
STATUTORY INSTRUMENTS

1995 No. 1442

**The Credit Institutions (Protection
of Depositors) Regulations 1995**

Part III

Amendments of Part II of 1987 Act

Functions of Deposit Protection Board

25. In subsection (2) of section 50 of the 1987 Act (functions of Deposit Protection Board), in paragraph (b), for the words “authorised institutions” there shall be substituted the words “contributory institutions.”

The Deposit Protection Fund

26. After subsection (3) of section 51 of the 1987 Act (the Deposit Protection Fund) there shall be inserted the following subsection—

“(3A) In subsection (3) above, the reference to Treasury bills includes a reference to bills and other short-term instruments issued by the government of another EEA State and appearing to the Bank to correspond as nearly as may be to Treasury bills.”

Contributory institutions etc.

27.—(1) For subsection (1) of section 52 of the 1987 Act⁽¹⁾ (contributory institutions and general provisions as to contributions) there shall be substituted the following subsection—

“(1) All UK institutions and participating institutions shall be liable to contribute to the Fund and are in this Part of this Act referred to as ‘contributory institutions’.”

(2) After subsection (2) of that section there shall be inserted the following subsection—

“(2A) Where—

- (a) a notice under subsection (2) above is served on a contributory institution; and
- (b) the amount specified in the notice remains unpaid after the period of twenty-one days mentioned in that subsection,

the Board shall as soon as practicable give written notice of that fact to the Bank.”

(3) For subsection (4) of that section there shall be substituted the following subsections—

“(4) Subject to subsection (4B) and section 57 below, the deposit base of an institution in relation to any contribution is the amount which the Board determines as representing the average, over such period preceding the levying of the contribution as appears to the Board to be appropriate, of deposits in EEA currencies with the United Kingdom offices of that institution other than—

(1) 1987 c. 22; section 52 was amended by the Banking Coordination (Second Council Directive) Regulations 1992 (S.I.1992/3218), regulation 47 and Schedule 8, paragraph 14.

- (a) secured deposits;
- (b) deposits which are own funds within the meaning given by Article 2 of Directive 89/299/EEC(2);
- (c) deposits which fall within item 1 or 2 of Annex I to Directive 94/19/EC(3); and
- (d) deposits in respect of which the institution has in the United Kingdom issued a certificate of deposit in an EEA currency.

(4A) In its application to UK institutions, subsection (4) above shall have effect as if the reference to United Kingdom offices included a reference to offices in other EEA States.

(4B) In the case of a participating EEA institution, the amount determined under subsection (4) above shall be reduced by the amount given by the formula—

$$PA \times \frac{HS}{UK}$$

where—

- PA = so much of the amount so determined as is attributable to deposits which are protected by the institution's home State scheme;
- HS = the level of protection (expressed in ecus) afforded by that scheme at the time when the determination is made, or the level of protection mentioned below, whichever is the less;
- UK= the level of protection (so expressed) afforded by this Part of this Act at that time."

(4) After subsection (5) of that section there shall be inserted the following subsections—

“(6) In this Part of this Act—

‘the 1995 Regulations’ means the Credit Institutions (Protection of Depositors) Regulations 1995;

‘administrator’, in relation to an institution, means an administrator of the institution under Part II of the Insolvency Act 1986(4) or Part III of the Insolvency (Northern Ireland) Order 1989(5);

‘building society’ means a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986;

‘the deposit protection scheme’ means the scheme for the protection of depositors continued in force by this Part of this Act;

‘ecu’ means—

- (a) the European currency unit as defined in Article 1 of Council Regulation No. 3320/94/EC(6); or
- (b) except in section 60(1) below, any other unit of account which is defined by reference to the European currency unit as so defined;

‘EEA currency’ means the currency of an EEA State or ecus;

‘EEA State’ means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(7) as adjusted by the Protocol signed at Brussels on 17th March 1993(8);

(2) O.J. L124, 5.5.89, page 16.

(3) O.J. L135, 31.5.94, page 5.

(4) 1986 c. 45.

(5) S.I. 1989/2405 (N.I. 19).

(6) O.J. L350, 31.12.94, page 1.

(7) Cm 2073.

‘former authorised institution’ does not include any institution which is a former UK institution or a former participating institution;

‘former participating institution’ means an institution which was formerly a participating institution and continues to have a liability in respect of any deposit for which it had a liability at a time when it was a participating institution, and ‘former participating EEA institution’ and ‘former participating non-EEA institution’ shall be construed accordingly;

‘former UK institution’ means an institution which was formerly a UK institution and continues to have a liability in respect of any deposit for which it had a liability at a time when it was a UK institution;

‘home State scheme’ has the same meaning as in the 1995 Regulation;

‘participating EEA institution’ means a European authorised institution which, in accordance with Chapter I of Part II of the 1995 Regulations, is participating in the deposit protection scheme;

‘participating institution’ means a participating EEA institution or a participating non-EEA institution;

‘participating non-EEA institution’ means an authorised institution which is incorporated in or formed under the law of a country or territory outside the European Economic Area, not being one—

- (a) which has, in accordance with Chapter III of Part II of the 1995 Regulations, elected not to participate in the deposit protection scheme; and
- (b) whose election under that Chapter is still in force;

‘UK institution’ means an authorised institution which is incorporated in or formed under the law of any part of the United Kingdom.

- (7) In its application to this Part, section 5(3) above shall have effect as if—
 - (a) the references in paragraph (a) to an authorised institution included references to a building society and to any credit institution which is incorporated in or formed under the law of a country or territory outside the United Kingdom; and
 - (b) in Schedule 2 to this Act, paragraph 5 (building societies) were omitted.”

Initial contributions

28. After subsection (2) of section 53 of the 1987 Act (initial contributions) there shall be inserted the following subsection—

“(2A) In its application to participating EEA institutions, subsection (2) above shall have effect as if the reference to a basis of equality were a reference to a basis of parity.”

Calculation of deposit base of transferee institutions

29.—(1) In subsections (2) to (4) of section 57 of the 1987 Act (deposit base of transferee institutions)—

- (a) for the words “sterling deposits”, in each place where they occur, there shall be substituted the words “deposits in EEA currencies”; and
- (b) for the words “sterling certificates of deposit”, in each place where they occur, there shall be substituted the words “certificates of deposit in EEA currencies”.

(2) After subsection (4) of that section there shall be inserted the following subsection—

“(4A) In their application to UK institutions, subsections (2) to (4) above shall have effect as if references to United Kingdom offices included references to offices in other EEA States.”

Compensation payments to depositors

30.—(1) For subsections (1) and (2) of section 58 of the 1987 Act⁽⁹⁾ (compensation payments to depositors) there shall be substituted the following subsections—

“(1) Subject to the provisions of this section, if at any time an institution to which this subsection applies becomes insolvent, the Board—

- (a) shall as soon as practicable pay out of the Fund to depositors who have protected deposits with that institution which are due and payable amounts equal to nine-tenths of their protected deposits; and
- (b) shall in any event secure that, before the end of the relevant period, it is in a position to make those payments as soon as they fall to be made.

(2) Subsection (1) above applies to an institution which—

- (a) is a UK institution or participating institution;
- (b) is a former UK institution or a former participating institution; or
- (c) is a former authorised institution (not being a recognised bank or licensed institution excluded by an order under section 23(2) of the Banking Act 1979);

and if at any time such an institution ceases to be insolvent, subsection (1) above shall cease to apply in relation to that institution.

(2A) In subsection (1) above ‘the relevant period’ means—

- (a) the period of three months beginning with the time when the institution becomes insolvent; or
- (b) that period and such additional period or periods, being not more than three and of not more than three months each, as the Bank may in exceptional circumstances allow.

(2B) A person claiming to be entitled to a payment under subsection (1) above in respect of a protected deposit with a participating institution shall make his claim in such form, with such evidence proving it, and within such period, as the Board directs.

(2C) The amount of any payment which falls to be made under subsection (1) above in respect of a protected deposit made with an office of a UK institution in another EEA State shall not exceed such amount as the Board may determine is or would be payable, in respect of an equivalent deposit made with an institution authorised in that State, under any corresponding scheme for the protection of depositors or investors which is in force in that State.

(2D) Where, in the case of a participating EEA institution, the Board is satisfied that a depositor has received or is entitled to receive a payment in respect of his protected deposit under any home State scheme, the Board shall deduct an amount equal to that payment from the payment that would otherwise be made to the depositor under subsection (1) above.”

(2) In subsection (3) of that section—

⁽⁹⁾ 1987 c. 22; section 58 was amended by the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405) (N.I. 19), article 381(2) and Schedule 9, Part II, paragraph 50 and by the Banking Coordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218), regulation 47 and Schedule 8, paragraph 15.

- (a) for the words from “Where” to “depositor” there shall be substituted the words “Where, in the case of a UK institution or participating non-EEA institution, the Board is satisfied that a depositor has received or will receive a payment”; and
 - (b) the words “or (2)” shall be omitted.
- (3) In subsection (5) of that section, the words “or (2)” shall be omitted.
- (4) For subsection (6) of that section there shall be substituted the following subsection—
- “(6) There shall be deducted from any payment to be made by the Board under subsection (1) above in respect of a deposit any payment already made in respect of that deposit by a liquidator or administrator of the institution; and in this subsection, in relation to an institution formed under the law of a country or territory outside the United Kingdom, the reference to a liquidator or administrator includes a reference to a person whose functions appear to the Board to correspond as nearly as may be to those of a liquidator or administrator.”
- (5) In subsection (7) of that section—
- (a) for the words “subsections (1), (2) and (6)” there shall be substituted the words “subsection (1)”; and
 - (b) for the words “those subsections” there shall be substituted the words “that subsection”.
- (6) In subsection (8) of that section—
- (a) in paragraph (a), after the word “document” there shall be inserted the words “required to be sent to a creditor of the institution under Part II of the Insolvency Act 1986 or under Part III of the Insolvency (Northern Ireland) Order 1989, or”;
 - (b) in paragraph (b)(ii), for the words “section 301” there shall be substituted the words “section 26 or 301”; and
 - (c) in paragraph (b)(v), for the words “Article 274” there shall be substituted the words “Article 38 or 274”.
- (7) For subsection (10) of that section there shall be substituted the following subsection—
- “(10) References in this section and sections 59 and 60 below to a former authorised institution include references to an institution which—
- (a) was formerly a European authorised institution which accepted deposits in the United Kingdom; and
 - (b) continues to have a liability in respect of any deposit for which it had a liability when it was such an institution;
- and references in section 60 below to ceasing to be an authorised institution include references to ceasing to be a European authorised institution which accepted deposits in the United Kingdom.”

Meaning of insolvency etc.

- 31.** For section 59 of the 1987 Act there shall be substituted the following section—

“59 Meaning of insolvency etc.

- (1) For the purposes of this Part of this Act, a UK institution or participating non-EEA institution becomes insolvent—
- (a) on the making by the Bank of a determination that, for reasons which directly relate to the institution’s financial circumstances, the institution—
 - (i) is unable to repay deposits which are due and payable; and

- (ii) has no current prospect of being able to do so;
 - (b) on the making by a court in any part of the United Kingdom, or in another EEA State, or a judicial ruling which—
 - (i) directly relates to the institution's financial circumstances; and
 - (ii) has the effect of suspending the ability of depositors to make claims against the institution; or
 - (c) in the case of a participating non-EEA institution, on the making by a court in any country or territory outside the European Economic Area of a judicial ruling which appears to the Board to correspond as nearly as may be to such a judicial ruling as is mentioned in paragraph (b) above,
- but only if deposits made with the institution have become due and payable and have not been repaid.
- (2) For those purposes, a participating EEA institution becomes insolvent—
 - (a) on the making by the supervisory authority in the institution's home State of a declaration that deposits held by the institution are no longer available; or
 - (b) on the making by a court in any part of the United Kingdom, or in an EEA State other than the institution's home State, of a judicial ruling which—
 - (i) directly relates to the institution's financial circumstances; and
 - (ii) has the effect of suspending the ability of depositors to make claims against the institution,

but only if, in a case falling within paragraph (b) above, deposits made with the institution have become due and payable and have not been repaid.
 - (3) For those purposes—
 - (a) an institution which has become insolvent by virtue of such a determination or declaration as is mentioned in subsection (1)(a) or (2)(a) above ceases to be insolvent on any withdrawal of the determination or declaration; and
 - (b) an institution which has become insolvent by virtue of such a judicial ruling as is mentioned in subsection (1)(b) or (c) or (2)(b) above ceases to be insolvent on any reversal of the ruling (whether on appeal or otherwise).
 - (4) In relation to a UK institution or participating non-EEA institution, it shall be the duty of the Bank—
 - (a) to make such a determination as is mentioned in subsection (1)(a) above within 21 days of its being satisfied as there mentioned; and
 - (b) to withdraw such a determination within 21 days of its ceasing to be so satisfied.
 - (5) In this section—
 - (a) any reference to a UK institution includes references to a former UK institution, and to a former authorised institution which is incorporated in or formed under the law of any part of the United Kingdom;
 - (b) any reference to a participating EEA institution includes references to a former participating EEA institution, and to a former authorised institution which is incorporated in or formed under the law of an EEA State other than the United Kingdom; and
 - (c) any reference to a participating non-EEA institution includes references to a former participating non-EEA institution, and to a former authorised institution

which is incorporated in or formed under the law of a country or territory which is outside the European Economic Area.”

Protected deposits

32.—(1) For subsections (1) to (4) of section 60 of the 1987 Act⁽¹⁰⁾ (protected deposits) there shall be substituted the following subsections—

“(1) Subject to the provisions of this section, in relation to an institution in respect of which a payment falls to be made under section 58(1) above, any reference in this Act to a depositor’s protected deposit is a reference to the liability of the institution to him in respect of—

- (a) the principal amount of each deposit in an EEA currency which was made by him with a United Kingdom office of the institution before the time when the institution became insolvent and has become due and payable; and
- (b) accrued interest on any such deposit up to the time when it became due and payable,

but so that the total liability of the institution to him in respect of such deposits does not exceed £20,000, or the sterling equivalent of 22,222 ecus immediately before the time when the institution became insolvent, whichever is the greater.

(2) In calculating a depositor’s protected deposit for the purposes of subsection (1) above, the amount to be taken into account as regards any deposit made in another EEA currency shall be its sterling equivalent immediately before the time when the institution became insolvent, or the time when the deposit became due and payable, whichever is the later.

(2A) In its application to UK institutions, subsection (1) above shall have effect as if any reference to United Kingdom offices included a reference to offices in other EEA States.

(3) For the purposes of subsection (1) above no account shall be taken of any liability unless—

- (a) proof of the debt, or a claim for repayment of the deposit, which gives rise to the liability has been lodged with a liquidator or administrator of the institution; or
- (b) the depositor has provided the Board with all such written authorities, information and documents as, in the event of a liquidator or administrator being appointed, the Board will need for the purpose of lodging and pursuing, on the depositor’s behalf, a proof of the debt, or a claim for the repayment of the deposit, which gives rise to the liability.

(4) In subsection (3) above, in relation to an institution incorporated in or formed under the law of a country or territory outside the United Kingdom—

- (a) references to a liquidator or administrator include references to a person whose functions appear to the Board to correspond as nearly as may be to those of a liquidator or administrator; and
- (b) references to the lodging, or the lodging and pursuing, of a proof of the debt, or a claim for the repayment of the deposit, which gives rise to the liability include references to the doing of an act or acts which appear to the Board to correspond as nearly as may be to the lodging, or the lodging and pursuing, of such a proof or claim.”

(2) In subsection (5) of that section, for the words “subsections (1) and (2)” there shall be substituted the words “subsection (1)”.

⁽¹⁰⁾ 1987 c. 22; section 60 was amended by the Banking Coordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218), regulation 47 and Schedule 8, paragraph 16.

- (3) For subsection (6) of that section there shall be substituted the following subsections—
- “(6) In determining the liability or total liability of an institution to a depositor for the purposes of subsection (1) above, no account shall be taken of any liability in respect of a deposit if—
- (a) it is a secured deposit; or
 - (b) it is a deposit which is own funds within the meaning given by Article 2 of Directive [89/299/EEC\(11\)](#); or
 - (c) it is a deposit which the Board is satisfied was made in the course of a money-laundering transaction; or
 - (d) it is a deposit by a person mentioned in item 1 or 2 of Annex I to Directive [94/19/EC\(12\)](#) which was made otherwise than as trustee for a person not so mentioned; or
 - (e) the institution is a former UK institution or former authorised institution and the deposit was made after it ceased to be a UK institution or authorised institution unless, at the time the deposit was made, the depositor did not know, and could not reasonably be expected to have known, that it had ceased to be a UK institution or authorised institution; or
 - (f) the institution is a former participating EEA institution and the deposit was made after it ceased to be a participating EEA institution; or
 - (g) the institution is a former participating non-EEA institution and the deposit was made after it ceased to be a participating non-EEA institution unless the Board is satisfied—
 - (i) that the depositor is entitled under the institution’s home State scheme to a payment in respect of the deposit; and
 - (ii) that he has not received, and has no prospect of receiving, that payment; and references in paragraph (e) above to an institution ceasing to be an authorised institution include references an institution ceasing to be a recognised bank or licensed institution under the Banking Act 1979.
- (6A) A transaction in connection with which an offence has been committed under—
- (a) any enactment specified in regulation 2(3) of the Money Laundering Regulations 1993(13); or
 - (b) any enactment in force in another EEA State, or in a country or territory outside the European Economic Area, which has effect for the purpose of prohibiting money laundering within the meaning of Article 1 of Directive [91/308/EEC\(14\)](#), is a money-laundering transaction for the purposes of subsection (6)(c) above at any time if, at that time, a person stands convicted of the offence or has been charged with the offence and has not been tried.”

(4) In subsection (7) of that section—

 - (a) the words “or (2)”, in both places where they occur, shall be omitted; and
 - (b) for the words “or, as the case may be, subject to the administration order against any such sterling deposit” there shall be substituted the words “against any such deposit in an EEA currency”.

(11) O.J. L124, 5.5.89, page 16.

(12) O.J. L135, 31.5.94, page 5.

(13) S.I. 1993/1933.

(14) O.J. L166, 28.6.91, page 77.

(5) Subsection (8) of that section shall be omitted.

Trustee deposits, joint deposits etc.

33. After subsection (10) of section 61 of the 1987 Act (trustee deposits, joint deposits etc.) there shall be inserted the following subsection—

“(11) In the application of this section in relation to deposits made with an office of a UK institution in another EEA State, references to persons entitled in any of the following capacities, namely—

- (a) as trustees;
- (b) as bare trustees;
- (c) as members of a partnership; or
- (d) as persons jointly entitled,

shall be construed as references to persons entitled under the law of that State in a capacity appearing to the Board to correspond as nearly as may be to that capacity.”

Liability of institution in respect of compensation payments

34.—(1) In subsection (1) of section 62 of the 1987 Act (**15**) (liability of institution in respect of compensation payments), the following shall be omitted, namely—

- (a) in paragraph (a), the words “or an administration order is in force in relation to it”; and
- (b) in paragraph (b), the words “or of the making of that order”.

(2) In subsection (2) of that section—

- (a) for the words “that is insolvent” there shall be substituted the words “that is being wound up”; and
- (b) in paragraph (a), for the words “became insolvent” there shall be substituted the words “began to be wound up”.

(3) In subsection (4) of that section, for the words “in relation to which an administration order is in force” there shall be substituted the words “that is not being wound up”.

(4) In subsection (5) of that section, for the words “becomes insolvent after an administration order has been in force relation to it” there shall be substituted the words “is wound up after it has become insolvent”.

Power to obtain information

35.—(1) For subsection (2) of section 65 of the 1987 Act (**16**) (power to obtain information) there shall be substituted the following subsection—

“(2) Subsections (4), (5), (11) and (13) of section 39 above shall have effect in relation to any requirement imposed under subsection (1) above on a UK institution or participating non-EEA institution as they have effect in relation to a requirement imposed under this section.”

(2) In subsection (3) of that section, for the words from “the liquidator” to “require him” there shall be substituted the words “an insolvent institution or, where a person has been appointed as liquidator or administrator of such an institution, on that person, require the institution or person”.

(15) 1987 c. 22; section 62 was amended by the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405) (N.I. 19), article 381(2) and Schedule 9, Part II, paragraph 52.

(16) 1987 c. 22; section 65 was amended by the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405) (N.I. 19), article 381(2) and Schedule 9, Part II, paragraph 53.

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- (3) In subsection (4) of that section—
- (a) for the words “having become insolvent” there shall be substituted the words “being wound up”; and
 - (b) for the words “the Official Assignee for company liquidations or in bankruptcy” there shall be substituted the words “the Official Receiver for Northern Ireland”.