

# Icesave

## **FSCS Accelerated Compensation For Depositors Instrument 2008 (Landsbanki Islands hf)**

1. On 8 October 2008, the Financial Services Authority declared Landsbanki Islands hf ("the bank") to be in default (the "FSCS Default") for the purposes of COMP 6.3.1 of the COMP Sourcebook (COMP 15.1.1 G).
2. On 8 October 2008 HM Treasury announced that arrangements would be put in place to ensure that no retail depositor will lose money as a result of the closure of the UK branch of the bank ("Icesave").
3. On 27 October 2008 the Icelandic authorities declared that since 6 October 2008 the bank had been in default for the purposes of the Icelandic compensation scheme.
4. On 28 October 2008 the FSA made new compensation rules under COMP 15 providing for an accelerated compensation scheme for retail depositors.
5. Financial Services Compensation Scheme Limited ("FSCS") determines that using the powers set out in this instrument would be beneficial to the generality of eligible claimants with protected deposits made with the bank in respect of whom the powers are to be used. In the absence of such accelerated process, eligible claimants would be required, under the provisions of the Deposit Guarantee Directive, to make applications for compensation to the Icelandic authorities in respect of the first 20,887 of their deposit and to FSCS in respect of any part of their deposit in excess of 20,887 but less than £50,000. Eligible claimants would also be required to make applications for

compensation in excess of £50,000 to HMT Treasury. In the absence of an accelerated process FSCS would be required to receive applications for compensation from each eligible claimant and to determine claims on a case by case basis. Payments in respect of the first 20,887 of each protected deposit could only be made by FSCS if and when such payments were funded by the Icelandic authorities. This process would be prolonged and would not result in eligible claimants receiving full repayment promptly.

6. FSCS determines that using the powers set out in this instrument is unlikely to result in any additional cost to FSCS which would require the imposition of increased levies on participant firms over and above those required if the powers were not exercised. Under the arrangements put in place by HM Treasury the cost of compensation payable in respect of the first 20,887 and in respect of any excess over £50,000 of each protected deposit will be met by funds advanced by the Bank of England and HM Treasury, and will not require to be met by levies on participant firms. The FSCS has determined that the cost of an accelerated payment process is likely to be significantly less than a paper based application form approach, and in any event that if there were to be an additional cost involved it would be justified by the benefits obtained in view of the desirability of a prompt payment for the claimants concerned and wider considerations of the protection of consumers generally.

7. FSCS is satisfied for the purposes of COMP 15.1.14R in respect of Icesave that claimants:

- (a) in respect of the first 20,887 of their claims, are or are likely to become entitled to receive compensation from the Icelandic authorities; and

(b) in respect of the first 20,887 of their claims and any amount in excess of £50,000, are or are likely to become entitled to receive payment under arrangements made by HM Treasury.

1. FSCS is also satisfied that it will receive funding from HM Treasury and the Bank of England to enable it to make payments of compensation under this process.

2. FSCS has determined to use the powers in COMP Chapter 15 set out below in respect of:

- Icesave, the UK branch of the bank (COMP 15.1.5R(2)),

- all UK retail depositors who held deposits with Icesave at 8 October 2008 (COMP 15.1.5R(3)).

8. The powers to be used as an alternative to the powers and processes elsewhere in the COMP Sourcebook (COMP 15.1.5R(1)) are:

8.1 FSCS may pay compensation to an eligible claimant without having received an application (COMP 15.1.11R),

8.2 FSCS may (if the depositor consents) pay compensation for term or notice accounts on the basis that the principal sum (including any interest attributable up to that date) is due and payable on the "quantification date" (COMP 15.1.12R),

8.3 FSCS may pay compensation directly into an existing deposit account of (or for the benefit of) the claimant, having verified the existence of such account and given notice to the claimant of FSCS's intention to exercise this power (COMP 15.1.13R(2)),

8.4 FSCS may pay compensation to the first named account holder where there are more than one account holders in accordance with the terms and conditions for communications and withdrawals of the protected deposit with the bank (COMP 15.1.13R(3)),

8.5 FSCS may pay compensation in respect of the first 20,887 and in respect of any amount over £50,000 of any deposit by a depositor with Icesave (COMP 15.1.14R(3)),

8.6 FSCS may (having been satisfied as to the total amount to be paid or advanced to a claimant) ascertain the proportion of any payment or advance attributable to the Icelandic compensation scheme or any other provider of funding at any time, whether before or after making the payment or advance (COMP 15.1.14R(5)),

8.7 FSCS may (to the extent that prior funding has not been provided by the Icelandic compensation scheme or any other provider of funding) recover from the Icelandic compensation scheme or such other provider of funding the whole or any part of the amount of compensation paid or monies paid on account or advanced in respect of potential compensation which is or is likely to be payable to a claimant by the Icelandic compensation scheme or such other funder (COMP 15.1.14R(6)),

8.8 FSCS may, in determining the proportion of any payment or advance attributable to FSCS, the Icelandic compensation scheme or any other provider of funding, use any methodology or approach it considers appropriate if (and to the extent that) it considers that the cost of ascertaining the proportion by reference to each claimant would exceed or be disproportionate to the benefit of doing so (COMP 15.1.15R),

8.9 FSCS may, if it has made a payment or advance attributable to the Icelandic compensation scheme or any other provider of funding, and has acquired a right or recovery against the bank or any third party in respect of that amount, determine that the whole or any part of any recoveries which it makes shall be held by FSCS for the benefit of and/or shared amongst FSCS, the Icelandic compensation scheme, such other provider of funding and/or any other person which has provided prior funding in respect of a payment or advance attributable to any such body (COMP 15.1.16R),

8.10 FSCS may make the payment of compensation by it conditional upon a depositor assigning or transferring the whole or any part of all the rights and claims in the United Kingdom and elsewhere as he may have against the bank and any third party including the Icelandic compensation scheme (whether such rights are legal, equitable or of any other nature whatsoever and in whatever capacity the relevant person or third party is acting) in respect of which the payment of compensation is made on such terms as FSCS determines are appropriate (COMP 15.1.18R).

9. FSCS determines that, in the event that any assignment or transfer of rights envisaged by 15.1.18R is to any extent invalid or ineffective, FSCS shall immediately and automatically be subrogated, to the extent of any such invalidity or ineffectiveness, to such rights (COMP 15.1.17R(3)) with the effects set out in COMP 15.1.17R(4) and (5)).

10. FSCS reserve the right to amend, remake, or revoke these determinations at any time (COMP 15.1.7(5)).

11. This instrument takes effect immediately on the date and at the time on which it is made (COMP 15.1.17(2)).

**By Order of the Board**

**4 November 2008, 2.19pm.**