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STATUTORY INSTRUMENTS

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**2009 No. 351**

**The Bank Insolvency (Scotland) Rules 2009**

**PART 7**

**CLAIMS IN LIQUIDATION**

**Submission of claims**

**27.** Apply rule 4.15 of the 1986 Rules<sup>(1)</sup>.

**Application of the Bankruptcy Act**

**28.**—(1) Apply rule 4.16 of the 1986 Rules<sup>(2)</sup>.  
(2) Ignore rule 4.16<sup>(3)</sup>.

**Claims in foreign currency**

**29.**—(1) Apply rule 4.17 of the 1986 Rules<sup>(3)</sup>.  
(2) In rule 4.17<sup>(2)</sup> omit from “or, if” to the end.

**Rights of eligible depositor and set-off**

**30.**—(1) This rule applies if the FSA Rules allow the FSCS to make gross payments of compensation.

(2) In determining the sums due from the bank to an eligible depositor or from the eligible depositor to the bank for the purpose of any right or claim of set off available to the bank against the eligible depositor—

- (a) where the total of the sums held by the bank for any eligible depositor in respect of protected deposits is no more than the amount prescribed as the maximum compensation payable in respect of protected deposits under Part 15 of the Financial Services and Markets Act 2000<sup>(4)</sup>, paragraph (3) applies; and
- (b) where the sums held by the bank exceed that limit, paragraph (4) applies.

(3) Where paragraph (2)(a) applies, regardless of whether there are any sums due from the eligible depositor to the bank, the bank shall not be entitled to exercise or claim any right of set off available to it against or in respect of those sums held by the bank for the eligible depositor in respect of the protected deposits; and the sum due to the eligible depositor from the bank will be the total of the sums held by the bank for that eligible depositor in respect of protected deposits which sum shall be deemed free from any right or claim of set off by the bank.

(4) Where paragraph (2)(b) applies—

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(1) Rule 4.15 was amended by regulation 27(1) of [S.I. 2003/2109](#).  
(2) Rule 4.16 was amended by paragraph 15 of Schedule 1(I) to [S.I. 1987/1921](#), and rule 3 of [S.S.I. 2008/393](#).  
(3) Rule 4.17 was amended by rule 4 of [S.S.I. 2008/393](#).  
(4) [2000 c.8](#).

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- (a) the bank shall be entitled to exercise any right or claim of set off available to it only in respect of any sums held by the bank for that eligible depositor in excess of that limit, which sums shall be subject to any right or claim of set off available to the bank; and
  - (b) the sums due from the bank to the eligible depositor will be—
    - (i) the amount by which the total amount exceeds that limit subject to any right or claim of set off available to the bank; and
    - (ii) the sums held by the bank for the eligible depositor in respect of protected deposits up to the limit of the amount prescribed as the maximum compensation payable in respect of protected deposits under Part 15 of the Financial Services and Markets Act 2000.
- (5) Any arrangements with regard to set off between the bank and the eligible depositor in existence before the commencement of bank insolvency shall be subject to this rule.