*Draft Regulations laid before Parliament under sections 429(2) of the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 2010 No.

# FINANCIAL SERVICES AND MARKETS

## The Financial Services and Markets Act 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2010

*Made - - - -* ***

*Coming into force in accordance with regulation 1(1)*

The Treasury, in exercise of the powers conferred by sections 214B, 214D and 428(3) of the Financial Services and Markets Act 2000(**1**) make the following Regulations.

A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament in accordance with section 429(2) of the Financial Services and Markets Act 2000.

### Citation, commencement and revocation

**1.**—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2010 and shall come into force on the day after the day on which they are made.

(2) The Financial Services and Markets Act 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2009(**2**) ("the former Regulations") are revoked.

### Interpretation

**2.**—(1) In these Regulations—

"the Act" means the Financial Services and Markets Act 2000;

"the 2009 Act" means the Banking Act 2009(**3**);

"actual account" has the meaning set out in paragraph 7 of Schedule 1;

"banking institution" means—

(a) a bank (within the meaning of section 2 of the 2009 Act),

(**1**) 2000 c.8. Section 214B was substituted and sections 214C and 214D were inserted by section 16 of the Financial Services Act 2010 (c. 28).
(**2**) S.I. 2009/807.
(**3**) 2009 c.1. Parts 1 to 3 of this Act have been amended by Schedule 2 to the Financial Services Act 2010.

(b) a building society (within the meaning of section 119 of the Building Societies Act 1986(**4**)),

(c) a holding company (within the meaning of section 82 of the 2009 Act), or

(d) if an order has been made under section 89 of the 2009 Act applying Part 1 of that Act to credit unions (within the meaning of section 31 of the Credit Unions Act 1979(**5**) or, in Northern Ireland, Article 2 of the Credit Unions (Northern Ireland) Order 1985(**6**)), a credit union;

"court" means the High Court or the Court of Session;

"determination notice" has the meaning set out in regulation 13(5);

"eligible expenses" has the meaning set out in regulation 3;

"expenses account" has the meaning set out in paragraph 1 of Schedule 1;

"final notification" has the meaning set out in regulation 10 where the scheme manager has not made an interim payment, and in regulation 11 where it has;

"further notification" has the meaning set out in regulation 5(1);

"information notice" has the meaning set out in regulation 9(4);

"initial notification" has the meaning set out in regulation 4(1);

"interim payment" has the meaning set out in regulation 9(1);

"net cost of resolution" has the meaning set out in paragraph 6 of Schedule 1;

"notified rate" has the meaning set out in regulation 4(2)(f);

"notional account" has the meaning set out in paragraph 7 of Schedule 1;

"other person" has the meaning set out in regulation 4(2)(d);

"reconsidered determination notice" has the meaning set out in regulation 14(3);

"recoveries account" has the meaning set out in paragraph 1 of Schedule 1;

"relevant time" means the time at which a stabilisation power takes effect in respect of a banking institution and, if more than one stabilisation power is exercised, means the time at which the first stabilisation power so exercised takes effect;

"resolution" means the exercise of a stabilisation power;

"scheme" means the compensation scheme;

"scheme manager's limit" has the meaning set out in regulation 8(1);

"stabilisation power" means one of the stabilisation powers referred to in section 1(4) of the 2009 Act and a reference to the exercise of a stabilisation power includes the exercise of more than one stabilisation power in respect of or in connection with the same banking institution;

"total cost of interim payments" has the meaning set out in paragraph 19 of Schedule 1;

"voluntary interim payment" has the meaning set out in regulation 9(2); and

"voluntary payment notice" has the meaning given in regulation 9(8).

(2) Any reference in these Regulations to sections 214B, 214C or 214D are to those sections of the Act.

(3) A requirement under these Regulations to give a notice (or to notify) is a requirement to give notice in writing and, for that purpose, a message sent by facsimile transmission or electronic mail shall be treated as notice given in writing.

(**4**) 1986 c.53.
(**5**) 1979 c.34.
(**6**) S.I. 1985/1205 (N.I. 12).

**Eligible expenses**

**3.** The descriptions of expenses in respect of which the Treasury may require the scheme manager to make payments under section 214B(2) ("eligible expenses") are—

(a) expenses incurred in connection with the transfer of property, rights or liabilities of the banking institution under a stabilisation power;

(b) payments made to a bank administrator in connection with the pursuit of Objective 1 in respect of the banking institution (and "bank administrator" and "Objective 1" have the meanings given in sections 141 and 138 of the 2009 Act respectively);

(c) expenses incurred in connection with taking the banking institution into temporary public ownership in accordance with sections 13 or 82 of the 2009 Act; and

(d) expenses incurred in connection with the appointment of—

(i) an independent valuer in accordance with an order made under section 54 of the 2009 Act,

(ii) a valuer under section 214D(3), or

(iii) a person to perform the verification under regulation 12.

**Initial notification**

**4.**—(1) If the scheme manager is to be required by the Treasury to make payments under section 214B(2), the Treasury shall notify the scheme manager ("the initial notification") as soon as is reasonably practicable after the exercise of the stabilisation power.

(2) The initial notification shall include—

(a) the name and address of the banking institution in respect or in connection with which the stabilisation power has been exercised;

(b) a statement that the Treasury think that the banking institution was, or was likely to have been, or but for the exercise of the stabilisation power, would have become, unable to satisfy claims against it;

(c) details of the stabilisation power exercised, when it was exercised and the identity of the transferee (if any);

(d) the eligible expenses incurred, or an estimate of those expected to be incurred, by the Treasury or any other person other than the scheme manager ("the other person") and an estimate of any recoveries the Treasury or the other person expect to make in respect of the banking institution;

(e) if—

(i) a payment is required immediately from the scheme manager, a demand for that payment setting out the amount as calculated in accordance with regulation 9, and when and to whom the payment is due, or

(ii) if a payment is not required immediately from the scheme manager, an estimate as to when the scheme manager is likely to be required to make a payment or a date before which a payment will not be required;

(f) the interest rate ("the notified rate") which applies for the purposes of regulations 10(4), 11(3) or (4), and the accounts kept in accordance with Schedule 1;

(g) information as to—

(i) how the notified rate is to be calculated: whether this is to be a fixed rate, or a floating rate dependent on an underlying rate (and, if so, information as to this underlying rate), and

(ii) the period or successive periods for which the notified rate shall apply;

(h) any specified principles, methods or matters which the scheme manager will be required to apply, use or take into account when making its determinations under section 214D(2); and

(i) any further information that the Treasury consider necessary in respect of the payments to be made.

(3) No change can be made to the notified rate under paragraph (2)(f), or to the basis on which it is calculated, before the end of the period or periods notified.

(4) A failure to include any of the information in paragraph (2) in the initial notification does not render that notification invalid.

**Further notification**

**5.**—(1) Where an initial notification has been sent to the scheme manager, the Treasury must send a further notification ("further notification") to the scheme manager as soon as reasonably practicable if at any time before the Treasury issue a final notification—

(a) further expenses have been incurred by the Treasury or the other person in connection with the exercise of the stabilisation power;

(b) recoveries have been made by the Treasury or the other person in respect of the banking institution;

(c) there is a change in the notified rate or basis for calculating the notified rate (and the further notification shall set out the period or periods for which this new rate is to apply); or

(d) the Treasury expect a material change to the level of expenses expected to be incurred or recoveries expected to be made from that previously notified,

updating the information contained in the initial notification where relevant.

(2) A further notification must also be sent to the scheme manager where, at any time after the initial notification, the Treasury require the scheme manager to make an interim payment and the requirement for the interim payment was not included in the initial notification.

(3) A further notification under paragraph (2) shall set out the amount of the payment required (as calculated in accordance with regulation 9), and when and to whom it is due.

**The scheme manager's expenditure**

**6.**—(1) Following receipt of the initial notification under regulation 4, the scheme manager shall —

(a) make the determinations required by section 214D(2); and

(b) keep a record of—

(i) actual expenditure incurred by the scheme manager in respect of the banking institution, including a record of when the scheme manager incurs that expenditure; and

(ii) any recoveries made by the scheme manager in respect of the actual expenditure, including a record of when such recoveries are made.

(2) Once the scheme manager has made the determinations under section 214D(2), and is satisfied that, to the best of its knowledge, it will not incur any further actual expenses nor make any further recoveries, the scheme manager will notify the determinations to the Treasury together with the record of the actual expenditure.

**Calculation of the net cost of resolution**

**7.** Following the sending of the initial notification to the scheme manager, the Treasury shall keep the accounts specified in Part 1 of Schedule 1.

**Calculation of the scheme manager's limit**

**8.**—(1) On receipt of—

(a) the determinations of the scheme manager and the record of actual expenditure under regulation 6(2);

(b) the determinations or reconsidered determinations of the valuer under regulations 13 and 14; and

(c) an acknowledgement from the scheme manager that it does not intend to—

(i) require the valuer to reconsider the determinations under regulation 14(1),

(ii) refer the valuer's reconsidered determination to the Tribunal under regulation 14(5), or

(iii) make a reference to the Tribunal under regulation 15 or appeal any determination of the Tribunal,

the Treasury shall determine the limit of the amount of special resolution regime payments that can be required to be made under section 214B(2) in accordance with section 214C(1) ("the scheme manager's limit") using the methodology set out in Part 2 of Schedule 1.

(2) The Treasury may assume that the scheme manager does not have the intention referred to in paragraph (1)(c) if the Treasury have asked the scheme manager for an acknowledgement, 14 days have passed and the scheme manager has not indicated anything to the contrary.

**Interim payment**

**9.**—(1) The Treasury may require the scheme manager to make a payment ("an interim payment") in respect of the banking institution before—

(a) any verification takes place in accordance with regulation 12; or

(b) before the limit imposed by section 214C is calculated under regulation 8.

(2) The scheme manager may make an interim payment voluntarily ("a voluntary interim payment") in accordance with the provisions of this regulation.

(3) The total amount of interim payments made by the scheme manager must not be such as to give rise to an expectation that an amount will be required to be repaid to the scheme manager (once the accounts kept in accordance with Schedule 1 have been verified in accordance with regulation 12, and the Treasury have received the valuer's determination under section 214D(3).

(4) Before sending a notification under regulation 4 or 5 requiring an interim payment, the Treasury must send the scheme manager an information notice ("information notice") which requires the scheme manager to provide estimates—

(a) of the determinations it will make under section 214D(2); and

(b) of the actual expenditure it expects to incur in respect of the banking institution, including when this is likely to be incurred, and the amount (and timing) of any recoveries in respect of those expenses,

and shall set out the time by which the scheme manager must respond to the notice.

(5) An information notice may be sent to the scheme manager before the resolution takes place.

(6) On receipt of the information notice, the scheme manager may request any necessary information from the Treasury and the Treasury shall respond to such a request promptly.