
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Banking Act 2009 (c. 1) (“the Act”), as amended by the Financial Services (Banking Reform) Act 2013 (c. 33) (which introduced a new stabilisation power, the power to make special bail-in provision). They also implement, in part, Directive 2014/59/EU of the European Parliament and of the Council of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (OJ L173, 12.6.2014, p.190) (“the recovery and resolution directive”).

The Regulations specify provisions which must, or may, be included in a compensation order made under the Act following the exercise of the power to make special-bail in provision in respect of banks, banking group companies, investment firms, or—with modifications—building societies. The nature of the compensation order will depend on the way in which special bail-in provision is made: when made under the bail-in stabilisation option of section 12A of the Act, this will be a bail-in compensation order; when made in conjunction with a sale to a commercial purchaser under section 11(2), the bridge bank stabilisation option of section 12 of the Act or the asset management vehicle stabilisation option under section 12ZA of the Act, this will be a third party compensation order, which regulation 4 requires to be included in the resolution fund order (a “relevant compensation order”).

The Regulations relate, in particular, to the treatment of those who were pre-resolution shareholders and creditors (as defined in section 60B of the Act, the shareholders and creditors immediately before the coming into force of the first instrument made by the Bank in respect of the bank or investment firm) (“relevant persons”). As building societies do not have shareholders, in their application to building societies these Regulations refer instead to the shareholding members of the building society (regulation 13).

Regulation 3 sets out the cases in which the Regulations apply.

Regulation 5 provides that a relevant compensation order must provide for the appointment of an independent valuer to determine whether relevant persons should be paid compensation and if so, in what amount.

Regulation 6 provides that the relevant compensation order must require the independent valuer to assess the treatment actually received by relevant persons and the treatment relevant persons would have received had the banking institution entered insolvency. If the independent valuer determines that the actual treatment is less favourable than the insolvency treatment, the valuer must determine that compensation is payable. The amount of compensation is to be determined by the independent valuer by reference to the fair and equitable value of that difference in treatment. The methodology is very similar to the mandatory compensation provisions following partial property transfers under the Act, as provided for in the Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009 (S.I. 2009/319).

Regulation 7 provides that a relevant compensation order must either specify what insolvency process the independent valuer should apply for the purposes of assessing the insolvency treatment or that the independent valuer must determine which insolvency process it is likely that the banking institution would have entered had the first resolution instrument (or property transfer instrument, in the case of the bridge bank option) not been made.

Regulation 8 makes provision for the valuation principles which the independent valuer must apply.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument:
The Banking Act 2009 (Mandatory Compensation Arrangements Following Bail-in) Regulations 2014 No. 3330

Regulation 9 provides that a relevant compensation order must include a provision enabling the independent valuer to make provision for payments to be made on account of compensation to be payable under the order.

Regulation 10 provides that a relevant compensation order must require an independent valuer to have regard to information provided by a relevant person which is relevant to the exercise of the independent valuer's functions under the order.

Regulation 11 provides that a relevant compensation order may make provision as to the assumptions the independent valuer must make as to the treatment or valuation of certain property of, or securities issued by, the banking institution.

Regulation 12 provides for the application of these Regulations to building societies (as noted above), with modifications.

Regulation 13 requires the Treasury to review the regulatory system established by the regulations at least once every 5 years.

A Transposition Table setting out how the recovery and resolution directive is transposed into UK law is available from HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ.

A full impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on <http://www.hm-treasury.gov.uk/> and is published alongside the Regulations on <http://www.legislation.gov.uk/>.