



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XV

#### THE FINANCIAL SERVICES COMPENSATION SCHEME

##### *The scheme manager*

#### **212 The scheme manager**

- (1) The Authority must establish a body corporate (“the scheme manager”) to exercise the functions conferred on the scheme manager by or under this Part.
- (2) The Authority must take such steps as are necessary to ensure that the scheme manager is, at all times, capable of exercising those functions.
- (3) The constitution of the scheme manager must provide for it to have—
  - (a) a chairman; and
  - (b) a board (which must include the chairman) whose members are the scheme manager’s directors.
- (4) The chairman and other members of the board must be persons appointed, and liable to removal from office, by the Authority (acting, in the case of the chairman, with the approval of the Treasury).
- (5) But the terms of their appointment (and in particular those governing removal from office) must be such as to secure their independence from the Authority in the operation of the compensation scheme.
- (6) The scheme manager is not to be regarded as exercising functions on behalf of the Crown.
- (7) The scheme manager’s board members, officers and staff are not to be regarded as Crown servants.

### *The scheme*

#### **213 The compensation scheme**

- (1) The Authority must by rules establish a scheme for compensating persons in cases where relevant persons are unable, or are likely to be unable, to satisfy claims against them.
- (2) The rules are to be known as the Financial Services Compensation Scheme (but are referred to in this Act as “the compensation scheme”).
- (3) The compensation scheme must, in particular, provide for the scheme manager—
  - (a) to assess and pay compensation, in accordance with the scheme, to claimants in respect of claims made in connection with regulated activities carried on (whether or not with permission) by relevant persons; and
  - (b) to have power to impose levies on authorised persons, or any class of authorised person, for the purpose of meeting its expenses (including in particular expenses incurred, or expected to be incurred, in paying compensation, borrowing or insuring risks).
- (4) The compensation scheme may provide for the scheme manager to have power to impose levies on authorised persons, or any class of authorised person, for the purpose of recovering the cost (whenever incurred) of establishing the scheme.
- (5) In making any provision of the scheme by virtue of subsection (3)(b), the Authority must take account of the desirability of ensuring that the amount of the levies imposed on a particular class of authorised person reflects, so far as practicable, the amount of the claims made, or likely to be made, in respect of that class of person.
- (6) An amount payable to the scheme manager as a result of any provision of the scheme made by virtue of subsection (3)(b) or (4) may be recovered as a debt due to the scheme manager.
- (7) Sections 214 to 217 make further provision about the scheme but are not to be taken as limiting the power conferred on the Authority by subsection (1).
- (8) In those sections “specified” means specified in the scheme.
- (9) In this Part (except in sections 219, 220 or 224) “relevant person” means a person who was—
  - (a) an authorised person at the time the act or omission giving rise to the claim against him took place; or
  - (b) an appointed representative at that time.
- (10) But a person who, at that time—
  - (a) qualified for authorisation under Schedule 3, and
  - (b) fell within a prescribed category,is not to be regarded as a relevant person in relation to any activities for which he had permission as a result of any provision of, or made under, that Schedule unless he had elected to participate in the scheme in relation to those activities at that time.

### *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—
  - (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—
  - (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).

## **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—

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- (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.
- (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.

*Annual report*

**218 Annual report**

- (1) At least once a year, the scheme manager must make a report to the Authority on the discharge of its functions.

- (2) The report must—
  - (a) include a statement setting out the value of each of the funds established by the compensation scheme; and
  - (b) comply with any requirements specified in rules made by the Authority.
- (3) The scheme manager must publish each report in the way it considers appropriate.

### *Information and documents*

## **219 Scheme manager’s power to require information**

- (1) The scheme manager may, by notice in writing given to the relevant person in respect of whom a claim is made under the scheme or to a person otherwise involved, require that person—
  - (a) to provide specified information or information of a specified description; or
  - (b) to produce specified documents or documents of a specified description.
- (2) The information or documents must be provided or produced—
  - (a) before the end of such reasonable period as may be specified; and
  - (b) in the case of information, in such manner or form as may be specified.
- (3) This section applies only to information and documents the provision or production of which the scheme manager considers—
  - (a) to be necessary for the fair determination of the claim; or
  - (b) to be necessary (or likely to be necessary) for the fair determination of other claims made (or which it expects may be made) in respect of the relevant person concerned.
- (4) If a document is produced in response to a requirement imposed under this section, the scheme manager may—
  - (a) take copies or extracts from the document; or
  - (b) require the person producing the document to provide an explanation of the document.
- (5) If a person who is required under this section to produce a document fails to do so, the scheme manager may require the person to state, to the best of his knowledge and belief, where the document is.
- (6) If the relevant person is insolvent, no requirement may be imposed under this section on a person to whom section 220 or 224 applies.
- (7) If a person claims a lien on a document, its production under this Part does not affect the lien.
- (8) “Relevant person” has the same meaning as in section 224.
- (9) “Specified” means specified in the notice given under subsection (1).
- (10) A person is involved in a claim made under the scheme if he was knowingly involved in the act or omission giving rise to the claim.

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## **220 Scheme manager’s power to inspect information held by liquidator etc**

- (1) For the purpose of assisting the scheme manager to discharge its functions in relation to a claim made in respect of an insolvent relevant person, a person to whom this section applies must permit a person authorised by the scheme manager to inspect relevant documents.
- (2) A person inspecting a document under this section may take copies of, or extracts from, the document.
- (3) This section applies to—
  - (a) the administrative receiver, administrator, liquidator or trustee in bankruptcy of an insolvent relevant person;
  - (b) the permanent trustee, within the meaning of the Bankruptcy (Scotland) Act 1985, on the estate of an insolvent relevant person.
- (4) This section does not apply to a liquidator, administrator or trustee in bankruptcy who is—
  - (a) the Official Receiver;
  - (b) the Official Receiver for Northern Ireland; or
  - (c) the Accountant in Bankruptcy.
- (5) “Relevant person” has the same meaning as in section 224.

## **221 Powers of court where information required**

- (1) If a person (“the defaulter”)—
  - (a) fails to comply with a requirement imposed under section 219, or
  - (b) fails to permit documents to be inspected under section 220,the scheme manager may certify that fact in writing to the court and the court may enquire into the case.
- (2) If the court is satisfied that the defaulter failed without reasonable excuse to comply with the requirement (or to permit the documents to be inspected), it may deal with the defaulter (and, in the case of a body corporate, any director or officer) as if he were in contempt.
- (3) “Court” means—
  - (a) the High Court;
  - (b) in Scotland, the Court of Session.

### *Miscellaneous*

## **222 Statutory immunity**

- (1) Neither the scheme manager nor any person who is, or is acting as, its board member, officer or member of staff is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the scheme manager’s functions.
- (2) Subsection (1) does not apply—
  - (a) if the act or omission is shown to have been in bad faith; or



- (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

## **223 Management expenses**

- (1) The amount which the scheme manager may recover, from the sums levied under the scheme, as management expenses attributable to a particular period may not exceed such amount as may be fixed by the scheme as the limit applicable to that period.
- (2) In calculating the amount of any levy to be imposed by the scheme manager, no amount may be included to reflect management expenses unless the limit mentioned in subsection (1) has been fixed by the scheme.
- (3) “Management expenses” means expenses incurred, or expected to be incurred, by the scheme manager in connection with its functions under this Act other than those incurred—
  - (a) in paying compensation;
  - (b) as a result of any provision of the scheme made by virtue of section 216(3) or (4) or 217(1) or (6).

## **224 Scheme manager’s power to inspect documents held by Official Receiver etc**

- (1) If, as a result of the insolvency or bankruptcy of a relevant person, any documents have come into the possession of a person to whom this section applies, he must permit any person authorised by the scheme manager to inspect the documents for the purpose of establishing—
  - (a) the identity of persons to whom the scheme manager may be liable to make a payment in accordance with the compensation scheme; or
  - (b) the amount of any payment which the scheme manager may be liable to make.
- (2) A person inspecting a document under this section may take copies or extracts from the document.
- (3) In this section “relevant person” means a person who was—
  - (a) an authorised person at the time the act or omission which may give rise to the liability mentioned in subsection (1)(a) took place; or
  - (b) an appointed representative at that time.
- (4) But a person who, at that time—
  - (a) qualified for authorisation under Schedule 3, and
  - (b) fell within a prescribed category,is not to be regarded as a relevant person for the purposes of this section in relation to any activities for which he had permission as a result of any provision of, or made under, that Schedule unless he had elected to participate in the scheme in relation to those activities at that time.
- (5) This section applies to—
  - (a) the Official Receiver;
  - (b) the Official Receiver for Northern Ireland; and
  - (c) the Accountant in Bankruptcy.