

Chapter 7

Assignment, subrogation,
variation or creation of rights

7.7

Funeral plan contracts and related trust arrangements and contracts of insurance

Application

7.7.1

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This section applies:

(1) in connection with any *trust arrangement* or *contract of insurance* that relates to *funeral plan contracts* entered into or carried out by a *relevant person* or *successor* who is *in default*; and

(2) irrespective of whether the *trust arrangement*, *contract of insurance* or related rights or obligations came into existence before or after the date on which this section comes into force.

7.7.2

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The *FSCS* is required to administer the compensation scheme in accordance with the European Convention on Human Rights (■ COMP 2.2.1R). This includes in accordance with Article 1 Protocol 1 of the Convention concerning the protection of property.

General

7.7.3

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The following provisions apply in relation to this section making any necessary changes:

(1) ■ COMP 7.3.2R and ■ COMP 7.3.3R (General);

(2) ■ COMP 7.3.4R (Determinations by the *FSCS*);

(3) ■ COMP 7.3.5R (Verification of determinations); and

(4) ■ COMP 7.3.6R (Effect of this section on other provisions in this sourcebook etc).

Rights and obligations in respect of trust arrangements and contracts of insurance

7.7.4

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If the *FSCS*:

(1) has paid, or has decided to make a payment of, compensation; or

(2) has made a payment, or has decided to make a payment, in connection with securing continuity of *funeral plan contracts*,

		<p>the <i>FSCS</i> may make a determination with all or any of the following effects as set out in the determination:</p> <p>(3) to vary existing rights or obligations under or in respect of the <i>trust arrangement or contract of insurance</i>; such variation may, in particular, provide for the right to be transferred, or obligation to be owed, to a different <i>person</i> and, in either case, to subsist between that different <i>person</i> and the trustees or <i>insurer</i> respectively provided that the different <i>person</i> (if not the <i>eligible claimant</i>) has consented;</p> <p>(4) to create new rights under the <i>trust arrangement or contract of insurance</i> in favour of, or obligations by the trustees or <i>insurer</i> to, the <i>FSCS</i>; those new rights or obligations may, in particular, override existing rights or obligations;</p> <p>(5) to enable the <i>FSCS</i> to claim and take legal or any other proceedings or steps in the <i>United Kingdom</i> or elsewhere to enforce any such rights held by or obligations owed to the <i>FSCS</i> in its own name against the trustees, the <i>insurer</i> and/or any third party.</p>
7.7.5	R	Any right of recovery conferred on the <i>FSCS</i> by a determination under this section may not exceed the amount paid or (in the opinion of the <i>FSCS</i>) to be paid out by the <i>FSCS</i> in connection with the <i>funeral plan contracts</i> concerned.
7.7.6	R	Any right of recovery conferred on the <i>FSCS</i> by a determination under this section is subject to the prior payment of those sums that the <i>FSCS</i> reasonably considers should be prioritised. Such sums may include: the legitimate fees and expenses of the trustee, <i>insurer</i> , actuary and <i>relevant person</i> , tax payable in respect of the <i>trust arrangement or contract of insurance</i> and existing funeral costs.
7.7.7	R	A payment by the trustees pursuant to a determination will operate to discharge the trustees from all other obligations in relation to that part of the trust assets reflecting the payment made.
7.7.8	R	<p>Duty to pursue recoveries</p> <p>.....</p> <p>If the <i>FSCS</i> has a right of recovery under this section, it must pursue all and only such recoveries as it considers are likely to be both reasonably possible and cost effective to pursue.</p>