HOUSE OF LORDS

Library Note

Bank of England and Financial Services Bill [HL] (HL Bill 65 of 2015–16)

The Bank of England and Financial Services Bill [HL] is a government bill prepared by the Cabinet Office. The Bill received its first reading in the House of Lords on 14 October 2015, and is due to be read a second time on 26 October 2015. As set out in the Bill's Explanatory Notes, it seeks to:

> [A]mend governance and accountability arrangements at the Bank of England (the Bank), expand the scope of and make changes to the Senior Managers and Certification Regime, permit the extension of the Government's Pension Wise service, and allow for some flexibility to change which legal entities are authorised to issue commercial banknotes in Scotland and Northern Ireland.

The Bill is split into three main parts. The first sets out the proposed changes to the Bank of England's governance and to procedures connected to its accountability. The second includes a number of provisions linked to the regulation of financial services, particularly the introduction of the Senior Managers and Certification Regime (SM&CR). The third part of the Bill contains provisions on the issuing of banknotes in Scotland and Northern Ireland. This Library Note discusses some of the changes in parts one and two of the Bill in further detail, particularly those related to the Bank's governance, the new accountability arrangements, and the changes to the SM&CR.

The Bill is also currently being considered as part of an inquiry by the House of Commons Treasury Committee. At the time of writing, the Committee had only published oral evidence from the first session taken on the Bill (which is referred to within this Note). Subsequently, the transcript of the second session, including oral evidence from the Governor of the Bank of England, Mark Carney, has also been published. The Chancellor of the Exchequer, George Osborne, is due to appear before the Committee on 22 October 2015.

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1. Key Provisions and Background

1.1 Key Provisions

In brief, the Bank of England and Financial Services Bill includes provisions to:

- Amend the membership of the Bank of England's ('The Bank') Court of Directors ('The Court'), abolish the oversight committee, and allow the Court to assign responsibility of the Bank's financial stability strategy to the most appropriate section(s) of the Bank (clauses 1–5).

- Change the membership and procedures of the Bank's Financial Policy Committee (FPC) and the Monetary Policy Committee (MPC), including a reduction in the MPC's number of meetings a year (down from twelve to eight), and alterations to the MPC's publishing requirements (clauses 6–8).

- Introduce new auditing and information-sharing requirements upon the Bank, which will give HM Treasury and National Audit Office greater oversight of the Bank's operation and performance (clauses 9–11).

- Confer upon the Bank the role of Prudential Regulation Authority (PRA), ending the existence of the current external body acting as the PRA and introducing a Prudential Regulation Committee within the Bank to take responsibility for these duties (clauses 12–15).

- Amend aspects of the regulation of financial services, including changes to the SM&CR extending the term "relevant authorised persons", as applied by the Financial Services and Markets Act 2000 (FSMA), to apply to those working in any institution authorised to carry out regulated activities under the FSMA (clauses 18–21).

- Amend the misconduct rules under the Senior Managers Regime, which will allow action to be taken by the FCA and the PRA against "directors of authorised persons who have breached rules of conduct applying to them", and will also reverse the current burden of proof applying to senior managers so that "no senior manager will be guilty of misconduct unless the regulators can prove that the senior manager did not take reasonable steps to avoid the breach happening"[1] (clause 22).

- Extend the circumstances when a financial institution can be said to be "failing" under the "offence relating to a decision causing a financial institution to fail" as set out in section 36 of the Financial Services (Banking Reform) Act 2013 (clause 23).

- Expand the Pension Wise service so that it can offer guidance to annuity holders considering selling the income from their annuities to a third party (clause 24).

- Introduce new powers and duties requiring the Bank to provide information to the Treasury regarding action taken in relation to the failure of banks or other financial institutions (clause 24).

[1] Explanatory Notes, p 17.

- Give the Treasury "power to make regulations (with the consent of the Bank of England) which authorise a bank in the same group as an existing issuer to issue commercial banknotes in Scotland or Northern Ireland instead of the existing issuer"[2] (clause 25).

The Bill's provisions extend to England and Wales, Scotland and Northern Ireland, with commencement dates due to be set by the Treasury through statutory instruments.

1.2 Background

Many of the provisions in the Bill linked to the governance and accountability of the Bank of England build upon changes and suggestions announced by the Bank in December 2014.[3] This included a commitment to change many of the Bank's publishing procedures (particularly those relating to MPC and Court minutes or transcripts) and the management or structure of its committees. Announcing these plans, the Governor of the Bank of England, Mark Carney, stated:

> The Bank now has immense responsibilities for monetary stability, financial stability and for micro-prudential regulation. And with these responsibilities comes the need for effective transparency, genuine accountability and robust governance. Today I am pleased to announce the most significant set of changes to how we present and explain our interest rate decisions since the Monetary Policy Committee was formed in 1997. Alongside those measures, we have also proposed a number of additional changes that will mark a step change in the governance of this institution. These changes will enhance our transparency and make us more accountable to the British people.[4]

The announcement was accompanied by two reports containing further details on the proposed changes:

- Warsh Review, *Transparency and the Bank of England's Monetary Policy Committee*, December 2014.
- Bank of England, *Transparency and Accountability at the Bank of England*, 11 December 2014.

A Bill to carry out changes to the Bank of England was announced by the Government as part of the Queen's Speech, which emphasised a commitment to carry through with the legislative changes necessary to implement many of the recommendations proposed by the Warsh Review and the Bank itself.[5] The Government said this would:

- [Ensure] the Bank is well positioned to fulfil its vital role of overseeing monetary policy and financial stability.

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[2] ibid, p 3.
[3] Bank of England, 'Bank of England Announces Measures to Bolster Transparency and Accountability', 11 December 2014.
[4] ibid.
[5] GOV.UK, *Queen's Speech 2015*, 27 May 2015.

- [Ensure] that the UK's regulatory framework remain at the forefront of internationally agreed best practice standards.[6]

The Treasury subsequently launched a 'technical consultation' on the Bill's proposed changes to the Bank of England in July 2015.[7] The consultation set out these proposals along three key themes:

- Strengthening the regulatory architecture.
- Protecting tax payers from firm failure.
- Strengthening governance and accountability.

The Treasury published the consultation response document on 15 October 2015.[8] The provisions in the Bill relating to the regulation of financial services were announced in a press release on 15 October 2015.[9] The proposed modifications to the SM&CR build upon changes currently in train following the Financial Services (Banking Reform) Act 2013.

2. Changes to the Bank of England's Governance

The Bank of England was established in 1694. It states its primary mission as "promoting the good of the people of the United Kingdom by maintaining monetary and financial stability".[10] It sets out a number of its key responsibilities in pursuit of this mission, which can be summarised as:

- Maintaining public confidence in money and its value (ie ensuring low and stable prices).
- Maintaining public trust in the financial systems (eg through promoting, maintaining and safeguarding the safety of financial institutions).
- Regulating key payment, clearing and settlement systems.
- Acting as the lender of last resort at the times of financial stress.

2.1 Court of Directors

Since its establishment in 1694, the Bank of England has been governed by 'the Court'.[11] The term previously referred to the 'Court of Proprietors' who ran the Bank as shareholders, but now (since 1946) refers to the Bank's 'Court of Directors'. A detailed history of the Court can be found in the Bank of England's first Quarterly Bulletin of 2014 (see pages 28–37).[12]

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[6] ibid, p 89.
[7] HM Treasury, *Bank of England Bill: Technical Consultation*, July 2015, p 11.
[8] HM Treasury, *Bank of England Bill: Response to the Consultation*, 15 October 2015.
[9] GOV.UK, 'Chancellor Announces Bank of England and Financial Services Bill', 15 October 2015.
[10] Bank of England, 'What We Do', accessed 21 October 2015.
[11] Bank of England, 'The Court of the Bank of England', 2014, p 28.
[12] ibid.

The composition and duties of the Court are currently set out in the Bank of England Act 1998. As outlined on the Bank of England's website:

> The Bank's Court of Directors acts as a unitary board, setting the organisation's strategy and budget and taking key decisions on resourcing and appointments. Required to meet a minimum seven times per year, it has four executive members from the Bank and nine non-executive members. All members of Court are appointed by the Crown. One of the non-executive members is selected by the Chancellor to chair Court. The Governor serves on Court for a period of eight years, the Deputy Governors for five years, and the non-executive members for three years.[13]

Membership of the Court of Directors (as at 19 October 2015):

Anthony Habgood—Chair of the Court
Mark Carney—Governor
Ben Broadbent—Deputy Governor, Monetary Policy
Sir Jon Cunliffe—Deputy Governor, Financial Stability
Andrew Bailey—Deputy Governor, Prudential Regulation & Chief Executive of the Prudential Regulation Authority
Bradley Fried
Tim Frost
Baroness Harding of Winscombe
Dave Prentis
Don Robert
John Stewart
Dorothy Thompson

In December 2014, the Bank of England outlined a number of proposed changes to the Court's functions and its membership.[14] These changes were then set out in further detail in the Treasury's consultation document on the Bill in July 2015, which explained that they were intended to "strengthen and simplify the Court, and to make sure that it continues to keep pace with corporate governance best practice".[15] The consultation document set out the key changes contained in the Bill as follows:

- Addition of a new deputy governor post on the Court (Deputy Governor for Markets and Banking), currently held by Dame Nemat Shafik.

- Introduce greater flexibility to add new deputy governor posts, or change the scope of a deputy governor post, through the use of secondary legislation.

- Abolition of the Court's oversight Committee, which acts as a sub-committee of the Court consisting of its non-executive directors.

[13] Bank of England, 'The Court of Directors', accessed 19 October 2015.
[14] Bank of England, *Transparency and Accountability at the Bank of England*, 11 December 2014, p 5.
[15] HM Treasury, *Bank of England Bill: Technical Consultation*, July 2015, p 11.

Regarding the latter change, the Treasury's consultation document stated:

> [the Oversight Committee had] responsibility for keeping under review the Bank's performance against its objectives. The oversight committee was also given powers to commission reviews into specific issues or processes. These powers have been a successful innovation, but the creation of a new committee to exercise them has introduced an extra and unnecessary layer of governance. The Bill will therefore simplify the way the Bank's oversight functions are administered by rationalising them and transferring them to the Court itself, and abolishing the oversight committee. As a result of this change, the Court as a whole, rather than a sub-committee of the Court, will be responsible for commissioning reviews and monitoring the Bank's response to, and implementation of, any recommendations resulting from a review.[16]

However, the consultation document emphasised that non-executive directors would continue to decide the terms and conditions of the Governor or Deputy Governors, and could also be delegated other specific functions by the Court.[17] The issue of the oversight committee's abolition was raised by the House of Commons Treasury Committee in their meeting of 9 September 2015, with members of the Treasury Committee questioning how the functions would now be carried out by the Court.[18] Speaking for the Bank of England, Bradley Fried and Anthony Habgood suggested that the new arrangements were in line with how most unitary boards operated.

2.2 Prudential Regulation Authority

The Prudential Regulation Authority (PRA) is a regulatory body established by the Financial Services Act 2012, and is currently a subsidiary of the Bank of England. The PRA has three core statutory objectives, as originally set out by the Financial Services and Markets Act 2000, namely:

- A general objective to promote the safety and soundness of the firms it regulates.
- An objective specific to insurance firms, to contribute to the securing of an appropriate degree of protection for those who are or may become insurance policyholders.
- A secondary objective to facilitate effective competition.[19]

The Bank of England's website states that the PRA is responsible for the "prudential regulation and supervision of around 1,700 banks, building societies, credit unions, insurers and major investment firms. It sets standards and supervises financial institutions at the level of the individual firm".[20] Further information on the PRA's role and activities can be found on the PRA's website.

The Bill would end the subsidiary status of the PRA. The Bank of England would instead be considered the PRA, and would exercise the PRA's functions through a new Prudential

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[16] ibid, p 12.
[17] ibid.
[18] House of Commons Treasury Select Committee, 'Oral Evidence', 9 September 2015, pp 15–16.
[19] Bank of England, 'About the Prudential Regulation Authority', accessed 19 October 2015.
[20] Bank of England. 'Prudential Regulation Authority', accessed 19 October 2015.

Regulation Committee (PRC). Explaining these changes, the Treasury's July 2015 consultation document stated that:

> [T]he government intends to end the PRA's status as a subsidiary and fully integrate the PRA into the Bank, while recognising the PRA's operational independence, in line with the Basel Core Principles on Supervision. This will continue the process of building a unified institution that can better share knowledge, expertise, and analysis. To implement this change, the PRA's functions will be transferred to the Bank itself, and a new Prudential Regulation Committee ('PRC') will be established within the Bank with responsibility for exercising them […]
>
> The new PRC will entirely retain its independence in making rules, policies and supervisory decisions. The statutory objectives of the PRA, which underpin its forward looking, judgement based approach to supervision, will remain unchanged. The new arrangements will reinforce the accountability of the PRC and the Chief Executive Officer for the Bank's prudential regulation functions, and updated reporting requirements will ensure supervision continues to operate with appropriate independence and adequate resources.[21]

The consultation document stated that the changes would not affect the PRA's "distinctive name and brand", and said that the membership of the PRC would "mirror" the membership of the current PRA.[22] Specifically, the Bill sets out that that the membership will consist of: the Governor of the Bank of England; the Deputy Governor for Financial Stability; the Deputy Governor for Markets and Banking; the Deputy Governor for Prudential Regulation; the Chief Executive of the Financial Conduct Authority; one member appointed by the Governor of the Bank of England (and approved by the Chancellor of the Exchequer); and at least six members appointed by the Chancellor of the Exchequer. Further details of the changes proposed to the PRA, including the introduction of new reporting requirements, can be found in the Treasury's consultation document on pages 5–6.[23]

A summary of the responses to the consultation was published by the Treasury on 15 October 2015. The Treasury stated that:

> Respondents broadly welcomed this change and the clear accountability and increased potential for cooperation across the Bank's functions it would bring (though many emphasised the importance of protecting the operational independence of the PRA under the new arrangements). One respondent supported the end of the PRA's status as a subsidiary but cautioned that silos and barriers to information flows could remain even after desubsidiarisation. Only one respondent was opposed to ending the subsidiary status of the PRA, arguing that the current structures are working well.[24]

Responding to some concerns that the move may erode the PRA's independence, the Treasury emphasised that the Bank of England would only be able to exercise its prudential regulation functions through the PRC.[25] The Treasury also noted concerns about the representation of insurers on the new PRC, and the importance of working closely with the Financial Conduct Authority.

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[21] HM Treasury, *Bank of England Bill: Technical Consultation*, July 2015, pp 5–6.
[22] ibid, p 6.
[23] ibid, pp 5–6.
[24] HM Treasury, *Bank of England Bill: Response to the Consultation*, 15 October 2015, p 5.
[25] ibid.

2.3 Monetary Policy Committee

A brief overview of the remit of the Monetary Policy Committee (MPC) was set out in the House of Commons Library Note, *Improvements to Monetary Policy Committee Transparency* (7 September 2015), which stated:

> Since the Bank of England was granted independence in 1997, its Monetary Policy Committee has been the body which sets interest rates (and, more recently, the level of quantitative easing (QE)). The Chancellor of the Exchequer sets the inflation target (2 percent as measured by the Consumer Prices Index). The MPC aims to meet the inflation target through its decisions about interest rates and QE […]
>
> There are 9 MPC members: 5 from the Bank of England and 4 external members, appointed by the Chancellor of the Exchequer from outside the Bank to give an independent perspective. The 5 Bank of England members are the Governor, 3 of the Deputy Governors and the Bank's Chief Economist. Each member of the MPC has expertise in economics and monetary policy—the members do not represent particular interests. Each member votes on decisions about interest rates and QE. The MPC's decisions are communicated via publication of its minutes. MPC members are also held to account at their appearances before the Treasury Committee.[26]

The Committee has traditionally held meetings once a month, with MPC decisions made on the basis of one-person, one vote.[27] The meetings are held over three days, and usually consist of one meeting to discuss the MPC's interpretations of economic data, and then two "policy meetings".[28] The minutes of the meetings were often published up to two weeks after the MPC's interest rates announcement. In advance of these meetings, the members of the MPC receive a number of briefings from Bank of England staff regarding recent data on the economy and analysis of economic trends. The Bank of England describes the MPC members as experts in the fields of economics and monetary policy.

In December 2014, Kevin Warsh (a former member of the Board of Governors of the US Federal Reserve) published the results of his review into the transparency of the Bank of England's monetary policy practices.[29] The report included a number of recommendations to improve transparency, including improvements to the publication of MPC meetings and releasing transcripts of the day two meetings after a period of five to ten years. The review's recommendations were welcomed by the Bank, and many of the recommendations have already been implemented.[30] The Bill would "complete steps already taken by the Bank in implementing the Warsh Review recommendations by amending the requirement on the timing of the publication of MPC minutes, so that the Bank is required to publish them as soon as reasonably practicable following the meeting; and by moving the MPC to a schedule of at least eight regular meetings a year".[31]

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[26] House of Commons Library, *Improvements to Monetary Policy Committee Transparency*, 7 September 2015, CBP-7289, p 6.

[27] Bank of England, 'Monetary Policy Committee', accessed 20 October 2015.

[28] ibid.

[29] Warsh Review, *Transparency and the Bank of England's Monetary Policy Committee*, December 2014.

[30] Bank of England, 'Bank of England Announces Measures to Bolster Transparency and Accountability', 11 December 2014.

[31] HM Treasury, *Bank of England Bill: Technical Consultation*, July 2015, p 15.

The Warsh Review recommended a reduction in the number of MPC meetings on two main grounds. First, it suggested that the current monthly cycle is time consuming for staff and MPC members, and does not give them adequate opportunity for proper reflection. Second, it reasoned that:

> Monetary policy works with considerable lags, and policymakers face great uncertainty. Changes in the outlook for policy typically require persistent changes in tracking data. Rarely would a single four-week period be sufficient to change economic assessments. The current monthly schedule unnecessarily heightens market expectations, and prods the MPC to refine judgements and policies more frequently than economic analyses often make prudent.[32]

In response to this view, the House of Commons Library has noted that:

> In fact, the MPC has changed interest rates at successive meetings on a number of occasions. For example, rates were changed in 5 meetings in a row between October 1998 and February 1999, 3 successive meetings between September and November 2001 and 6 successive meetings between October 2008 and March 2009.[33]

The Commons Library has published a table containing the historical timings of interest rate changes on page 9 of its Note.[34] In addition, full details on votes and interest rate changes at MPC meetings since 1997 can be found on the Bank of England website.[35]

Regarding the proposed change to the timing of the publication of the MPC's minutes, the Warsh Review reasoned that doing so would:

> [F]urther the Bank's objective of communicating its policy judgements effectively. It would provide a fair representation of the true balance of the policy debate. It would also liberate individual members to communicate their own policy judgements in a timely manner in subsequent speeches and interviews. Under current arrangements, members often find themselves in the uncomfortable position of necessarily obfuscating their views in public until the minutes are released two weeks hence.[36]

However, some commentators have raised concerns that the release of too much information as the same time could have negative consequences. For example, an article on the Centre for Economic Policy and Research's policy portal raised concerns that: "the simultaneous release of so much information may be difficult to absorb and confuse market participants. If true, then this could lead to more volatile market outcomes".[37] Further arguments put forward by economists and commentators in favour of the change and opposing the change can be found in the CEPR's article.[38]

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[32] Warsh Review, *Transparency and the Bank of England's Monetary Policy Committee*, December 2014, p 7.
[33] House of Commons Library, *Improvements to Monetary Policy Committee Transparency*, 7 September 2015, CBP-7289, p 9.
[34] ibid.
[35] Bank of England, 'Monetary Policy Committee Decisions, Minutes and Forecasts', accessed 20 October 2015
[36] Warsh Review, *Transparency and the Bank of England's Monetary Policy Committee*, December 2014, p 7.
[37] CEPR Policy Portal, 'Transparency and the Effectiveness of Monetary Policy After the Warsh Review at the Bank of England', 17 March 2015.
[38] ibid.

3. Bank of England Accountability and Information-sharing

3.1 National Audit Office Scrutiny

The Bill will extend National Audit Office (NAO) scrutiny to the whole of the Bank of England for the first time. The extent of these proposed arrangements were summarised in the Treasury's consultation document, which stated:

> Historically, the Bank of England itself has been outside the NAO's audit regime. One consequence of integrating the PRA into the Bank will be the need to unify audit arrangements across the organisation. The government intends to use this opportunity to bring the entire Bank within the NAO's oversight: in future, the NAO will have freedom to initiate value for money studies in relation to the whole of the Bank, following consultation with Court […]
>
> The Court will continue to appoint external auditors to undertake the financial audit of the Bank's full accounts, including in relation to its new prudential regulation functions. The NAO will have full access to this financial audit: they will be consulted during the appointment process, and on the work programme for the audit itself. In addition, NAO representatives will have access, on request, to information made available to the Bank's external auditors, and will be able to attend the Bank's audit and risk committee.[39]

The NAO will also be involved in auditing specific operations of the Bank that are indemnified by the Treasury. The consultation document stated that the NAO's scrutiny will strengthen the Bank's accountability to the public and to Parliament.[40] However, it is not intended that the NAO would be able to consider the merits of the Bank's policy decisions. Further explanation of how this would work was set out by the Treasury in October 2015 (updating the original guidance on this issue published in its July 2015 consultation document):

> As proposed, the Bill will explicitly exclude consideration of the merits of the Bank's policy from the NAO's remit […] The Bank will be able to notify the NAO of concerns that a proposed study would question the merits of its general policy. The Bank would be required to consider the views of the NAO, but ultimately it will be for the Court to determine what constitutes a matter of general policy for these purposes. When such a difference of opinion prevails, the NAO must make public the disagreement. This provides continued assurance of the Bank's critical policy-making independence. The NAO will continue to have independence in determining a value for money programme within this framework.[41]

The Treasury stated that all the respondents to the consultation had welcomed the proposals to include the Bank of England within the NAO's value for money studies. However, speaking to the House of Commons Treasury Committee on 9 September 2015, the chair of the Bank of England's Court, Anthony Habgood, stated that the extent of the NAO's proposed involvement had come as a surprise.[42] Both Habgood and Bradley Fried raised concerns that the proposals could affect the "carefully constructed independence of the policy functions of the Bank", and that they could create ambiguity over the role of the Court and the role of the NAO in

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[39] HM Treasury, *Bank of England Bill: Technical Consultation*, July 2015, p 14.
[40] ibid.
[41] HM Treasury, *Bank of England Bill: Response to the Consultation*, 15 October 2015, p 9.
[42] House of Commons Treasury Select Committee, 'Oral Evidence', 9 September 2015, p 15.

assessing the management of the Bank's resources.[43] Similar points were raised in a September 2015 *Financial Times* article by Ferdinando Giugliano, who questioned whether it would duplicate the Court of Directors' role, and the extent to which the Bank's "policy" may be defined. In contrast, the NAO's current Comptroller and Auditor General, Sir Amyas Morse, has criticised the drafting of the Bill for not going far enough, arguing that the current limitations on the NAO's involvement (as relates to the "general policy" of the Bank) "created a false impression of greater accountability".[44] The *Financial Times* stated that the Bank's "veto" over what the NAO can scrutinise would be "the first time that a public entity could restrict the scope of a NAO value-for-money study. Britain's official auditors are not allowed to question the merits of policy, but government departments cannot limit what the auditors scrutinise".[45]

3.2 Co-operation with the Treasury

The Bill would give the Treasury the power to commission an independent value for money study of the way in which the Bank carries out prudential regulation. In addition, the Bill would enhance the level of co-operation between the Bank of England and the Treasury when dealing with the potential failure of financial institutions. Regarding this, the Explanatory Notes to the Bill state:

> The Bank has primary operational responsibility for resolving banks and other financial institutions when they fail. However, the Chancellor and the Treasury have sole responsibility for any decision involving public funds. The Bill seeks to enhance the powers of the Treasury to ensure that public funds are applied appropriately in a financial crisis by imposing new obligations on the Bank to provide the Treasury with information on proposed resolution options being considered by the Bank, and by enhancing the Treasury's powers to obtain additional information from the Bank in relation to the implications for public funds of the failure of a bank or other financial institution.[46]

Further details on these arrangements were outlined in the Treasury's consultation document on the Bill.[47] This stated that the current framework as to how the Bank of England and the Treasury should work together when a financial stability risk is identified is set out in the Financial Services Act 2012 and in the *Memorandum of Understanding on Financial Management* (MoU).[48] Although the Treasury said that the division of responsibilities was "working well", it emphasised the need to update the guidance in line with advances in best practice and to formalise the co-operation between the two entities.[49] The Treasury explained that this would be achieved through the measures proposed in the Bill, and by updating the MoU:

> Through the Bill and the updated MoU, the government will ensure the framework for managing resolution reflects the continued advances to best practice in managing firm failure, as well as the effective working practices employed by the Bank and the Treasury—along with the financial regulators—for protecting taxpayers and the wider economy. In particular, the proposals will set out clearly how the Treasury and the Bank

[43] ibid, pp 2–3.
[44] *Financial Times*, 'Auditor Calls Bank of England Regulation Bill "unacceptable"', 15 October 2015.
[45] ibid.
[46] Explanatory Notes, p 4.
[47] HM Treasury, *Bank of England Bill: Technical Consultation*, July 2015, p 7.
[48] HM Treasury, *Memorandum of Understanding on Financial Crisis Management*, 2012.
[49] ibid, pp 7–8.

> identify and mitigate risks to public funds in financial crisis planning, in three crucial areas:
>
> - development of resolution strategies;
> - active contingency planning; and
> - development of resolution policy.
>
> Taken together, these measures stand to formalise the strong working relationship that exists between the Bank and the Treasury on resolution and crisis coordination, ensuring these arrangements are preserved in future to the benefit of UK taxpayers and the economy, and keeping the UK at the forefront of best practice for managing firm failure.[50]

Further details on how this will work is set out on pages 8–9 of the Treasury's consultation. The Treasury has said that the respondents to the consultation welcomed the changes, although it did note one party's concerns regarding its effect on the division of responsibilities between the Bank and the Treasury.[51] The Treasury stated that this would not alter, as the legislation only seeks to ensure communication and information-sharing between the entities was strengthened. A draft copy of the new Memorandum of Understanding was published by the Treasury on 15 October 2015.[52]

4. Financial Services Regulation

In addition to making changes to the governance and accountability of the Bank of England, the Bill also contains a number of measures focused on the regulation of financial services. For example, in its press release of 15 October 2015, the Treasury highlighted the changes the Bill would make to the Senior Managers and Certification Regime and to its Pension Wise guidance service:

> The Chancellor is also announcing the extension of the Senior Managers & Certification regime (SM&CR) across the entire financial services industry, replacing the discredited Approved Persons Regime.
>
> The changes being brought forward represent the furthest reaching reforms the government has made on the personal responsibility of senior managers in the financial services industry, ensuring that they face the same 'duty of responsibility' in whatever type of firm they work at.
>
> The government is also revolutionising the pension system to allow people to access their pension pots flexibly without being hit with punitive tax rates. Following decisions to extend pensions freedoms to those who already hold an annuity in 2017, the bill will extend the scope of the Pension Wise guidance service, so that pensioners can access a free, impartial service to discuss their new options.[53]

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[50] ibid, pp 8–9.

[51] HM Treasury, *Bank of England Bill: Response to the Consultation*, 15 October 2015, p 8.

[52] HM Treasury, 'Draft Memorandum of Understanding on Resolution Planning and Financial Crisis Management', 15 October 2015.

[53] GOV.UK, 'Chancellor Announces Bank of England and Financial Services Bill', 15 October 2015.

Pension Wise is a free guidance service offered by the Government aimed at helping people understand their pension options.[54] It allows members of the public to consult with people in person or over the telephone regarding the different ways they could utilise the money in their pension pots, and the range of options that are open to them. The remit of this guidance is set out in the Financial Services and Markets Act 2000. The Bill would extend this remit, so that advice could be given to people who have already bought annuities and are considering selling the income of them to a third party.[55]

Following concerns raised by the Parliamentary Commission on Banking Standards over the Approved Persons Regime,[56] the Senior Managers and Certification Regime (SM&CR) was introduced by the Government through the Financial Services (Banking Reform) Act 2013.[57] The SM&CR is due to come into operation on 7 March 2016 for financial services firms defined as "banks, other deposit takers and those investment firms that are regulated by the PRA".[58] The Bill would extend the operation of the SM&CR to cover all firms carrying out regulated activities under the Financial Services and Markets Act 2000. Further details on the SM&CR were set out in the Treasury document, *Senior Managers and Certification Regime: Extension to All FSMA Authorised Persons*.[59] The document set out the background to the SM&CR, and provides extensive information on the proposed changes. In brief, it described the key features of the extended SM&CR as:

- An approval regime focused on senior management, with requirements on firms to submit robust documentation on the scope of these individuals' responsibilities.
- A statutory requirement for senior managers to take reasonable steps to prevent regulatory breaches in their areas of responsibility.
- A requirement on firms to certify as fit and proper any individual who performs a function that could cause significant harm to the firm or its customers, both on recruitment and annually thereafter.
- A power for the regulators to apply enforceable Rules of Conduct to any individual who can impact their respective statutory objectives.[60]

The document suggested that the expansion of the SM&CR would create a stronger and comprehensive regime across all financial services, and would "enhance personal responsibility for senior managers as well as providing a more effective and proportionate means to raise standards of conduct of key staff more broadly, supported by robust enforcement powers for the regulators".[61] The Treasury stated that it expected the changes to fully come into operation in 2018.[62]

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[54] GOV.UK, 'Pension Wise', accessed 20 October 2015.
[55] Explanatory Notes, p 5.
[56] Parliamentary Commission on Banking Standards, *Changing Banking for Good*, June 2013, HL Paper 27-i of session 2013–14.
[57] Explanatory Notes, p 5.
[58] ibid.
[59] HM Treasury, *Senior Managers and Certification Regime: Extension to All FSMA Authorised Persons*, October 2015.
[60] ibid, p 3.
[61] ibid.
[62] ibid, p 15.

As part of these changes, the Bill would also change the 'reverse burden of proof' originally proposed for the Senior Managers Regime in the Financial Services (Banking Reform) Act 2013. The Explanatory Notes to the Bill explain this as follows:

> [The Bill would amend] the definition of "misconduct" applicable to senior managers so that, where there has been a regulatory contravention in an area for which they are responsible, senior managers no longer have to prove that they have taken reasonable steps to prevent that contravention to avoid being found guilty of misconduct. [Instead] it will be necessary for the regulators to prove that a senior manager has not taken such steps before they can bring disciplinary proceedings against a senior manager on this ground.[63]

The Bank of England has described this change as one of "process rather than substance",[64] and reportedly defended the move at the House of Commons Treasury Committee meeting of 20 October 2015.[65] The *International Business Times* stated that the move had been welcomed by those in the banking sector.[66]

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[63] Explanatory Notes, p 3.
[64] *Financial Times*, 'Treasury Abandons Senior Bankers' Accountability Rule', 15 October 2015.
[65] *Guardian*, 'Bank of England Deputy Defends U-turn on Banking Reform', 20 October 2015.
[66] *International Business Times*, 'Senior Managers Regime: Banking Sector Welcomes Treasury Changes to Compliance Rules', 15 October 2015.