HM Treasury

Introducing an Insurer Resolution Regime

Consultation

January 2023

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Chapter 1

Introduction

1.1 Following the government's previous commitment to do so, this consultation paper sets out the government's proposal to introduce a dedicated insurer resolution regime (IRR) in the UK. Throughout this document, the term 'insurance' is used to cover both insurance and reinsurance firms/liabilities unless otherwise specified.

The UK Insurance Sector and Current Regime

1.2 The UK insurance sector is the fourth largest in the world, contributing £29.1bn to the UK economy annually.[1] The sector provides a wide array of important services for households and businesses which facilitate the management and reduction of risk, investment and long-term savings and the provision of retirement income. In addition, insurers are significant employers and investors, with £2.7 trillion in assets, and they make a material contribution to UK financial services exports and to UK tax revenues.[2]

1.3 The UK insurance sector benefits from a robust regulatory framework. The Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) monitor and regulate the conduct and prudential requirements of insurers respectively. The government has, separately, now concluded its review of Solvency II – the prudential regulation regime for insurers.[3] These reforms will ensure that the UK's prudential regulatory regime for the insurance sector is better tailored to support the unique features of the UK sector and the UK regulatory approach. Under these reforms, the insurance sector will remain well-capitalised and resilient to shocks.

1.4 Nevertheless, insurers can experience unexpected financial difficulties and, in rare cases, fail, with potential negative impacts on policyholders (i.e. individuals and organisations that enter into insurance contracts with insurers) and the wider economy. The PRA's typical approach to dealing with an insurer in distress is to oversee the execution of the firm's recovery plan and, if necessary, remove the insurer's permission to write new business and to place it in run-off. This is consistent with the 'ladder of intervention' in the Solvency II framework, which remains unchanged following the conclusion of the government's review. The PRA has an objective to ensure high

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1 https://www.abi.org.uk/about-the-abi/about-us/

2 https://www.abi.org.uk/globalassets/files/publications/public/key-facts/abi_key_facts_2021.pdf and https://www.bankofengland.co.uk/statistics/insurance-aggregate-data-report

3 https://www.gov.uk/government/consultations/solvency-ii-review-consultation

standards of policyholder protection, but explicitly does not operate a zero-failure regime and has a responsibility to ensure the orderly exit of firms to support financial stability. It is therefore important that the UK authorities have the necessary tools to manage insurer failure in an orderly manner.

1.5 Currently, certain tools are available to manage insurer failure under the UK's insolvency arrangements, which for insurers are a modified version of the standard corporate insolvency arrangements and other restructuring provisions. In May 2021, HM Treasury published a consultation on proposed amendments to the arrangements for insurers in financial difficulties, which are currently being taken through Parliament in the Financial Services and Markets Bill 2022.[4] While these amendments will extend and clarify the powers available to UK authorities and the courts, they may be less effective in managing the failure of insurers in certain scenarios, including the failure of: (1) one of the largest firms, especially a rapid failure; (2) multiple insurers concurrently; and (3) insurers offering 'niche' business lines where replacement or substitute cover cannot easily be obtained.

1.6 While such scenarios are highly unlikely, insolvency processes may not always allow the UK authorities to act sufficiently quickly to stabilise an insurer, and to minimise risks to the wider financial sector and to public funds if these were to arise.

Introducing a Resolution Regime

1.7 The introduction of an IRR is a critical means of addressing these issues. Such a regime would provide powers to take prompt action to stabilise and manage an insurer that is failing or likely to fail, subject to appropriate safeguards. By providing the tools to stabilise and manage the failure of a large insurer in an orderly manner, the regime would facilitate the:

- Preservation of UK financial stability, including the provision of critical services;
- Protection of policyholders including continuity of cover;[5]
- Reduction of costs to industry in comparison to a lengthy insolvency process by avoiding the significant value destruction associated with insolvency;
- Maintenance of public confidence in the UK insurance sector by ensuring that even large, systemic insurer failures can be

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4 https://bills.parliament.uk/bills/3326

5 If the firm were allowed to enter insolvency, alternative cover may need to be found and policyholders may need to claim compensation from the FSCS or claim as a creditor in the firm's liquidation. Loss of insurance cover could impact the real economy by increasing frictional costs of business operations and by placing a greater cost burden on consumers of insurance products. Insolvency is disruptive to consumers, and even temporary interruptions in service can have important financial impacts.

managed in an orderly manner, thus making the UK a more attractive place to do business; and

- In the long-term, promotion of effective competition in the market, including mitigating risks to economic growth and public funds.

1.8 The introduction of an IRR will also ensure the UK remains at the forefront of international standards. The Financial Stability Board (FSB) sets out that the objective of an effective resolution regime is to manage the failure of financial institutions and their critical economic functions without causing severe disruption or relying on public funds while also respecting the hierarchy of claims in liquidation.[6]

1.9 The Key Attributes of Effective Resolution Regimes for Financial Institutions (the 'Key Attributes') set out the core elements that the FSB considers to be necessary for an effective resolution regime. These are important standards, and it is critical they are implemented to ensure the UK retains its reputation as a leading market for insurance services (and where relevant, associated IAIS standards). It would also fulfil the recommendation made by the IMF to introduce such a regime in its 2016 and 2021 assessment of the UK's financial system (known as the Financial Sector Assessment Program (FSAP)).[7]

1.10 Importantly, even with an IRR in place, the PRA will continue to work with firms to support the execution of an orderly recovery or exit of firms in distress, including the use of run-off where necessary. The IRR would provide vital additional tools for cases where recovery or run-off may not be appropriate to secure the UK's financial stability, the protection of policyholders and of public funds, and ultimately to support the UK's long-term economic growth.

The Proposed Regime

1.11 The government's overall priority when designing the regime is to preserve the stability of the UK's financial system, protect public funds, and ensure the UK remains a world leader in the design of its regulatory framework for insurers, contributing to the long-term growth of the UK economy. Consistent with the objectives in the Banking Act 2009 which introduced the Special Resolution Regime in relation to banking institutions, this approach is guided by several intertwining principles:

- Protecting the policyholders of the firm(s) in resolution;
- Protecting and enhancing the stability of the financial system of the UK;

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[6] https://www.fsb.org/wp-content/uploads/r_141015.pdf

[7] https://www.imf.org/en/Publications/CR/Issues/2022/02/22/United-Kingdom-Financial-Sector-Assessment-Program-Financial-System-Stability-Assessment-513442

- Protecting and enhancing public confidence in the stability of the financial system of the UK;
- Protecting public funds;
- Avoiding interference with property rights; and
- Ensuring consistency with international standards including FSB standards and guidance.

1.12 The government has considered the different capital structure and risk profile of insurers compared to other financial institutions in designing the policy approach to ensure the proposed IRR is tailored to the specificities of the insurance sector. As such, the government aims to develop a proportionate regime, while ensuring that it provides for appropriate powers which can be deployed if necessary.

1.13 The government has also considered relevant feedback received in response to the consultation on amendments to the insolvency arrangements for insurers when developing this proposal.

1.14 Chapter 2 of this document contains an overview of the government's proposal, with a more detailed description contained in Annex A.

Who Should Respond?

1.15 This consultation will be of particular interest to UK-authorised insurance firms, and insurance holding companies, as well as their counterparties and investors.

1.16 The government welcomes views from insurance firms, trade bodies, consultants, other parties in the insurance industry (including brokers) and the wider financial services and business sector, as well as consumer organisations and members of the public.

1.17 Details on how to respond to this consultation are set out in Chapter 3.

Chapter 2
Overview of the Proposed Regime

2.1 In line with the government's ongoing commitment to global standards in financial services, the proposed regime would aim to implement the key relevant international standards within the UK.[8]

2.2 Where these standards are agnostic as to the particular nature of the financial institution being resolved, the proposal has been influenced by the UK's resolution regimes for banks, building societies and central counterparties (CCPs).[9] There is benefit to industry and the relevant authorities in operating regimes that are consistent across institutions and products, and it is appropriate to make use of proven legal structures and mechanisms. However, the government has considered the different nature of insurance and banking, for example, as well as differences in the capital structure and risk profile of insurers, in designing the proposed regime to ensure the proposed IRR is tailored to the specificities of the insurance sector.

2.3 This chapter contains an overview of the government's proposal that is detailed in Annex A. To make it easier to review the proposals, they are separated into four sections: (1) the overarching framework; (2) stabilisation options and safeguards; (3) pre-resolution planning; and (4) ancillary matters. This chapter also includes a summary of the anticipated impacts of introducing the proposed regime.

Overarching Framework

2.4 The government proposes for the Bank of England to be the dedicated Resolution Authority under the IRR. While the Key Attributes envisage the possibility for multiple resolution authorities in one jurisdiction, this is prefaced on the need to have a lead authority to coordinate resolution action. The government considers that a single resolution authority will ensure a swifter, more agile resolution at the point the proposed IRR is triggered. The Bank of England, as the current resolution authority in the UK for banks, building societies and CCPs, has considerable experience in operating resolution frameworks, and has contributed significantly to the international standards the proposed IRR would implement. Henceforth in this chapter, the Bank of

[8] In particular, the FSB's Key Attributes and the International Association of Insurance Supervisors' ICP 12 (and associated ComFrame standards).

[9] Please refer to the Banking Act 2009 and the Financial Services and Markets Bill 2022.

England, when acting in its role as Resolution Authority, will be referred to as the 'RA'.

Scope

2.5 The Key Attributes state that 'any financial institution that could be systemically significant or critical if it fails should be subject to a resolution regime'. As such, the proposed regime would be able to be applied to all UK-authorised insurers, defined as undertakings that have a Part 4A FSMA permission to effect and/or carry out contracts of insurance as principal, subject to certain exclusions. While this proposed scope is broad, the government anticipates that the proposed statutory tests for resolution action (see below) would likely only be met in respect of a few insurers, with the majority instead being put into some other procedure at the point of failure.

2.6 The proposed regime would also apply to: mixed financial holding companies; insurance holding companies; mixed activity insurance holding companies; regulated entities within the corporate group of an insurer; other non-regulated entities within the corporate group of an insurer; and UK branches of foreign insurers.

2.7 However, smaller insurers that are not subject to recently announced Solvency II reforms and friendly societies would be excluded. Lloyd's of London would also be out of scope given its inclusion at this time would be disproportionate and as arrangements are in place that create some powers that are similar to what is envisaged under the proposed IRR which would help to manage the impact of a failure of some or all of Lloyd's.[10]

Resolution Objectives

2.8 The proposed regime would include resolution objectives that the RA and other relevant authorities must have regard to when taking or considering taking resolution action. These resolution objectives will not be ranked, since to do so could detrimentally limit the RA's flexibility to deploy the most appropriate tools in any specific circumstance.

2.9 The proposed resolution objectives are:

- **Objective 1** is to protect and enhance the stability of the financial system of the UK, including in particular by: (a) preventing contagion; and (b) protecting the ability of those who are or may become insurance policyholders to access critical functions, including the continuity of services on existing policies;

- **Objective 2** is to protect and enhance public confidence in the stability of the financial system of the UK;

[10] Please refer to the Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005.

- **Objective 3** is to protect public funds, including by minimising reliance on extraordinary public financial support;
- **Objective 4** is to protect policyholders of the firm in resolution, including those covered by an insurance guarantee scheme; and
- **Objective 5** is to avoid interfering with property rights in contravention of a Convention Right (within the meaning of the Human Rights Act 1998).

2.10 For the IRR, critical functions are those activities, services or operations of an insurer, the discontinuation of which would be likely to disrupt services that are essential to the UK economy or disrupt the financial stability of the UK. The extent to which a function is critical is also influenced by the ease with which a service or product can be replaced at a reasonable cost and within a reasonable time at the initiative of the third parties. It is the government's intention to define critical functions by reference to these factors.

2.11 HM Treasury would also be empowered to supplement this definition with the exact types of activities, services or operations that will be classed as 'critical functions'.

Resolution Conditions

2.12 The government proposes four Resolution Conditions (RCs) that would need to be met in order for an insurer to be placed into resolution; this would ensure that a high bar would need to be met to justify the exercise of resolution powers. The proposed RCs, which would be considered on a consecutive basis, are:

- **RC 1:** the PRA assesses that an insurer is failing or likely to fail (FOLTF);
- **RC 2:** the RA assesses that, having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the insurer that will result in RC 1 ceasing to be met;
- **RC 3:** the RA assesses that the exercise of the stabilisation powers is necessary having regard to the public interest in the advancement of one or more of the statutory resolution objectives; and
- **RC 4:** the RA assesses that one or more of the statutory resolution objectives would not be met to the same extent if stabilisation powers were not deployed.

2.13 Before determining whether RC 1 is met, the PRA would be obliged to consult with the RA. Before determining whether RCs 2 – 4 are met, the RA would be obliged to consult with the PRA, the FCA and HM Treasury.

2.14 The PRA's determination of RC 1 would require judgment, particularly in regard to the level of financial deterioration that a firm must reach to be considered 'FOLTF' (as defined in Annex A). The government considers that the PRA should be able to exercise its judgment when making this decision, and that it would be inappropriate to set out in legislation a specific intervention point. In any event, even if the PRA was satisfied that a firm was 'FOLTF', it would not be placed in resolution unless all the other conditions were also met.

2.15 More broadly, it is generally expected that a firm which is assessed to satisfy all the resolution conditions would have its permission to write new business limited or removed except where necessary to maintain an economically critical product which is not substitutable or offered by others. The code of practice that would be introduced as part of the proposed regime (see below) would set out guidance as to how and in what circumstances the authorities will use the proposed resolution tools following the assessment of the RCs. The government also anticipates that the Bank of England (i.e., in its capacity as RA and PRA) will set out its approach to insurance resolution, following the introduction of the proposed regime.

Stabilisation Options and Safeguards

2.16 In line with the Key Attributes, the proposed regime would introduce stabilisation options that could be deployed in respect of a failing insurer once the resolution conditions have been satisfied.

2.17 The RA would be empowered to apply one or more of the proposed stabilisation options (either concurrently or sequentially), depending on the nature of the insurer and wider circumstances. However, HM Treasury would need to approve any action taken by the RA that has implications for public funds. When using these powers, the RA would act within a set of safeguards (see below), in particular to promote outcomes that leave no creditor worse off than in insolvency.

Pre-Resolution Valuation

2.18 Before exercising any of the stabilisation options, the RA would be obliged to ensure that the assets and liabilities of the failing insurer are valued. The purpose of this valuation would be to ensure that any losses and costs which may arise during resolution are identified in advance of entry into resolution, and to inform the RA's decisions about: (1) whether the resolution conditions are met; (2) the stabilisation option(s) that should be deployed; and (3) how the stabilisation powers should be exercised, including decisions on how to assign losses.

2.19 The RA would be obliged to appoint an independent valuer to conduct this valuation, unless the RA determined that there was a need for urgency. In this scenario, the RA would be able to conduct a provisional valuation, followed by the appointment of an independent valuer to conduct a 'full' valuation.

Stabilisation Options

2.20 The proposed stabilisation options – further detailed in Annex A – are set out below. These are guided by ensuring the UK aligns with international standards and ensures the relevant authorities are equipped with the necessary tools to manage a failing insurer.

- **Transfer to a Private Sector Purchaser**

  The Key Attributes state that insurer resolution authorities should be able to undertake a portfolio transfer moving all or part of the insurance business to another insurer without the consent of each and every policyholder.

  The government proposes that the RA is able to transfer the shares or the business of a failing insurer to a willing third party/ private sector purchaser via a transfer of its securities or property (i.e. its assets and liabilities).[11] This transfer could be a full or a partial transfer, and would override any right of veto by third parties (i.e., other than the willing acquirer) including other authorities, the shareholders of the insurer to be transferred or of its parent, and policyholders and other creditors in the failing insurer. It would also take effect without involvement of the courts.

  The proposed IRR would empower HM Treasury to place certain restrictions around partial property transfers in resolution. This would include introducing relevant protections to ensure a partial property transfer does not cause implications for set off / netting provisions and associated opinions.[12]

- **Bridge Institution**

  The Key Attributes state that resolution authorities should be empowered to "establish a temporary bridge institution to take over and continue certain critical functions and viable operations of a failed firm".

  The government proposes that the RA is empowered to implement a transfer of a failing insurer's business or shares to a bridge institution (or bridge insurer) as a temporary measure. A

[11] The key difference between what the government intends for the IRR and the existing arrangements that allow insurers to transfer business (under Part VII of the Financial Services and Markets Act 2000) is control: under the proposed IRR, the RA would not require court approval and instead could arrange and execute a transfer under its own authority.

[12] Set off allows two or more debts, claims or obligations to be set off against each other. Netting allows amounts payable between contracting parties to be aggregated into a single claim, such that only one (net) claim exists at any point. Netting opinions are legal opinions confirming the enforceability of termination and close-out netting provisions in derivative contracts and are needed to allow counterparties to treat their financial exposures on a net (rather than a higher, gross) basis.

key benefit of the bridge institution in the context of the proposed IRR is to facilitate a transfer of business, 'buying time' for due diligence and valuation, which can be complex for insurers while critical functions continue to take place. However, to reflect the 'temporary' nature of a bridge insurer, the lifespan of the bridge insurer would be restricted.

Where a failing insurer's business is transferred to a bridge (which is directly carrying out insurance policies), the bridge itself would require the relevant Part 4A FSMA permissions, and be subject to supervision from the PRA and the FCA.

- **Bail-In**

  The Key Attributes state that resolution authorities should be empowered to bail-in firms – that is to reduce or convert (into equity or other ownership instruments of the firm in resolution) all or parts of unsecured creditor claims in a manner that respects the hierarchy of claims in liquidation. The aim of a bail-in is that losses should be allocated to a firm's shareholders and subordinated debt holders before liabilities to other creditors are written down.

  The government proposes that the RA is able to 'bail-in' a failing insurer by restructuring, modifying, limiting, or writing down its liabilities, including its policyholder liabilities. The intent is also to, at the same time, allocate losses to shareholders and subordinated debt holders and to provide recompense to certain affected creditors via an interest in the equity of the firm. Where FSCS-protected policyholders are written down, it is the government's intent that the FSCS will also provide "top-up payments" up to the same limits that would apply in an insolvency, subject to the usual eligibility criteria.

  Rather than recapitalising to the extent necessary to allow new business, it is more likely that the RA would use the bail-in stabilisation option to restore a level of capital coverage sufficiently in excess of liabilities to enable the firm to continue a safe run-off. Given this, and the different risk profile and funding structure of insurers compared with other financial institutions, the government has determined that the introduction of an additional MREL[13]-like requirement of liabilities/equity is not appropriate in the proposed IRR.

- **Temporary Public Ownership**

[13] For banking institutions, MREL is the minimum amount of equity and subordinated debt a firm must maintain to support an effective resolution. This is separate from the capital requirements set by the PRA.

The Key Attributes permit jurisdictions to place a failing entity into temporary public ownership "as a last resort and for the overarching purpose of maintaining financial stability" as part of resolution regimes.

Within the proposed IRR, the government intends to make provision to place a failing insurer into temporary public ownership. Importantly, this would be considered a tool of last resort in the extreme and highly unlikely event that the other stabilisation options are not sufficient.

Where possible after this stabilisation option has been exercised, the intention – as with the UK's resolution regime for banking institutions – will be to return the business of the insurer to the private sector as soon as commercial and financial circumstances allow, in a manner that maintains financial stability and protects policyholders and the taxpayer while acting in a way that promotes competition.[14]

2.21 In addition to the four stabilisation options, the proposed regime would also include the following tools which could be deployed in combination with the stabilisation options:

- **Balance Sheet Management Vehicle**

  The Key Attributes state that resolution authorities should have a power to establish asset management vehicles for the management and run-down of non-performing or difficult-to-value assets. Within the proposed IRR, the government intends this to be available to hold both assets and liabilities, and is referred to as a 'balance sheet management vehicle' (BSMV).

  The purpose of the BSMV would be to act as a warehouse for relevant assets, liabilities, property or rights from the failed insurer with a view to maximising their value through either an eventual sale or orderly wind down.

- **Insurer Administration Procedure**

  The government considers that the introduction of an 'insurer administration procedure', equivalent to the provisions of Part 3 of the Banking Act 2009, would provide the RA with valuable flexibility to exercise the proposed private sector purchaser and bridge insurer stabilisation options outlined above to manage a failing insurer, while ensuring that the firm's critical functions can continue to operate effectively.

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[14] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945165/SRR_CoP_December_2020.pdf

This would include introducing a new objective for an appointed administrator to provide support to the bridge insurer or private sector purchaser by ensuring it is supplied with such services and facilities as the RA considers it requires to operate effectively that would take precedence over the "normal" administration objectives. Importantly, this could only be exercised in relation to a firm in resolution.

No Creditor Worse Off Safeguard

2.22 The Key Attributes state that "creditors should have a right to compensation where they do not receive at a minimum what they would have received in a liquidation of the firm under the applicable insolvency regime". This is known as the no creditor worse off (NCWO) safeguard. In the design of all elements of the proposed IRR, the government has given due regard to promoting outcomes where no party is worse off than in insolvency.

2.23 To further effect this, the government proposes that, following the exercise of one or more of the above stabilisation options, HM Treasury would be obliged to make an order that would provide the mechanism by which the level (if any) of NCWO compensation needed could be calculated and paid.

2.24 The proposed regime would allow HM Treasury to appoint an independent valuer to determine the level of NCWO compensation required.

Pre-Resolution Planning

2.25 To satisfy the Key Attributes, jurisdictions' resolution frameworks must provide for: (1) the RA carrying out regular 'Resolvability Assessments', which would determine and address barriers to resolution; and (2) ongoing Recovery and Resolution Planning (RRP) for, at a minimum, systemically important insurers. Such planning is crucial to ensure that resolution action, where necessary, can be taken at pace to prevent severe systemic disruption and risks to public funds.

2.26 In the UK, the PRA already supervises insurance firms, including working with insurance firms to develop recovery and resolution plans, and it has also been involved in resolvability assessments. Although the PRA does not carry out every item of work anticipated by the Key Attributes, it does (or is planning to do) much of what is needed. Therefore, the government's intent is to implement the full requirements of the Key Attributes on pre-resolution planning, while ensuring the regime recognises work the PRA and industry is already beginning to undertake following the conclusion of the Solvency II review, to avoid undermining the PRA's and industry's ongoing exit planning work or duplicating work unnecessarily.

2.27 In practice, the government anticipates that a key element of the RA's judgment of whether to carry out pre-resolution planning would be the extent to which a firm would be likely to satisfy the proposed

RCs (in particular RC 3 (the public interest test) in the event that RCs 1 and 2 were also met). Indicative work from the PRA and RA suggests that only a limited number of firms would be within scope of the proposed pre-resolution planning requirements detailed below.

Resolvability Assessments

2.28 The Key Attributes expect the RA to conduct Resolvability Assessments that evaluate the feasibility and effectiveness of various resolution strategies. The aim of these assessments is to understand features of the firms that may constitute barriers to the use of the proposed stabilisation options. It is the government's intent to establish a requirement for the RA to undertake regular Resolvability Assessments.

2.29 It is expected that much of the content for the RA's Resolvability Assessments will be obtainable from existing or planned PRA work, and there would be a principle of maximum information sharing between the RA and the PRA to avoid duplicate information requests.

2.30 A key element of the Resolvability Assessment will be that the RA is empowered to direct a firm to take action to remedy barriers to resolvability, and take enforcement action if the firm does not comply. It is the government's intent that these powers are included in the proposed IRR.

RRPs – Resolution Plans

2.31 Given the government assesses that the recovery element of RRPs already exists under the UK framework through the PRA's current or proposed future exit planning, the proposed IRR will only need to introduce RA-led Resolution Plans to fulfil the requirements of the Key Attributes.

2.32 The purpose of the Resolution Plan would be to facilitate the effective use of resolution powers. It would set out the proposed resolution strategy for a firm and an operational plan for its implementation. The RA would be obliged to update the Resolution Plan annually, or more frequently when material changes take place to the firm's structure, strategy or business activity, or there is a substantive change in economic conditions.

2.33 It is the government's expectation that firms may need to carry out some additional work to support the creation of Resolution Plans, because they would relate to the use of new powers that the PRA does not possess (and therefore does not factor into its work).

Ancillary Matters

Ancillary Provisions

2.34 The Key Attributes provide that entry into resolution and the exercise of resolution powers should not constitute a termination event under contracts provided that the substantive obligations under the relevant contracts continue to be performed. As such, the government intends to introduce provisions to prevent the exercise of resolution powers triggering a default or early termination. This would be structured in line with the precedent established in section 48Z of the Banking Act 2009.

2.35 Additionally, the Key Attributes state that resolution regimes for insurers should include a restriction on policyholder surrender rights. As such, the government intends to introduce a proportionate restriction on policyholder surrender rights when a failing insurer enters resolution. Unlike termination rights, surrender rights are not reliant on a 'termination event' occurring. Therefore, it will be necessary for this restriction to be time-limited, and it must balance the need to ensure the effectiveness of the RA's resolution approach with the need for a proportionate restriction on policyholders exercising surrender rights.

2.36 Separately, it is the government's intent that if a stabilisation option has been used on a firm, or it meets the resolution conditions, it would not be possible to initiate insolvency proceedings against the firm except with the consent of the RA.

RA Ancillary Powers

2.37 To fulfil the requirements of the Key Attributes, the RA would require several discretionary ancillary powers that could be exercised alongside a stabilisation option(s). The PRA already has some of these powers, and the RA will only possess these ancillary powers when a firm has been placed in resolution. The proposed RA ancillary powers include powers to:

- Take action in relation to directors and senior managers, including to remove and/or replace a director or senior manager of a specified insurer in resolution;
- Appoint a resolution administrator(s);
- Appoint skilled person(s) or investigator(s);
- Prohibit or restrict the payment of dividends or other distributions to shareholders;
- Prohibit the payment of variable remuneration to, and allow the recovery of monies from, Members of the Board, Senior Management, Key Persons in Control Functions, and major risk-taking staff, including claw-back of variable remuneration and discretionary pension benefits;
- Prohibit the transfer or pledging of the insurer's assets without RA approval;
- Subject to appropriate safeguards, introduce a temporary (up to two-day) suspension of: (a) payments to unsecured creditors in any contract where one of the parties is the insurer in resolution;

(b) creditors' action to attach assets or otherwise collect money or property; and (c) termination of contracts;

- Apply to the court for a stay of legal proceedings once the RA has exercised one or more stabilisation option(s);
- Terminate, continue, modify, restructure, transfer, assign and/or create contracts, including derivatives, securities, financing transactions and insurance contracts, subject to appropriate safeguards; and
- Initiate the liquidation of the whole or part of the insurer.

HM Treasury Ancillary Powers

2.38 HM Treasury would be empowered under the proposal to introduce provisions about the fiscal consequences of the RA exercising one or more of the stabilisation options, and to amend UK law to ensure the stabilisation options and broader resolution powers can be used effectively in a specific resolution.

2.39 HM Treasury would also be able to make provision modifying the application of company law to insurers in resolution.

Cross Border Considerations

2.40 The government proposes that the IRR makes provision for: (1) a framework for the RA to recognise (or not) resolution actions taken by other jurisdictions' resolution authorities; and (2) to ensure the proposed stabilisation options under the proposed IRR work as intended for a resolution of UK branches of foreign-headed insurers (in line with the regime's proposed scope set out above).

2.41 More broadly, the RA's ability to exercise the proposed stabilisation options would be restricted where HM Treasury has notified the RA that its exercise would contravene one or more of the UK's international obligations.

Further Ancillary Matters

2.42 The proposed regime would oblige HM Treasury to publish (and lay before Parliament) a code of practice about the use of the stabilisation options. HM Treasury, the RA, the FCA and the PRA would be required to have regard to the detail of the code when undertaking their respective functions under the proposed regime.

2.43 The proposed regime would also include a requirement for HM Treasury to establish an advisory panel to provide guidance on the effect of the resolution regime on: (1) insurers; (2) persons with whom insurers do business; and (3) the financial markets.

Anticipated Impacts of Introducing the Proposed IRR

2.44 The proposed IRR is expected to deliver various benefits at the macroeconomic and microeconomic levels. It is expected to promote UK financial stability and reduce risks to public funds in an instance of significant insurer failure. The proposed regime would also implement international standards into domestic legislation, ensuring the UK has a world-class regime and remains at the forefront of international standards. Finally, introduction of the proposed IRR will help to ensure the UK public retains confidence in the UK insurance sector, supporting prospects for continued sector growth. The proposed IRR will also protect the ability of policyholders to access critical functions, including the continuity of services on existing policies.

2.45 The government has also considered possible impacts on the industry arising from this proposal. It has sought to develop a proportionate regime that reflects the specific nature of the UK insurance sector. However, as set out above, it is the government's expectation that firms may need to carry out some additional work to support the creation of Resolution Plans. The government will also continue to consider carefully potential impacts on firms' debt issuance costs, financial and supply contract pricing, and outwards reinsurance pricing (ceding risk to a counterparty). Further, the government is aware of both the legal and opportunity costs required to familiarise relevant individuals with the proposed regime. Finally, the government intends to consider the costs associated with ensuring that the FSCS can protect eligible policyholders in the event of insurer failure, including any implications for public funds or the levy. Respondents are welcome to feedback observations on these issues.

Chapter 3
How to Respond

3.1 The consultation will close on 20 April 2023. We would welcome your views on the proposals set out above and detailed in Annex A, or any issue relevant to the UK's approach to insurer resolution.

How to Submit Responses

3.2 Please submit your responses to: insurerresolutionconsultation@hmtreasury.gov.uk or post to: Resolution Policy Unit, HM Treasury, 1 Horse Guards Road, SW1A 2HQ.

3.3 More information on how HM Treasury will use your personal data for the purpose of this consultation is available in Annex B.

Box 3.A Consultation Questions from Annex A

1. To what extent do you support the government's intent to implement the relevant international standards in the proposed regime?

2. To what extent do you support the introduction of a single Resolution Authority under the proposed regime?

3. Do you agree with the proposed scope of the regime?

4. Do you agree with the proposed approach for entry into resolution (i.e. the resolution conditions), including that this is not set at a fixed level of Solvency Capital Requirement/ Minimum Capital Requirement breach?

5. Do you agree it is not appropriate for the bail-in stabilisation option to include the introduction of MREL or bail-in bonds for insurers?

6. Do you support the proposed role of the FSCS in protecting certain policyholders under the bail-in stabilisation option?

7. Do you have views on how a firm's existing shareholders and subordinated creditors should be treated under the bail-in stabilisation option?

8. Do you agree with the proposed scope of the NCWO safeguard and compensation, including the approach to calculating the counterfactual?

9. Considering the requirements of the Key Attributes, do you agree with the proposed approach to pre-resolution planning?
10. Considering the requirement of the Key Attributes, do you have views on how a restriction of policyholder surrender rights in resolution should be structured (including for example, the appropriate length of this restriction)?
11. To what extent will the proposed ancillary powers support an effective resolution?
12. What lead-in time would be appropriate for industry to prepare for the proposed regime? Are there any elements of the proposed regime that would not require a lead-in time?
13. Do you agree with the potential impacts of introducing an IRR identified in chapter 2? How would the proposed regime impact insurance firms' costs?
14. Do you have any other comments on this proposal, or the government's approach to insurer resolution?

Annex A
The Proposed Regime

A.1 This annex provides a more detailed description of the proposed regime as set out in chapter 2 which aims to implement the key relevant international standards. In line with the approach in that chapter, to make it easier to review the proposals, these are separated into four sections: (1) the overarching framework; (2) stabilisation options and safeguards; (3) pre-resolution planning; and (4) ancillary matters.

Consultation Question 1: To what extent do you support the government's intent to implement the relevant international standards in the proposed regime?

Overarching Framework

A.2 The Key Attributes require the designation of one or more resolution authorities responsible for exercising resolution powers over firms. The government intends the Bank of England to be the dedicated Resolution Authority under the proposed IRR.

A.3 The alternative to appointing a single Resolution Authority would be for several different entities to act as parties to a resolution. Arguably, this would be more similar to the current arrangements for managing an insurer in financial distress where different parties with different interests and obligations/ objectives are involved in different processes. While this approach may provide familiarity, the government considers there to be risk that such an approach will not be effective in the extreme scenarios where it is envisaged resolution tools may be needed. Having a single designated Resolution Authority with a single set of resolution objectives and conditions will facilitate swift and accountable decision-making.

A.4 As such, the government considers the best approach to be for the appointment of a single Resolution Authority in the proposed regime, with the Bank of England best placed to act as the UK's Resolution Authority for insurers. The Bank of England has contributed significantly to the international standards the proposed IRR would implement. Additionally, there is an existing precedent in the banking and CCP resolution regimes that the Bank of England should act as sole Resolution Authority meaning it already has a strong understanding of undertaking this role. By contrast, distributing powers across many agencies and bodies could create practical challenges as well as additional and disproportionate legislative complexities.

A.5 The government recognises, however, that it is important in taking on this role that the Bank of England coordinates closely with other authorities, both to benefit from their expert input but also to avoid duplicating processes that work well under current arrangements. Further sections of this consultation seek to reflect that principle, for instance in determining when resolution conditions are met and arrangements for pre-resolution planning.

Consultation Question 2: To what extent do you support the introduction of a single Resolution Authority under the proposed regime?

A.6 Henceforth in this chapter, the Bank of England, when acting in its role as Resolution Authority will be referred to as the 'RA'.

Regime Scope

A.7 The Key Attributes state that 'any financial institution that could be systemically significant or critical if it fails should be subject to a resolution regime'. While larger institutions may traditionally be expected to pose greater systemic risk, this may not always be the case for insurers, for instance an insurer's failure may have systemic consequences if they provide insurance products with no readily available substitutes, or where there are multiple concurrent insurer failures. As such, the government intends that the scope of the proposed regime should be drawn broadly, so these risks can be effectively addressed as they arise. This means that the proposed IRR would apply to all UK-authorised insurers, defined as undertakings that have a Part 4A FSMA permission to effect and/or carry out contracts of insurance as principal, subject to certain exclusions. The proposed regime would also apply to: mixed financial holding companies; insurance holding companies; mixed activity insurance holding companies; regulated entities within the corporate group of an insurer; other non-regulated entities within the corporate group of an insurer; and UK branches of foreign insurers.

A.8 However, this broad legal scope of the proposed regime would be subject to the expectation that in practice, several important elements of the regime, such as pre-resolution planning, will be limited to a smaller group of institutions (further detail below). In addition, the government anticipates that the majority of insurers would be unlikely to meet the statutory tests for resolution action (see below) and would instead be put into some other procedure at the point of failure. However, a broader legal scope will ensure that resolution tools are available whenever there is a risk to financial stability thereby ensuring the RA has the necessary flexibility to address risks as they arise.

A.9 The association of underwriters known as Lloyd's of London (and the various entities governing and participating in that market) (Lloyd's) would be excluded from the scope of the IRR. It is the government's view that including Lloyd's of London at this time would be disproportionate. The business offered by Lloyd's syndicates is in most cases substitutable and does not fulfil a critical function; this is true for the Society as well. It is therefore appropriate for the market to fill any gap, even in an extreme outcome in which the entire Society is imperilled. Furthermore, Lloyd's has existing provisions, including some of the same powers envisaged in the proposed IRR, that allow for centralised loss absorption and restructuring of liabilities across the market.[15] In addition, the size of individual members and syndicates makes it unlikely that their failure would satisfy the public interest test for entry into resolution (more below); given that the unique corporate structure of the Society of Lloyd's would require a Lloyd's-specific IRR, this is considered disproportionate.

A.10 (Re)insurers that are not subject to recently announced Solvency II reforms are also proposed to be excluded, since they are small scale and less interconnected with other firms and the wider financial system. As a result, they are extremely unlikely to meet the public interest test for entry into resolution.[16] Explicitly excluding these firms from the scope of the IRR would also provide clarity, and reduce the regulatory burden placed on these firms.

A.11 Friendly societies would not be within scope of the regime. This is because friendly societies are unlikely to meet the proposed statutory tests for resolution. Further, excluding friendly societies from scope would avoid complicating the proposed regime in order to cater for their different corporate structures and governance bodies. In a similar way to the Society of Lloyd's, it would be disproportionate to design a bespoke resolution regime for a sector of insurance that would not meet the public interest test required to justify resolution. The PRA also already possesses additional powers in respect of friendly societies.[17]

Consultation Question 3: Do you agree with the proposed scope of the regime?

Resolution Objectives

A.12 The government proposes to specify resolution objectives that the RA and other relevant authorities must have regard to when taking or considering resolution action. These resolution objectives will not be ranked, since to do so could detrimentally limit the RA's flexibility to deploy the most appropriate tools in any specific resolution. There is

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[15] Please refer to the Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005 (SI 2005/1998) and the Lloyd's Market Reorganisation Order.

[16] Under the UK's recent Solvency II reforms, Solvency II/UK rules will not be applied to firms with gross premium income below £15 million and gross technical provisions of less than £50 million. Firms below this threshold will still be able to opt into Solvency II/UK should they choose to.

[17] Please refer to the Friendly Societies Act 1992.

also no requirement in the Key Attributes for ranking these objectives. Rather, the objectives will be balanced by the RA considering the specific circumstances of an individual resolution.

A.13 The proposed resolution objectives are:

- **Objective 1** is to protect and enhance the stability of the financial system of the UK, including in particular by: (a) preventing contagion; and (b) protecting the ability of those who are or may become insurance policyholders to access critical functions, including the continuity of services on existing policies;
- **Objective 2** is to protect and enhance public confidence in the stability of the financial system of the UK;
- **Objective 3** is to protect public funds, including by minimising reliance on extraordinary public financial support;
- **Objective 4** is to protect policyholders of the firm in resolution, including those covered by an insurance guarantee scheme; and
- **Objective 5** is to avoid interfering with property rights in contravention of a Convention Right (within the meaning of the Human Rights Act 1998).

A.14 In comparison to other financial institutions, international standards defining 'critical functions' for insurers are less developed. As such, it is the government's intent to define critical functions by reference to the activities, services or operations of an insurer which: (1) are provided by an insurer to unrelated third parties; (2) the discontinuation of which would be likely to disrupt services that are essential to the UK economy or disrupt the financial stability of the UK; and (3) could not be replaced at a reasonable cost and within a reasonable time at the initiative of the third parties.[18] This will be supplemented by a delegated power for HM Treasury to provide further detail as to the exact types of activities, services or operations that will be classed as 'critical functions'. This approach will enable the regime to remain up-to-date as international standards develop.

Resolution Conditions

A.15 The government proposes four Resolution Conditions (RCs) that would need to be satisfied in order for an insurer to be placed into resolution; this would ensure that a high bar would need to be met to justify the exercise of resolution powers.

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[18] Please refer to IAIS Application Paper on Resolution Powers and Planning (23 June 2021): https://www.iaisweb.org/uploads/2022/01/210623-Application-Paper-on-Resolution-Powers-and-Planning.pdf

A.16 The proposed RCs, which would be considered on a consecutive basis, are:

- **RC 1:** the PRA assesses that an insurer is failing or likely to fail (FOLTF), defined as:
  a) It is failing, or is likely to fail, to satisfy the Threshold Conditions[19] in circumstances where that failure would justify the variation or cancellation by the PRA under section 55J of the Financial Services and Markets Act 2000 of the insurer's permission to effect new contracts of insurance as principal;
  b) The value of the assets of the insurer is determined to be less than the value of its liabilities (including contingent liabilities);[20]
  c) It is unable to pay its debts or other liabilities as they fall due;
  d) Paragraph (b) or (c) (or both) will, in the near future, apply to the insurer; and/or
  e) Extraordinary public financial support is required in respect of the insurer (with relevant carve outs).
- **RC 2:** the RA assesses that, having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the insurer that will result in RC 1 ceasing to be met;
- **RC 3:** the RA assesses that the exercise of the stabilisation powers is necessary having regard to the public interest in the advancement of one or more of the statutory resolution objectives; and
- **RC 4:** the RA assesses that one or more of the statutory resolution objectives would not be met to the same extent if stabilisation powers were not deployed.

A.17 Before determining whether RC 1 is met, the PRA would be obliged to consult with the RA. Before determining whether RCs 2 – 4 are met, the RA would be obliged to consult with the PRA, the FCA and HM Treasury.

A.18 Since insurance liabilities are based on expected cashflows that can extend a long way into the future (and then may be continuous for decades), the assessment of the RCs – in particular RC 1 – will require a degree of judgment. However, this is an existing dynamic in the financial reports, credit ratings and prudential regulation of insurers. An insurer's balance sheet (both IFRS and Solvency II) and regulatory

[19] As defined in section 55B of the Financial Services and Markets Act 2000.

[20] Here, the PRA would not have sufficient confidence that the insurer could maintain a solvent run off (pay all valid claims in full as they fall due) for the maturity of its book.

capital assessments already incorporate judgments about what will happen far into the future (especially for life insurers) and contains assumptions built into the present value of future claims and cash flows. As such there is arguably no inconsistency with the proposed IRR basing its RCs on a similar approach, nor is there any way to avoid reliance on judgment. The government has considered, but concluded it would not be appropriate, for FOLTF to be defined by reference to a specific point on the Solvency II Ladder of Intervention. Imposing a 'hard' intervention point in legislation could be seen as arbitrary, and the government considers it may be preferable to ensure: (i) consistency with the UK's existing resolution frameworks; and (ii) that the RA has flexibility to act depending on the individual circumstances of a failing firm, including non-financial circumstances leading to a breach of threshold conditions.

A.19 As a feature of insurance, the concept of 'run-off' will be particularly relevant when determining whether the RCs are met. Insurers sometimes close to new business (i.e., give up their permission to enter new insurance contracts) and enter what is referred to as 'run-off'. This is not, on its own, a failure, nor does run-off necessarily lead to or entail insolvency. The PRA currently supervises a number of firms in run-off with balance sheets of varying health which it nonetheless considers to be safe. These are generally solvent (although there are some exceptions where the PRA has judged that winding up the firm would be, on balance, an unacceptable policyholder outcome) in that they possess assets in excess of what is required to cover their Solvency II Technical Provisions (which include the best estimate liabilities and a risk margin). What varies is the extent to which these firms can meet their capital requirements, which apply on top of the Technical Provisions.

A.20 The government anticipates that, when carrying out the RC assessments, the PRA and RA would consider the extent to which a firm would need to meet capital requirements in order to be in a 'safe run-off'. In short, the government considers that if a firm could afford to run off safely, the proposed RCs could not be met. The exact amount of capital needed to fund safe run-off will differ by firm and circumstance and will not be set out on the face of legislation.

A.21 If a firm could afford a safe run-off, it would be very unlikely RC 1 would be met, because in a safe run-off, a firm can pay its obligations as they fall due (and would meet some or all of its capital requirements). If somehow RC 1 was judged to be met while a firm could yet afford safe run-off, the firm might be able to improve capital coverage within a reasonable period and therefore RC 2 would fail to be met. If somehow RCs 1 and 2 were met, RC 3 would also be unlikely to be met if a firm could afford safe run-off: it would be hard to argue it is in the public interest to take resolution action for a firm that can afford to pay claims as they fall due (i.e. meet technical provisions, including the best estimate liabilities and risk margin) and can meet a significant share of its capital requirements. Finally, if RCs 1-3 are met, the RC 4 assessment would determine if solutions other than resolution would be viable. If a safe run-off is viable as an alternative to resolution, it is unlikely that RC 4 would be met either.

A.22 Taken together, the proposed RCs would ensure that the proposed stabilisation options under the proposed IRR would only be exercised in a scenario, where all other options (including normal PRA and firm action to recover to place a firm in safe run-off) have been ruled out, and where it is in the public interest to do so.

A.23 As set out below, the government intends to publish a code of practice as part of the proposed regime, and anticipates that the Bank of England (in its capacity as RA and PRA) will set out its approach to resolution; these documents would provide additional information on how and in what circumstances the authorities would use the proposed resolution tools.

Consultation Question 4: Do you agree with the proposed approach for entry into resolution (i.e. the resolution conditions), including that this is not set at a fixed level of Solvency Capital Requirement/ Minimum Capital Requirement breach?

Stabilisation Options and Safeguards

A.24 In line with the Key Attributes, the proposed regime would introduce four stabilisation options that could be deployed in respect of a failing insurer once all the resolution conditions have been satisfied. These are: (1) transfer to private sector purchaser; (2) transfer to a bridge institution; (3) bail-in; and (4) as a last resort, temporary public ownership. In addition to these stabilisation options, the proposed regime would also include provisions enabling providing for a balance sheet management vehicle (BSMV) to be established and for the insurer or its business to be transferred to that vehicle, as well as a new 'insurer administration procedure' which would supplement the existing regime for insurers and could be deployed in combination with the stabilisation options. All of these tools are explored further below.

A.25 The RA would be empowered to apply one or a combination of the proposed stabilisation options (either concurrently or applied sequentially) when resolving an insurer, including being empowered to apply different powers to different parts of the insurer's business, and to different entities within the insurer's group. However, HM Treasury would need to approve any action taken by the RA that has implications for public funds.

A.26 Further to the section above regarding the scope of the regime, the legislation implementing the proposed IRR would include provisions to make amendments as necessary to ensure the stabilisation options and other tools could be effectively applied in line with the proposed scope of the regime.

Pre-Resolution Valuation

A.27 Before exercising any of the stabilisation options, the RA would be obliged to ensure that the assets and liabilities of the failing insurer are valued. The purpose of this valuation would be to ensure that any losses and costs which may arise during resolution are identified in advance of entry into resolution, and to inform the RA's decisions about: (1) whether the resolution conditions are met; (2) the stabilisation option(s) that should be deployed; and (3) how the stabilisation should be exercised, including decisions on how to assign losses.

A.28 The RA would be obliged to appoint an independent valuer to conduct this valuation, unless the RA determined that there was a need for urgency based on the specifics of the individual case. In this scenario, the RA would be able to conduct a provisional valuation. A provisional valuation would need to incorporate sufficient prudence to cater for the possibility of additional losses by the insurer. Following a provisional valuation, the RA would still be required to appoint an independent valuer to conduct a 'full' valuation, and would be able to make supplemental provisions to its resolution approach if these valuations differed.

A.29 The pre-resolution valuation would be accompanied by an obligation to produce relevant products, for example a balance sheet of the insurer at the date of valuation and a report on the forward-looking financial position of the insurer (e.g. a business plan with projected balance sheets). In the case of a provisional valuation, the RA would be obliged to comply with the obligation as far as it is reasonable to do so.

Transfer to Private Sector Purchaser

A.30 The Key Attributes state that insurance resolution authorities should be able to undertake a portfolio transfer moving all or part of the insurance business to another insurer without the consent of each and every policyholder.

A.31 The government proposes that the RA is able to transfer – without requiring court approval – the shares or the business of a failing insurer to a willing third party/ private sector purchaser via a transfer of its securities or business (i.e. its assets and liabilities).[21] Share transfers are also included in this power, but have been distinguished (more

[21] This would not require court approval (as with Part VII Transfers) and so there would be certainty the transfer would go ahead. Therefore, this power would need to be dovetailed with existing legislation, for example section 105 of the FSMA may need to be amended to acknowledge that any business transfer of an insurer by resolution instrument fell within the definition of an "excluded scheme" (section 105(3) FSMA) and that therefore no court order under section 111(1) FSMA would be required to transfer the business.

below) from the transfer of assets and liabilities, because share transfers can already occur through other mechanisms without the approval of a relevant authority (i.e. through secondary market activity in the case of listed issuers or private sale agreement in the case of subsidiary entities); in resolution, transfer of shares may require compelling unwilling shareholders to sell. This transfer could be a full or a partial transfer, and would override any right of veto or approval by third parties including other authorities, the shareholders of the insurer to be transferred or of its parent, policyholders[22] and other creditors in the failing insurer. The RA would be able to disapply clauses in insurance contracts (for example to allow a policyholder's prior medical history to be disregarded when transferring or re-issuing medical cover) if necessary to facilitate a transfer.

A.32 A transfer to a private sector purchaser may be the preferable stabilisation power in circumstances where a viable willing buyer is identified, and the transfer meets the objectives of the IRR. The proposed IRR would not introduce any legislative restrictions on who the private sector purchaser can be. However, all the standard regulatory provisions/ safeguards on who can own an insurer (including the change in control approval process) would continue to apply throughout the exercise of this stabilisation option.

A.33 As part of pre-resolution planning, the RA would take steps to identify a potential buyer in advance of resolution. As part of its close and continuous supervision before and throughout resolution, the PRA would also be active in working with a firm to recover from a position of financial distress (including engaging with the firm regarding a sale outside of resolution if possible). At the point of resolution (i.e. once the proposed resolution conditions have been met), the RA would test the market swiftly to form a 'live' view of the viability of these existing plans, and would have a responsibility for an appropriate level of marketing.

A.34 Once a willing purchaser has been found, the RA would action a transfer by making a transfer (either business and/or share) instrument. This instrument would: (1) provide for securities issued and/or the business (in part or in full) of a specified insurer to be transferred to a third party; and (2) make any other provision required for the purpose of, or in connection with, the transfer of securities issued and/or the business (in part or in full) of a specified insurer (where the transfer has been or is to be effected by that instrument, by another instrument, or otherwise). The transfer of reinsurance[23] would be an important part of making 'any other provision required' for the operation of the business, which the RA would consider. The purpose of transferring reinsurance

[22] Including in the case of with profits business, the with-profits members who notionally 'own' the fund.

[23] Reinsurance – often thought of as insurance for insurers - is the process by which insurers transfer portions of their risks to a reinsurer (for an agreed consideration). The aim of this process is for the insurer to reduce the insurer's gross exposure in the event of insurance claims against it.

along with the business would be to avoid a sudden increase in the size of the liabilities being transferred or a cost to reinstate cover.

A.35 Once a transfer instrument is made, its effect would be to provide that a transferee may be treated as if they were the original transferor. The intent of this is to ensure continuity of obligations to the transferred insurer, including for example to maintain outwards reinsurance and/or operational continuity. In practice, this means a transfer instrument may:

- provide for agreements made or other things done by or in relation to a transferor to be treated as made or done by or in relation to the transferee;
- provide for anything (including legal proceedings) that relates to securities, property, rights, or liabilities transferred and is in the process of being done by or in relation to the transferor immediately before the transfer date, to be continued by or in relation to the transferee;
- modify references (express or implied) in an instrument or document to a transferor; and
- require or permit a transferor to provide a transferee with information and assistance (and vice versa).

A.36 In the event that resolution action is taken on, or otherwise affects, a listed issuer, it is the government's intent that a share transfer instrument may provide for these securities to be converted, or the listing of these securities to be discontinued or suspended. Where the listing has been suspended, the securities would be treated as still being listed for the purposes of section 96 of, and paragraph 23(6) of Schedule 1ZA to, the Financial Services and Markets Act 2000. This would mean the insurer would remain subject to the FCA's Listing Rules, including obligations in relation to transparency and disclosure. Importantly, this provision would not prevent the FCA from suspending a listing of its own accord before or during resolution.

A.37 It is the government's intent that, after making an initial transfer instrument, the RA will be able to make supplemental, onward and reverse transfer instruments, in line with the procedures set out in this section. Before making a supplemental, onward or reverse transfer instrument, the RA would be required to consult with the PRA, FCA and HMT (in all cases, not just where there are risks to public funds where HM Treasury consent would be needed).

A.38 While the government considers that partial property transfers will be a useful approach to resolution under the proposed IRR, it is still possible that issues could arise in certain circumstances, for example if the assets and liabilities of a failing insurer were not transferred in a balanced manner. As such, the proposed IRR would empower HM

Treasury to place certain restrictions around partial property transfers in resolution. This would include introducing relevant protections for set off/ netting provisions and associated opinions.[24] However, it would ensure HM Treasury is able to introduce restrictions that are tailored to the insurance sector. In addition, the NCWO safeguard (more below) would apply to any (partial) transfer of insurance business, such that the RA would only contemplate splitting up a book of business where doing so would not leave creditors worse off.

Bridge Institution

A.39 The Key Attributes state that resolution authorities should be empowered to “establish a temporary bridge institution to take over and continue certain critical functions and viable operations of a failed firm”.

A.40 The government proposes that the RA is empowered to implement a transfer of a failing insurer’s business or shares to a bridge institution (or bridge insurer) as a temporary measure. One intended use for the bridge insurer is that it could continue to operate the functions of the insurer in resolution (including for example carrying out insurance policies) in its entirety. Another is that the bridge could house a portion of the business of the firm in resolution that is commercially viable (and can meet the capital requirements for a ‘safe run-off’), while a buyer is found or to provide time to carry out valuations in support of a purchase.

A.41 A transfer of a failing insurer’s business or shares to a bridge insurer would operate in a similar way as a transfer to a private sector purchaser and would provide a temporary vehicle to transfer policyholder liabilities and assets out from a failing insurer as a temporary measure.

A.42 Similarly to the transfer stabilisation option discussed above, the RA would be able to undertake the transfer of a failing insurer’s securities or business by making a transfer instrument(s) (and so this option would be subject to the procedural requirements set out in the above section). This transfer would override any right of veto by third parties including other authorities and the shareholders of the transferring insurer or its group, and would be subject to the procedures/ requirements set out in the above section alongside the further information provided below. It would also be subject to any restrictions on partial property transfer set by HM Treasury as discussed above.

A.43 The RA would wholly or partially own and control the bridge institution. The RA would be empowered to select the management

24 This power would parallel the provisions of sections 47 and 48 of the Banking Act 2009, and the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 (SI 2009/ 322) made under those provisions.

and board of the bridge, and amend this as needed while the bridge is in operation. The government does not propose to introduce any new restrictions in legislation on the individuals who can undertake these management functions. However, existing restrictions including the Senior Insurance Managers Regime would continue to apply. Relatedly, PRA rules on the management functions would continue to apply.[25] Ongoing management costs would be paid out of the bridge insurer itself.

A.44 The RA would also have the power to establish the terms and conditions under which the bridge has the capacity to operate, and amend this while the bridge is in operation. This would include how the bridge obtains regulatory capital, operational financing, and other capital and liquidity support. However, where a failing insurer's business is transferred to a bridge (and so it is directly carrying out insurance policies), it would require the relevant Part 4A FSMA permissions, and so be subject to supervision from the PRA and the FCA. This approach would aid a subsequent onward sale of the bridge (or its business).

A.45 In line with the requirements of Key Attribute 3.4, the RA would be able to modify regulatory capital requirements (including any and all aspects of Solvency II) or any other regulatory requirements that apply to the operations of the bridge. However, as it is intended for the bridge insurer to have the relevant Part 4A FSMA permissions, it is also considered very likely that the RA would still subject the bridge institution to Solvency II.

A.46 To reflect the 'temporary' nature of a bridge insurer and the long-term nature of some insurance business, the proposed maximum base lifespan of the bridge insurer would be 5 years, beginning on the date in which the initial transfer instrument was made. The lifespan of the bridge insurer could be extended by the RA in increments of 2.5 years (i.e. half the original period). The RA would be able to extend the lifespan of the bridge provided it was satisfied that an extension: (a) would support an eventual transfer; or (b) is necessary to ensure continuity of cover. However, the RA would, without delay, be required to wind down the bridge once all or substantially all of the bridge insurer's assets, property, rights and liabilities have been run-off or transferred to a third party; or there is no prospect of a willing buyer being found. However, this requirement would not apply if the bridge: (1) merged with another entity; (2) was no longer owned and controlled by the Bank; or (3) had already been wound up.

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[25] For example, rule 2.3(1) of the Insurance - Senior Management Functions Part of the PRA Rulebook requires firms to have at least a CEO, CFO and Chair.

Bail-in

A.47 The Key Attributes state that RAs should be empowered to bail-in firms – that is to reduce or convert (into equity or other ownership instruments of the firm in resolution) all or parts of unsecured creditor claims in a manner that respects the hierarchy of claims in liquidation. Shareholders – more specifically their equity stake in the firm – absorbs losses automatically as the firm's financial position deteriorates. The bail-in power proposed in the IRR would result in the creation of new shares, diluting existing shareholders' ownership and allocating losses to shareholders relative to the extent creditors are affected.

A.48 The government proposes that the RA is able to stabilize or 'bail in' a failing insurer by restructuring, modifying, limiting, or writing down its unsecured liabilities, including its policyholder liabilities. Writing down unsecured liabilities reduces their value and thus has the effect of creating new net assets in the firm. The intent is also to, at the same time, allocate losses to shareholders and subordinated debt holders and to compensate certain affected creditors via an interest in the equity of the firm. This would be actioned through the RA making one or more resolution instrument(s), which would have the effect of creating new shares, issued in respect of the written-down creditors, diluting the original shareholders in favour of these creditors. The precise scope of liabilities within the bail-in power will be subject to certain exceptions, with the banking regime and insurer insolvency arrangements measures guiding the government's considerations here. The two elements to the bail-in stabilisation option – the write-down and the issuance of new shares – are explored below.

The Write Down

A.49 Under this stabilisation option, the RA's write-down of liabilities would broadly follow the established creditor hierarchy. In insolvency, the creditor hierarchy determines the order in which creditors receive payments when a firm's assets are distributed in liquidation. 'Insurance policyholders' (which does not include reinsurance policyholders) sit above other unsecured creditors, but below secured creditors and preferential creditors (which, for instance, includes employees' wage arrears).[26] By following the creditor hierarchy when applying the write down, creditors ranking lower than insurance policyholders in an insolvency would have their claims fully written down or converted before policyholders are affected (subject to certain exclusions[27]). In practice, this means that the use of the bail-in power will involve a

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[26] An insurance policyholder is one who has taken out a contract of insurance with an insurer and who may or may not be FSCS protected (e.g. a small business). Reinsurance policies are insurance contracts between insurance firms and are not protected by the FSCS. The creditor hierarchy for insurers is set out in the Insurers (Reorganisation and Winding Up) Regulations 2004 (SI 2004/353).

[27] The government intends for these exclusions to be based on section 48B (7A) – (10) of the Banking Act 2009.

percentage write-down of all in-scope liabilities, with higher ranking creditors (e.g. insurance policyholders) only being impacted after all relevant lower ranking creditor classes have been fully affected. The government considers this is the most effective way to increase net assets and recapitalise the insurer (while allocating losses to shareholders), which is the objective of a bail-in. By stabilising the firm through bail-in, continuity of cover is preserved (with protected policy value topped up by FSCS coverage) – as opposed to an insolvency counterfactual in which insurance policyholders may have to obtain replacement cover.

A.50 Under the UK's special resolution regime for banks and certain other firms, certain firms are required to hold Minimum Requirement for Own Funds and Eligible Liabilities (MREL) to ensure that there are sufficient resources to write down or convert into equity if the bank or other financial institution enters resolution. MREL is not proposed as part of the IRR and accordingly other unsecured creditors (including policyholders) may be bailed-in instead. The IRR does not aim to recapitalise a firm so that it can continue to write new business. Rather, the bail-in stabilisation option's most likely use in the IRR would be to allow the failed insurer to return to a level of capital coverage sufficiently in excess of liabilities to enable it to continue a safe run-off of all the business or in combination with the other stabilisation tools. Given this, and the different risk profile and funding structure of insurers compared with other financial institutions, the government considers that an MREL-like requirement for liabilities/equity, and other approaches such as the creation of a resolution 'pre-fund' through regular contributions (or levies) collected from the insurance sector (additional to existing FSCS levies) are not appropriate in the proposed IRR.

Consultation Question 5: Do you agree it is not appropriate for the bail-in stabilisation option to include the introduction of MREL or bail-in bonds for insurers?

A.51 The government is aware that writing down policyholder liabilities in the event of a bail-in may be contentious, given the potential for disruption to policyholders' benefits, to the extent that they are not covered by the FSCS. However, it should be noted that the significant share of liabilities held by insurance firms are to its policyholders, and a bail-in needs to be considered against the status quo under insolvency (in which policyholders may need to obtain replacement policy coverage, and only protected policyholders benefit from FSCS compensation). This approach also aligns with the Key Attributes, which stipulate that relevant jurisdictions should have statutory or other policies in place so that authorities are not constrained to rely on public ownership or bail-out funds as a means of resolving failed firms and envisage policyholders as a potential source of funding in resolution.[28]

A.52 In the event that a write-down of policyholder liabilities is required, the bail-in will apply *pari passu* to all insurance policyholders - without making any distinction between levels of FSCS protection. This is because all insurance policyholders, both FSCS-protected and unprotected, rank equally in the creditor hierarchy. In practice, this means both FSCS-protected and unprotected policyholders will be expected to have the value of their policies written down by a fixed percentage stipulated by the RA after more junior creditors have been exhausted. New shares would then be created in respect of the equity created by the write-down. These shares would then be a source of funding for the recompense paid to written-down policyholders, while at the same time diluting existing shares and thus allocating losses to shareholders.

A.53 Where protected policyholders are written down, it is the government's intent that the FSCS will provide "top-up payments" to the firm as an off-balance sheet item.[29] The firm will then administer and distribute these payments to FSCS-protected policyholders (both 90% and 100% protected). These payments will cover the gap between written down amounts payable to FSCS-protected policyholders (applying the usual eligibility criteria) and their pre-write-down FSCS-protected benefits. Two indicative examples of a percentage write-down and retained policy cover under the bail-in stabilisation option are set out below.

Table A.1 Indicative Examples of Retained Policy Cover following a Bail-in

Write Down (%)	Retained Policy Cover (%)		
	FSCS-Protected Policyholders (100% Cover)	FSCS-Protected Policyholders (90% Cover)	Unprotected Policyholders
5	100 (funded: 95 from insurer and 5 from FSCS "top-up")	95 (funded: 95 from insurer)	95
15	100 (funded: 85 from insurer and 15 from FSCS "top-up")	90 (funded: 85 from insurer and 5 from FSCS "top-up")	85

28 Please refer to Key Attribute 6.1 and paragraph 1.1 of II-Annex 2 to the Key Attributes.

29 This approach bears similarities to the amendments to the arrangements for insurers in financial difficulties discussed in the introduction to this document.

Note: the above table describes funding sources from the insurer's perspective. In all cases, it is proposed actual payment to the policyholder is made by the insurer (drawing on these funding sources).

Consultation Question 6: Do you support the proposed role of the FSCS in protecting certain policyholders under the bail-in stabilisation option?

New Share Issuance

A.54 As set out above, the bail-in stabilisation option would also involve the creation of new shares in respect of the net assets created by the write-down. These shares – which might be issued in relation to the insurance entity or its holding company, depending on the situation – would be a means to fund the recompense paid to written-down creditors, while at the same time diluting the original shareholders and thus allocating losses to them. There are a number of procedural issues that would arise from issuing share capital to written-down creditors – for example, whether share capital is a good substitute for policy proceeds. Therefore, the government intends that a mechanism is in place to ensure that payments can be made in cash – provided adequate distributions are made in relation to the equity or there are proceeds of share disposals – to: (a) the FSCS, in relation to top-up payments it provides, and unprotected policyholders; and (b) other affected creditors (who would rank behind insurance policyholders in line with the creditor hierarchy) – in the event of a bail-in. The intention is for this mechanism to be legislated for as part of the regime. This mechanism will be unique to the exercise of the bail-in stabilisation option in the context of writing down insurance liabilities, and is distinct from the compensation framework resulting as a result of the no creditor worse off (NCWO) safeguard discussed below (which would still be required).

A.55 Given the long term and forward-looking nature of insurance business and supervision, and the aim to ensure that a firm has sufficient capital to support a safe run-off, it is possible that the PRA could judge RC 1 (failing or likely to fail) to be met while an insurer still had residual book value. In this scenario, intervention by the RA before a firm's net assets reach zero may be appropriate because it will reduce the total size of a percentage write-down necessary to stabilise the firm, ultimately improving outcomes for policyholders and other creditors. Such an intervention might also be justified by the uncertainty involved in placing a best estimate value on long-dated liabilities, and the need for risk capital following resolution. However, the possibility of this scenario – and in particular the possibility that shareholders will own non-trivial residual value – requires a decision on how to treat existing shareholders vis-à-vis other creditor liabilities under this stabilisation option, while also ensuring compliance with the Key Attributes.

A.56 A key requirement of the Key Attributes is that shareholders should absorb losses before creditors. The book value of a firm absorbs losses automatically as a firm's financial position deteriorates, and shareholders will absorb losses up front via their ownership of the book value. The issuance of new shares in proportion to the creation of new net assets via write-down will also cause shareholders to absorb losses. There is an important issue over the extent to which, following write-down, existing shareholders should absorb further losses, and the nature of any such loss. The government is cognisant of the risks of interfering with property rights by displacing existing shareholders, particularly when there might be an amount of residual equity value left in a firm judged likely to fail (and thus shareholders own property with residual value). This issue can be avoided if the RA only uses the bail-in power once the failing firm's equity value is largely exhausted, though use of bail-in at the point of a failure has drawbacks, most notably necessitating a larger write-down of policyholders (all being equal). Further, intervention only after the residual equity value has been depleted would, by definition, fail to preserve value for shareholders; whereas stabilising a failed firm which nonetheless still possesses book value might serve to protect some of that value in a way that would not be possible in the insolvency counterfactual, or in a counterfactual in which the RA only acts when the book value is exhausted.

A.57 The pre-resolution valuation set out above would play a role in ensuring the equitable treatment of shareholders. This process would calculate the amount of capital needed to support 'safe' run-off, and in so doing, the required size of the write-down, and provide the relevant counterfactual to judge against the value of shareholders' existing equity. Therefore, it may be that this leads to the conclusion that shareholders should be fully displaced even where equity exists at the moment of resolution. As explored in more detail below, there will still be mechanisms to provide compensation in a case where any party is worse off than in an insolvency.

A.58 However, there is an open question as to whether these would be relevant scenarios, and on what bases. The government therefore invites feedback from respondents on whether the circumstances set out above would be expected to arise in practice, and if so, what the material impact on a firm and its shareholders might be. In particular, the government is interested in respondents' views on what the appropriate counterfactual might be to an intervention scenario where a bail-in is sanctioned whilst the firm retains residual equity value.

Consultation Question 7: Do you have views on how a firm's existing shareholders should be treated under the bail-in stabilisation option?

<u>Other Matters</u>

A.59 Set-off and netting arrangements are of particular importance for insurers. These arrangements are agreements in financial (derivative) contracts which allow parties to calculate their liabilities on a net basis (rather than a gross basis) when the other party becomes insolvent or otherwise enters financial difficulties. The exercise of the bail-in stabilisation option will be subject to protections for these types of arrangements in line with the protections in section 48P of the Banking Act 2009.

A.60 Pay-as-paid clauses stipulate that a reinsurer must only pay out the amount the original insurer (cedant) actually pays to underlying policyholders, which will be written down following a bail-in. Under this stabilisation option "pay-as-paid" clauses would be overridden. Overriding "pay-as-paid" clauses in reinsurance contracts between an insurer under write-down and its reinsurers will ensure that reinsurers remain liable for the pre-written down amount due, even if a bail-in has reduced the value of the liability owed by the cedant insurer to the underlying policyholder. This will prevent the value of outwards reinsurance contracts held by an insurer entering resolution from decreasing and providing undue financial benefits to a reinsurer once a firm has been bailed in.

Temporary Public Ownership

A.61 The Key Attributes permit jurisdictions to place a failing entity into temporary public ownership "as a last resort and for the overarching purpose of maintaining financial stability" as part of resolution regimes.

A.62 Within the proposed IRR, the government intends to make provision to enable a failing insurer to be placed into temporary public ownership. Unlike a transfer to a private sector purchaser which would be exercised by the RA, only HM Treasury would be able to place a failing insurer into temporary public ownership. This would be exercised by HM Treasury making one or more share transfer order(s), with the transferee either a nominee of HM Treasury, or a company wholly owned by HM Treasury.

A.63 Importantly, this would be considered a tool of last resort in the extreme and highly unlikely event that the other stabilisation options are not sufficient. To reflect this severity, HM Treasury would only be able to place a failing insurer into temporary public ownership if one of the following conditions – in addition to the general resolution conditions above – is met: (1) the exercise of the power is necessary to resolve or reduce a serious threat to the stability of the financial system of the United Kingdom; or (2) the exercise of the power is necessary to protect the public interest. HM Treasury would be obliged to consult the RA, PRA and FCA before making this determination.

A.64 Where possible after this stabilisation option has been exercised, the intention shall be to return the business of the insurer to the private sector as soon as commercial and financial circumstances allow, in a manner that maintains financial stability and protects policyholders and the taxpayer while acting in a way that promotes competition.

A.65 A share transfer order would be subject to similar procedural requirements as a transfer instrument made by the RA (as described above) with appropriate amendments.

Balance Sheet Management Vehicle

A.66 The Key Attributes state that resolution authorities should have a power to establish asset management vehicles for the management and run-down of non-performing or difficult-to-value assets.

A.67 Within the proposed IRR, the government intends for this to be referred to as a 'balance sheet management vehicle' (BSMV). While the asset management vehicle power in the banking regime is not limited to holding assets solely, assets are a key focus.[30] In contrast, it is more likely the proposed BSMV will more frequently hold impaired assets and liabilities (given the different structure of an insurer's balance sheet compared with banks).

A.68 The purpose of the BSMV would be to act as a warehouse for any assets, liabilities, property or rights from the failed insurer with a view to maximising their value through either an eventual sale or orderly wind down. Transferring the assets, liabilities, property or rights of the failed insurer in this way could reduce the risk profile of the remaining business and boost its attractiveness to potential buyers. In this sense, the BSMV provides the RA with greater flexibility to conduct a resolution, and the BSMV tool could be more appropriate than bailing-in the assets, liabilities, property or rights from the failed insurer, or placing the failing entity into liquidation (thereby crystallising the position).

A.69 The BSMV would be an undertaking that: (a) is wholly or partially owned (directly or indirectly) by the failing insurer, the RA or HM Treasury; (b) is controlled by the RA; and (c) is created for the purpose of receiving some or all of the assets, liabilities, property and rights of: (i) the failing insurer; (ii) a bridge institution which has received assets/liabilities from a failing insurer; or (iii) both the failing insurer and bridge institution. The RA would also be able to transfer the business of one BSMV into another, for example to split an insurer's business further. The RA would be empowered to transfer the assets, liabilities,

[30] Subsection (2)(c) of section 12ZA of the Banking Act 2009 envisages that liabilities could be transferred as well, following a supplemental property transfer.

property and/or rights of a failing insurer via one or more business transfer instrument(s).

A.70 The BSMV (as a result of holding insurance contracts, and thereby requiring a permission to carry out such contracts) would need to be an authorised entity and be subject to supervision by the PRA and the FCA. As such, the BSMV would be subject to Solvency II. However, in line with the bridge institution, the RA would also have the power to modify the prudential and other regulatory requirements that apply to the operations of the BSMV. One potential use of the BSMV would be to house a 'bad book' of business, in contrast to the bridge insurer, which would likely be more useful for housing a 'good book'.

A.71 The RA would only be able to exercise the BSMV stabilisation tool provided that two conditions were met:

- That the power is exercised in connection with the exercise of one or more of the stabilisation options in respect of the failing insurer; and
- That the RA is satisfied that:
  - the situation of the market for the assets, liabilities, property or rights which it is proposed to transfer by the exercise of the power is of such a nature that the liquidation of those assets, liabilities, property or rights under normal insolvency proceedings could have an adverse effect on one or more financial markets;
  - the transfer is necessary to ensure the proper functioning of the insurer or bridge institution from which the transfer is to be made; or
  - the transfer is necessary to maximise the proceeds available for distribution.

A.72 Before determining whether these two conditions are met, and if so how to react, the RA would have to consult with the PRA, FCA and HM Treasury. This consultation would be in addition to the consultation concerning the resolution conditions.

Insurer Administration Procedure

A.73 The Banking Act 2009 introduced a modified administration regime for banks that can only be commenced by a court order following an application from the Bank of England. Importantly, this regime could only be used in conjunction with the stabilisation tools introduced under that Act, and once certain other conditions are met.

A.74 The bank administration procedure is designed to apply to an insolvent residual company to ensure that any essential services and facilities that cannot be immediately transferred to a bridge bank or private sector purchaser continue to be provided for a period of time. To enact this, an administrator appointed under this procedure has an additional objective, to "provide support to the bridge bank or private sector purchaser by ensuring it is supplied with such services and facilities as the Bank of England considers it requires to operate effectively", which takes precedence over the "normal" administration objectives.[31]

A.75 The transfer of insurance business – largely through transfers under Part VII of the Financial Services and Markets Act 2000 – is an important part of the landscape of the UK insurance sector. As such, the government considers that the introduction of an equivalent to the Bank Administration Procedure (BAP) would provide the RA with valuable flexibility to exercise the proposed private sector purchaser and bridge insurer stabilisation options outlined above to manage a failing insurer while ensuring that critical functions can continue to operate effectively.

A.76 With appropriate amendments, the government considers that provisions akin to Part 3 of the Banking Act 2009 are appropriate to introduce an 'insurer administration procedure' – akin to the BAP. The UK's insolvency arrangements for insurers are already a modified version of the standard corporate insolvency arrangements (i.e. the insolvency laws and procedures which apply to most companies), augmented in some places with bespoke provisions.[32] As such, the government does not see the need for a further amended Insurer Insolvency Procedure (akin to the Banking Insolvency Procedure (BIP)). "Normal" administration for an insurer under the proposed procedure would remain in line with the modified version of the standard corporate insolvency arrangements.

No Creditor Worse Off Safeguard

A.77 The use of the proposed stabilisation options may interfere with the interests of creditors and shareholders. By imposing losses in the order they would fall in an insolvency, and treating creditors equally within a class, generally creditors are expected to be no worse off than under insolvency in resolution. However, in line with the Key Attributes, respect for the creditor hierarchy will not always be absolute. As such, the Key Attributes state that "creditors should have a right to compensation where they do not receive at a minimum what they would have received in a liquidation of the firm under the applicable insolvency regime". This is known as the no creditor worse off (NCWO) safeguard.

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[31] See section 140 of the Banking Act 2009. These objectives consist of either rescuing the residual bank as a going concern or achieving a better result for its creditors as a whole than would likely be the case for a liquidation without first being in bank administration.

[32] For example, please see section 360 of the Financial Services and Markets Act 2000 and the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2010 (SI 2010/3023).

A.78 To give effect to this, the government proposes that, following the exercise of one of more or the above stabilisation options, HM Treasury would be obliged to make an order that would provide the mechanism by which the level (if any) of NCWO compensation needed could be calculated and paid. This order could take the form of one or more of the following, depending on the stabilisation option deployed:

- A compensation scheme order – an order that: (a) establishes a scheme for determining whether transferors should be paid compensation, or providing for transferors to be paid compensation; and (b) establishes the scheme for paying such sums;
- A bail-in compensation order – an order that establishes a scheme for determining whether any transferors or others should be paid compensation;
- A resolution fund order – an order that establishes a scheme under which transferors become entitled to the proceeds of the disposal of things transferred: (1) in specified circumstances; and (2) to a specified extent;
- A third-party compensation order – an order that makes provision about compensation to be paid to persons other than transferors.

A.79 When making one or more of these orders, the proposed regime would allow HM Treasury to appoint an independent valuer to determine the level (if any) of NCWO compensation required. The role of an independent valuer will be critical in this context given significant actuarial analysis will be needed to construct the insolvency counterfactual due to the contingent and uncertain nature of insurers' liabilities.

A.80 HM Treasury (if it chose to do so) would also be able to specify principles to be applied in determining the level of NCWO compensation required, if any. This would enable HM Treasury to ensure relevant information which may affect the level of NCWO compensation required to be considered within this process. For example, this could be used to ensure information such as the insurer's intentions prior to entering resolution to be factored in. These valuation principles may, in particular, require or permit an independent valuer:

- To apply, or not to apply, specified methods of valuation;
- To assess values or average values at specified dates or over specified periods;
- To take specified matters into account in a specified manner;
- Not to take specified matters into account; and

- Make assumptions, such as, for example, that the insurer: (i) has had its Part 4A FSMA permission to effect and/or carry out contracts of insurance varied or cancelled; (ii) is unable to continue as a going concern; (iii) is required to hold regulatory capital at a specified level; (iv) is in administration; or (v) is being wound up.

A.81 Importantly, under the proposed regime there would be no maximum or minimum level of NCWO compensation. There would also be nothing to prevent an independent valuer determining that no NCWO compensation is required. Where it has been determined that NCWO compensation is required, this would be paid by HM Treasury or any other person specified in the order.

Consultation Question 8: Do you agree with the proposed scope of the NCWO safeguard and compensation, including the approach to calculating the counterfactual?

Pre-Resolution Planning

A.82 To satisfy the Key Attributes, jurisdictions' resolution frameworks must provide for: (1) the RA to carry out regular 'Resolvability Assessments', which would determine and address barriers to resolution; and (2) ongoing Recovery and Resolution Planning (RRP) for, at a minimum, systemically important insurers. While the Key Attributes state that the RA should own Resolvability Assessments, they do not specify how jurisdictions should assign responsibilities for RRP between the supervisory authority and the RA.

A.83 In the UK, the PRA already supervises firms, including working with insurance firms to develop recovery and resolution plans, and it has been involved in resolvability assessments. The PRA is specifically responsible for reviewing, assessing and providing challenge to firms' recovery plans as part of the supervisory process. The PRA can also review a firm's plans to exit the market, and has tools and legal powers for managing a firm's exit from the market. However, given the PRA does not possess every power envisaged in an IRR, its existing and planned work cannot by itself fully satisfy the requirements of the Key Attributes.

A.84 Nevertheless, as some of the work required by the Key Attributes already exists to a considerable extent, it is important to distinguish between the work the PRA currently undertakes to plan for and manage firms' exits from the market, and the newly constituted pre-resolution planning requirements for firms' resolution which will be directed by the RA, and to understand the intersections and differences between the two. This document distinguishes them by referring to the PRA's current activity as recovery and exit planning, and the RA's activity as Resolution Planning.

A.85 Therefore, the government's intent is to implement the full requirements for pre-resolution planning in the proposed IRR, while recognising within the regime the PRA's ongoing recovery and exit planning work. The proposed IRR would introduce: (1) RA-led Resolvability Assessments which would aim to understand, and address, features of the firms that may constitute barriers to the use of the proposed stabilisation options; and (2) RA-led Resolution Plans which would set out the RA's preferred resolution strategy for a firm and an operational plan for its implementation. Each of these is addressed in more detail below.

A.86 In all aspects of pre-resolution planning, the PRA and RA will share information with the aim of minimising duplication of effort and the resource burden on firms. This is also consistent with the government's Solvency II reforms, including to reduce reporting and administrative burdens.[33] However, the Bank of England as RA will still require information gathering powers to enable it to direct firms to take a range of actions (if appropriate) and to preserve the operational independence of the RA and PRA as required by section 30C of the Bank of England Act 1998.[34]

Resolvability Assessments

A.87 As noted above, under the Key Attributes the RA is expected to conduct Resolvability Assessments that evaluate the feasibility and effectiveness of various resolution strategies. The aim of these assessments is to understand features of the firms that may constitute barriers to the use of the proposed stabilisation options. These may include features of the corporate structure, contractual features (e.g. reinsurance and intra-group arrangements), outsourcing, operational processes, and IT systems. In carrying out a Resolvability Assessment on a firm, the RA will have in mind its preferred Resolution Plan (explored in more detail below). However, the Assessment will be broader than merely Resolution Plans, and will consider a wide range of features that impact resolvability and the ability to apply any stabilisation option. It is the government's intent to establish a requirement for the RA to undertake regular Resolvability Assessments. The RA will focus its efforts on a restricted population of larger and more complex firms, particularly those deemed systemically important (see more below).

A.88 The PRA also carries out work similar to Resolvability Assessments as an integral part of its recovery and exit planning, and in a recent speech[35], PRA senior staff have shared plans to expand this work to a wider population of insurers. These are distinct from the

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[33] https://www.gov.uk/government/consultations/solvency-ii-review-consultation

[34] The government will ensure the definition of the Bank of England's "resolution functions" and "stabilisation powers" in the Bank of England Act 1998 will include its functions as RA under the proposed IRR.

[35] Prudentist - speech by Sam Woods | Bank of England

proposed RA's Resolvability Assessments, which will be a formal requirement introduced by the proposed IRR and which will apply to a smaller number of firms (see section on scope below). Given its remit, the focus of the RA's work on Resolvability would be on the use of the proposed stabilisation options.

A.89 A key element of the Resolvability Assessment will be that the RA is empowered to direct a firm to take action to remedy barriers to resolvability, and take enforcement action if the firm does not comply. It is the government's intent that these powers are included in the proposed IRR. In line with the precedent established by the Banking Act 2009, a direction given to a relevant person for this purpose would need to provide reasons and be accompanied by a notice stating reasons (and allowing for representations to be made and the firm's right to appeal to the upper Tribunal). This direction would not take effect during the period for appeal or if appealed until the Tribunal's determination.

RRPs – Resolution Plans

A.90 The Key Attributes refer to a combined Recovery and Resolution Plan (RRP). As set out above, the government assesses that the recovery element of RRPs already exists under the UK framework through the PRA's recovery and exit planning. As such, the proposed IRR will only need to introduce the RA-led Resolution Plan aspect of RRPs to fulfil the requirements of the Key Attributes.

A.91 The purpose of the Resolution Plan would be to facilitate the effective use of resolution powers. It would set out the preferred resolution strategy for a firm and an operational plan for its implementation. The Resolution Plan would be expected to focus on how the RA would apply resolution powers, including some contingency options (in the event the proposed RCs were satisfied).

A.92 It is the government's expectation that much of the information needed for the RA to create a Resolution Plan is likely due to be collected by the PRA already; as set out above, the PRA and RA will be expected to share information with the aim of minimising duplication of effort and the resource burden on firms. However, the development and assessment of Resolution Plans would be a RA responsibility, led by RA staff, and would require consideration of how the proposed stabilisation options could be applied in practice. For example, so that the proposed IRR meets the requirements of the Key Attributes for the purpose of Resolution Plans, the RA may require firms to participate in additional activities further to the PRA's exit and recovery work. This could include:

- Information provision – e.g. details on a firm's systemically important functions;

- Assessing the operational processes needed to implement the Resolution Plan;
- Periodic simulation exercises with authorities to test the Resolution Plan;
- Regular reviews of the Resolution Plan; and
- Establishing clear crisis-management roles and responsibilities for the Resolution Plan.

A.93 As such, the government considers it likely that Resolution Plans may require some additional work by the relevant firms. However, as set out in more detail below, the government's expectation is that only a small number of firms would be in scope of RA-led Resolution Planning.

A.94 There would be a requirement for the Bank to consult the PRA, FCA and HMT when drawing up a Resolution Plan. In addition, provisions akin to those sections of the Financial Services Act 2012 that create a duty for the Bank to inform HM Treasury of any potential draw on public funds would also apply in relation to insurance firms.

A.95 In line with the requirements of the Key Attributes, the government intends to require the Resolution Plan to be updated annually by the RA, or more frequently when material changes take place to the firm's structure, strategy or business activity, or there is a substantive change in economic conditions.

A.96 In addition, it is the government's intent to provide HM Treasury with a delegated power to make provision concerning the review of recovery plans and the creation, maintenance, and review of Resolution Plans by the RA. This would enable a parallel approach to be taken to resolution planning for insurance firms to that taken from time to time to banking institutions. Importantly, however, this power would not extend to the arrangements under which insurers submit recovery or exit plans to the PRA and would not be used to duplicate those arrangements.

Insurers in Scope of Pre-Resolution Planning

A.97 As set out above, the scope of the proposed IRR will be set, so that, in principle, almost any firm could be placed in resolution (subject to meeting the proposed RCs, which as noted, most firms would be unlikely to meet). However, it is the government's expectation that only a small number of systemically important firms will be subject to RA-led Resolvability Assessment and Resolution Planning. In this context, 'systemically important firms' would be defined as those firms which the RA considers likely to satisfy the resolution conditions assessment in the event of failure. The list of Internationally Active Insurance Groups (IAIGs) defined by the IAIS is a useful indicator of systemic importance, but it is not an exhaustive list – the RA may wish to conduct Resolvability Assessments or create Resolution Plans for a wider population of firms (although even this wider population would still only be a small subset of the firms for which the PRA carries out recovery and exit planning).

Consultation Question 9: Considering the requirements of the Key Attributes, do you agree with the proposed approach to pre-resolution planning?

Ancillary Matters

Ancillary Provisions[36]

A.98 The Key Attributes provide that entry into resolution and the exercise of resolution powers should not constitute a contract termination event provided that the substantive obligations under the relevant contract continue to be performed. This is because as resolution is intended to stabilise a failing firm, the effectiveness of that action would be undermined if it resulted in the termination of the firm's services and functions. Consistent with this, the government intends to introduce provisions to prevent the exercise of resolution powers triggering a default or early termination. These provisions would be structured in line with the precedent established in section 48Z of the Banking Act 2009. Broadly, this would mean that the RA exercising one or more of the proposed stabilisation options (alongside certain other events) would not trigger a contractual termination event or default event. However, other termination rights – such as for non-payment – could still be exercised. Moreover, protected arrangements would enjoy similar protections to those under the Banking Act 2009.[37]

A.99 Additionally, the Key Attributes state that resolution regimes for insurers should include a restriction on policyholder surrender rights in order to achieve an effective resolution.[38] Where available, surrender rights allow policyholders to terminate their contract in return for some proportion of its cash value. It might undermine the effectiveness of resolution action if a significant proportion of policyholders exercised surrender rights in a short period of time – in particular, by placing

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36 Exemptions from broader legislative requirements which apply when powers under the Banking Act 2009 are exercised may also need to be extended to the proposed IRR. Separately, in line with Key Attribute 5.5, the exercise of the stabilisation options could not by default be unwound by the courts. Provisions akin to section 73 of the Banking Act 2009 and regulation 186 of the Bank Recovery and Resolution (No. 2) Order 2014 (SI 2014/3348) would be included within the proposed regime. Similar to the precedent established in section 71 of the Banking Act 2009, the RA would also be able to make provision about the application of one or more stabilisation options on pension schemes.

37 Please refer to subsection 48Z(6A) of the Banking Act 2009.

38 Specifically, the Key Attributes refer to the 'rights of policyholders to withdraw from their insurance contracts' (II-Annex 2, paragraph 4.8).

liquidity and/or capital strain on the insurer.[39] In line with the Key Attributes, it is the government's intent to introduce a proportionate restriction on policyholder surrender rights (including switching rights) when a failing insurer enters resolution.[40]

A.100 Restricting policyholder surrender rights is different to the restriction on termination rights above, because policyholder surrenders do not require a 'termination event' to occur, they can typically be exercised for any reason at any time. As such, it will be necessary for this restriction to be time-limited, rather than (per the above, or section 48Z of the Banking Act 2009) a restriction triggering default / termination. This restriction of policyholders' rights must be proportionate to the benefit gained through any increased effectiveness of the RA's resolution tools. The government considers that the similar provisions preventing policyholder surrender rights under a write-down order which are currently being taken through Parliament in the Financial Services and Markets Bill 2022 may provide a helpful precedent.

Consultation Question 10: Considering the requirement of the Key Attributes, do you have views on how a restriction of policyholder surrender rights in resolution should be structured (including for example, the appropriate length of this restriction)?

A.101 Separately, it is the government's intent that if a stabilisation option has been used on a firm, or it meets the resolution conditions, it would not be possible to initiate insolvency proceedings against the firm except with consent of the RA.

RA Ancillary Powers

A.102 To fulfil the requirements of the Key Attributes, the RA would require a number of further ancillary powers that could be exercised alongside a stabilisation option(s).[41] The PRA already has some of these powers, and the RA will only possess these when a firm has been placed in resolution. These are typically discretionary powers that the RA could choose (or not) to exercise, and they would generally be enacted through the making of a relevant instrument. The intention is that these powers are subject to appropriate safeguards where relevant.

A.103 The proposed RA ancillary powers include power to:

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[39] The most material classes of insurance policy that have surrender rights are unit-linked and with-profits policies. Unit linked liabilities and assets are closely matched, so surrenders do not typically entail material capital strain apart from the loss of future profits on those policies. With-profits policies typically have mechanisms to reduce capital strain.

[40] That is, a right to switch between different funds operated by the same insurer.

[41] In the event the temporary public ownership stabilisation option is deployed, relevant powers could be exercised by HM Treasury through the making of a share transfer order.

- (a) remove a director or senior manager of a specified insurer in resolution; (b) vary the service contract of a director or senior manager of a specified insurer; (c) terminate the service contract of a director or senior manager of a specified insurer; (d) appoint a director or senior manager of a specified insurer (on terms and conditions set by the RA); and (e) permit or require the execution, issue or delivery of an instrument. The purpose of these powers would be to remove and/or replace individuals who are no longer considered appropriate individuals to remain responsible for the operation of the insurer in question during and after resolution, and to make relevant supplemental provisions;

- Appoint a resolution administrator(s). The purpose of this power would be to enable the RA to exercise control over the insurer in resolution. The role of a resolution administrator would be flexible but would generally aim to facilitate and implement necessary measures to achieve the resolution objectives, at the direction of the RA;

- Appoint skilled person(s) or investigator(s). If the RA has required or could require a person to provide information or produce documents with respect to any matter, the RA may appoint a skilled person to provide it with a report on the matter concerned. If it appears to the RA that there is good reason for doing so, the RA would also have the power to appoint one or more investigators to conduct an investigation into relevant matters;

- Prohibit or restrict the payment of dividends or other distributions to shareholders. The purpose of this power would be to preserve capital in the failing insurer by restricting inappropriate distributions to shareholders (who rank after other creditors). This would prevent shareholders being inappropriately rewarded at a time when the insurer is in difficulty;

- Prohibit the payment of variable remuneration to, and allow the recovery of monies from, Members of the Board, Senior Management, Key Persons in Control Functions, and major risk-taking staff, including claw-back of variable remuneration and discretionary pension benefits. The primary purpose of this power would be to align incentives and eliminate perverse outcomes whereby a senior manager of a failing insurer is highly rewarded. It would also have the added benefit of: (a) capital conservation in the failing insurer (where a prohibition is introduced); and (b) bolstering the capital position of the failing insurer (where recoveries / claw-backs are undertaken);

- Prohibit the transfer of the insurer’s assets without RA approval. The purpose of this power would be to help maintain the financial position of the failing insurer by restricting the transfer of its assets;

- Introduce a temporary suspension on: (a) payments to unsecured creditors in any contract where one of the parties is the insurer in resolution; (b) creditors' action to attach assets or otherwise collect money or property; and (c) termination of contracts. In line with the provisions of sections 70A – 70D of the Banking Act 2009, the purpose of this power would be to provide certainty and stability to a failing insurer's financial position and to facilitate the RA exercising one or more of the stabilisation options. Importantly, this power would be subject to similar safeguards to those included in the aforementioned provisions of the Banking Act 2009. In effect, these provisions would pause the firm's substantive activities, for a strictly time-limited period of no longer than two business days. These powers may only be exercised as part of exercising one or more of the proposed stabilisation powers;

- Apply to the court for stay on legal proceedings once the RA has exercised one or more stabilisation option(s). Under this power, the RA would be allowed to apply to the court for a stay of any legal proceedings to which the firm is party if the RA considers that a stay is necessary for an effective application of the resolution tools or the stabilisation powers;

- Terminate, continue, modify, restructure, transfer, assign and/or create contracts (both financial or services contracts), including derivatives, securities, financing transactions and insurance contracts.[42] The purpose of this power would be to provide the RA with the flexibility to manage a failing insurer's balance sheet and facilitate the effective use of one or more of the stabilisation options. The use of this power would be subject to appropriate safeguards, including to protect set-off, netting and title transfer arrangements. In practice, this may involve the RA restructuring contracts and liabilities, or terminating/ transferring contracts including financial contracts. In the event that derivatives were transferred, this would only take place alongside the backing collateral or security; and

- Initiate the liquidation of the whole or part of the insurer.

A.104 The Key Attributes also anticipate that the RA would have general powers to compel firms to provide information to the RA and/ or to take action to remove impediments to resolution and resolvability.

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[42] The RA would be able to exercise this power in a way that binds unknown policyholders where: (i) claims have not arisen; (ii) claims have arisen but have not yet been notified; (iii) claims have arisen, been notified, but not yet estimated; or (iv) the identify of policyholders is not known.

These would be included and are considered above in the relevant sections of this document.

Consultation Question 11: To what extent will the proposed ancillary powers support an effective resolution? Are there any other issues to consider?

HM Treasury Ancillary Powers

A.105 HM Treasury would be empowered to introduce provisions about the fiscal consequences of the RA exercising one or more of the stabilisation options under the proposal.

A.106 In order to support a specific resolution, HM Treasury, having regard to the resolution objectives outlined above, would also be empowered to amend UK law to ensure the stabilisation options and broader resolution powers can be used effectively.

A.107 HM Treasury would also be able to make provision about the application of company law to insurers in resolution.[43] In particular, this will ensure that the RA is able to override the rights of shareholders of the firm in resolution (such as for example, pre-emption rights) in line with the requirements of Key Attributes.

Cross Border Considerations

A.108 The Key Attributes set out a number of requirements for resolution authorities to interact with overseas authorities on resolution matters. In particular, a requirement for one jurisdiction's resolution authority to interact with overseas authorities as part of resolution planning where appropriate and in a resolution – whether it is initiated by the overseas resolution authority or the original jurisdiction.

A.109 In the UK, the PRA already has relationships with many overseas regulators as part of its close and continuous supervision of firms, including branches and subsidiaries of overseas organisations. The PRA is also active in Crisis Management Groups (CMGs) and discusses matters relating to its statutory objectives with overseas regulators, and works with overseas regulators to advance those objectives. Nonetheless, implementing the Key Attributes would necessitate the imposition of new requirements on the designated RA. In particular, the RA would need to interact with overseas authorities as part of resolution planning and a resolution – whether it is initiated by the overseas resolution authority or the RA.

A.110 In addition, it is the government's intent to ensure the proposed IRR makes provision for: (1) a framework for the UK to recognise (or not) resolution actions taken by other jurisdictions' resolution authority; and

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[43] Akin to the provisions introduced in the Bank Recovery and Resolution (No. 2) Order 2014 (SI 2014/3348).

(2) to ensure the proposed stabilisation options under the proposed regime work as intended for a resolution of UK branches of foreign-headed insurers (in line with the regime's proposed scope set out above).

A.111 More broadly, to ensure the UK continues to meet its international obligations, the government proposes that the provisions of sections 76 and 77 of the Banking Act 2009 are replicated in the proposed IRR. This would restrict the RA's ability to exercise the proposed stabilisation options where HM Treasury notified the RA that its exercise would contravene one or more of the UK's international obligations.

Code of Practice

A.112 It is the government's intent for HM Treasury to publish (and lay before Parliament) a code of practice about the use of the stabilisation options under the proposed IRR. This document would include guidance on, for example: (a) how the resolution objectives are to be understood and achieved; (b) the choice between different options; (c) the information to be provided in the course of a consultation; (d) the giving of advice by one relevant authority to another about whether, when and how the stabilisation powers are to be used; and (e) how to determine whether the resolution conditions are met.

A.113 HM Treasury, the RA, the FCA and the PRA would be required to have regard to the code when undertaking their respective functions under the proposed regime.

A.114 HM Treasury would be empowered under the proposal to update the code of practice as needed, following consultation with the RA, the FCA, the PRA and the FSCS. Once updated, HM Treasury would be required to lay a copy of the updated code of practice before Parliament as soon as is reasonably practical.

Liaison Panel

A.115 The proposed regime would include a requirement for HM Treasury to establish an advisory panel to provide guidance on the effect of the resolution regime on: (1) insurers; (2) persons with whom insurers do business; and (3) the financial markets.

Consultation Question 12: What lead-in time would be appropriate for industry to prepare for the proposed regime? Are there any elements of the proposed regime that would not require a lead-in time?

Consultation Question 13: Do you agree with the potential impacts of introducing an IRR identified in chapter 2? How would the proposed regime impact insurance firms' costs?

Consultation Question 14: Do you have any other comments on this proposal, or the government's approach to insurer resolution?

Annex B
Privacy Notice

B.1 This notice sets out how HM Treasury will use your personal data for the purposes of **this consultation paper on introducing an insurer resolution regime** and explains your rights under the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA).

Your data (Data Subject Categories)

B.2 The personal information relates to you as either a member of the public, parliamentarians, and representatives of organisations or companies.

The data we collect (Data Categories)

B.3 Information may include your name, address, email address, job title, and employer of the correspondent, as well as your opinions. It is possible that you will volunteer additional identifying information about themselves or third parties.

Legal basis of processing

B.4 The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in HM Treasury. For the purpose of this consultation, the task is consulting on departmental policies or proposals or obtaining opinion data in order to develop good effective government policies.

Special categories data

B.5 Any of the categories of special category data may be processed if such data is volunteered by the respondent.

Legal basis of processing special category data

B.6 Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: the processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.

B.7 This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop good effective policies.

Purpose

B.8 The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

Who we share your responses with

B.9 Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).

B.10 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.

B.11 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

B.12 Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.

B.13 Where information about respondents is not published, it may be shared with officials within the Bank of England, Prudential Regulation Authority, Financial Conduct Authority, Financial Services Compensation Scheme, Insolvency Service and any other public bodies involved in this consultation process to assist us in developing the policies to which it relates.

B.14 As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor, NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we will hold your data (Retention)

B.15 Personal information in responses to consultations may generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

B.16 Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

Your Rights

- You have the right to request information about how your personal data are processed and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- You have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted.
- You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.
- You have the right to data portability, which allows your data to be copied or transferred from one IT environment to another.

How to submit a Data Subject Access Request (DSAR)

B.17 To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit

1 Horse Guards Road

London

SW1A 2HQ

dsar@hmtreasury.gov.uk

Complaints

B.18 If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk.

B.19 If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. The Information Commissioner can be contacted at:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

0303 123 1113

casework@ico.org.uk

B.20 Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
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1 Horse Guards Road
London
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Tel: 020 7270 5000

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