

Bank Resolution (Recapitalisation) Bill [HL]

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

Clause 1

LORD VAUX OF HARROWDEN

Clause 1, page 2, line 3, after “2009)”, insert “excluding institutions with minimum requirements for own funds and eligible liabilities on the basis of a bail-in resolution strategy as may be identified by the Bank of England from time to time.”

Member's explanatory statement

This probing amendment is designed to understand why these new rules should apply to all banks, contrary to the Treasury's consultation on Enhancing the Special Resolution Regime of January 2024. It would exclude those banks subject to requirements to hold additional funds and liabilities, known as MREL, under a bail-in strategy that is designed to cover those banks deemed “too big to fail”.

LORD VAUX OF HARROWDEN

Clause 1, page 2, line 3, at end insert –

- “(6) When the Bank of England exercises its power in subsection (1), the Bank must make a report to the Chancellor of the Exchequer within 28 days of the date of any recapitalisation payment being made.
- (7) The report must comply with any requirements as requested by the Treasury, but must include –
 - (a) the reasons why the Bank decided to make a recapitalisation payment in preference to allowing the financial institution to go into insolvency;
 - (b) a breakdown of the costs referred to in subsection (2);
 - (c) a comparison of the expected recapitalisation payment or payments that will be paid by the Financial Services Compensation Scheme, compared with the expected costs to the Scheme in an insolvency process.

- (8) The Bank must make further reports to the Chancellor of the Exchequer within three months of the date of the sale of the institution to a private sector purchaser, or the sale, closure or winding up of the bridge bank, providing such information as the Treasury may require, including the breakdown of the actual recapitalisation payment or payments and the reasons for any differences to the expected costs referred to in subsection (7)(b).
- (9) The Chancellor of the Exchequer must lay a copy of each report under subsection (7) or (8) before Parliament.”

Member's explanatory statement

This amendment is intended to ensure that the reasons for decisions of the Bank to follow a resolution process in preference to an insolvency process are explained and the explanation laid before Parliament, both at the time of the decision and once the resolution process has been completed, and that the costs can be compared to what would have been expected if the institution had been placed into insolvency.

Clause 2

LORD VAUX OF HARROWDEN

Clause 2, page 2, line 20, after “up” insert “or from the management or shareholders of the institution being sold or wound up”

Member's explanatory statement

This is a probing amendment to ascertain under what circumstances the Bank may be able to recover all or part of previously paid management bonuses, dividends to shareholders, or otherwise require a shareholder (foreign or UK) to cover all or part of the recapitalisation costs.

LORD VAUX OF HARROWDEN

Clause 2, page 2, line 20, at end insert –

- “(aa) on a winding up of the institution, any recapitalisation payment is to be treated as a debt of the institution and paid out of the institution’s assets in preference to all other claims except any prescribed fees or expenses of the official receiver;”

Member's explanatory statement

Because the recapitalisation payment is not paid by the FSCS to the institution, but is paid to the Bank of England, it is not clear how it would be treated on a winding up of the institution. This probing amendment aims to ensure that it is treated as a debt of the institution and to ensure that recapitalisation payments are recovered first in any insolvency process, in preference to other creditors or shareholders, other than the expenses of the receiver.

Clause 4

LORD VAUX OF HARROWDEN

Clause 4, page 3, line 39, at end insert –

“(8) In section 79A (private sector purchaser: report), at the end insert –

“(5) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament.””

Member's explanatory statement

This amendment would require reports made by the Bank of England to the Chancellor of the Exchequer regarding the sale of all or part of a bank's business to a commercial purchaser to be laid before Parliament, bringing this in line with the requirements that already apply when a bank's business is transferred to a resolution company in accordance with section 80 of the Banking Act 2009.

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