

2009 No. 807

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (Contribution to
Costs of Special Resolution Regime) Regulations 2009**

Approved by both Houses of Parliament

Made - - - - 3.06 p.m. on 29th March 2009

Coming into force 29th March 2009

Laid before Parliament 30th March 2009

The Treasury, in exercise of the power conferred by sections 214B and 428 of the Financial Services and Markets Act 2000(a), make the following Regulations.

The power in section 214B is being exercised for the first time and the Treasury are satisfied, in accordance with section 259(4) of the Banking Act 2009(b), that it is necessary to exercise it without laying a draft for approval.

Citation

1. These Regulations may be cited as the Financial Services and Markets Act 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2009.

Interpretation

2. In these Regulations—

“the Act” means the Financial Services and Markets Act 2000;

“the 2009 Act” means the Banking Act 2009;

“Amount A” has the meaning set out in regulation 4(2)(a)(vii)(aa);

“Amount B” has the meaning set out in regulation 5(2);

“amount of recovery” has the meaning set out in regulation 8(1);

“banking institution” means—

(a) a bank (within the meaning of section 2 of the 2009 Act);

(b) a building society (within the meaning of section 119 of the Building Societies Act 1986(c));

(a) 2000 c.81. Section 214B was inserted by section 171 of the Banking Act 2009.

(b) 2009 c.1

(c) 1986 c.53.

- (c) a holding company (within the meaning of section 82 of the 2009 Act); or
 - (d) if an order has been made under section 89 of the 2009 Act applying Part 1 of that Act to credit unions (within the meaning of section 31 of the Credit Unions Act 1979^(a) or, in Northern Ireland, Article 2 of the Credit Unions (Northern Ireland) Order 1985^(b)), a credit union;
- “compensation scheme order” has the meaning set out in section 49(2) of the 2009 Act;
- “COMP Sourcebook” means the Authority’s Compensation Sourcebook as amended from time to time, made by the Authority under the Act;
- “court” means the High Court or the Court of Session;
- “determination notice” has the meaning set out in regulation 8(6);
- “eligible claimant” means a person who is eligible to make a claim under the scheme in respect of a deposit at a banking institution (see rule 4.2.1. of the COMP Sourcebook);
- “end of the resolution” means the time at which the scheme manager receives the final notification under regulation 5 or 6;
- “FEES 6 Chapter” means Chapter 6 (Financial Services Compensation Scheme Funding) of the Fees Manual as amended from time to time, made by the Authority under the Act;
- “protected deposit” means a protected deposit under the scheme (see rule 5.3.1 of the COMP Sourcebook);
- “qualifying claimant” means an eligible claimant who, if the banking institution were to have been in default for the purposes of the COMP Sourcebook immediately before the relevant time, would have had a claim against the banking institution in respect of a protected deposit;
- “relevant time” means the time at which a stabilisation power takes effect in respect of a banking institution and, if more than one stabilisation power is exercised, means the time at which the first stabilisation power so exercised takes effect;
- “resolution fund order” has the meaning set out in section 49(3) of the 2009 Act;
- “revised determination notice” has the meaning set out in regulation 9(3);
- “scheme” means the compensation scheme;
- “stabilisation power” means one of the stabilisation powers referred to in section 1(4) of the 2009 Act and a reference to the exercise of a stabilisation power includes the exercise of more than one stabilisation power in respect of or in connection with the same banking institution;
- “third party compensation scheme order” has the meaning set out in section 49(4) of the 2009 Act; and
- “total liability” has the meaning set out in regulation 5(6).

Liability of the scheme

3.—(1) The scheme manager may be required under section 214B of the Act to make payments—

- (a) in connection with the transfer of rights and liabilities in respect of protected deposits,
- (b) in connection with the transfer of any other property, rights and liabilities of the banking institution,
- (c) to a bank administrator in connection with the pursuit of Objective 1 (and “bank administrator” and “Objective 1” have the meanings given in sections 141 and 138 of the 2009 Act respectively), and
- (d) in connection with taking the banking institution into temporary public ownership in accordance with section 13 of the 2009 Act.

(a) 1979 c.34.
(b) S.I. 1985/1205 (NI 12).

(2) Those payments include payments in respect of expenses incurred by the Bank of England or the Treasury in connection with the activities in paragraph (1).

Notification

4.—(1) Where section 214B applies, and the Treasury requires the scheme manager to make payments under regulation 3, the Treasury will notify the scheme manager as soon as practicable.

(2) The notification under paragraph (1)—

(a) shall include—

- (i) the name and address of the banking institution in respect of which, or in connection with which, the stabilisation power has been exercised,
- (ii) a statement that the Treasury think that the banking institution was or, but for the exercise of the stabilisation power, would have become unable to satisfy claims against it,

(iii) details of the stabilisation power exercised,

(iv) details of when it was exercised,

(v) details of the transferee (if any),

(vi) the activities in regulation 3 in connection with which the scheme manager is required to make payments,

(vii) subject to regulation 6(2), either—

(aa) a calculation of the provisional amount (“Amount A”) of the scheme’s liability in respect of the activities in sub-paragraph (vi) and any information and assumptions upon which this calculation is based, or

(bb) (if insufficient information is known at the time the notification is made), an estimate of Amount A,

(viii) details as to any payments to be made by the scheme manager in respect of Amount A and when those payments are to be made,

(ix) details of the person to whom any payments are to be made; and

(b) may also include—

(i) any relevant conditions to be satisfied before payments are to be made, and

(ii) any further information that the Treasury consider necessary in respect of payments to be made.

(3) Amount A, and any other information contained in a notification may be adjusted from time to time by the Treasury sending a revised notification to the scheme manager.

(4) A notification under this regulation may be given by such means as the Treasury consider appropriate.

Payment after the end of the resolution

5.—(1) This regulation applies when the notification under regulation 4(1) requires the scheme manager to make payments after the end of the resolution.

(2) Following receipt of the notification, the scheme manager will, by any methodology or approach it considers appropriate, make an assessment of the amount of compensation (“Amount B”) that qualifying claimants would, immediately before the relevant time, have been entitled to claim from the scheme in respect of protected deposits if—

(a) the banking institution was in default (see rule 6.3.1 of the COMP Sourcebook) immediately before the relevant time, and

(b) the stabilisation power had not been exercised and no other order or instrument under Parts 1 to 3 of the 2009 Act would have been made in relation to or in connection with the banking institution,

and the scheme manager will notify Amount B, together with any calculations or assumptions made in carrying out the assessment, to the Treasury.

(3) For the purposes of paragraph (2), if the quantification date for a claim would have been a date other than the date upon which the banking institution would have been in default, the amount that a qualifying claimant would have been entitled to claim from the scheme is the lesser of—

- (a) the amount which the scheme manager quantifies as being the value of that claim as at the time immediately before the relevant time, and
- (b) the amount that would have been payable at the quantification date, if different, for that claim,

and in this paragraph, “quantification date” means the date the banking institution would have been in default or the day the protected deposit would have been due and payable (if later) (see rule 12.3.1 of the COMP Sourcebook).

(4) Amount B may be adjusted from time to time by the scheme manager and any such adjustment shall be notified to the Treasury by the scheme manager as soon as reasonably practicable after the adjustment is made.

(5) If, at any time, Amount A is greater than Amount B then, subject to paragraph (6), the scheme’s liability will be reduced to Amount B and the scheme manager will notify this to the Treasury.

(6) The scheme’s liability will be further reduced by—

- (a) the amount of recovery set out in the determination notice or in the revised determination notice under regulations 8 or 9,
- (b) the amount of compensation (if any) actually paid out under the scheme to eligible claimants in respect of protected deposits held with the banking institution, and
- (c) the amount of any other compensation which the scheme has become liable to pay under a provision made under section 61(2) of the 2009 Act,

to give the scheme’s total liability (“the total liability”).

(7) When the Treasury have received sufficient information to calculate the scheme’s total liability and consider that no further revised notifications are to be made, the Treasury will—

- (a) calculate the scheme’s total liability, and
- (b) appoint a person to carry out an independent verification of the total liability,

and the costs of the appointment will be borne jointly by the Treasury and the scheme.

(8) After the independent verification has taken place, the Treasury will—

- (a) make any adjustments to the total liability as a result of the verification, and
- (b) send a final notification to the scheme manager that a payment is required, setting out the scheme’s total liability and the date by which the payment is to be made.

(9) The Treasury and the scheme manager may agree that it is neither appropriate nor reasonable to make further revised notifications under regulations 4(3) or 5(4), and, following such an agreement, paragraphs (7) and (8) will apply.

Payment before the end of the resolution

6.—(1) This regulation applies when the notification under regulation 4(1) or a revised notification under 4(3) requires the scheme manager to make payments before the end of the resolution.

(2) The notification or revised notification must also contain an estimate of the total liability, to the best of the Treasury’s knowledge in the circumstances at the time the notification is made and for the purpose of this regulation, this estimate shall constitute Amount A.

(3) The scheme manager will pay Amount A in accordance with the timetable for payments set out in the notification.

(4) Regulations 5(2) to (7) and (9) will then apply.

- (5) After the independent verification has taken place, the Treasury will—
- (a) make any adjustments to the total liability as a result of the verification, and
 - (b) send a final notification to the scheme manager setting out the scheme’s total liability, a summary of the amounts paid or to be paid by the scheme, and the date when any outstanding payments (if any) are to be made.
- (6) If the scheme’s total liability is less than the aggregate amount already paid by the scheme manager in accordance with the notification, the scheme manager will notify the Treasury and the Treasury will refund the difference.
- (7) The Treasury will pay any refund within 28 days of the final notification.
- (8) The Treasury will pay interest on the refunded amount at such a rate as may be agreed between the Treasury and the scheme manager.
- (9) For the purposes of paragraph (8)—
- (a) interest shall be calculated from the date on which the amount paid by the scheme manager under the notification or a revised notification first exceeded the total liability, and
 - (b) where the notification or a revised notification required several payments to be made, interest shall be calculated on each amount paid by the scheme manager after the date referred to in paragraph (a) from the date on which the relevant amount was paid.

Independent valuer

7.—(1) After making a notification under regulation 4(1), the Treasury must make arrangements for an independent valuer to perform the function in regulation 8(1).

(2) Where section 54 of the 2009 Act applies and the Treasury makes provision for the appointment of an independent valuer in a compensation scheme order, a resolution fund order or a third party compensation scheme order, the Treasury may specify that the independent valuer may perform the function in regulation 8(1).

(3) Where the Treasury do not make the specification in paragraph (2), Part 1 of the Schedule to these Regulations shall apply.

Function of the independent valuer

8.—(1) The independent valuer must calculate the amount that would have been likely to be recovered by the scheme from the banking institution (“the amount of recovery”) if immediately before the relevant time —

- (a) the banking institution was in default (see rule 6.3.1 of the COMP Sourcebook),
- (b) the institution had entered into insolvency, and
- (c) the scheme manager had paid the amount of compensation that qualifying claimants would have been entitled to receive.

(2) For the purposes of paragraph (1)(b), where regulation 7(2) applies and a valuation principle specified in the compensation scheme order, resolution fund order or third party compensation scheme order requires the independent valuer to assume the banking institution is in a specified insolvency procedure, in sub-paragraph (1)(b), for “insolvency”, substitute a reference to the specified insolvency procedure.

(3) The independent valuer may do anything necessary or desirable for the purposes of or in connection with calculating the amount of recovery.

(4) The independent valuer may apply to the court for an order requiring the provision of information reasonably required for the purposes of calculating the amount of recovery and in that event paragraph 12 of the Schedule shall apply.

(5) Paragraphs 13 to 16 of the Schedule apply to information obtained by the independent valuer in connection with the function specified in paragraph (1).

(6) When the amount of recovery has been calculated, the independent valuer will give the scheme manager and the Treasury notice in writing of the determination (“the determination notice”).

(7) The determination notice shall contain the following information—

- (a) the date on which it is issued,
- (b) the amount of recovery, and
- (c) assumptions and calculations relevant to the determination.

(8) The scheme manager may publish the determination notice on the scheme’s website.

Appeal against the amount of recovery

9.—(1) If the scheme manager or the Treasury are dissatisfied with the determination notice, the Treasury or the scheme manager may require the independent valuer to reconsider his or her determination.

(2) The request must be made within 3 months of the date of the determination notice and must—

- (a) set out the reasons for disputing the amount of recovery, and
- (b) be in writing.

(3) Where the independent valuer is required to reconsider the determination made under regulation 8, he or she must give the Treasury and the scheme manager notice in writing of his or her revised determination (“the revised determination notice”).

(4) The revised determination notice must contain the information specified in regulation 8(7).

(5) If the Treasury or the scheme manager is dissatisfied with the revised determination notice, either may apply to the court.

(6) On receiving an application under paragraph (5), the court may require the independent valuer to redetermine his or her revised determination and may give directions, including directions as to costs (in Scotland, expenses).

(7) Where paragraph (6) applies, paragraphs (3), (4) and (8) will apply to any re-determination in accordance with a direction of the court.

(8) The scheme manager may publish the revised determination notice on the scheme’s website.

Application to the court

10.—(1) An application may be made to the court by the Treasury or the scheme manager for the resolution of disputes arising under these Regulations.

(2) An application may concern—

- (a) a calculation or assumption made, or
- (b) the timing or any issue relating to the making of payments,

but no application may be made under this regulation in respect of any determination or revised determination made by the independent valuer under regulations 8 or 9.

(3) On receipt of an application the court may give directions as to—

- (a) the revising of a calculation,
- (b) the assumptions to be made when revising that calculation,
- (c) the independent verification of a revised calculation,
- (d) the timing or any issue relating to the making of payments, and
- (e) any other such matters, including directions as to the adjustment of the total liability as a result of any revised calculations as the court thinks fit.

(4) The court shall give directions as to costs (in Scotland, expenses) of the application.

Payments made under these Regulations to constitute payment of compensation under the scheme

11.—(1) For the purposes of Part 15 of the Act, the COMP Sourcebook and the FEES 6 Chapter—

- (a) any payments made by the scheme manager under these Regulations in respect of protected deposits shall constitute payment of compensation to each qualifying claimant in respect of claims under the scheme against the banking institution for protected deposits;
- (b) on the scheme manager receiving the notification from the Treasury under regulation 4(1)—
 - (i) the banking institution shall be deemed to be in default for purposes of section 213, the COMP Sourcebook and the FEES 6 Chapter,
 - (ii) each qualifying claimant shall be deemed to have made an application for compensation for the purpose of the COMP Sourcebook and the FEES 6 Chapter, and
 - (iii) each qualifying claimant shall be deemed to have accepted an offer of compensation made by the scheme and to have received payment for such compensation for the purposes of the COMP Sourcebook and the FEES 6 Chapter,

and, accordingly, a qualifying claimant has no right to claim, and the scheme has no obligation to pay, any further compensation in respect of a protected deposit with that banking institution.

(2) For the purposes of this regulation—

- (a) where all or part of the business of a banking institution has been transferred to a bridge bank under section 12 of the 2009 Act, the bridge bank is to be treated as being the same banking institution as the institution in respect of which the stabilisation power was exercised;
- (b) where the banking institution has been taken into temporary public ownership under section 13 of the 2009 Act, when that institution ceases to be publicly owned, it shall be treated as a new banking institution; and
- (c) a “qualifying claimant” means a qualifying claimant whose protected deposit has been dealt with by the exercise of the stabilisation power.

Bob Blizzard
Alistair Darling

29th March 2009

Two of the Lords Commissioners of Her Majesty’s Treasury

SCHEDULE

Regulations 7 and 8

PART 1

The appointment and remuneration of the independent valuer

1. The Treasury must appoint, or appoint a panel to appoint, an independent valuer to perform the function in regulation 8(1).

2. The independent valuer is to hold and vacate office in accordance with the terms of his or her appointment.

3. The Treasury may remove the independent valuer only on the ground of incapacity or serious misbehaviour.

4. In the event of the death of the independent valuer, or if the valuer is removed from office or resigns, the Treasury (or panel appointed by the Treasury) shall appoint a new independent valuer as soon as possible.

5. The independent valuer shall be—

- (a) paid such remuneration, and
- (b) reimbursed such expenses,

as the Treasury may determine.

6. The Treasury may appoint a person to verify the remuneration and expenses of the independent valuer.

7. The independent valuer may appoint staff.

8. The independent valuer shall determine the remuneration and other conditions of service of persons appointed under paragraph 7.

9. Any determination under paragraph 8 shall require the approval of the Treasury.

10. Independent valuers (and their staff) are neither servants nor agents of the Crown (and in particular are not civil servants).

11. Records of an independent valuer in relation to his or her functions in connection with an appointment under these Regulations are public records for the purposes of the Public Records Act 1958(a).

PART 2

Application to the court for information

12.—(1) The court may, on an application by the independent valuer, make an order requiring a person to provide information that is reasonably required for the purpose of assessing the amount of recovery.

(2) A person required to provide information pursuant to an order under sub-paragraph (1) shall not be required to provide information—

(a) 1958 c.51.

- (a) in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings,
- (b) if such provision by the person holding it would be prohibited by or under any enactment, or
- (c) if it is held by a government department and provision of such information would be contrary to the public interest.

(3) In relation to information recorded otherwise than in legible form, the power to require it to be provided includes power to require it to be provided in a form from which it can be readily produced in visible and legible form.

13. A person who provides information to the independent valuer for the purposes of the assessment by the valuer of the amount of recovery is not, by reason only of the provision of such information, liable in any proceedings relating to a breach of confidence.

14. Specified information shall not be disclosed by the independent valuer (or any person to whom the independent valuer has disclosed such information in accordance with paragraph 15(2)) without the consent of the person from whom the independent valuer obtained the specified information and, if different, the person to whom it relates.

15.—(1) The prohibition in paragraph 14 of the disclosure of specified information is subject to the following exceptions.

(2) The independent valuer may, for the purpose of assessing the amount of recovery, disclose specified information to any staff appointed by the independent valuer or to any person providing advice or assistance to the independent valuer.

(3) The independent valuer may disclose specified information if and to the extent that the independent valuer considers it necessary to do so for the purposes of exercising the functions of the office.

(4) The independent valuer must, before disclosing any specified information in accordance with sub-paragraph (3), have regard to the need to exclude from disclosure (so far as practicable)—

- (a) commercial information the disclosure of which might significantly harm the legitimate business interests of the person to whom it relates,
- (b) information relating to the private affairs of an individual, the disclosure of which might significantly harm the individual's interests, or
- (c) any information the disclosure of which would be contrary to the public interest.

(5) The independent valuer may disclose specified information in accordance with this paragraph subject to such conditions as the independent valuer thinks appropriate.

16. In this Part, “specified information” means any information obtained by the independent valuer for the purpose of assessing the amount of recovery.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 214B of the Financial Services and Markets Act 2000 and provide for the Treasury to notify the Financial Services Compensation Scheme (“the scheme”) if it requires the scheme to contribute to expenses incurred in connection with the exercise of a stabilisation tool in respect of a banking institution under Part 1 of the Banking Act 2009 (“the 2009 Act”).

Regulation 3 sets out payments in connection with the exercise of a stabilisation power under Part 1 of the 2009 Act which the Treasury may require the scheme to make.

Regulation 4 provides that where section 214B (1) applies and payments are required, the Treasury will notify the scheme manager as to the payments it is to make and when such payments are to be made. The Treasury may revise the notification from time to time.

Regulation 5 applies when the notification requires the scheme to make payments after all expenses and liabilities have been ascertained and verified. The scheme then will calculate what it would have had to pay out to eligible depositors if, at the time at which the stabilisation power was exercised, the bank had instead gone into default. If this amount is less than the scheme’s liability under the notification, then the scheme’s liability is reduced to this amount. The scheme’s liability is also reduced by the amount of recovery it would have expected to recover from the insolvent estate of the banking institution.

Regulation 6 applies when the notification requires the scheme to make a payment before all expenses and liabilities have been ascertained and verified. If, after all the costs have been ascertained, the scheme has paid too much money then the Treasury will refund any excess paid.

Regulation 7 requires the Treasury to appoint an independent valuer. This may be the same person appointed under certain orders made under the 2009 Act. If not, then Part 1 of the Schedule, which sets out provisions concerning the appointment of the valuer, applies.

Regulation 8 sets out the functions of the independent valuer. The independent valuer may apply to court for an order requiring the provision of information. Part 2 of the Schedule sets out provisions concerning this information.

Regulation 9 provides for the determination of the independent valuer to be reconsidered and appealed to court.

Regulation 10 provides for applications to be made to court for the resolution of disputes arising under the Regulations, other than a dispute over the independent valuer’s determination.

Regulation 11 provides that qualifying claimants under the scheme, who have had their deposits dealt with under the exercise of the stabilisation power, are deemed to have made claims under the scheme and cannot make a claim against the scheme for compensation.

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