

FINANCIAL SERVICES (BANKING REFORM) ACT 2013

EXPLANATORY NOTES

COMMENTARY

Part 2 – Depositor Preference and the Financial Services Compensation Scheme

Depositor preference

Section 13: Preferential debts: Great Britain

95. *Section 13* makes amendments to the Insolvency Act 1986 and the Bankruptcy (Scotland) Act 1985 to add to the existing categories of preferential debts on insolvency in Great Britain. *Subsection (1)* amends Schedule 6 to the Insolvency Act 1986, to insert new paragraphs 15B and 15C. *Paragraph 15B* defines the new category of preferential debts. Where a deposit is within the scope of the financial services compensation scheme (“FSCS”), it will be a preferential debt. Where a deposit is not eligible for protection under the FSCS, it will not be a preferential debt. If a single depositor has a very large deposit, part of which is not eligible for protection under the FSCS, only the part of that deposit which is covered by the FSCS will be a preferential debt. The remainder of the deposit will not be a preferential debt: it will rank equally to other non-preferred unsecured debts. *Paragraph 15C* defines the terms “eligible deposit” and “deposit” for the purposes of the new category of preferential debts. Deposits which were held in dormant accounts and have been transferred to authorised reclaim funds under the Dormant Bank and Building Society Accounts Act 2008 are included in the definition of “deposit”.
96. *Subsection (2)* makes a consequential amendment to section 386 of the Insolvency Act 1986.
97. *Subsection (3)* amends Part 1 of Schedule 3 to the Bankruptcy (Scotland) Act 1985 to insert new paragraph 6B. The Insolvency Act 1986 covers corporate insolvency in both England and Wales and Scotland, but deals with bankruptcy only in England and Wales. Bankruptcy in Scotland is dealt with under the Bankruptcy (Scotland) Act 1985. This paragraph makes provision in relation to bankruptcy and sequestration proceedings in Scotland equivalent to the provision made in new paragraphs 15B of Schedule 6 to the Insolvency Act 1986 which will apply to England and Wales and corporate insolvency proceedings in Scotland. *Subsection (4)* amends Part 2 of Schedule 3 to the 1985 Act to insert new paragraph 9A. This paragraph contains equivalent definitions of “eligible deposit” and “deposit” to those set out in new paragraph 15C of Schedule 6 to the Insolvency Act 1986. A balance transferred to an authorised reclaim fund is not mentioned as the insolvency of a reclaim fund in Scotland is subject to the Insolvency Act 1986, not the 1985 Act.

Financial Services Compensation Scheme

Section 14: Discharge of functions by scheme manager

98. *Sections 14 to 16* make provision in relation to the scheme manager of the financial services compensation scheme.
99. *Section 14* inserts a new section 224ZA into FSMA to require the scheme manager to have regard to the need for efficiency and effectiveness in the way in which it discharges its functions. It must also have regard to the need to minimise public expenditure in relation to loans or financial assistance to the scheme manager. For example, the scheme manager would be expected to have regard to the need to ensure that the cost to the government of making a loan or providing other financial assistance to the financial services compensation scheme (such as a loan) is covered by repayments made by the scheme to the government.

Section 15: Power to require information

100. *Section 15* gives the Treasury power by written notice to require the scheme manager to provide specified information needed by the Treasury in connection with its duties under the Government Resources and Accounts Act 2000 (such as its duty to prepare consolidated accounts for the public sector, and to consolidate information relating to the financial services compensation scheme in its departmental accounts). *Subsection (2)* requires such information to be provided before the end of a reasonable period specified in the notice.

Section 16: Scheme manager: appointment of accounting officer

101. *Section 16* amends section 212 of FSMA. *Subsection (2)* amends subsection 212(3) of FSMA so that the constitution of the scheme manager must provide for it to have a chief executive, who is to be a member of the board of the scheme manager. The chief executive is also to be the accounting officer. *Subsection (3)* amends subsection 212(4) of FSMA to provide that the chief executive must be appointed by the PRA and the FCA. The appointment, and if relevant the removal from office, of the chief executive by the regulators will be subject to the approval of the Treasury.