

2011 No. 2859

FINANCIAL SERVICES AND MARKETS

The Regulated Covered Bonds (Amendment) Regulations 2011

Made - - - - 28th November 2011

Laid before Parliament 29th November 2011

Coming into force - - 1st January 2013

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 Bond (Amendment) Regulations 2011, and come into force on 1st January 2013.

Amendment of the Regulated Covered Bond Regulations 2008

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

(2) In regulation 1—

(a) in paragraph (2), insert in the relevant places—

““deposit” has the meaning given in article 5(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(e);”;

““government stock” means stock or bonds of any of the descriptions included in Part 1 of Schedule 11 to the Finance Act 1942(f);”;

(a) 1972 c.68; section 2(2) of, and Schedule 2 to, the 1972 Act were amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51); and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(b) S.I. 2001/3495, as amended by S.I. 2008/1714; 2010/22; 2010/671.

(c) S.I. 2000/3057.

(d) S.I. 2008/346.

(e) S.I. 2001/544. Article 5 was amended by S.I. 2002/682.

(f) 1942 c.21. Part 1 of Schedule 11 was amended by the Finance Act 1963 (c.25), Schedule 14, Part 7; the National Loans Act 1968 (c.13), Schedule 6, Part 2; the Statute Law (Repeals) Act 1986 (c. 12), Schedule 1, Part 2; and the Finance Act 1989 (c.26), Schedule 17, Part 14.

““liquid assets” means—

- (a) government stock or treasury bills issued by Her Majesty’s Government in the United Kingdom and other specified government securities which comply with paragraph 68(a) or (b) of Annex VI to the banking consolidation directive;
- (b) deposits in sterling or another specified currency in an account held in the name of the owner with the issuer or with a specified credit institution which comply with the requirements set out in paragraph 68(c) of Annex VI to the banking consolidation directive,

and “specified” for the purposes of this definition means specified by the Authority in guidance issued under regulation 42;”;

““mixed asset class bond” means a mixed asset class regulated covered bond included in Part one of the register of regulated covered bonds;”;

““reference rate” means a rate used to set the interest rates charged to borrowers in relation to a loan included in the asset pool;”;

““the relevant date” is the date on which the Regulated Covered Bonds (Amendment) Regulations 2011 come into force;”;

““single asset class bond” means a single asset class regulated covered bond included in Part 2 of the register of regulated covered bonds;”;

““total principal amounts outstanding” means—

- (a) in relation to loans, the sum of the original amounts advanced on the loan and any further advances, less any repayments of principal made on the loan;
- (b) in relation to other assets, the total amount of principal which remains due to be repaid in relation to the asset.”.

(3) In regulation 2—

(a) in paragraph (1)—

(i) for the opening words, substitute “In these Regulations, “eligible property” in relation to a mixed asset class bond or programme means any interest in—”;

(ii) for sub-paragraph (a), substitute—

“(a) subject to paragraph (1B), eligible assets specified in and compliant with the requirements contained in paragraph 68 of Annex VI of the banking consolidation directive;”;

(iii) after sub-paragraph (e), insert—

“(f) other liquid assets.”.

(b) after paragraph (1), insert—

“(1A) In these Regulations, “eligible property” in relation to a single asset class bond or programme means, subject to paragraph (1B), any interest in eligible assets specified in and compliant with the requirements of one (and only one) of the following classes—

- (a) class 1 (public sector assets): eligible assets referred to in subparagraph (a) and (b) of paragraph 68 of Annex VI of the banking consolidation directive, assets referred to in sub-paragraph (b), (c), (d) and (e) of paragraph (1) above and other liquid assets;
- (b) class 2 (residential mortgage assets): eligible assets referred to in sub-paragraph (d) of paragraph 68 of Annex VI of the banking consolidation directive, and liquid assets;
- (c) class 3 (commercial mortgage assets): eligible assets referred to in sub-paragraph (e) of paragraph 68 of Annex VI of the banking consolidation directive and liquid assets.

(1B) Assets in the following categories—

- (a) exposures to a body which does not qualify for credit quality step 1 on the credit quality assessment scale set out in Annex VI of the banking consolidation directive; and
 - (b) senior units, issued by French Fonds Communs de Creances or equivalent securitisation entities governed by the laws of the United Kingdom or an EEA State, securitising residential real estate or commercial real estate exposures;
- shall not be eligible property for the purposes of paragraph (1)(a) or (1A).”.
- (4) In regulation 7, after paragraph (1), insert—
- “(1A) The register of regulated covered bonds shall be divided into two parts.
 - (1B) Part one shall be a register of mixed asset class regulated covered bonds.
 - (1C) Part two shall be a register of single asset class regulated covered bonds.
 - (1D) Any covered bonds or programme of covered bonds included on the register of regulated covered bonds immediately before the relevant date—
 - (a) shall be included in part two of the register of regulated covered bonds if the issuer certifies to the Authority at least one month before the relevant date—
 - (i) that the eligible property (other than liquid assets) in the asset pool for the covered bond or programme of covered bonds in question all falls within one and only one of the classes specified in regulation 2(1A); and
 - (ii) that the issuer wishes the regulated covered bond or bonds in question to be single-asset class regulated covered bonds;
 - (b) shall otherwise be included in part one of the register of regulated covered bonds.
 - (1E) Where a regulated covered bond is included in part two of the register of regulated covered bonds, the Authority shall record on the register which class of eligible property is contained in the asset pool for that covered bond or programme of covered bonds.”.
- (5) In regulation 8, for paragraph (b) substitute—
- “(b) for the covered bond or the programme of covered bonds to be admitted to—
 - (i) part one of the register of regulated covered bonds, or
 - (ii) part two of the register of regulated covered bonds.”.
- (6) In regulation 10—
- (a) in paragraph (1), for “regulation 8(b)” substitute “regulation 8(b)(i) or (ii)”; and
 - (b) after paragraph (2), insert—
 - “(3) The Authority may only grant an application under regulation 8(b)(ii) if it is satisfied that the eligible property (other than liquid assets) in the asset pool all falls within one and only one of the classes specified in regulation 2(1A).”.
- (7) In regulation 14, for paragraph (1)(b), substitute—
- “(b) the covered bond or the programme of covered bonds to—
 - (i) part one of the register of regulated covered bonds, in the case of an application under regulation 8(b)(i); or
 - (ii) part two of the register of regulated covered bonds in the case of an application under regulation 8(b)(ii).”.
- (8) In regulation 15, for paragraph (1)(b), substitute—
- “(b) the bond is admitted to part one or part two of the register of regulated covered bonds.”.
- (9) In regulation 17(2)—
- (a) at the end of sub-paragraph (c), omit “and”;
 - (b) insert after sub-paragraph (d)—

- (e) the eligible property in the asset pool of a single asset class bond consists only of eligible property of the same class as the eligible property included in the asset pool of the regulated covered bond when it was registered;
 - (f) the total principal amounts outstanding in respect of eligible property in the asset pool is more than 108% of the total principal amounts outstanding in relation to the bonds to which the asset pool relates; and
 - (g) the total amount of interest payable in the period of twelve months following any given date in respect of eligible property in the asset pool is not less than the interest which would be payable in relation to the regulated covered bonds issued under the programme in that period, assuming that the reference rates applicable on the given date do not change in that period.”; and
- (c) insert after paragraph (2)—
- “(2A) In determining whether the requirements in subparagraphs (e) and (f) of paragraph (2) are satisfied, no account shall be taken of eligible property which is liquid assets.
- (2B) In ensuring that the arrangements satisfy the requirements in subparagraphs (f) and (g) of paragraph (2), the issuer may take account of any hedging agreements which it has entered into in relation to the assets in the asset pool and the regulated covered bonds.
- (2C) Nothing in this regulation shall prevent the Authority directing an issuer to observe additional requirements in relation to its asset pool.”.
- (10) After regulation 17, insert—

“Asset pool monitor

17A.—(1) An issuer of a regulated covered bond must appoint an asset pool monitor for each asset pool maintained for the regulated covered bonds it has issued.

(2) The person appointed as asset pool monitor must—

- (a) be eligible for appointment as a statutory auditor of the issuer under Part 42 of the Companies Act 2006; and
- (b) not be disqualified from acting as a statutory auditor of the issuer by section 1214 of that Act (independence requirement).

(3) The asset pool monitor shall—

- (a) inspect the compliance of the issuer with the requirements in regulations 16 and 17, and in particular—
 - (i) the extent to which the asset pool satisfies the conditions set out in regulation 17(2); and
 - (ii) the accuracy of the records kept in relation to each asset in the asset pool, once every twelve months; and
- (b) prepare an annual report in accordance with guidance issued by the Authority on the steps the issuer has taken to comply with regulations 16 and 17, and on the quality of the assets in the asset pool.

(4) Guidance issued to the asset pool monitor of an individual issuer under paragraph (3)(b) may identify particular issues to be addressed in the report for that issuer.

(5) A copy of the report prepared by the asset pool monitor shall be delivered to the Authority at such time as the Authority may direct.

(6) If it appears to the asset pool monitor that the issuer has failed to comply with the requirements set out in regulation 17, or that the issuer has not provided the monitor with all the information and explanations to which the monitor is entitled under this regulation, the asset pool monitor shall report in writing on that fact to the Authority as soon as possible.

(7) The asset pool monitor—

- (a) has a right of access at all times to all books, accounts and vouchers of the issuer and of the owner of the relevant asset pool which are related to that asset pool, in whatever form they are held, and
 - (b) may require any of the persons referred to in paragraph (8) to provide such information and explanations as the asset pool monitor thinks necessary for the performance of the monitor's duties under this regulation.
- (8) The persons referred to in paragraph (7)(b) are—
- (a) any officer or employee of the issuer or the owner;
 - (b) any person holding or accountable for any of the books, accounts or vouchers of the issuer or the owner;
 - (c) any person who fell within either sub-paragraph (a) or (b) at a time to which the information or explanations required by the asset pool monitor relates or relate.
- (9) A statement made by a person in response to a requirement under this regulation may not be used in evidence against him in criminal proceedings, except proceedings for an offence under section 398 of the Act in connection with the giving of information pursuant to requirements imposed by or under these Regulations.
- (10) On the insolvency of the issuer of a regulated covered bond—
- (a) the asset pool monitor appointed by the issuer shall continue to act as asset pool monitor for the owner of the relevant asset pool;
 - (b) any subsequent appointment of an asset pool monitor required under paragraph (1) of this regulation shall be made by the owner of the relevant asset pool;
 - (c) references in paragraphs (2), (3), (4) and (6) to the issuer shall be understood as references to the owner of the relevant asset pool; and
 - (d) references in paragraph (3) to regulations 16 and 17 shall be understood as references to regulation 24.”.
- (11) In regulation 18, insert after paragraph (3)—
- “(4) Any information required under paragraphs (1) and (2), or any part of that information, must, if the Authority so directs, be published as directed by the Authority.
- (5) Nothing in paragraph (4) entitles the Authority to direct publication of information which the issuer would be entitled to refuse to disclose in court proceedings on grounds of legal professional privilege.”.
- (12) In regulation 22(a)—
- (a) renumber the existing provision as paragraph (1) of that regulation; and
 - (b) insert after paragraph (1)—
- “(2) Any eligible property acquired for the asset pool of a single asset class bond under paragraph (1) must be eligible property of the same class as the eligible property included in the asset pool of the regulated covered bond when it was registered.”.
- (13) In regulation 24—
- (a) after paragraph (1)(a)(iii), insert—
- “(iv) the asset pool of a single asset class bond consists only of eligible property of the same class as the assets included in the asset pool of the regulated covered bond when it was registered.”; and
- (b) after paragraph (2), insert—
- “(2A) In determining whether the requirement in paragraph (1)(a)(iv) is satisfied, no account shall be taken of eligible property which is liquid assets.

(a) Regulation 22 was amended by S.I. 2008/1714.

(2B) Nothing in this regulation shall prevent the Authority directing the owner to observe additional requirements in relation to its asset pool.”.

(14) In regulation 38, insert after paragraph (1)—

“(1A) For the purposes of section 398 of the Act, as applied to requirements imposed by or under these Regulations, information provided to the asset pool monitor in response to a requirement under regulation 17A(7) shall be treated as being given to the Authority.”.

(15) For regulation 42(2), substitute—

“(2) The Authority must give guidance consisting of—

- (a) information as to which government securities, credit institutions and currencies are specified for the purposes of the definition of “liquid assets” in regulation 1(2);
- (b) information and advice about the quality of an asset pool for the purposes of the requirement specified in regulation 17(2)(d) and the manner in which it will assess the issuer’s and owner’s compliance with that requirement;
- (c) information and advice about the contents of the annual report required for the purposes of regulation 17A(3)(b).”.

Review

3.—(1) Before the end of each review period, the Treasury must—

- (a) carry out a review of regulation 2,
- (b) set out the conclusions of the review in a report, and
- (c) lay the report before Parliament.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how Article 52(4) of Council Directive 2009/65/EC(a) (which is implemented by means of the Regulated Covered Bond Regulations 2008 as amended by these Regulations) is implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by that regulation,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) “Review period” means—

- (a) the period of five years beginning with the day on which regulation 2 comes into force, and
- (b) subject to paragraph (5), each successive period of five years.

(5) If a report under this regulation is laid before Parliament before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is laid.

Angela Watkinson
Jeremy Wright

28th November 2011

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) O.J. L302/32, 27.11.2009.

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations amend the Regulated Covered Bonds Regulations 2008 (SI 2008/346) (the “principal Regulations”). The principal Regulations provide a legislative regime for covered bonds in the UK, implementing Article 52(4) of Council Directive 2009/65/EC of 13 July 2009 (previously 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.

Regulation 2(2) inserts additional definitions into regulation 1.

Regulation 2(3) provides for a new definition of “eligible property” to apply in relation to single asset class regulated covered bonds. For this new class of bond, the eligible property used to secure the issuer’s obligations under the bond must be limited to one of the following classes of assets: public sector assets, residential mortgage assets or commercial mortgage assets.

Regulation 2(4) amends regulation 7, to provide for the register of regulated covered bonds to be kept in two parts. Part one will contain the register of mixed asset class regulated covered bonds. Part two will contain the register of single asset class covered bonds. Regulation 2(5) to (8) make amendments to regulations 8, 10, 14 and 15 consequential on this change.

Regulation 2(9) amends regulation 17 to impose additional requirements in relation to the asset pool maintained to secure the obligations of the issuer under the regulated covered bond.

Regulation 2(10) inserts regulation 17A which requires the issuer to appoint an asset pool monitor to inspect the issuer’s compliance with the requirements set out in the principal Regulations. The asset pool monitor will prepare a report, which must be delivered to the Financial Services Authority (FSA). The asset pool monitor is given power to require the provision of information from the issuer where necessary for his functions. Statements provided to the asset pool monitor under this power may not be used in criminal proceedings against the person giving the statement, except in proceedings for misleading the FSA under section 398 of the Financial Services and Markets Act 2000.

Regulation 2(11) amends regulation 18 to give the FSA power to direct issuers to publish information given to the FSA.

Regulation 2(12) amends regulation 22 to clarify that eligible property acquired for the asset pool of a single asset class regulated covered bond after it has been registered must be property of the same class as the property originally included in the asset pool on registration.

Regulation 2(13) amends regulation 24 to ensure that the asset pool of a single asset class bond may only consist of the eligible property relevant to that class.

Regulation 2(14) amends regulation 38 to ensure that a person who gives false or misleading information to the asset pool monitor may be prosecuted under section 398 of the Financial Services and Markets Act 2000.

Regulation 2(15) makes consequential amendments to regulation 42 to reflect the provisions of regulation 17A.

Regulation 3 requires the Treasury to review the operation and effect of these Regulations and lay a report before Parliament within five years after they come into force and within every five years after that. Following a review it will fall to the Treasury to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Banking and Credit Team, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ, and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.