

PRA RULEBOOK: SOLVENCY II FIRMS, NON-SOLVENCY II FIRMS, NON-AUTHORISED PERSONS: POLICYHOLDER PROTECTION AMENDMENT 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);
 - (6) section 216 (Continuity of long-term insurance policies);
 - (7) section 217 (Insurers in financial difficulties);
 - (8) section 217ZA (Insurers subject to write-down orders);
 - (9) section 217ZB (Recovery of financial assistance under section 217ZA);
 - (10) section 218A (Regulators’ power to require information);
 - (11) section 219 (Scheme manager’s 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: Solvency II Firms, Non-Solvency II Firms, Non-Authorised Persons: Policyholder Protection Amendment Instrument 2023

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

Part	Annex
Glossary	A
Policyholder Protection	B

Commencement

- E. This instrument comes into force on 19 September 2023.

Citation

- F. This instrument may be cited as the PRA Rulebook: Solvency II Firms, Non-Solvency II Firms, Non-Authorised Persons: Policyholder Protection Amendment Instrument 2023.

By order of the Prudential Regulation Committee
5 September 2023

Annex A

Amendments to the Glossary Part

In this Annex new text is underlined.

...

affected market participant

has the meaning given in regulation 2(1) of The Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005 (2005/1998).

...

insurer under write-down

means an insurer other than a friendly society, in respect of which a write-down order has effect.

...

write-down manager

has the meaning given to the term 'the manager' in 377G(1) of FSMA (The manager).

write-down order

has the meaning given in section 377A(1) of FSMA (Write-down orders).

...

Annex B

Amendments to the Policyholder Protection Part

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

1 APPLICATION AND DEFINITIONS

1.1 This Part applies to the *FSCS*, and:

(a) for the purposes of Chapter 5A, this Part also applies to *insurers under write-down* and *insurers that have been so*, but not to *affected market participants* or the *Society*; and

(b) for the purposes of chapter 21, 22.6 - 22.8 and Annex 2, this Part also applies to *participant firms* and the *Society*.

...

1.2 In this Part, the following definitions shall apply:

...

compensation costs

means the costs incurred:

- (1) in paying compensation in accordance with this Part;
- (2) as a result of making the arrangements contemplated in 4.1 or 4.3 or taking the measures contemplated in 5.1; ~~or~~

(2A) as a result of taking the other measures contemplated in 5A.1; or

- (3) in making payments or giving indemnities under 18.2.

...

participant firm

means:

- (1) a firm which is an insurer, or a member (except:
 - (a) 21, 22.6 - 22.8 and Annex 2 in respect of a *member*; and
 - (b) 21 and Annex 2 in respect of a *relevant person* which is an *insurer under write-down*); or
- (2) a *CRO insurer*.

...

top-up amount

has the meaning given in 5A.4(2).

...

trust account

means the bank account referred to in 5A.2(1)(c).

trust deed

means the trust deed referred to in 5A.2(2)(a).

written-down claim

means a claim as reduced by virtue of a write-down order.

...

3 QUALIFYING CONDITIONS FOR PAYING COMPENSATION

...

3.4 Notwithstanding any provision in this Part to the contrary, the FSCS may:

...

- (3) make a payment to an *eligible claimant* in accordance with 4.3;~~or~~
- (4) take such measures as it considers appropriate in accordance with 5.1; or
- (5) make a payment to an insurer under write-down in accordance with 5A.1, so as to enable the insurer under write-down to pay a top-up amount in respect of a written-down claim in accordance with 5A.4;

without fully or at all investigating the eligibility of the claimant and/or the validity and/or amount of the *claim*, if in the opinion of the FSCS:

- (a) the costs of investigating the merits of the *claim* are reasonably likely to be disproportionate to the likely benefit of such investigation; and
- (b) (as a result or otherwise) it is reasonably in the interests of *relevant persons* to do so.

...

5A INSURERS UNDER WRITE-DOWN

5A.1

- (1) The FSCS must pay an insurer under write-down in accordance with 5A.3 if the conditions in 5A.2(1) are satisfied.
- (2) The FSCS may also take such measures as it considers appropriate in respect of an insurer under write-down in accordance with:
 - (a) Chapter 4 (in respect of contracts of long-term insurance), as if the insurer under write-down were within the scope of 4.1; and/or
 - (b) Chapter 5, as if the insurer under write-down were in financial difficulties within the meaning of 5.4.

5A.2

- (1) The conditions referred to in 5A.1(1) are:
 - (a) the FSCS has been notified in accordance with section 377F of FSMA and 2.1(7) of the Insurers in financial difficulties: Notification of Affected Persons Part that a write-down order has been made in respect of the insurer under write-down;
 - (b) a write-down manager has been appointed in respect of the insurer under write-down;
 - (c) an account has been opened in the name of the insurer under write-down for the purpose of receiving payments from the FSCS which will then fund top-up amounts (the 'trust account'); and

- (d) a trust has been entered into in respect of any funds from time-to-time held in the *trust account* which satisfies the minimum criteria in (2).
- (2) The minimum criteria of the trust are that:
- (a) it is established and documented under a *trust deed* entered into by the *insurer under write-down*;
- (b) it has the *insurer under write-down* as the trustee;
- (c) it is over any funds from time-to-time held in the *trust account* (including any interest that accrues on the account);
- (d) the only funds to be held in the *trust account* will be those received from the *FSCS* under this Chapter and any accrued interest;
- (e) it is a discretionary trust with the following beneficiaries:
- (i) first, any *policyholder* of the *insurer under write-down*, insofar as the *policyholder* is an *eligible claimant* with a *written-down claim* by virtue of the *write-down order* (to be described in the *trust deed* by class of *contract of insurance*); and
- (ii) second, the *FSCS*, in respect of any residual amounts held in the *trust account* (including residual amounts existing upon the *write-down order* ceasing to have any further effect in accordance with section 377H of *FSMA*); and
- (f) in accordance with section 217ZA(5)(a) of *FSMA*, amounts paid into the *trust account* by the *FSCS* under 5A.1(1) shall not be used by the *insurer under write-down* (whether or not by the *write-down manager* acting on its behalf) for any other purpose.

5A.3

- (1) Payments to be made by the *FSCS* in accordance with 5A.1(1) must be paid into the *trust account* in such amounts and at such times as the *FSCS* determines sufficient for the *insurer under write-down* to be able to pay *top-up amounts* to *eligible claimants*.
- (2) Such payments must include an amount sufficient for such *top-up amounts* to be paid by the *insurer under write-down* in respect of any due and payable *written-down claim* (or such a *claim* that would be due and payable but for the effect of the *write-down order*) including an amount in respect of any such interest as the *FSCS* may consider appropriate.
- (3) In determining payments under (1) and (2), the *FSCS* must have regard in each case to any representations or other relevant information provided by the *insurer under write-down*.

5A.4

- (1) The *insurer under write-down* must pay a *top-up amount* to a *policyholder* that is an *eligible claimant* with a due and payable *written-down claim* (or that would be due and payable but for the *write-down order*), but only if:
- (a) there are sufficient funds in the *trust account* to do so; and
- (b) the *written-down claim* is less than the amount that the *FSCS* would pay if, rather than the *claim* being subject to the *write-down order*, the circumstances were such that the *claim* gave rise to an entitlement to compensation under Chapter 3.
- (2) The *top-up amount* in respect of an *eligible claimant* in respect of a *claim* is: $A \times B\% - C$ where:
- 'A' is the *claim* (as if the *write-down order* were not in effect);

'B', expressed as a percentage, is the level of cover that would apply under Chapter 17 in respect of the *claim* if, rather than the *claim* being subject to the *write-down order*, the circumstances were such that the *claim* gave rise to an entitlement to compensation under Chapter 3; and

'C' is the *written-down claim*.

- (3) The insurer under write-down must add interest to the top-up amount, if the FSCS has provided funding for it to do so.

5A.5

- (1) Where a write-down order ceases to have any further effect in accordance with section 377H of FSMA, the FSCS shall have a right of recovery from the insurer to which that write-down order applied, in respect of any amounts paid to it by the FSCS under this Chapter.
- (2) The FSCS must pursue all and only such recoveries under (1) as it considers are likely to be both reasonably possible and cost effective to pursue.
- (3) The FSCS may not seek any form of recovery under (1) from current or former policyholders of the insurer to which that write-down order applied (whether or not the policyholder received payment of a top-up amount).
- (4) Chapters 12, 13 and 14 do not apply in respect of amounts paid under this Chapter by the FSCS to an insurer under write-down and their recovery by the FSCS.

5A.6 For the purposes of this Chapter, where a write-down order is varied (but not terminated):

- (1) this Chapter applies as if references to the write-down order were to the order as varied; and
- (2) the insurer under write-down and the FSCS shall take such steps as may be necessary to amend the trust deed so as to ensure that the arrangements of the trust established under the trust deed reflects the write-down order as varied.

...

10 RELEVANT PERSONS IN DEFAULT

...

10.3 Subject to 10.6 and 10.7, and provided that the FSCS is not taking measures for the purpose of safeguarding the rights of *eligible claimants* in accordance with 5, the FSCS may determine a *relevant person* to be *in default* when it is, in the opinion of the FSCS or the PRA:

- (1) unable to satisfy *protected claims* against it; or
- (2) likely to be unable to satisfy *protected claims* against it.

...

10.7 The FSCS may not declare an insurer under write-down to be in default while the write-down order is in effect.

...

18 PAYMENT OF COMPENSATION

18.1 If the FSCS determines that compensation is payable (or any recovery or other amount is payable by the FSCS to the claimant), it must pay it to the claimant, or if the FSCS so decides, as directed by the claimant, unless:

(1) arrangements have or are being made to secure continuity of insurance under 4.1; or

(1A) the FSCS is taking measures it considers appropriate to safeguard *eligible claimants* under 5.1;

(1B) the FSCS is making payments to an *insurer under write-down*, or taking any other permitted action in respect of *written-down claims of eligible claimants* under Chapter 5A;
or

(2) 18.2 applies.

...

19 CALCULATING COMPENSATION – GENERAL

...

19.5A For the purposes of 19.5, where a *relevant person* was an *insurer under write-down* and paid a *top-up amount* in relation to a *relevant claim*, the FSCS must take that payment into account when calculating the claimant's overall *claim*.

...

20 THE COMPENSATION CALCULATION

...

20.2A Where a *relevant person* was an *insurer under write-down* and paid a *top-up amount* in relation to a *claim* in respect of a *contract of insurance* to which this Chapter applies, the FSCS must take that payment into account when calculating the liability under that *contract of insurance*.