

Bank Resolution (Recapitalisation) Bill [HL]

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Clause 1

BARONESS BOWLES OF BERKHAMSTED

- 1** Clause 1, page 1, line 8, after “institution” insert “that is not required to hold Minimum Requirement for Own Funds and Eligible Liabilities (MREL) or is below a level of total assets of value of £15 billion index linked from 1 January 2016”

Member's explanatory statement

This amendment seeks to ensure that the bill applies primarily to smaller banks, using Minimum Requirement for Own Funds and Eligible Liabilities (MREL) as a definition.

BARONESS NOAKES
BARONESS VERE OF NORBITON

- 2** Clause 1, page 1, line 18, leave out lines 18 to 20

Member's explanatory statement

This amendment probes the nature of “other expenses” and the persons other than the Bank which could incur expenses.

BARONESS NOAKES

- 3** Clause 1, page 1, line 20, at end insert –

“(2A) The Bank may not exercise the power in subsection (1) more than once in respect of the same financial institution without the consent of the Treasury.”

Member's explanatory statement

This amendment requires the Bank to obtain Treasury consent before it can require the FSCS to make a second (or subsequent) recapitalisation payment in respect of an individual bank.

BARONESS NOAKES

4 Clause 1, page 1, line 20, at end insert –

“(2A) The Bank may not exercise the power in subsection (1) in respect of a financial institution which meets the condition in subsection (2B) without the consent of the Treasury.

(2B) The condition is that the financial institution is a subsidiary of a company based outside the United Kingdom.”

Member's explanatory statement

This amendment requires the Bank of England to obtain Treasury consent before it can require the FSCS to make a capitalisation payment in respect of a bank which is a subsidiary of an overseas body.

BARONESS NOAKES

5 Clause 1, page 1, line 20, at end insert –

“(2A) The Bank may not exercise the power in subsection (1) in respect of a financial institution which meets the condition in subsection (2B) without the consent of the Treasury.

(2B) The condition is that the financial institution has been required by the Bank under subsection (4) of section 3A of the Banking Act 2009 to hold an amount of bail-in liabilities.”

Member's explanatory statement

This amendment requires the Bank of England to obtain Treasury consent before it can require the FSCS to make a capitalisation payment in respect of a bank which had not satisfied the Bank's suitability for the use of the insolvency procedure in resolution.

BARONESS NOAKES

6 Clause 1, page 1, line 20, at end insert –

“(2A) The Bank may not exercise the power in subsection (1) without the consent of the Treasury.”

Member's explanatory statement

This amendment requires the Bank of England to obtain Treasury consent before it can require the FSCS to make a capitalisation payment.

BARONESS BOWLES OF BERKHAMSTED

- 7 Clause 1, page 1, line 20, at end insert –
- “(2A) The Bank of England may only exercise the power in subsection (1) if it assesses that the use of the power would support the public interest, which may include but need not be limited by –
- (a) supporting market competitiveness, or
 - (b) retaining or growing smaller banks.”

BARONESS VERE OF NORBITON

- 8★ Clause 1, page 1, line 20, at end insert –
- “(2A) The Bank of England must not require the scheme manager to make a recapitalisation payment if it has directed the financial institution to maintain a Minimum Requirement for Own Funds and Eligible Liabilities (MREL) or issue eligible liabilities.”

Member's explanatory statement

This amendment seeks to limit the use of FSCS funds for recapitalisation to small financial institutions.

LORD SIKKA

- 9★ Clause 1, page 1, line 22, at end insert –
- “(3A) Before exercising the power in subsection (1), the Bank and the scheme manager must assess whether they consider that there should be a clawback of executive pay and bonuses from the previous 12 months.”

Member's explanatory statement

This amendment seeks to address potential moral hazards through requiring the Bank and scheme manager to take directors' pay and bonuses into consideration when a recapitalisation payment is made.

LORD VAUX OF HARROWDEN

- 10 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 EATWELL

- 11★** Clause 1, page 2, line 3, after “2009)”, insert “that is not required to hold the Minimum Requirement for own funds and Eligible Liabilities (MREL) above minimum capital requirements.”

Member's explanatory statement

The amendment would confine the scheme to small banks.

LORD VAUX OF HARROWDEN
BARONESS VERE OF NORBITON

- 12** 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.

BARONESS BOWLES OF BERKHAMSTED

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

- “(6) Use of the Financial Services Compensation Scheme for bank recapitalisation and associated costs must not reduce bank depositors’ entitlement to the full amount of Deposit Guarantee Insurance.”

BARONESS NOAKES

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

“214F Recapitalisation payments: reporting

- (1) The Bank must report to the Chancellor of the Exchequer about the exercise of the power in section 214E.
- (2) The report must comply with any requirements as to content specified by the Treasury.
- (3) The report must be made as soon as is practicable after the use of the power.
- (4) The Treasury must lay a copy of the report before Parliament.”

Member's explanatory statement

This amendment ensures that that information about the use of a recapitalisation payment is made to the Treasury and to Parliament.

BARONESS NOAKES

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

“214F Engagement with Parliamentary Committees

- (1) If the Bank of England exercises the power under section 214E it must, as soon as reasonably practicable, notify in writing the chair of each relevant Parliamentary Committee that the power has been exercised.
- (2) Relevant Parliamentary Committees are –
 - (a) the Treasury Committee in the House of Commons, and
 - (b) the Financial Services Regulation Committee in the House of Lords.
- (3) References to the committees referred to in subsection (2) –
 - (a) if the name of the Committee is changed, are references to that Committee by its new name, and
 - (b) if the functions of that Committee (or substantially corresponding functions) become functions of a different Committee of the House of Commons or the House of Lords, are to be treated as references to the Committee by which the functions are exercisable.
- (4) Any question arising under subsection (3) is to be determined by the Speaker of the House of Commons in relation to committees of the House of

Commons and by the Senior Deputy Speaker of the House of Lords in relation to committees of the House of Lords.”

Member's explanatory statement

This amendment provides that the Bank of England must notify the Treasury Committee of the House of Commons and the Financial Services Regulation Committee in the House of Lords if the recapitalisation power is used.

Clause 2

LORD VAUX OF HARROWDEN

- 16 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

- 17 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 3

BARONESS VERE OF NORBITON

- 18★ Clause 3, page 2, line 36, at end insert “nor on financial institutions that the Bank of England has directed to maintain a Minimum Requirement for Own Funds and Eligible Liabilities (MREL) or issue eligible liabilities.”

Member's explanatory statement

This probing amendment seeks to clarify the rationale for the scope of financial institutions liable to pay the levy versus those that are likely to benefit from a recapitalisation payment.

BARONESS VERE OF NORBITON

19★ Clause 3, page 2, line 41, at end insert –

“(5C) The compensation scheme may not allow the scheme manager to impose levies on liable financial institutions in relation to recapitalisation payments under 214E in financial years following that in which the recapitalisation payments occurred without the consent of the Treasury.”

Member's explanatory statement

This probing amendment is designed to test the anticipated scale of the levy, and period of payment, in a reasonable worst case of the resolution of several financial institutions in a single financial year.

Clause 4

BARONESS NOAKES

20 Clause 4, page 3, line 15, at end insert –

“(2A) In section 4 (special resolution objectives), at the end of subsection (9) insert –

“(9A) Objective 8, which applies in any case in which the Bank of England uses the power in section 214E of the Financial Services and Markets Act (recapitalisation payments), is to ensure that the costs which are born through the Financial Services Compensation Scheme do not exceed those which would have been born if the bank insolvency procedure had been used.””

Member's explanatory statement

This amendment adds to the special resolution objectives so that the Bank of England has to consider the net costs recouped via the FSCS if it uses the recapitalisation power with the counterfactual of the use of the bank insolvency procedure.

BARONESS NOAKES

BARONESS VERE OF NORBITON

21 Clause 4, page 3, line 15, at end insert –

“(2A) In section 5 (code of practice), at the end of subsection (1) insert “and –

(iv) the bank recapitalisation power under section 214E of the Financial Services and Markets Act 2000.””

Member's explanatory statement

This amendment requires the Treasury to include the use of the recapitalisation power created in this Bill in the Code of Practice issued in respect of the special resolution regime.

BARONESS BOWLES OF BERKHAMSTED

- 22 Clause 4, page 3, line 16, leave out subsection (3)

BARONESS BOWLES OF BERKHAMSTED

- 23★ Clause 4, page 3, line 20, after “question” insert “and, for such a bank, the shortfall may only be reduced insofar as necessary to cover recapitalisation.”

Member's explanatory statement

This amendment seeks to ensure that the FSCS should only be used for recapitalisation not for bailing out shareholders.

LORD VAUX OF HARROWDEN

- 24★ Clause 4, page 3, line 39, at end insert –

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

“(5) Where the sale to a private sector purchaser followed a recapitalisation payment under section 214E of the Financial Services and Markets Act 2000, 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.

After Clause 4

BARONESS BOWLES OF BERKHAMSTED

- 25 After Clause 4, insert the following new Clause –

“Impact assessment: appropriateness of the minimum total asset value level for imposition of MREL on smaller banks

The Secretary of State must, within 12 months of the passing of this Act, publish an assessment of the impact of this Act on the appropriateness of the minimum total asset value level at which Minimum Requirement for Own Funds and Eligible Liabilities (MREL) is imposed on smaller banks.”

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