

Chapter 7

Assignment, subrogation,
variation or creation of rights

7.3 Automatic subrogation

General

7.3.1 R [deleted]

7.3.2 R The FSCS's powers in this section may be used:

- (1) separately or in any combination as an alternative and in substitution for the powers and processes elsewhere in this sourcebook; and/or
- (2) [deleted]
- (3) in relation to all or any part of a *protected claim* or class of *protected claim* made with respect to the *relevant person* (or, where applicable, a *successor*).
- (4) [deleted]

7.3.3 R The FSCS may determine that the exercise of any power in this section is subject to such incidental, consequential or supplemental conditions as the FSCS considers appropriate.

Determinations by the FSCS

- 7.3.4 R
- (1) Any power conferred on the FSCS to make determinations under this section is exercisable in writing.
 - (2) An instrument by which the FSCS makes the determination must specify the provision under which it is made, the date and time from which it takes effect and the *relevant person* (or, where applicable, a *successor*) and *protected claims*, parts of *protected claims* and/or classes of *protected claims* in respect of which it applies.
 - (3) The FSCS must take appropriate steps to publish the determination as soon as possible after it is made. Such publication must be accompanied by a statement explaining the effect of ■ COMP 7.4.2 R.
 - (4) Failure to comply with any requirement in this *rule* does not affect the validity of the determination.
 - (5) A determination by the FSCS under this section may be amended, remade or revoked at any time and subject to the same conditions.

Verification of determinations

- 7.3.5 **R** (1) The production of a copy of a determination purporting to be made by the *FSCS* under this section:
- (a) on which is endorsed a certificate, signed by a member of the *FSCS*'s staff authorised by it for that purpose; and
 - (b) which contains the required statements;
- is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (2) The required statements are:
- (a) that the determination was made by the *FSCS*; and
 - (b) that the copy is a true copy of the determination.
- (3) A certificate purporting to be signed as mentioned in (1) is to be taken to have been properly signed unless the contrary is shown.
- (4) A *person* who wishes in any legal proceedings to rely on a determination may require the *FSCS* to endorse a copy of the determination with a certificate of the kind mentioned in (1).

Effect of this section on other provisions in this sourcebook etc

7.3.6 **R** Other provisions in this sourcebook and **FEES 6** are modified to the extent necessary to give full effect to the powers provided for in this section.

7.3.7 **R** Other than as expressly provided for, nothing in this section is to be taken as limiting or modifying the rights or obligations of or powers conferred on the *FSCS* elsewhere in this sourcebook or in **FEES 6**.

Rights and obligations against the relevant persons, successors and third parties

- 7.3.8 **R** The *FSCS* may determine that:
- (1) the payment of compensation by the *FSCS*; or
 - (2) a payment by the *FSCS* in connection with securing continuity of *funeral plan contracts*;
shall have all or any of the following effects:
 - (3) the *FSCS* shall immediately and automatically be subrogated, subject to such conditions as the *FSCS* determines are appropriate, to all or any part (as determined by the *FSCS*) of the rights and claims in the *United Kingdom* and elsewhere of the claimant against the *relevant person* (or, where applicable, a *successor*) and/or any third party (whether such rights are legal, equitable or of any other nature whatsoever and in whatever capacity the *relevant person* (or, where applicable, a *successor*) or third party is acting) in respect of or arising out of the *claim* in respect of which the payment of or on account of compensation was made;

- (4) the *FSCS* may claim and take legal or any other proceedings or steps in the *United Kingdom* or elsewhere to enforce such rights in its own name or in the name of, and on behalf of, the claimant, or in both names against the *relevant person* (or, where applicable, a *successor*) and/or any third party;
- (5) the subrogated rights and claims conferred on the *FSCS* shall be rights of recovery and claims against the *relevant person* (or, where applicable, a *successor*) and/or any third party which are equivalent (including as to amount and priority and whether or not the *relevant person* (or, where applicable, a *successor*) is insolvent) to and do not exceed the rights and claims that the claimant would have had; and/or
- (6) such rights and/or obligations (as determined by the *FSCS*) as between the *relevant person* (or, where applicable, a *successor*) and the claimant arising out of the *protected claim* in respect of which the payment was made shall be transferred to, and subsist between, another *authorised person* (or, where a *successor* is not an *authorised person*, an *authorised person*) with an appropriate *permission* and the claimant provided that the *authorised person* has consented (but the transferred rights and/or obligations shall be treated as existing between the *relevant person* (or where applicable, a *successor*) and the *FSCS* to the extent of any subrogation, transfer or assignment for the purposes of (3) to (5) and ■ COMP 7.3.9 R).

7.3.9

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The *FSCS* may alternatively or additionally make the actions in ■ COMP 7.3.8R conditional on the claimant assigning or transferring the whole or any part of all such rights as they may have against the *relevant person* (or, where applicable, a *successor*) and/or any third party on such terms as the *FSCS* determines are appropriate.

7.3.10

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- (1) The *FSCS* may determine that:
 - (a) if the claimant does not assign or transfer his rights under ■ COMP 7.3.9 R;
 - (b) if it is impractical to obtain such an assignment or transfer; and/or
 - (c) if it is otherwise necessary or desirable in conjunction with the exercise of the *FSCS*'s powers under ■ COMP 7.3.8 R or ■ COMP 7.3.9 R;that claimant shall be treated as having irrevocably and unconditionally appointed the chairman of the *FSCS* for the time being to be his attorney and agent and on his behalf and in his name or otherwise to do such things and execute such deeds and documents as may be required under such laws of the *United Kingdom* or any other state or law-country to create or give effect to such assignment or transfer or otherwise give full effect to those powers.
- (2) The execution of any deed or document under (1) shall be as effective as if made in writing by the claimant or by his agent lawfully authorised in writing or by will.