

PRA RULEBOOK: DEPOSITOR PROTECTION INSTRUMENT 2023

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (1) section 137G (The PRA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 213 (The compensation scheme);
 - (4) section 214 (General);
 - (5) section 215 (Rights of the scheme in insolvency); and
 - (6) section 218A (Regulators power to require information).

- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

Pre-conditions to making

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

PRA Rulebook: Depositor Protection Instrument 2023

- D. The PRA makes the rules in Annexes to this instrument.

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Commencement

- E. This instrument comes into force at 4 p.m. on 12/03/2023.

Citation

- F. This instrument may be cited as the PRA Rulebook: Depositor Protection Instrument 2023.

By order of the Prudential Regulation Committee

12 March 2023

Annex A

Amendments to the Glossary

In this Annex, the text is all new and is not underlined.

...

authorised electronic money institution

has the meaning given in regulation 2(1) of the *Electronic Money Regulations*.

authorised payment institution

has the meaning given in regulation 2(1) of the *Payment Services Regulations*.

...

Electronic Money Regulations

means the Electronic Money Regulations 2011 (SI 2011/99).

...

Payment Services Regulations

means the Payment Services Regulations 2017 (SI 2017/752).

...

small electronic money institution

has the meaning given in regulation 2(1) of the *Electronic Money Regulations*.

...

small payment institution

has the meaning given in regulation 2(1) of the *Payment Services Regulations*.

...

Annex B

Amendments to the Depositor Protection Part

In this Annex new text is underlined and deleted text is struck through.

1 APPLICATION AND DEFINITIONS

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1.4 Unless otherwise stated, in this Part, the following definitions shall apply:

...

electronic money institution

has the meaning given in regulation 2(1) and in regulation 20(5) of the *Electronic Money Regulations*.

...

exclusions view

means a single, consistent view of:

- (1) an account holder's aggregate *deposits* with a *firm* limited to accounts that contain or may contain *eligible deposits* to which the account holder is not absolutely entitled or which are *safeguarded funds*; or
- (2) a *depositor's* aggregate *eligible deposits* with a *firm* limited to accounts that are *not active*

and which contains the information required by 12.9.

...

insolvency event

means:

- (1) in relation to an *electronic money institution*, an *insolvency event* as defined in regulation 22(3) of the *Electronic Money Regulations*;
- (2) in relation to an *authorised payment institution* or *small payment institution*, an *insolvency event* as defined in regulation 23(18) of the *Payment Services Regulations*; or
- (3) in relation to an *electronic money institution*, *authorised payment institution* or *small payment institution*, entry into special administration as defined in regulation 7 of The Payment and Electronic Money Institution Insolvency Regulations 2021 (SI 2021/716).

...

priority creditors

means, in relation to a *deposit* which comprises *safeguarded funds*, the persons whose claims in the event of an *insolvency event* are to be paid from the asset pool in priority to all other creditors.

...

safeguarded funds

means a deposit held by a UK establishment of a PRA-authorised credit institution and made by:

- (1) an electronic money institution for the purposes of regulation 21 or 22 of the Electronic Money Regulations; or
- (2) an authorised payment institution or a small payment institution for the purposes of regulation 23 of the Payment Services Regulations.

...

2 ELIGIBILITY

...

2.2 ...

(4) Subject to (5), the following are not eligible deposits:

...

- (k) a debt security issued by the *DGS member* and any liabilities arising out of own acceptances and promissory notes;

...

(5) But 2.2(4)(a), (d) and (e) shall not exclude from eligibility a deposit to the extent this Part provides for compensation to be calculated by reference to the position of:

- (a) a person; or
- (b) a grouping without legal personality, other than the depositor.

...

5 CALCULATING COMPENSATION

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5.2

- (1) Compensation shall be calculated by reference to eligible deposits held on the compensation date; or
- (2) Where an insolvency event occurs in relation to a depositor of safeguarded funds after the compensation date, compensation relating to its deposit shall be calculated by reference to eligible deposits held by it, and the position of its priority creditors, on the date the insolvency event occurred and taking account of any compensation already paid in respect of the safeguarded funds.

...

5.7A

- (1) Where a deposit is part of safeguarded funds, the share of each priority creditor that relates to those safeguarded funds shall be considered separately in calculating the amount payable in relation to that deposit:-
- (2) Where a priority creditor is a person whose own deposit would not be an eligible deposit, the FSCS must in calculating the amount payable under (1) adjust the amount of the

overall deposit to eliminate the part of it which, in the FSCS's view, relates to that priority creditor;

- (3) The part of the overall deposit that relates to a priority creditor shall be determined by the FSCS on the basis of the FSCS's reasonable estimate of the amount of the overall deposit that would be used to pay the claims to that priority creditor on the occurrence of an insolvency event.

...

6 PAYING COMPENSATION

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6.2 The FSCS must pay any compensation to the *depositor*, with the following exceptions:

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- (5) where the account holder is not absolutely entitled to the *eligible deposit*:

(a) if another *person* (A) is absolutely entitled to the *eligible deposit*, A is the *person* entitled to compensation in respect of the *deposit*, and accordingly the FSCS must pay any compensation to A (or, where A (or a *person* who has authority to act on behalf of A) directs that any compensation be paid to another *person*, the FSCS may pay the compensation as directed by A (or a *person* who has authority to act on behalf of A)), provided that A has been identified or is identifiable); ~~and~~

(b) if no *person* is absolutely entitled to the *eligible deposit*, the FSCS must pay any compensation in accordance with such of 6.3, 6.4, 6.5 and 6.6 as applies; and

- (6) in the case of safeguarded funds, the FSCS must, subject to 6.2A – 6.2C:

(a) pay compensation to the priority creditors (B) in relation to whom compensation is payable;

(b) pay compensation to C, where B (or a person with authority to act on behalf of B (D)) has directed that any compensation payable to B should be paid to C; or

(c) if satisfied that B would be in no worse position than B would be if the compensation was paid in accordance with (a), pay compensation to an account maintained by the depositor for the purposes of regulation 21 or 22 of the *Electronic Money Regulations*; or regulation 23 of the *Payment Services Regulations*.

6.2A The FSCS may pay compensation:

- (1) under 6.2(6) only where B (and such of C and D as are relevant) has been identified (or is identifiable) and their identity has been verified as required by the MLR;

- (2) under 6.2(6)(a) and (b) only where an insolvency event has occurred in relation to the depositor.

6.2B If it is not the case that the conditions for payment under at least one of 6.2(6)(a), (b) or (c) are met then the FSCS must not pay compensation in respect of safeguarded funds.

6.2C The FSCS must consult the FCA and PRA before making payments under 6.2(6).

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9 TIME LIMITS

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9.3 The applicable time period referred to in 9.2 is the period starting on the day following the *compensation date* and ending:

- (1) until 31 December 2018: twenty *business days* later;
- (2) from 1 January 2019 until 31 December 2020: fifteen *business days* later;
- (3) from 1 January 2021 until 31 December 2023: ten *business days* later;
- (4) from 1 January 2024: seven *business days* later;

unless 6.2(5) applies, (or the FSCS reasonably believes that it may), or in the case of *safeguarded funds*, in which case it ends three months later.

9.4 The FSCS may decide to defer the payment of compensation beyond the time period set out in 9.3 where:

- (1) ~~it is uncertain whether the compensation a person is or may be entitled to receive~~ compensation is uncertain;

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12 SINGLE CUSTOMER VIEW REQUIREMENTS

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12.9 A firm must ensure that each *single customer view* and *exclusions view* contains all the information set out in the table below.

	Field identifier	Field descriptor	Notes
	...		
	Details of accounts(s)		
	...		
37	Exclusion type	<p>If applicable, where the file is an <i>exclusions view</i>, an indication of why the account falls within an <i>exclusions view</i>.</p> <p>Identify all of the following which apply:</p> <ol style="list-style-type: none"> a) The <i>depositor</i> is not absolutely entitled to the sums held in the account <u>or the account comprises <i>safeguarded funds</i></u>; b) The account is a <i>dormant account</i>; c) The account is an account for which the <i>firm</i> has received formal notice of a legal dispute or competing claims to the proceeds of the account; d) The account appears on the “Consolidated list of financial sanctions targets in the United Kingdom” that is maintained by HM Treasury or is otherwise subject to restrictive 	<p>Values:</p> <ol style="list-style-type: none"> a) BEN b) LEGDOR c) LEGDIS d) HMTS <p>Maximum number of characters in field: 6</p>

		measures imposed by national governments or international bodies.	
	...		

...

28 SUBROGATION

...

28.2A Payment of compensation by the FSCS in accordance with 6.2(6)(a) or (b) shall have the immediate effect that B (as defined in 6.2(6)(a)) may not enforce any claims B has against the *depositor* to the value of the compensation paid to B or paid as directed in accordance with 6.2(6)(b).

28.2B Any claim of B against the *depositor* that is suspended in accordance with 28.2A is only deemed to have been paid for the purposes of regulation 24(1)(b) of the *Electronic Money Regulations* or regulation 23(14)(b) of the *Payment Services Regulations* when (and to the extent) the FSCS (or the *depositor* where the FSCS assigns rights back to the *depositor* in accordance with 29.2) has made recoveries from the *credit institution* or any third party in respect of the *eligible deposit*.

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28.6 Where 6.2(6) provides for the FSCS to pay compensation to a *person* other than the *depositor*, references in 28 to the *compensation recipient* are references to the *depositor*.

29 DUTIES ON THE FSCS TO PURSUE RECOVERIES

...

29.3 Where 6.2(6) provides for the FSCS to pay compensation to a *person* other than the *depositor*, references in 29 to the *compensation recipient* are references to the *depositor*.

30 RECOVERIES OF ELIGIBLE DEPOSITS: RETURN OF SURPLUS TO COMPENSATION RECIPIENT

30.1 If the FSCS, in relation to a *claim* for *eligible deposits*, makes recoveries from the *credit institution* or any third party in respect of that *eligible deposit*, it must:

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(2) as soon as reasonably possible after it makes the recoveries;

(a) where the FSCS has paid compensation under 6.2(6)(a) or (b), pay any remaining sum to the *depositor*, and otherwise;

(b) pay any remaining sum to the *compensation recipient* (or, if not the *depositor*, as directed by the *depositor* or to any *person* subrogated to the *claim* of the *depositor* against the *credit institution* or to the rights of the *depositor* under this Part or to any *person* otherwise entitled to any remaining sum).

43 FUNDING – CLASS A TARIFF BASE CALCULATION

43.1 The *Class A tariff base* is:

- (1) *covered deposits* (excluding *temporary high balances*) as at 31 December except that, where the *covered deposit* is a *dormant account*, the applicable tariff base is *covered deposit* multiplied by 0.2 as at 31 December; and
- (2) the total balance of any *deposits* in any account which holds funds to which the account holder is not absolutely entitled or which are *safeguarded funds* but may exclude the value of any funds which the *firm* has confirmed are not *covered deposits*.

...

Annex C

Amendments to the Financial Conglomerates Part

In this Annex deleted text is struck through.

1 APPLICATION AND DEFINITIONS

...

1.4 ...

~~*authorised electronic money institution*~~

~~means in accordance with regulation 2(1) of the *Electronic Money Regulations*:~~

~~(1) a person included by the FCA in the *Financial Services Register* as an authorised electronic money institution pursuant to regulation 4(1)(a) of the *Electronic Money Regulations*; or~~

~~(2) a person deemed to have been granted authorisation by virtue of regulation 74 of the *Electronic Money Regulations*.~~

...

~~*Electronic Money Regulations*~~

~~means the *Electronic Money Regulations 2011 (SI 2011/99)*.~~

...

~~*small electronic money institution*~~

~~means, in accordance with regulation 2(1) of the *Electronic Money Regulations*, a person included by the FCA in the *Financial Services Register* pursuant to regulation 4(1)(b) of the *Electronic Money Regulations*.~~

...