



# Banking Act 1987

## 1987 CHAPTER 22

### PART II

#### THE DEPOSIT PROTECTION SCHEME

##### *Payments out of the Fund*

#### **58 Compensation payments to depositors**

- (1) Subject to the provisions of this section, if at any time an institution becomes insolvent and at that time—
  - (a) it is an authorised institution; or
  - (b) it is a former authorised institution (not being a recognised bank or licensed institution excluded by an order under section 23(2) of the Banking Act 1979),the Board shall as soon as practicable pay out of the Fund to each depositor who has a protected deposit with that institution an amount equal to three-quarters of his protected deposit.
- (2) Subject to the provisions of this section, if at any time an administration order is made under section 8 of the Insolvency Act 1986 in relation to an institution and at that time it is such an institution as is mentioned in subsection (1) above the Board shall pay out of the Fund to each depositor who has a protected deposit with that institution an amount equal to three-quarters of his protected deposit; and that payment shall be made as soon as practicable after the deposit is or becomes due and payable under the terms on which it was made or, if later, the approval of the administrator's proposals under section 24 of that Act.
- (3) Where the Board is satisfied that a payment has been or will be made to a depositor in respect of his protected deposit under any scheme for protecting depositors or investors which is comparable to that for which provision is made by this Part of this Act or under a guarantee given by a government or other authority the Board may—
  - (a) deduct an amount equal to the whole or part of that payment from the payment that would otherwise be made to him under subsection (1) or (2) above; or

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- (b) in pursuance of an agreement made by the Board with the authority responsible for the scheme or by which the guarantee was given, make in full the payment required by that subsection and recoup from that authority such contribution to it as may be specified in or determined under the agreement.
- (4) Where the Board makes such a deduction as is mentioned in paragraph (a) of subsection (3) above it may agree with the authority responsible for the scheme or by which the guarantee was given to reimburse that authority to the extent of the deduction or any lesser amount.
- (5) The Board may decline to make any payment under subsection (1) or (2) above to a person who, in the opinion of the Board, has any responsibility for, or may have profited directly or indirectly from, the circumstances giving rise to the institution's financial difficulties.
- (6) There shall be deducted from any payment to be made by the Board in respect of a deposit under subsection (2) above any payment in respect of that deposit already made by the administrator; and where an institution becomes insolvent after an administration order has been in force in relation to it the payments to be made by the Board under subsections (1) and (2) above, taken together, in respect of a depositor's protected deposits with the institution shall not exceed an amount equal to three-quarters of those deposits.
- (7) The Treasury may, after consultation with the Board, by order amend subsections (1), (2) and (6) above so as to substitute for the fraction for the time being specified in those subsections such other fraction as may be specified in the order; but no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (8) Notwithstanding that the Board may not yet have made or become liable to make a payment under subsection (1) above in relation to an institution falling within that subsection—
- (a) the Board shall at all times be entitled to receive any notice or other document required to be sent to a creditor of the institution whose debt has been proved; and
  - (b) a duly authorised representative of the Board shall be entitled—
    - (i) to attend any meeting of creditors of the institution and to make representations as to any matter for decision at that meeting;
    - (ii) to be a member of any committee established under section 301 of the Insolvency Act 1986;
    - (iii) to be a commissioner under section 30 of the Bankruptcy (Scotland) Act 1985; and
    - (iv) to be a member of a committee established for the purposes of Part IV or V of the Insolvency Act 1986 under section 101 of that Act or under section 141 or 142 of that Act or of a committee of inspection appointed for the purposes of Part XX or XXI of the Companies (Northern Ireland) Order 1986.
- (9) Where a representative of the Board exercises his right to be a member of such a committee as is mentioned in paragraph (b)(ii) or (iv) of subsection (8) above or to be a commissioner by virtue of paragraph (b)(iii) of that subsection he may not be removed except with the consent of the Board and his appointment under that subsection shall be disregarded for the purposes of any provision made by or under any enactment

which specifies a minimum or maximum number of members of such a committee or commission.

- (10) Notwithstanding that the Board may not yet have made or become liable to make a payment under subsection (2) above in relation to an institution falling within that subsection—
- (a) the Board shall at all times be entitled to receive any notice or other document required to be sent to a creditor of the institution under Part II of the Insolvency Act 1986; and
  - (b) a duly authorised representative of the Board shall be entitled—
    - (i) to attend any meeting of creditors of the institution summoned under Part II of that Act and to make representations as to any matter for decision at that meeting; and
    - (ii) to be a member of any committee established under section 26 of that Act.

## **59 Meaning of insolvency**

- (1) For the purposes of this Part of this Act a body corporate incorporated in the United Kingdom becomes insolvent—
- (a) on the making of a winding-up order against it;
  - (b) on the passing of a resolution for a voluntary winding-up in a case in which no statutory declaration has been made under section 89 of the Insolvency Act 1986 or Article 534 of the Companies (Northern Ireland) Order 1986; or
  - (c) on the holding of a creditors' meeting summoned under section 95 of that Act or Article 541 of that Order;

and a body corporate incorporated elsewhere becomes insolvent on the occurrence of an event which appears to the Board to correspond as nearly as may be to any of those mentioned in paragraphs (a), (b) and (c) above.

- (2) For the purposes of this Part of this Act a partnership formed under the law of any part of the United Kingdom becomes insolvent—
- (a) in England and Wales, on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act;
  - (b) in Scotland, on the making of an award of sequestration on the estate of the partnership or on the making of a winding-up order against it by virtue of section 92 below;
  - (c) in Northern Ireland, on the making of an order of adjudication of bankruptcy against any of the partners;

and a partnership formed under the law of a member State other than the United Kingdom becomes insolvent on the occurrence of an event which appears to the Board to correspond as nearly as may be to any of those mentioned in paragraphs (a), (b) and (c) above.

- (3) For the purposes of this Part of this Act an unincorporated association which is formed under the law of another member State and is not a partnership becomes insolvent on the occurrence of any event which appears to the Board to correspond as nearly as may be to any of those mentioned in subsection (1)(a), (b) or (c) or (2)(a), (b) or (c) above.

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## 60 Protected deposits

- (1) Subject to the provisions of this section, in relation to an institution in respect of which a payment falls to be made under section 58(1) above any reference in this Act to a depositor's protected deposit is a reference to the total liability of the institution to him immediately before the time when it becomes insolvent, limited to a maximum of £20,000, in respect of the principal amounts of and accrued interest on sterling deposits made with United Kingdom offices of the institution.
- (2) Subject to the provisions of this section, in relation to an institution in respect of which a payment falls to be made under section 58(2) above any reference in this Act to a depositor's protected deposit is a reference to the liability of the institution to him in respect of—
  - (a) the principal amount of each sterling deposit which was made by him with a United Kingdom office of the institution before the making of the administration order and which under the terms on which it was made is or becomes due or payable while the order is in force; and
  - (b) accrued interest on any such deposit up to the time when it is or becomes due and payable as aforesaid;but so that the total liability of the institution to him in respect of such deposits does not exceed £20,000.
- (3) For the purposes of subsection (1) above no account shall be taken of any liability unless—
  - (a) proof of the debt which gives rise to it has been lodged with the liquidator of the insolvent institution; or
  - (b) in the case of an institution formed under the law of a country or territory outside the United Kingdom, an act has been done which appears to the Board to correspond as nearly as may be to the lodging of such a proof with the liquidator of the institution.
- (4) For the purposes of subsection (2) above no account shall be taken of any liability unless a claim for repayment of the deposit which gives rise to it has been lodged with the administrator.
- (5) The Treasury may, after consultation with the Board, by order amend subsections (1) and (2) above so as to substitute for the sum for the time being specified in those subsections such larger sum as may be specified in the order; but no such order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (6) In determining the total liability of an institution to a depositor for the purposes of subsection (1) above, or the liability or total liability of an institution to a depositor for the purposes of subsection (2) above, no account shall be taken of any liability in respect of a deposit if—
  - (a) it is a secured deposit; or
  - (b) it is a deposit which had an original term to maturity of more than five years; or
  - (c) the institution is a former authorised institution and the deposit was made after it ceased to be an authorised institution or a recognised bank or licensed institution under the Banking Act 1979 unless, at the time the deposit was made, the depositor did not know and could not reasonably be expected to have known that it had ceased to be an authorised institution, recognised bank or licensed institution.

- (7) Unless the Board otherwise directs in any particular case, in determining the total liability of an institution to a depositor for the purposes of subsection (1) or (2) above there shall be deducted the amount of any liability of the depositor to the institution—
- (a) in respect of which a right of set-off existed immediately before the institution became insolvent or, as the case may be, subject to the administration order against any such sterling deposit as is referred to in subsection (1) or (2) above; or
  - (b) in respect of which such right would then have existed if the deposit in question had been repayable on demand and the liability in question had fallen due.
- (8) Where an institution becomes insolvent after an administration order has been in force in relation to it the maximum applying under subsection (1) above to a depositor's protected deposit with the institution shall be reduced by the amount of his protected deposit or deposits with the institution taken into account for the purposes of subsection (2) above.
- (9) For the purposes of this section and sections 61 and 62 below the definition of deposit in section 5 above—
- (a) shall be treated as including—
    - (i) any sum that would otherwise be excluded by paragraph (a), (d) or (e) of subsection (3) of that section if the sum is paid as trustee for a person not falling within any of those paragraphs;
    - (ii) any sum that would otherwise be excluded by paragraph (b) or (c) of that subsection;
  - (b) subject to subsections (10) and (11) below, shall be treated as excluding any sum paid by a trustee for a person falling within paragraph (e) of subsection (3) of that section; and
  - (c) shall be treated as including any sum the right to repayment of which is evidenced by a transferable certificate of deposit or other transferable instrument and which would be a deposit within the meaning of section 5 as extended by paragraph (a) and restricted by paragraph (b) above if it had been paid by the person who is entitled to it at the time when the institution in question becomes insolvent.
- (10) Where the trustee referred to in paragraph (b) of subsection (9) above is not a bare trustee and there are two or more beneficiaries that paragraph applies only if all the beneficiaries fall within section 5(3)(e) above.
- (11) Subsection (10) above does not extend to Scotland and, in Scotland, where there are two or more beneficiaries of a trust the trustee of which is referred to in paragraph (b) of subsection (9) above that paragraph applies only if all the beneficiaries fall within section 5(3)(e) above.

## **61 Trustee deposits, joint deposits etc.**

- (1) In the cases to which this section applies sections 58 and 60 above shall have effect with the following modifications.
- (2) Subject to the provisions of this section, where any persons are entitled to a deposit as trustees they shall be treated as a single and continuing body of persons distinct from the persons who may from time to time be the trustees, and if the same persons are

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entitled as trustees to different deposits under different trusts they shall be treated as a separate and distinct body with respect to each of those trusts.

- (3) Where a deposit is held for any person or for two or more persons jointly by a bare trustee, that person or, as the case may be, those persons jointly shall be treated as entitled to the deposit without the intervention of any trust.
- (4) Subsection (3) above does not extend to Scotland and, in Scotland, where a deposit is held by a person as nominee for another person or for two or more other persons jointly, that other person or, as the case may be, those other persons jointly shall be treated as entitled to the deposit.
- (5) A deposit to which two or more persons are entitled as members of a partnership (whether or not in equal shares) shall be treated as a single deposit.
- (6) Subject to subsection (5) above, where two or more persons are jointly entitled to a deposit and subsection (2) above does not apply each of them shall be treated as having a separate deposit of an amount produced by dividing the amount of the deposit to which they are jointly entitled by the number of persons who are so entitled.
- (7) Where a person is entitled (whether as trustee or otherwise) to a deposit made out of a clients' or other similar account containing money to which one or more other persons are entitled, that other person or, as the case may be, each of those other persons shall be treated (to the exclusion of the first-mentioned person) as entitled to so much of the deposit as corresponds to the proportion of the money in the account to which he is entitled.
- (8) Where an authorised institution is entitled as trustee to a sum which would be a deposit apart from section 5(3)(a) above and represents deposits made with the institution, each of the persons who made those deposits shall be treated as having made a deposit equal to so much of that sum as represents the deposit made by him.
- (9) The Board may decline to make any payment under section 58 above in respect of a deposit until the person claiming to be entitled to it informs the Board of the capacity in which he is entitled to the deposit and provides sufficient information to enable the Board to determine what payment (if any) should be made under that section and to whom.
- (10) In this section "jointly entitled" means—
  - (a) in England and Wales and in Northern Ireland, beneficially entitled as joint tenants, tenants in common or coparceners;
  - (b) in Scotland, beneficially entitled as joint owners or owners in common.

## **62 Liability of institution in respect of compensation payments**

- (1) This section applies where—
  - (a) an institution becomes insolvent or an administration order is in force in relation to it; and
  - (b) the Board has made, or is under a liability to make, a payment under section 58 above by virtue of the institution becoming insolvent or of the making of that order;

and in the following provisions of this section a payment falling within paragraph (b) above, less any amount which the Board is entitled to recoup by virtue of any such agreement as is mentioned in subsection (3)(b) of that section, is referred to as "a

compensation payment" and the person to whom such a payment has been or is to be made is referred to as "the depositor".

- (2) Where this section applies in respect of an institution that is insolvent—
  - (a) the institution shall become liable to the Board, as in respect of a contractual debt incurred immediately before the institution became insolvent, for an amount equal to the compensation payment;
  - (b) the liability of the institution to the depositor in respect of any deposit or deposits of his ("the liability to the depositor") shall be reduced by an amount equal to the compensation payment made or to be made to him by the Board; and
  - (c) the duty of the liquidator of the insolvent institution to make payments to the Board on account of the liability referred to in paragraph (a) above ("the liability to the Board") and to the depositor on account of the liability to him (after taking account of paragraph (b) above) shall be varied in accordance with subsection (3) below.
- (3) The variation referred to in subsection (2)(c) above is as follows—
  - (a) in the first instance the liquidator shall pay to the Board instead of to the depositor any amount which, apart from this section, would be payable on account of the liability to the depositor except in so far as that liability relates to any such deposit as is mentioned in section 60(6) above; and
  - (b) if at any time the total amount paid to the Board by virtue of paragraph (a) above and in respect of the liability to the Board equals the amount of the compensation payment made to the depositor, the liquidator shall thereafter pay to the depositor instead of to the Board any amount which, apart from this paragraph, would be payable to the Board in respect of the liability to the Board.
- (4) Where this section applies in respect of an institution in relation to which an administration order is in force—
  - (a) the institution shall, at the time when the compensation payment in respect of a deposit falls to be made by the Board, become liable to the Board for an amount equal to that payment; and
  - (b) the liability of the institution to the depositor in respect of that deposit shall be reduced by an amount equal to that payment.
- (5) Where an institution becomes insolvent after an administration order has been in force in relation to it subsections (2) and (3) above shall not apply to any compensation payment to the extent to which the Board has received a payment in respect of it by virtue of subsection (4)(a) above.
- (6) Where by virtue of section 61 above the compensation payment is or is to be made by the Board to a person other than the person to whom the institution is liable in respect of the deposit any reference in the foregoing provisions of this section to the liability to the depositor shall be construed as a reference to the liability of the institution to the person to whom that payment would fall to be made by the Board apart from that section.
- (7) Where the Board makes a payment under section 58(4) above in respect of an amount deducted from a payment due to a depositor this section shall have effect as if the amount had been paid to the depositor.
- (8) Rules may be made—

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- (a) for England and Wales, under sections 411 and 412 of the Insolvency Act 1986;
  - (b) for Scotland—
    - (i) under the said section 411; and
    - (ii) in relation to an institution whose estate may be sequestrated under the Bankruptcy (Scotland) Act 1985, by the Secretary of State under this subsection; and
  - (c) for Northern Ireland, under Article 613 of the Companies (Northern Ireland) Order 1986 and section 65 of the Judicature (Northern Ireland) Act 1978,
- for the purpose of integrating the procedure provided for in this section into the general procedure on a winding-up, bankruptcy or sequestration or under Part II of the Insolvency Act 1986.