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STATUTORY INSTRUMENTS

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**2008 No. 2644**

**The Heritable Bank plc Transfer of  
Certain Rights and Liabilities Order 2008**

**PART 3**

**FINANCIAL SERVICES COMPENSATION SCHEME**

**Liability of Heritable to the FSCS and the Treasury**

**15.**—(1) Heritable is liable to the FSCS in respect of an amount equal to the amount which would have been provable in the administration of Heritable in respect of the transferred liabilities had this Order not been made and had Heritable been placed in administration immediately before the effective date.

(2) The FSCS shall pursue recoveries from Heritable in respect of the liability incurred under paragraph (1) to the extent reasonably practicable.

(3) Subject to paragraph (4), if an eligible claimant had, in relation to a relevant protected deposit, a liability to Heritable which would have been capable of being set-off against a liability of Heritable to that claimant in an administration of Heritable (if that liability had not been transferred), the amount which would have been provable in the administration shall for the purposes of paragraph (1) be taken to be the sum of—

- (a) the amount of the reduction in the depositor's liability to Heritable as a result of the application of set-off; and
- (b) the amount which would have been recovered in respect of the balance of the claim (if any) provable in the administration of Heritable.

(4) Paragraph (3) applies only to the extent that its application does not have the effect that the other creditors of Heritable are in a worse position than they would have been had the set-off been applied.

(5) The FSCS shall determine the proportion of any amount which it receives or recovers from Heritable which is properly attributable to each type of liability described below and shall promptly on receipt account for that receipt or recovery as follows—

- (a) in full to the Treasury, to the extent that—
  - (i) the receipt is attributable to a transferred liability; and
  - (ii) the person to whom such transferred liability is owed would not have been entitled to make a claim for compensation from the FSCS immediately before the effective time;
- (b) to the Treasury by reference to the relevant proportion, to the extent that—
  - (i) the receipt is attributable to a transferred liability;
  - (ii) the person to whom such transferred liability is owed is an eligible claimant; and

- (iii) the amount of such liability exceeds the maximum compensation that the eligible claimant would have been entitled to claim from the FSCS immediately before the effective time;
- (c) for the account of the FSCS, to the extent that—
  - (i) the receipt is attributable to a transferred liability owed to an eligible claimant; and
  - (ii) the amount of such liability is equal to or less than the maximum compensation that the eligible claimant would have been entitled to claim from the FSCS immediately before the effective time.
- (6) In paragraph (5), the “relevant proportion” is the proportion of the total liabilities which arise under article 13(1) for which the Treasury are liable.
- (7) If Heritable is in administration or an interim order has been made in relation to Heritable under paragraph 13(1)(d) of Schedule B1 to the 1986 Act, the liability incurred under paragraph (1) shall not be treated as an expense of the administration under paragraph 99(3) of Schedule B1 of the 1986 Act, rule 2.67 of the Insolvency Rules 1986 or any analogous provision of the Insolvency (Scotland) Rules 1986.
- (8) Nothing in this Part shall have the effect that the FSCS recovers less than it would have recovered if this Order had not been made.