

2018 No. 1285

EXITING THE EUROPEAN UNION
FINANCIAL SERVICES

**The Deposit Guarantee Scheme and Miscellaneous Provisions
(Amendment) (EU Exit) Regulations 2018**

Made - - - - *3rd December 2018*

Coming into force in accordance with regulation 1

The Treasury are designated^(a) for the purpose of section 2(2) of the European Communities Act 1972^(b) in relation to financial services.

The Treasury make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018^(c).

In accordance with paragraph 2A(3)(a) of Schedule 2 to the European Communities Act 1972 and paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

General provisions

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Deposit Guarantee Scheme and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018.

(2) Parts 1 and 2 come into force on the day after the day on which these Regulations are made.

(3) Parts 3 and 4 come into force on exit day.

(a) S.I. 2012/1759.

(b) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 c.7. By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1993 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183). The European Communities Act 1972 is repealed with effect from exit day by section 1 of the European Union (Withdrawal) Act 2018.

(c) 2018 c.16.

(4) In these Regulations “the 2015 Regulations” means the Deposit Guarantee Scheme Regulations 2015(a).

PART 2

Amendments of the Deposit Guarantee Scheme Regulations 2015: European Communities Act 1972

2.—(1) The 2015 Regulations are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1)—

(a) after the definition of “credit union” insert—

““deposit” means—

(a) a deposit within the meaning of point (3) of Article 2(1) of the deposit guarantee schemes directive (including a share treated as a deposit by virtue of Article 2(3) of the directive); or

(c) a share in a credit union other than—

(i) a deferred share within the meaning given by section 31A of the Credit Unions Act 1979; or

(ii) a deferred share issued by a society registered under the Credit Unions (Northern Ireland) Order 1985 or a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 as a credit union.”;

(b) after the definition of “deposit guarantee schemes directive” insert—

““eligible deposit” has the meaning given in section 70A(7) of the Banking Act 2009”.

(3) In regulation 6 (time limit for determining that a compensation scheme member is unable to repay deposits), in paragraph (1), for the words from “make” to the end substitute—

“determine whether in its view the compensation scheme member appears unable for the time being, for reasons which are directly related to its financial circumstances, to repay the deposit and the compensation scheme member has no current prospect of being able to do so.”.

PART 3

Amendments of Primary Legislation: European Union (Withdrawal) Act 2018

Amendments of the Financial Services and Markets Act 2000

3.—(1) In the Financial Services and Markets Act 2000(b), Schedule 17 (the ombudsman scheme) is amended as follows.

(2) In Part 1, in paragraph 1—

(a) omit the definition of “ADR Directive”;

(b) in the definition of “ADR entity”, for the words from “any” to the end substitute “a person whose name appears on a list maintained in accordance with regulation 10 of the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015(c)”.

(a) S.I. 2015/486.

(b) 2000 c.8.

(c) S.I. 2015/542.

(3) In Part 2, in paragraph 2(2), for “quality requirements in Chapter II of the ADR Directive” substitute “requirements in Schedule 3 to the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015”.

(4) In Part 3, in paragraph 14(3A), for “quality requirements in Chapter II of the ADR Directive” substitute “requirements in Schedule 3 to the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015”.

Amendment of the Financial Services Act 2012

4. In the Financial Services Act 2012(a), in section 82 (publication of reports of inquiries and investigations), in subsection (3)(a), for “, enforceable EU obligation” substitute “(including any provision of retained direct EU legislation)”.

PART 4

Modification of the Deposit Guarantee Scheme Regulations 2015: European Union (Withdrawal) Act 2018

Amendments of the Deposit Guarantee Scheme Regulations 2015

5.—(1) The 2015 Regulations are further amended as follows.

(2) In regulation 2, in paragraph (1)—

(a) for the definition of “deposit” substitute—

““deposit” means—

(a) a deposit within the meaning of point (23A) of Article 2(1) of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012;

(b) a share in a building society, as defined in section 119 of the Building Societies Act 1986, other than a share of a capital nature that is own funds, as defined in point (118) of Article 4.1 of Regulation No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012; or

(c) a share in a credit union other than—

(i) a deferred share within the meaning given by section 31A of the Credit Unions Act 1979; or

(ii) a deferred share issued by a society registered under the Credit Unions (Northern Ireland) Order 1985 or a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 as a credit union;”;

(b) omit the definition of “non-UK deposit guarantee scheme”.

(3) In regulation 3 (meaning of “compensation scheme member”)—

(a) omit paragraph (1)(a);

(b) in paragraph (2)(d)(ii), omit “an incoming firm or”;

(c) omit paragraph (3)(a).

(4) Omit regulation 4 (designation of competent authority and designated authority).

(5) In regulation 7A (transitional maximum compensation level), at the end insert—

“(5) The amount referred to in paragraph (3) must be reviewed periodically by the PRA and at least once every five years.

(a) 2012 c.21.

(6) Having reviewed the amount referred to in paragraph (3), the PRA may adjust the amount, taking account of matters the PRA considers relevant, including in particular, developments in the banking sector and the economic and monetary situation in the United Kingdom.

(7) The first review carried out in accordance with paragraph (5) must not commence before 2021 unless unforeseen events necessitate an earlier review.

(8) The PRA may adjust the amount referred to in paragraph (3) in accordance with inflation in the United Kingdom during the period since the most recent alteration of the amount referred to in paragraph (3).

(9) Any adjustment under paragraph (8) must be carried out on the basis of changes in the consumer prices index calculated and published by the Office for National Statistics or, where the index is not published for any year during the period, any substituted index or figures published by that Office.

(10) The PRA is not required to carry out a review under paragraph (5) in order to exercise its power under paragraph (8).

(11) The PRA must not adjust the amount referred to in paragraph (3) in accordance with paragraph (6) or (8) without the prior written approval of the Treasury.”.

(6) For regulation 8 (determination by PRA whether contributions may be raised by the scheme manager) substitute—

“Determination by PRA whether contributions may be raised by the scheme manager

8.—(1) This regulation specifies conditions which must be met before the scheme manager may request a loan under section 223B(a) of FSMA for the purposes of—

- (a) repaying depositors in accordance with the compensation scheme; or
- (b) contributing to the costs of the special resolution regime under section 214B(b) of FSMA or section 61(2)(b) of the Banking Act 2009.

(2) The conditions are—

- (a) the PRA has determined whether the scheme manager may raise contributions under the compensation scheme; and
- (b) the PRA has notified that determination in writing to the scheme manager and the Treasury.”.

(7) Omit regulation 10 (payment of compensation by the scheme manager on behalf of a non-UK scheme).

(8) Omit regulation 11 (notification of covered deposits and available financial means of the compensation scheme).

(9) Omit regulation 12 (notification of contents of co-operation agreements).

(10) In regulation 18 (review), omit paragraph (2).

Transitional arrangements for payment of compensation by the scheme manager on behalf of a non-UK deposit guarantee scheme

6.—(1) Paragraph (2) applies if—

- (a) the conditions specified in regulation 10(1)(a) and (b) of the 2015 Regulations are met in relation to a non-UK deposit guarantee scheme before regulation 5(7) (above) comes into force; but

(a) Inserted by the Banking Act 2009, section 173.

(b) A section 214B was originally inserted by the Banking Act 2009, section 171(1). A modified section 214B and sections 214C and 214D were substituted for that by the Financial Services Act 2010, section 16(1), and the modified section 214B was subsequently amended by the Financial Services Act 2012, section 101(10).

(b) the conditions specified in regulation 10(1)(c) of the 2015 Regulations are not met until after regulation 5(7) (above) comes into force.

(2) The scheme manager may, with the written consent of the PRA and in accordance with the instructions of the non-UK deposit guarantee scheme, make a payment of compensation referred to in regulation 10 of the 2015 Regulations.

(3) Anything done or omitted by the scheme manager in accordance with this regulation or in consequence of the application of paragraph 37 of Schedule 8 to the European Union (Withdrawal) Act 2018 in relation to a non-UK deposit guarantee scheme is to be treated for the purposes of section 222(1) of the Financial Services and Markets Act 2000 (statutory immunity) as done or omitted in the discharge, or purported discharge, of the scheme manager's functions.

(4) The PRA may by rules make provision in connection with the payment of compensation by the scheme manager in accordance with paragraph (2).

*Mike Freer
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3rd December 2018

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2 of these Regulations is made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. This Part amends the definitions of "deposit" and "eligible deposit" that apply by virtue of regulation 2(2) of the Deposit Guarantee Scheme Regulations 2015 ("the 2015 regulations"), so that they include certain shares in a credit union.

Parts 3 and 4 of these Regulations are made in exercise of the powers in section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c.16) ("the Act") in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU. In particular, these Regulations address deficiencies under paragraphs (a), (b), (c) and (g) of section 8(2) of the Act and transfer functions under section 8(6) of the Act.

Part 3 amends primary legislation relating to the financial ombudsman scheme and financial independent inquiries and investigations.

Part 4 amends the 2015 regulations which implement Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast) repealing Directive 94/19/EC.

Regulations 3, 4 and 5 amend EU references and remove arrangements which will no longer be appropriate after withdrawal.

Regulation 5(5) transfers from EU institutions to the UK's Prudential Regulation Authority (the "PRA") the power to set the maximum compensation in respect of deposits payable by the UK's deposit guarantee scheme called the Financial Services Compensation Scheme (the "FSCS").

Regulation 5(7) removes the (reciprocated) arrangement whereby the FSCS must, as agent, pay compensation to persons who have made deposits through a UK branch with a credit institution that is a member of a deposit guarantee scheme in a state within the European Economic Area (the "EEA") other than the UK. This provision is saved under regulation 6 for the purpose of allowing payments to be made in respect of compensation claims due prior to exit from the EU. Aside from this saving provision and the general saving provision made by paragraph 37 of Schedule 8 to the Act, the overall effect of regulation 5(7) will be that after EU exit the deposit guarantee schemes of EEA member states will be treated on the same basis as those of third countries for purpose of the UK's deposit guarantee scheme arrangements.

Regulation 5(8) and (9) remove requirements of the PRA to notify certain matters to the European Banking Authority.

An impact assessment has not been produced for this instrument, as no significant impact on the costs of business or the voluntary sector is foreseen.