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(**a**) 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(**b**) ("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(**c**);

"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),

(**a**) 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).
(**b**) S.I. 2009/807.
(**c**) 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(**a**)),

(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(**b**) or, in Northern Ireland, Article 2 of the Credit Unions (Northern Ireland) Order 1985(**c**)), 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.

(**a**) 1986 c.53.
(**b**) 1979 c.34.
(**c**) 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.

(7) On receipt of the information —

(a) using the notified rate (or the intended notified rate as the case may be); and

(b) estimating—

(i) the amount that would have been likely, at the time when the stabilisation power was exercised to be recovered by the scheme manager, and

(ii) the time or times at which the amount would have been likely to have been recovered,

the Treasury shall establish, using the methods set out in Schedule 1, the maximum amount of interim payments that may be made by the scheme manager. The amount required in the notification under regulations 4 or 5 shall be subject to this maximum amount.

(8) Where the scheme manager proposes to make a voluntary interim payment it must send the Treasury a notice ("voluntary payment notice") which contains—

(a) the date on which the scheme manager proposes to make the payment;

(b) the amount it proposes to pay; and

(c) the estimates required under paragraph (4)(a) and (b).

(9) Before sending a voluntary payment notice, the scheme manager may request from the Treasury any information it considers necessary for the making of the estimates specified in paragraph (4)(a) and (b) and the Treasury shall respond to such a request promptly.

(10) On receipt of a voluntary payment notice, using the procedure set out in paragraph (7), the Treasury shall establish the maximum amount of payments that the scheme manager may make under this regulation.

(11) On establishing the maximum amount of payments in paragraph (10), the Treasury shall then determine whether–

(a) to consent to the voluntary interim payment;

(b) to consent to a voluntary interim payment of a different amount (which shall not be greater than that proposed by the scheme manager); or

(c) not to consent to the voluntary interim payment,

and shall notify their determination to the scheme manager in writing.

(12) The Treasury must not consent to a voluntary interim payment that exceeds the maximum amount established under paragraph (10).

(13) The scheme manager shall not make a voluntary interim payment without the Treasury's consent.

(14) Where any interim payment is made, the Treasury shall keep the account specified in Part 3 of Schedule 1 to these Regulations.

Final notification (no interim payments)

10.—(1) This regulation applies where the scheme manager does not make any interim payments.

(2) As soon as reasonably practicable after—

(a) establishing—

(i) the net cost of resolution in accordance with regulation 7, and

(ii) the scheme manager's limit in accordance with regulation 8, and

(b) the undertaking of verification in accordance with regulation 12,

the Treasury shall send a final notification to the scheme manager setting out the amount of the payment due from the scheme manager and to whom that payment should be made.

(3) The amount required from the scheme manager will be the lower of the net cost of resolution and the scheme manager's limit.

(4) Following receipt of the final notification, the scheme manager will pay the amount due, together with interest accruing on that amount at the notified rate from the date the final notification is sent until the date of payment.

Final notification (interim payments)

11.—(1) This regulation applies where the scheme manager has made an interim payment.

(2) After—

(a) the Treasury have established—

(i) the net cost of resolution in accordance with regulation 7,

(ii) the scheme manager's limit in accordance with regulation 8, and

(iii) the total cost of interim payments in accordance with regulation 9, and

(b) verification in accordance with regulation 12,

the Treasury shall calculate the amount of any balancing payment due from the scheme manager or the Treasury in accordance with Part 4 of Schedule 1 and send a final notification to the scheme manager.

(3) Where under the final notification a balancing payment is due from the scheme manager, the final notification shall set out to whom that payment should be made, and it shall be paid together with interest accruing on that amount at the notified rate from the date the final notification is sent until the date of payment.

(4) Where under the final notification a balancing payment is due from the Treasury to the scheme manager, it shall be paid within 7 days together with interest accruing on that amount at the notified rate from the day the final notification is sent until the day of payment.

Independent verification

12. Before sending a final notification under regulation 10 or 11, the Treasury shall appoint an independent person to verify—

(a) the accounts kept in accordance with Schedule 1; and

(b) whether—

(i) the expenses included in the expenses account are eligible expenses, and

(ii) all recoveries made to date by the Treasury or the other person in respect of the banking institution have been included in the recoveries account.

Appointment and determinations of the valuer

13.—(1) Where the person appointed as valuer to make the determinations under section 214D(3) is not the same person as appointed in accordance with an order made under section 54 of the 2009 Act, Part 1 of Schedule 2 shall apply.

(2) The Treasury may specify any principles, methods or matters to be applied, used or taken into account by the valuer when making the determinations under section 214D(3).

(3) The valuer may—

(a) do anything necessary or desirable for the purposes of or in connection with making the determinations, and

(b) apply to the court for an order requiring the provision of information reasonably required for making the determinations in paragraph (1) (and, in that event, paragraph 11 of Schedule 2 shall apply).

(4) Part 2 of Schedule 2 applies to information obtained by the valuer in connection with making the determinations.

(5) When the valuer has made the determinations, the valuer shall give the scheme manager and the Treasury notice in writing ("the determination notice").

(6) The determination notice must contain the following information—

(a) the date on which it is issued;

(b) the determinations made by the valuer under section 214D(3); and

(c) the assumptions and calculations relevant to those determinations.

(7) The scheme manager may publish the determination notice on the scheme's website or in such other way as the scheme manager thinks fit.

Reconsideration of the valuer's determinations

14.—(1) If the scheme manager is or the Treasury are dissatisfied with the determination notice, either may require the valuer to reconsider the determinations.

(2) The request must be made within 3 months of the date of the determination notice, set out the reasons for disputing either or both the determinations and be in writing.

(3) Where the valuer is required to reconsider a determination, the valuer must give the Treasury and the scheme manger notice in writing of their reconsidered determination ("the reconsidered determination notice").

(4) The reconsidered determination notice must contain the information specified in regulation 13(6).

(5) If the scheme manager is or the Treasury are dissatisfied with a reconsidered determination, either may refer it to the Tribunal(**a**).

(6) If the Tribunal requires the valuer to redetermine a reconsidered determination, paragraphs (3), (4) and (7) will apply to any re-determination.

(7) The scheme manager may publish the reconsidered determination notice on the scheme's website or in such other way as the scheme manager thinks fit.

Other disputes that may be referred to the Tribunal

15. A reference may be made to the Tribunal by the Treasury or the scheme manager in order to resolve the following disputes arising under these Regulations—

(a) a determination made by the scheme manager under section 214D(2);

(b) a calculation made by the Treasury in connection with their functions under these Regulations; or

(c) a dispute relating to the making of payments under these Regulations.

Proceedings before the Tribunal

16. Where a reference is made under regulation 14(5) or 15, Schedule 3 shall apply.

(**a**) "The Tribunal" means the Upper Tribunal: see section 417(1) of the Act as amended by S.I. 2010/22.

Payments made under these Regulations to constitute payment of compensation under the scheme

17.—(1) This regulation applies where the stabilisation power exercised in respect of the banking institution has resulted in a qualifying claimant having all or part of their protected deposits held by that institution (or, where the banking institution is a holding company, held by a subsidiary of that company) being transferred to a new entity.

(2) For the purposes of the scheme (including the provisions in FEES 6 Chapter)—

(a) any payments made by the scheme manager, under these Regulations, in respect of that banking institution, shall constitute payment of compensation to that claimant in respect of claims under the scheme against the banking institution (or as the case may be, the subsidiary) for the amount of their protected deposit transferred;

(b) the banking institution, (or if the banking institution is a holding company, the subsidiary of that company holding protected deposits,) shall be deemed to be in default;

(c) each qualifying claimant shall be deemed to have made an application for compensation in respect of the amount of their protected deposit transferred; and

(d) each qualifying claimant shall be deemed to have accepted an offer of compensation made by the scheme manager and to have received payment for such compensation for that amount,

and accordingly, a qualifying claimant has no right to claim, and the scheme manager has no obligation to pay, any further compensation in respect of that amount.

(3) For the purposes of this regulation—

(a) where all or part of the business of a banking institution has been transferred to a bridge bank under section 12 of the 2009 Act, although a new entity for the purposes of paragraph (1), the bridge bank is to be treated as being the same banking institution as the institution in respect of which the stabilisation power was exercised;

(b) where a banking institution is in temporary public ownership—

(i) it shall be treated as a new entity for the purposes of paragraph (1), but

(ii) when it ceases to be in temporary public ownership it shall be treated as a different banking institution.

(4) In this regulation—

"COMP Sourcebook" means the Authority's Compensation Sourcebook as amended from time to time, made by the Authority under the Act;

"eligible claimant" means a person who is eligible to make a claim under the scheme in respect of a deposit at a banking institution(**a**);

"FEES 6 Chapter" means Chapter 6 (Financial Services Compensation Scheme Funding) of the Fees Manual as amended from time to time, made by the Authority under the Act;

"in default" means in default in accordance with rule 6.3.1. of the COMP Sourcebook;

"in temporary public ownership" means that a share transfer order has been made under, or in accordance with, section 13(2) of the 2009 Act and the banking institution is wholly owned by a nominee of the Treasury or a company wholly owned by the Treasury;

"qualifying claimant" means an eligible claimant who, if the banking institution were to have been in default immediately before the relevant time, would have had a claim against the banking institution, or in the case of a banking institution which is a holding company would have had a claim against one more of its subsidiary companies, in respect of a protected deposit; and

"protected deposit" means a protected deposit under the scheme(**b**) held with the banking institution.

(**a**) See rule 4.2.1. of the COMP Sourcebook.
(**b**) See rule 5.3.1 of the COMP Sourcebook.

Transitional provision for previous notifications

18.—(1) This regulation applies where, before the coming into force of these Regulations, a notification has been made by the Treasury under regulation 4 of the former Regulations.

(2) A notification (or where revised notifications have been sent, the most recent revised notification) under the former Regulations shall be treated as the initial notification in respect of the banking institution in accordance with regulation 4 of these Regulations.

(3) The scheme manager's assessment of Amount B under regulation 5(2) of the former Regulations shall be treated as its determination under section 214D(2)(a).

(4) As soon as practicable after the coming into force of these Regulations, the Treasury will send an updating notification to the scheme manager setting out—

(a) the total eligible expenses incurred to date in respect of the banking institution;

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

(c) if—

(i) the 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 this payment is due, or

(ii) if the 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;

(d) the notified rate and 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; and

(e) any specified principles, methods or matters that the scheme manager must apply, use or take into account when making the determination under section 214D(2)(b).

(5) Where the Treasury require the scheme manager to make an interim payment after the coming into force of these Regulations, in regulation 9(4) the reference to "a notification under regulations 4 or 5" means the notification in accordance with paragraph (4).

(6) If a valuer has been appointed to perform the function in regulation 8(1) of the former Regulations, on the coming into force of these Regulations—

(a) the valuer shall be treated as if appointed to exercise functions under section 214D(3);

(b) the Treasury shall promptly specify any principles, methods or matters to be applied, used or taken into account by the valuer when making the determination under section 214D(3)(b), and, if no determination notice has been received under regulation 8(6) of the former Regulations, the determination under section 214D(3)(a);

(c) where the Treasury have received the determination notice under regulation 8(6) of the former Regulations, this shall be treated as the valuer's determination under section 214D(3)(a); and

(d) where the valuer has been required to reconsider that determination notice under regulation 9(1) of the former Regulations, the Treasury shall treat the revised determination notice as a reconsidered determination in respect of the valuer's determination under section 214D(3)(a) under regulation 14 above.

(7) Where this regulation applies, Schedule 1 to these Regulations applies with the following modifications—

(a) for paragraph 4, substitute—

"**4.** From 19th November 2009(**a**) (or from the time specified in paragraph 2 if later), interest at the notified rate shall accrue daily on the amount in each account and shall be added to the account on each anniversary of the relevant time, but where the final notification is made on a date falling after an anniversary date, then all accrued interest not yet added, shall be added to the account on the date of the final notification.";

(b) for paragraph 11, substitute—

"**11.** In the notional account the Treasury shall account for interest at the notified rate on the outstanding balance as if it had, as from 19th November 2009 (or from the time specified in paragraph 8 if later), accrued daily and had been added to the account on each anniversary of the relevant time.";

(c) for paragraph 12, substitute—

"**12.** In the actual account the Treasury shall account for interest at the notified rate on the outstanding balance as if it had, as from the 19th November 2009, (or from the time specified in paragraph 8 if later), accrued daily on the outstanding balance and had been added to the outstanding balance on each anniversary of the relevant time."; and

(d) for paragraph 18, substitute—

"**18.** From 19th November 2009 (or from the time specified in paragraph 16 if later), interest at the notified rate shall accrue daily on the amount in the account and shall be added to the account on each anniversary of the relevant time, but where the final notification is made on a date falling after an anniversary date, then all accrued interest not yet added shall be added to the account on the date of the final notification.".

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[ ] 2010 Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1

Regulations 7, 8, 9, 11 and 12.

PART 1

Calculation of the net cost of the resolution

1. The Treasury shall keep accounts of eligible expenses incurred ("the expenses account") and of recoveries made ("the recoveries account") by itself or by the other person in respect of the banking institution.

2. The accounts shall be dated from the time when the Treasury or the other person first incurred eligible expenses or made recoveries, whichever is the sooner.

3. The Treasury shall add eligible expenses and recoveries to the appropriate accounts on the dates on which they are incurred or made.

4. Interest at the notified rate shall accrue daily on the amount in each account and shall be added to the account on each anniversary of the relevant time, but where the final notification is made on a date falling after an anniversary date, then all accrued interest not yet added shall be added to the account on the date of the final notification.

(**a**) See section 16(2) of the Financial Services Act 2010.

5. When the Treasury are satisfied that all recoveries have been made in respect of the banking institution, or considers that any remaining recoveries are sufficiently foreseeable so as to be included in the recoveries account on the date of the final notification, it shall calculate the net cost of resolution.

6. The net cost of resolution is the total amount in the expenses account less the total amount in the recoveries account on the date of the final notification, but if the total amount in the recoveries account equals or exceeds the total amount in the expenses account, the net cost of resolution is zero.

PART 2

Calculation of the scheme manager's limit

7. The Treasury shall create accounts of—

(a) notional net expenditure ("the notional account"), and

(b) actual net expenditure ("the actual account"),

of the scheme manager in respect of the banking institution.

8. The Treasury shall date the accounts as from the time when the scheme manager would have first, or has for the first time, incurred expenses or made recoveries.

9. At the time when—

(a) the scheme manager would have incurred expenses (as determined by the scheme manager under section 214D(2) of the Act), those amounts shall be added to the notional account;

(b) the valuer determined that the scheme would have made recoveries under section 214D(3), those amounts shall be subtracted from the notional account.

10. At the time when the scheme manager—

(a) incurred actual expenditure in respect of the banking institution, those amounts shall be added to the actual account;

(b) made recoveries in respect of the actual expenditure, those amounts shall be subtracted from the actual account.

11. In the notional account, the Treasury shall account for interest at the notified rate on the outstanding balance as if it had accrued daily and had been added to the account on each anniversary of the relevant time.

12. In the actual account, interest at the notified rate shall accrue daily on the outstanding balance and shall be added to the account on each anniversary of the relevant time.

13. In paragraphs 11 and 12, where the final notification is made on a date falling after an anniversary date, then all accrued interest not yet added shall be added to the account on the date of the final notification.

14. The scheme manager's limit is the outstanding balance in the notional account less the outstanding balance in the actual account on the date of the final notification.

PART 3

Calculation of the total cost of interim payments

15. The Treasury shall keep an account of any interim payments made by the scheme manager under regulation 9.

16. The account shall be dated from the time when the Treasury or the other person first received an interim payment.

17. The Treasury shall add the interim payments to the account on the date on which they are received.

18. Interest at the notified rate shall accrue daily on the amount in the account and shall be added to the account on each anniversary of the relevant time, but where the final notification is made on a date falling after an anniversary date, then all accrued interest not yet added shall be added to the account on the date of the final notification.

19. The total cost of interim payments is the total amount in the account on the date of the final notification.

PART 4

Calculation of balancing payments

20. A balancing payment is due—

(a) from the scheme manager if both the net cost of resolution and the scheme manager's limit exceed the total cost of interim payments; or

(b) from the Treasury to the scheme manager if either the net cost of resolution or the scheme manager's limit (or both) are lower than the total cost of interim payments.

21. If paragraph 20(a) applies, then the amount of the balancing payment shall be the lower of the net cost of resolution and the scheme manager's limit, minus the total cost of interim payments.

22. If paragraph 20(b) applies then the amount of the balancing payment shall be the total cost of interim payments minus the lower of the net cost of resolution and the scheme manager's limit.

SCHEDULE 2

Regulation 13

PART 1

The valuer

1. The valuer is to hold and vacate office in accordance with the terms of his or her appointment.

2. The Treasury may remove the valuer only on the ground of incapacity or serious misbehaviour.

3. In the event of the death of the valuer, or if the valuer is removed from office or resigns, the Treasury (or a panel appointed by the Treasury) shall appoint a new valuer as soon as possible.

4. The valuer shall be—

(a) paid such remuneration, and

(b) reimbursed such expenses,

as the Treasury may determine.

5. The Treasury may appoint a person to verify the remuneration and expenses of the valuer.

6. The valuer may appoint staff.

7. The valuer shall determine the remuneration and other conditions of service of persons appointed under paragraph 6.

8. Any determination under paragraph 7 shall require the approval of the Treasury.

9. Valuers (and their staff) are neither servants nor agents of the Crown (and in particular are not civil servants).

10. Records of a valuer in relation to his or her functions in connection with an appointment under these Regulations are public records for the purposes of the Public Records Act 1958(**a**).

PART 2

Application to the court for information

11.—(1) The court may, on an application by the valuer, make an order requiring a person to provide information that is reasonably required for the purpose of making the determinations in section 214D(3).

(2) A person required to provide information pursuant to an order under sub-paragraph (1) shall not be required to provide information—

(a) in respect of which a claim to legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings;

(b) if such provision by the person holding it would be prohibited by or under any enactment; or

(c) if it is held by a government department and provision of such information would be contrary to the public interest.

(3) In relation to information recorded otherwise than in legible form, the power to require it to be provided includes power to require it to be provided in a form from which it can be readily produced in visible and legible form.

12. A person who provides information to the valuer for the purpose set out in paragraph 11(1) is not, by reason only of the provision of such information, liable in any proceedings relating to a breach of confidence.

13. Specified information shall not be disclosed by the valuer (or any person to whom the valuer has disclosed such information in accordance with paragraph 14(2)) without the consent of the person from whom the valuer obtained the specified information and, if different, the person to whom it relates.

14.—(1) The prohibition in paragraph 13 of the disclosure of specified information is subject to the following exceptions.

(2) The valuer may, for the purpose of making the determinations under section 214D(3), disclose specified information to any staff appointed by the valuer or to any person providing advice or assistance to the valuer.

(3) The valuer may disclose specified information if and to the extent that the valuer considers it necessary to do so for the purposes of exercising the functions of the office.

(**a**) 1958 c.51.

(4) The valuer must, before disclosing any specified information in accordance with sub-paragraph (3), have regard to the need to exclude from disclosure (so far as practicable)—

(a) commercial information the disclosure of which might significantly harm the legitimate business interests of the person to whom it relates;

(b) information relating to the private affairs of an individual, the disclosure of which might significantly harm the individual's interests; or

(c) any information the disclosure of which would be contrary to the public interest.

(5) The valuer may disclose specified information in accordance with this paragraph subject to such conditions as the valuer thinks appropriate.

15. In this Part, "specified information" means any information obtained by the valuer for the purpose of making determinations under section 214D(3) of the Act.

SCHEDULE 3

Regulation 16

Proceedings before Tribunal: general provision

1. This Schedule applies in the case of a reference to the Tribunal under regulation 14(5) or 15 in respect of—

(a) a reconsidered determination of the valuer under regulation 14;

(b) a determination of the scheme manager under section 214D(2); or

(c) a calculation made by the Treasury in connection with its functions under these Regulations.

2. This Schedule also applies in the case of a reference to the Tribunal under regulation 15 in respect of a dispute relating to the making of payments under these Regulations.

3. On receiving a reference described in paragraph 1—

(a) Tribunal Procedure Rules may make provision for the suspension of the determination or calculation to which the reference refers from taking effect;

(b) the Tribunal may consider any evidence relating to the subject matter of the reference, whether or not it was available to the person making the determination or the calculation at the material time.

4. On receiving a reference described in paragraph 1 or 2, the Tribunal must determine what (if any) is the appropriate action—

(a) in the case of a reference described in paragraph 1, for the person making the determination or calculation to take in relation to the matter referred to it (and that person must act in accordance with the determination of, and any direction given by, the Tribunal;) or

(b) in the case of a reference described in paragraph 2, to be taken to resolve the dispute, which may include an award of damages.

5. An award of damages under paragraph 4(b) may only be made if the Tribunal is satisfied that an award would have been made by a county court or, in Scotland, the Court of Session, if the claim had been made in an action begun in that court.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the descriptions of expenses in respect of which the Treasury may require the Financial Services Compensation Scheme ("the scheme manager") to make payments under section 214B(2) of the Financial Markets and Services Act 2000, and make further provision in connection with such payments. Regulation 1(2) revokes the Financial Services and Markets Act 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2009 (S.I. 2009/807).

Regulation 3 describes the expenses to which the Treasury may require the scheme manager to make payments.

Regulation 4 provides that the Treasury may send the scheme manager an initial notification. This notification includes details of the banking institution and the stabilisation power, sets out the expenses incurred or expected to be incurred and whether or not a payment is required immediately from the scheme manager. The notification also sets out the interest rate to be applied to the accounts kept in respect of the resolution under Schedule 1.

Regulation 5 provides for the initial notification to be updated on the occurrence of certain events.

Regulation 6 provides for the scheme manager, on receipt of the initial notification, to make the determinations under section 214D(2) and to keep a record of its actual expenditure.

Regulation 7 provides that the Treasury shall keep the accounts set out in Part 1 of Schedule 1.

Regulation 8 provides that the Treasury shall determine the limit of the amount of special resolution regime payments the scheme manager can be required to make, using the methodology in Part 2 of Schedule 1.

Regulation 9 applies where either the Treasury require the scheme manager, or the scheme manager volunteers, to make an interim payment. It provides that the Treasury shall establish the maximum amount of interim payment that can be made and shall keep an account of any interim payment made in accordance with Part 3 of Schedule 1.

Regulation 10 provides for the final notification for payment where no interim payments have been made.

Regulation 11 provides for the calculation of the balancing payment due from the scheme manager (in accordance with Part 4 of Schedule 1) and final notification for payment where interim payments have been made.

Regulation 12 provides for the accounts kept in accordance with Schedule 1 and expenses included in those accounts to be independently verified.

Regulation 13 provides for Part 1 of Schedule 2 to apply to a valuer appointed by the Treasury under section 214D(3). It provides that the Treasury may specify principles for the valuer to apply and for the valuer to notify their determinations to the Treasury.

Regulation 14 provides for the scheme manager or the Treasury to require the valuer to reconsider their determinations and to make a reference to the Tribunal.

Regulation 15 provide for other disputes arising under the Regulations to be referred to the Tribunal.

Regulation 16 applies Schedule 3.

Regulation 17 provides that payments made by the scheme manager under the Regulations are to be treated as payment of compensation to eligible claimants.

Regulation 18 makes transitional provision for notifications made under the Financial Services and Markets Act 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2009.

Schedule 1 provides for accounts to be kept to allow the Treasury to calculate the net cost of resolution, the scheme manager's limit, the total cost of interim payments and any balancing payments.

Schedule 2 provides for the valuer to hold office and to be remunerated and to apply to the court for information to be disclosed.

Schedule 3 makes provision for proceedings before the Tribunal under these Regulations.

An Impact Assessment of the effect that allowing the cost of funding the exercise of SRR powers to be recovered from the FSCS will have on the costs of business and the voluntary sector has been prepared. It may be obtained from the Financial Regulation Strategy Team, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ. It is also available on HM Treasury's website (www.hm-treasury.gov.uk).

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DRAFT STATUTORY INSTRUMENTS

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

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