in respect of that deposit as a result of a determination or ruling referred to in paragraph (a) or (b) of point (8) of Article 2(1) of the deposit guarantee schemes directive; and
- (c) the non-UK deposit guarantee scheme has—
 - (i) instructed the scheme manager to make that payment of compensation to that person; and
 - (ii) provided funds to the scheme manager to cover that payment of compensation.

(2) Anything done or omitted by the scheme manager in accordance with this regulation is to be treated for the purposes of section 222(1) of FSMA (statutory immunity)(d) as done or omitted in the discharge, or purported discharge, of the scheme manager's functions.

Notification of covered deposits and available financial means of the compensation scheme

11.—(1) Each year before 31st March the PRA must notify EBA(e) of the following amounts calculated as at 31st December in the preceding year—

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- (a) “available financial means” is defined in point (12) of Article 2(1) of the deposit guarantee schemes directive.
 - (b) “credit institution” is defined in point (9) of Article 2(1) of the deposit guarantee schemes directive.
 - (c) “branch” is defined in point (10) of Article 2.1 of the deposit guarantee schemes directive.
 - (d) Section 222(1) was amended by the Banking Act 2009 (c.1), section 179(2) and the Financial Services Act 2012 (c. 21), section 38(1) and Schedule 10.
 - (e) “EBA” is defined in section 417 of FSMA.

- (a) the total amount of covered deposits^(a) held by compensation scheme members; and
- (b) the amount of the available financial means^(b) of the compensation scheme.

Notification of contents of co-operation agreements

12. The PRA must notify EBA of the contents of any agreement which concerns the exercise of functions under the deposit guarantee schemes directive and is made between the scheme manager and a body which administers a non-UK deposit guarantee scheme (or, if different, the designated authority which supervises that non-UK deposit guarantee scheme).

PART 3

Amendments of primary and secondary legislation

Amendment of FSMA

13.—(1) FSMA is amended as follows.

(2) In section 55Z2 (notification of EBA)^(c) after subsection (1) insert—

“(1A) A notification given in accordance with paragraph (a) or (c) of subsection (1) must contain a statement to the effect that the compensation scheme makes provision for cases where the credit institution concerned is unable, or likely to be unable, to satisfy claims against it.”.

(3) In section 215 (rights of the scheme in insolvency), after subsection (2) insert—

“(2A) Any payment made by the scheme manager under section 214B(2)^(d) in connection with the exercise of a stabilisation power in respect of a bank, building society or credit union is to be treated as a debt due to the scheme manager from that bank, building society or (as the case may be) credit union.

(2B) In subsection (2)—

“bank” has the meaning given in section 2 of the Banking Act 2009^(e);

“building society” has the meaning given in the Building Societies Act 1986^(f);

“credit union” means a credit union within the meaning of—

(a) the Credit Unions Act 1979^(g); or

(b) article 2 of the Credit Unions (Northern Ireland) Order 1985^(h).”.

(4) In section 218A (regulators power to require information)⁽ⁱ⁾, for subsection (1) substitute—

“(1) Each regulator may make rules enabling that regulator to require authorised persons to—

(a) provide information to the scheme manager on the request of that regulator or the scheme manager; or

(a) “covered deposits” has the meaning given in point (5) of Article 2.1 of the deposit guarantee schemes directive.
 (b) “available financial means” has the meaning given in point (12) of Article 2.1 of the deposit guarantee schemes directive.
 (c) Section 55Z2 was inserted by the Financial Services Act 2012, section 11(2). Subsection (1) was amended by S.I. 2013/3115.
 (d) Section 214B was inserted by the Banking Act 2009 (c. 1), section 171(1). It was substituted for the section as originally enacted, together with sections 214C and 214D, by the Financial Services Act 2010 (c. 28), section 16(1).
 (e) 2009, c. 1. Section 2 was amended by S.I.2011/2832. There are other amendments to section 2 but none are relevant to these Regulations.
 (f) 1986, c. 53.
 (g) 1979 c. 34.
 (h) S.I. 1985/1205 (N.I. 12). There are amendments to article 2 not relevant to these Regulations.
 (i) Section 218A was inserted by the Banking Act 2009 (c.1), section 176(1) and amended by the Financial Services Act 2012 (c.21), Schedule 10.

- (b) provide information to that regulator, which may then be made available to the scheme manager by that regulator.”.

Amendment of the Insolvency Act 1986

14.—(1) The Insolvency Act 1986(a) is amended as follows.

(2) In section 386 (categories of preferential debts)(b), in subsection (1), after “steel production” insert “; debts owed to the Financial Services Compensation Scheme”.

(3) In Schedule 6 (the categories of preferential debts)—

(a) after paragraph 15A(c) insert—

“Category 6A: Debts owed to the Financial Services Compensation Scheme

15AA. Any debt owed by the debtor to the scheme manager of the Financial Services Compensation Scheme under section 215(2A) of the Financial Services and Markets Act 2000(d).”;

(b) in the italic heading before paragraph 15C(e) for “categories 7 and 8” substitute “categories 6A, 7 and 8.”;

(c) in paragraph 15C, before sub-paragraph (1) insert—

“(A1) In paragraph 15AA “the scheme manager” has the meaning given in section 212(1) of the Financial Services and Markets Act 2000.”.

Amendment of the Insolvency (Northern Ireland) Order 1989

15.—(1) The Insolvency (Northern Ireland) Order 1989(f) is amended as follows.

(2) In Article 346 (categories of preferential debts)(g), in paragraph (1), after “steel production” insert “; debts owed to the Financial Services Compensation Scheme”.

(3) In Schedule 4 (categories of preferential debts)—

(a) after paragraph 17 insert—

“Category 6A: Debts owed to the Financial Services Compensation Scheme

17A. Any debt owed by the debtor to the scheme manager of the Financial Services Compensation Scheme under section 215(2A) of the Financial Services and Markets Act 2000.”;

(b) in the heading before paragraph 21, for “7 and 8” substitute “6A, 7 and 8”;

(c) in paragraph 21, before sub-paragraph (1) insert—

“(A1) In paragraph 17A “the scheme manager” has the meaning given in section 212(1) of the Financial Services and Markets Act 2000.”.

Amendment of the Bankruptcy (Scotland) Act 1985

16. In Schedule 3 to the Bankruptcy (Scotland) Act 1985(h)—

(a) after paragraph 6A insert—

(a) 1986 c. 45.
(b) Section 386 was amended by the Pension Schemes Act 1993 (c. 48), Schedule 8, paragraph 18, the Enterprise Act 2002 (c. 40), section 251(3), the Financial Services (Banking Reform) Act 2013 (c. 33), section 13(2), and S.I. 2014/3486.
(c) Paragraph 15A was inserted by S.I. 1987/2093.
(d) Section 215(2A) is inserted by regulation 14 of these Regulations.
(e) Paragraph 15C was amended by the Financial Services (Banking Reform) Act 2013 (c.33) section 13(1) and S.I. 2014/3486.
(f) S.I. 1989/2405 (N.I. 19).
(g) Article 346 has been amended by S.I. 2005/1455 (N.I. 10), and S.I. 2014/3486.
(h) 1985 c.66 (S.).

“Debts owed to the Financial Services Compensation Scheme

6AA. Any debt owed by the debtor to the scheme manager of the Financial Services Compensation Scheme under section 215(2A) of the Financial Services and Markets Act 2000.”;

(b) after paragraph 9 insert—

“Meaning of scheme manager

9ZA. In paragraph 6AA “the scheme manager” has the meaning given in section 212(1) of the Financial Services and Markets Act 2000.”.

Credit Institutions (Protection of Depositors) Regulations 1995: revocation

17. Regulations 46 to 48 of the Credit Institutions (Protection of Depositors) Regulations 1995(a) are revoked.

PART 4

Review

Review

18.—(1) The Treasury must from time to time—

- (a) carry out a review of regulations 1 to 16,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how the deposit guarantee schemes directive (which is partially implemented by regulations 1 to 16) is implemented in EA states other than the United Kingdom.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by regulations 1 to 16,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

*Mark Lancaster
Harriett Baldwin*

4th March 2015

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in part Directive 2014/49/EU of the European Parliament and of the Council of 16th April 2014 on deposit guarantee schemes (recast) repealing directive 94/19/EC (OJ L 173 12.6.2014, p.149) (“DGSD”).

(a) S.I. 1995/1442. There are amendments to regulations 46 to 48 but they are not relevant to these Regulations.

From 4th July 2015 DGSD repeals and replaces an earlier European directive on deposit guarantee schemes (Directive 94/19/EC of the European Parliament and of the Council on deposit guarantee schemes (OJ L 135, 13.5.1994, p.5) (“DGSD94”).

Whilst these Regulations implement some provisions of DGSD, the remainder are implemented through rules made, and other legally binding requirements imposed, by the Prudential Regulation Authority (“PRA”).

Regulation 4 provides that the PRA is the competent authority and the designated authority for the purposes of the DGSD.

Regulation 5 requires the PRA to notify the Financial Services Compensation Scheme (“FSCS”) (the “scheme manager”) if the PRA becomes aware that a credit institution has financial difficulties which are likely to require the intervention of the scheme manager.

Regulation 6 requires the PRA, or the FSCS in the case of a credit union, if it is satisfied that a credit institution has failed to repay deposits which are due and payable, to make a determination as soon as possible (and in any event within five working days) that the deposits are unavailable.

Regulation 7 requires the PRA to make rules specifying the maximum compensation payable under the compensation scheme in respect of deposits held by a person with a credit institution. The PRA must specify the maximum compensation payable in the usual case, and the maximum payable when a deposit is one of a limited number of kinds of deposit which the DGSD allows to have temporary increased protection.

Regulation 8 requires the PRA to determine whether the FSCS may raise contributions from members of the compensation scheme before the available financial means of the scheme are used to fund a payment of compensation under the scheme or to finance steps taken to resolve a credit institution which is experiencing financial difficulties.

Regulation 9 allows the PRA to approve a proposal by the FSCS to levy a compensation scheme member for an amount which is above a limit specified in the PRA’s compensation scheme rules.

Regulation 10 requires the FSCS to pay compensation to a person who has made deposits through a UK branch with a credit institution that is a member of a deposit guarantee scheme in a state within the European Economic Area (“EEA”) other than the United Kingdom, provided that the non-UK deposit guarantee scheme provides the FSCS with funds to cover the payment.

Regulation 11 requires the PRA to notify the European Banking Authority (“EBA”) each year of the amount of deposits in the United Kingdom which are covered by the compensation scheme and the available financial means of the compensation scheme in the preceding year.

Regulation 12 requires the PRA to notify the EBA of the contents of any agreements concluded between the FSCS and deposit guarantee schemes established in EEA states other than the United Kingdom.

Part 3 contains amendments of primary and secondary legislation. It includes provision for a new category of preferential debt: that is, debts owed to the FSCS as a result of the FSCS funding actions to resolve a credit institution which is experiencing financial difficulties.

Part 4 requires the Treasury to review regulations 1 to 16 every five years.

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

£6.00

UK2015030451 03/2015 19585

<http://www.legislation.gov.uk/id/uksi/2015/486>

ISBN 978-0-11-113183-1



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