

2008 No. 1714

FINANCIAL SERVICES AND MARKETS

The Regulated Covered Bonds (Amendment) Regulations 2008

<i>Made</i> - - - -	<i>30th June 2008</i>
<i>Laid before Parliament</i>	<i>1st July 2008</i>
<i>Coming into force</i> - -	<i>22nd July 2008</i>

The Treasury are a government department designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to—

- (a) credit and financial institutions and the taking of deposits or other repayable funds from the public(b); and
- (b) measures relating to securities and rights in securities(c).

The Treasury, in exercise of the powers conferred by section 2(2) of that Act, make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Regulated Covered Bonds (Amendment) Regulations 2008 and come into force on 22nd July 2008.

Amendment of the Regulated Covered Bonds Regulations 2008

2.—(1) The Regulated Covered Bonds Regulations 2008(d) are amended as follows.

(2) In regulation 1(2) (interpretation)—

- (a) after the definition of “banking consolidation directive” insert—
““building society” means a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986(e);”;
- (b) for the definition of “registered office” substitute—

(a) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51).
(b) S.I. 2001/3495.
(c) S.I. 2000/3057.
(d) S.I. 2008/346.
(e) 1986 c.53.

““registered office” in relation to a building society means its principal office;”.

(3) For regulation 21(3) (prohibition) substitute—

“(3) In paragraph (1)—

“company” has the meaning given by section 735 of the Companies Act 1985(a) (“company” etc) and article 3 of the Companies (Northern Ireland) Order 1986(b) (“company” etc) until the coming into force of section 1 of the 2006 Act (companies) when it will have the meaning given by that section;

“limited liability partnership” has the meaning given —

(a) in relation to Great Britain, by section 1 of the Limited Liability Partnerships Act 2000(c) (limited liability partnerships); and

(b) in relation to Northern Ireland, by section 1 of the Limited Liability Partnerships Act (Northern Ireland) 2002(d) (limited liability partnerships) until the coming into force of section 1286 of the 2006 Act(e) (extension of GB enactments relating to certain other forms of business organisation), when it will have the meaning given by section 1 of the Limited Liability Partnerships Act 2000.”.

(4) For regulation 22 (sums derived from the issue of regulated covered bonds) substitute—

“**22.** The owner of the relevant asset pool must, so far as necessary for the purpose of complying with arrangements made pursuant to regulation 23 or 24(1)(a), use the sums lent to it by the issuer of a regulated covered bond to acquire eligible property.”.

(5) At the end of regulation 28(2) (realisation of a charge) insert—

“(3) For the purposes of paragraphs (1) and (2) the claims of the persons mentioned in regulation 27(2)(b), (c) and (d) may rank equally with, but not in priority to, the claims of the persons mentioned in regulation 27(2)(a).”.

(6) For regulation 29 (expenses) substitute—

“**29.**—(1) Disbursements made by a liquidator, provisional liquidator, administrator, administrative receiver, receiver or manager of the owner in respect of costs which—

(a) are incurred after the commencement of any winding up, administration, administrative receivership or receivership; and

(b) relate to any of the persons mentioned in paragraph (2);

shall be expenses of the winding up, administration, administrative receivership or receivership, as the case may be, and shall rank equally among themselves in priority to all other expenses.

(2) The persons referred to in paragraph (1)(b) are—

(a) persons providing services for the benefit of regulated covered bond holders;

(b) the counter-parties to hedging instruments which are incidental to the maintenance and administration of the asset pool or to the terms of the regulated covered bonds; and

(c) persons (other than the issuer) providing a loan to the owner to enable it to meet the claims of regulated covered bond holders or pay costs which relate to persons falling within sub-paragraph (a) or (b).”.

(7) In Part 2 of the Schedule (modifications to secondary legislation)—

(a) For paragraph 8 (modification to the Insolvency (Scotland) Rules 1986) substitute—

(a) 1985 c.6.
(b) S.I. 1986/1032 (N.I.6).
(c) 2000 c.12.
(d) 2002 c. 12 (N.I.).
(e) 2006 c. 46.

“8. Rules 2.39B (expenses of the administration) and 4.67 (order of priority of expenses of liquidation) of the Insolvency (Scotland) Rules 1986(a) shall apply to an owner subject to the provisions of regulation 29.”;

(b) in paragraph 9(1) after “(payment of debts out of assets subject to floating charge)” insert “and article 53 (power to dispose of charged property)”;

(c) for paragraph 9(2) substitute—

“(2) Article 93 of and paragraphs 66(1) and 67 of Schedule B1 to the 1989 Order (distribution of company’s property) shall apply only after payment has been made of the claims of relevant persons.

(3) Article 134 of the 1989 Order (payment of expenses) shall apply only after payment has been made of the expenses referred to in regulation 29.

(4) Articles 149 (preferential debts (general provision)) and 150A (share of assets for unsecured creditors) of the 1989 Order shall not apply to an owner.”.

Alan Campbell

Dave Watts

30th June 2008

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) S.I. 1986/1915 (S. 139), amended by S.I. 2008/662 (S. 4); there are other amending instruments but none is relevant.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on [July] 2008, amend the Regulated Covered Bonds Regulations 2008 (SI 2008/346) (the “principal Regulations”). The principal Regulations provide a new legislative regime for covered bonds in the UK, implementing in particular Article 22(4) of Council Directive 85/611/EC of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (which Article was inserted by Directive 2001/108/EC of 21 January 2002). A Transposition Table setting out how Article 22(4) (and relevant provisions of other Directives) are transposed into UK law is available from the Financial Stability and Regulatory Policy Team, HM Treasury, 1 Horseguards Road, London, SW1A 2HQ. The Transposition Table is also available on HM Treasury’s website (www.hm-treasury.gov.uk).

Regulation 2(2) provides that in the case of a building society references to “registered office” mean its principal office.

Regulation 2(3) makes minor amendments to the definitions of “company” and “limited liability partnership”.

Regulation 2(4) provides that the owner of the relevant asset pool must use the sums lent to it by the issuer of the covered bond to acquire eligible property to the extent necessary to comply with certain requirements set out in the principal Regulations, including the requirement that the asset pool is capable of covering claims attaching to the bond.

Regulation 2(5) clarifies how the claims of “relevant persons” as defined by regulation 27(2) of the principal Regulations should rank if a charge relating to an asset in the asset pool is realised.

Regulation 2(6) specifies which payments should be regarded as expenses of the relevant insolvency process.

Regulation 2(7) provides that rule 2.39B of the Insolvency (Scotland) Rules 1986 applies to an owner subject to the provisions of regulation 29 of the principal Regulations and that article 53 of the Insolvency (Northern Ireland) Order 1989 (No.2405 (N.I. 19)) does not apply to an owner. Minor drafting changes are made to paragraph 9(2) of the Schedule to the principal Regulations.

A full impact assessment was produced for the principal Regulations and was deposited in both Houses of Parliament. It is available either at the above address or on HM Treasury’s website.