



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY

Consultation Paper | CP21/15

# Depositor and policyholder protection — technical amendments

June 2015

Prudential Regulation Authority  
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Please address any comments or enquiries regarding depositor protection by 19 June 2015 to:

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## 1 Introduction

1.1 This consultation paper (CP) sets out proposed changes to the Depositor Protection Part in the Prudential Regulation Authority (PRA) Rulebook and to the FEES transitional provisions and schedules in the PRA Handbook. The proposed rules are intended to advance the PRA's general objective of promoting the safety and soundness of firms by reducing the adverse effects the failure of firms could be expected to have on the stability of the UK financial system.

1.2 The proposed rule changes arise partly as a result of issues identified with the rules consulted on in CP20/14 'Depositor protection',<sup>(1)</sup> CP4/15 'Depositor, dormant account and policyholder protection — amendments',<sup>(2)</sup> and CP15/15 'Depositor and dormant account protection — further amendments',<sup>(3)</sup> (the CPs) published in October 2014, January and April 2015 respectively. Following the CPs the PRA published PS6/15 'Depositor and dormant account protection',<sup>(4)</sup> and PS9/15 'Depositor and dormant account protection — further amendments',<sup>(5)</sup> containing amended rules in April and May 2015 respectively. The rule amendments in this CP seek to confirm and clarify arrangements to support depositor preference and the power to 'look through' accounts to those absolutely entitled to deposits, as well as to address minor administrative changes.

1.3 Appendix 1 of this CP contains the proposed amendments to the Depositor Protection rules found in the Depositor Protection Part of the PRA Rulebook.

1.4 Appendix 2 of this CP contains an instrument amending certain FEES transitionals and schedules. The PRA consulted on its approach to FEES transitional provisions and schedules (which relate to FEES 6, which sets out rules regarding the funding of the FSCS) in CP4/15. The instrument amending the relevant transitional provisions and schedules was not however included in the CP and is therefore included in this CP.

1.5 Appendix 3 of this CP contains proposed amendments to the Deposit Guarantee Scheme Statement of Policy to reflect changes proposed in this CP.<sup>(6)</sup>

1.6 This CP is relevant to:

- UK banks, building societies and credit unions as well as to overseas firms with PRA deposit-taking permission and UK branches of European Economic Area (EEA) credit institutions;
- the Financial Services Compensation Scheme (FSCS), as the administrator of the United Kingdom's Deposit Guarantee Scheme (DGS); and
- depositors.

1.7 The FEES transitionals and schedules amendment instrument is also relevant to UK insurers (including those that establish a branch or operate on a freedom of services basis in the EEA), EEA insurers that establish a UK branch or operate in the United Kingdom on a freedom of services basis, and Channel Islands insurers or Isle of Man insurers with UK, Channel Island or Isle of Man risks or commitments (PRA-authorized insurers), firms (where applicable, being any of the foregoing) that have assumed responsibility for liabilities from PRA-authorized insurers (successors), the Society of Lloyd's and policyholders.

### Proposals under consultation

1.8 The PRA proposes:

- amendments to the recovery rules in the Depositor Protection Part to reflect depositor preference under Article 108 of the Banking Recovery and Resolution Directive.<sup>(7)</sup> These rules allow the FSCS to pay over to the depositor recoveries it receives insofar as these exceed the amount that the depositor has been paid by the FSCS;
- a new rule which sets out which person(s) the FSCS may treat as being absolutely entitled to an eligible deposit in circumstances where the account holder is not the person who is absolutely entitled to it;
- an amendment to allow a firm to exclude from its class A tariff base calculation the value of any funds, for example in beneficiary accounts, which it has confirmed are not covered deposits;
- minor administrative amendments to Single Customer View (SCV) file and exclusions file requirements to clarify information to be included; and
- an amendment to provide that, from 3 July 2015 until 1 June 2016, the FSCS shall ensure that a depositor that is a small local authority shall have access to their covered deposits within fifteen business days of receipt of a request from the depositor which contains sufficient information to enable the FSCS to make a payment.

(1) *PRA Consultation Paper CP20/14*, 'Depositor protection', October 2014; [www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp2014.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp2014.aspx).

(2) *PRA Consultation Paper CP4/15*, 'Depositor, dormant account and policyholder protection — amendments', January 2015; [www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp415.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp415.aspx).

(3) *PRA Consultation Paper CP15/15*, 'Depositor and dormant account protection — further amendments', April 2015; [www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp1515.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp1515.aspx).

(4) *PRA Policy Statement PS6/15*, 'Depositor and dormant account protection', April 2015; [www.bankofengland.co.uk/pr/Pages/publications/ps/2015/ps615.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/ps/2015/ps615.aspx).

(5) *PRA Policy Statement PS9/15*, 'Depositor and dormant account protection — further amendments', May 2015; [www.bankofengland.co.uk/pr/Pages/publications/ps/2015/ps915.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/ps/2015/ps915.aspx).

(6) *PRA Statement of Policy*, 'Deposit Guarantee Scheme', April 2015; [www.bankofengland.co.uk/pr/Pages/publications/sop/2015/ps615.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/sop/2015/ps615.aspx).

(7) Directive 2014/59/EU Bank Recovery and Resolution Directive: establishing a framework for the recovery and resolution of credit institutions and investment firms: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL\\_2014\\_173\\_R\\_0008&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_173_R_0008&from=EN).

## Statutory obligations

1.9 In discharging its general functions of making rules, and determining the general policy and principles by reference to which it performs particular functions, the PRA must, so far as reasonably possible, act in a way that advances its general objective to promote the safety and soundness of the firms it regulates.<sup>(1)</sup> These proposals advance the PRA's general objective by seeking to minimise the adverse effect that the failure of a PRA-regulated firm could be expected to have on the stability of the UK financial system. They may also support the safety and soundness of firms by enhancing depositor confidence, thus reducing the risk of disorderly runs on deposit-takers. The proposed changes to the recovery rules slightly change the way in which the objectives are promoted to reflect the introduction of depositor preference under the Bank Recovery and Resolution Directive.

1.10 In making its rules and establishing its practices and procedures, the PRA has had regard to the Regulatory Principles as set out in the Financial Services and Markets Act (FSMA).<sup>(2)</sup>

## Economic impact

1.11 The PRA is required to perform an analysis of the economic impact in respect of proposed rules.

1.12 The proposed changes to the recovery rules reflect the preference of covered deposits and the requirement that the FSCS's right to exercise subrogation rights in respect of a depositor's claim against a failed firm when it has compensated that depositor should have the same priority as that claim. As the recovery rules only operate at the point of a firm's failure, they should not have any impact on ongoing costs for firms. At the point of failure, they are unlikely to result in any increased costs. However, they will reallocate the costs of failure in relation to deposits that exceed the covered amount from the DGS levy payers to the depositor in a way that reflects the introduction of depositor preference. The impact of the reallocation effect will depend on the amount of uncovered deposits held at the firm.

1.13 The proposed changes to clarify which person(s) the FSCS may treat as being absolutely entitled to the eligible deposit, where the account holder is not absolutely entitled to the eligible deposit, do not represent a change in approach. As such, the PRA does not expect the proposed changes to have any cost implications. The benefit of the changes is that the FSCS will be provided with certainty in regards to the application of the rules which will reduce the risk of delay in the payment of compensation to beneficiaries.

1.14 The proposed amendment to a firm's tariff base calculation will mean firms are not required to pay DGS levies in respect of funds which they have confirmed are not covered deposits held in beneficiary accounts, and as such may be

considered to represent a fairer allocation of DGS levies. This change could result in a decrease in DGS levies (all else being equal) where firms hold a large number of such accounts and have identified the deposits as ineligible, a proportion of eligible deposits as not covered deposits or both. By contrast, firms that hold beneficiary accounts, but do not know the eligibility of the underlying beneficiary(s) of such accounts or the extent of their covered deposits, may see a slight increase in their DGS levies (all else being equal). The effect of the reallocation will depend on the proportion of beneficiary accounts held at a firm and whether the firm has chosen to identify the eligibility of the underlying beneficiary and the extent of their covered deposits.

1.15 The PRA expects that only the proposals relating to SCV and the calculation of the tariff base should have implications for firms. Proposals relating to SCV are administrative amendments to existing rules and are not expected to impose any costs beyond the costs of new SCV requirements in general.

1.16 The rule amendment to allow the FSCS to pay compensation to small local authorities within fifteen business days (of a receipt of a request from the depositor containing sufficient information) should benefit small local authorities as they should be able to receive compensation within a reasonable time period following a request even where their deposits have not yet been included in the SCV file. As the relevant rule only operates at the point of a firm's failure, the amendment should not have any impact on ongoing costs for firms. This change is not expected to impose a material cost to the FSCS.

## Impact on mutuals

1.17 The PRA has a statutory obligation to state whether the impact of proposed rules on mutuals will be significantly different from the impact on other firms.<sup>(3)</sup>

1.18 The proposed changes to the recovery rules will apply to mutuals that accept deposits in the same way as other deposit-takers. However, given the nature of the proposed changes, the PRA does not believe it is appropriate to make specific provision in the rules for the treatment of mutuals.

1.19 Proposals relating to SCV will affect mutuals but these are minor changes designed to provide firms with clarification and the impact of the proposed rules is not expected to be significantly different from the impact on other firms.

1.20 The PRA expects that the change to the calculation of a firm's tariff base should not have a different impact on

(1) Section 2B of FSMA.

(2) Section 3B of FSMA.

(3) Section 138K of FSMA.

mutuals compared to other firms, except to the extent that some building societies and credit unions may be less likely to hold beneficiary accounts (in which case they are unlikely to see a reduction in their tariff base and therefore could, all else being equal, see a marginal increase in DGS levies as their proportional share of total industry deposits may be larger).

### Impact on competition

1.21 When discharging its general functions in a way that advances its primary objectives the PRA has, as a secondary objective, a duty insofar as reasonably possible, to facilitate effective competition in the markets for services provided by PRA-authorized persons in carrying on regulated activities.<sup>(1)</sup> The PRA does not expect an impact on competition as a direct result of the proposed rules.

### Equality and diversity

1.22 The PRA may not act in an unlawfully discriminatory manner. It is also required under the Equality Act 2010, to have regard to the need to eliminate discrimination and to promote the equality of opportunity in carrying out its policies, services and functions.<sup>(2)</sup> To meet this requirement, the PRA has performed an assessment of the equality and diversity implications of any new policy proposals considered. In general, the PRA finds that the issues addressed in this CP do not give rise to equality and diversity implications.

### Responses and next steps

1.23 This consultation closes on 19 June 2015. The PRA invites feedback on the proposals set out in this consultation. Please address any comments or enquires to CP21\_15@bankofengland.co.uk.

1.24 Firms should note that the PRA intends to publish an amended version of supervisory statement SS18/15 in due course (as referred to in PS9/15), setting out further detail on the PRA's expectations in respect of the recast DGSD disclosure requirements following industry requests for further clarity. The PRA also intends to update SS18/15 to reflect any necessary amendments arising out of this CP.

## 2 Proposed changes to the Depositor Protection rules

2.1 This chapter explains the PRA's proposed changes to the Depositor Protection Part of the PRA Rulebook.

### A. FSCS's obligation to pursue recoveries

2.2 Under existing PRA rules, where a depositor accepts compensation from the FSCS, the depositor's rights against the failed firm or against any third parties will be assigned to the FSCS, thus enabling the FSCS to claim as a creditor in the insolvency of the firm. If the FSCS obtains recoveries in excess of the amount of compensation it has paid the depositor, it

must pay these to the claimant. This section sets out proposed amendments to the recovery rules in Chapter 30 of the Depositor Protection Part of the PRA Rulebook to reflect the preference of covered deposits under the Bank Recovery and Resolution Directive (BRRD).<sup>(3)</sup>

### Amendments to the recovery rules to reflect depositor preference

2.3 When the FSCS compensates a depositor on the failure of a firm, the subrogation rules in Chapter 28 of the Depositor Protection Part are activated. These enable the FSCS to 'stand in the shoes' of the depositor to bring a claim against the failed firm to recover the costs of compensation. The FSCS can elect to exercise this right in relation to some, or all, of the depositor's claim.

2.4 The recovery rules are relevant if the deposit exceeds the coverage limit and the FSCS elects to stand in the shoes of the depositor for an amount of the claim that exceeds the coverage limit.

2.5 Under the existing recovery rules in Chapter 30 of the Depositor Protection Part due to come into force on 3 July 2015, where a depositor's claim against a failed firm exceeds the coverage limit, recoveries (after the FSCS's reasonable costs) are shared rateably between the deposit guarantee scheme and the depositor to reflect the fact that prior to the 1 January 2015, the covered part of the deposit and the amount of the deposit over the coverage limit ('excess amount') would rank equally on the firm's insolvency.

2.6 European law requires that, where the FSCS stands in the shoes of the depositor, its claim should rank at the same level as the covered deposits.<sup>(4)</sup> Such deposits are ranked more highly in the creditor hierarchy (ie they are 'super-preferred') than un-covered deposits (which are 'preferred' above ordinary unsecured creditors). This insolvency priority of the claim of the FSCS is intended to minimise the exposure of resolution funds under the no creditor worse off principle set out in the BRRD.<sup>(5)</sup> The current recovery rules in Chapter 30 of the Depositor Protection Part could be seen as inconsistent with this priority by requiring the sharing of recoveries between the FSCS and the depositor before the FSCS has been fully compensated for the loss.

2.7 Therefore, the PRA proposes to amend the recovery rules in Chapter 30 to provide that recoveries are retained by the

(1) Section 2H of FSMA.

(2) Section 149 of the Equality Act 2010.

(3) Article 108 of Directive 2014/59/EU, as implemented in the United Kingdom with effect from 1 January 2015 through the amendments to sections 175 and 386, and Schedule 6 to the Insolvency Act 1986 by the Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (SI 2014/3486).

(4) Article 9(2) of the Deposit Guarantee Schemes Directive and Article 108(b)(ii) of the Bank Recovery and Resolution Directive. These provisions are reflected in rule 28.2(3) of the Depositor Protection Part.

(5) Recital 111 to the Bank Recovery and Resolution Directive.

FSCS until it has fully recovered the amount of compensation paid as well as its reasonable costs of recovery.

## B. Beneficiary accounts

2.8 This section sets out further proposed rule changes relating to beneficiary accounts (ie accounts where persons other than the account holder are absolutely entitled to the eligible deposit). The proposed amendments clarify how the PRA expects the FSCS to treat beneficiary accounts and proposes a change in relation to the treatment of beneficiary accounts in respect of a firm's calculation of their FSCS deposits tariff base ('class A tariff base') where the firm has identified the underlying beneficiaries to be ineligible depositors.

### Trustees and beneficial interests

2.9 Depositor Protection Rule 6.2(5)(a) states that where the depositor is not absolutely entitled to the eligible deposit, the FSCS must pay compensation to the person who is absolutely entitled. The PRA proposes further rules to clarify, where the account holder is not absolutely entitled to the eligible deposit, which person(s) the FSCS may treat as being absolutely entitled to the eligible deposit.

2.10 The PRA has also amended Depositor Protection Rule 2.2(4)(a) to make it clear that the 'look through' treatment in Depositor Protection Rule 6.2(5)(a) applies in the same way to each category of excluded depositor, such that it is clear that in all cases a person who is absolutely entitled to an eligible deposit can receive compensation. Further clarification regarding the PRA's expectations in respect of the FSCS's treatment of beneficiary accounts in payout is also set out in proposed amendments to the Deposit Guarantee Scheme Statement of Policy in Appendix 3.

### Calculation of the deposits tariff base

2.11 Currently PRA rules in the Depositor Protection Part of the PRA Rulebook set out that a firm must include in its class A tariff base calculation (which is used to calculate a firm's share of DGS levies) the total covered deposits held and the total balance of any deposits in an account that is not active or an account which holds funds to which the account holder is not absolutely entitled (a beneficiary account). The PRA proposes a rule change to allow firms to exclude from their class A tariff base calculation the value of any funds which they have confirmed are not eligible deposits; are eligible but are not covered deposits; or both.

## C. Minor amendments

2.12 This section sets out further minor amendments to the Depositor Protection rules which relate to the SCV and exclusions view in response to requests from industry for clarification. In addition, following the extension of eligibility to small local authorities in PS9/15, due to come into force on 3 July 2015, an amendment to the time period for

compensating small local authorities during the period between 3 July 2015 and 1 June 2016 is proposed to take into account the fact that small local authority deposits are not required to be included in firms' SCV files during this period.

### SCV and exclusions files

2.13 In response to queries from industry, and to make minor corrections, the PRA is proposing the following administrative and clarificatory changes to the Depositor Protection Part:

- (a) Depositor Protection 50.11 is amended to require the reporting of 'account balance in sterling' in the SCV file during the transition period rather than 'account balance in original currency'.
- (b) Depositor Protection 12.9 is amended to confirm a 100 character limit for the SCV record number and to clarify how other national identifiers should be reported in the SCV or exclusions file.
- (c) There are amendments to several Depositor Protection rules to confirm which accounts should be included in the exclusions file.

### Time limits for compensation for small local authorities

2.14 Minor amendments to Depositor Protection 9.6 are proposed to make it clear that, from 3 July 2015 until 1 June 2016, the FSCS shall ensure that a depositor that is a small local authority shall have access to their covered deposits within fifteen business days of receipt of a request from the depositor which contains sufficient information to enable the FSCS to make a payment.

2.15 This change is proposed because small local authorities will be eligible depositors from 3 July 2015 and firms are not required to include such deposits in their SCV file until 1 December 2016.<sup>(1)</sup> From 1 June 2016 until 31 December 2023 these depositors shall have access to an appropriate amount of their covered deposits to cover necessary business expenses within five business days of receipt of a request from a depositor, where the FSCS cannot pay compensation within seven business days and where the FSCS receives sufficient information to enable it to make a payment (see Depositor Protection 9.6(1)(b)). The proposed change therefore allows the FSCS to pay such deposits during the period from 3 July 2015 until 1 June 2016 where they receive sufficient information from the depositor. A similar rule exists for large companies' deposits, which will also be eligible for deposit protection from 3 July 2015 and are not required to be included in the SCV file until 1 December 2016.

(1) The PRA made rules to make small local authorities eligible depositors in *PRA Policy Statement PS9/15*, 'Depositor and dormant account protection — further amendments', May 2015; [www.bankofengland.co.uk/pr/Pages/publications/ps/2015/ps915.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/ps/2015/ps915.aspx).

# Appendices

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- 1 Depositor Protection (Amendment) Instrument 2015 (PRA 2015/xx)

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  - 2 Handbook (Rulebook Consequentials No. 2) Instrument 2015 (PRA 2015/xx)

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  - 3 Proposed amendments to the Statement of Policy — Deposit Guarantee Scheme

**PRA RULEBOOK: CRR FIRMS, NON CRR FIRMS AND NON AUTHORISED PERSONS:  
DEPOSITOR PROTECTION (AMENDMENT No. 2) INSTRUMENT 2015**

**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); and
  - (5) section 215 (Rights of the scheme on insolvency).
- 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: CRR Firms, Non CRR Firms and Non Authorised Persons: Depositor  
Protection (Amendment No. 2) Instrument 2015**

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

**Commencement**

- E. This instrument comes into force on 3 July 2015.  
F. With effect from 1 June 2016, the PRA deletes rule 9.6(2A).

**Citation**

- G. This instrument may be cited as the PRA Rulebook: CRR Firms, Non CRR Firms and Non Authorised Persons: Depositor Protection (Amendment No.2) Instrument 2015

**By order of the Board of the Prudential Regulation Authority**  
[DATE]

## Annex A

## Amendments to the Depositor Protection Part

Chapter 30 is deleted and the following amendments are made. In this Annex, new text is underlined and deleted text is struck through (with the exception of the deletion of the existing text of Chapter 30, which is not shown).

## 1 APPLICATION AND DEFINITIONS

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...

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

...

*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
- (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.

~~a depositor's aggregate eligible deposits with a firm which contains the information required by 12.9, limited to accounts which:~~

- ~~(1) hold any funds to which the depositor is not absolutely entitled; or~~
- ~~(2) are not active.~~

...

investment

has the meaning given in section 22(4) of FSMA.

nominee company

means a body corporate whose business consists solely of acting as a nominee holder of investments or other property.

...

## 2 ELIGIBILITY

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...

2.2 ...

- (4) The following are not *eligible deposits*:

- (a) a *deposit* made by another *credit institution* ~~on its own behalf or for its own account;~~

...

## 6 PAYING COMPENSATION

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...

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

...

- (5) where the ~~*depositor*~~ account holder is not absolutely entitled to the *eligible deposit*:
- (a) if another *person* (A) is absolutely entitled to the *eligible deposit*, ~~that person 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) ~~the person who is absolutely entitled to the *eligible deposit*~~, provided that the *person* A has been identified or is identifiable before the *compensation date*;

...

6.10 For the purposes of 6.2(5)(a), the cases in which A is absolutely entitled to the *eligible deposit* include where:

- (a) A is a beneficiary under a bare trust;
- (b) the account holder is a *nominee company*;
- (c) A is a client in respect of money which the account holder is treating as client money of A in accordance with FCA rules, the SRA Accounts Rules 2011 or an equivalent regime;
- (d) A is a beneficiary under a trust fund established under section 42 of the Landlord and Tenant Act 1987 and the account is a designated account in relation to sums standing to the credit of the trust fund under section 42A of the Landlord and Tenant Act 1987; or
- (e) the FSCS is otherwise satisfied that A is absolutely entitled to the *eligible deposit* taking into account any information that the FSCS considers relevant.

6.11 The FSCS may interpret other references in this Part to a *person* being “absolutely entitled” in accordance with 6.10.

## 9 TIME LIMITS

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...

9.6 (1) From 1 June 2016 until 31 December 2023, in cases to which ~~9.2~~ 9.3 applies, where the FSCS cannot pay compensation within seven *business days* starting on the day following the *compensation date*, the FSCS shall, provided it receives sufficient information to enable it to make a payment, ensure that within five *business days* of receipt of a request from a *depositor*:

(a) the *depositor* who is an individual, has access to an appropriate amount of their *covered deposits* to cover the cost of living; and

(b) the *depositor* which is not an individual or a large company, ~~or is a small local authority~~, has access to an appropriate amount of their *covered deposits* to cover necessary business expenses or operating costs.

**[Note: Art 8(4) of the DGSD]**

(2) From 3 July 2015 until 1 December 2016, in cases to which 9.3 applies, the FSCS shall ensure that a depositor which is a *large company* has access to their *covered deposits* within fifteen *business days* of receipt of a request from the *depositor* which contains sufficient information to enable the FSCS to make a payment.

(2A) From 3 July 2015 until 1 June 2016, in cases to which 9.3 applies, the FSCS shall ensure that a depositor which is a small local authority has access to their covered deposits within fifteen business days of receipt of a request from the depositor which contains sufficient information to enable the FSCS to make a payment.

...

## 12 SINGLE CUSTOMER VIEW REQUIREMENTS

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...

12.3 If a *firm* does not have any accounts or balances which are required to be included within ~~the~~ an *exclusions view*, the *firm* must provide confirmation of this to the FSCS.

...

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

...

1.	<i>Single customer view</i> record number	Unique customer identifier.	Maximum number of characters in field: <del>200</del> <u>100</u>
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...

10.	Other national identifier	The type of national identifier being provided [if applicable and where held by the <i>firm</i> ].	<del>Maximum number of characters in field: 50</del> <u>Values:</u> (a) <u>NID - national identifier (Non-UK)</u> , (b) <u>DL - driving licence</u> , (c) <u>O - other or unknown</u> .
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			Maximum number of characters in field: 3
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...

27.	Single customer view record number	Unique customer identifier.	Maximum number of characters in field: <del>200</del> 100
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...

37.	Exclusion type	<p>If applicable, where <del>the file is</del> 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> <ul style="list-style-type: none"> <li>a) <u>The account contains or may contain <i>eligible deposits</i> to which the account holder is not absolutely entitled. <del>The depositor is not absolutely entitled to the sums held in the account;</del></u></li> <li>b) The account is a <i>dormant account</i>;</li> <li>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;</li> <li>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 measures imposed by national governments or international bodies.</li> </ul>	<p>Values:</p> <ul style="list-style-type: none"> <li>a) BEN</li> <li>b) LEGDOR</li> <li>c) LEGDIS</li> <li>d) HMTS</li> </ul> <p>Maximum number of characters in field: 6</p>
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...

48.	Single customer view record number	Unique customer identifier.	Maximum number of characters in field: <del>200</del> 100
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...

12.13 The amount inserted into each *single customer view* and *exclusions view* as the account balance (Field 42) and aggregate balance across all accounts (Field 49 50) must be the total of principal plus any interest or premium attributable up to the *compensation date* (or the date on which the *PRA* or *FSCS* requests the *firm* to provide the *single customer view* and *exclusions view* in accordance with 12.2).

12.14 A *firm* must ensure that the amount inserted into each *single customer view* and *exclusions view* as the account balance (Field 42), original account balance before interest (Field 46 47) and aggregate balance across all accounts (Field 49 50) includes any payment made to the *depositor* for which value has been credited to the *depositor's* account regardless of whether the *firm* has received the value itself. A *firm* must ensure that the amount inserted into each *single customer view* and *exclusions view* as the account balance (Field 42), original account balance before interest (Field 46 47) and aggregate balance across all accounts (Field 49 50) excludes any payment sent by the *depositor* which has been debited from the *depositor's* account regardless of whether the *firm* has sent value itself.

...

### 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:

- (1) retain from those recoveries a sum equal to the aggregate of:
  - (a) the sum paid by the *FSCS* as compensation;
  - (b) any amount paid or payable by a *home state scheme* to the *compensation recipient*; and
  - (c) any amount the *FSCS* determines is appropriate to cover all or part of its reasonable costs of recovery; and
- (2) as soon as reasonable possible after it makes the recoveries, 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 under this Part).

...

### 43 FUNDING – CLASS A TARIFF BASE CALCULATION

43.1 The *class A tariff base* is *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 ~~*dormant account*~~ *covered deposit* multiplied by 0.2 as at 31 December.

...

43.3 A-Subject to 43.4, a *firm* must also include in its *class A tariff base* calculation the total balance of any *deposits* in any:

- (1) ~~not active account;~~ or

(2) account which holds funds to which the account holder is not absolutely entitled.

43.4 A firm may exclude from its class A tariff base calculation the value of any funds which it has confirmed are not covered deposits.

...

## 50 TRANSITIONAL PROVISIONS – SINGLE CUSTOMER VIEW

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...

50.11 A firm must ensure that a single customer view contains all the information set out in the table below.

...

Account balance <del>in sterling in the original currency</del>	Account balance including any interest or premium attributable, at end of business on:  (a) the <i>compensation</i> date; or (b) the date of request from the <i>FSCS</i> or the <i>PRA</i>
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...

**HANDBOOK (RULEBOOK CONSEQUENTIALS No. 2) INSTRUMENT 2015****Powers exercised**

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in 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 218A (Regulators power to require information);
  - (7) section 223 (Management expenses); and
  - (8) section 224F (Rules about relevant schemes).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Pre-conditions to making**

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

**Commencement**

- D. This instrument comes into force on 3 July 2015.

**Deletion**

- E. Each of the following modules and chapters of the PRA’s Handbook is deleted:

FEES TP2, TP3 and TP7 (Financial Services Compensation Scheme Funding Transitional Provisions)
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**Citation**

- F. This instrument may be cited as the Handbook (Rulebook Consequentials No. 2) Instrument 2015.

**By order of the Board of the Prudential Regulation Authority**

[DATE]

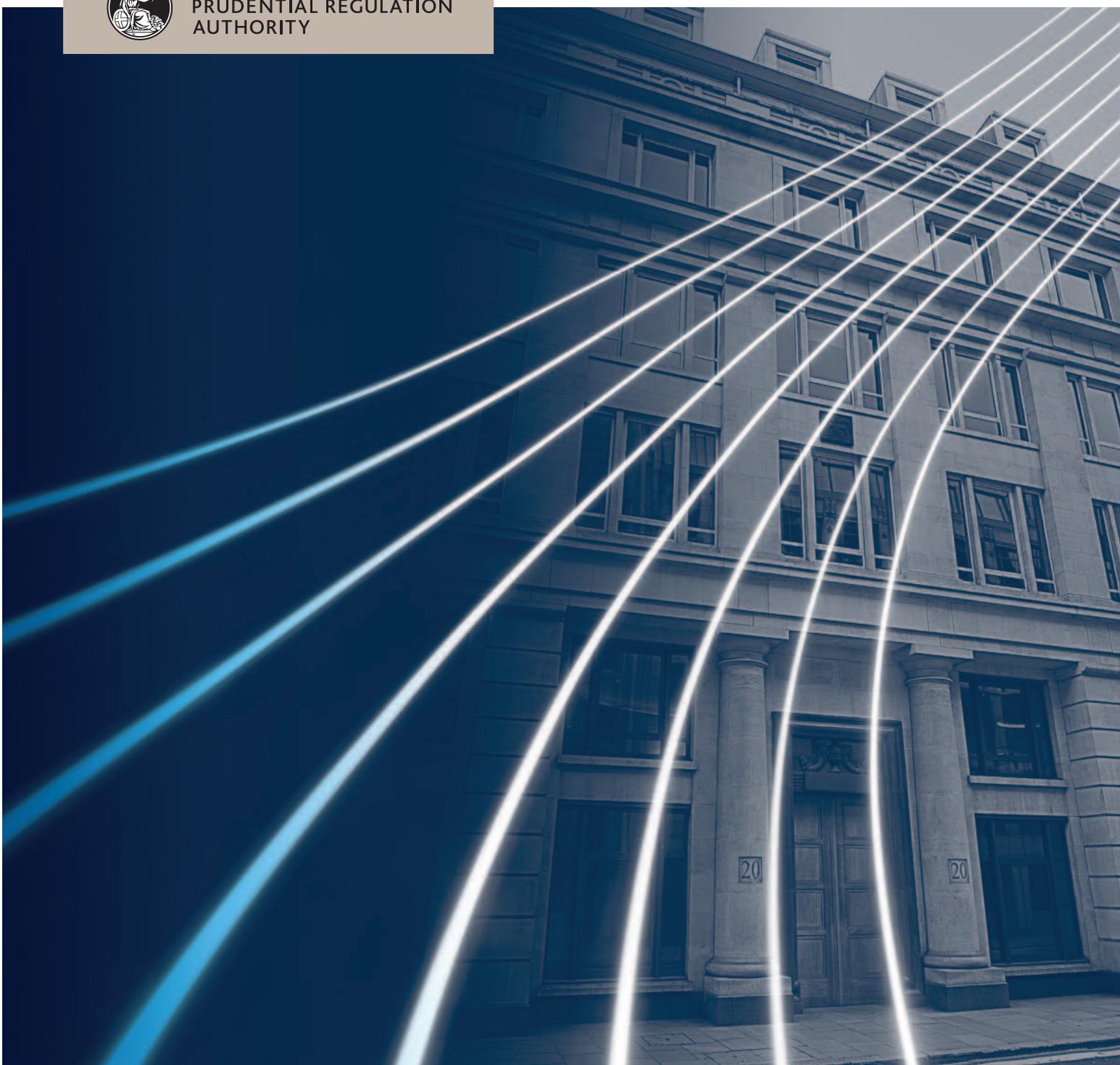
# Statement of Policy

# Deposit Guarantee Scheme

June 2015



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY



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London EC2R 6DA

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BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY

Statement of Policy

# Deposit Guarantee Scheme

June 2015



## 1 Introduction

1. This statement of policy is addressed to the Financial Services Compensation Scheme Limited (FSCS) in respect of its role as scheme manager of the deposit guarantee scheme. This statement may also be of interest to firms and depositors.

2. The purpose of this statement is to set out the expectations of the Prudential Regulation Authority (PRA) on the FSCS with regards to:

- (a) the duties of the FSCS;
- (b) the FSCS's role in assessing and paying compensation in respect of deposits;
- (c) the FSCS's role in assessing and paying temporary high balance (THB) claims; and
- (d) the FSCS's role in the funding of the Deposit Guarantee Scheme (DGS).

3. By providing further information to the FSCS with regards to its duties and role in paying and funding compensation in respect of deposits, this statement should help to ensure an effective deposit guarantee scheme and thus contribute towards the safety and soundness of deposit-takers.

4. This statement of policy is intended to be read together with the rules specific to deposits as set out in the Depositor Protection Part, which applies to the FSCS, and firms that are DGS members. The funding section is also intended to be read with the Management Expenses Levy Limit and Base Costs Part and the Management Expenses in respect of Relevant Schemes Part which also apply to PRA-authorized insurers and the Society of Lloyd's.

## 2 Background

5. The FSCS exercises the functions that are conferred on the scheme manager by Part XV of the Financial Services and Markets Act 2000 (FSMA).

6. The PRA is required, under section 213 of FSMA and SI 2013/598, to make rules establishing a scheme for compensating persons in cases where firms are unable or, likely to be unable, to satisfy claims for deposits.

7. In addition to PRA rules, other aspects of the operation of the FSCS are dealt with through the powers of the FSCS under company law (such as the power to borrow, to take on premises, etc) and through rules made by the Financial Conduct Authority (FCA).

8. In addition, FSMA confers certain powers upon the FSCS, such as a power under section 219 (Scheme Manager's powers to require information) to require persons to provide information.

## 3 Duties of the FSCS

9. Chapter 24 sets out duties of the FSCS in respect of the DGS.

### Co-operation with other Member States' DGS

10. Depositor Protection 26.4 sets out that the FSCS must have co-operation agreements with other Member States' DGS. A template for such co-operation agreements should be reviewed by the PRA. Any material changes to the template should also be submitted to the PRA for review.

### Language of correspondence with depositors

11. Depositor Protection 24.10 sets out the languages in which the FSCS may correspond with depositors. The FSCS may also communicate in Welsh where this is agreed with the depositor in addition to English.

## 4 Paying compensation

### Pension schemes

12. Depositor Protection 6.4 clarifies that certain types of pension, including the occupational pension schemes of micro, small and medium-sized enterprises, where the schemes are money purchase schemes, are to be compensated on the basis that each member has a separate entitlement to compensation. The deposits of occupational pension schemes of large enterprises are not eligible deposits under the Deposit Guarantee Scheme Directive (DGSD), and cannot therefore attract FSCS protection.

### Paying compensation

13. Depositor Protection Chapter 6 (paying compensation) allows the FSCS to pay compensation to a person other than the depositor (or to a person other than the person who is absolutely entitled to the deposit) in certain circumstances. The PRA considers examples of the circumstances covered by these rules to be:

- (a) when personal representatives are entitled to receive compensation on behalf of the deceased;
- (b) when trustees are entitled to receive compensation on behalf of beneficiaries (for further provisions relating trustees entitlement to compensation, see Depositor Protection 6.3 to 6.6);
- (c) when the donee of an enduring power of attorney or a lasting power of attorney is entitled to receive compensation on behalf of the donor of the power;

(d) when the Court of Protection is entitled to receive compensation on behalf of a person incapable by reason of mental disorder of managing and administering his property and affairs; and

(e) when a depositor dies before receiving compensation.

### Paying compensation to agents

14. If a depositor is an agent for one or more principals, the PRA expects that, under Depositor Protection 6.2(5)(a), the FSCS must treat the principal or principals as being the party entitled to receive compensation, not the depositor.

### Obligation to pay compensation

15. The obligation to compensate arises when deposits with a DGS member are determined to be unavailable deposits. The PRA would make such a determination as soon as possible after being satisfied that either of the conditions under the 'unavailable deposit' determination (as defined in Depositor Protection Chapter 1) has been met.

### Subrogation and Recoveries

When the FSCS compensates a depositor, the subrogation rules in Chapter 28 are activated. These enable the FSCS to 'stand in the shoes' of the depositor to bring a claim against the failed firm to recover the costs of compensation. The FSCS can elect to exercise this right in Chapter 28 in relation to some, or all, of the depositor's claim.

Depositor Protection Chapter 30 sets out how the FSCS must act in relation to recoveries made from a credit institution or third party in respect of eligible deposits.

~~16. Depositor Protection Chapters 29 and 30 set out how the FSCS must act in relation to recoveries made from the DGS member or third party in respect of eligible deposits. PRA rules provide that the FSCS must retain from those recoveries the 'FSCS retention sum', and, as soon as reasonably possible after it makes recoveries, pay to the depositor (or as directed by the depositor) a 'top up payment'.~~

~~17. Depositor Protection 30.2 sets out how the FSCS must calculate the FSCS retention sum and top up payment. The following example illustrates how the rules would apply.~~

~~18. Example: if the depositor held overall eligible deposits of £120,000, and the FSCS paid compensation of £85,000 and subrogated the depositor's rights in relation to that claim, and made recoveries through those rights of the sum of £96,000 (after the costs of recovery and of distribution), then:~~

~~(a) the recovery ratio would be 80% (£96,000 : £120,000);~~

~~(b) the compensation shortfall would be £35,000 (£120,000 — £85,000);~~

~~(c) the FSCS retention sum would be £68,000 (80% x £85,000);~~

~~(d) the top up payment would be £28,000 (80% of £35,000);~~

~~(e) the total payment to the depositor would be £113,000 (£85,000 of compensation plus £28,000 of top up payment); and~~

~~(f) the total outlay by the FSCS, net of the FSCS retention sum, would be £17,000 (20% x £85,000).~~

~~19. In the example above, the amount recovered exceeds the amount of compensation. However, Depositor Protection 30.2 also applies where the amount recovered is less than the amount of compensation. Therefore, for example, if the depositor's eligible deposits were £120,000, and the FSCS paid compensation of £85,000 and took assignment of all the depositor's rights in relation to that claim, and made recoveries through those rights in the sum of £24,000 (after the costs of recovery and of distribution), then:~~

~~(a) the recovery ratio would be 20% (£24,000 : £120,000);~~

~~(b) the compensation shortfall would be £35,000 (£120,000 — £85,000);~~

~~(c) the FSCS retention sum would be £17,000 (20% x £85,000);~~

~~(d) the top up payment would be £7,000 (20% of £35,000);~~

~~(e) the total payment to the depositor would be £92,000 (£85,000 of compensation plus £7,000 of top up payment); and~~

~~(f) the total outlay by the FSCS, net of the FSCS retention sum, would be £68,000 (80% x £85,000).~~

### Interim compensation payments

20. Regarding Depositor Protection 9.6, reasonably practicable, the PRA expects the FSCS to inform depositors (that do not fall under any of the categories of depositors excluded from the seven working day repayment obligation under Depositor Protection 9.4) if the FSCS considers they are unlikely to make compensation available within seven working days from the date on which deposits are determined to be unavailable and that they tell depositors that they may request an interim compensation payment.

21. In such circumstances, when the FSCS is required to make a payment to cover the cost of living in accordance with Depositor Protection 9.6(1), the PRA expects the FSCS to have regard to the following considerations when determining the appropriate amount to pay the depositor:

- (a) the amount of time before the FSCS is able to pay the depositor the full amount;
- (b) the total aggregated deposits held by the depositor; and
- (c) whether the aggregated deposits include deposits held in the depositor's primary current account (if known).

22. In general the PRA expects that interim payments made in accordance with Depositor Protection 9.6(1)(a) should equal at least 75% of the balance up to a maximum of £5,000.

23. In general the PRA expects that interim payments made in accordance with Depositor Protection 9.6(1)(b) should equal at least 75% of the balance or £85,000, whichever is lower.

### Timing for compensation

24. Depositor Protection 9.4 sets out the circumstances in which the FSCS may defer payment of compensation beyond the time period set out in Depositor Protection 9.3, consistent with the recast DGSD. The PRA expects that the FSCS should aim to pay out these deposits within three months where possible. The PRA recognises that circumstances where it may not be possible for FSCS to pay out within this timeframe may include:

- (a) where the deposit remains subject to legal dispute after three months;
- (b) where the deposit remains subject to restrictive measures imposed by national governments or international bodies; and
- (c) where there remains uncertainty as to whether a person is entitled to receive compensation, despite investigation by the FSCS.

### Calculation of the compensation sum

25. Depositor Protection Chapter 5 sets out how the FSCS should calculate a compensation sum. In calculating the depositor's overall compensation, the FSCS may rely, to the extent that it is relevant, on any determination by:

- (a) a court of competent jurisdiction;
- (b) a trustee in bankruptcy;
- (c) a liquidator; and
- (d) any other recognised insolvency practitioner.

## 5 Compensation for temporary high balances

26. Chapter 10 sets out the PRA rules applicable to the protection of certain deposits categorised as 'temporary high balances' (THBs).

### Application

27. The PRA considers that the THB protection limit in Depositor Protection 4.3 applies to each depositor on a 'per event per authorised entity' basis and is intended to apply to natural persons only and not all eligible depositors. As a result, if a person has eligible deposits in excess of £85,000 as a result of more than one of the life events set out in Depositor Protection 10.2, that person may make a claim for compensation in respect of both of those events and the limit in Depositor Protection 4.3 would apply separately to each event. For example, if a depositor had a deposit of £750,000 from an inheritance and a deposit of £750,000 from a house sale, then they would be able to claim up to £750,000 in each case.

28. Where a depositor has spread a THB across more than one deposit-taker, then they would be able to make a separate claim for each deposit-taker that defaults. However, the depositor would still need to demonstrate a sufficient link between the amount in their account at the point of default and the THB event. The depositor should never be able to claim more than the value of the original THB amount.

29. Depositors in a joint account will each benefit from THB coverage separately, although they will only benefit from this if they are able to demonstrate that the THB arises from a relevant life event and provide verification. Each joint account holder will also only be able to claim for the proportion of the THB deposit to which they are entitled (in accordance with the terms of the account or equally, where the terms of the account do not specify the split). For example, where £2 million (which is the proceeds of sale from the depositor's house) is deposited in a joint account which is owned equally by a couple, each will be entitled to claim up to £1 million. If only £1 million is deposited, each can claim up to £500,000. For the avoidance of doubt, as noted above, each depositor can claim on a 'per event per authorised entity' basis meaning that a couple is entitled to a claim of up to £1 million each for the same life event (eg wedding or redundancy) per authorised entity.

30. Under Depositor Protection 10.7, the protection for THBs runs for a period of six months from the later of the first date on which a THB is credited to a depositor's account (or to a client account on a person's behalf) or the first date on which the THB becomes legally transferable to the depositor. The PRA considers that a deposit becomes legally transferable to a person at the point in time when that person becomes entitled

to receive the money. This is likely to include the date of grant of probate, the date of completion of a residential property sale or the date on which a judgement is made awarding damages.

### What types of THB deposits are protected?

31. Depositor Protection 10.2 sets out the list of categories of eligible deposits that may benefit from THB protection. We have set out further detail below on the PRA's expectations in relation to these categories:

#### (1) Deposits relating to a depositor's private residential property (Depositor Protection 10.2(1))

32. The protection under Depositor Protection 10.2(1) should enable a person to claim THB protection in relation to amounts deposited in their own account or in a solicitor's client account on their behalf.

33. The PRA considers references to 'private residential property' in Depositor Protection 10.2 (1) to refer to a specific residential property (ie the property is identifiable) in which the depositor resides, intends to reside or has resided as their main or only residence (as that term is understood in connection with capital tax gains purposes). The PRA does not consider that general savings for a property should fall under this category.

34. The PRA considers that land purchased with a view to constructing a dwelling would fall within this category. The depositor should provide evidence that the land has been purchased (or is about to be purchased) with a view to constructing the purchaser's only or main dwelling.

35. The PRA considers that proceeds from the sale of a property that the depositor owned as a buy-to-let property, or that was the depositor's investment property, should not benefit from THB protection. Similarly, the PRA considers that funds held by a depositor in preparation for the purchase of second home, a holiday home, or any other investment property (which will not be the depositor's only or main residence) should not be protected.

36. For the avoidance of doubt, the PRA does not consider that THB claims falling under this category should be restricted to the purchase price of the property. For example, the PRA expects that amounts falling under category 10.2(1)(a) could include deposits for anticipated stamp duty and associated fees.

#### (2) Deposits that fall under Depositor Protection 10.2(2)

37. The PRA considers that the following deposit types would benefit from THB protection:

- (a) sums paid in respect of benefits payable under an insurance policy. These may include proceeds of pure protection contracts as well as sums paid in respect of lump sums payable under an endowment or life insurance policy;
- (b) a claim for compensation for personal (including criminal) injury. This may include personal injury compensation payments or damages for incapacity or invalidity (made in court (by Her Majesty's Courts and Tribunal Services or by an equivalent European Economic Area (EEA) court) or out of court, or from a statutory body);
- (c) state benefits paid in respect of a disability or incapacity. This may include backdated payment for care, disability living allowance, severe disablement allowance, vaccine damage payment;
- (d) a claim for wrongful conviction. This may include compensation for wrongful conviction resulting from decisions made by Her Majesty's Courts and Tribunal Services or by an equivalent EEA court;
- (e) sums paid in respect of a divorce or dissolution of a civil partnership. These may include divorce settlement lump sums (including out of court settlements) or lump-sum settlements resulting from civil partnership dissolution;
- (f) sums paid in respect of sums payable on retirement. These may include lump sums payable under pension schemes; and
- (g) Sums deposited in preparation for the purchase of, or arising from the sale of house boats and other mobile homes which are or, if the purchase not yet happened, are intended to become, the depositor's only or main dwelling.

#### (3) Deposits that fall under Depositor Protection 10.2(3)

38. The PRA considers that sums paid to a depositor in respect of benefits payable on death may include death in service payments paid under occupational pension schemes or otherwise.

39. The PRA also considers that ISAs passed on to a spouse at death would also fall under this category.

#### The FSCS's role in verifying THBs

40. Following the default of a firm (ie where a determination has been made that deposits are unavailable), the PRA expects that the FSCS will review the SCV file of the firm and write to depositors with aggregated deposits at the firm in excess of £85,000 to inform them that they may be entitled to

additional compensation if they hold any deposits that qualify as temporary high balances and can provide evidence verifying this.

41. The PRA expects the FSCS to provide information to the depositor on what constitutes sufficiently robust evidence and refer the depositor to where they may find further information, including information on any prescribed format for the evidence, the address to which the evidence should be submitted, any relevant timeframes for submission and an overview of the process the FSCS will follow in assessing the evidence. The PRA expects that the FSCS may ask to review evidence including (but not limited to) the following: a property sale receipt or agreement; a court judgement; a will; a letter from an insurer regarding an insurance payout; a letter from a lawyer, conveyancer, mortgage provider, former employer or pension trustees; court orders; social security statements; probate/letters of administration; death/marriage certificate; land register records and HMRC records. This list is not exhaustive.

42. Regarding claims made in respect of Depositor Protection 10.2 (2)(g), the PRA expects that the FSCS should require suitable evidence that a marriage or civil partnership between two specified individuals has been arranged, for example, confirmation of the booking of the marriage or civil partnership ceremony.

43. The PRA expects the FSCS to assess the validity of a THB claim in accordance with PRA rules and to determine if a sufficient link has been established between an eligible deposit and the relevant THB category on the basis of the nature of and quality of evidence provided by the depositor.

44. The PRA expects the FSCS to determine (i) that the evidence provided by the depositor is sufficiently robust; and (ii) that the deposits fall under one of the THB categories.

45. The PRA acknowledges that because depositors may have payments flowing in and out of their accounts, it may be difficult to establish what portion of their money has retained THB protection since the THB was paid in. The PRA considers that, once the THB has been credited to a depositor's account, the depositor will benefit from the extra THB protection for the coverage period to the value of the original THB credit, no matter what pattern of payment follows.

46. If a THB is transferred to another DGS member, then the PRA considers that the THB cover would be retained (although the coverage period will not begin again, ie the depositor will not be able to receive consecutive periods of cover for the same THB). Where there are a number of payments flowing in and out of accounts, it may be difficult to establish whether a THB has been transferred and the PRA expects that the FSCS, in determining if a sufficient link has been established between

an eligible deposit and a THB category, should have regard to a number of considerations including:

- (a) the written evidence provided by the depositor;
- (b) the value of the amount or amounts transferred and whether they constitute a *de minimis* proportion of the original THB;
- (c) the length of time that has elapsed between the life event specified and the date on which the relevant sum was credited to an individual depositor's account; and
- (d) any other relevant factors.

47. By way of illustration, the examples below set out where the PRA expects that a depositor would be eligible for THB protection and where protection would not apply.

**Examples:** In the examples below it is assumed that a depositor's £100,000 inheritance has been credited to bank A.

- (a) If the depositor transfers £50,000 to bank B, the PRA considers that the depositor should be able to claim up to £50,000 from the FSCS for each amount (in addition to the standard £85,000 compensation per bank) should both banks fail within six months from the date at which the £100,000 was credited to bank A.
- (b) If the depositor withdraws £100,000 from bank A, and A fails within six months of the date at which the original £100,000 inheritance was credited to A, and the depositor still has aggregate deposits of £100,000 remaining in the account, then the PRA expects that the depositor should be able to claim £15,000 THB compensation.
- (c) If the depositor transfers £50,000 to bank B, giving the depositor a balance with bank B in excess of £85,000, and bank B fails one month after the amount was credited to B but seven months after the original amount was credited to A, then the PRA considers that THB protection should not apply.
- (d) If the depositor withdrew £100,000 from bank A, but there was no corresponding transfer to bank B, should bank B fail and the depositor had an aggregate balance of £185,000 at bank B (and there had been no payments in during the coverage period), the PRA considers that the depositor should not be able to claim £100,000 THB protection from bank B.

### Limits in compensation payable

48. Depositor Protection 4.3 sets out that, for THB claims for sums paid in respect of personal injury or incapacity claims, there is no limit to the compensation payable for THBs. The

PRA expects that deposits falling under this category would include sums paid in respect of:

- (a) claims for compensation for personal (including criminal) injury under Depositor Protection 10.2(2)(b) which may include personal injury compensation payments or damages for incapacity or invalidity (made in court (by Her Majesty's Courts and Tribunal Services or by an equivalent EEA court) or out of court, or from a statutory body);
- (b) state benefits paid in respect of a disability or incapacity under Depositor Protection 10.2(2)(c) which may include backdated payment for care, disability living allowance, severe disablement allowance and vaccine damage payment; and
- (c) benefits payable under insurance contracts for personal injury or incapacity claims.

49. For the avoidance of doubt, the PRA considers that the THB limit may apply to a number of deposits for the same life event. For example, where a depositor has three deposits of £5,000 as separate gifts for the same wedding, the depositor is entitled to claim up to an additional £15,000 over and above their normal £85,000 protection. Total claims for the same life event may not exceed £1 million (unless for a personal injury or incapacity claim).

### Payment of compensation for THBs

50. Depositor Protection 10.8 sets out the timeframe for the FSCS to pay compensation.

51. In accordance with Depositor Protection 10.6, the FSCS may pay compensation in respect of a temporary high balance to a person who makes a claim on behalf of another person in certain circumstances. Examples of circumstances in which the FSCS may decide to pay compensation in respect of a THB to a person who makes a claim on behalf of another person include:

- (a) where a personal representative makes a claim on behalf of the deceased;
- (b) where a solicitor makes a claim on behalf of clients who are entitled to money in the solicitor's client account;
- (c) where trustees make a claim on behalf of beneficiaries;
- (d) where the donee of an enduring power of attorney or a lasting power of attorney makes a claim on behalf of the donor of the power;

- (e) where the Court of Protection makes a claim on behalf of a person incapable by reason of mental disorder of managing and administering his property and affairs; and
- (f) where an eligible claimant makes a claim for compensation but dies before his claim is determined.

## 6 Funding of the FSCS

### Legislation around funding

52. Section 213(3)(b) of FSMA requires the PRA to make rules to enable the FSCS to impose levies on firms in order to meet its expenses under the deposit guarantee scheme. These expenses include in particular expenses incurred, or expected to be incurred, in paying compensation, borrowing or insuring risks.

53. Section 224F of FSMA enables the PRA to make rules to enable the FSCS to impose levies on PRA firms in order to meet its management expenses incurred if, under Part 15A of FSMA, it is required by HM Treasury to act in relation to relevant schemes.

54. Section 223 of FSMA prevents the FSCS from recovering, through a levy, any management expenses attributable to a particular period in excess of the limit set in the PRA and the FCA rules as applicable to that period.

### FSCS access to mandatory contributions

55. In accordance with Article 10(4) of the recast DGSD and the Deposit Guarantee Scheme Regulations,<sup>(1)</sup> Depositor Protection 32.2 restricts the FSCS's ability to borrow an amount equal to the amount of such mandatory contributions in order to meet the liabilities of the deposit guarantee scheme. The FSCS may borrow such amounts to meet the liabilities of the DGS if the PRA determines that the FSCS is unable to raise levies from DGS members to meet those liabilities. In accordance with the Deposit Guarantee Scheme Regulations the PRA will make that determination on a case by case basis, at the time of each call on deposit guarantee scheme funds. In making this determination, the PRA expects to take into account a range of factors including the likely impact on financial stability of raising levies, as well as the amount of levies needed to be raised.

56. Depositor Protection 34.3(2) also sets out the DGSD requirement that regular levies imposed under Depositor Protection 34.3(1) shall take due account of the phase of the business cycle and the impact that procyclical contributions may have when setting annual contributions. In order to meet this requirement, the PRA expects the FSCS to consult the PRA before setting the timing and size of levy amounts raised.

(1) The Deposit Guarantee Scheme Regulations 2015 (SI 2015/486).

### Levying timings

57. The FSCS may impose three types of levy on DGS members: a DGS management expenses levy (consisting of a DGS base costs levy and a specific costs levy); a DGS compensation costs levy; and a DGS management expenses in respect of relevant schemes levy. The FSCS has discretion as to the amount and timing of the levies imposed.

58. Under Depositor Protection 34.2, the FSCS must levy DGS members at least once in each financial year (and in respect of DGS compensation costs, for expenditure expected in the period of twelve months following 1 July in that year).

However, if the DGS compensation costs or DGS specific costs incurred, or expected to be incurred, exceed the amounts held, or reasonably expected to be held, to meet those costs, the FSCS may, at any time during the financial year, do one or more of the following:

- (a) impose an interim DGS compensation costs levy or DGS management expenses levy; or
- (b) utilise other sources of funding such as commercial borrowing or other borrowing including from the National Loans Fund; or
- (c) utilise money collected from DGS members as set out in, and subject to Depositor Protection Chapter 33.

59. The PRA expects that the FSCS should generally impose a levy rather than borrow or utilise funds as described in (c), unless the latter options appear to it to be preferable in the specific circumstances prevailing at the relevant time; for example, to address short-term liquidity issues, or in order to deal with a significant failure without having to wait for a levy to be imposed or collected.

### DGS management expenses levy

60. The PRA's rules on the Management Expenses Levy and Management Expenses in respect of Relevant Schemes are set out in the Management Expenses Levy Limit and Base Costs Rulebook Part and Management Expenses in respect of Relevant Schemes Rulebook Part.

61. A DGS management expenses levy may consist of two elements. The first is a DGS base costs levy, for the base costs of running the FSCS in a financial year, ie DGS share of costs which are not attributable to any specific class. Included in this category are items such as the salary of the members of the board of the FSCS, the costs of the premises which the FSCS occupies, and its audit fees. The amount that each participant firm pays towards a DGS base costs levy is calculated by reference to the regulatory costs paid by the firm as a proportion of total regulatory costs of all participant firms. All DGS members are liable to contribute towards a DGS base costs levy.

62. The second element of a management expenses levy is a DGS specific costs levy for the 'specific costs' of running the deposit guarantee scheme in a financial year. These costs are attributable to class A, and include the salary costs of certain staff of the FSCS and claims handling and legal and other professional fees. Another example is IT costs attributable to a specific class such as SCV data systems. It also may include the cost of any insurance cover that the FSCS secures against the risk of the FSCS paying out compensation above a given level in class A (but below the levy limit for class A for the year). The specific costs are attributed to the class which is responsible for those costs. When the FSCS imposes a DGS specific costs levy, the levy is allocated to class A up to the relevant levy limits. The FSCS may include in a DGS specific costs levy the DGS specific costs that the FSCS expects to incur (including in respect of defaults not yet determined at the date of the levy) during the financial year of the deposit guarantee scheme. The amount that each DGS member pays towards the DGS specific costs levy is calculated by reference to the amount of business conducted by the firm in class A. There is a 'class A tariff base' for this purpose, set out in Depositor Protection Chapter 43.

63. The PRA and the FCA typically consult on the limit on the FSCS's management expenses attributable to the forthcoming financial year of the FSCS in January each year.

### Fees refund

64. Depositor Protection Chapter 38 sets out when the FSCS may adjust the calculation of a DGS member's share of any levy. Depositor Protection 38.5 sets out that the FSCS may not adjust the calculation of a DGS member's levy under Depositor Protection 38.4 on the grounds that it would be inequitable for that firm to pay that share or part of it (or on the grounds that it would be inequitable for the FSCS to retain that share or part of it). The reason for this rule is that any such claim should be dealt with under Depositor Protection Chapter 46.

### Recovery of Fees

65. Paragraphs 23(8) and 27 of Schedule 1ZA and paragraphs 31(7) and 35 of Schedule 1ZB of FSMA permit the PRA to recover fees, and section 213(6) permits the FSCS to recover shares of the FSCS levy payable, as a debt owed to the PRA and FSCS respectively, and the PRA and FSCS, as relevant, will consider taking action for recovery (including interest) through the civil courts.

66. The PRA may also take regulatory action in relation to the non-payment of a share of a DGS levy, after reference of the matter to the PRA by the FSCS. What action (if any) is taken by the PRA will be decided upon in the light of the particular circumstances of the case.

### Remission of Fees and levies

67. Depositor Protection Chapter 46 sets out the circumstances in which the PRA or the FSCS may reduce or remit FSCS levies. A poor estimate or forecast by a DGS

member, when providing information relevant to the class A tariff base, is unlikely, of itself, to fall within Depositor Protection 46.1. By contrast, a mistake of fact or law by a fee or levy payer may give rise to such a claim.