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Bank Resolution (Recapitalisation) Bill [HL] 2024-25: Progress of the Bill

Contents

Summary

The Bank Resolution (Recapitalisation) Bill would allow the Bank of England to levy money from the banking industry to manage the failure of a bank, if doing so was in the public interest.

The Bank of England (BoE) already has special 'resolution' tools to manage the failure of large banks, which are intended to prevent the costs of bailing out a large bank from falling on the taxpayer. But the mechanism in this bill would provide another tool which might help the BoE manage small bank failure using money levied from the industry.

The bill has cross-party support and its overall design is supported by the industry, though there have been disagreements about which organisations might be charged for and covered under the mechanism.

The bill passed through the House of Lords after four unopposed government amendments, three unopposed opposition amendments and one opposition amendment which the government opposed but which was passed on division. The last of these would limit the use of the mechanism to smaller banks only. This amendment was reversed during the Commons committee stage. Commons report stage is scheduled for 24 April 2025.

Managing bank failure: The resolution regime

The BoE has a few tools to help manage bank failure if doing so would be in the public interest. These were developed in the aftermath of the financial crisis in the late 2000s when banks were largely bailed out by the taxpayer with the aim of ensuring the costs of bank failure are met by the industry.

Larger banks are now required to maintain a level of assets and liabilities which can bear losses should the bank fall into difficulty (called a minimum requirement for own funds and eligible liabilities, or MREL). If a large bank has to go through resolution, the costs of this are borne by the bank's shareholders and some of its creditors (those have loaned it money). Some loans to the bank can be converted into shares should the BoE require which can be worth much less than the original loans. This can help stabilise the failing bank by restoring its capital.

By contrast, the BoE currently expects failing small banks to enter the insolvency process, where the bank would be dissolved with the proceeds going to pay off its remaining debts and liabilities, where possible. Bank deposits up to £85,000 per person are guaranteed by the industry-funded Financial Services Compensation Scheme.

Silicon Valley Bank and new policy

The government started developing the bill after the collapse of Silicon Valley Bank in March 2023 and the impending failure of its UK subsidiary SVB UK.

As SVB was a small bank it was expected to enter insolvency proceedings, but it was eventually sold to HSBC. The Treasury said the experience prompted policymakers to consider whether the resolution regime could be adjusted to better manage small bank failure, given there may be cases when doing so is in the public interest.

The Treasury proposed that the BoE be given powers to request money from the Financial Services Compensation Scheme (FSCS) to give to a failing bank (recapitalisation). The FSCS is funded by the banking industry.

It published its consultation in January 2024 and the response in July 2024.

Respondents to the consultation were broadly supportive of the plans. Some questioned whether large banks, which are not the intended focus of the mechanism, should bear its costs via the FSCS. Respondents also stressed insolvency should remain the normal process for dealing with a failing bank.

The bill

The bill was published on 18 July 2024 alongside explanatory notes provided by the government. A cost-benefit analysis was produced by the Treasury in January 2024 during the consultation stage. The House of Lords Library published a briefing on the bill.

The bill was first read in the House of Lords on 18 July as bill 2 of the 2024–25 parliamentary session and passed third reading on 12 November. It had its first reading in the House of Commons on 13 November as bill 132 of the 2024–25 parliamentary session, its second reading on 22 January 2025 and passed committee stage on 11 February 2025.

The bill has eight clauses and it would extend to the whole of the UK. It would allow the BoE to demand money from the FSCS for the purpose of recapitalising a bank.

The bill would require the BoE to reimburse the FSCS for any surplus funds taken and require it to report to the Treasury, the Commons Treasury Committee and the Lords Financial Services Regulation Committee on the use of this mechanism.

The bill was considered by the Delegated Powers and Regulatory Reform Committee which raised no concerns.

Lords stages

Members of the House of Lords debated whether the bill allowed the government sufficient oversight of the BoE's use of the new mechanism. In particular, they were concerned the BoE might not limit the costs to industry as it should. The government tabled amendments to increase the amount the BoE would need to report to the Treasury and Parliament should it use the new mechanism.

Members of the House of Lords also debated why the mechanism was not limited to use only for the failure of smaller banks. They argued that allowing it to be used for larger banks could be costly to industry, and the BoE shouldn't need to use the mechanism if its resolution strategies for bailing-in and transferring large banks are planned properly.

The government advocated the BoE have as much flexibility with the mechanism as it required, but opposition peers disagreed, voting against the government on division to limit the mechanism's use to smaller banks which do not hold their planned MREL.

Commons stages

During the Commons committee stage, the government reversed the Lords amendment limiting the use of the mechanism to only smaller banks.

An opposition amendment to introduce a growth and competitiveness objective for the regime, similar to one that had been debated during the Lords' stages, was not moved.

1 Background

The Bank of England (BoE) is responsible for maintaining the stability of the UK financial sector, and part of this covers what it should do when a bank is failing.[1]

Banks can be left to fail in a similar way to other businesses by entering an insolvency process but, in some cases, it may be in the public interest for the BoE to manage this failure, a process known as "resolution".

The bill was developed to provide another resolution tool for the BoE to deal with failing banks; using money levied from the banks by the Financial Services Compensation Scheme.

1.1 Resolution: Managing bank failure

The need for a resolution regime

In the late 2000s the UK Government injected £137 billion of public money into the financial sector to support struggling and failing banks, believing the cost of not doing so would be even greater.[2]

The money was used to take a minority share in the Lloyds Banking Group, a majority share in the Royal Bank of Scotland, and to entirely nationalise Northern Rock and Bradford & Bingley, among other things. While many of these assets were then sold back to the private sector, as of March 2023, the Office for Budget Responsibility estimated these interventions will end up costing the public £33 billion.[3]

In the aftermath of the bank bailouts, policymakers investigated how the financial sector might best be supported in future, without such a need for public funds. This became the UK's resolution regime which is largely set out in the Banking Act 2009 and aligned with international standards agreed by the G20 in 2011.[4]

1 Bank of England, The Bank of England's approach to resolution, 15 December 2023
2 Commons Library research briefing SN-05748, Bank rescues of 2007-09: outcomes and cost, 8 October 2018
3 OBR, Major balance sheet interventions, March 2023 (pdf)
4 Financial Stability Board, Key Attributes of Effective Resolution Regimes for Financial Institutions, updated 22 September 2024

How the regime works

The Banking Act 2009 established the following stabilisation tools to resolve a failing bank:[5]

- Bail-in: This is where the BoE imposes losses on the target bank's shareholders and some eligible creditors (for example, other finance firms which have loaned money to the struggling bank); this is known as 'bail-in' because it means the shareholders and creditors take the loss to save the bank, rather than the taxpayer as with a 'bail-out'.

- Transfer: This is where the bank or part of the bank's assets and liabilities are transferred to another entity (although transfer may also involve losses being imposed on the bank's shareholders and some eligible creditors). This entity could be:

  - a private purchaser (such as another bank),

  - a 'bridge entity' established and controlled by the BoE to hold these assets and liabilities, pending the onward sale to a private purchaser, or

  - an asset management vehicle controlled by the BoE, to be wound down in an orderly manner.

- Temporary public ownership as a last resort

Alongside these stabilisation tools, there are modified insolvency procedures for banks.

A bank is placed into resolution if all the following criteria are met:

- It is failing or likely to fail.

- It is unlikely action will be taken to recover the firm.

- Resolution is necessary in the public interest including ensuring the continuity of banking services in the UK, protecting the stability of the financial system, protecting confidence in the UK's financial system and protecting public funds.

- The resolution objectives would not be met to the same extent by placing the bank into insolvency.

The resolution objectives are set out in the Banking Act 2009 and include the protection of public funds, investors, depositors and the UK financial system's stability.

[5] Bank of England, The Bank of England's approach to resolution, 15 December 2023

Where a bank is likely to fail and it is unlikely action will be taken to recover the firm, but the other criteria are not met, the bank can be put into special insolvency if they hold deposits or client assets, and normal insolvency if they do not.

Under special insolvency, eligible depositors are automatically compensated up to £85,000 per person by the Financial Services Compensation Scheme (FSCS).[6] The FSCS is funded by levies on the banking sector.

Requirements on banks to prepare for resolution

Before a bank gets to the point where it might fail, the BoE develops a resolution strategy for each bank on a case-by-case basis.[7]

In general, the largest banks (with assets of at least £15 billion to £25 billion) have a resolution strategy involving the bail-in tool. This covers the major high-street banks and large building societies.

Banks with assets under this level, but at least around 40,000 to 80,000 transaction-based retail accounts (like current accounts), have a resolution strategy which would involve transferring the bank to another company. This includes Monzo and Starling.

Both these types of banks have to hold amounts of loss-absorbing assets and liabilities set by the BoE, to allow them to be recapitalised (see box 1 below: Capital requirements and MREL).

Banks smaller than this generally have an insolvency strategy. Like all banks, they must hold a set amount of regulatory capital but they don't have to hold higher levels of loss-absorbing assets and liabilities, unlike banks with a bail-in or transfer strategy.

1 Capital requirements and MREL

All banks are required to hold 'regulatory capital' to absorb losses in a downturn and allow the bank to keep operating. Simplistically, this means holding enough money in reserve. In practice, various financial instruments can count as regulatory capital.[8]

The BoE also sets minimum requirements for own funds and eligible liabilities (MRELs) for banks with a bail-in or transfer strategy which requires them to hold higher amounts of regulatory capital and other loss-absorbing liabilities.[9]

This reflects the fact that these banks may need more in reserve for their resolution strategies to work effectively than if they just held the minimum level of regulatory capital. The MRELs are specific to each bank.

6 Financial Services Compensation Scheme, "Banks, building societies and credit unions" (accessed 4 December 2024)
7 Bank of England, The Bank of England's approach to resolution, 15 December 2023
8 Bank of England, Further details about banking sector regulatory capital data, updated 31 January 2023
9 Bank of England, External minimum requirements for own funds and eligible liabilities (MRELs) – 2024, 28 March 2024

What counts as "own funds and eligible liabilities" includes regulatory capital funds, as well as other forms of debt that can absorb losses.[10]

The BoE can convert these debts to shares as part of a resolution plan. This process reduces the bank's liabilities, helping provide stability.[11] Because these shares may end up being worth very little, due to the bank's weak financial position, lenders of this type of debt face a significant risk. This means banks usually have to pay a premium to issue these types of debt.

Additionally, certain types of debt are "subordinated" to other types of debt, meaning they are designed to be converted into shares first during a resolution. Again, this risk means subordinated debt may be more expensive for a bank (for example because of higher interest payments) than debt which is not subordinated.[12]

1.2 The collapse of Silicon Valley Bank and development of the bill

The resolution regime has been used a handful of times since being established in 2009, most recently in 2023 with the failure of Silicon Valley Bank (SVB) in the United States.[13]

In the UK, SVB's UK subsidiary was affected by the failure of its parent company. As SVB UK was a small bank, the BoE intended to place it into insolvency but ended up facilitating a transfer to HSBC.

In its January 2024 consultation on enhancing the resolution regime, the Treasury wrote that this demonstrated the effectiveness of the resolution regime and delivered good outcomes for financial stability, customers and taxpayers.[14] However, it noted that the experience offered an opportunity to revisit and potentially improve the regime.

The Treasury further explained that a small bank, ordinarily under an insolvency resolution plan rather than a bail-in or transfer plan, may not pose

10 Bank of England, Interim and end-state minimum requirements for own funds and eligible liabilities (MRELs), updated 27 March 2024
11 Bank of England, Executing bail-in: An operational guide from the Bank of England, July 2021, para 1.2
12 HMRC, HMRC internal manual, International Manual, INTM598080, updated 7 November 2024
13 Bank of England, The Bank of England's approach to resolution, 15 December 2023
14 HM Treasury, Enhancing the Special Resolution Regime: Consultation, January 2024

a systemic risk alone; however, if its failure was due to a common reason, the failure of multiple small banks may pose a systemic risk.[15]

It also noted that, while SVB UK was a small bank, the BoE still considered it in the public interest to apply resolution tools:

> Whilst a good outcome was achieved in this case, SVB UK's resolution does expose the potential challenge of managing the failure of a small bank where resolution action is judged to be necessary in the public interest at the time of failure, but without access to additional capital resources that might be needed to facilitate the resolution. As mentioned, smaller banks are not required to hold additional equity and debt to be bailed-in.[16]

In essence, the problem was how to ensure the resolution regime could be applied to smaller banks, without the need to use public funds.

1.3 Government proposal and consultation

The Treasury's proposed solution was to allow the BoE to draw on funds from the Financial Services Compensation Scheme (FSCS) to fund the recapitalisation and administrative costs associated with transferring a bank.

The FSCS is the industry-funded compensation scheme for customers of failed financial services firms; it covers customer deposits in failed banks up to the value of £85,000.[17]

The government's preferred approach was for the FSCS to levy banks after the BoE indicated it needed funds to support a resolution, rather than for the industry to pay into a common fund in advance of any possible need.

The Treasury did consider simply applying MREL (see box 1) to smaller banks but concluded that, in practice, small banks have limited or no ability to access the markets necessary to issue MREL-eligible debt. Applying MREL would therefore mean small banks meeting these requirements with shareholder equity. This would impose disproportionate costs on them.

While the new function would be aimed at helping smaller banks, the Treasury did not propose limiting its use to those banks which are not required to hold MREL.

15 HM Treasury, Enhancing the Special Resolution Regime: Consultation, January 2024, para 1.5, page 8

16 As above, para 2.20, page 16

17 FSCS, "Banks, building societies and credit unions" (accessed 15 November 2023)

Responses to the consultation

In its July 2024 response to the consultation, the new government said most of the 17 respondents were generally supportive, though there was some disagreement:[18]

On who should pay for the mechanism

- Some respondents objected to larger banks with MREL contributing to the costs of the mechanism, as they were not the focus of the intervention.[19] The Treasury said a broad-base levy was beneficial as it mirrored the insolvency process for small banks where MREL-holding banks do contribute to the costs via the FSCS.

- Two respondents opposed the idea of levying credit unions via the FSCS under the mechanism, as credit unions cannot legally be helped by the resolution regime.[20] The Treasury agreed to remove credit unions from paying any levies required under the new mechanism.

- One respondent said some costs might be obtained from senior staff involved in the bank's failure.[21] The Treasury responded that, as shares were commonly used as remuneration for senior staff at financial firms, and shareholders would be the first to bear losses in a bank resolution, this would likely already be the case.

On how the money should be managed

- Some respondents felt the costs should be collected before a potential failure, as this would ensure that the target bank at least contributed something towards its own resolution in the preceding years.[22] The Treasury opposed the idea of banks locking up money which could otherwise be used productively, say to issue loans to businesses, in advance of such an event.

- One respondent felt that some of the FSCS's costs (and in turn the banking industry's costs) might be recouped if the target bank was sold to a private sector purchaser and then increased in value over the following year.[23] The Treasury said this approach could impede the sale of a failing bank.

Other responses

- Ordinarily, banks subject to the special resolution regime are subject to what's called the 8% and 5% rules.[24] This means that financing provided

18 HM Treasury, Enhancing the Special Resolution Regime: Government Response to Consultation, July 2024
19 As above, page 12, 22-24
20 As above, page 12, 22-23
21 As above, page 11, 32
22 As above, page 11, 26
23 As above page 11, 32
24 HM Treasury, Banking Act 2009: special resolution regime code of practice, revised December 2020

from the wider industry can only be used after the failing bank's shareholders and creditors have borne costs equal to at least 8% of the liabilities of the institution and the contribution of the resolution financing may not exceed 5% of the liabilities of the institution.

  - The Treasury proposed waiving these rules under this mechanism on the basis it would cover banks not obliged to hold MREL where the 8% rule might be unfeasible. Some respondents disagreed or felt they should continue to apply to banks which do not hold MREL.[25] However, the Treasury did not make any changes to its approach.

- A number of respondents requested additional safeguards and scrutiny of the mechanism to limit the costs to industry.[26] The Treasury felt the regime already had sufficient safeguards, such as requiring the BoE to consult on resolutions. It added it would amend the resolution regime code of practice so the BoE would have to disclose estimated costs to industry of all options considered in a bank resolution.

25 HM Treasury, Enhancing the Special Resolution Regime: Government Response to Consultation, July 2024, pages 14-15, 28-29

26 As above, pages 10-11, 20-21

2 What the bill does

The bill would allow the BoE to demand money from the FSCS to recapitalise a failing bank where this was in the public interest, such as being necessary to maintain stability of the UK's financial system and protecting public funds.

The bill would require the BoE to reimburse the FSCS for any surplus funds taken and require it to report to the Treasury, the Commons Treasury Committee and the Lords Financial Services Regulation Committee on the use of this mechanism.

The bill was introduced to the Lords with five clauses, increasing to eight following amendments to add more scrutiny to the use of the mechanism. During the Commons committee stage the only substantive change was to reverse the amendment made by the Lords which would have restricted the use of the mechanism to smaller banks only.

Before Lords committee stage the bill was considered by the Delegated Powers and Regulatory Reform Committee which raised no concerns.[27] Amendments to the bill gave the government powers to specify the content required in reports the BoE would have to make if it used the mechanism.

2.1 Clauses 1, 4, 6 and 7: The new mechanism

Clauses 1, 4, 6 and 7 are the key clauses which would provide for the new mechanism, and largely mirror clauses 1 to 4 of the bill as brought to the Lords.

Clause 1 would allow the BoE to draw money from the FSCS, to cover the costs incurred when recapitalising a financial institution.

Clause 4 would require the BoE to reimburse the FSCS for any money taken under clause 1 which turned out to be unnecessary.

Clause 6 would amend the Financial Services and Markets Act 2000 to specify that when the FSCS levies banks to cover the amount taken by the BoE under its powers in clause 1, the levy should, as far as is practicable, reflect its costs. Clause 6 also specifies that credit unions cannot be levied for costs incurred related to this function.

[27] Delegated Powers and Regulatory Reform Committee, First Report of Session 2023-24, 5 September 2024

Clause 7 would make minor amendments to the Banking Act 2009 which provides for the resolution regime, to take into account the new mechanism.

2.2 Clauses 2, 3 and 5: Oversight of the mechanism

Clauses 2, 3 and 5 were all new clauses introduced during Lords report stage by the government and passed without division.[28]

Clause 2 would require the BoE to provide reports to the Treasury when it draws money from the FSCS using the power in clause 1, and for these reports to be laid before Parliament.

Clause 5 would require that the Treasury should decide, and publish in its special resolution code of practice, what content should be in these new reports.

Clause 3 would require the BoE to notify the Commons Treasury Committee and the Lords Financial Services Regulation Committee whenever it draws money from the FSCS using the power in clause 1.

2.3 Clause 8: Extent and commencement

Clause 8 specifies the act would extend to the whole of the UK and would come into force on a day appointed by the Treasury via regulations.

[28] HL Deb 4 November 2024, c1355-1356 (clause 2 via amendment 8)
HL Deb 4 November 2024, c1356-1357 (clause 3 via amendments 10-13)
HL Deb 4 November 2024, c1357 (clause 5 via amendment 14)

3 Lords stages and scrutiny

3.1 First and second reading

The bill was introduced in the House of Lords on 18 July 2024.[29] Second reading was on 30 July 2024.[30]

The following outlines the main areas of debate during second reading.

Justification of the bill

While Members of the House of Lords were supportive of the bill's intentions, Lord Eatwell (Lab) raised some issues with the Treasury's framing of the bill's alleged benefits.

He noted the Treasury's consultation had said that while an individual small bank failing might not raise wider concerns, it might be a sign of a systemic risk. Lord Eatwell criticised the Treasury's "wishful thinking" in claiming that such a mechanism could deal with a "systemic risk", noting that when there is a system-wide failure, all banks are under stress and there are no buyers. [31]

He also criticised the Treasury's cost-benefit analysis (PDF) for comparing the costs of saving a bank using the mechanism to the costs of insolvency rather than to the current resolution regime.[32]

Financial Secretary to the Treasury, Lord Livermore, responded for the government, explaining the regime as a whole was designed to help the BoE manage systemic risk and defended the Treasury's use of insolvency as a counterfactual in its cost-benefit analysis.[33]

Scope of the mechanism

Baroness Penn (Con), Lord Vaux (crossbench) and Lord Eatwell (Lab) questioned why the bill was intended to deal with the failure of small banks but drafted to allow the mechanism to be used to save larger banks.[34] Lord

29 HL Deb 18 July 2024 c30
30 HL Deb 30 July 2024 c905-934
31 HL Deb 30 July 2024 c915-916
32 HM Treasury, Bank Resolution (Recapitalisation) Bill Cost-Benefit Analysis, July 2024
33 HL Deb 30 July 2024 c930
34 HL Deb 30 July 2020 c915, 917, 926

Livermore responded that the government felt it was right for the BoE to have this flexibility to respond to circumstances as required.[35]

Funding of the mechanism

Lord Moylan (Con) questioned whether the mechanism should be funded by the industry via the FSCS. He noted that banks already pay the bank levy which could be used instead, a point echoed by Baroness Penn (Con). [36] Lord Livermore responded that only large banks pay the bank levy while the government felt the whole sector should cover the cost of the mechanism via the FSCS, including smaller banks.[37]

Lord Vaux (crossbench) questioned whether the wider industry should pay costs under the new mechanism at all, saying, "If the resolution decision is driven by a public interest test, surely it should be the public purse that pays the excess rather than the banks which have no part in this."[38]

Under the mechanism as drafted, Lord Vaux questioned whether the FSCS might be able to claim money back should a bank initially saved with funds provided by the FSCS under the mechanism, later failed. He also questioned whether the private sector buyer of a failing bank should cover some of the FSCS's costs, a point raised in consultation (see section 1.2 of this briefing).[39]

Oversight

Lord Macpherson (crossbench) raised concerns about the BoE's role as both the body responsible for resolution and the regulator. He argued the BoE has a historical tendency to intervene and may do so under the new mechanism "less because it is in the national interest and more as a way of minimising the reputational damage of regulatory failure".[40] Various peers raised concerns about the mechanism being used too frequently, and that insolvency should remain the default option for small banks.

Lord Macpherson also questioned whether the BoE would sufficiently act to minimise the cost of resolution noting "unlike the Government, the Bank does not have to stand for re-election, so its incentive to contain costs is rather less".[41] He asked for the Treasury to maintain oversight of the BoE.

Baroness Kramer (Lib Dem) asked for reassurances that the mechanism wouldn't be used by banks to avoid ring-fencing requirements (where the

35 HL Deb 30 July 2020, c929

36 HL Deb 30 July 2024 c909-911, c926

37 HL Deb 30 July 2024 c928; The bank levy Is paid by banks with chargeable balance sheets of at least £20 billion under the Finance Act 2011.

38 HL Deb 30 July 2024, c918-919

39 HL Deb 30 July 2024, c918-919

40 HL Deb 30 July 2024 c913-14

41 HL Deb 30 July 2024 c914

retail and investment arms of banks are separated, to protect the former) as had been the case with HSBC's takeover of SVB UK.[42]

3.2 Committee stage

Committee stage in the Lords took place over two sessions on 5 September 2024 and 10 September 2024. No amendments were passed.[43]

Most of the amendments tabled were raised again in some form during report stage and are covered in section 3.3 of this briefing on report stage. Amendments which were not raised again at report stage included:

- Baroness Noakes (Con) tabled a series of amendments (3 to 6) which would have required the BoE to seek consent from the Treasury if the mechanism were to be used in certain circumstances.[44] For example if the BoE wanted to access funds from the FSCS twice for the same bank, use the mechanism for a bank holding MREL or for a subsidiary of a foreign company.

- Lord Vaux (crossbench) tabled a probing amendment (16) to ascertain under what circumstances the BoE might be able to recover bonuses or dividends paid to staff or shareholders under the mechanism.[45] Lord Sikka (Lab) tabled an amendment (9) with similar effect. As at second reading, Financial Secretary to the Treasury, Lord Livermore, noted that in a bank resolution shareholders would bear losses first.[46]

3.3 Report stage

Report stage took place on 4 November 2024.[47] Various government amendments were passed without division; these largely increased the amount of scrutiny the BoE would be under should it use the new mechanism. One opposition amendment was passed on division to limit the use of the mechanism.

This section covers the main amendments and points of discussion during report stage.

42 HL Deb 30 July 2024 c923
43 HL Deb 5 September 2024 c1GC=50GC; HL Deb 10 September 2024 c51GC-78GC
44 HL Deb 5 September 2024 c16GC-25GC
45 HL Deb 5 September 2024 c37GC-42GC
46 HL Deb 5 September 2024 c40GC
47 HL Deb 4 November 2024 c1320-1362

Restricting the mechanism to the resolution of small banks

At report stage Baroness Vere (Con) moved amendment 2 which would prevent the FSCS from paying out money to help the resolution of banks that meet the MREL required by the BoE (also known as end-state MREL); these would usually be larger banks.[48] Banks moving towards their end-state MREL (for example, banks which had recently grown to the size at which they need to hold MREL) would still be covered by the new mechanism.

The amendment was agreed on division (247 to 125) with the government voting against.[49]

In moving the amendment at report stage, Baroness Vere argued that using the mechanism to resolve a large bank could be very costly for the FSCS, and therefore for the banking sector and its customers. Lord Vaux (crossbench) said that if the government was unsure MREL would be sufficient to save large banks in a bail-in or transfer resolution, it should strengthen the MREL regime, rather than allow large banks to be aided with this new mechanism.

Lord Eatwell (Lab) challenged this argument saying that the FSCS is already constrained in how much it can levy from banks in a given year.[50] Lord Eatwell had previously moved an amendment with a similar effect at committee stage, although for a different reason. He said that "the mechanism proposed in the Bill could be a source of contagion, in the sense that the cost of the collapse of a bank, or of many banks together, would be seen by the market as imposing costs, which are now unbearable, on other parts of the banking sector".[51]

The Financial Secretary to the Treasury, Lord Livermore, said the government had tried to provide reassurance with its draft code of practice, which says it intends the mechanism to be used only for small banks.[52]

Requiring the Bank of England to report to the Treasury

At report stage, the Financial Secretary moved amendment 8 which would require the BoE to report to the Treasury when it requires a payment under the mechanism.[53]

Lord Vaux (crossbench) noted that, while the amendment would require the BoE "to report within three months of any recapitalisation payment, it would not require a final report on what actually happened at the end of the

48 HL Deb 4 November 2024 c1324
49 HL Deb 4 November 2024 c1330-1332
50 FSCS, Levy information and retail pool (accessed 19 November 2024)
51 HL Deb 5 September 2024 c11GC
52 HL Deb 4 November 2024 c1327-1329
53 HL Deb 4 November 2024 c1355

resolution process".[54] He tabled amendment 9 to amendment 8 requiring the BoE further report after the end of the process.

The Financial Secretary said the government intended to update the code of practice "to make clear that, where feasible and appropriate, the Treasury would expect the Bank of England to report soon after the sale or closure of the resolved firm". However, the government did not want this to be put into legislation, to allow the BoE flexibility.

Lord Vaux withdrew his amendment and amendment 8 passed without division.

Specifying the contents of reports from the Bank of England to the Treasury

At report stage, the Financial Secretary moved amendment 14 which would require the special resolution regime code of practice to include guidance on what the BoE's reports to the Treasury should include.[55]

Lord Vaux (crossbench) separately tabled amendment 5, which was more prescriptive about what these reports should contain, and which would require the BoE to produce a report within 28 days of any payment being made under the mechanism.[56] The Financial Secretary argued the amendment may lead to unintended consequences. He said that "requiring an initial report as soon as 28 days after using the mechanism is likely to be too soon" and that requiring the disclosure of specific information too early might complicate a resolution as the information may be incomplete or highly sensitive.

Lord Vaux withdrew the amendment. The government's amendment 14 passed without division.

Requiring the Bank of England to notify Parliament

At report stage, the Financial Secretary moved amendment 10, requiring the BoE to report to the relevant committees in the Commons and Lords whenever it uses the new mechanism.[57] Amendments 11 to 13 moved by Baroness Noakes (Con) proposed minor amendments to amendment 10 to refer to the Financial Services Regulation Committee in the Lords by its name.

All were agreed without division.

54 HL Deb 4 November 2024 c1337
55 HL Deb 4 November 2024 c1357
56 HL Deb 4 November 2024 c1340-1345
57 HL Deb 4 November 2024 c1356-1357

During report stage there was also debate on areas where ultimately the bill was not amended.

FSCS's priority as a bank's creditor under the mechanism

At report stage Lord Vaux (crossbench) moved amendment 15 which would have treated payments from the FSCS to a failing bank under the mechanism as debts, and allowed the FSCS to claim these debts ahead of other creditors, if the bank ultimately entered insolvency proceedings.[58]

The amendment was drafted to avoid failing bank's creditors being reimbursed with FSCS money following the use of the mechanism, when those creditors would not have been reimbursed had the bank entered insolvency proceedings directly.

Lord Vaux withdrew the amendment, noting complications with it, but asked the government kept the issue under review.

Competitiveness and growth objective

At report stage, the Lords rejected amendment 7 moved by Baroness Bowles (Lib Dem) on division (125 to 155).[59] The amendment would have added a secondary objective requiring the BoE to observe "competitiveness and growth" when using the new mechanism.

Baroness Bowles described the amendment as introducing a "private interest test to go alongside the public interest test". She said that the mechanism in the bill would essentially require the banking sector to bail-out failing competitors and that such a mechanism would benefit from the BoE having to consider whether its use would promote the banking sector's growth and competitiveness. Similar objectives have recently been given to the Financial Conduct Authority and Prudential Regulation Authority.[60]

The Financial Secretary said that in a resolution scenario the BoE may not have the information to assess what effect using the mechanism might have on growth and competitiveness. He added that the government had increased the ways it could scrutinise the BoE's decisions through amendments to the bill and that "as a public authority, the Bank of England is under general public law duties to ensure that, for any decision that it makes, it considers whether the impact on a firm or group of firms is proportionate to the outcome sought".[61]

Amendment 16, tabled by Baroness Noakes, sought similar ends by requiring the BoE to minimise costs to the FSCS under the mechanism. The Financial

58 HL Deb 4 November 2024 c1357-1362
59 HL Deb 4 November 2024 c1354-1355
60 Financial Services and Markets Act 2023 Chapter 3
61 HL Deb 4 November 2024 c1348-1349

Secretary said the amendment might risk the BoE drawing less money from the FSCS than needed to sustain market confidence in the bank in resolution. He added the objective may conflict with the BoE's other resolution objectives.[62]

The amendment was not moved at report stage.

3.4 Third reading

Third reading took place on 12 November 2024.[63] No substantive debate took place and the bill was passed without division and sent to the Commons.

3.5 Delegated powers

The government's delegated powers memorandum noted just one delegated power, allowing the Treasury to set the date the new bill would take effect if passed.[64] The Delegated Powers and Regulatory Reform Committee noted nothing it wished to draw to the attention of the Lords.[65]

Amendments to the bill made during the Lords report stage would allow the Treasury to set requirements on the content of reports made by BoE when using the mechanism.

62 HL Deb 4 November 2024 c1350-1351
63 HL Deb 12 November 2024 c1702-1703
64 Bank Resolution (Recapitalisation) Bill: Delegated Powers Memorandum, 18 July 2024
65 Delegated Powers and Regulatory Reform Committee 1st Report of Session 2024-25, 5 September 2024

4 Commons stages

4.1 First and second reading

The bill was introduced in the House of Commons on 13 November 2024.[66] Second reading was on 22 January 2025.[67]

During second reading, Economic Secretary Emma Reynolds MP (Lab) stated the government's intention to amend the bill to reverse the Lords' amendment to limit the mechanism to smaller banks only. She said narrowing the scope of the mechanism would constrain the Bank of England in uncertain crisis scenarios.[68]

Opposition minister Mark Garnier MP (Con) and spokesperson Daisy Cooper MP (LD) spoke against Labour's proposal to reverse the amendment.[69]

Daisy Cooper also spoke in favour of requiring the BoE to consider growth and competitiveness of the UK banking sector when using the mechanism, arguing this would help avoid an unintended consequence whereby the rescue of one bank came at the expense of others.

Kit Malthouse MP (Con) questioned the BoE's decision-making in selling SVB UK to HSBC and how transparent it is about how it makes these decisions. Kit Malthouse asked the government to consider setting out in a code of conduct what consideration the Bank of England has to give to the competitive landscape when it is resolving a bank.[70]

4.2 Committee stage

Committee stage was on 11 February 2025.[71] Three substantive amendments were tabled. Membership of the public bill committee is set out at Annex two to this briefing.

66 UK Parliament, Commons Votes and Proceedings, 13 November 2024
67 HC Deb 22 Jan 2025 c1049-1065
68 HC Deb 22 Jan 2025 c1052
69 HC Deb 22 Jan 2025 c1056, 1059
70 HC Deb 22 Jan 2025 c1059-1060
71 PBC Deb 11 February 2025 c1-18

The government's amendment 1 passed on division 10 vote to 6 to remove part of clause 1 introduced by the House of Lords which would have prevented the BoE from using the mechanism to resolve smaller banks.

Economic Secretary Emma Reynolds MP said the government believed it was not desirable to limit the mechanism's scope.[72] She said there may be limited circumstances in which using the mechanism is desirable to resolve a larger bank which already holds loss-absorbing assets and liabilities called MREL designed to assist in its resolution (see box 1 of this briefing). For example, if a bank was subject to a large redress claim that couldn't be covered by its MREL.

Clive Jones MP (LD) tabled amendment 3 which would have prevented the BoE from using the mechanism to resolve larger banks which hold MREL, unless permission was given by the Treasury via regulations.[73] The amendment was not moved.

The Economic Secretary said she agreed with the intent behind the amendment but that a range of safeguards were already in place.[74] She said the Treasury is already involved in the use of any resolution powers and is consulted about whether the public interest test for resolution has been met. Also, if, under the new mechanism, the FSCS would need to borrow money from the Treasury to meet the sums required by the BoE, the Treasury would need to consent.

Mark Garnier MP (Con) raised concern about how the amendment might slow down decision making.[75] He noted that the resolution of SVB UK happened over a weekend and similar resolutions requiring the use of the new mechanism may not happen quickly enough should regulations need to be passed first.

Clive Jones also tabled amendment 4 which would have required the BoE to consider the competitiveness and growth of the market before using the mechanism. He withdrew the amendment after debate.[76]

Emma Reynolds said when managing a bank failure, the BoE may need to take a decision quickly in a complex and uncertain environment, and that the amendment would complicate this process.[77] She said the Prudential Regulation Authority and the Financial Conduct Authority already have a growth and competitiveness objective as regards regular policymaking.

72 PBC Deb 11 February 2025 c5
73 PBC Deb 11 February 2025 c4
74 PBC Deb 11 February 2025 c4-5
75 PBC Deb 11 February 2025 c7-8
76 PBC Deb 11 February 2025 c11, 13
77 PBC Deb 11 February 2025 c12-13

Annex 1: How bills go through Parliament

Bills can be introduced in either the House of Commons or the House of Lords. They can be amended but the entire text must be agreed by both Houses before they can receive Royal Assent and become law. In both Houses, bills go through the same stages although there are slight differences in the practices of the two Houses.

The Bank Resolution (Recapitalisation) Bill started in the House of Lords and this annex reflects that process.

Lords stages

Bills introduced in the Lords go through the following stages, completing all stages in the Lords before being sent to the Commons:

- First reading sees the formal introduction of a bill, when a clerk reads out the name of the bill in the Lords chamber. There is no debate at this stage. Bills cannot be published before their introduction. Government bills are usually published immediately after introduction. The Bank Resolution (Recapitalisation) Bill had its first reading on 18 July 2024.

- Second reading debate is the first time peers debate a bill. They discuss the purpose of the bill. At the end of the debate, peers decide whether it should pass to the next stage. Peers can table amendments to the order paper to decline to give the bill a second reading, with or without reason. If this is agreed to, the bill cannot make any further progress. No amendments are made to the bill itself at this stage. The Bank Resolution (Recapitalisation) Bill had its second reading on 30 July 2024.

- Most bills are considered by a committee of the whole House in the House of Lords. Some are referred to the Lords Grand Committee – which all members can attend. The committee debates and decides whether amendments should be made to the bill and whether each clause and schedule should be included. Divisions (votes) are not permitted in the Grand Committee and any amendments must be agreed without a division. The Bank Resolution (Recapitalisation) Bill had its committee stage in Grand Committee on 5 and 10 September 2024.

- Report stage takes place in the Lords Chamber and involves peers considering the bill as agreed at committee stage. During report stage peers consider the bill clause-by-clause. Peers can also move

amendments debated at committee stage or new amendments and force votes if necessary. The Bank Resolution (Recapitalisation) Bill had its report stage on 4 November 2024.

- Third reading is the final chance for peers to debate the contents of a bill. The government may move amendments to tidy up the bill or add entirely new clauses. At the end of the debate, the House decides whether to approve the bill and therefore pass it onto the House of Commons. The Bank Resolution (Recapitalisation) Bill had its third reading on 12 November 2024.

Commons stages

A bill that is introduced in the House of Commons will go through the following stages.

- First reading sees the formal introduction of a bill, when a clerk reads out the name of the bill in the Commons chamber. There is no debate at this stage. Bills cannot be published before their introduction. Government bills are usually published immediately after introduction. The Bank Resolution (Recapitalisation) Bill had its first reading on 13 November 2024.

- Second reading debate is the first time MPs debate a bill. They discuss the purpose of the bill. Debates are usually scheduled to take a full day (five to six hours). At the end of the debate, MPs decide whether it should pass to the next stage. Sometimes a 'reasoned amendment', which sets out the reasons to reject a bill, is tabled. If this is agreed to, or if the bill is voted down, the bill cannot make any further progress. No amendments are made to the bill itself at this stage. The Bank Resolution (Recapitalisation) Bill had its second reading on 22 January 2025.

- Committee stage is usually conducted by a small number of MPs (usually 17) in a public bill committee but sometimes bills can be considered in detail in the Commons Chamber by all MPs in a committee of the whole House. The committee debates and decides whether amendments should be made to the bill and whether each clause and schedule should be included. The Bank Resolution (Recapitalisation) Bill had its committee stage on 11 February 2025.

- Report stage takes place in the Commons Chamber and involves MPs considering the bill as agreed at committee stage. MPs can also propose further amendments which can be voted on. The Bank Resolution (Recapitalisation) Bill is scheduled for report stage on 24 April 2025.

- Amendments at committee and report stage can leave out words, substitute words and add words, including whole clauses and schedules. They can be proposed by backbench and frontbench MPs. The Speaker or the chair of the committee selects and groups amendments to debate.

- Third reading, usually on the same day as report stage, is the final chance for MPs to debate the contents of a bill before it goes to the House of Lords. It's usually a short debate and changes cannot be made at this stage in the Commons. At the end of the debate, the House decides whether to approve the bill and therefore pass it onto the House of Lords.

'Ping pong'

If the Commons amend a bill that was sent from the Lords, the amendments are returned to the Lords and peers debate the amendments proposed by the Commons. This is potentially the start of "ping-pong", a process whereby amendments and messages about the amendments are sent backwards and forwards between the two Houses until agreement is reached.

Once agreement has been reached, the bill receives Royal Assent, becoming law when both Houses have been notified that Royal Assent has been granted.

Amendments

MPs can submit amendments, via the Public Bill Office (PBO), at three different stages of a bill: committee stage, report stage, and when a bill is returned from the Lords. Once the PBO accepts the amendment, it has been 'tabled'. If an MP wants to amend a bill during committee stage but is not a member of the committee, they will need a committee member to 'move' it for debate on their behalf.

In order to be debated, the amendment must be selected by the chair. Similar amendments may be grouped for debate to avoid repetition. For committee stage, selection and grouping is carried out by MPs from the panel of chairs chosen to chair the committee. If there is a committee of the whole House, the chair is the Chairman of Ways and Means (the principal Deputy Speaker). For report stage, it is the Speaker.

Amendments might not be selected for debate if they are, for example, outside the scope of a bill, vague, or tabled to the wrong part of a bill. The PBO can advise on whether an amendment is likely to be selected.

Further information on bill procedure

The MPs' Guide to Procedure has a section on bills.

MPs who have questions about the procedure for bills or want advice on how to amend them should contact the Public Bill Office.

The Library can provide information on the background and potential impact of a bill and of amendments but cannot help MPs with drafting amendments.

Annex 2: Members of the Public Bill Committee

Chairs: Dr Rosena Allin-Khan, † Christine Jardine

† Brickell, Phil (Bolton West) (Lab)

† Cocking, Lewis (Broxbourne) (Con)

† Coghlan, Chris (Dorking and Horley) (LD)

† Garnier, Mark (Wyre Forest) (Con)

† Grady, John (Glasgow East) (Lab)

† Jones, Clive (Wokingham) (LD)

† Nichols, Charlotte (Warrington North) (Lab)

† Obese-Jecty, Ben (Huntingdon) (Con)

† Pearce, Jon (High Peak) (Lab)

† Reynolds, Emma (Economic Secretary to the Treasury)

Ryan, Oliver (Burnley) (Ind)

† Sandher, Dr Jeevun (Loughborough) (Lab)

† Stephenson, Blake (Mid Bedfordshire) (Con)

† Tomlinson, Dan (Chipping Barnet) (Lab)

† Wakeford, Christian (Bury South) (Lab)

† Walker, Imogen (Hamilton and Clyde Valley) (Lab)

† Wheeler, Michael (Worsley and Eccles) (Lab)

† attended the committee

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