

EXPLANATORY MEMORANDUM TO
THE DEPOSIT GUARANTEE SCHEME REGULATIONS 2015

2015 No. 486

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This instrument is being made to implement Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (DGSD).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None

4. **Legislative Context**

- 4.1 This instrument is made to implement certain requirements of the DGSD. The other provisions of the DGSD are being implemented in rules made by the Prudential Regulation Authority (PRA) under the Financial Services and Markets Act 2000 (FSMA).

- 4.2 It sets out procedural requirements that apply to the PRA and the Financial Services Compensation Scheme (FSCS) established under FSMA when performing their duties under the DGSD, which relate to the protection of certain deposits in UK credit institutions, and amends FSMA to give effect to notification requirements set out in the DGSD and to ensure that the FSCS can request information from a credit institution at any time in accordance with the DGSD.

- 4.3 It also amends the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 and the Bankruptcy (Scotland) Act 1985 to introduce a new category of preferential debt – debts owed by credit institutions to the FSCS in respect of costs expended by the FSCS.

- 4.4 It revokes Regulations 46 to 48 of the Credit Institutions (Protection of Depositors) Regulations 1995 as the other amendments being made render these obsolete.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Deposit Guarantee Scheme Regulations 2015 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The DGSD (2014/49/EU) aims to create a harmonised system of Deposit Guarantee Schemes (DGS) across Europe and ensure that depositors are adequately protected. This enhances consumer protection, and ensures a level playing field across the EU for the provision of financial services by eliminating differences between deposit protection in different member states. It repeals and replaces the original Directive (94/19/EC).

7.2 DGS are schemes set up in order to protect depositors of banks and other credit institutions in the event of their failure. In the event of a failure by a bank or credit institution, DGS protect depositors up to defined levels and provide compensation to depositors in the event that they cannot recover their money in the insolvency. The UK's DGS is the Financial Services Compensation Scheme (FSCS).

7.3 Without DGS, when a bank or other credit institution fails, depositors would be unsecured creditors in the insolvency, and may not recover the full amount of their deposit. They would also lose access to their deposit for a period. The existence of DGSs means that depositors are protected and will receive their money back promptly following a firm's failure, up to the defined coverage limit.

7.4 The provisions in this SI are intended to facilitate cooperation between DGS in different member states, to ensure that the European Banking Authority can effectively monitor depositor protection in member states, and to ensure that the FSCS can access the information it needs in order to prepare for and effect a payout to depositors. These are all measures designed to increase the level of protection for depositors, and enhance confidence in depositor protection.

- Consolidation

7.5 The Deposit Guarantee Scheme Regulations 2015 make only limited amendments to existing legislation. It is not considered necessary to produce consolidated versions. Commercial publishers produce consolidated versions of FSMA, both in electronic and hard copy versions.

8. Consultation outcome

8.1 This SI was not subject to a public consultation, since it does not regulate business directly but imposes requirements on the PRA and the FSCS. It does the minimum necessary to comply with the requirements of the DGSD. The Treasury consulted with both the PRA and the FSCS in drafting this SI.

8.2 The PRA has consulted¹ on proposed changes to its rules, some of which rely on the extensions to its rule-making powers made in this SI. The results of that consultation will inform the PRA's final rules and policy statement.

9. Guidance

9.1 The Treasury has been in close contact with the PRA and the FSCS regarding the new obligations imposed by this SI. No guidance will be published.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible. The new procedural requirements that apply to the PRA and FSCS are not burdensome. They can be absorbed into the existing processes of these bodies, and will not require the hiring of additional staff or introduction of new systems or processes that would incur a cost.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This legislation is intended to enhance the protection of depositors in credit institutions, and ensure that in the event of the failure of a credit institution, its depositors protected by the FSCS will be protected and receive compensation promptly.

12.2 The legislation includes a review clause, and will be subject to internal review within 5 years, at which point the legislation may be amended accordingly.

¹ <http://www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp2014.aspx>

13. Contact

Catherine McCloskey at HM Treasury Tel: 020 7270 5377 or email: catherine.mccloskey@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.