
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes transitional provisions in connection with the coming into force (“commencement”) of section 19 of the Financial Services and Markets Act 2000 (c. 8) (“the Act”) in relation to compensation schemes. Part XV of the Act provides for the establishment of the Financial Services Compensation Scheme (“the new scheme”) and for the establishment of a body corporate (known as the “scheme manager”) to operate the new scheme.

The Order makes transitional provisions in relation to eight former compensation schemes. All of these schemes will be superseded by the new scheme. In the case of the PIA indemnity scheme, the Section 43 compensation scheme, the Investor Compensation Scheme and the ABI/ICS scheme (“investment compensation schemes”), which require a person to apply for compensation, the Order provides for two classes of “transitional applications”. Applications for compensation, whether made before or after commencement, in respect of a default that occurred before commencement (known in this Order as “pending applications”) are to be determined in accordance with the relevant former scheme by the scheme manager. The Financial Services Authority (“the Authority”) must by rules make such modifications of the former scheme as are necessary to enable the scheme manager to determine pending applications.

In cases where no relevant default occurred before commencement, claims for compensation may be made under the new scheme (a “post-commencement application”). The Authority must, by rules, make modifications of the new scheme that are necessary to enable the scheme manager to determine post-commencement applications. Certain provisions of Part XV of the Act, including section 219 (power to require information), 220 (power to inspect information held by a liquidator) and 224 (power to inspect documents held by the Official Receiver) apply in relation to post-commencement applications.

In the case of the Policyholders Protection Scheme, the Deposit Protection Scheme, the Building Societies Investor Protection Scheme and the Friendly Societies Protection Scheme, it is not necessary for a person to apply for compensation; when a relevant default occurs, the former scheme manager becomes subject to certain obligations. Except in the case of the Friendly Societies Protection Scheme, the Order provides that where a default occurs before commencement (“an article 9 default”) the statutory provisions that establish the scheme (which are repealed by Schedule 2 to this Order and the Financial Services and Markets Act 2000 (Mutual Societies) Order 2001 (S.I. 2001/2617) (“the Mutual Societies Order”)) continue to have effect subject to the modifications made by Schedule 1 to this Order. One of the modifications that Schedule 1 makes to these provisions is to provide that the scheme manager under the new scheme becomes subject to the obligations of the former manager of the scheme in relation to the article 9 default. In the case of the Friendly Societies Protection Scheme, the Order provides that the scheme manager must comply with that scheme, as modified by rules made by the Authority, in relation to an article 9 default.

Article 10 creates an exception to this general approach in cases involving compulsory liability insurance. In such cases, a person may make an application for compensation under the new scheme (as modified by rules made by the Authority), if the extent of the liability of the insurer is not determined until after commencement.

Under article 12, the Authority must make rules to enable the scheme manager to deal with applications where there was no article 9 default before commencement, the applicant’s circumstances could, before commencement, have given rise to a liability to pay compensation under the Policyholders Protection Scheme, the Deposit Protection Scheme, the Building Societies Investor

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Protection Scheme or the Friendly Societies Protection Scheme, but the application cannot otherwise be brought under the new scheme.

The Order also provides for the transfer of the funds, assets, rights and liabilities of the Policyholders Protection Board and the Deposit Protection Board to the scheme manager, subject to the retention by those Boards of funds (“residual funds”) necessary for them to publish their final reports and statements of account, as required by article 20. Parallel provisions in respect of the Building Societies Investor Protection Board may be found in the Mutual Societies Order.

There are also certain restrictions upon the uses the scheme manager can make of funds transferred to it from certain former schemes.

The Order extinguishes any right under a former scheme to raise funds by levying. The Order extends the power of the Authority to enable the scheme manager to levy authorised persons under section 213 of the Act so as to permit levying in respect of transitional applications, payments made in relation to article 9 defaults, and claims made pursuant to article 12.

It also makes provision in respect of the powers of the scheme manager in such cases to require the provision of information, and the application to him in such cases of the immunity conferred by section 222 of the Act.

Article 23 enables the Authority to make rules in respect of record-keeping and reporting requirements in relation to transitional cases, article 9 defaults and default by former authorised persons.

Article 24 and Schedule 2 revoke certain provisions of secondary legislation.

This Order gives effect, in part, to Council and European Parliament Directive [94/19/EC](#) (OJ No. L135 31.5.1994 p.5) relating to deposit-guarantee scheme and the European Parliament and Council Directive [97/9/EC](#) (OJ No. L84 26.03.1997 p.22) relating to investor-compensation schemes.

A copy of the following instruments may be obtained from the Financial Services Authority by applying to the principal offices of the Authority at 25 The North Colonnade, Canary Wharf, London E14 5HS:

- The Financial Services (Compensation of Investors) Rules 1998 (and amendments to those Rules);
- The Section 43 Compensation Scheme Rules (and amendments to those Rules);
- The Rules of the Friendly Societies Protection Scheme (and amendments to those Rules);
- The Grey Paper;
- The PIA Rulebook (and amendments to those rules so far as they relate to the PIA indemnity scheme); and
- the ABI/ICS agreement.