Bank Resolution (Recapitalisation) Bill

Memorandum from His Majesty's Treasury to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Bank Resolution (Recapitalisation) Bill ("the Bill"). The Bill was introduced to the House of Lords on [18 July]. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. The purpose of the Bill is to enhance the special resolution regime for banks and is key to limiting the risks to public funds arising from the failure of a financial institution.

3. The resolution regime was introduced in the Banking Act 2009, following the Global Financial Crisis. It provides the Bank of England with a range of powers to manage the failure of a financial institution in an orderly way, and protect financial stability, customers, public funds and the wider economy.

4. The UK's regime was last used in March 2023 in response to the failure of US bank Silicon Valley Bank (SVB), which triggered the failure of its UK subsidiary (SVB UK). Ordinarily, a small bank such as SVB UK would be expected to go into insolvency upon failure, but it was deemed in the public interest to use resolution powers to transfer SVB UK to HSBC. This delivered good outcomes by preserving financial stability, protecting SVB UK's customers, and avoiding the need to use taxpayer money. However, it also raised questions about the approach to using resolution powers in respect of small banks like SVB UK, which would normally be expected to go into insolvency, and the risks to public funds that may arise in those cases.

5. To be prepared for future cases in which resolution action for financial institutions is needed, and in particular small banks, this policy allows the Bank of England to request funds from the Financial Services Compensation Scheme (FSCS) to aid in the resolution of a financial institution. This gives the Bank of England more flexibility when responding to bank failures and protecting the economy, while reducing the risk to public funds.

6. The Bill will amend primary legislation to:

    a. Expand the statutory functions of the FSCS, enabling it to provide funds to the Bank of England upon request to meet certain costs arising from the failure of a financial institution.
    b. Allow the FSCS to recover any funds provided to the Bank of England after a failure event through imposing levies on the banking sector. Credit unions are exempted from levies for this purpose.

c. Provide the Bank of England with an ability to require a financial institution under resolution to issue new shares, facilitating the Bank's use of the funds provided by the FSCS to recapitalise a failing firm.
d. Make minor technical and consequential amendments to support the measures above.

C. DELEGATED POWERS

Approach to delegated powers

7. In this Bill, delegated powers have been narrowly drawn, and only when there is a strong justification for their necessity. There is therefore only one delegated power.

Clause 5: Extent, commencement and short title

Power conferred on: HM Treasury
Power exercised by: regulations made by statutory instrument
Parliamentary procedure: none

Context and purpose

8. Subsection 2 of this clause provides a standard power for the Treasury to bring sections 1 to 4 of the Bill into force by commencement regulations.

Justification for taking the power

9. The precise timing for the commencement of these sections is delegated to a Minister to allow flexibility in implementation, including, as appropriate, to allow relevant regulatory authorities time to amend their rules and procedures as necessary.

Justification for the procedure

10. As is common with commencement regulations bringing into force an enactment and making no substantive provision, it is considered that in respect of these regulations no Parliamentary procedure is indicated.