

Policy Statement | PS15/15

Depositor and policyholder protection- technical amendments

July 2015



BANK OF ENGLAND
PRUDENTIAL REGULATION
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This policy statement contains the final rules, and an updated statement of policy to implement the proposals made in Consultation Paper 21/15 in relation to depositor and policyholder protection.

1 Overview

1.1 This Prudential Regulation Authority (PRA) policy statement (PS) provides feedback to responses to CP21/15 'Depositor and policyholder protection — technical amendments'.¹ It sets out final rules intended to reduce the adverse effects the failure of firms could be expected to have on the stability of the UK financial system and enhance depositor confidence and therefore advance the PRA's general objective of promoting the safety and soundness of PRA authorised firms.

1.2 In CP21/15 the PRA proposed changes to the Depositor Protection Part in the PRA Rulebook and to the transitional provisions and schedules in the FEES Sourcebook (FEES). The rule changes arise partly as a result of issues identified with the rules consulted on in CP20/14 'Depositor protection'², CP4/15 'Depositor, dormant account and policyholder protection — amendments'³ and CP15/15 'Depositor and dormant account protection- further amendments'⁴ (the CPs) published in October 2014, January and April 2015 respectively.

1.3 The rule amendments seek to reflect depositor preference and to clarify who the Financial Services Compensation Scheme (FSCS) may treat as being absolutely entitled to deposits, as well as to address minor administrative changes.

1.4 In CP21/15 the PRA proposed:

- amendments to the recovery rules in the Depositor Protection Part to reflect depositor preference under Article 108 of the Bank Recovery and Resolution Directive (BRRD).⁵ These rules allow the FSCS to pay 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 will ensure that a depositor that is a small local authority will 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 CP21/15 'Depositor and policyholder protection- technical amendments'*, June 2015; www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp2115.aspx.

² *PRA Consultation Paper CP20/14, 'Depositor protection'*, October 2014; www.bankofengland.co.uk/pr/Pages/publications/cp/2014/cp2014.aspx.

³ *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.

⁴ *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.

⁵ 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.

1.5 Appendix 1 and 2 of this PS contain the amendments to the Depositor Protection rules found in the Depositor Protection Part of the PRA Rulebook.

1.6 Appendix 3 of this PS contains an instrument amending certain FEES transitionals and schedules. The PRA consulted on its approach to FEES transitional provisions and schedules relating to FEES 6, which sets out rules regarding the funding of the FSCS, in CP4/15.¹ The instrument amending the relevant transitional provisions and schedules was not, however, included in the CP and therefore was included in CP21/15.²

1.7 Appendix 4 of this PS contains amendments to the Deposit Guarantee Scheme Statement of Policy to reflect changes proposed in CP21/15.

1.8 This PS 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 UK's Deposit Guarantee Scheme (DGS); and
- depositors.

1.9 The FEES transitionals and schedules amendment (in Appendix 3) 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.

1.10 The PRA is required by the Financial Services and Markets Act 2000 (FSMA) to publish a statement setting out its opinion on whether or not the impact of the final rules on mutual societies and other firms as compared with mutual societies are significantly different from the impact of the proposed rules where the final rules differ from the draft of the proposed rules.³ In the PRA's opinion, the impact of the rules as made is not significantly different from the impact of the proposed rules in CP21/15 on mutuals or other deposit-takers.

1.11 The PRA is required by FSMA to have regard to any representations made to the proposals in a consultation, to publish an account, in general terms, of those representations and its response to them, and to publish details of any significant differences in the rules as made. The PRA considers that there is only one significant change, which is in respect of the Landlord and Tenant Act 1987 category of accounts which the PRA consulted on including in Depositor Protection 6.10 (which sets out the cases in which a person other than the account holder is treated as being absolutely entitled to an eligible deposit).⁴ This is because the PRA considers the question of which person(s) are entitled to sums in such accounts as being very difficult to determine at any particular point in time and so, under the final rules, such

1 *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.

2 *PRA Consultation Paper CP21/15* 'Depositor and policyholder protection- technical amendments', June 2015; www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp2115.aspx.

3 <http://www.legislation.gov.uk/ukpga/2000/8/contents>

4 <http://www.legislation.gov.uk/ukpga/1987/31>

accounts are treated in the same way as other complex trusts with multiple beneficiaries (which is in accordance with Depositor Protection 6.3-6.9). Section 2 sets out feedback received to PRA proposals.

2 Changes to the Depositor Protection rules

2.1 This chapter sets out feedback to responses received to PRA proposals set out in CP21/15 in relation to depositor protection.¹

A FSCS's obligation to pursue recoveries

Amendments to the recovery rules to reflect depositor preference

2.2 No objections were received to the PRA amendment to reflect the preference of covered deposits under the BRRD.² The PRA has therefore made the rules as proposed.

B Beneficiary accounts

2.3 This section sets out further rule changes relating to beneficiary accounts (ie accounts where persons other than the account holder are absolutely entitled to the eligible deposit). The amendments clarify how the PRA expects the FSCS to treat beneficiary accounts and makes 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 depositors that are ineligible or not covered.

Trustees and beneficial interests

2.1 No objections were received to the PRA amendments 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 and to make it clear that the 'look through' treatment applies in the same way to each category of excluded depositor. The PRA has therefore made the rules as proposed, with the exception of the Landlord and Tenant Act 1987 category of accounts which the PRA has not included in Depositor Protection 6.10. This is because the PRA considers the question of which person(s) are entitled to sums in such accounts as being very difficult to determine at any particular point in time. The PRA is therefore following an approach under which such accounts are treated like other more complex trust accounts in accordance with Depositor Protection 6.3-6.9. The DGS statement of policy in Appendix 4 has been updated to reflect this approach.

Calculation of the deposits tariff base

2.2 The PRA confirms a rule change to allow firms to exclude from their class A tariff base calculation (which is used to calculate a firm's share of DGS levies) the value of any funds (for example in beneficiary accounts), which it has confirmed are not covered deposits.

2.3 One respondent expressed concern that credit unions may see a marginal increase in their DGS levies as a result of the rule change. This is because credit unions may be less likely to hold beneficiary accounts and as such may, all else being equal, see their proportional share of total industry deposits increase. The PRA acknowledged this possible impact on mutuals in the consultation paper. This impact is expected to be minimal and offset by the change in eligibility of large corporate depositors who are newly eligible depositors and may be less likely to hold their deposits with mutuals. The PRA has therefore made the rule amendments as proposed.

1 *PRA Consultation Paper CP21/15 'Depositor and policyholder protection- technical amendments'*, June 2015; www.bankofengland.co.uk/pr/Pages/publications/cp/2015/cp2115.aspx.

2 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).

C Minor amendments

2.4 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 December 2016 is made to take into account the fact that small local authority deposits are not required to be included in firms' SCV files during this period.¹

SCV and exclusions files

2.5 No objections were received to the minor administrative and clarificatory changes to the Depositor Protection Part. The PRA has therefore made the rules as proposed. These include:

- (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; and
- (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

2.6 No respondents objected to the amendment to Depositor Protection rule 9.6 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.

2.7 The PRA is making this change 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. 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 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 PRA Consultation Paper, PS9/15, 'Depositor and dormant account protection - further amendments', May 2015; www.bankofengland.co.uk/pr/Pages/publications/ps/2015/ps915.aspx.

Appendices

1 Depositor Protection (Amendment No. 2) Instrument 2015 (PRA 2015/56) –
see www.bankofengland.co.uk/pradocuments/publications/ps/2015/ps1515instr1556.pdf

2 Depositor Protection (Amendment No. 5) Instrument 2015 (PRA 2015/60) –
see www.bankofengland.co.uk/pradocuments/publications/ps/2015/ps1515instr1560.pdf

3 Handbook (Rulebook Consequentials No.2) Instrument 2015 (PRA 2015/58) –
see www.bankofengland.co.uk/pradocuments/publications/ps/2015/ps1515instr1558.pdf

4 Statement of Policy – Deposit Guarantee Scheme – see landing page
www.bankofengland.co.uk/pradocuments/publications/sop/2015/fscsdgsupdate.aspx