

Policy Statement | PS18/15

Depositor and dormant account protection – consequential amendments

July 2015



BANK OF ENGLAND
PRUDENTIAL REGULATION
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This policy statement contains the final rules and an updated supervisory statement to implement the proposals made in Consultation Paper 23/15 in relation to depositor and dormant account protection.

1 Overview

1.1 This Prudential Regulation Authority (PRA) policy statement (PS) provides feedback to responses to CP23/15 'Depositor and dormant account protection – consequential amendments'.¹

1.2 It sets out final rules intended to advance the PRA's general objective of promoting the safety and soundness of firms by reducing the adverse effects the failure of PRA authorised firms could be expected to have on the stability of the UK financial system.

1.3 In CP23/15 the PRA proposed:

- new rules in the Depositor Protection Part to ensure depositors experiencing a reduction of deposit protection as a result of the deposit protection limit change (see PS14/15 'Depositor and dormant account protection – the protection limit')² are able to withdraw affected funds without charge, penalty or loss of interest;
- amendments to the disclosure rules in Chapter 17 of the Depositor Protection Part to provide clarity on how the information sheet should be provided;
- amendments to the information sheet in Annex 1 of the Depositor Protection Part to address compensation arrangements for small local authorities; and
- an amendment to the Dormant Account Scheme Part in respect of the class J tariff base to ensure a funding approach that is consistent with the class A tariff base in the Depositor Protection Part (under which an amendment in respect of dormant accounts was confirmed in PS15/15 'Depositor and policyholder protection – technical amendments').³

1.4 Appendix 1 of this PS contains the amendments to the Depositor Protection Part of the PRA Rulebook, as well as an amendment to the Dormant Account Scheme Part. Appendix 2 contains a link to the updated version of SS18/15 'Depositor and dormant account protection'.

1.5 This PS is relevant to:

- UK banks, building societies and credit unions as well as to overseas firms with PRA deposit-taking permission;
- the FSCS, as the administrator of the UK's Deposit Guarantee Scheme (DGS) and Dormant Account Scheme (DAS);
- depositors; and
- dormant account fund operators.

1.6 The PRA is required by the Financial Services and Markets Act 2000 (FSMA) to publish a statement on the impact of rules on mutual societies where the final rule differs from the draft

¹ *PRA Consultation Paper CP23/15, 'Depositor and dormant account protection – consequential amendments'* www.bankofengland.co.uk/pradocuments/publications/cp/2015/cp2315.aspx.

² *PRA Policy Statement PS14/15, 'Depositor and dormant account protection- the protection limit'*, July 2015; www.bankofengland.co.uk/pradocuments/publications/ps/2015/ps1415.aspx.

³ *PRA Policy Statement PS15/15, 'Depositor and policyholder protection – technical amendments'*, July 2015; www.bankofengland.co.uk/pradocuments/publications/ps/2015/ps1515.aspx.

of the proposed rule.¹ Following a review of consultation responses, a carve out has been included in Depositor Protection 57.11 (2) to provide that the requirement to enable an affected person to reduce their aggregate eligible deposits under Depositor Protection 57.6 does not prevent a credit union calculating a discretionary dividend on a share account by reference to the affected person's balance on a single reference date if this is its usual practice. In the PRA's opinion, the overall impact of the rules as made is not significantly different from the impact of the proposed rules in CP23/15 on mutual societies or other deposit-takers.

1.7 The PRA is required to have regard to any representations made to the proposals in a consultation, to publish an account, in general terms, of those representations and its response to them, and to publish details of any significant differences in the rules as made.

1.8 As a result of the feedback received from industry and retail depositors, this PS outlines the changes following consultation, including:

- an amendment to provide that any requests for withdrawals received before 1 October 2015 are treated as if they were received on 1 October 2015 (rather than requiring firms to action requests from 1 August 2015) to allow firms time to prepare their processes and systems;
- in cases where depositors have multiple accounts at the same firm, enabling firms to choose which account(s) the withdrawn amounts will be taken from, provided firms do not require the withdrawal to come from a transactional account;
- clarifying that depositors should not lose interest on remaining funds solely as a result of managing to the limit, except when the amount of the remaining deposit would put the deposit into a lower tier of interest rate under the original terms of the product.
- clarifying that where a firm's processes do not support partial withdrawals, and closure of the entire product or account is necessary, the PRA considers that the effect of Depositor Protection 57 is that firms should not impose any early closure charges and customers should be offered a new product with the same characteristics for the funds not withdrawn pursuant to Depositor Protection 57.6; and
- amending the rule to calculate the amount that can be withdrawn with reference to the estimated value at maturity less the new £75,000 coverage level, to a maximum of £10,000.

1.9 Section 2 sets out feedback received to CP23/15.

¹ Section 138K of FSMA.

2 Changes to the Depositor Protection rules

2.1 This chapter summarises the feedback received to the PRA’s proposed changes to the Depositor Protection Part of the PRA Rulebook in relation to depositors with aggregate eligible deposits above £75,000 and disclosure requirements. The amendments summarised below can be found in the Instrument in Appendix 1. The measures in this PS should be read alongside the full suite of rules relating to the implementation of the European Deposit Guarantee Schemes Directive (DGSD)¹ in PS6/15, PS9/15, PS14/15, PS15/15, and SS18/15 in Appendix 2.²

A. Depositors with aggregate eligible deposits above £75,000

2.2 The PRA received 39 responses to its proposals to ensure that depositors who were previously protected in accordance with the PRA Handbook, and continue to be protected under the Depositor Protection Part of the PRA Rulebook, can request a withdrawal to adjust the total amount of eligible deposits they hold with any one Deposit Guarantee Scheme (DGS) member.

Responses from firms and trade bodies

2.3 **Costs:** Responses from firms focussed on the practical difficulties and operational costs of implementing the requirements within the proposed timelines. These costs related to additional communications with depositors, systems changes and staff costs to facilitate early withdrawals. Trade bodies noted during the consultation that firms with business models dependent on offering ‘best buy’ deposit rates (and possibly with a greater proportion of depositors managing to the protection limit) were especially concerned about the impacts of the proposals to their funding. The PRA believes this is unlikely to have a significant impact since the proposed PRA rules would only allow each depositor to withdraw a maximum of £10,000. Moreover, deposits lost by firms may be at least partially offset by incoming new deposits that are withdrawn from other firms.

2.4 The PRA considers that depositor confidence in the protection framework is a key element underpinning financial stability. In the absence of positive action, many depositors would be faced with greater risk and uncertainty. Willingness to deposit amounts up to the deposit protection limit might be reduced, especially in fixed-term deposit accounts.

2.5 **Timelines:** Respondents were concerned that there would not be enough time to develop internal policies and operational processes to facilitate withdrawals without penalty by 1 August 2015. In response, the PRA has modified the rules to provide that any requests for withdrawals that come in before 1 October are treated as if they came in on 1 October 2015 (rather than requiring firms to action requests from 1 August 2015), which will coincide with the deadline for notifying affected depositors. Firms will then have two months following any request to return funds to depositors (provided that all funds are returned by 31 January 2016). Delaying the start date of processing depositor requests to 1 October will give firms more time to develop processes and also amend their systems to reduce the use of manual workarounds.

2.6 **Withdrawal – choice of account:** If depositors have more than one type of account or deposit at a particular firm, the proposed rule allowed depositors to choose the account from which to withdraw funds. Firms noted that depositors may not consider the full range of

¹ Recast DGSD; <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0049>.

² 2015 updates on depositor, dormant account and policyholder protection; www.bankofengland.co.uk/pr/Pages/authorisations/fs/cs/2015updates.aspx

options available to them and suggested that the costs to the firm in withdrawing sums from some accounts would be greater than others. We recognise the need to minimise, where possible, the burden that this measure may impose on firms. The PRA has therefore amended the rule to allow firms to choose which account(s) will be subject to the withdrawal, provided firms do not require the withdrawal to be made from a customer's transactional account. SS18/15 has been updated to outline the PRA's expectations on this.

2.7 Withdrawal – without charge, penalty or loss of interest: Respondents requested clarification from the PRA about the meaning of a withdrawal 'without...loss of interest'. The PRA expects that depositors should not suffer loss of interest accrued at the time of withdrawal on the amount withdrawn or the remaining amount because of action they may take in managing to the new limit. SS18/15 has also been amended to clarify that where a firm's processes do not support partial withdrawals, and closure of the entire product or account is necessary, the PRA considers that the effect of Depositor Protection 57 is that firms should not impose any early closure charges and customers should be offered a new product with the same characteristics for the funds not withdrawn pursuant to Depositor Protection 57.6. SS18/15 and the rules have also been amended to outline that depositors should not lose interest on remaining funds solely as a result of managing to the limit except when the amount of the remaining deposit would put the deposit into a lower tier of interest rates under the original terms of the product.

2.8 Restricted accounts: Two respondents requested clarification from the PRA on whether they would be required to allow withdrawals from certain accounts that may have legal prohibitions, money laundering restrictions or if the deposit is held as collateral for an amount owed to the firm. The PRA has amended the rule to clarify firms' obligations on this.

2.9 Impact on contracts: Firms and trade bodies questioned the appropriateness of the PRA's rule to require firms to waive penalties and fees to which they are contractually entitled, and were concerned these measures could create a precedent. The PRA consider this to be an appropriate outcome given the disruption to the basis on which contracts have been entered into as a result of the DGSD and in order to deliver confidence in the financial system, which benefits both depositors and firms in the long run.

2.10 Products maturing before 31 December 2015: A number of firms questioned whether penalty-free withdrawals should be allowed where deposits mature before 31 December 2015 as depositors with these products will not necessarily be affected before the limit changes. The PRA acknowledges this point and has removed the requirement to allow penalty free withdrawals where the firm is contractually required to pay away sums before 1 January 2016 so that the reduction of the coverage limit on that date is unlikely to cause a problem for that depositor.

Responses from consumers

2.11 Responses from consumers focussed on grandfathering of the £85,000 limit and the ability of those managing to the limit to protect accruing interest over the term of the deposit.

2.12 Consumers urged the PRA to allow for existing term deposits to be grandfathered at the £85,000 limit until maturity. Grandfathering all existing fixed-term deposits is not permitted under the DGSD. While the DGSD would allow the grandfathering of fixed-term deposits entered into before 2 July 2014, those deposits entered into after 2 July 2014 would not be permitted to be grandfathered under the DGSD. The PRA decided to create a requirement for firms to allow the reduction of such deposits rather than grandfathering. It took this decision in light of the possible different treatment of customers, the operational complexity it would

create for firms, complexity in the event of a pay-out and the risk of causing confusion as to the applicable protection limit.

2.13 Consumer respondents also explained that they have been careful to manage their deposits so that all monies (including any interest to be earned on deposits) would have continued to be fully protected by the £85,000 limit for the life of the fixed term. They requested that the PRA allow a penalty-free withdrawal of an amount that would keep the total value at maturity fully protected.

2.14 In light of this feedback, the PRA has amended the rules to calculate the amount that can be withdrawn with reference to the estimated value at maturity less the new £75,000 coverage level, to a maximum of £10,000. This would allow for protection for interest accrued during the term of the deposit to the extent it would have been protected under the £85,000 limit and for contractually required regular savings.

2.15 The PRA has also amended Section 12 of SS18/15 in response to feedback to clarify the PRA's expectations further in respect of the proposed rules.

B. Disclosure Requirements

Amendments to Depositor Protection 17

2.16 Depositor Protection Chapter 17 sets out continuing disclosure requirements including how firms must confirm deposit eligibility and provide the information sheet and exclusions list, in relation to statements of account. There were very few comments on the minor rule amendments that make clear that:

- confirmation of deposit eligibility is only in relation to eligible deposits;
- where a depositor does not receive statements of account, the information sheet and exclusions list must still be provided; and
- the information sheet and exclusions list can be supplied in the same document as a statement of account or in an accompanying document.

Amendments to Depositor Protection Annex 1

2.17 No objections were received to the amendments to Annex 1, the Depositor Protection Part which sets out the standard text that should be included in the information sheet that firms provide to depositors. A section has therefore been added setting out the compensation arrangements for small local authorities under Depositor Protection 9.6(2A), as proposed.

3 Additional guidance in SS18/15 ‘Depositor and dormant account protection’

3.1 No material concerns were raised to the updated version of Supervisory Statement 18/15 ‘Depositor and dormant account protection’ with further guidance on disclosure requirements in the Depositor Protection rules (see Appendix 2).

3.2 The additional disclosure guidance covers a number of areas, including:

- the requirements to provide the information sheet and exclusions list in relation to joint account holders;
- when a deposit-taking contract is entered into;
- how the information sheet can be supplied online and over the phone;
- the extent to which the information sheet can be edited; and
- PRA expectations where the depositor’s address is not known.

3.3 This additional guidance should help firms understand the PRA’s expectations around the Depositor Protection rules, and in general seeks to provide firms with an appropriate degree of flexibility in terms of implementation, while maintaining robust depositor protection measures in accordance with the DGSD.

3.4 In SS18/15, the PRA has also set out how it considers deposits that a person has created a charge or security interest over should be treated for the purposes of the Depositor Protection rules, following requests from the industry for further clarity.¹ (See paragraph 2.9 of SS18/15).

¹ *PRA Supervisory Statement SS18/15, ‘Depositor and dormant account protection’, July 2015;* www.bankofengland.co.uk/pr/Pages/publications/ss/2015/ss1815update4.aspx.

4 Proposed change to the Dormant Account Scheme rules

4.1 No comments were received on the PRA proposed rule amendment to the class J tariff base calculation. It now reflects the dormant account scheme protection limit, meaning that, for the purpose of their class J tariff base calculation, DAS members need only include those funds held in dormant accounts that are covered up to the dormant account scheme protection limit. This brings the approach for calculating the class J tariff base in line with the change in approach for calculating the class A tariff base which the PRA recently confirmed in PS6/15.¹

¹ PRA Policy Statement PS6/15, 'Depositor and dormant account protection', April 2015; www.bankofengland.co.uk/pr/Pages/publications/ps/2015/ps615.aspx .

Appendices

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- 1 Depositor Protection and Dormant Account Scheme (Amendment No. 6) Instrument 2015 (PRA 2015/62) – see www.bankofengland.co.uk/pradocuments/publications/ps/2015/ps1815instr1562.pdf
 - 2 Supervisory Statement – Depositor and dormant account protection (SS18/15) – see www.bankofengland.co.uk/pradocuments/publications/ss/2015/ss1815update4.aspx
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