
STATUTORY INSTRUMENTS

2008 No. 2644

**The Heritable Bank plc Transfer of
Certain Rights and Liabilities Order 2008**

PART 3

FINANCIAL SERVICES COMPENSATION SCHEME

Application of Part 3

12. This Part applies where, before the effective time, Heritable is in default for the purposes of rule 6.3.1 of the COMP Sourcebook.

Sums to be paid to Deposits Management (Heritable) following the transfer

13.—(1) The following liabilities arise at the effective time—

(a) the FSCS is liable to pay (as soon as practicable) to Deposits Management (Heritable) an amount equal to the amount that eligible claimants would, immediately before the effective time, have been entitled to claim from the FSCS in respect of claims against Heritable in relation to relevant protected deposits; and

(b) the Treasury are liable to pay (as soon as practicable) to Deposits Management (Heritable) an amount equal to the aggregate amount of the liabilities transferred to Deposits Management (Heritable) under article 3 less the amount specified in sub-paragraph (a).

(2) For the purposes of paragraph (1)(a), if the quantification date for a claim would have been a date other than the date on which Heritable was determined to be in default for the purposes of section 6.3 of the COMP Sourcebook, the amount that an eligible claimant would have been entitled to claim from the FSCS is the lesser of—

(a) the amount which the FSCS quantifies as being the value of that claim as at immediately before the effective time; and

(b) the amount that would have been payable at the quantification date, if different, for that claim.

(3) In paragraph (2), “quantification date” has the meaning given in rule 12.3.1 of the COMP Sourcebook.

(4) As soon as practicable after the effective time—

(a) Heritable shall estimate the aggregate amount of the transferred liabilities;

(b) the FSCS shall pay to Deposits Management (Heritable) the amount it is liable to pay under paragraph (1)(a) as estimated by the Authority; and

(c) the Treasury shall pay to Deposits Management (Heritable) an amount equal to the amount estimated by Heritable in accordance with sub-paragraph (a) less the amount estimated by the Authority in accordance with sub-paragraph (b).

(5) From time to time—

(a) the FSCS may revise the estimate of its liability under paragraph (1)(a); and

(b) Heritable may revise the estimate of the aggregate amount of the transferred liabilities, and the FSCS, the Treasury and Deposits Management (Heritable) shall make such corresponding payments to each other as are necessary to ensure that the FSCS and the Treasury have each paid to Deposits Management (Heritable) the amount required (and no more than the required amount) to meet their liability under paragraph (1).

(6) If at any time after the effective time Heritable is placed into administration or an interim order is made in relation to Heritable under paragraph 13(1)(d) of Schedule B1 to the 1986 Act, the references to Heritable in paragraphs (4) and (5) are to be treated as references to the administrator.

Payment to Deposits Management (Heritable) to constitute payment of compensation for the purposes of the Financial Services Compensation Scheme

14. For the purposes of Part 15 (the financial services compensation scheme) of the 2000 Act, the COMP Sourcebook and the FEES 6 Chapter (including, without limitation, the power of the FSCS to impose levies)—

- (a) all payments by the FSCS to Deposits Management (Heritable) under article 13 shall constitute the payment of compensation to each eligible claimant under the Financial Services Compensation Scheme in accordance with their respective entitlements in respect of claims against Heritable for relevant protected deposits;
- (b) each eligible claimant—
 - (i) is deemed to have made an application for compensation for the purposes of rule 3.2.1(1) of the COMP Sourcebook; and
 - (ii) is deemed to have accepted an offer of compensation made by the FSCS and to have received payment of such compensation for the purposes of rule 11.2.1 of the COMP Sourcebook,

and, accordingly, an eligible claimant has no right to claim, and the FSCS has no obligation to pay, for a relevant protected deposit any further compensation under the Financial Services Compensation Scheme in respect of the default of Heritable determined by the Authority under section 6.3 of the COMP Sourcebook.

Liability of Heritable to the FSCS and the Treasury

15.—(1) Heritable is liable to the FSCS in respect of an amount equal to the amount which would have been provable in the administration of Heritable in respect of the transferred liabilities had this Order not been made and had Heritable been placed in administration immediately before the effective date.

(2) The FSCS shall pursue recoveries from Heritable in respect of the liability incurred under paragraph (1) to the extent reasonably practicable.

(3) Subject to paragraph (4), if an eligible claimant had, in relation to a relevant protected deposit, a liability to Heritable which would have been capable of being set-off against a liability of Heritable to that claimant in an administration of Heritable (if that liability had not been transferred), the amount which would have been provable in the administration shall for the purposes of paragraph (1) be taken to be the sum of—

- (a) the amount of the reduction in the depositor's liability to Heritable as a result of the application of set-off; and
- (b) the amount which would have been recovered in respect of the balance of the claim (if any) provable in the administration of Heritable.

(4) Paragraph (3) applies only to the extent that its application does not have the effect that the other creditors of Heritable are in a worse position than they would have been had the set-off been applied.

(5) The FSCS shall determine the proportion of any amount which it receives or recovers from Heritable which is properly attributable to each type of liability described below and shall promptly on receipt account for that receipt or recovery as follows—

- (a) in full to the Treasury, to the extent that—
 - (i) the receipt is attributable to a transferred liability; and
 - (ii) the person to whom such transferred liability is owed would not have been entitled to make a claim for compensation from the FSCS immediately before the effective time;
- (b) to the Treasury by reference to the relevant proportion, to the extent that—
 - (i) the receipt is attributable to a transferred liability;
 - (ii) the person to whom such transferred liability is owed is an eligible claimant; and
 - (iii) the amount of such liability exceeds the maximum compensation that the eligible claimant would have been entitled to claim from the FSCS immediately before the effective time;
- (c) for the account of the FSCS, to the extent that—
 - (i) the receipt is attributable to a transferred liability owed to an eligible claimant; and
 - (ii) the amount of such liability is equal to or less than the maximum compensation that the eligible claimant would have been entitled to claim from the FSCS immediately before the effective time.

(6) In paragraph (5), the “relevant proportion” is the proportion of the total liabilities which arise under article 13(1) for which the Treasury are liable.

(7) If Heritable is in administration or an interim order has been made in relation to Heritable under paragraph 13(1)(d) of Schedule B1 to the 1986 Act, the liability incurred under paragraph (1) shall not be treated as an expense of the administration under paragraph 99(3) of Schedule B1 of the 1986 Act, rule 2.67 of the Insolvency Rules 1986 or any analogous provision of the Insolvency (Scotland) Rules 1986.

(8) Nothing in this Part shall have the effect that the FSCS recovers less than it would have recovered if this Order had not been made.

FSCS’s power to require information

16.—(1) The FSCS may, by notice in writing given to Deposits Management (Heritable), require it –

- (a) to provide specified information or information of a specified description; or
- (b) to produce specified documents or documents of a specified description.

(2) Paragraph (1) only applies to information and documents the provision or production of which the FSCS considers to be necessary (or likely to be necessary) for the exercise of its functions under or by virtue of this Order.

(3) Subsections (2), (4), (5) and (7) of section 219 of the 2000 Act (scheme manager’s power to require information) apply to a requirement imposed under paragraph (1) as if it were a requirement imposed under that section.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Statutory immunity

17. For the purposes of section 222 (statutory immunity) of the 2000 Act the scheme manager's functions shall include any acts or omissions carried out by the FSCS pursuant to or in connection with this Order.