
STATUTORY INSTRUMENTS

2001 No. 2967

**The Financial Services and Markets Act 2000
(Transitional Provisions, Repeals and Savings)
(Financial Services Compensation Scheme) Order 2001**

PART 3

**COMPENSATION SCHEMES IN RELATION TO
INSURANCE BUSINESS AND DEPOSIT TAKING**

Article 9 defaults occurring before commencement

9.—(1) If, before commencement, an article 9 default occurred and no terminating event occurred in relation to that default—

- (a) subject to article 10, where the relevant former scheme is the PPS, the Policyholders Protection Act continues to have effect in relation to the default, notwithstanding any repeal of that Act, but subject to the modifications set out in Part 1 of Schedule 1;
- (b) where the relevant former scheme is the DPS, Part II of the Banking Act continues to have effect in relation to the default, notwithstanding any repeal of that Part, but subject to the modifications set out in Part 1 of Schedule 1;
- (c) where the relevant former scheme is the BSIPS, sections 24 to 31 of, and Schedule 6 to, the Building Societies Act continue to have effect in relation to the default, notwithstanding the repeal of those sections and that Schedule by the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001(1) but subject to the modifications set out in Part 1 of Schedule 1;
- (d) where the relevant former scheme is the FSPS, the scheme manager must comply with that scheme, as modified by rules made by the Authority under paragraph (3), in relation to the default, even if that scheme has otherwise ceased to exist.

(2) Where the scheme manager exercises functions under paragraph (1) in relation to an article 9 default, the acts and omissions of the former manager before commencement in connection with that default are, for the purposes of the exercise by the scheme manager of those functions, deemed to be the acts and omissions of the scheme manager.

(3) The Authority must by rules make such modifications to the FSPS as it considers are required to enable the scheme manager to comply with that scheme as provided in paragraph (1).

(4) The Authority must secure by rules made under paragraph (3) that the functions conferred on the Friendly Societies Protection Scheme Board by the FSPS are exercisable by the scheme manager after commencement.

(5) No provision of the FSPS has effect after commencement to the extent that it imposes a levy or equivalent kind of charge on any person.

(6) Any term in any provision of a former scheme which continues to have effect by virtue of paragraph (1), and which was defined by any provision of the Policyholders Protection Act, the Banking Act or the Building Societies Act, continues to have the meaning given by that Act, notwithstanding any repeal of any provision of that Act.

(7) Except as provided for in this article, the former schemes do not apply to any default referred to in (a), (b), (c), (d), (e), (h) or (i) of the definition of “default” that occurs after commencement.

Applications in respect of compulsory liability insurance

10.—(1) A person may make an application for compensation to the scheme manager under the new scheme (as modified by rules made by the Authority under paragraph (2)) if—

- (a) the relevant former scheme is the PPS;
- (b) the application arises from an article 9 default which occurred before commencement;
- (c) the application relates to a policy of insurance which at any time before commencement satisfied the requirements of any of the enactments referred to in section 6(1) of the Policyholders Protection Act; and
- (d) the extent of the liability of the authorised insurance company concerned to the person making the claim was not determined before commencement.

(2) The Authority must make rules modifying the new scheme to enable the scheme manager to receive, assess, determine and make payments in respect of applications for compensation made under paragraph (1).

(3) Article 9(1)(a) does not apply in relation to applications for compensation made under paragraph (1).

The Credit Institutions (Protection of Depositors) Regulations 1995

11. Where the DPS or the BSIPS continues to have effect after commencement in relation to an article 9 default by virtue of this Order, the Credit Institutions (Protection of Depositors) Regulations 1995(2) continue to have effect in relation to that default, notwithstanding the revocation of those Regulations by article 24 and Schedule 2, but subject to the modifications set out in Part 1 of Schedule 1.

Applications under the new scheme

12.—(1) Notwithstanding anything in Part XV of the Act, a person (“the applicant”) may after commencement make an application to the scheme manager for compensation under the new scheme as modified by rules made by the Authority under paragraph (3), if—

- (a) the application is made in respect of the inability (or likely inability) of —
 - (i) a participating deposit-taker or participating institution to satisfy a claim made against him by the applicant in respect of a deposit within the meaning of the Banking Act, or a protected investment within the meaning of section 27 of the Building Societies Act;
 - (ii) an authorised insurer to satisfy a claim made against him by the applicant in respect of liability under a policy of insurance; or
 - (iii) a member society to satisfy a claim made against it by the applicant in respect of liability under a policy of insurance;

- (b) the circumstances giving rise to the applicant's claim against the relevant body occurred before commencement, and were of a kind capable of giving rise to a duty to make a payment to the applicant in accordance with the PPS, the DPS, the BSIPS or the FSPS;
 - (c) none of the former schemes referred to in sub-paragraph (b) has effect, by virtue of article 9, in relation to the circumstances giving rise to the applicant's claim;
 - (d) the applicant is not entitled to make an application for compensation in accordance with article 10; and
 - (e) the applicant's claim would not, apart from this article and any rules made under it, be capable of giving rise to an entitlement to compensation under the new scheme.
- (2) An application is not to be regarded as falling outside paragraph (1) by reference to sub-paragraph (b) merely because no article 9 default occurred before commencement.
- (3) The Authority must make rules modifying the new scheme to enable the scheme manager to receive, assess and determine applications for compensation made in accordance with this article.
- (4) For the purposes of assessing and determining applications for compensation made pursuant to paragraph (1)—
- (a) section 219 of the Act applies as if the references to the relevant person include a reference to a relevant body;
 - (b) section 221 of the Act applies as if the reference to a requirement under section 219 includes a reference to a requirement imposed under section 219 as it applies by virtue of this article;
 - (c) where a relevant body is insolvent, sections 220, 221 and 224 of the Act apply as if—
 - (i) references to a relevant person include references to a relevant body;
 - (ii) the reference in section 221 to a failure to permit documents to be inspected under section 220 includes a reference to a failure to permit documents to be inspected under section 220 as it applies by virtue of this article; and
 - (iii) the reference in section 224(1)(a) to the compensation scheme includes a reference to the scheme as modified by rules made by the Authority under paragraph (3).
- (5) In this article, "relevant body" means a participating deposit-taker, participating institution, authorised insurer or member society against whom an applicant has a claim of a kind falling within paragraph (1)(a) and (b).

Repayment of recovered money

13.—(1) This article applies where the scheme manager receives money under section 62 of the Banking Act(3) or section 28 of the Building Societies Act(4) ("recovered money").

(2) Where this article applies, the scheme manager must prepare and carry out a scheme for the repayment of recovered money to such persons, and in such amounts, as the scheme manager considers fair and equitable in the circumstances, having regard to the payments made by such persons by way of contributions or levies payable to the scheme manager, the Deposit Protection Board or the Building Societies Investor Protection Board.

Use of certain funds

14.—(1) The scheme manager must, so far as practicable, ensure that—

(3) Amended by [S.I. 1995/1442](#) and by [S.I. 1989/2405 \(N.I. 19\)](#).

(4) Amended by [S.I.1995/1442, \(N.I. 19\)](#) and amended and repealed in part by the Building Societies Act 1997 section 33 and Schedule 9.

- (a) funds held by it which originate from the payment of contributions levied under sections 53 to 55 of the Banking Act or section 26 of the Building Societies Act⁽⁵⁾ are used only to meet relevant liabilities attributable to deposit-taking;
 - (b) funds held by it which originate from the payment of general business levies under the Policyholders Protection Act are used only to meet relevant liabilities attributable to general insurance business;
 - (c) funds held by it which originate from the payment of long term business levies or levies on intermediaries under the Policyholders Protection Act are used only to meet relevant liabilities attributable to long-term insurance business.
- (2) In this article—
- “deposit-taking” means—
- (a) deposit-taking business within the meaning of section 6 of the Banking Act;
 - (b) deposit-taking, or the issue of shares to members, carried out by a building society within the meaning of the Building Societies Act; or
 - (c) accepting deposits within the meaning of the Regulated Activities Order;
- “general insurance business” means—
- (a) general business within the meaning of section 1 of the Insurance Companies Act; or
 - (b) effecting and carrying out contracts of general insurance within the meaning of the Regulated Activities Order;
- “long-term insurance business” means—
- (a) long term business within the meaning of section 1 of the Insurance Companies Act; or
 - (b) effecting and carrying out contracts of long-term insurance within the meaning of the Regulated Activities Order;
- “relevant liabilities” means liabilities of the scheme manager to pay compensation in respect of article 9 defaults or applications for compensation under the new scheme.

(5) Repealed in part and amended by [S.I. 1995/1442](#).