

**PRA RULEBOOK: DEPOSITOR PROTECTION (NO. 2) INSTRUMENT [2023]**

**Powers exercised**

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137G (The PRA’s general rules);
  - (2) section 137T (General supplementary powers);
  - (3) section 213 (The compensation scheme);
  - (4) section 214 (General);
  - (5) section 215 (Rights of the scheme in insolvency); and
  - (6) section 218A (Regulators power to require information).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

**Pre-conditions to making**

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

**PRA Rulebook: Depositor Protection (No. 2) Instrument [2023]**

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

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**Commencement**

- E. This instrument comes into force on dd/mm/yy.

**Citation**

- F. This instrument may be cited as the PRA Rulebook: Depositor Protection (No. 2) Instrument [2023].

**By order of the Prudential Regulation Committee**

[DATE]

**Annex A**

**Amendments to the Glossary**

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

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*authorised electronic money institution*

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

*authorised payment institution*

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

...

*Electronic Money Regulations*

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

...

*Payment Services Regulations*

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

...

*small electronic money institution*

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

...

*small payment institution*

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

...

## Annex B

## Amendments to the Depositor Protection Part

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

**1 APPLICATION AND DEFINITIONS**

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

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electronic money institution

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

...

exclusions view

means a single, consistent view of:

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

and which contains the information required by 12.9.

...

insolvency event

means:

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

...

priority creditors

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

...

safeguarded funds

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

- (1) an *electronic money institution* in accordance with regulation 21 of the *Electronic Money Regulations*; or
- (2) an *authorised payment institution* or a *small payment institution* in accordance with regulation 23 of the *Payment Services Regulations*.

...

## 2 ELIGIBILITY

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2.2 ...

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

...

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

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

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## 5 CALCULATING COMPENSATION

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5.2 (1) Compensation shall be calculated by reference to *eligible deposits* held on the *compensation date*.

(2) But, where an *insolvency event* occurs in relation to a *depositor* of *safeguarded funds* after the *compensation date*, compensation relating to its *deposit* shall be calculated by reference to *eligible deposits* held by it, and the position of its *priority creditors*, on the date the *insolvency event* occurred.

...

5.7A (1) Where a *deposit* is part of *safeguarded funds*, the share of each *priority creditor* that relates to those *safeguarded funds* shall be considered separately in calculating the amount payable in relation to that *deposit*.

(2) Where a *priority creditor* is a *person* whose own *deposit* would not be an *eligible deposit*, the FSCS must adjust the amount of the overall *deposit* to eliminate the part of it which, in the FSCS's view, relates to that *priority creditor*.

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

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## 6 PAYING COMPENSATION

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

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

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

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

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

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

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

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

6.2A The FSCS may pay compensation:

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

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

6.2B If the conditions for payment under all of 6.2(6)(a), (b) and (c) are not met then the FSCS must not pay compensation in respect of *safeguarded funds*.

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

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## 9 TIME LIMITS

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

(1) until 31 December 2018: twenty *business days* later;

(2) from 1 January 2019 until 31 December 2020: fifteen *business days* later;

(3) from 1 January 2021 until 31 December 2023: ten *business days* later;

(4) from 1 January 2024: seven *business days* later;  
 unless 6.2(5) applies, (or the *FSCS* reasonably believes that it may), or in the case of *safeguarded funds*, in which case it ends three months later.

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

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

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## 12 SINGLE CUSTOMER VIEW REQUIREMENTS

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

	Field identifier	Field descriptor	Notes
	...		
	<b>Details of accounts(s)</b>		
	...		
37	Exclusion type	If applicable, where the file is an <i>exclusions view</i> , an indication of why the account falls within an <i>exclusions view</i> . Identify all of the following which apply: a) The <i>depositor</i> is not absolutely entitled to the sums held in the account <u>or the account comprises <i>safeguarded funds</i></u> ; b) The account is a <i>dormant account</i> ; c) The account is an account for which the <i>firm</i> has received formal notice of a legal dispute or competing claims to the proceeds of the account; d) The account appears on the “Consolidated list of financial sanctions targets in the United Kingdom” that is maintained by HM Treasury or is otherwise subject to restrictive measures imposed by national governments or international bodies.	Values: a) BEN b) LEGDOR c) LEGDIS d) HMTS Maximum number of characters in field: 6
	...		

...

## 28 SUBROGATION

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

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

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

## 29 DUTIES ON THE FSCS TO PURSUE RECOVERIES

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

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

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

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

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

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

## 43 FUNDING – CLASS A TARIFF BASE CALCULATION

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43.1 The Class A tariff base is:

(1) covered deposits (excluding temporary high balances) as at 31 December except that, where the covered deposit is a dormant account, the applicable tariff base is covered deposit multiplied by 0.2 as at 31 December; and

(2) the total balance of any deposits in any account which holds funds to which the account holder is not absolutely entitled or which are safeguarded funds but may exclude the value of any funds which the firm has confirmed are not covered deposits.

...

## Annex C

## Amendments to the Financial Conglomerates Part

In this Annex deleted text is struck through.

**1 APPLICATION AND DEFINITIONS**

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1.4 ...

*authorised electronic money institution*

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

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

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

...

*Electronic Money Regulations*

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

...

*small electronic money institution*

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

...