

**EXITING THE EUROPEAN UNION: REDRESS SOURCEBOOKS (AMENDMENTS)
INSTRUMENT 2019**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) regulation 3 of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;
 - (2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000;
 - (3) regulation 120 (Guidance) Payment Services Regulations 2017; and
 - (4) regulation 60 (Guidance) Electronic Money Regulations 2011.

Commencement

- B. This instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018.

Amendments to the Handbook

- C. The Consumer Redress Schemes sourcebook (CONRED) is amended in accordance with Annex A to this instrument.
- D. The Compensation sourcebook (COMP) is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Exiting the European Union: Redress Sourcebooks (Amendments) Instrument 2019.

By order of the Board
28 March 2019

Annex A

Amendments to the Consumer Redress Schemes sourcebook (CONRED)

In this Annex, striking through indicates deleted text.

1 **General**

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1.4 **Scope of a consumer redress scheme**

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1.4.2 G A consumer redress scheme could apply to all *authorised persons*, *electronic money issuers* or *payment service providers* or to a specified description of *authorised person*, *electronic money issuer* or *payment service provider*. This means the *FCA* could create a scheme that applied to a named list of firms. ~~Given that a scheme can apply to *authorised persons*, it could also apply to *incoming EEA firms* that are authorised under Schedule 3 to the *Act*. However, the *FCA* would need to consider on a case-by-case basis the extent to which this was both practicable and appropriate (having regard to the division of responsibilities between *Home* and *Host State regulators* under the various *EU Directives* that apply to financial services firms).~~

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1.4.9 G The section 404 power could be used in relation to non-UK consumers if they are protected by the underlying law (e.g. some ~~*FCA rules*~~ apply to ~~*UK firms*~~ doing business in another ~~*EEA State*~~).

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Annex B

Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

INTRO Foreword

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(This Foreword to the Compensation sourcebook does not form part of COMP.)

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~~Chapter 14 Participation by EEA firms~~

~~This chapter sets out the way the FSCS deals with incoming EEA firms who may choose to top up into the FSCS to supplement the compensation available from their home state scheme.~~

1.1 Application, Introduction, and Purpose

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Introduction

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1.1.8 G *COMP* 1 consists of *guidance* which is aimed at giving an overview of how this sourcebook works. The provisions of *COMP* 2 to *COMP* 14 12A cover who is eligible, the amount of compensation and how it might be paid.

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2 The FSCS

2.1 Application and Purpose

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Purpose

2.1.2 G In order to carry out its functions and put into effect the provisions set out in *COMP* 3 – *COMP* 14 12A (which deal with determining whether compensation is payable, calculating the amount of compensation that should be paid, and making levies on *firms*), the *FSCS* needs to have a variety of powers. The purpose of this chapter is to set out these powers, and the restrictions upon them.

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5 Protected claims

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5.5 Protected investment business

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Territorial scope condition

- 5.5.2 R The territorial scope condition is that the *protected investment business* was carried on from:
- (1) an establishment of the *relevant person* in the *United Kingdom*; ~~or~~
 - (2) a ~~branch of a UK firm which is:~~
 - (a) a ~~MiFID investment firm established in another EEA State; or~~
 - (b) a ~~UCITS management company established in another EEA State (but only in relation to managing investments (other than advising on investments or safeguarding and administering investments); [deleted]~~

and the *claim* is an *ICD claim*; or
 - (3) both (1) and (2); or ~~[deleted]~~
 - (4) (a) a ~~UK branch of an EEA UCITS management company; or~~
 - (b) an establishment of such an ~~EEA UCITS management company in its Home State from which cross border services are being carried on; [deleted]~~

and in either case the *management company* is providing *collective portfolio management services* for a *UCITS scheme* but only if the *claim* relates to that activity; or
 - (5) an establishment of an ~~incoming EEA AIFM in another EEA State if the claim relates to providing AIFM management functions on a cross border services basis for an authorised AIF. [deleted]~~

Managers and depositaries of funds

- 5.5.3 R The conditions referred to in *COMP 5.5.1R* for a manager or *depository* of a *fund* are:
- (1) for the activities of *managing an AIF, managing a UK UCITS or establishing, operating or winding up a collective investment scheme*, the *claim* is in respect of an investment in:

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5.6 Protected home finance mediation

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5.6.2 R *COMP* 5.6.1R applies only if the *protected home finance mediation* was carried on by a *relevant person*:

- (1) with a *customer* who was a resident in the *United Kingdom*; ~~or~~
- (2) ~~from an establishment maintained by the relevant person (or its appointed representative) in the United Kingdom with a customer who was resident elsewhere in the EEA;~~

at the time the *protected home finance mediation* was carried on.

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5.7 Protected non-investment insurance distribution

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5.7.2 R *COMP* 5.7.1R only applies if the conditions in (1) and (2) are satisfied:

- (1) the *protected non-investment insurance distribution* was carried on from:
 - (a) an establishment of the *relevant person* in the *United Kingdom*; ~~or~~
 - (b) ~~a branch of a UK firm established in another EEA State in the exercise of an EEA right derived from the IDD; and~~
- (2) the claimant making the *claim* (or where *COMP* 3.2.4R applies, the *customer* on behalf of whom a *firm* makes a *claim*) dealt initially, with a view to entering into a *relevant general insurance contract* or a *pure protection contract* but not a *long-term care insurance contract* or a *reinsurance contract*, with an intermediary that was:
 - (a) established in the *United Kingdom*; ~~or~~
 - (b) ~~a branch of a UK firm established in another EEA State in the exercise of an EEA right derived from the IDD.~~

5.7.3 G The *FSCS* will not cover a *claim* against an intermediary or a *successor* of an intermediary that meets the criteria of either *COMP* 5.7.2R(2)(a) ~~or~~ ~~*COMP* 5.7.2R(2)(b)~~ where the claimant was introduced to that intermediary by an intermediary that does not meet the criteria of either *COMP* 5.7.2R(2)(a) ~~or~~ ~~*COMP* 5.7.2R(2)(b)~~.

- 5.7.4 G ... However, *COMP 5.7.2R* has the effect that a *claim* in respect of a *relevant person* further up the chain carrying on *protected non-investment insurance mediation* in accordance with *COMP 5.7.2R(1)(a)* may be covered by the *FSCS* if the claimant dealt initially with a *UK intermediary* that is not a *relevant person*.

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6 Relevant persons and successors in default

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6.2 Who is a relevant person?

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- 6.2.3 G *A pre-exit incoming EEA firm may be a participant firm in respect of acts or omissions before exit day that give rise to a claim against it.*

6.3 When is a relevant person in default?

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- 6.3.3 R The *FSCS* may determine a *relevant person* to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim*), and the *relevant person* is the subject of one or more of the following proceedings in the *United Kingdom* (or of equivalent or similar proceedings in another jurisdiction):

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- (2) a determination by the *relevant person's Home State regulator* *FCA* or the *PRA* that the *relevant person* appears unable to meet *claims* against it and has no early prospect of being able to do so;

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6.3A When is a successor in default?

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- 6.3A.3 R The *FSCS* may determine a *successor* to be *in default* if it is satisfied that a *protected claim* exists (other than an *ICD claim* against a *successor* that is a *MiFID investment firm*), and the *successor* is the subject of one or more of the following proceedings in the *United Kingdom* (or of equivalent or similar proceedings in another jurisdiction):

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- (2) a determination by the ~~successor's Home State regulator~~ FCA or the PRA that the *successor* appears unable to meet *claims* against it and has no early prospect of being able to do so; or

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7 Assignment or subrogation of rights

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7.3 Automatic subrogation

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

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- 7.3.10 R (1) The *FSCS* may determine that:

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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*, ~~another EEA State~~ 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.

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10 Limits on the amount of compensation payable

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10.2 Limits on compensation payable

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Table limits

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- 10.2.5 G *COMP* 12.4.4R includes further limits relating to certain ~~ICD~~ claims against certain ~~incoming EEA firms~~ pre-exit incoming EEA firms, where the act or omission giving rise to the *claim* arose before *exit day*. These reflect

the *Investor Compensation Directive*, which will continue to apply to *EEA State compensation schemes* after *exit day*, under which compensation may be payable by the ~~*incoming EEA firm's*~~ *pre-exit incoming EEA firm's Home State compensation scheme* *EEA State compensation scheme*.

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12 Calculating compensation

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12.4 The compensation calculation

Protected investment business: general

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- 12.4.4 R If the claimant has an *ICD claim* against ~~an *incoming EEA firm*~~ a *pre-exit incoming EEA firm* which is a *MiFID investment firm* or, where applicable, a *successor* of such a *firm*, and the act or omission giving rise to the *ICD claim* arose before *exit day*, the *FSCS* must take account of the liability of the ~~*Home State compensation scheme*~~ *EEA State compensation scheme* in calculating the compensation payable by the *FSCS*. For the purposes of applying this rule, "*ICD claim*" and "*MiFID investment firm*" have the meaning they had immediately before *exit day*.

...

COMP 14 (Participation by EEA Firms) is deleted in its entirety. The deleted text is not shown but the chapter is marked [deleted] as shown below.

14 Participation by EEA firms [deleted]

Amend the following as shown.

TP 1 Transitional Provisions

TP 1.1 Transitional Provisions Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions coming into force
...					

42	<u>Amendments introduced by the Exiting the European Union: Redress Sourcebooks (Amendments) Instrument 2019</u>	<u>R</u>	<u>The changes referred to in column (2) do not apply in relation to a <i>relevant person</i> or a <i>successor</i> that was <i>in default</i> on or before <i>exit day</i>.</u>	<u>From <i>exit day</i> indefinitely</u>	<u><i>exit day</i></u>
43	<u>Amendments to <i>COMP 5.5.2R(2) – (3)</i> and <i>COMP 5.7.2R(1)(b)</i> and <i>(2)(b)</i> by the Exiting the European Union: Redress Sourcebooks (Amendments) Instrument 2019</u>	<u>R</u>	<u>The amendments referred to in column (2) only apply to acts or omissions by a <i>relevant person</i> after <i>exit day</i>.</u>	<u>From <i>exit day</i> indefinitely</u>	<u><i>exit day</i></u>
44	<u><i>COMP TP 43</i></u>	<u>G</u>	<u>The purpose of <i>COMP TP 43</i> is to ensure that the <i>FSCS</i> can pay compensation after <i>exit day</i> in respect of acts or omissions before <i>exit day</i> by a <i>branch</i> of a <i>UK firm</i> that was established in an <i>EEA State</i>.</u>		
45	<u><i>COMP 6.3.1R</i>, <i>6.3A.1R</i>, <i>9.2.2R</i>, <i>11.2.6</i>, <i>12.3.5R</i> and <i>12.3.6R</i></u>	<u>R</u>	<u>The defined terms “<i>ICD claim</i>” and “<i>MiFID investment firm</i>” in or under the provisions referred to in column (2) have the meaning they had immediately before <i>exit day</i> for any of the following purposes: <u>(1) declaring <i>in default</i>, or</u> <u>(2) postponing compensation where the <i>claim</i> is not an <i>ICD claim</i> against, or</u> <u>(3) paying a lesser sum in final</u></u>	<u>From <i>exit day</i> indefinitely</u>	<u><i>exit day</i></u>

			<p>settlement where the <u>claim</u> is not an <u>ICD claim</u> against, or</p> <p>(4) determining the <u>quantification date</u> in respect of,</p> <p>a <u>pre-exit incoming firm</u>, or the <u>successor</u> of such a firm.</p>		
46	<p><u>Amendments and deletions in participant firm and COMP by the Exiting the European Union: Glossary (Amendments) Instrument 2019 and the Exiting the European Union: Redress Sourcebooks (Amendments) Instrument 2019 respectively</u></p>	R	<p>The amendments and deletions referred to in column (2) are <u>disapplied</u>, in relation to a <u>claim</u> against a <u>pre-exit incoming EEA firm</u> in respect of any act or omission by that firm before <u>exit day</u>, to the extent <u>needed to enable the FSCS</u>:</p> <p>(1) to determine <u>whether, had the claim been made immediately before exit day, the FSCS would have paid compensation in respect of it; and</u></p> <p>(2) if so, to <u>pay compensation in respect of that claim</u>.</p> <p>For these purposes, where an <u>amendment or deletion to a defined term is disapplied under this rule</u>, that <u>defined term has the meaning it had immediately before exit day</u>.</p>	From <u>exit day</u> indefinitely	<u>exit day</u>

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Sch 2 Notification requirements

Sch 2.1G

1.	The aim of the guidance in the following table is to give the reader a quick overall view of the relevant requirements for notification and reporting. In all cases, other than those concerning Chapter 14 and the Transitional Provisions, the notification rules in <i>COMP</i> apply only to the <i>FSCS</i> (the scheme manager).
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Sch 2.2G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
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<i>COMP</i> 14.2.1R	Application by eligible inward passporting <i>EEA</i> firm to obtain <i>top-up cover</i> into <i>compensation scheme</i>	That firm is qualifying incoming <i>EEA</i> firm. The sub-scheme(s) the firm wishes to participate in. Confirmation that the level or scope of cover offered by its home state scheme(s) is less than that available in the UK.	The firm's decision that it wishes to obtain <i>top-up cover</i> into the UK scheme.	N/A
<i>COMP</i> 14.4.5R	Termination of <i>top-up cover</i>	Statement that incoming <i>EEA</i> firm is terminating <i>top-up cover</i>	Decision by firm to resign from <i>FSCS</i>	6 months notice
<i>COMP</i> 14.4.6R	Termination of inward passporting <i>EEA</i> firm's <i>top-up cover</i> into <i>compensation scheme</i>	The firm's resignation from the <i>compensation scheme</i> and the level of <i>compensation</i> available to clients of the firm's UK branch following its decision to	Termination of firm's <i>top-up cover</i>	No later than six weeks after the end of the firm's participation in <i>compensation scheme</i>

		resign from FSCS		
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Sch 5 Rights of action for damages

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Sch 5.2G

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Chapter/ Appendix	Section/Annex	Paragraph	For private person?	Removed	For other person ?
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COMP 14.4.6R			Yes	No	No