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HL Bill 2 of 2024–25

Bank Resolution (Recapitalisation) Bill [HL]

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The Bank Resolution (Recapitalisation) Bill [HL] is a government bill. It was announced in the King's Speech on 17 July 2024 and was introduced in the House of Lords the following day. The second reading of the bill is due to take place on 30 July 2024.

The bill seeks to enhance the UK's regime for managing bank failures, termed resolution. Specifically, it would introduce a mechanism which would allow the Bank of England—the UK's resolution authority—to recover the costs associated with recapitalising failing small banks through a levy on the banking sector.

The government has argued that this will provide the Bank of England with a more flexible toolkit when responding to the failure of small banks, while ensuring that the costs of managing such failure do not fall on taxpayers. Respondents to a consultation on the proposals were broadly supportive.

1. Background to the bill

1.1 Previous bank failures

In 2009, in the wake of the 2007–08 financial crisis, the UK implemented a regime for resolving failing banking institutions. The Banking Act 2009 made the Bank of England (the Bank) the UK's resolution authority. It provided the Bank with a set of options and powers to stabilise failing banking institutions, in order to "protect financial stability, enhance confidence in the financial system and protect depositors, whilst limiting risks to public funds".[1]

As described by Sir Dave Ramsden, the Bank's deputy governor for markets and banking, the regime was subject to its "first major test" in March 2023, when the collapse of the US-based Silicon Valley Bank triggered the failure of its UK subsidiary, Silicon Valley Bank UK (SVBUK).[2] In this instance, the Bank initially announced its intention to put SVBUK into an insolvency procedure.[3] However, in the days following that announcement, a number of "credible private sector purchasers" of SVBUK emerged, and the Bank used its resolution powers to transfer the business of SVBUK to HSBC, another bank.[4]

Rishi Sunak's Conservative government assessed that these events had demonstrated the "soundness" of the resolution regime, with the Bank having secured "good outcomes for financial stability, customers, and taxpayers" as it managed the failure of SVBUK.[5] Nevertheless, having reflected on the episode, the Sunak government concluded that there were lessons to be learned and, in January 2024, it proposed enhancing the Bank's resolution powers to mitigate the risk that "taxpayer funds would be needed to cover costs of a small bank failure".[6]

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[1] Explanatory notes, p 2.

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

[3] Bank of England, 'Bank of England statement: Silicon Valley Bank UK', 10 March 2023.

[4] Bank of England, 'Statement on Silicon Valley Bank', 13 March 2023; 'What happened to Silicon Valley Bank UK?', 24 March 2023; and 'The Bank of England's approach to resolution', 15 December 2023.

[5] HM Treasury, 'Enhancing the special resolution regime: Consultation', 11 January 2024, p 8.

[6] As above, p 9.

1.2 Proposed enhancement of the resolution regime

In a consultation outlining the proposals, the then government said that there may be certain situations where it would be in the public interest to transfer a failing small bank into a 'bridge bank' or (as in the case of SVBUK) to a willing private sector purchaser, rather than placing such a bank in insolvency.[7] This can require recapitalisation; however, unlike large, systemically important banks, small banks are not required to hold certain amounts of equity and debt that can be drawn on to recapitalise them when they fail.[8] Therefore, resolving a small bank in this way can "pose risks to taxpayers given the potential need for such a bank to be recapitalised".[9]

To address this risk, the then government proposed a mechanism which would "allow the Bank of England to use funds provided by the banking sector to cover costs associated with a resolution, including those associated with recapitalising and operating the failed bank".[10] The funds would initially be provided to the Bank by the Financial Services Compensation Scheme (FSCS), with the FSCS recouping the costs through "an ex-post levy on the banking sector".[11]

The FSCS already has the "operational capability and infrastructure" to do this, as it is in this way that the FSCS funds a pay-out or transfer of covered deposits after a firm is placed into insolvency. Under the proposal, the funding gap that arises between funds being provided to the Bank and recouped from the banking sector would be met "using any available FSCS funds or, where necessary, through the FSCS's existing ability to borrow commercially".

1.3 New government's approach to the bill

Following consideration of consultation feedback, Keir Starmer's Labour government included the Bank Resolution (Recapitalisation) Bill in the background briefing to King's Speech to implement the proposals.[12] The new government's position remains "broadly" in line with that set out in the January 2024 consultation, with the exception that credit unions

[7] As set out in section 12 of the Banking Act 2009, a bridge bank is a company that is created and controlled by the Bank of England for the purposes of ensuring the critical functions of a failing bank can be maintained, before the failing bank or its business is sold on.
[8] HM Treasury, 'Enhancing the special resolution regime: Consultation', 11 January 2024, p 9.
[9] As above, p 8.
[10] As above, p 9.
[11] As above, p 19.
[12] HM Treasury, 'Enhancing the special resolution regime: Government response to the consultation', 19 July 2024, p 6; and Prime Minister's Office, 'The King's Speech 2024: Background briefing notes', 17 July 2024.

will now not be in scope of any levy that is imposed under the proposed mechanism.[13]

2. Provisions of the bill

The bill has five clauses.

Clause 1 would insert a new section into part 15 of the Financial Services and Markets Act 2000, the legislation which established the Financial Services Compensation Scheme (FSCS). This new section ('214E Recapitalisation payments') would allow the Bank of England to require the FSCS to transfer funds to it or to another person (for example, a failing financial institution) when the Bank is exercising its stabilisation powers under the resolution regime. The amount of this 'recapitalisation payment' will be the Bank's estimate of the likely costs of recapitalising the failing financial institution in question, plus any other expenses that the Bank or another person (for example, HM Treasury) might incur in connection with this process.

This clause requires that the Bank consults with the FSCS before requiring a transfer of funds through this mechanism. Additionally, it makes clear that the funds provided will be classed as an "expense under the compensation scheme". As explained in the explanatory notes, this classification has the effect of ensuring that the FSCS can levy the financial services industry to recover the expenses involved.[14]

Clause 2 would insert another new section into part 15 of the Financial Services and Markets Act 2000. This new section ('214F Reimbursement in respect of a recapitalisation payment') would require the Bank to reimburse the FSCS if the costs of recapitalisation turn out to be lower than the Bank anticipated or if the Bank recovers costs in relation to the financial institution that was recapitalised (for example, recovering an amount as a result of the sale of the institution).

Clause 3 makes a series of minor and consequential amendments to the Financial Services and Markets Act 2000. Amongst these is an amendment to make clear that the FSCS cannot impose levies on credit unions for the purpose of recouping funds provided under the new recapitalisation mechanism.

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[13] HM Treasury, 'Enhancing the special resolution regime: Government response to the consultation', 19 July 2024, p 6.
[14] Explanatory notes, p 6.

Clause 4 makes a series of minor and consequential amendments to the Banking Act 2009. Amongst these is an amendment which allows the Bank to require a financial institution being resolved to issue securities. This is to "ensure that the Bank can move swiftly to ensure FSCS funds are able to recapitalise the failing firm in question".[15]

Clause 5 states that the bill would extend to England and Wales, Scotland and Northern Ireland and that the above provisions of the act would come into force "on such day as the Treasury may by regulations appoint".

3. Reaction to the bill

In its response to the consultation, the government reported that respondents were generally in favour of the proposals, with most respondents supportive of the "proposed scope of application and the proposal to recoup any funds used from the entire banking sector on an ex-post basis".[16]

In response to the bill's publication, a spokesperson for UK Finance—a trade association representing the banking and finance industry—said that while it was "right for the authorities to have more tools at their disposal", they would expect insolvency to remain the "default" resolution option.[17]

4. Read more

- The Banker (£), 'Explainer: What the King's Speech means for banks', 18 July 2024
- HM Treasury, 'Enhancing the special resolution regime: Consultation', 11 January 2024; and 'Government response', 19 July 2024
- Bank of England, 'What happened to Silicon Valley Bank UK?', 24 March 2023
- Bank of England, 'The Bank of England's approach to resolution', 15 December 2023

[15] Explanatory notes, p 7.
[16] HM Treasury, 'Enhancing the special resolution regime: Government response to the consultation', 19 July 2024, p 6.
[17] The Banker (£), 'Explainer: What the King's Speech means for banks', 18 July 2024.

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