



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XV

#### THE FINANCIAL SERVICES COMPENSATION SCHEME

##### *Provisions of the scheme*

#### 214 General

- (1) The compensation scheme may, in particular, make provision—
  - (a) as to the circumstances in which a relevant person is to be taken (for the purposes of the scheme) to be unable, or likely to be unable, to satisfy claims made against him;
  - (b) for the establishment of different funds for meeting different kinds of claim;
  - (c) for the imposition of different levies in different cases;
  - (d) limiting the levy payable by a person in respect of a specified period;
  - (e) for repayment of the whole or part of a levy in specified circumstances;
  - (f) for a claim to be entertained only if it is made by a specified kind of claimant;
  - (g) for a claim to be entertained only if it falls within a specified kind of claim;
  - (h) as to the procedure to be followed in making a claim;
  - (i) for the making of interim payments before a claim is finally determined;
  - (j) limiting the amount payable on a claim to a specified maximum amount or a maximum amount calculated in a specified manner;
  - (k) for payment to be made, in specified circumstances, to a person other than the claimant.
- (2) Different provision may be made with respect to different kinds of claim.
- (3) The scheme may provide for the determination and regulation of matters relating to the scheme by the scheme manager.
- (4) The scheme, or particular provisions of the scheme, may be made so as to apply only in relation to—

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- (a) activities carried on,
  - (b) claimants,
  - (c) matters arising, or
  - (d) events occurring,
- in specified territories, areas or localities.
- (5) The scheme may provide for a person who—
- (a) qualifies for authorisation under Schedule 3, and
  - (b) falls within a prescribed category,
- to elect to participate in the scheme in relation to some or all of the activities for which he has permission as a result of any provision of, or made under, that Schedule.
- (6) The scheme may provide for the scheme manager to have power—
- (a) in specified circumstances,
  - (b) but only if the scheme manager is satisfied that the claimant is entitled to receive a payment in respect of his claim—
    - (i) under a scheme which is comparable to the compensation scheme, or
    - (ii) as the result of a guarantee given by a government or other authority,
 to make a full payment of compensation to the claimant and recover the whole or part of the amount of that payment from the other scheme or under that guarantee.

## **215 Rights of the scheme in relevant person’s insolvency**

- (1) The compensation scheme may, in particular, make provision—
- (a) as to the effect of a payment of compensation under the scheme in relation to rights or obligations arising out of the claim against a relevant person in respect of which the payment was made;
  - (b) for conferring on the scheme manager a right of recovery against that person.
- (2) Such a right of recovery conferred by the scheme does not, in the event of the relevant person’s insolvency, exceed such right (if any) as the claimant would have had in that event.
- (3) If a person other than the scheme manager presents a petition under section 9 of the 1986 Act or Article 22 of the 1989 Order in relation to a company or partnership which is a relevant person, the scheme manager has the same rights as are conferred on the Authority by section 362.
- (4) If a person other than the scheme manager presents a petition for the winding up of a body which is a relevant person, the scheme manager has the same rights as are conferred on the Authority by section 371.
- (5) If a person other than the scheme manager presents a bankruptcy petition to the court in relation to an individual who, or an entity which, is a relevant person, the scheme manager has the same rights as are conferred on the Authority by section 374.
- (6) Insolvency rules may be made for the purpose of integrating any procedure for which provision is made as a result of subsection (1) into the general procedure on the administration of a company or partnership or on a winding-up, bankruptcy or sequestration.
- (7) “Bankruptcy petition” means a petition to the court—

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- (a) under section 264 of the 1986 Act or Article 238 of the 1989 Order for a bankruptcy order to be made against an individual;
  - (b) under section 5 of the 1985 Act for the sequestration of the estate of an individual; or
  - (c) under section 6 of the 1985 Act for the sequestration of the estate belonging to or held for or jointly by the members of an entity mentioned in subsection (1) of that section.
- (8) “Insolvency rules” are—
- (a) for England and Wales, rules made under sections 411 and 412 of the 1986 Act;
  - (b) for Scotland, rules made by order by the Treasury, after consultation with the Scottish Ministers, for the purposes of this section; and
  - (c) for Northern Ireland, rules made under Article 359 of the 1989 Order and section 55 of the Judicature (Northern Ireland) Act 1978.
- (9) “The 1985 Act”, “the 1986 Act”, “the 1989 Order” and “court” have the same meaning as in Part XXIV.

## **216 Continuity of long-term insurance policies**

- (1) The compensation scheme may, in particular, include provision requiring the scheme manager to make arrangements for securing continuity of insurance for policyholders, or policyholders of a specified class, of relevant long-term insurers.
- (2) “Relevant long-term insurers” means relevant persons who—
  - (a) have permission to effect or carry out contracts of long-term insurance; and
  - (b) are unable, or likely to be unable, to satisfy claims made against them.
- (3) The scheme may provide for the scheme manager to take such measures as appear to him to be appropriate—
  - (a) for securing or facilitating the transfer of a relevant long-term insurer’s business so far as it consists of the carrying out of contracts of long-term insurance, or of any part of that business, to another authorised person;
  - (b) for securing the issue by another authorised person to the policyholders concerned of policies in substitution for their existing policies.
- (4) The scheme may also provide for the scheme manager to make payments to the policyholders concerned—
  - (a) during any period while he is seeking to make arrangements mentioned in subsection (1);
  - (b) if it appears to him that it is not reasonably practicable to make such arrangements.
- (5) A provision of the scheme made by virtue of section 213(3)(b) may include power to impose levies for the purpose of meeting expenses of the scheme manager incurred in—
  - (a) taking measures as a result of any provision of the scheme made by virtue of subsection (3);
  - (b) making payments as a result of any such provision made by virtue of subsection (4).

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## **217 Insurers in financial difficulties**

- (1) The compensation scheme may, in particular, include provision for the scheme manager to have power to take measures for safeguarding policyholders, or policyholders of a specified class, of relevant insurers.
- (2) “Relevant insurers” means relevant persons who—
  - (a) have permission to effect or carry out contracts of insurance; and
  - (b) are in financial difficulties.
- (3) The measures may include such measures as the scheme manager considers appropriate for—
  - (a) securing or facilitating the transfer of a relevant insurer’s business so far as it consists of the carrying out of contracts of insurance, or of any part of that business, to another authorised person;
  - (b) giving assistance to the relevant insurer to enable it to continue to effect or carry out contracts of insurance.
- (4) The scheme may provide—
  - (a) that if measures of a kind mentioned in subsection (3)(a) are to be taken, they should be on terms appearing to the scheme manager to be appropriate, including terms reducing, or deferring payment of, any of the things to which any of those who are eligible policyholders in relation to the relevant insurer are entitled in their capacity as such;
  - (b) that if measures of a kind mentioned in subsection (3)(b) are to be taken, they should be conditional on the reduction of, or the deferment of the payment of, the things to which any of those who are eligible policyholders in relation to the relevant insurer are entitled in their capacity as such;
  - (c) for ensuring that measures of a kind mentioned in subsection (3)(b) do not benefit to any material extent persons who were members of a relevant insurer when it began to be in financial difficulties or who had any responsibility for, or who may have profited from, the circumstances giving rise to its financial difficulties, except in specified circumstances;
  - (d) for requiring the scheme manager to be satisfied that any measures he proposes to take are likely to cost less than it would cost to pay compensation under the scheme if the relevant insurer became unable, or likely to be unable, to satisfy claims made against him.
- (5) The scheme may provide for the Authority to have power—
  - (a) to give such assistance to the scheme manager as it considers appropriate for assisting the scheme manager to determine what measures are practicable or desirable in the case of a particular relevant insurer;
  - (b) to impose constraints on the taking of measures by the scheme manager in the case of a particular relevant insurer;
  - (c) to require the scheme manager to provide it with information about any particular measures which the scheme manager is proposing to take.
- (6) The scheme may include provision for the scheme manager to have power—
  - (a) to make interim payments in respect of eligible policyholders of a relevant insurer;
  - (b) to indemnify any person making payments to eligible policyholders of a relevant insurer.

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- (7) A provision of the scheme made by virtue of section 213(3)(b) may include power to impose levies for the purpose of meeting expenses of the scheme manager incurred in—
- (a) taking measures as a result of any provision of the scheme made by virtue of subsection (1);
  - (b) making payments or giving indemnities as a result of any such provision made by virtue of subsection (6).
- (8) “Financial difficulties” and “eligible policyholders” have such meanings as may be specified.