



FINANCIAL SERVICES ACT 2008

**COMPENSATION OF DEPOSITORS (AMENDMENT) REGULATIONS
2008**

<i>Made</i>	<i>22 October 2008</i>
<i>Laid before Tynwald</i>	<i>23 October 2008</i>
<i>Coming into operation</i>	<i>23 October 2008</i>

The Treasury makes the following Regulations under section 25 of the Financial Services Act 2008¹—

1 Title

These Regulations are the Compensation of Depositors (Amendment) Regulations 2008.

2 Commencement

These Regulations come into operation on 23 October 2008.

3 Amendment of the Compensation of Depositors Regulations 2008

The Compensation of Depositors Regulations 2008² are amended as follows.

4 Amendment of regulation 2

In regulation 2(2) (interpretation of certain terms used in the Regulations), in the definition of “deposit taker” at the end add “but does not include a building society regulated under the Industrial and Building Societies Act 1892³”.

5 Amendment of regulation 9

For regulation 9(3) (determination of amount of eligible protected deposits) substitute —

“(3) In determining the amount of an eligible protected deposit due to any person —

¹ 2008 c.8.

² S.D. 826/08..

³ VI. p. 405.

- (a) separate deposits which are, or are treated as being, in the same ownership are aggregated and treated as one deposit;
- (b) a deposit in the joint names of 2 or more persons is treated as if each such person held a separate deposit of an amount equal to the total deposit divided by the number of persons in whose names it is held unless sub-paragraph (c) or (e) applies;
- (c) a deposit held by a partnership is treated as one deposit;
- (d) a deposit held by a bare trustee or nominee for other persons is treated as one deposit unless sub-paragraph (e) applies;
- (e) a deposit held by trustees of a trust is treated as one deposit unless the identity and right to benefit of each beneficiary can be conclusively established, in which case each beneficiary is treated as holding a separate deposit by reference to his or her respective entitlement;
- (f) a client account, which is entitled as such, is treated as representing separate deposits made by persons, corresponding to the amount to which each is entitled;
- (g) if the deposit is in a currency other than sterling, it shall be converted into sterling for the purposes of this Scheme by reference to the middle market rate.”.

6 Amendment of regulation 10

For regulation 10(3) and (4) (exceptions from entitlement to compensation) substitute —

- “(3) Compensation shall not be paid to depositors in respect of —
 - (a) a secured deposit; or
 - (b) a deposit that had an original term to maturity of more than 5 years.
- (4) Compensation shall not be paid to —
 - (a) persons licensed under section 3 of the Act to undertake deposit taking or investment business;
 - (b) deposit takers that are authorised, licensed or recognised in a country or territory outside the Island;
 - (c) any person who, in the opinion of the Scheme Manager, has any responsibility for, or may have profited directly or indirectly from, the circumstances giving rise to, the participant’s default;

- (d) any person who was at the time of the participant's default a shareholder, director, controller or manager of the participant, or who, in the opinion of the Scheme Manager, has exercised the functions of a shareholder, director, controller or manager of the participant, and any associate (within the meaning of section 48 of the Act) of such person;
- (e) any company that at the time of default was a parent, subsidiary or fellow subsidiary of the participant, or a company in common ownership with the participant.”.

7 Substitution of regulation 11

For regulation 11 (limits of compensation) substitute—

“Limits of compensation

11. (1) The amount of compensation payable under the Scheme in respect of an eligible protected deposit (“the compensation sum”) is 100% of the amount of the eligible protected deposit, subject to the following provisions of this regulation.

(2) The maximum amount of compensation in the case of each default in respect of each depositor is —

- (a) where the depositor is an individual beneficially entitled to the deposit, £50,000;
- (b) in any other case, £20,000.

(3) The Scheme Manager shall determine the maximum amount which it is prudent to pay by way of compensation sums to depositors in any financial year of the scheme having regard, amongst other things, to —

- (a) the amount of contributions for that year levied in accordance with regulation 12(1); and
- (b) any Treasury funding due under regulation 12A.

(4) Accordingly, if the full amount of compensation is not payable by virtue of paragraph (3), the Scheme Manager must ensure, as far as is reasonably possible, that the payments it determines to pay, taking into consideration any payment on account, are the same proportion of each eligible protected deposit up to the appropriate maximum amount under paragraph (2).

(5) This regulation is subject to the other provisions of these Regulations (and in particular those by virtue of which no compensation is payable).”.

8 Amendment of regulation 12

In regulation 12 (levies on participants) —

- (a) in paragraph (1)(a) for “£50,000” substitute “£35,000”; and
- (b) in paragraph (2) for “£500,000” substitute “£350,000”.

9 Insertion of regulation 12A

After regulation 12 insert —

“Treasury funding

12A. (1) Where a default has occurred the Treasury shall pay to the Scheme Manager such sum as appears to it to represent the total of the amount by which the compensation payable in respect of each depositor exceeds £20,000.

(2) The total sum provided under paragraph (1) in respect of all defaults shall not exceed £150,000,000.”.

10 Amendment of regulation 16

Renumber the final paragraph of regulation 16 (rights of Scheme Manager against defaulting participant) as paragraph (6) of that regulation.

11 Insertion of regulations 16A and 16B

After regulation 16 insert —

“Distribution of sums recovered

16A If the Scheme Manager recovers sums from a defaulting participant in respect of a compensation payment which it has made, it shall distribute those sums between participants, holders of eligible protected deposits and the Treasury on such basis as appears to the Scheme Manager to be just and equitable having regard to the sources of funding from which the compensation payment was made.

Applications to the Court

16B. (1) The Scheme Manager may seek the directions of the High Court on any question relating to the operation of the Scheme or the Fund.

(2) On an application for directions under paragraph (1) the High Court may direct notice of the application to be given to such person or persons as appear appropriate.”.

12 Prospective further amendments

On the first anniversary of the approval of these Regulations by Tynwald —

- (a) for regulation 11(2) the following is substituted —
 - “(2) The maximum amount of compensation in the case of each default in respect of each depositor is £20,000.”; and
- (b) the following cease to have effect —
 - (i) in regulation 11(3) the words after “regulation 12(1)”;
 - and
 - (ii) regulation 12A.

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Minister for the Treasury

EXPLANATORY NOTE

(This Note is not part of the Regulations)

These Regulations amend the Compensation of Depositors Regulations 2008 (S.D. 828/08). The amendments are introduced by regulation 3. They restore the range of depositors entitled to compensation to the position under the Banking Business (Compensation of Depositors) Regulations 1991 (G.C. 47/91), which were in force prior to the 2008 Regulations, save that the compensation limit for each of these depositors is increased from 75% of the deposit up to a maximum of £15,000 to 100% up to a maximum of £20,000. The increased protection for depositors who are individuals beneficially entitled to the deposit remains at 100% up to a maximum of £50,000 (*regulations 5 to 7*).

The Scheme Manager must determine the maximum amount to be paid out in compensation to depositors in any financial year having regard (amongst other things) to the amount of the contributions levied and any funding due from the Treasury. Also reintroduced is the provision from the 1991 Regulations that requires the Scheme Manager, when unable to pay out the full amount due to the claims exceeding the money available, to pay the same proportion to each depositor (*regulation 7*).

The maximum levy on each participant in the scheme in any one financial year is reduced from being the greater of £50,000 and a sum not exceeding £500,000 representing 0.125% the average deposits of the participant, to a similar formula using the amounts of £35,000 and £350,000 instead of £50,000 and £500,000 respectively (*regulation 8*).

A requirement is introduced for the Treasury to pay into the scheme a sum equivalent to the amount paid out as a result of the limit for individual depositors being £50,000 and not £20,000 (*regulation 9*).

A minor correction is made to the numbering of regulation 16 of the 2008 Regulations (*regulation 10*). In addition the definition of “deposit taker” is expanded to make it clear that it does not include a building society (*regulation 4*).

In addition provisions are added requiring the Scheme Manager, in the event of a recovery of sums from a defaulting participant, to distribute those sums between participants, the holders of eligible protected deposits and the Treasury on such basis as appears to it to be just and equitable, and enabling the Scheme Manager to seek the directions of the High Court on any question relating to the operation of the scheme or the Fund (*regulation 11*).

The provisions giving a higher level of compensation to individuals and for the Treasury to fund the extra cost of so doing will cease to have effect a year after these Regulations are approved by Tynwald (*regulation 12*).