

Bank Resolution (Recapitalisation) Bill [HL]

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Clause 1

LORD LIVERMORE

1 Clause 1, page 1, line 18, leave out “another” and insert “a relevant”

Member's explanatory statement

See the explanatory statement for my second amendment to Clause 1.

BARONESS VERE OF NORBITON
BARONESS BOWLES OF BERKHAMSTED
LORD VAUX OF HARROWDEN
BARONESS NOAKES

2 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 an end-state Minimum Requirement for Own Funds and Eligible Liabilities (MREL) exceeding minimum capital requirements.”

Member's explanatory statement

This amendment seeks to prohibit the use of FSCS funds to recapitalise large financial institutions, defined as those which have reached end-state MREL.

LORD SIKKA

3 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 any part of executive remuneration 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 LIVERMORE

4 Clause 1, page 1, line 25, at end insert –

“(4A) In subsection (2)(b), “relevant person” means –

- (a) the Treasury,
- (b) a bridge bank, or
- (c) an asset management vehicle.

(4B) In this section, “bridge bank” and “asset management vehicle” have the meanings given by sections 12 and 12ZA, respectively, of the Banking Act 2009.”

Member's explanatory statement

This amendment, together with my first amendment to Clause 1, clarifies the persons (in addition to the Bank of England) in respect of whose expenses a recapitalisation payment may be made.

LORD VAUX OF HARROWDEN
 BARONESS BOWLES OF BERKHAMSTED
 BARONESS NOAKES
 BARONESS VERE OF NORBITON

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

“(6) When the Bank 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 specified 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 a further report 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 institution or 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

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

- “(6) When discharging its functions in respect of the exercise of recapitalisation payments under this section, the Bank of England must observe the competitiveness and growth objective.
- (7) The competitiveness and growth objective is facilitating, subject to aligning with relevant international standards –
 - (a) the international competitiveness of the economy of the United Kingdom (including in particular the financial services sector), and
 - (b) its growth in the medium to long term.”

BARONESS BOWLES OF BERKHAMSTED
BARONESS VERE OF NORBITON
BARONESS NOAKES

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

- “(6) As a secondary objective to the special resolution objectives in section 4 of the Banking Act 2009, when discharging its functions in respect of the exercise of recapitalisation payments under this section, the Bank of England must observe the competitiveness and growth objective.
- (7) The competitiveness and growth objective is facilitating, subject to aligning with relevant international standards –
 - (a) the international competitiveness of the economy of the United Kingdom, and

(b) its growth in the medium to long term.”

After Clause 1

LORD LIVERMORE

8 After Clause 1, insert the following new Clause –

“Reporting

In the Financial Services and Markets Act 2000, after section 214E (as inserted by section 1 of this Act) insert –

“214EA Recapitalisation payment: report

- 5
- (1) This section applies where the Bank of England requires the scheme manager to make a recapitalisation payment under section 214E.
- (2) The Bank must report to the Chancellor of the Exchequer about –
- 10 (a) the exercise of the power to require a recapitalisation payment to be made, and
- (b) the stabilisation power and the stabilisation option to which the payment relates.
- (3) The report (“the final report”) must –
- 15 (a) comply with such requirements as to content, and
- (b) be provided within such period or at such time, as the Treasury may specify.
- (4) The Bank must provide an interim report if –
- 20 (a) the period specified under subsection (3)(b) is a period of more than 3 months beginning with the day on which the Bank requires the recapitalisation payment in question (“the first 3 months”), or the time specified under subsection (3)(b) is after the first 3 months, and
- (b) the Bank does not provide the final report within the first 3 months.
- (5) An interim report must –
- 25 (a) comply with such requirements as to content as the Treasury may specify, and
- (b) be provided within the first 3 months.
- (6) Subject to subsection (7), the Chancellor of the Exchequer must lay each report, and any interim report, before Parliament.
- 30 (7) The Chancellor of the Exchequer may omit from the report, and any interim report, any information which the Chancellor of the Exchequer considers it would not be in the public interest to publish.”

Member's explanatory statement

This new Clause imposes a reporting requirement on the Bank of England when it requires a recapitalisation payment to be made.

LORD VAUX OF HARROWDEN
 BARONESS VERE OF NORBITON
 BARONESS NOAKES
 BARONESS BOWLES OF BERKHAMSTED

As an amendment to Amendment 8

9 After inserted subsection (5) insert—

“(5A) Unless already covered by the final report under subsection (3), the Bank must make a further report to the Chancellor of the Exchequer within three months of the date of the sale to a private sector purchaser of the financial institution to which the recapitalisation payment relates, or the sale, closure or winding up of the financial institution or bridge bank to which the recapitalisation payment relates, complying with such requirements as to content as the Treasury may specify.”

LORD LIVERMORE

10 After Clause 1, insert the following new Clause—

“Notification to Parliamentary Committees

In the Financial Services and Markets Act 2000, after section 214EA (as inserted by section (*Reporting*) of this Act) insert—

“214EB Notification to Parliamentary Committees

- 5
- (1) Where the Bank of England requires the scheme manager to make a recapitalisation payment under section 214E, the Bank must, as soon as reasonably practicable, notify in writing the chair of each relevant Parliamentary Committee that it has done so.
- 10
- (2) The relevant Parliamentary Committees are—
- (a) the Treasury Committee of the House of Commons, and
- (b) the Committee of the House of Lords which—
- 15
- (i) is charged with responsibility by that House for the purposes of this section, and
- (ii) has notified the Bank that it is a relevant Parliamentary Committee for those purposes.
- (3) The reference to the Treasury Committee of the House of Commons—
- (a) if the name of that committee is changed, is to be treated as a reference to that committee by its new name, and
- 20
- (b) if the functions of that committee (or substantially corresponding functions) become functions of a different committee, is to be treated as a reference to the committee by which those functions are exercisable.
- (4) Any question arising under subsection (3) is to be determined by the
- 25
- Speaker of the House of Commons.””

Member's explanatory statement

This new Clause requires the Bank of England to notify relevant Parliamentary Committees when it requires a recapitalisation payment to be made.

BARONESS NOAKES

As an amendment to Amendment 10

- 11★** In inserted subsection (2) leave out paragraph (b) and insert—
“(b) the Financial Services Regulation Committee of the House of Lords”

BARONESS NOAKES

As an amendment to Amendment 10

- 12★** In inserted subsection (3), leave out “The reference to the Treasury Committee of the House of Commons” and insert “A reference to a committee in subsection (2)”

BARONESS NOAKES

As an amendment to Amendment 10

- 13★** In inserted subsection (4), at end insert “, in relation to committees of the House of Commons, and
(b) the Chairman of Committees of the House of Lords, in relation to committees of the House of Lords.”

After Clause 2

LORD LIVERMORE

- 14** After Clause 2, insert the following new Clause—
“Code of practice
In the Banking Act 2009, in section 5 (code of practice), after subsection (2) insert—
“(2A) The code must include guidance on the contents of a report, and of any interim report, under section 214EA of that Act (recapitalisation payment: report).””

Member's explanatory statement

This new Clause require the Treasury to include, in a code of practice under section 5 of the Banking Act 2009, provision relating to the content of reports about recapitalisation payments.

LORD VAUX OF HARROWDEN
 BARONESS BOWLES OF BERKHAMSTED
 BARONESS NOAKES
 BARONESS VERE OF NORBITON

15 After Clause 2, insert the following new Clause –

“Treatment of recapitalisation payments on a winding up

(1) In section 215 of the Financial Services and Markets Act 2000 (rights of the scheme in insolvency), after subsection (2A), insert –

“(2AB) Any recapitalisation payment made by the scheme manager under section 214E in respect of a bank, building society or investment firm is to be treated, in the event of such bank, building society or investment firm or associated bridge bank being wound up, as a debt due to the scheme manager from that bank, building society or (as the case may be) investment firm.”

(2) In Schedule 6 of the Insolvency Act 1986 (categories of preferential debts), after paragraph 15AA, insert –

“15AB Any debt owed by the debtor to the scheme manager of the Financial Services Compensation Scheme under section 215(2AB) of the Financial Services and Markets Act 2000.””

Member's explanatory statement

This amendment creates a mechanism that would allow the FSCS to recover its money in preference to creditors who would otherwise have no right to be bailed out. This mirrors the existing treatment of stabilisation payments made by the FSCS in Clause 215 (2A) of FSMA 2000.

Clause 4

BARONESS NOAKES
 BARONESS BOWLES OF BERKHAMSTED
 LORD VAUX OF HARROWDEN
 BARONESS VERE OF NORBITON

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

“(2A) In section 4 (special resolution objectives), after 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 2000 (recapitalisation payments), is to ensure that the costs which are borne through the Financial Services Compensation Scheme are minimised.””

Member's explanatory statement

This amendment adds to the special resolution objectives so that the Bank of England has to consider minimising the net costs recouped from the banking sector via the FSCS.

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