Amendments to the Insolvency Arrangements for Insurers:

Consultation

May 2021

HM Treasury

Amendments to the Insolvency Arrangements for Insurers:

Consultation

May 2021

© Crown copyright 2021

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at: www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at public.enquiries@hmtreasury.gov.uk

ISBN: 978-1-911680-91-8 PU: 3129

Contents

Chapter 1	Introduction	2
Chapter 2	Overview of the Proposed Amendments	6
Chapter 3	Responding to this Consultation	12
Annex A	How the Current Arrangements Operate	15
Annex B	Proposed Amendments to the Existing Arrangements	20
Annex C	Privacy Notice	63

Chapter 1

Introduction

1.1 The UK insurance sector is the fourth largest in the world, with UK insurers holding around £2.1 trillion in invested assets in Q4 2020[1]. The sector provides a wide array of vital services for households and businesses that facilitate the management and reduction of risk.

1.2 The UK insurance sector benefits from a robust regulatory framework, with oversight from the Financial Conduct Authority ('FCA') and the Prudential Regulation Authority ('PRA'). The FCA and PRA monitor and regulate the conduct and prudential requirements of insurers, and the management of the risks they take on.

1.3 The UK insurance sector is robustly supervised, well-capitalised and resilient to shocks, and benefits from the requirements of a rigorous and risk-based prudential regulatory system. Nevertheless, insurers may still experience unexpected financial difficulties and, in rare cases, become insolvent. The failure of an insurer could have negative impacts on policyholders and the wider economy. For example, businesses may be unable to operate, and consumers could be affected - particularly through the loss of long-term insurance arrangements, compulsory insurance policies (such as motor insurance) or the loss of life insurance policies which can provide the main source of income for some policyholders.

1.4 It is important that the UK regulatory authorities have the requisite tools to manage the failure of an insurer in an orderly way and, in doing so, provide protection to policyholders. This consultation paper sets out the government's proposals to pre-emptively amend the current insolvency arrangements for insurers to ensure they remain up-to-date and consistent with best practice, and by extension ensure they fully achieve these objectives.

1.5 Throughout this document, the term 'insurance' is used to cover both insurance and reinsurance[2] liabilities unless otherwise specified.

The Current Arrangements

1.6 Generally, when a firm is unable to pay its debts as they fall due (due to insufficient cashflow), or when the value of its liabilities is greater than the value of its assets, it is said to be insolvent. When a firm is insolvent (or likely

1 Source: Prudential Regulation Authority.

2 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.

to become insolvent), UK insolvency law provides a range of procedures designed to protect and retain value in the firm and ensure a fair distribution of assets to the firm's creditors (anyone to whom the firm owes a debt). The UK's insolvency arrangements for insurers are 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. Further information on the operation of the current arrangements can be found in Annex A.

1.7 The government, working with the Bank of England, the PRA and the FCA, has identified areas in which reform can make the UK's insolvency arrangements for insurers more robust, in order to better protect policyholders and reduce costs to industry and the wider financial sector.

1.8 Therefore, the government is proposing a series of targeted amendments to the current insurer insolvency arrangements to enable the UK authorities to better manage insurer distress in an orderly manner.

The Proposed Changes to the Current Arrangements

1.9 The proposed changes, which include amendments to the current arrangements as well as the introduction of new provisions, are:

1) Enhancements to the court's existing power under section 377 of the Financial Services and Markets Act 2000 ('FSMA') to order a reduction ('write-down') of the value of an insurer's contracts. This would include: (1) clarifying which interested parties may apply to the court to exercise this power; (2) clarifying that a write-down may extend to all unsecured creditors; (3) enabling the write-down procedure to be exercised earlier than the proved insolvency of an insurer; and (4) allowing for a subsequent write-up of the written-down liabilities. These enhancements are hereafter referred to as "Proposal One".

2) The creation of a new position of a 'write-down manager' – an officer of the court appointed to support a write-down under section 377 FSMA (as amended by Proposal One).

3) The introduction of a moratorium on certain contractual termination rights in both service contracts and financial contracts held with insurers upon application to the court for, and during (in the case of (a) and (b)): (a) an administration; (b) a write-down under section 377 FSMA (as amended by Proposal One); or (c) a winding up.

4) For life insurance policies only: the introduction of a stay (suspension) on policyholder surrender rights upon application to the court for, and during (in the case of (a) and (b)): (a) an administration; (b) a write-down under section 377 FSMA (as amended by Proposal One); or (c) a winding up.

5) A change to the operation of the Financial Services Compensation Scheme ('FSCS') in the event of a write-down under section 377 FSMA (as amended by Proposal One) to ensure protected policyholders are not financially worse off under such a write-down.

1.10 These proposals will apply to all insurers currently in scope of section 377 FSMA[3] (except the proposal for a stay on policyholder surrender rights, which will apply to UK-authorised insurers with life insurance policies only). However, these proposals would not apply to the association of underwriters known as Lloyd's of London. This is because separate legislation provides for the specific restructuring and winding-up procedures available to Lloyd's of London[4].

1.11 Taken together, the objective of these proposals is to enhance and provide clarity on existing powers for managing insurer distress, in order to:

- **Promote continuity of cover** by allowing earlier intervention by the regulatory authorities (including before – and in order to avoid – an insurer becoming insolvent) to maintain an insurer's solvency sufficiently to allow a solvent run-off[5] and orderly exit from the market. This would allow policyholders to continue to receive payment for claims promptly, albeit with reductions in some instances (although FSCS coverage may be available), while the insurer continues operating. In 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.
- **Protect policyholders** by promoting continuity of cover and by empowering the PRA to amend its rules to provide appropriate safeguards for FSCS-protected policyholders in the event of a court-ordered write-down under section 377 FSMA.
- **Reduce costs to industry** by unlocking additional loss absorbency through an expanded court-ordered write-down procedure, and by reducing the extent of value reduction in the subsequent insolvency of a distressed insurer. Otherwise, the greater the size of losses, the more compensation the FSCS may need to provide, and the greater the costs passed on to industry via the FSCS levy.
- **Maintain public confidence** in the UK insurance sector by enhancing the tools available to manage insurer distress in an orderly way. As some of the current powers are untested and only set out at a high level, an insurer entering into insolvency could be a prolonged and disruptive process which could adversely affect policyholders and undermine public confidence.

1.12 Moreover, it is the government's intention to achieve the above objectives while providing appropriate safeguards and protections for the fundamental rights of parties in insolvency proceedings. However, the government also wants to understand the impact of its proposed changes on the terms on which third parties supply crucial services to the insurance sector.

Insurance Resolution Regime

1.13 Since the 2008 financial crisis, significant progress has been made in the development of international standards for the design and operation of

---

[3] As defined in the Financial Services and Markets Act (2000) (Insolvency) (Definition of Insurer) Order 2001 (SI 2001/2634).

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

[5] Further information on the current arrangements – including the run-off procedure – can be found in Annex A.

recovery and resolution regimes - in particular, the publication and adoption of the Financial Stability Board's ('FSB') Key Attributes of Effective Resolution Regimes for Financial Institutions[6]. These Key Attributes set out the core elements which the FSB considers to be necessary for an effective resolution regime, and which should assist competent authorities to resolve financial institutions in an orderly manner, while maintaining continuity of their vital economic functions and minimising taxpayer exposure.

1.14 More recently, these international standards have been supplemented by guidance tailored to specific financial institutions, including insurers. For example, the publication by the FSB of its Key Attributes Assessment Methodology for the Insurance Sector in August 2020. While UK institutions – in particular, the Bank of England in its role as the resolution authority for some types of firm in the UK[7] – have played an active role in the development of international standards and guidance on resolution (including for insurers), the UK has not yet fully aligned with these updated international standards through the introduction of a specific resolution regime, or the designation of a specific resolution authority, for insurers.

1.15 As such, alongside the proposed amendments to the insolvency arrangements for insurers set out in this document, HM Treasury is actively engaging with the Bank of England to develop a proposal for the introduction of a specific resolution regime for insurers aligned with internationally agreed standards and best practice, and intends to set out further detail in due course. The proposals set out in this document are not intended to pre-empt the consideration of a specific resolution regime. Rather, these proposals aim to enhance and provide clarity on existing powers for managing insurer distress, and improve policyholder protection by facilitating continuity of cover, within the UK's insolvency arrangements.

[6] Both insolvency arrangements and resolution regimes seek to manage the failure of financial institutions. However, a resolution regime for insurers would be specifically designed to ensure that the failure of the largest, most systemically important insurers could be more effectively dealt with, including to limit financial stability risks.

[7] The Bank of England is designated as the UK's resolution authority for specific types of firm, and is empowered to manage the failure of a bank, building society, central counterparty or certain types of investment firm through existing resolution regimes.

Chapter 2

Overview of the Proposed Amendments

2.1 This chapter provides a summary of the government's proposals for amendments to the current insolvency arrangements for insurers. Further detail on these proposals can be found in Annex B to this document.

2.2 The proposals aim to enhance and provide clarity on elements of the current arrangements, and introduce new measures to ensure insurer distress can be managed in an orderly way.

Proposal One: Amendments to section 377 FSMA to widen the existing power for a court-ordered write-down of an insurer's contracts and liabilities to a broader set of circumstances

2.3 Section 377 FSMA provides a high-level power for the court to reduce ('write down') the value an insolvent insurer (both general and life) owes under its contracts as an alternative to making a winding-up order (which triggers compulsory liquidation). In practice, this means that policyholders would receive less than the contract originally specified, when making a valid claim on their insurance.

2.4 As this power has never been used, and is only set out in broad terms in legislation, there is uncertainty concerning several important aspects of its operation. This includes: (1) which parties may apply to the court for a write-down; and (2) which of the insurer's debts can be written down by the court.

2.5 Therefore, the government is seeking to clarify and enhance the court's current power. The proposal includes:

- Specifying which parties may apply to the court for a write-down, and setting out that PRA consent is required in order for an application for a write-down to be presented to the court. To support an application to the court, the applicant will be able to propose to the court the scale and extent of the write-down, justifying why this is in the interest of the insurer's creditors (including its policyholders).
- Clarifying that (almost) all unsecured debts of the insurer could be subject to a write-down, while respecting the creditor hierarchy.[1]
- Allowing the court to exercise this power once it is satisfied that the insurer is, or is likely to become, unable to pay its debts, and is reasonably

[1] Please refer to the Insurers (Reorganisation and Winding Up) Regulations 2004 (SI 2004/353).

likely to lead to a better outcome for the insurer's creditors as a whole. This would enable a write-down earlier than is currently allowed. Under the existing power, a write-down under section 377 FSMA is only permitted once it has been proven that an insurer is unable to pay its debts.

- Clarifying that any write-down of the insurer's liabilities would not affect recoveries under any outwards reinsurance.
- Clarifying that liabilities can be written up if the insurer's financial position is later found to be better than assumed in the initial write-down.

2.6 Importantly, the government is proposing that a write-down being sanctioned by the court would not permanently extinguish the liabilities of the insurer. Rather, these liabilities would be deferred until 'reactivated' by certain events – including a write-up – occurring. However, while these liabilities are deferred, they would be kept off the insurer's balance sheet.

2.7 The government believes that by enhancing and clarifying aspects of the court's current write-down power, it can be made more robust and usable. This is important as a write-down could be preferable to the administration or insolvent winding up of the insurer, as write-down is more likely to provide continuity of cover to policyholders (albeit with benefits paid at a reduced level, although FSCS coverage may be available – see Proposal Five), and avoids the more severe value reduction and disruption of insurance cover associated with insolvency proceedings.

2.8 Separately, the government is proposing to introduce a moratorium on legal process (similar to that which applies during an administration) where an insurer is subject to a write-down under section 377 FSMA.

Proposal Two: The right for certain interested parties to apply to the court for the appointment of a write-down manager to support a write-down under section 377 FSMA (as amended by Proposal One)

2.9 The government is proposing the creation of a new court-appointed 'write-down manager' position. The court would be empowered to appoint a write-down manager – as an officer of the court – to oversee and implement a court-ordered write-down under section 377 FSMA (as amended by Proposal One). It is expected that when sanctioning a write-down the court would also appoint a write-down manager, other than in exceptional circumstances. The write-down manager would need to be an independent person who is fit and proper, as well as free from any conflicts of interest (including any conflict of interests on the part of their employer) which may, or may appear to, undermine the independence of their engagement or prejudice their status in the eyes of the court.

2.10 Moreover, prior to their appointment by the court (but subject to PRA consent to their nominee appointment), a nominee write-down manager would lead the design of the write-down proposal to be put to the court under section 377 FSMA (as amended by Proposal One). In their design of the write-down plan, the nominee write-down manager would be expected

to review their proposal against the test the court would consider when determining whether to sanction the write-down (i.e. whether the write-down is reasonably likely to lead to a better outcome for the insurer's creditors as a whole), including the impact of the proposed write-down on the insurer's creditors (including implications for its policyholders). The nominee write-down manager would also have a right to be heard at a court hearing in relation to the court's sanctioning of a write-down under section 377 FSMA (as amended by Proposal One), and may provide independent views to the court on the proposed write-down.

2.11 Once appointed, the write-down manager would ensure the write-down works as intended to stabilise the insurer, thereby providing continuity of cover for policyholders. As well as ensuring the write-down was serving the interests of the insurer's creditors, the government proposes that the write-down manager, in carrying out their duties, be required to have regard to: (1) any action including directions given to the insurer by the PRA (and FCA); and (2) the interests of the FSCS. However, unlike an insolvency practitioner, the write-down manager would not be 'in possession of the insurer' and so their powers would generally be limited to making recommendations to the insurer's directors. The government is proposing the write-down manager's minimum powers would be set in legislation. However, the court would be empowered to vary or add to the powers of the write-down manager if necessary, including where necessary to reflect particular issues raised by the regulators.

2.12 Importantly, the write-down manager once appointed, would not be acting as an insolvency practitioner as per section 388 of the Insolvency Act 1986 ('IA 1986').

Proposal Three: A moratorium on the termination / suspension of financial contracts and service contracts upon application to the court for, and during (in the case of (a) and (b)): (a) an administration; (b) a write-down under section 377 FSMA (as amended by Proposal One); or (c) a winding up

2.13 Insurers typically hold financial contracts (such as derivatives to hedge against risk) as well as service contracts (such as those for the provision of business-critical services, or outwards reinsurance contracts). These contracts may include clauses which permit counterparties to terminate or suspend the contract if the insurer were to enter insolvency proceedings (or other forms of financial distress). The termination of these contracts could significantly impact an insurer's financial position and/or operational continuity, making it less able to pay its debts, including to policyholders.

2.14 The government is proposing to introduce a statutory moratorium on certain termination rights for financial and service contracts while an insurer is undergoing a write-down under section 377 FSMA (as amended by Proposal One) or administration, or while there is an outstanding application to the court for either procedure, or an outstanding petition for winding up. This would include the exercise of relevant termination rights should they have

been triggered (but not acted upon) prior to the proposed moratorium taking effect. The moratorium will be subject to the insurer continuing to meet its payment and other substantive obligations under these contracts, so counterparties are unlikely to be materially disadvantaged by the moratorium on their contractual rights. Moreover, the court would be empowered to vary the scope of the moratorium, in terms of the contracts affected, to ensure counterparty rights are only affected where necessary for the purpose of the write-down under section 377 FSMA (as amended by Proposal One) or administration.

2.15 The proposed moratorium would be subject to prescribed termination triggers, to ensure counterparty rights are not affected for longer than necessary. Separately, the government is proposing the inclusion of a hardship provision, which would enable counterparties to apply to the court for an exemption from the effect of the moratorium on any contract(s) they hold with an insurer, where the effect of the moratorium would cause that firm or person financial hardship.

2.16 The government believes the proposed moratorium will provide certainty and stability in the circumstances set out above, and mitigate the risk and extent of value reduction, business disruption, policyholder harm and costs arising solely as a result of an insurer undergoing a write-down under section 377 FSMA (as amended by Proposal One) or insolvency procedure.

Proposal Four: *For Life Insurance Policies Only:* A stay on policyholder surrender rights upon application to the court for, and during (in the case of (a) and (b)): (a) an administration; (b) a write-down under section 377 FSMA (as amended by Proposal One); or (c) a winding up

2.17 Surrender clauses allow life insurance policyholders to terminate their contract in return for some proportion of its cash value. If a significant number of policyholders exercised surrender rights while an insurer was experiencing financial difficulties, this would make it more difficult to estimate an insurer's liabilities. This uncertainty could slow down the write-down or insolvency process and potentially destabilise negotiations for a transfer of business to another insurer, likely leading to worse outcomes for creditors and policyholders.

2.18 The government is proposing a stay on policyholder surrender rights for life insurance policies while an insurer is undergoing a write-down under section 377 FSMA (as amended by Proposal One) or administration, or while there is an outstanding application to the court for either procedure, or an outstanding petition for winding up. The proposed stay would only apply to life insurance policies, and would be subject to the insurer meeting its substantive obligations under the policies (in particular, claims and non-surrender benefits being paid out to policyholders as they fall due). As such, policyholders are unlikely to be materially disadvantaged by the stay on their contractual rights.

2.19 The proposed stay would be subject to prescribed termination triggers to ensure policyholder rights are not affected for longer than necessary. Moreover, the court would be empowered to vary the scope of the stay (in terms of the contracts affected), and individual policyholders would be able to apply for an exemption where the stay would be likely to cause them hardship.

2.20 The government believes the proposed stay would provide certainty and stability in an insurer's liabilities in the circumstances set out above and, in particular, fix in place the policies which might, for example, form part of a transfer of business to an acquiring insurer.

Proposal Five: A change to the protection provided by the FSCS in the event of a write-down under section 377 FSMA (as amended by Proposal One)

2.21 The FSCS – the UK's compensation scheme of last resort – will, once an insolvent insurer has been declared "in default", compensate policyholders who are eligible for protection in accordance with the Policyholder Protection part of the PRA Rulebook ('protected policyholders') up to certain limits. However, the value of a policyholder's claim may be written down by the court under section 377 FSMA. At present, a write-down under section 377 FSMA would not trigger FSCS protection, leaving a protected policyholder financially worse off following this write-down than they would have been in the likely counterfactual of insolvency, since in insolvency FSCS protection would have been available. Similarly, if the insurer were to fail following a write-down under section 377 FSMA, the FSCS may only protect the lower, written down value of a protected policyholder's claim up to the protected limits. The government believes this does not deliver the best outcome for policyholders.

2.22 The detail of FSCS compensation rules in relation to insurers are a matter for the PRA Rulebook. It is for the PRA to consider whether to introduce rules which would make FSCS protection available to protected policyholders whose contracts are written down under section 377 FSMA (as amended by Proposal One), with compensation payable following any subsequent insolvency calculated using the original pre-write-down value of the claim (as opposed to the lower, post-write-down value). The PRA could also introduce rules to ensure that policyholders whose claims fall due following a write-down but while the insurer is still solvent receive 'top up payments', ensuring they are not worse off than in the counterfactual of insolvency. The government intends to amend legislation to ensure that, alongside broader changes to relevant legislation, the PRA has vires (powers) to, at its discretion, amend PRA rules accordingly.

2.23 The government anticipates that payments made by the FSCS following a write-down as a result of these proposed changes (or any related changes to PRA rules) would not be larger than the amount FSCS may currently pay out to protect policyholders in an insurer insolvency. The proposals set out in this consultation are designed to help insurers avoid unnecessary losses at the point of insolvency, potentially reducing the losses suffered by policyholders,

and the amount the FSCS is required to pay in compensation. As such, we do not anticipate these proposals leading to an increase in the FSCS levy.

2.24 The government is also proposing amendments to ensure the FSCS is able to make recoveries for any payments it makes in respect of protected policyholders following a write-down under section 377 FSMA (as amended by Proposal One).

Chapter 3

Responding to this Consultation

3.1 This consultation will close on Friday 13 August 2021. We would welcome your views on the proposals set out above and detailed in Annex B, or on any issue relevant to the UK's insolvency arrangements for insurers.

How to Submit Responses

3.2 Please submit your responses to insurer.insolvency.consultation@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 C.

Box 3.A: Consultation Questions

General Questions

I) In what circumstances do you envisage these proposals would be used?

II) Do you envisage any impediments to the use of the proposed measures in practice?

III) Do you agree that these proposals would usefully add to the flexibility with which the distress of an insurer could be managed?

IV) Do you have any other comments on these proposals or the current insolvency arrangements for insurers?

Proposal One:

V) How will the proposed amendments to section 377 FSMA enhance the UK authorities' ability to manage the distress of an insurer, resulting in a better outcome for policyholders and creditors?

VI) To what extent do you believe that the proposed amendments to section 377 FSMA will improve the usability of the write-down procedure?

VII) Do you believe the tests which the court would need to be satisfied are met in order to sanction a write-down under section 377 FSMA (as amended by this proposal) are sufficient to safeguard against undue impact of a write-down on an insurer's creditors (including its policyholders)[1]?

VIII) Do you support the nominee write-down manager being able to provide independent views to the court (including on the impact of the write-down on an insurer's creditors (including its policyholders) at a write-down court hearing?

IX) Would the proposed amendments to section 377 FSMA be likely to impact an insurer's costs (including in relation to debt issuance)?

X) To what extent would the proposed moratorium on legal process during a write-down under section 377 FSMA assist in the write-down process?

XI) Do you have any other comments on Proposal One?

Proposal Two:

XII) Do you support the introduction of a write-down manager to support a write-down under section 377 FSMA (as amended by Proposal One)?

XIII) To what extent do you agree with the proposed eligibility criteria for a write-down manager under Proposal Two?

XIV) Do you think the proposed role and powers of the write-down manager would be adequate to ensure the development/ implementation of a write-down is in the interests of the insurer and its creditors (in particular policyholders)?

XV) Do you have any other comments on Proposal Two?

Proposal Three:

XVI) Do you agree that the proposed moratorium under Proposal Three would help provide stability, leading to better outcomes for policyholders and creditors overall, in the circumstances outlined above?

XVII) How would the proposed moratorium under Proposal Three affect the terms on which insurers are able to enter into financial contracts and service contracts?

XVIII) Factoring in the safeguards outlined above, do you have any concerns about the impact of the proposed moratorium under Proposal Three on the rights of an insurer's counterparties?

XIX) Do you have any other comments on Proposal Three?

[1] Please refer to paragraphs B.7 – B.13 for more detail.

Proposal Four:

XX) Do you agree that the proposed stay under Proposal Four would help provide stability, leading to better outcomes for policyholders and creditors overall, in the circumstances outlined above?

XXI) Factoring in the safeguards outlined above, do you have any concerns about the impact of the proposed stay under Proposal Four on the rights of an insurer's policyholders?

XXII) Do you have any other comments on Proposal Four?

Proposal Five:

XXIII) To what extent do you agree with government's proposal to ensure protected policyholders are not financially worse off as a result of a write down under section 377 FSMA (as amended by Proposal One), as compared to insolvency?

XXIV) Do you have any other comments on Proposal Five?

Annex A

How the Current Arrangements Operate

A.1 In the UK, the insolvency arrangements for insurers are a modified version of the standard corporate insolvency arrangements, augmented in some places with bespoke provisions. As with corporate insolvency, insurer insolvency procedures are sanctioned by the courts, but can involve a number of parties including other firms, creditors (including policyholders), and the PRA and the FCA.

A.2 The need for insurer-specific arrangements stems from the unique features of insurance business, and the resulting difficulties that these features can cause in insolvency proceedings. For example, the most valuable assets an insolvent insurer holds may be its reinsurance recoverables. Calculating the amount payable under reinsurance policies, which typically depends on the value of claims made against the insolvent insurer, can be complex and time-consuming. This is one reason why insolvency proceedings may take longer in the case of insurers; a point recognised by the longer period for an insurer in administration (30 months in comparison to 12 months for normal corporate administration[1]).

The Prudential Regulation Authority

A.3 In the UK, the PRA is responsible for the prudential[2] regulation and supervision of certain financial services firms, including insurers with their head office in the UK.

A.4 In discharging its functions in relation to insurers, the PRA must act in accordance with its statutory objectives. The PRA has two primary objectives[3]:

- A general objective, set out in section 2B FSMA, to promote the safety and soundness of all PRA-authorised firms; and
- An insurer-specific objective set out in section 2C FSMA, to contribute to the securing of an appropriate degree of protection for those who are or may become policyholders.

---

1 Please refer to Paragraph 6, Schedule 1 of the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2010.

2 Prudential regulation broadly relates to the financial risks PRA-authorised firms take on through their business activities, and is distinct to the regulation of a firm's conduct, which is the responsibility of the FCA.

3 The PRA also has a secondary objective (section 2H FSMA): to act in a way (so far as is reasonably possible) to facilitate effective competition in the markets for services provided by PRA-authorised firms.

A.5 The PRA takes a forward-looking approach (i.e. it assesses insurers not just against current risks, but also against those which could plausibly arise in future). It supervises insurers to assess whether they are safe and sound, whether they protect their policyholders appropriately, and whether they meet and are likely to continue to meet a minimum set of conditions (known as Threshold Conditions).

A.6 Where the PRA assesses that an insurer is at increased risk of failure, it can take supervisory action, such as restricting asset sales or the payment of dividends. Where risks are more severe, the PRA, of its own initiative, may also vary or cancel an insurer's regulatory permission.

A.7 Moreover, the PRA is empowered[4] to apply to the court for an insurer to be put into administration – a type of insolvency proceeding – should this be necessary to manage an insurer in distress.

A.8 When an insurer is in distress, or becomes insolvent, there are a number of options available to manage this. These include both restructuring options and, where these are not sufficient to stabilise a failing insurer, insolvency options.

A.9 The key options available in the event of insurer financial difficulty/ failure are[5]:

Restructuring Option: Run-Off

- An insurer is said to be in 'run-off' when it is no longer writing new contracts of insurance, but is still operating in order to administer existing contracts. The insurer is gradually wound down as insurance contracts (and other liabilities) are paid out or reach their time limits. There is no time limit to this process; a run-off could take decades in the case of, for example, long-term insurance contracts.
- An insurer may enter run-off voluntarily for commercial reasons. Alternatively, the PRA can put an insurer into run-off by revoking its permissions to effect insurance contracts. However, this power is subject to certain procedural requirements.
- Given it typically ensures continuity of cover for policyholders, a run-off is normally the PRA's preferred method of managing an insurer failure under the current arrangements.

Restructuring Option: Transfer of Business

4 Please refer to section 359 FSMA.

5 This section does not deal with administrative receivership other than to note the following. Administrative Receivership is a process initiated by a secured creditor (typically a bank) who has doubts regarding a company's ability to repay the sums owed. Administrative receivers are appointed with a view to selling assets of the company in order to repay the sums owed to the secured creditor. There are some similarities between administrative receivership and administration. However, administrations are now more common as a secured creditor is generally only able to appoint an administrative receiver in circumstances where they are holding a security – most commonly a debenture – that was granted before 15 September 2003. Separately, this section does not deal with Company Voluntary Arrangements ('CVAs'). CVAs have not historically been used for insurers. Although section 1A of the IA 1986 now allows for a moratorium in relation to certain small companies proposing entering into a CVA, insurers are expressly excluded from eligibility for the moratorium (even if they could qualify as small companies, which would seem generally unlikely).

- Under Part VII FSMA, an insurer may transfer some or all of its insurance business to a willing acquiring insurer without the consent of its policyholders. Any transfer of business must be sanctioned by the court, who would determine whether it is appropriate to sanction a transfer, given the particular circumstances of the insurers involved.
- While a transfer of business guarantees continuity of cover for policyholders, finding a willing acquiring insurer may not always be possible at an acceptable price, particularly in the case of a failing insurer.

Restructuring Option: Scheme of Arrangement/ Restructuring Plan

- Schemes of Arrangement, under Part 26 of the Companies Act 2006, allow a firm to reach a binding compromise or arrangement with its creditors – anyone to whom the firm owes a debt - to settle its debts. Schemes can be used by solvent firms to tie up particular business lines, or by failing firms as an alternative to liquidation. Typically, a firm's creditors' claims are settled in return for some proportion of their value. This is seen as preferable to insolvency proceedings as the creditor receives a guaranteed payment and does not have to wait for an insolvency process to conclude.
- For a Scheme of Arrangement to be put in place, 75% of creditors by value (and a majority in number) within each class must vote in favour of the proposed scheme at a meeting of creditors. The approval of the court is required both to convene a meeting of creditors, and to sanction an agreed scheme.
- Additionally, Part 26A of the Companies Act 2006 (inserted by the Corporate Insolvency and Governance Act 2020) provides for a new restructuring plan. This gives an additional route for a firm in financial difficulties to propose a compromise or arrangement with its creditors, in a manner similar to a Scheme of Arrangement. However, unlike a Scheme of Arrangement, the new plan allows the courts to sanction a binding compromise without the consent of a majority of creditors, but where it judges that the proposed compromise leaves creditors in the dissenting class no worse off than the most likely alternative (which could, for example, be administration or liquidation).

Insolvency Option: Administration

- In administration, an insurer is placed under the control of a court-appointed administrator, who enjoys broad powers to manage the firm, including the power to appoint or remove the firm's directors. In the case of insurers, the PRA and FCA both have the right to apply to the court for an administration order, in addition to the insurer's directors, creditors and shareholders. Unlike other corporate firms, an insurer can only be put into administration following an application to the court for an administration order.
- In order to grant an administration order, the court must be satisfied that the insurer is, or is likely to become, unable to pay its debts[6]. This

[6] Please refer to paragraph 11(a) of Schedule B1 of the IA 1986.

statutory test[7] is less demanding than the equivalent test for liquidation, meaning that administration can be used earlier in the insolvency process, before an insurer has become unable to pay its debts. To grant an administration order the court must also be satisfied there is a real prospect of administration achieving specified objectives, including the rescue of the insurer and/or achieving a better outcome for creditors than would be likely in liquidation. In addition to their duties to all creditors, administrators of insurers are required to carry on any long-term insurance contracts with a view to transferring them to a viable insurer, in order to maintain continuity of cover for policyholders.

- As is the case in corporate insolvency, insurers in administration are insulated from legal process, including winding-up petitions, under the statutory moratorium contained in the IA 1986[8].
- While an administrator may make payments due to an insurer's creditors, including policyholders, they cannot pay out more than the creditor would receive under the statutory creditor hierarchy in a winding up[9].

Insolvency Option: Liquidation/ Winding up

- In compulsory liquidation, a court-appointed liquidator takes control of a firm, sells off its remaining assets and distributes the proceeds to its creditors, according to the creditor hierarchy[10]. Unlike administration, liquidation is always a 'terminal' procedure, whereby a firm is closed down and ceases to trade. For this reason, liquidation of an insurer will lead to loss of cover for policyholders, and so liquidation is not generally considered a desirable outcome for insurers.
- An insurer can be liquidated on a voluntary as well as a compulsory basis, by resolution of the insurer's shareholders[11]. Moreover, the PRA (and the FCA) has the right to petition the court for an insurer to be liquidated. In order to sanction a liquidation, the court must be satisfied that the insurer is unable to pay its debts (as they fall due)[12].
- As with administration, liquidators of insurance companies have a statutory duty to carry on any long-term insurance contracts with a view to transferring them to a viable insurer[13].
- The existing arrangements also provide a power for the court to reduce the amount owed under an insurer's contracts as an alternative to making a winding-up order. However, the extent of this power (known as 'write-

---

[7] Please refer to section 123 of the IA 1986.

[8] Please refer to section 43, Schedule B1 of the IA 1986.

[9] Please refer to Regulation 10 of the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2010.

[10] The creditor hierarchy sets out the order in which creditors receive payment when a firm's assets are distributed in liquidation. Insurance policyholders normally sit above other unsecured creditors, but below secured creditors and preferential creditors (which includes employees' wage arrears).

[11] However, a long-term insurance company may not be voluntarily liquidated without the consent of the PRA. Please refer to section 366 FSMA.

[12] Please refer to section 122 of the IA 1986.

[13] Please refer to section 376 FSMA.

down') is unclear, and it has never been used in practice. More details on the write-down power are given in Annex B.

A.10 Importantly, run-off and transfer of business may be applied for commercial reasons, for example to achieve economies of scale, when an insurer is not in financial distress. Separately, a run-off, transfer of business and Scheme of Arrangement/Restructuring Plan are restructuring options, and so can be used outside of formal insolvency proceedings. In comparison, liquidation and administration are reserved for insurers which are insolvent, or likely to become insolvent.

A.11 Moreover, these options are not mutually exclusive; it is possible that an insurer in distress could undergo a combination of these options. For example, a run-off could be accelerated using a Scheme of Arrangement.

Annex B

Proposed Amendments to the Existing Arrangements

Proposal One: Amendments to section 377 FSMA to widen the existing power for a court-ordered write-down of an insurer's contracts and liabilities to a broader set of circumstances

Current Position

B.1 Section 377 FSMA provides a high-level power for the court to reduce (write down) the value of one or more of the insurer's contracts. This can only be exercised when an insurer has been proved to be unable to pay its debts, and only as an alternative to making a winding-up order (which if made, would move the insolvent company into compulsory liquidation). Any reduction is to be on such terms and subject to such conditions (if any) as the court thinks fit.

B.2 A write-down could be preferable for the insurer in question's policyholders to the winding up of the insurer, as it provides continuity of cover to policyholders. The court, under section 377 FSMA, is currently unable to reduce the value of one or more of the insurer's contracts before an insurer is insolvent.

Rationale for Amendments

B.3 The power has never been exercised, and therefore no precedent exists as to how the court may apply a write-down under section 377 FSMA. Moreover, there is material ambiguity in the drafting of the provision with regard to:

a) Which interested parties may apply to the court to implement the power;

b) The grounds which need to be satisfied to prove an insurer has been unable to pay its debts for the purposes of winding up defined in section 123 IA 1986;

c) The extent of the write-down the court should consider;

d) Whether liabilities can be written up to some extent should actual claims experience have a better outcome than estimated;

e) Whether the write-down would affect recoveries under outwards reinsurance;

f) What kind of debts may (or may not) be relevant for its purposes (for both the insolvency test and the scope of the write-down);

g) Treatment of contracts under which the insurer's obligations are secured; and

h) How section 377 FSMA would interact with the statutory priority under the Insurance (Reorganisation and Winding Up) Regulations 2004 (SI 2004/353).

B.4 These ambiguities may lead to uncertainty, potentially limiting the effectiveness and speed with which the court could action a write-down in the event that an insurer became insolvent. In turn, this could have a detrimental impact on policyholders because of the uncertainty as to: (i) payment of claims; and (ii) continuity of cover where the insolvent insurer has in-force policies.

Intention of Policy Proposal

B.5 The government's intention is to clarify and expand on who is able, and on what grounds, to apply to the court to sanction a write-down of an insurer's contracts under section 377 FSMA, and by extension, facilitate the use of a write-down as a tool to allow the solvent run-off of a failing insurer (where this may otherwise not be possible) and thereby improve policyholder protection by facilitating continuity of cover (albeit at a reduced level, though FSCS coverage may be available – see Proposal Five).

B.6 Importantly, an insurer which is subject to a write-down under section 377 FSMA (as amended by Proposal One) would remain a PRA-authorised person[1], and so would continue to be subject to PRA and FCA supervision.

Test to be met in order for a Court to Order a Write-Down under Proposal One

B.7 The intention of this aspect of Proposal One is to expand the parameters around the court's ability to order a write-down, to enable the court to sanction a write-down: (1) when an insurer 'is, or is likely to become, unable to pay its debts' rather than solely when it 'has been proved to be unable to pay its debts' (i.e. this test should mirror the test for administration (and more closely mirror the definition provided by section 123 of the IA 1986), including in relation to the insurer's debts which should be taken into account when making this determination); and (2) as an alternative to administration as well as to winding up (section 377 FSMA currently only enables a write-down as an alternative to winding up).

B.8 However, it is not intended for a write-down under section 377 FSMA (as amended by Proposal One) to be available once an insurer has already entered insolvency proceedings[2] (i.e. once an administration order or winding-up order has been made by the court or an administrator/ liquidator

---

[1] Please see Part 4A FSMA.

[2] However, an application for a write-down could be presented to the court while an application for administration or a petition for winding up has been presented to the court and not yet sanctioned/ dismissed. This would include when a provisional liquidator has been appointed but ahead of the court sanctioning a winding-up order.

has been appointed). By extension, this will mean that two additional routes for a write-down under Proposal One would be created in comparison to the current drafting of section 377 FSMA. There will then be three separate routes available:

a. an application for a standalone write-down absent an administration or winding-up application/petition being presented to the court;

b. write-down as an alternative to the court making an administration order; and

c. write-down as an alternative to the court making a winding-up order (currently available under section 377 FSMA).

B.9 Additionally, further parameters would be introduced to increase the transparency of the write-down tool as well as assisting the court as to when the power should be exercised. Specifically, this would include a direction for the court, in that it should consider the impact the write-down would have, including on different types of creditors. Specifically, the government is proposing that, when considering whether to sanction the write-down, the court would need to be satisfied that the write-down would be reasonably likely to lead to a better outcome for the insurer's creditors as a whole, including its policyholders.

B.10 Separately, the court will need a clear counterfactual to compare the impact of the write-down under Proposal One against. The government is proposing that the court should consider the impact of the write-down under section 377 FSMA (as amended by Proposal One) to what it considers is the next most likely scenario were it not to sanction the write-down. Taking each of the three different scenarios outlined above, the next mostly likely scenario which the court would consider may typically be (but would not be limited to[3]):

a. In scenario (a), any other potential outcome, including administration, liquidation etc.

b. In scenario (b), the court making an order for administration (which may also include a consideration of the potential for winding up where the objectives of an administration cannot be achieved).

c. In scenario (c), the court making an order for winding-up.

B.11 Taking this section in its entirety, the test which the court would have to be satisfied is met before a write-down could be ordered would be: (1) that the insurer 'is, or is likely to become, unable to pay its debts'; and (2) that the write-down is reasonably likely to lead to a better outcome for creditors as a whole compared with the counterfactual of the next most likely scenario if the court were not to sanction the write-down. Given the effect of the Insurers (Reorganisation and Winding Up) Regulations 2004 (SI 2004/353) the court would need to take account of the order of priority that would

3 For example, a court could issue a winding-up order following an administration application.

apply in a winding up when considering the interests of the different groups of creditors[4].

B.12 However, where the court decides the test has been met, the court's existing broad powers to determine whether a write-down under section 377 FSMA is to be subject to any terms and/or conditions which it considers appropriate would remain in place.

B.13 Moreover, it would be possible for a write-down under section 377 FSMA (as amended by Proposal One) to be sanctioned in relation to an insurer which has undergone a separate restructuring event (for example, a restructuring plan under Part 26A Companies Act 2006) previously. However, unlike the position established by paragraph 2 of Schedule ZA1 of the IA 1986, this proposal would not introduce a minimum time frame which must pass between the previous restructuring event and a write-down. However - as set out in further detail below - as an application to the court for a write-down under this proposal would require PRA consent, the government believes firms would be prevented from making use of this procedure improperly.

Who may Apply to the Court

B.14 Under each of the three routes for a court ordered write-down under section 377 FSMA (as amended by Proposal One), the interested parties which may apply to the court would be:

a. the directors of the UK-authorised insurer in question (authorised under Part 4A FSMA);

b. the shareholders of the UK-authorised insurer in question (authorised under Part 4A FSMA);

c. the PRA, after consulting with the FCA;

d. a singular or group of the insurers' policyholders or creditors; and

e. any combination of those parties listed above.

B.15 While all the interested parties listed above would be entitled to apply to the court for a write-down, explicit prior written consent from the PRA to do so would be required before an application could be put to the court. This would take the form of a formal certificate issued by the PRA, which would set out its explicit consent. The court would not be permitted to consider an application for a write-down under section 377 FSMA (as amended by Proposal One), and would need to adjourn a hearing of an application under this proposal, unless the PRA had issued this certificate. The government does not consider it appropriate for legislation to set out the process by which the PRA should issue this certificate. Rather, the PRA should be able to determine how this process will operate and set out this information in a manner it deems the most appropriate.

---

[4] This order of priority is also relevant to outcomes for creditors in administration, since an insurer's administrator cannot pay more to a creditor than they would receive in a winding up, as per Regulation 10 of the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2010.

B.16 When considering an application for consent to present an application to the court for a write-down, the PRA would ensure that any such decision was made in accordance with the PRA's decision-making framework, and therefore in accordance with the PRA's public law duties. The PRA would be obliged by its statutory objectives, including its insurance objective, to only give such consent where it would further those objectives. This would include ensuring that a write-down under section 377 FSMA (as amended by Proposal One) would be in the interest of policyholders.

B.17 The PRA would be required to consult the FCA before granting its consent for a write-down application to be presented to the court. Similar to transfers of business under Part VII FSMA, and in accordance with the PRA/FCA Memorandum of Understanding, the PRA would be the lead regulator. Accordingly, the PRA would not require consent from the FCA to give PRA consent for the write-down application.

B.18 The court would not be obliged to act in accordance with the objectives of any other interested parties (i.e. the PRA). The government anticipates the court would likely consider arguments put forward by the applicant as to how a write-down would be effected, however the court would be under no obligation to heed any proposal put forward by applicants for the write-down.

Withdrawing an Application

B.19 Any of the interested parties who have applied to the court for a write-down under section 377 FSMA (as amended by Proposal One), or a variation of that write-down (further detail below) would be entitled to withdraw their application at any point after presenting the application to the court and before the relevant court hearing. However, as is the status quo following an application to place an insurer into administration[5], the application for a write-down under section 377 FSMA (as amended by Proposal One) could only be withdrawn with the permission of the court.

B.20 Moreover, any applicant (unless the applicant is the PRA) would be required to notify the PRA in advance of making an application to the court to withdraw an application for a write-down.

Court Hearing

B.21 Under Proposal One, the PRA (and the FCA) would be entitled to be heard and be present at the court hearing for a write-down under each of three routes outlined above. Other parties would be able to represent themselves at any court hearing. However, like other insolvency court hearings, there would not be a requirement for the court to notify relevant parties upon receiving a write-down application. While these parties wouldn't be expressly notified, their interests would be protected by: (1) the presence of an independent nominee write-down manager (see Proposal Two for more detail on the write-down manager) to lead on the design of the write-down (except for in exceptional circumstances); and (2) as set out below, provisions to apply to the court for a variation of the write-down if the

[5] Please refer to paragraph 12(3) of Schedule B1 IA 1986.

insurer's financial position is later found to be better than assumed in the initial write-down[6].

B.22 Separately, under Proposal One, it is expected that an application to the court for a write-down would also include an application for the appointment of a write-down manager. Where a nominee write-down manager is in place, they would also be entitled to be present and heard at the court hearing, and would able to provide independent views to the court on the proposed write-down, including on the impact it would have on the insurer's creditors. The government believes it is likely the court would seek to hear the views of the nominee write-down manager in making its determination on whether to sanction the write-down under section 377 FSMA (as amended by Proposal One).

B.23 Similar to the approach taken in insolvency court hearings in relation to insurers, it would not be necessary to distinguish between general and life insurers in the conduct of a court hearing to consider a write-down application under section 377 FSMA (as amended by Proposal One)[7]. Rather, the court hearing should operate in the same manner irrespective of the type of insurer being considered.

Sequencing of Court Hearings

B.24 As outlined above, under this proposal, it is expected that an application for a write-down under section 377 FSMA (as amended by Proposal One) could either be presented to the court: (1) at the same time as or after an application for the insurer to enter administration or petition to enter liquidation, but before the administration / liquidation court hearing; or (2) absent an application/ petition for the insurer to enter insolvency proceedings. Given an application/petition to place an insurer into insolvency proceedings would trigger the need for a court hearing (as would an application for a write-down under this proposal), the intended choreography/ sequencing of all relevant court hearings (i.e. administration/ liquidation/ write-down) is set out below:

1) In scenario (1), where there is an existing administration application or winding-up petition underway, and a write-down application is then made, any pending administration or winding-up proceedings will be stayed on an interim basis. If the write-down application is successful, then the administration application or liquidation petition would be dismissed. However, this would not prevent a new administration application or liquidation petition being put to the court following the sanctioning of the write-down. If the write-down application is not successful, then the pre-existing application/petition (either administration or liquidation) would be re-activated for the court's consideration (at the same hearing, or for separate consideration, as the court deems appropriate).

---

[6] As set out in Proposal Two, a write-down manager would be obliged to apply to the court to vary the scope of the write-down if they considered the variation would be reasonably likely to result in a better outcome for creditors as a whole than the original write-down.

[7] The only distinction is in the context of a life insurer which is seeking to wind itself up on a voluntary basis where the PRA's prior written consent is required – please refer to section 366(1) FSMA.

2) In scenario (2), where no administration or winding-up applications/ petitions are underway, the write-down application should be considered by the court as soon as is practical. Once the write-down application is presented to the court, no subsequent administration application or winding-up petition should be presented to the court until the write-down application is either withdrawn (with the consent of the court), sanctioned or dismissed. Following any of these events occurring, an administration application or a winding-up petition could be presented to the court in the usual way.

B.25 It is expected that (almost) all applications to court under section 377 FSMA (as amended by Proposal One) would be accompanied by an application for the appointment of a write-down manager under Proposal Two. In this event, and similar to the existing choreography as for an administration application (where the court's decision whether to put the firm into administration and the appointment of an administrator are concurrent), the government expects that the application for a write-down and an application for the appointment of a write-down manager would be considered in a single court hearing, with the court's decision on both these matters to be concurrent. In the unlikely event that the applications are not made together, it would be expected that a further court hearing would take place for the appointment of a write-down manager should the court order the write-down in isolation.

B.26 Additionally, it is envisaged that the court, if it determined it necessary to amend the scope of the moratorium under Proposal Three, or the scope of the stay under Proposal Four, would make this determination concurrently to determine whether to sanction the write-down under section 377 FSMA (as amended by Proposal One). However, the court will have the power to vary either scope at any point, as set out in the respective proposals.

Application Proposal

B.27 The government expects that an application to the court to sanction a write-down would be supported by a proposal on the scale and extent of the write-down, including supporting evidence on why a write-down would be reasonably likely to lead to a better outcome for creditors as a whole, particularly compared to the most likely scenario if the court did not order the write-down (in line with the approach set out above). For example, the applicant could demonstrate that the insurer was on the glide-path to insolvency with actuarial analysis, which could include run-off projections.

B.28 However, the government does not propose to introduce a statutory obligation for the applicant to produce a proposal as the court is unlikely to sanction a write-down without specialist evidence. Moreover, a statutory requirement to produce a write-down proposal may impede the ability for a write-down application under section 377 FSMA (as amended by Proposal One) to be put to the court at pace should this be necessary. Rather, applicants would produce the necessary information for the application, which could include a write-down proposal for the court's consideration including information such as: (1) actuarial analysis demonstrating that the insurer was on the glide-path to insolvency; (2) a run-off plan with sensitivity

analysis of that plan; (3) a determination of the extent of the write-down required to allow for a solvent run-off until maturity; and (4) an analysis of the impact on those creditors (including policyholders) written down (for example, including consideration of how the proposal affects their interests/ rights).

Varying a Court-Ordered Write-Down

B.29 Under Proposal One, the parties entitled to apply to the court for a write-down outlined above, the FCA (following consultation with the PRA), the FSCS, and the write-down manager for the write-down (if appointed) would also be entitled to apply to the court to vary or amend the sanctioned write-down in a new court hearing. This ability to vary or amend a write-down would also include the ability to apply to the court to terminate the write-down.

B.30 The process for varying/ amending the original write-down sanctioned by the court under section 377 FSMA (as amended by Proposal One) would be a mirror of the process for applying to the court for the original write-down, as outlined above, i.e. it would require PRA consent (following consultation with the FCA, where the FCA is not the applicant) in line with the process outlined above.

B.31 The court would only sanction a variation of an existing write-down if it was satisfied that the variation would be reasonably likely to lead to a better outcome for creditors (including policyholders) as a whole compared with the existing write-down. This could, for example, occur should: (1) a surplus emerge following the sanctioning of the write-down which would enable creditors to be written up (see below); or (2) unintended consequences come to light following the court sanctioning the write-down.

Liabilities in Scope of the Write-Down

B.32 It would be specified that the write-down could apply to (almost) all unsecured creditors of the insurer (e.g. unsecured bondholders) with regard to be had to the order in which they sit in the creditor hierarchy as set out in the Insurers (Reorganisation and Winding Up) Regulations 2004 (SI 2004/353). This would include policyholder contracts and liabilities (such as discretionary benefits and bonuses which have not yet been declared). Secured creditors would be out of scope of a write-down under this proposal. This is because: (1) the exercise of security could have the effect of destabilising the write-down plan; and (2) secured creditors rank ahead of policyholders and other unsecured creditors in the creditor hierarchy.

B.33 The below unsecured liabilities – existing at the point the court sanctions the write-down through a write-down order - would be excluded from the scope of any write-down under this proposal:

- Liabilities with an original maturity of less than 7 days (given practicality reasons due to the close proximity);
- Liabilities related to employees of the insurer – including pay and pensions, but excluding bonuses (given staff will be needed for business continuity, thereby assisting in the implementation of the write-down).

This includes, but is not limited to, preferential debts for insurers – as defined by Part IV of the Insurers (Reorganisation and Winding Up) Regulations 2004 (SI 2004/353);

- Liabilities arising from financial contracts (to avoid a further downgrade in the insurer's financial position (and the close links to Proposal Three)); and
- Liabilities arising from commercial and trade creditors for critical services (where these need to continue to be paid in full in order for the write-down to be successfully implemented).[8]

B.34 Moreover, the government does not propose to introduce any limitations on the extent of the write-down which the court can sanction under section 377 FSMA to be set in legislation under this proposal. However, the government believes the process for a write-down application as outlined above contains suitable safeguards – principally as any application that is presented to the court would need PRA consent. The PRA would not apply for, or give consent to, a write-down under Proposal One if it did not think the extent of the write-down was well balanced. The PRA's judgement on what is balanced will take account of the specificities of the case being considered.

B.35 Separately, the government does not propose to introduce a 'no creditor worse off' ('NCWO') safeguard – akin to that provided by sections 49 – 62 of the Banking Act 2009 – in the context of a write-down under section 377 FSMA (as amended by Proposal One).

The Write-Down

B.36 The court, if satisfied it is reasonably likely to lead to a better outcome for creditors as a whole, will approve a write-down (either in line with the applicant's proposed write-down (or otherwise, as the court would not be obliged to sanction the write-down exactly as proposed)) and confirm this through a write-down order. From a protected policyholder's perspective,[9] there should be minimal disruption. On the making of a write-down order, as soon as practicable the write-down manager or the insurer in question will be responsible for issuing communications (for example, letters or other communications) to policyholders and other affected creditors in scope of the write-down. This would inform them: (1) that a write-down has been sanctioned; (2) of details of the effect on them from the write-down depending on policyholder or creditor type (including the matters to which they can apply to the court in regard to); and (3) what would happen in the event of a future write-up or if a surplus remains once additional strategies, such as run-off or transfer of business, have been implemented.

B.37 Separately, and related to Proposal Five, a write-down being sanctioned by the court would not permanently extinguish the liabilities of the insurer and corresponding rights of creditors (including after a claim has become due

---

8 It would be expected that any application to the court would set out which commercial and trade creditors provide critical services.

9 I.e. Policyholders who are eligible for protection in accordance with the Policyholder Protection part of the PRA Rulebook.

and payable during the write-down[10]). Rather, these liabilities and rights (representing the value of creditor claims which have been written down) would be deferred until 'reactivated' by one of the follow trigger events:

- a write-up by way of a variation of the write-down sanctioned by the court – in this case, the deferred liabilities would reactivate relative to the size of the write-up;
- the insurer entering liquidation proceedings (by way of the court sanctioning the insurer being placed in liquidation through a winding-up order or, in the event of a voluntary liquidation, the appointment of a liquidator) or administration proceedings (by way of the court granting an administration order) – in this case, the entirety of the deferred liabilities would reactivate; or
- the availability of a sufficient distributable surplus following a solvent run-off – in this case, the entirety of the deferred liabilities would reactivate (following a write-up) to ensure written down creditors recovering before shareholders remove value from the firm.

B.38 Importantly, while liabilities and creditor rights are deferred, the (contingent) liabilities of the insurer – alongside any FSCS funding received as a result of Proposal Five – would be kept off the insurer's balance sheet.

Write-Up

B.39 Proposal One would provide that liabilities can be written up if the insurer's financial position is later found to be better than assumed in the initial write-down, in order to distribute any surplus. This would include where sufficient distributable surplus remained at the end of a subsequent run-off of the insurer's contracts.

B.40 From a statutory perspective, an application to the court to write-up an insurer's contracts would be considered in the same manner as another application to vary/ amend the original write-down sanctioned by the court. As such, the process for a write-up would follow that as outlined above for varying the original write-down. There would not be an obligation for an application to be presented to the court for a write-up at certain specified points. Rather, it would be for the applicant to determine the appropriate point at which to present an application to the court for a write-up. However, as set out in Proposal Two, a write-down manager would be obliged to apply to the court for a write-up if they considered it reasonably likely this would lead to a better outcome for creditors as a whole compared with the original write down.

B.41 The economic effect of the write-up should be paid in the order of the creditor hierarchy.[11] Here, the FSCS, where it has taken on the rights of

---

10 As such, the deferred portion of a creditor's claim could be 'reactivated' and become due and payable some time after the non-written down part of their claim was paid out.

11 As set out in the Insurers (Reorganisation and Winding Up) Regulations 2004 (SI 2004/353), the order of priority of payment in a winding up of an insurer is: (1) preferential debts; (2) insurance debts (which are debts to which the insurer is or may become liable under a contract of insurance to a policyholder or any person who has a direct right of action against that insurer, and include any premium paid in connection with a contract of insurance which the insurer is liable to refund); (3) all other debts.

compensated policyholders (see Proposal Five for further information), would rank equally with other (non-protected) policyholders. Once the FSCS and all other (non-protected) policyholders[12] have received funds to the pre-written-down amount of their claims, then remaining surplus would continue to be distributed according to the creditor hierarchy. This means that a partial write-up could result in non-insurance unsecured creditors (i.e. creditors who are not policyholders) receiving no benefit from the write-up in the event that the FSCS and policyholders (who would rank equally) had not been made whole to the pre-written-down amount.

Box B.1: Life Insurance Example of Write-Down/ Write-Up (Further information on FSCS involvement is set out in Proposal Five)

- Year 1 – Write-down order is sanctioned. 100% of all subordinated debt written down to nil (in accordance with the creditor hierarchy) and policyholders written down to 60%. The insurer is liable for 60% of the value of claims, and for protected policyholders the FSCS would pay out the remaining 40%. Non-protected policyholders will 'lose-out' on the written-down 40% value of their claim (if there was a subsequent write-up, or a surplus at the maturity of a subsequent run-off, then the financial loss would be reduced). The insurer is put into run-off (i.e. it continues to operate to administer its existing contracts, but cannot write new business).
- Year 5 – a clear surplus emerges. Following court approval, there is a write-down variation (write-up) from 60% to 80%. This would mean that the 40% write-down is reduced to 20% for both claims made and claims yet to be made since the original write-down.
  - For all protected claims that had been paid between year 1 and year 5, the 20% uplift is payable to the FSCS. This can either be refunded to the FSCS or can be used to net off against future claims contributions from FSCS. For non-protected policyholders who have made claims, the 20% uplift is paid to them.
  - For future claims, protected policyholders get 80% from the insurer and 20% from the FSCS, and non-protected policyholders get 80% from the insurer only.
  - No payments are made to unsecured creditors as a result of the write-up because policyholders (and the FSCS standing in the shoes of policyholders) rank higher than all non-policyholder creditors within scope of the write-down, and those creditors below policyholders in the hierarchy should only benefit from a prospective write-up once all policyholders (and the FSCS) have been compensated to the pre-written-down amount.
- Year 15 – The run-off matures and all policyholder liabilities paid 'in full' up to 80% (i.e. the written-down value following the

[12] These policyholders would include non-FSCS-protected policyholders, and any FSCS-protected policyholders who had not yet accepted FSCS compensation, and therefore retained their original rights and place in the creditor hierarchy.

recalibration in year 5). If there is a surplus, this is distributed proportionately to the FSCS and non-protected policyholders. So for example, if there is scope for a further 10% write-up to 90% of the original pre-written-down value, both the FSCS and non-protected policyholders received their fair proportion so that each have only 'lost' 10% of all claims values over the duration of the run-off following the write-down in year 1.

If there is excess surplus so that both the FSCS and non-protected policyholders are 'made whole' to the original value of claim (i.e. the pre-written-down amount), then the remaining surplus can be distributed in accordance to the creditor hierarchy.

Termination of the Write-Down

B.42 As outlined above, any of the parties entitled to apply to the court to vary a write-down order would be entitled to apply to the court for the termination of the write-down (i.e. a write-up of all liabilities back to 100%) in line with the procedure set out in that section. The court would be able to approve the termination of the write-down provided it was satisfied that the write-down had no reasonable chance of success (i.e. the write-down would not enable the solvent run-off of the insurer's contracts), or alternatively where it is satisfied the purpose of the write-down has been achieved (similar to paragraph 80 of Schedule B1 of the IA 1986 in relation to administration).

B.43 The write-down would automatically terminate upon the insurer entering liquidation proceedings. This would trigger in the event of: (1) the court sanctioning the insurer being placed in liquidation through a winding-up order; or (2) in the event of voluntary liquidation, the appointment of a liquidator.

B.44 However, in the event that a provisional liquidator was appointed[13], the write-down would not automatically terminate. Rather, the write-down would continue up until the court sanctioned the insurer being placed in liquidation through a winding-up order as outlined above. This is appropriate as it is possible that, following the appointment of a provisional liquidator, the court may determine not to wind up the insurer.

B.45 The write-down under section 377 FSMA (as amended by Proposal One) would also terminate upon an insurer subsequently entering administration as a result of the court making an administration order. However, where an insurer is currently subject to a write-down under section 377 FSMA (as amended by Proposal One), PRA consent would be required for an administration application to be presented to the court. This process of consent would follow the procedures set out in relation to the write-down

[13] Provisional liquidation is an emergency procedure governed by the IA 1986 and the Insolvency (England and Wales) Rules 2016. A provisional liquidator can only be appointed by the court after a winding-up petition has been presented. Provisional liquidation may be appropriate where there is a real concern that, between the presentation of the winding-up petition and the making of a winding-up order by the court, the company's affairs will not be properly conducted, or its assets will be dissipated. The main reason for appointing a provisional liquidator is to preserve the company's assets.

application set out above (i.e. it would require consultation with the FCA). The government believes PRA consent in this context would be necessary as – unlike a liquidation as set out above or as through the write-down process and subsequent run-off – an administration, considering the primary objective of an administrator,[14] may result in the continuation of the insurer in some form.

Impact on Reinsurance

B.46 Proposal One would include a clarification that any write-down of liabilities would not affect recoveries under any outwards reinsurance (i.e. a statutory variation of the 'pay-as-paid' doctrine).

B.47 As a statutory variation, it would apply in respect of reinsurance contracts governed by UK law. However, it would not apply to those governed by the laws of other jurisdictions. Given the likely challenges of obtaining recognition in non-UK Law contracts, the government considers that re-papering these existing contracts may be sensible.

B.48 Separately, this statutory variation should apply retrospectively as well as to future contracts. Retrospective application is deemed necessary since reinsurance contracts may be held with long lifetimes to manage long term risks.

Moratorium on Legal Process

B.49 The government proposes to introduce a moratorium on legal process[15] which would apply upon on an interim and then permanent basis following an application being presented to the court for a write-down/ the court sanctioning a write-down under section 377 FSMA (as amended by Proposal One).

B.50 The moratorium would apply on an interim basis from the point of an application for a write-down under section 377 FSMA (as amended by Proposal One) being presented to the court, and on a permanent basis from the point a write-down order is made by the court (should the court sanction a write-down).

B.51 There would be no time limitation on the interim moratorium. Rather, this would remain in force until either: (1) the court sanctions a write-down through a write-down order (at which point, the moratorium would become permanent); (2) the court determines not to sanction the write-down; or (3) the application for a write-down is withdrawn. When one of these events occurs, the interim moratorium would terminate.

B.52 The permanent moratorium would last for a base period of 12 months. However, the court would be able to approve an unlimited number of extensions, each with a maximum length of 12 months.

---

[14] Please refer to Paragraph 3 of Schedule B1 of the IA 1986.

[15] As set out in Proposals Three and Four, this moratorium would not in itself prevent a creditor from exercising (or seeking to exercise) a contractual right to, for example, terminate / suspend a contract.

B.53 Certain parties would be able to apply to the court for an extension to the proposed moratorium, providing a proposed length, rationale for the extension, and relevant supporting evidence. The court will have discretion as to which factors to consider when deciding if the applicant has made a sufficient case for the extension. The parties eligible to apply to the court for this extension will be:

a) Those parties eligible to apply to the court for a write-down under section 377 FSMA (as amended by Proposal One);

b) A write down manager (as defined in Proposal Two), where one has been appointed;

c) A provisional liquidator, where one has been appointed; and

d) The FCA (following consultation with the PRA).

B.54 Separately, the permanent moratorium would automatically terminate should the write-down under section 377 FSMA (as amended) also terminate.

B.55 The government is proposing that this moratorium would not bind the FCA or PRA in terms of their ability to take regulatory action (where necessary). This would ensure the regulators maintain their ability to use their powers in an efficiently and effective way in order to fulfil their statutory objectives.

B.56 Separately, this moratorium would not prevent any relevant parties[16] from petitioning/ applying to the court to enter the insurer into insolvency proceedings. However, as set out above, consent from the PRA would be needed before a party could apply to the court to place an insurer – subject to a write-down under section 377 FSMA (as amended by Proposal One) – into administration.

B.57 Moreover, this moratorium would not apply in relation to contracts entered into following the court ordering the write-down under section 377 FSMA (as amended by Proposal One).

Box B.2: Consultation Questions – Proposal One

- How will the proposed amendments to section 377 FSMA enhance the UK authorities' ability to manage the distress of an insurer, resulting in a better outcome for policyholders and creditors?

- To what extent do you believe that the proposed amendments to section 377 FSMA will improve the usability of this write-down procedure?

- Do you believe the tests which the court would need be satisfied are met in order to sanction a write-down under section 377 FSMA (as amended by this proposal) are sufficient to safeguard against undue

[16] I.e. those parties which are able to apply to the court to place the insurer in question into insolvency proceedings prior to that insurer becoming subject to a write-down under this proposal.

impact of a write-down on an insurer's creditors (including its policyholders)[17]?

- Do you support the nominee write-down manager being able to provide independent views to the court (including on the impact of the write-down on an insurer's creditors (including its policyholders) at a write-down court hearing?
- Would the proposed amendments to section 377 FSMA be likely to impact an insurer's costs (including in relation to debt issuance)?
- To what extent would the proposed moratorium on legal process during a write-down under section 377 FSMA assist in the write-down process?
- Do you have any other comments on Proposal One?

Proposal Two: A right for certain interested parties to apply to the court for the appointment of a write-down manager to support a write-down under section 377 FSMA (as amended by Proposal One).

The Current Position

B.58 Under section 377 FSMA, it is only possible for a write-down to be sanctioned by the court as an alternative to making a winding-up order. This means it would not necessarily be possible for a suitably skilled individual (such as, for example, an insolvency practitioner) to support an application for a write-down without a court hearing to wind up the firm.

Rationale for Amendments

B.59 There may be circumstances where relevant parties determine that it would be appropriate for a suitably skilled court-appointed individual to oversee the implementation and execution of a court-issued write-down under section 377 FSMA (as amended by Proposal One), to ensure it was working as intended to stabilise the insurer and allow continuity of cover to be maintained (important for all policyholders, particularly life policyholders and annuitants).

Intention of the Policy Proposal

B.60 The government's intention is to ensure that, should it be deemed appropriate by the court, a suitably qualified court-appointed individual is able to lead on the design of, provide advice to the court on, and oversee and monitor the implementation and execution of a write-down sanctioned by the court under section 377 FSMA (as amended by Proposal One). This individual would ensure the write-down was working as intended to stabilise the insurer (taking account of the impact on the interests of creditors

[17] Please refer to paragraphs B.7 – B.13 for more detail.

(including policyholders) and allow continuity of cover to be maintained. The government is proposing this role is undertaken by an individual in a new role of a write-down manager.

B.61 As with insolvency proceedings, it would be possible for a joint appointment to the role of the write-down manager.

Purpose of the Write-Down Manager

B.62 The precise role of the write-down manager in any particular case would necessarily depend on the nature of the firm and the particular circumstances then prevailing. However, their overarching objective and formal role (once their appointment has been approved by the court) would be to oversee the implementation and execution of a write-down sanctioned by the court under section 377 FSMA (as amended by Proposal One). As the write-down manager would be court appointed, they would be an officer of the court with attendant duties and accountability, and their obligations would be formally expressed as being to the court. Importantly, as an insurer which is subject to a write-down under section 377 FSMA (as amended by Proposal One) would remain authorised, the write-down manager would not have any responsibility for the on-going management of the firm; rather, this responsibility would be retained by the insurer's directors.

B.63 Moreover (and further detail is provided below), once a potential write-down manager has been nominated (with the approval of the PRA, in consultation with the FCA) prior to their appointment by the court, they would also lead on the design of the write-down and associated application put to the court under section 377 FSMA (as amended by Proposal One). They would also be entitled to be heard at the relevant court hearing to provide independent views to the court on the proposed write-down, including the impact it would have on the insurer's creditors – including its policyholders (both in terms of the value of their policy and relevant conduct implications – including how the proposal would be reasonably likely to offer a better outcome for the insurer's creditors as a whole compared to the relevant counterfactual. This would require the write-down manager to ensure they design/ review the write-down proposals against the tests the court would consider when determining whether to sanction the write-down.

B.64 Separately, the write-down manager would provide reports on the implementation and execution of a write-down under section 377 FSMA (as amended by Proposal One). The firm would issue the reports to policyholders (and other creditors), the PRA, and the court, if so provided for in the court order confirming the write-down manager's appointment.

Powers of the Write-Down Manager

B.65 The minimum powers of the write-down manager would be set in legislation. However, these powers could be varied or added to through the court order appointing each specific write-down manager and any subsequent variations of such order. The write-down manager would exercise all of their powers as a principal and appointee of the court.

B.66 The powers of the write-down manager to be set in legislation would be:

- The power to obtain information from the insurer, its directors and its creditors where necessary for the purpose of overseeing and implementing the write-down sanctioned by the court under section 377 FSMA (as amended by Proposal One);
- The power to engage appropriate independent expertise as needed to facilitate the write-down;
- The right to apply to the court to seek remedy where the write-down manager's recommendations are disregarded by the insurer's directors;
- As set out in Proposal One, the power to apply to the court to vary/ amend the write-down – including in respect of a write-up and a termination – sanctioned by the court under section 377 FSMA (as amended by Proposal One). Further, the write-down manager would be obliged to apply to the court for this purpose if they considered the variation would be reasonably likely to result in a better outcome for creditors as a whole than the original write-down (for example, through a write-up);
- As set out below, the power to apply to the court to vary the individual appointed as the write-down manager for the particular firm;
- As set out in Proposal Three, the power to apply to the court to vary/ amend the scope of, and for an extension to, the moratorium on financial and service/ supply contracts;
- As set out in Proposal Four, the power to block the switching rights of some or all policyholders subject to the stay on policyholder surrender rights should the exercise of switching rights, in their view, risk a material impact on the value of the insurer's liabilities
- As set out in Proposal Four, the power to apply to the court to vary/ amend the scope of, and for an extension to, the stay on policyholder surrender rights (in relation to life insurers); and
- As set out in Proposal Four, the power to allow the exercise of life insurance policyholder surrender rights, during the application of the stay, if satisfied that the stay would otherwise cause the policyholder financial hardship. To note, while not formally 'in possession'[18], write-down managers will be given this discretion so as to avoid policyholders being required to make potentially onerous applications to the court.

Appointment Process for a Write-Down Manager

B.67 In essence, there would be a two-stage process for the appointment of a write-down manager: (1) a nominee appointment (requiring PRA approval), following which the nominee write-down manager would be in waiting but would not be appointed to the write-down manager role; and (2) the

---

18 When in post, an administrator or liquidator is 'in possession' of the firm in question, and "may do anything necessary or expedient for the management of the affairs, business and property of the company" as set out in section 59, Schedule B1 to the IA 1986 (in the case of an administrator) and sections 165 and 167 of, and paragraph 13 of Part 3 of Schedule 4 to the IA 1986 (in the case of a liquidator) . Write-down, by contrast, is a 'debtor-in-possession' procedure, where directors remain empowered to manage the firm.

appointment of the nominee write-down manager by the court. These are considered in turn below.

Stage One – Nominee Stage (Prior to Court Appointment)

B.68 Following an insurer entering financial difficulty (and likely being able to meet the test of 'is, or is likely to become, unable to pay its debts' as set out in Proposal One) and all appropriate management actions being exhausted, it may be determined that a write-down under section 377 FSMA (as amended by Proposal One) is the most viable option to manage the insurer's position in comparison to other restructuring or insolvency options.

B.69 Following this, the applicant would decide or agree to look to nominate a write-down manager to develop substantive proposals for a write-down to accompany the application to the court under section 377 FSMA (as amended) (pending the PRA granting consent to this application). Where a nominee write-down manager is proposed by an applicant other than the PRA, the PRA (alongside the FCA) would review the nominee to, amongst other things, assess their suitability for the role in question. The PRA (following consultation with FCA), provided it was satisfied that the nominee write-down manager is reasonably likely to meet the eligibility criteria (set out below), would then give approval to the nominee appointment of the write-down manager. If the applicant does not propose a suitable candidate for the write-down manager function, or where the PRA is the applicant, it is expected that the PRA would select and appoint a nominee write-down manager to the insurer in question.

B.70 It is expected that the nominee write-down manager would continue to liaise with the firm, the PRA and the FCA to develop a write-down plan – having regard to the effect the write-down plan would have on all of the insurer's creditors (including policyholders), and the test the court would have to be satisfied is met to sanction the write-down (i.e. reasonably likely to lead to a better outcome for the insurer's creditors as a whole compared to the next most likely scenario if the write-down isn't sanctioned) - to be presented to the court under section 377 FSMA (as amended by Proposal One).

B.71 There would be no time limit on the PRA's approval for the nominee appointment of a write-down manager.

Stage Two – Appointment by the Court

B.72 Following PRA approval of the nomination of the write-down manager, the same parties eligible to make an application for a write-down under section 377 FSMA (as amended by Proposal One) would be entitled to apply to the court for the appointment of the nominee write-down manager. These parties are:

1) the directors of the UK-authorised insurer in question (authorised under Part 4A FSMA);

2) the shareholders of the UK-authorised insurer in question (authorised under Part 4A FSMA);

3) the PRA, after consulting with the FCA;

4) a singular or group of the insurers' policyholders or creditors; and

5) any combination of the parties listed above.

B.73 While all parties above can apply to the court, it would be expected that the same party (or group of parties) would make an application to the court under Proposal One and Two in comparison to separate parties. However, if a party other than the PRA (or group of parties not including the PRA) presented an application for a write-down under section 377 FSMA (as amended by Proposal One) to the court, the PRA (in consultation with the FCA) would be explicitly empowered to apply to the court for the appointment of a write-down manager under Proposal Two.

B.74 As with Proposal One, explicit consent from the PRA to apply to the court for the appointment of a write-down manager would be required before an application could be presented to the court. This would take the form of a formal certificate issued by the PRA, which would set out its explicit consent for the application to be presented to the court, and confirming its approval of the nominee write-down manager. The court would not be permitted to consider an application for the appointment of a write-down manager, and would need to adjourn the application under this proposal until the PRA had issued this certificate.

B.75 When considering an application for consent to apply to the court for the appointment of a write-down manager, the PRA would ensure that any such decision was made in accordance with the PRA's decision-making framework, and therefore in accordance with the PRA's public law duties. The PRA would be obliged by its statutory objectives, including its insurance objective, to only give such consent where it would further those objectives. Similar to Proposal One, the PRA would be required to consult the FCA before granting its consent for an application for the appointment of a write-down manager.

B.76 However, it would ultimately be for the court to determine whether or not it is appropriate for a write-down manager to be appointed, and the conditions around this. The court would need to be satisfied that it was in the interest of the insurer's creditors for a write-down manager to be appointed.

B.77 Separately, in giving its consent for an application for the appointment of a write-down manager, the PRA would seek to ensure the application to be presented to the court includes a proposal which sets out any additional powers which the write-down manager would require with a clear consideration of both: (1) policyholder protection; and (2) the particular circumstances of the insurer.

Court Hearing

B.78 As set out above, it is expected that the write-down manager would have a pivotal role in developing the write-down proposal. As such, the nominee write-down manager would have a right to be present and heard at the relevant court hearing, and would be able to give independent views to the court on the write-down proposal, including on the impact it would have on the insurer's creditors (including its policyholders).

B.79 As set out in Proposal One, and similar to the existing choreography as for an administration application (where the court's decision whether to put the firm into administration and the appointment of an administrator are concurrent), the government would anticipate the application for a write-down under section 377 FSMA (as amended by Proposal One) and an application for the appointment of a write-down manager under Proposal Two to be considered in a single court hearing, with the court's decision on both these matters to be concurrent.

Withdrawing an Application for the Appointment of a Write-Down Manager by the Court

B.80 Any of the interested parties who have applied to the court for the appointment of a write-down manager would be entitled to withdraw their application at any point after submitting the application and before the relevant court hearing. However, as with the status quo following an application to place an insurer into administration[19], the application for the appointment of a write-down manager could only be withdrawn with the permission of the court. Moreover, similar to Proposal One, any applicant (unless the applicant is the PRA) would be required to notify the PRA in advance of presenting their application to withdraw to the court.

B.81 Separately, (as set out in Proposal One) the court would be expected to make a concurrent judgement on whether to sanction a write-down under section 377 FSMA (as amended by Proposal One) and the appointment of a write-down manager. However, in the event that a write-down is not sanctioned or where an application for a write-down submitted to the court is withdrawn, the associated application for the appointment of the write-down manager would automatically fall away.

Write-Down Manager's Relationship with Other Parties

Insurer's Directors

B.82 The write-down manager's powers – beyond those directly related to the write-down (and stay under Proposal Four) – will be generally limited to making recommendations to directors, and the right to apply to the court to seek remedy in the event there is disagreement.

B.83 As the insurer would remain authorised during a write-down under Proposal One, the insurer's directors' duties would not be curtailed by the appointment of a write-down manager. Moreover, failure by the insurer's directors to comply with the court order(s) setting out the write-down under section 377 FSMA (as amended by Proposal One) and appointment of the write-down manager would be grounds for action by the court and/or the PRA.

[19] Please refer to paragraph 12(3) of Schedule B1 IA 1986.

PRA and FCA

B.84 The write-down manager would liaise with the PRA and the FCA: (1) from receiving PRA approval for their nominee appointment (and during the approval process); and (2) following their court appointment.

B.85 As section 348 FSMA prohibits the disclosure of confidential information by the PRA and FCA (as well as certain other entities) to other parties, unless such information is exempted, an express gateway to allow information sharing between the write-down manager and the PRA and the FCA would be created under this proposal. This is because the write-down manager may require confidential information that it cannot obtain from the insurer in order to develop and oversee the implementation of a write-down under section 377 FSMA (as amended by Proposal One). To enable the write-down manager to develop a write-down proposal, this gateway would need to be available from the PRA's approval of their nominee appointment (in advance of the court hearing).

B.86 Moreover, in carrying out their duties, the write-down manager would also be required to have regard to:

- **Directions given to the insurer by the PRA (and the FCA).**[20] Examples of the sort of directions given to, or requirements imposed on, the insurer by the PRA and the FCA which the write-down manager would be required to have regard to when putting forward any recommendations to the insurer's directors under this proposal include:

  a) To commission a review by a skilled person under section 166 FSMA;

  b) To delay or not to delay payments to particular policyholders or classes of policyholders;

  c) Whether to communicate significant outstanding but not yet agreed claims on particular terms;

  d) To maintain a certain solvency margin during the subsequent run-off;

  e) To provide particular information (and incur costs to produce that information) on claims, or pre-write-down transactions (which might be challengeable in a winding up – e.g. directors' bonuses);

  f) To meet requirements on insurers in the PRA Rulebook/ FCA Handbook on an ongoing basis, including to maintain ongoing regulatory reporting as directed by the PRA and FCA; and

  g) The PRA's power to impose requirements under section 55M, and the FCA under section 55L FSMA.

[20] A firm subject to a write-down under section 377 FSMA (as amended by Proposal One) will remain authorised (and so any person in a governance/management function within the firm, including the write-down manager, will be obligated to comply with PRA rules (SMF26). As such, in general terms, the firm via the write-down manager will be expected to have regard to PRA objectives, namely policyholder protection.

- **The interests of the FSCS.** The write-down manager would be obliged to work with the FSCS to ensure continuity of cover for policyholders is maintained.

Provisional Liquidator

B.87 As set out in Proposal One, the appointment of a provisional liquidator would not trigger the termination of the write-down or the write-down manager's appointment. Rather, the write-down and the appointment of the write-down manager would continue until the court sanctioned the insurer being placed in liquidation through a winding-up order.

B.88 The appointment of a provisional liquidator would also not amend the powers of the write-down manager. However, the write-down manager would require consent from the provisional liquidator to exercise these powers while the provisional liquidator is in post. Any recommendations which the write-down manager would previously have made to the insurer's directors would be made to the provisional liquidator during the provisional liquidator's appointment.

Write-Down Manager Eligibility

B.89 The appointment of a write-down manager would be by the court. Therefore, this appointment would be subject to the court's scrutiny and would be proportionate. The appointment of a write-down manager would be publicised.[21] Once appointed,[22] the write-down manager would be required to notify the insurer's creditors directly of their appointment. This notification should be made as soon as is reasonably practicable.

B.90 The write-down manager would need to be an independent person who is fit and proper, as well as free from any conflicts of interest (including any conflict of interests on the part of their employer) which may, or may appear to, undermine the independence of their engagement/ prejudice their status in the eyes of the court. The write-down manager will have the skills necessary to undertake the role of write-down manager, including the requisite insurer restructuring expertise (i.e. having knowledge and experience of the types of insurance business transacted by the firm). It would be a statutory requirement that the write-down manager would be either: (1) a licensed insolvency practitioner; (2) a suitably qualified insurance professional; or (3) an actuary.

B.91 Importantly, a licensed insolvency practitioner – should they be appointed as the write-down manager – would not be considered to be acting as an insolvency practitioner as per section 388 IA 1986. As such, a write-down manager would not be engaging the insolvency practitioner regulatory architecture, and therefore would not be subject to the same licensing and professional requirements. However, as an officer of the court, the write-down manager would have duties to the court. The government considers that there would be no need for a bond (as with an insolvency practitioner)

---

21 Please refer to section 71F(8) FSMA.

22 Including when the appointed write-down manager is replaced, as set out below.

given the write-down manager would not be in control of the insurer's assets in the way in which an insolvency practitioner would be.

B.92 Should the write-down manager require specialist/ technical knowledge that they do not have (i.e. actuarial or legal advice), it would be expected that the write-down manager would engage appropriate independent expertise.

Funding of the Write-Down Manager

B.93 The costs of the write-down manager would be recovered from the insurer.[23] This would include the costs of any subsequent individual or individuals hired (for their expertise) to assist the write-down manager as outlined above. The costs of the write-down manager would include their remuneration as well as their expenses (including any applications/ petitions subsequently put to the court).

B.94 The government expects that any potential write-down manager would set out the basis by which their fees/ remuneration will be calculated and an estimation of such fees/ remuneration ahead of their nominee appointment, and such information would be included in the application to the court for their appointment.

Termination of the Write-Down Manager

B.95 The court order appointing the write-down manager would specify how and when the write-down manager's appointment may be terminated.

B.96 Moreover, the court would have inherent jurisdiction to remove/ replace the write-down manager, or vary their powers, including in response to an application by certain parties (further detail set out below).

B.97 Following the position set out in Proposal One, should the insurer subject to a write-down under section 377 FSMA (as amended by Proposal One) subsequently enter insolvency proceedings, the write-down manager's appointment would terminate. Termination would also be triggered by: (1) in the case of administration, an administration order being sanctioned by the court; (2) in the case of court-led liquidation, a winding-up order being sanctioned by the court; and (3) in the case of voluntary liquidation, when a liquidator is appointed.

Replacing the Appointed Write-Down Manager

B.98 All parties eligible to apply to the court for the appointment of the write-down manager, alongside the currently appointed write-down manager and the FCA, could apply to the court for the appointed write down manager to be replaced (for example, should an appointed write-down manager retire). This application would follow the approach outlined above for the initial application (i.e. require PRA consent to ensure the suggested write down manager met the eligibility criteria etc.).

B.99 In the event that an individual is acting as a write-down manager across a number of insurers, the court would be able make a block transfer order to

[23] This would include the period of the write-down manager's nominee appointment.

appoint a new write-down manager to replace the current write-down manager in respect of all relevant insurers. Parties eligible to apply for a block transfer order would be the same as those able to vary the appointed write down manager in relation to a single insurer as listed above.

Challenging a Write-Down Manager's Actions/ Appointment

B.100 The government considers it important that the actions of the write-down manager can be challenged, and if there are significant concerns, for parties to be able to apply to court for the termination of that write-down manager (outside of the process of replacing the write-down manager due to more natural change outlined above).

B.101 The process of challenging the write-down manager's actions/ appointment would parallel the relevant provisions established in paragraphs 74 and 88 of Schedule B1 of the IA 1986 in relation to administration. Importantly, applicants would be able to challenge the actions taken by the write-down manager when: (1) the write-down manager is acting or has acted so as unfairly to harm the interests of the insurer's creditors (whether individually or as a group); (2) the write-down manager proposes to act in a way which would unfairly harm the interests of the insurer's creditors (whether individually or as a group); or (3) where the write-down manager is not performing their functions as quickly or as efficiently as is reasonably practicable.

B.102 The parties able to apply to the court for this purpose would be:

a) The directors of the UK-authorised insurer in question (authorised under Part 4A FSMA);

b) The shareholders of the UK-authorised insurer in question (authorised under Part 4A FSMA);

c) The PRA, after consulting with the FCA;

d) The FCA, after consulting with the PRA;

e) A singular or group of the insurer's policyholder or creditors;

f) The FSCS; and

g) Any combination of the parties listed above.

B.103 If satisfied that the write-down manager has not acted appropriately (i.e. the write-down manager is, has, or proposes to act as unfairly to harm the interests of the insurer's creditors (whether individually or as a group) or is not performing their functions as quickly or as efficiently as is reasonably practicable), the court could take action as it considered appropriate. This could include any of the actions set out in paragraph 74(4) of Schedule B1 of the IA 1986, as well as varying/ amending the powers of the write-down manager.

Box B.3: Consultation Questions – Proposal Two

- Do you support the introduction of a write-down manager to support a write-down under section 377 FSMA (as amended by Proposal One)?
- To what extent do you agree with the proposed eligibility criteria for a write-down manager under Proposal Two?
- Do you think the proposed role and powers of the write-down manager would be adequate to ensure the development/ implementation of a write-down is in the interests of the insurer and its creditors (in particular policyholders)?
- Do you have any other comments on Proposal Two?

Proposal Three: A moratorium on the termination / suspension of financial contracts and service contracts upon application to the court for, and during (in the case of (a) and (b)): (a) an administration; (b) a write-down under section 377 FSMA (as amended by Proposal One); or (c) a winding up.

The Current Position

B.104 Insurers are typically parties to various types of financial contracts (such as interest rate swaps, currency forwards, capital raising instruments) and service contracts (such as IT service contracts) – these arrangements are ordinarily entered into in order to, for example, hedge against risks or procure specific business-critical services.

B.105 Frequently, these financial and service contracts include clauses which permit either party to terminate / suspend the contract, or take certain other actions,[24] in the event of the other party entering insolvency proceedings or otherwise suffering some form of financial distress.

Administration

B.106 If an insurer is in administration, or is the subject of an outstanding application for an administration order, it will be insulated from any legal process by virtue of the statutory moratorium set out in the IA 1986. However, this will not in itself prevent a counterparty to a financial or service contract from exercising (or seeking to exercise) a contractual right to terminate / suspend the contract.

24 For the purposes of this section, 'termination / suspension rights' should be understood to cover clauses allowing counterparties to terminate, suspend, impose additional charges, or 'do any other thing' as a consequence of an insolvency procedure, in line with the wording of the 'protection of supplies' provisions in section 233B of the IA 1986.

Write-Down/ Winding up

B.107 If an insurer is the subject of a write-down process under section 377 FSMA (or subject to an outstanding winding-up petition, recognising that this could lead to a write-down under section 377), a counterparty to a financial or service contract would not be prevented from exercising (or seeking to exercise) a contractual right to terminate / suspend the contract, or taking legal action to enforce such a right.

Rationale for Amendments

B.108 A counterparty to an insurer's financial or service contracts is potentially likely to be able to terminate / suspend the contract once the insurer enters insolvency proceedings, solely on the grounds of that entry into insolvency (even if the insurer continues to perform its obligations, including its payment obligations, under the contract)[25].

B.109 In the case of financial contracts, no protection currently exists in law against the termination / suspension of an insurer's financial contracts as a result of insolvency events. In the case of service contracts, some protection against termination / suspension rights triggered by insolvency events already exists in the IA 1986, however not all services are covered.

B.110 The exercise or enforcement of these rights could have an adverse impact on an insurer's financial position and / or its operations. It could also slow down or destabilise the recovery / insolvency process, such as where negotiations are taking place for a portfolio transfer to another insurer. For example:

- **Financial contracts**: any termination / suspension could disrupt an insurer's hedging position, thereby exposing it to risk and potential loss. This could adversely affect the solvency of the insurer, ultimately making any recovery or rescue more difficult.
- **Service contracts**: any termination / suspension could disrupt an insurer's business operations such as where the insurer relies on a third-party supplier for business-critical services (buildings maintenance, IT support etc.). This could adversely affect the rescue of an insurer as a going concern or the run-off of an insurer's business. Such a disruption could also have an adverse impact on customers.

Intention of Policy Proposal

B.111 The government's intention is to provide certainty and stability while an administration or write-down under section 377 FSMA (as amended by Proposal One) is underway (or while there is an outstanding application to the court for either procedure) or while there is an outstanding petition for a winding up[26]. This will mitigate the risk and extent of business disruption,

---

[25] In some cases, a counterparty may be able to exercise such a right where an insurer has not entered insolvency but is suffering some form of financial distress.

[26] To note, the government is proposing that the moratorium will not apply once winding up has been sanctioned, since winding up is a 'terminal' procedure, which, in and of itself, does not provide continuity of cover for policyholders.

policyholder harm, and costs arising solely as a result of an insurer being the subject of an insolvency procedure or write-down.

Scope of Moratorium

B.112 This proposal would create an automatic moratorium on termination / suspension rights (including the exercise of such rights and the ability to take legal action to enforce such rights) in financial contracts and service contracts, where these rights arise solely as a result of the insurer's entry into insolvency proceedings, or a write-down procedure under section 377 FSMA (as amended by Proposal One) (including petitions / applications to the court for these).

B.113 Financial or service contracts may also include clauses allowing termination / suspension as a result of events other than formal insolvency proceedings, such as an insurer being in financial distress, or late / missed payments. This proposal does not affect the exercise of such rights when the moratorium is not in force. However, where such a clause has been triggered by one of the events set out below, but the counterparty has not exercised the resulting termination / suspension right prior to the moratorium subsequently taking effect, this right will not be exercisable while the proposed moratorium is in force[27]. This paragraph will only apply to termination / suspension rights arising as a result of the following events:

a. the insurer coming under financial stress / hardship, no matter how defined in the contract; or

b. the insurer failing to make a payment, or to make a payment on time. Note that in this case the operation of the moratorium would be conditional on all payment terms being met during the operation of the moratorium, but would not require payment of previous arrears (see below).

B.114 Termination / suspension rights arising from events unrelated to the insurer's financial position or ability to meet contractual payment terms should not be affected by the moratorium, and are excluded from the above list. These could include, for example, clauses in supply contracts giving rise to termination / suspension rights if the price of a certain good or raw material rose above a specified point. Similarly, termination / suspension clauses in financial contracts may be triggered by the movement of asset prices, and these would not be affected by the moratorium. More generally, contractual clauses may give rise to termination / suspension rights automatically at a certain point in time. In any of these examples, the counterparty would be free to terminate / suspend the contract.

B.115 A default set of contracts defined as 'financial contracts' or 'service contracts' for the purposes of this moratorium will be defined in legislation.

B.116 The operation of the moratorium would depend on / be subject to the insurer meeting its substantive obligations under the relevant contract on an

---

[27] This provision mimics that set out in section 233B(4) of the IA 1986, although with a narrower scope, since 233B(4) covers all pre-insolvency events which give rise to a termination right.

ongoing basis[28]. Hence counterparties should still be able to terminate / suspend the contract where the insurer is failing to meet payment or other substantive contractual terms[29]. As such, the counterparty should not be materially disadvantaged by this proposal, though it is possible that this proposal could result in new contracts becoming marginally more expensive for insurers (due to risk premia) to reflect the counterparty's loss of contractual protection.

B.117 As the moratorium would be a statutory moratorium, it would apply to contracts governed by UK law only.

B.118 The moratorium would apply retrospectively and prospectively (i.e. to contracts already entered into and contracts which will be entered into). Retrospective application is deemed to be necessary since insurers typically hold derivative contracts with long lifetimes to hedge against long-term risk.

B.119 The moratorium would not lead to a change in the status quo with regard to an administrator paying claims.

Moratorium Process

Interim Application

B.120 The moratorium would be automatically "switched on" as follows:

- **Administration**: upon an application for an administration order being made to the court (noting that there is no 'out of court' route into administration for insurers[30]).
- **Winding up**: upon a petition for winding up being made to the court, recognising that this can lead to the court ordering a write-down section 377 FSMA (as amended by Proposal One) as an alternative to making a winding-up order. To note, the moratorium would not trigger through any voluntary liquidation proceedings.
- **Write-down:** upon an application for a write-down under section 377 FSMA (as amended by Proposal One) being made to the court.

B.121 The moratorium would then remain in force on an interim basis until the relevant court hearing takes place, or the relevant petition or application is withdrawn (broadly mirroring the moratorium process under the IA 1986).

Permanent Application

B.122 The moratorium would remain "switched on" or would be "switched off" as follows:

- **Administration:** if the court grants an administration order at the hearing, the moratorium would continue to apply for the duration of the administration. If the court does not grant an administration order (and

[28] The proposed moratorium would not be subject to the insurer making payment in respect of arrears accrued before the moratorium came into force, and the counterparty would not be able to make payment of arrears a condition for their continuing participation in the contract. In this regard, this proposal mimics the provision in section 233B(7) of the IA 1986.

[29] Substantive obligations under the contract should include payment and delivery obligations and the provision of collateral.

[30] Please refer to the Insurers (Reorganisation and Winding Up) Regulations 2004 (SI 2004/353).

does not alternatively order a write-down under section 377 FSMA (as amended by Proposal One)), the moratorium would cease to apply at this point.

- **Winding up:** if the court makes a winding-up order, or declines to make either a winding-up order or a write-down order, the moratorium would cease to apply at that point[31]. However, if the court orders a write-down as an alternative to making a winding-up order, the moratorium would apply under the write-down, as set out below.
- **Write-Down:** if the court orders a write-down under section 377 FSMA (as amended by Proposal One) (either following an application for such a write-down, or as an alternative response to an application for an administration order or winding up), the moratorium would apply until the write-down process has been completed – either where it has been implemented or terminated. If the court declines to order a write-down, the moratorium will cease to apply at this point.

B.123 Further, in the case of a write-down under section 377 FSMA (as amended by Proposal One), in addition to the termination triggers listed above (and in line with the stay in Proposal Four), the moratorium would automatically terminate after 12 months, although the court would be able to approve (an unlimited number of) extensions, each with a maximum length of 12 months. This time-based termination trigger would not apply during the moratorium's interim application.

B.124 Certain parties will be able to apply to the court for this extension of the moratorium, providing a proposed length, rationale for the extension, and relevant supporting evidence. The court will have discretion as to which factors to consider when deciding if the applicant has made a sufficient case for the extension. The parties eligible to apply to the court for this extension will be:

- those parties eligible to apply to the court for a write-down under section 377 FSMA (as amended by Proposal One);
- a write-down manager (as defined in Proposal Two), where one has been appointed;
- a provisional liquidator, where one has been appointed; and
- the FCA (following consultation with the PRA).

Counterparty Notification

B.125 When the moratorium comes into force, and if there is no write-down manager or insolvency practitioner in post, the insurer will be required to notify all affected counterparties of the moratorium, its effect, and their rights (including the right to apply for an exemption on hardship grounds, as set out below). If the court varies the scope of the moratorium via the procedure described below, resulting in certain counterparties being brought into or taken out of the scope of the moratorium, affected counterparties

[31] The moratorium would remain in effect after this point if the insurer was already in administration, and continues to be in administration following the rejection of a winding-up petition.

must be notified at this point. Affected counterparties must also be notified upon any extension to the moratorium made by the court, and when the moratorium is terminated. In all cases, notification should be made as soon as is reasonably practicable. Once a write-down manager or insolvency practitioner is in post[32], they will be responsible for informing counterparties of the moratorium and its effect, if this has not already been done.

Variation

B.126 The court will have the power to vary the scope of the moratorium in the case of a specific firm (in terms of the contracts affected), departing from the default scope set by the statutory definition of financial contracts and service contracts. This power will be available at any time when the moratorium is in force. There would be no express requirement for the court to consider a variation. Instead, a variation could be made by the court on its own initiative, or in response to an application from any of the parties set out below. The court will be empowered to make such a variation where it assesses that failure to do so would be likely to cause financial hardship to affected counterparties, or where the variation benefits the purpose of the write-down or administration (and where it would not cause hardship to any counterparty).

B.127 Certain parties will be eligible to apply to the court to vary the contracts in scope of the moratorium:

- Where the insurer is in administration, or where the moratorium is in force as a result of an outstanding application for administration, these parties will be all those parties normally eligible to apply for an administration order in respect of the insurer.
- Where the insurer is undergoing a write-down under section 377 FSMA (as amended by Proposal One), or where the moratorium is in force as a result of an outstanding application for such a write-down, these parties will be all those parties normally eligible to apply for such a write-down in respect of the insurer (as set out in Proposal One).
- Where the moratorium is in force as a result of an outstanding petition for a winding up, these parties will be all those parties normally eligible to petition for a winding-up order in respect of the insurer.
- In all cases, these parties will include the FCA (following consultation with the PRA).

B.128 Such an application for a variation could also be made alongside an application for a write-down or administration, or petition for winding up, although this would not be a requirement, and would then be considered concurrently with the write-down / administration application or winding-up petition at the relevant court hearing. Such an application will require the consent of the PRA (following consultation with the FCA, where the FCA is not the applicant). This consent would take the form of a formal certificate

[32] While a write-down manager's appointment will terminate upon the appointment of an administrator, as set out in Proposal One, a write-down manager would remain in post after the appointment of a provisional liquidator. In this scenario, the responsibility for policyholder notification will remain with the write-down manager

issued by the PRA through a process matching that set out in Proposal One. The court would not be permitted to consider an application for a variation made without this permission, and would need to adjourn a hearing of the application until the PRA had issued this certificate. However, the consent of the PRA would not be required for the court to vary the contracts in scope of the moratorium on its own initiative.

B.129 In addition to those parties set out above, a write-down manager, administrator or provisional liquidator will be able to apply for a variation of the contracts in scope of the moratorium. In this case, the consent of the PRA will not be required, although the applicant would be required to notify the PRA in advance when making such an application.

B.130 Interested parties would be entitled to attend and be heard at the court hearing for a variation of the contracts in scope of the moratorium. This would include a specific right for the applicant, the PRA, the FCA, write-down manager, administrator or provisional liquidator to attend and be heard at any hearing.

Exemptions

B.131 Counterparties (to both financial and/or service contracts) will be able to apply to the court for an individual exemption from the effects of the moratorium. The court will be able to grant an exemption where it is satisfied that the continuation of the contract would cause the counterparty hardship[33]. There would be a requirement for the counterparty to notify the PRA when making this application and a right for the PRA to make representations to the court in relation to any such application.

B.132 While the moratorium is in force, the directors of the insurer (if there is no insolvency practitioner in post) or an insolvency practitioner will be able to allow a counterparty to exercise a contractual termination / suspension right, where, in their view, this is not detrimental to the purposes of the administration / write-down, or where it is otherwise required by their statutory duties. This power would not be available, by default, to a write-down manager. However, the court would be able to grant a write-down manager this power, where the court deemed this appropriate, through the mechanism for assigning powers to a write-down manager set out in Proposal Two. This is because, unlike for example, an administrator, a write-down manager would not be, by default, 'in possession'[34] or empowered to act on behalf of a firm, with the exception of allowing life insurance policyholder surrenders during the period of the stay described in Proposal Four.

B.133 The directors or insolvency practitioner would not normally be required to notify the PRA when an individual exemption from the moratorium is granted. However, if a large number of applications for exemptions were made, such that, in the view of the party empowered to allow these exemptions (as set out above), allowing them could materially affect the

---

33 This provision mimics the hardship exemption to the protection of essential supplies found in section 233A(4)(b) of the IA 1986.

34 Please refer to section 59, Schedule B1 to the IA 1986 which provides that an administrator "may do anything necessary or expedient for the management of the affairs, business and property of the company."

prospects of the write-down or administration achieving its purpose, said party would be required to notify the PRA as soon as possible.

Box B.4: Consultation Questions – Proposal Three

- Do you agree that the proposed moratorium under Proposal Three would help provide stability, leading to better outcomes for policyholders and creditors overall, in the circumstances outlined above?
- How would the proposed moratorium under Proposal Three affect the terms on which insurers are able to enter into financial contracts and service contracts?
- Factoring in the safeguards outlined above, do you have any concerns about the impact of the proposed moratorium under Proposal Three on the rights of an insurer's counterparties?
- Do you have any other comments on Proposal Three?

Proposal Four: *For Life Insurance Policies Only:* A stay on policyholder surrender rights upon application to the court for, and during (in the case of (a) and (b)): (a) an administration; (b) a write-down under section 377 FSMA (as amended by Proposal One); or (c) a winding up.

The Current Position

B.134 Surrender clauses allow certain life insurance policyholders to (fully or partially) terminate their contract, prior to its maturity / an insured event occurring, in return for some proportion of its cash value[35] and / or repayment of unearned premiums (i.e. the amount of premium that had been paid in advance covering the time period post-surrender).

Administration

B.135 If an insurer is in administration, or is the subject of an outstanding application for an administration order, it will be insulated from any legal process by virtue of the statutory moratorium set out in the IA 1986. However, this will not in itself prevent a policyholder from exercising (or seeking to exercise) a contractual right to surrender their policy.

Write-Down/ Winding up

B.136 If an insurer is the subject of a write-down process under section 377 FSMA (or subject to an outstanding winding-up petition, recognising that this could lead to a write-down under section 377 FSMA), policyholders would not be prevented from exercising (or seeking to exercise) a contractual right to surrender their policy, or taking legal action to enforce such a right.

---

[35] 'Cash value' refers to the nominal value of a life insurance policy which includes an investment element.

Rationale for Amendments

B.137 Policyholders surrendering their contracts makes it more difficult to estimate an insurer's liabilities. Surrenders could also force an insurer to sell its assets to meet an influx of requests for payment of benefits payable and the return of unearned premiums. This could slow down or destabilise the recovery / insolvency process, such as where negotiations are taking place for a transfer of business to another insurer. While it is not generally in the interest of policyholders of life contracts to surrender, they may be more likely to do so when their insurer experiences financial difficulties, due to concern over loss of benefits should their insurer fail.

Intention of Policy Proposal

B.138 The government's intention is to provide certainty and stability while an administration or write-down under section 377 FSMA (as amended by Proposal One) is underway (or while there is an outstanding application to the court for either procedure) or while there is an outstanding petition for a winding up[36]. In particular, the stay aims to fix in place the policies which might, for example, form part of a transfer of business to an acquiring insurer.

B.139 The government believes this would help to reduce risks to the successful execution of measures taken with minimal risk of policyholder detriment relative to the status quo in administration. It is considered highly unlikely that policyholders would trigger their surrender clauses once the administration or write-down is completed (or otherwise terminated). For example, once a third-party insurer acquires the policies by way of a transfer of business, these policies could be surrendered in the normal course, but policyholders are unlikely to do so once they have been transferred to a viable insurer, restoring confidence.

Scope of Stay

B.140 This proposal would create an automatic stay on policyholder surrender rights (including the exercise of such rights and the ability to take legal action to enforce such rights[37]). Surrender rights here mean any right to access part or all of the value of a life insurance policy prior to its maturity, whether this is classed as surrender, partial surrender, withdrawal or cancellation.

B.141 The stay would only apply to life insurance policies (and by default would apply to all life insurance policies of the insurer in question, although the court will be empowered to reduce this to a sub-set of life insurance policies, as set out below). While general insurance policies may contain cancellation clauses, the government understands the risk and impact of cancellations of general insurance policies is likely to be smaller in comparison with life insurance policies. In addition, cancellation of general insurance contracts is

---

[36] To note, the government is proposing that the stay will not apply once winding up has been sanctioned, since winding up is a 'terminal' procedure, which, in and of itself, does provide continuity of cover for policyholders.

[37] The government is proposing that the stay will curtail policyholders' ability to take legal action to enforce surrender rights even where the policyholder first attempted to exercise these rights before the stay took effect.

less complex, from an accounting viewpoint, than surrender of life insurance policies, particularly those which include an investment element.

B.142 The stay will not affect contractual events other than surrender. The stay will also not affect (or replace) the insurer's right to apply a market value adjustment ('MVA')[38] to any benefits payable where this right exists, since MVAs are part of the business-as-usual functioning of the policy in question.

B.143 The stay would also not impact 'switching rights'[39] in unit-linked insurance policies if: (1) there is an existing right under the policy contract; and (2) the exercise of these rights would not have an adverse impact on the insurer's financial position. The write-down manager (as defined in Proposal Two) and administrator, once appointed, would be empowered to block the switching rights of some or all policyholders should the exercise of switching rights, in their view, risk a material adverse impact on the value of the insurer's liabilities.

B.144 As the stay would function as a statutory override of a contractual right, it would apply to policies governed by UK law only.

B.145 The operation of the stay would depend on / be subject to the policies continuing to operate (i.e. claims and benefits being paid out to policyholders as they fall due – even if that involves a sale of assets to achieve).

B.146 The stay would not constitute a default event for FSCS purposes. Therefore, conditions for policyholders to apply to the FSCS for compensation would not be met purely through a stay on policyholder surrender rights. Furthermore, any reduction in value of the investment element of a life insurance policyholder's contract during the period of the stay (for example, because of adverse market movements) will not give rise to FSCS compensation.

B.147 The stay would apply retrospectively and prospectively (i.e. to policies already entered into and policies which will be entered into).

B.148 The stay would not lead to a change in the status quo with regard to an administrator paying claims.

Stay Process

Interim Application

B.149 The stay would be automatically "switched on" as follows:

- **Administration:** upon an application for an administration order being made to the court (noting that there is no 'out of court' route into administration for insurers[40]).

---

[38] MVAs are reductions applied to the value of with-profits life insurance policies upon early surrender, to ensure the amount paid out is not higher than the current market value of the policy's underlying assets.

[39] Unit-linked insurance products combine insurance coverage and investment exposure, and typically allow policyholders to switch their investment between different funds based on their risk appetite.

[40] Please refer to the Insurers (Reorganisation and Winding Up) Regulations 2004 (SI 2004/353).

- **Winding up:** upon a petition for winding up being made to the court, recognising that this can lead to the court ordering a write-down under section 377 FSMA (as amended by Proposal One) as an alternative to making a winding-up order. To note, the stay would not trigger through any voluntary liquidation proceedings.

- **Write-down:** upon an application for a write-down under section 377 FSMA (as amended by Proposal One) being made to the court.

B.150 The stay would then remain in force on an interim basis until the relevant court hearing takes place, or the relevant petition or application is withdrawn (broadly mirroring the moratorium process under the IA 1986).

Permanent Application

B.151 The stay would remain "switched on" or would be "switched off" as follows:

- **Administration:** if the court grants an administration order at the hearing, the stay would continue to apply for the duration of the administration. If the court does not grant an administration order (and does not alternatively order a write-down under section 377 FSMA (as amended by Proposal One)), the stay would cease to apply at this point.

- **Winding up:** if the court makes a winding-up order, or declines to make either a winding-up order or a write-down order, the stay would cease to apply at that point[41]. However, if the court orders a write-down as an alternative to making a winding-up order, the stay would apply until the write-down is completed, as set out below.

- **Write-Down:** if the court orders a write-down under section 377 FSMA (as amended by Proposal One) (either following an application for such a write-down, or as an alternative response to an application for an administration order or petition for winding up), the stay would apply until the write-down process has been completed – either where it has been implemented or terminated. If the court declines to order a write-down under section 377 FSMA (as amended by Proposal One), the stay would cease to apply at this point.

B.152 Further, in the case of a write-down under section 377 FSMA (as amended by Proposal One), in addition to the termination triggers listed above (and in line with the moratorium in Proposal Three), the stay would automatically terminate after 12 months, although the court would be able to approve (an unlimited number of) extensions, each with a maximum length of 12 months. This time-based termination trigger would not apply during the stay's interim application.

B.153 Certain parties will be able to apply to the court for this extension of the stay, providing a proposed length, rationale for the extension, and relevant supporting evidence. The court will have discretion as to which factors to consider when deciding if the applicant has made a sufficient case for the extension. The parties eligible to apply to the court for this extension will be:

41 The stay would remain in effect after this point if the insurer was already in administration, and continues to be in administration following the rejection of a winding-up petition.

a. those parties eligible to apply to the court for a write-down under section 377 FSMA (as amended by Proposal One);

b. a write-down manager (as defined in Proposal Two), where one has been appointed;

c. a provisional liquidator, where one has been appointed; and

d. the FCA (following consultation with the PRA).

Policyholder Notification

B.154 When the stay comes into force, and if there is no write-down manager or insolvency practitioner in post, the insurer will be required to notify all affected policyholders of the stay, its effect, and their rights (including the right to apply for an exemption on hardship grounds, as set out below). If the court varies the scope of the stay via the procedure described below, resulting in certain policyholders being brought into or taken out of the scope of the stay, these policyholders must be notified at this point. Affected policyholders must also be notified upon any extension to the stay made by the court, and when the stay is terminated. In all cases, notification should be made as soon as is reasonably practicable. Once a write-down manager or insolvency practitioner is in post[42], they will be responsible for informing policyholders of the stay and its effect, if this has not already been done. While policyholder notification will be a requirement on the relevant party, the stay will apply and bind regardless even if notification is not given.

Variation

B.155 The court will have the power to vary the scope of the stay (in terms of the insurance contracts affected), departing from the default position that all life insurance policies are in scope, at any time when the stay is in force. There would be no express requirement for the court to consider a variation. Instead, a variation could be made by the court on its own initiative, or in response to an application from any of the parties set out below. The court will be empowered to make such a variation where it assesses that failure to do so would be likely to cause financial hardship to affected policyholders, or where the variation benefits the purposes of the write-down or administration (and where it would not cause hardship to any policyholder).

B.156 Certain parties will be eligible to apply to the court to vary the contracts in scope of the stay:

- Where the insurer is in administration, or where the stay is in force as a result of an outstanding application for administration, these parties will be all those parties normally eligible to apply for an administration order in respect of the insurer.
- Where the insurer is undergoing a write-down under section 377 FSMA (as amended by Proposal One), or where the stay is in force as a result of

42 While a write-down manager's appointment will terminate upon the appointment of an administrator, as set out in Proposal One, a write-down manager would remain in post after the appointment of a provisional liquidator. In this scenario, the responsibility for policyholder notification will remain with the write-down manager.

an outstanding application for such a write-down, these parties will be all those parties normally eligible to apply for such a write-down in respect of the insurer (as set out in Proposal One).

- Where the stay is in force as a result of an outstanding petition for a winding up, these parties will be all those normally eligible to petition for a winding-up order in respect of the insurer.
- In all cases these parties will also include the FCA (following consultation with the PRA).

B.157 Such an application for a variation could also be made alongside an application for a write-down under section 377 FSMA (as amended by Proposal One) or administration, or petition for winding up, although this would not be a requirement, and would then be considered concurrently with the write-down / administration application or winding-up petition at the relevant court hearing. Such an application will require the consent of the PRA (following consultation with the FCA, where the FCA is not the applicant). This consent would take the form of a formal certificate issued by the PRA through a process matching that set out in Proposal One. The court would not be permitted to consider an application for a variation made without this permission, and would need to dismiss the application for a variation of the stay until the PRA had issued this certificate. However, the consent of the PRA would not be required for the court to vary the contracts in scope of the stay on its own initiative.

B.158 In addition to those parties set out above, a write-down manager, administrator or provisional liquidator will be able to apply for a variation of the contracts in scope of the stay. In this case, the formal consent of the PRA will not be required, although the application would be required to notify the PRA when making such an application.

B.159 Interested parties would be entitled to attend and be heard at the court hearing for a variation of the contracts in scope of the stay. This would include a specific right for the applicant, the PRA, the FCA, write-down manager, administrator or provisional liquidator to attend and be heard at any hearing.

Exemptions

B.160 Where the stay would, or would be likely to, cause financial hardship for a policyholder, they will be able to apply for an individual exemption from the stay. This is envisaged, for example, where a policyholder experiences a life event such as illness or financial loss which creates an urgent need to access the cash value of their policy, or where the volatility in a policy's underlying assets increases beyond the policyholder's risk tolerance

B.161 Where an insolvency practitioner or write-down manager is in post, the policyholder will be able to apply to this office-holder, who will be empowered to allow the surrender if satisfied that the stay would otherwise be likely to cause the policyholder financial hardship. This office holder will also be empowered to allow the surrender where, in their view, this furthers the purposes of the administration / write-down.

B.162 The policyholder will also have the right to apply to the court, which will be empowered to allow the surrender if satisfied that the stay would otherwise be likely to cause the policyholder financial hardship. This option will always be available to the policyholder, but is intended for use when there is no insolvency practitioner or write-down manager in post (such as in the interim period between application for a write-down / administration or petition for winding up and the relevant court hearing), or where an insolvency practitioner or write-down manager has rejected the application or failed to respond in a timely manner.

B.163 While the stay is in force, the directors of the insurer (if there is no insolvency practitioner in post) will be able to allow the exercise of a policy surrender right, following a request from a policyholder. The directors will be empowered to allow surrender where, in their view, this is not detrimental to the purposes of the administration / write-down, or where it is otherwise required by their statutory duties. The directors will also be empowered to allow surrenders if satisfied both that the stay would otherwise be likely to cause the policyholder financial hardship, and that to allow the surrender would not otherwise conflict with their statutory duties.

B.164 The directors, write-down manager or insolvency practitioner would not normally be required to notify the PRA when an individual exemption from the stay is granted. However, if a large number of applications for exemptions were made, such that, in the view of the party empowered to allow these exemptions (as set out above), allowing them could materially affect the prospects of the write-down or administration achieving its purpose, said party would be required to notify the PRA as soon as possible.

Box B.5: Consultation Questions – Proposal 4

- Do you agree that the proposed stay under Proposal Four would help provide stability, leading to better outcomes for policyholders and creditors overall, in the circumstances outlined above?
- Factoring in the safeguards outlined above, do you have any concerns about the impact of the proposed stay under Proposal Four on the rights of the insurer's policyholders?
- Do you have any other comments on Proposal Four?

Proposal Five: A change to the protection provided by the FSCS in the event of a write-down under section 377 FSMA (as amended by Proposal One)

The Current Position

B.165 Part XV FSMA sets out the broad framework for a compensation scheme (i.e. the FSCS) and requires the PRA and FCA to establish rules for the operation of the FSCS. In the case of FSCS protection for insurance business, these rules are prescribed by the PRA in the Policyholder Protection Part of its Rulebook.

B.166 The FSCS compensates protected policyholders as follows (in each case, up to an unlimited amount):

a. Contracts of long-term insurance: 100% of the value of the claim;

b. Contracts of general insurance:

- 100% of the value of the claim for compulsory insurance (e.g. third-party motor insurance), professional indemnity insurance, sickness / injury insurance and building guarantee insurance;
- at least 90% of the value of the claim payable for all other types of general insurance.

Rationale for Amendments

B.167 Currently, following a write-down under section 377 FSMA, two broad scenarios may occur for a protected policyholder whose claim[43] becomes due and payable[44]:

a. *Scenario 1 (write-down implemented and insolvency avoided)*: if, subsequent to a write-down under section 377 FSMA, a protected policyholder's claim became due and payable pursuant to the terms of the policy, the insurer would be obliged to pay out only the lower post-write-down value of the claim (and there would be no FSCS payment absent a 'default event'[45] such as insolvency, which the write-down may allow the insurer to avoid); and

b. *Scenario 2 (write-down permitted but followed by insolvency)*: if, subsequent to a write-down under section 377 FSMA, the insurer nonetheless became insolvent and an FSCS compensation payment was triggered after the insolvency event, the FSCS could protect only the lower post-write-down value of a protected policyholder's claim (since that would represent the liability owed by the firm to the policyholder at the point of default).

B.168 In both of these scenarios, a protected policyholder would likely only receive the lower post-write-down value of any claim (or, as relevant, the FSCS-protected part of such value) and, therefore, could be financially worse-off than they would have been in an insolvency (i.e. the likely counterfactual absent a write-down). The government believes this mismatch does not deliver the best outcome for policyholders.

---

43 Within this section, a "claim" is intended to mean "a valid claim made in respect of a civil liability owed by an insurer under a contract of insurance". This follows the definition set out in the Policyholder Protection Part of the PRA Rulebook.

44 The point at which claims become due and payable will depend upon contractual terms. This may be automatic (e.g. for an annuity contract), or could require a certain insured event to occur, and the claim to be notified to, and agreed with, the insurer.

45 Please refer to Rule 10.4 in the Policyholder Protection Part of the PRA Rulebook for the full list of 'default events' for FSCS purposes.

Intention of Policy Proposal

B.169 The government's intention is to ensure that, in the event of a write-down under section 377 FSMA (as amended by Proposal One)[46], the value of a protected policyholder's claim, from the perspective of the policyholder, would be the higher original value (subject to normal FSCS compensation limits) as opposed to the lower post-write-down value. Hence, protected policyholders should not be any financially worse-off in the event of a write-down, compared to the most appropriate alternative (likely to be insolvency).

B.170 While some aspects of this proposal would be implemented in legislation, the detail of FSCS rules in relation to insurers is rightly a matter for the PRA Rulebook. Therefore, alongside broader changes to relevant legislation, the government intends to amend legislation to ensure that the PRA has vires (powers) to, at its discretion, amend its rules to contribute to achieving the outcomes described in this paper.

Policyholder Pay-outs

B.171 *Scenario 1*: following a write-down under section 377 FSMA (as amended by Proposal One), the insurer would remain responsible for paying out the lower post-write-down value of the claim. The FSCS would then:

- make a "top-up payment" in relation to any claims which are outstanding at the point when a write-down comes into effect, or which become due and payable after this point. These top-up payments would reflect the difference between the original and post-write-down value, subject to FSCS compensation limits (e.g. should the value of a general insurance claim, with a 90% FSCS compensation limit, be written-down from 100% to 60%, the FSCS would provide a top-up payment of 30% of the original value of the claim, so that the policyholder receives a maximum of 90%);
- have discretion to make the payment to the insurer rather than directly to a protected policyholder, with the insurer responsible for administering onward payments to the protected policyholder. This would help simplify the process from the perspective of a protected policyholder, and would be overseen by a write-down manager, as defined in Proposal Two, where one is in post. Any such funds provided by the FSCS would be ring-fenced from the insurer's assets, and would be recoverable by the FSCS if the insurer were to become insolvent or fail to make onward payment to the policyholder;
- have discretion over when these payments are made; and
- reduce the payments – potentially to zero – in the event that policies are subsequently written-up before they become due and payable.

B.172 While the court sanctioning the write-down would allow the FSCS to make these 'top-up payments' when claims become due and payable, it would not

---

[46] While the government has considered other means of a write-down, it has determined to restrict this proposal to a write-down under section 377 FSMA (as amended by Proposal One) only. For the remainder of this section references to a 'write-down' should be understand as meaning a write-down under section 377 FSMA (as amended by Proposal One).

constitute a default for FSCS purposes, and the FSCS would not be required to declare the firm in default before making these payments.

B.173 *Scenario 2*: FSCS compensation payments would be made based on the higher original claim value, subject to FSCS compensation limits (i.e. the meaning of "value" for FSCS compensation purposes would be the original as opposed to the post-write-down value where the value of the claim in question was the subject of a write-down).

B.174 Naturally, there may be situations over a period of time in which there is a hybrid of Scenarios 1 and 2. In these situations, the relevant approach for protected policyholder payments should be followed during each of the outlined scenarios. For example:

- a general insurer (Firm X) could have a number of protected policyholders (whose agreed claims are subject to an FSCS compensation limit of 90%) and whose claims become due and payable at different points over a period of 15 years;
- at the end of Year 1, a write-down could be actioned which reduces the value of Firm X's protected policyholders' contracts to 60% of their original claim value;
- all claims which become due and payable in Year 2 would fall under Scenario 1, with the protected policyholder receiving 60% of the original agreed value of their claim from Firm X, and the FSCS providing a top-up payment of 30% of the original value of their agreed claim;
- at the end of Year 5, Firm X could fail and enter an insolvency;
- all new agreed claims under policies, which become due and payable from Year 6 would fall under Scenario 2. The protected policyholder would receive FSCS compensation representing 90% of the original value of their claim;
- if the insurer were liquidated, protected policyholders (whose policies have not expired or been transferred) may become eligible (depending on the facts of the case) to make an FSCS claim for 90% of any return of premium entitlement (which may be pro-rated in accordance with the policy terms and conditions).

FSCS Recoveries

B.175 *Scenario 1*: as set out in Proposal One, following a write-down, the liabilities of the insurer, and corresponding creditor (including, but not limited to, protected policyholder) rights, would not be permanently extinguished. Rather, these liabilities and rights (representing the value of creditor claims written down) would be deferred until statutory 'reactivation' following certain events (outlined in Proposal One).

B.176 For a creditor who is not a protected policyholder, these deferred rights would remain with the creditor in question (including after any non-written-down part of the creditor's claim has become due and payable, and been paid. This means that the deferred portion of a creditor's claim could be 'reactivated' and become due and payable some time after the non-written

down part of their claim was paid). For a creditor who is a protected policyholder, these deferred rights would remain with the protected policyholder until such point as the FSCS makes a top-up payment and the protected policyholder receives the full protected value of their claim. At this point, the government proposes all of the deferred rights would automatically transfer to the FSCS – provided for in legislation as an automatic statutory assignment of rights. For example, should the value of a claim under a general insurance policy, with a 90% FSCS compensation limit, be written down from 100% to 60%, the FSCS would provide a top-up payment of 30% of the original value but receive the full 40% deferred rights.

B.177 This statutory reactivation and statutory assignment of rights would provide the FSCS with a (deferred) right to make recoveries in respect of top-up payments. This is similar to the approach to the subrogation of rights by the FSCS which is taken currently in respect of compensation payments[47]. In the event that the FSCS recovered more than they had paid to protected policyholders via top-up payments, they would be obligated to pay the difference to the relevant policyholders.

B.178 *Scenario 2*: FSCS recoveries under Scenario 2 would follow the existing approach in respect of compensation payments made to protected policyholders.

B.179 As set out in the above section, there may be situations in which there is a hybrid of Scenarios 1 and 2 (please refer to the example outlined in the above section). In these situations, the relevant approach for recoveries should be followed during each of the outlined scenarios in a hybrid model.

B.180 Under both scenario 1 and scenario 2, the FSCS's position in an insolvency will mirror its current position. This treatment of FSCS recoveries is designed to reflect the current treatment in insolvency, at which point the FSCS would compensate protected policyholders, take on their rights, and claim alongside non-protected policyholders in the insolvency.

Box B.6: Consultation Questions – Proposal Five

- To what extent do you agree with government's proposal to ensure protected policyholders are not financially worse off as a result of a write down under section 377 FSMA (as amended by Proposal One), as compared to insolvency?
- Do you have any other comments on Proposal Five?

47 Please refer to Rule 14 of the Policyholder Protection Part of the PRA Rulebook.

Box B.7: Write-Down – Process Overview Example: Life Insurer enters write-down under section 377 FSMA (as amended by Proposal One) initiated by firm

Firm identifies it is likely to be unable to pay its debts

↓

All management actions (and PRA supervisory actions) exhausted. The firm determines that a write-down (under Proposal One) is likely to be more desirable than formal insolvency

↓

Firm decides to nominate a write-down manager to provide substantive proposals for a write-down to accompany the firm's envisaged application to court (subject to PRA consent)

↓

PRA (and FCA) engage with the firm's nominee write-down manager to, amongst other things, assess their suitability for the role

↓

PRA consults with FCA on suitability of firm's nominee write-down manager

↓

If PRA is satisfied with firm's nominee write-down manager, PRA gives approval to their nominee appointment. Information sharing gateway becomes active

If PRA is not satisfied with firm's nominee write-down manager, PRA may nominate a different nominee write-down manager, or firm may nominate a different write-down manager

↓

Nominee write-down manager works closely with the firm, the PRA and the FCA to develop a write-down plan to be put to the court

↓

PRA (in consultation with the FCA) determines whether to give its consent to the firm's application to the court under section 377 (as amended by Proposal One) (a write-down application)

↓

If content, PRA issues formal certification that: (1) it consents to the firm's application (under Proposal One) to be put to the court; and (2) confirms its approval of the nominee write-down manager and its consent to apply to the court for their appointment

If not content, subsequent options may include: (1) further work on the write-down plan; or (2) proceeding instead with formal insolvency proceedings

↓

Firm applies to the court for write-down order and appointment of write-down manager. Moratoriums under Proposals One and Three, and stay under Proposal Four apply on interim basis

↓

Court hearing – firm, PRA, FCA and nominee write-down manager have right to (and are expected to) be present and heard

↓

Court adjourns the hearing for further information. Moratoriums under Proposals One and Three, and stay under Proposal Four continue to apply on interim basis

Court sanctions write-down and appointment of write-down manager. Moratoriums under Proposals One and Three, and stay under Proposal Four apply on permanent basis

Court sanctions write-down but not the appointment of the write-down manager. Moratoriums under Proposals One and Three, and stay under Proposal Four apply on permanent basis. PRA would be able to apply to the court (or request the firm applies to the court) for the appointment of a new write-down manager

Court does not sanction write-down. Nomination of write-down manager ceases. Moratoriums under Proposals One and Three, and stay under Proposal Four terminate

Annex C

Privacy Notice

Amendments to the Insolvency Arrangements for Insurers - Processing of Personal Data

C.1 This notice sets out how HM Treasury will use your personal data for the purposes of **Amendments to the Insolvency Arrangements for Insurers consultation** and explains your rights under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).

Your data (Data Subject Categories)

C.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)

C.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

C.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

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

Legal basis for processing special category data

C.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.

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

Purpose

C.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

C.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).

C.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.

C.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.

C.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.

C.13 Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates. Examples of these public bodies appear at: https://www.gov.uk/government/organisations

C.14 Responses to this consultation may be shared (in full, including the organisation's name and any personal data provided), with officials within the Bank of England, Prudential Regulation Authority, Financial Conduct Authority, Insolvency Service, and other public bodies where HM Treasury deems this necessary to support effective policy development.

C.15 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)

C.16 Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

C.17 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)

C.18 To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit
G11 Orange
1 Horse Guards Road
London
SW1A 2HQ

dsar@hmtreasury.gov.uk

Complaints

C.19 If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk.

C.20 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

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
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk