
STATUTORY INSTRUMENTS

1998 No. 2169

FINANCIAL SERVICES

The Investor Compensation Scheme Regulations 1998

Made - - - - *3rd September 1998*
Laid before Parliament *3rd September 1998*
Coming into force - - *26th September 1998*

Whereas the Treasury are a government department designated(1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to measures relating to investment firms and to the provision of investment services;

Now therefore the Treasury in exercise of the powers conferred on them by section 2(2) of that Act and of all other powers enabling them in that behalf hereby make the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Investor Compensation Scheme Regulations 1998 and shall come into force on 26th September 1998.

(2) In these Regulations:

“investment firm” has the same meaning as in article 1 of the European Parliament and Council directive 97/9/EC(6) of 3 March 1997 on investor compensation schemes.

“relevant scheme” means a scheme for the payment of compensation to investors who suffer loss as a result of the inability of a participant in the scheme to meet its obligations arising out of investors' claims.

Rights of the operators of relevant schemes in respect of investment firms

2.—(1) This regulation applies to compensation paid to a person (“the claimant”) by the operator of a relevant scheme set up pursuant to the conditions and arrangements mentioned in section 43(2) of the Financial Services Act 1986(3) in respect of any liability of an investment firm which is or was a participant in the scheme.

(2) Where the operator of a relevant scheme pays compensation to which this regulation applies, the payment of compensation extinguishes the liability of that firm to the claimant to the extent of

(1) S.I.1992/1315.

(2) 1972 c. 68.

(6) OJNo. L 84, 26.3.97, p.22

(3) 1986 c. 60.

the compensation paid and confers on the operator a right of recovery against the firm which is otherwise identical to the claimant's former rights in the claim or part thereof.

Amendment of the Building Societies Act 1986

3. For subsection (4) of section 27 of the Building Societies Act 1986(4) shall be substituted the following—

“(4) The Board may decline to make any payment under subsection (1) to a person who, in the opinion of the Board—

- (a) had any responsibility for, or may have profited directly or indirectly from, the circumstances giving rise to the institution's financial difficulties; or
- (b) is entitled to receive a payment in respect of his protected investment under a scheme established under section 54 of the Financial Services Act 1986 or set up pursuant to the conditions and arrangements referred to in section 43(2) of that Act,

and where any payment as mentioned in paragraph (b) above has been received by a person, the Board shall decline to make a payment under subsection (1) to that person.”

Amendment of the Banking Act 1987

4. For subsection (5) of section 58 of the Banking Act 1987(5) shall be substituted the following—

“(5) The Board may decline to make any payment under subsection (1) to a person who, in the opinion of the Board—

- (a) has any responsibility for, or may have profited directly or indirectly from, the circumstances giving rise to the institution's financial difficulties; or
- (b) is entitled to receive a payment in respect of his protected deposit under a scheme established under section 54 of the Financial Services Act 1986 or set up pursuant to the conditions and arrangements referred to in section 43(2) of that Act,

and where any payment as mentioned in paragraph (b) above has been received by a person, the Board shall decline to make a payment under subsection (1) to that person.”

Bob Ainsworth

Graham Allen

Two of the Lords Commissioners of Her Majesty's Treasury

3rd September 1998

(4) 1986 c. 53. Section 27 of the Building Societies Act has been amended by the Credit Institutions (Protection of Depositors) Regulations 1995 (S.I. 1995/1442) and by section 43 of and Schedule 7 to the Building Societies Act 1997 (c. 32).

(5) 1987 c. 22. Section 58 of the Banking Act was amended by the Credit Institutions (Protection of Depositors) Regulations 1995 (S.I. 1995/1442).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are part of the implementation of the Investor Compensation Schemes Directive (Directive [97/9/EC](#) of 3 March 1997) (“the ICD”).

Regulation 2 provides that where an investment firm is a participant in a compensation scheme set up under the section 43 listing conditions, the operator of that scheme is subrogated to the rights of claimants against the investment firm to the extent of the payment of compensation made by the scheme to the investor. The regulation implements article 12 of the ICD which provides that schemes which make payments in order to compensate investors shall have the right of subrogation to the rights on those investors in liquidation proceedings for amounts equal to their payments.

Regulations 3 and 4 amend the Building Societies Act [1986 \(c. 53\)](#) and the Banking Act [1987 \(c. 22\)](#) respectively to enable the Boards administering the compensation schemes set up under those statutes to reject a claim if the claim is covered by the scheme established under sections 43 or 54 of the Financial Services Act. This gives effect to article 2.3 of the ICD which stipulates that no claim should be eligible for compensation under both a scheme designed to implement the ICD and one designed to implement the Deposit Guarantee Schemes Directive (Directive [94/19/EC](#) of 30 May 1994).