

# Global Regulation Tomorrow

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## Enhancing the Special Resolution Regime – Government response to consultation



By Simon Lovegrove (UK) on July 19, 2024

On 19 July 2024, HM Treasury issued the Government's **response** to its earlier **consultation** on enhancing the special resolution regime.

In the consultation HM Treasury set out proposals for a new mechanism that would be introduced to facilitate the use of certain existing stabilisation powers to manage the failure of small banks, which would enable certain associated costs to be met by industry rather than the taxpayer. The consultation sought feedback on the proposed source of funds and scope of application.

The response notes that most respondents were supportive of the proposals with the main modification being that credit unions will not be required to contribute to the costs of recapitalisation should the new mechanism be used. Given the support for the proposals the Government has laid before Parliament the **Bank Resolution (Recapitalisation) Bill** together with **explanatory notes**.

The Bill implements the proposals by:

- Expanding the statutory functions of the Financial Services Compensation Scheme (**FSCS**), requiring it to provide funds to the Bank of England (**BoE**) upon request which could be used to meet certain costs arising from the use of the resolution regime to manage the failure of a bank, building

society or PRA-authorized investment firm.

- Allowing for the FSCS to use its levy-raising powers to recover any funds provided to the BoE after a failure event through imposing levies on the banking sector.
- Extending the BoE's ability, through explicit provision, to require the issuance of shares in connection with a resolution, to facilitate the BoE's use of the funds provided by the FSCS to meet a failing bank's recapitalisation costs.
- Making a number of minor and consequential amendments to legislation to support the measures outlined above and ensure FSCS funds can be used effectively in a resolution. Such minor and consequential amendments include:
  - Expressly scoping FSCS funds provided in resolution out of the definition of "extraordinary public financial support" in the Banking Act 2009.
  - Allowing the BoE to take into account the funds provided by the FSCS when they are calculating the contribution of shareholders and creditors when exercising the bail-in write-down tool.
  - Ensuring that FSCS funds provided in resolution are taken into account when HM Treasury makes Compensation Scheme Orders or Resolution Fund Orders after a resolution event and determining whether compensation or proceeds of sale are due to transferors.
  - Amending section 78A of the Banking Act 2009 (pre-conditions for financial assistance: duty of BoE to give information) by scoping use of FSCS funds provided in resolution out of the requirement on the BoE to inform HM Treasury where conditions for financial assistance are met.

Subject to consultation with the Banking Liaison Panel, the Special Resolution Regime Code of Practice will be updated to reflect the proposals when they have taken effect.

The PRA and FCA will also consult on any relevant updates to their rulebooks

resulting from the proposals.

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