HM Treasury

Banking Act 2009

Special Resolution Regime Code of Practice

July 2025

HM Treasury

Banking Act 2009

Special Resolution Regime Code of Practice

July 2025

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: 978-1-917638-41-8 PU: 3543

Contents

Chapter 1
Introduction

1.1 The Banking Act 2009 (the Act), covering England, Scotland, Northern Ireland and Wales, strengthens the UK's statutory framework for financial stability and depositor protection.

1.2 The Act provides for a special resolution regime (SRR), providing the Bank of England, the Prudential Regulation Authority (PRA) and the Treasury (the authorities) with tools to protect financial stability by effectively resolving banks, building societies, PRA regulated-investment firms, and banking group companies that are failing, while protecting depositors, client assets, taxpayers and the wider economy.

1.3 This Code of Practice, issued in accordance with sections 5 and 6 of the Act, supports the legal framework of the SRR, and provides guidance as to how and in what circumstances the authorities will use the special resolution tools. The code deals with banks, building societies, PRA-regulated investment firms and banking group companies (collectively referred to as “banking institutions”).

1.4 This Code of Practice was previously updated on a number of occasions, including:

- to reflect both changes to the Act following the implementation of the Bank Recovery and Resolution Directive (BRRD) and the changes in the regulatory architecture, with the creation of the PRA and Financial Conduct Authority (FCA);
- to reflect changes following the Bank Recovery and Resolution Order 2016; and
- changes derived from the UK’s exit from the European Union and the Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020, which alongside regulator rules implemented BRRDII in the UK.

1.5 This current update reflects:

- changes to the relevant legislation which removed FCA solo-regulated investment firms from the UK resolution regime – see paragraph 1.6;
- removal of sections related to the resolution regime for central counterparties, following the enactment of the Financial Services and Markets Act 2023 – see paragraph 1.7; and
- the enactment of the Bank Resolution (Recapitalisation) Act 2025 – see paragraph 1.8.

1.6 Following consultation with the Bank of England, PRA and FCA and after a public consultation, the SRR no longer applies to FCA solo-

regulated investment firms[1]. FCA solo-regulated investment firms will remain subject to relevant legislation and the FCA's existing rules and processes in place to facilitate the orderly wind-down of FCA solo-regulated investment firms. In addition, the Investment Bank Special Administration Regime (IBSAR), as set out by the Investment Bank Special Administration Regulations 2011, remains available to use to manage the failure of some investment firms. This Code only applies to PRA regulated investment firms.

1.7 The Financial Services and Markets Act 2023 (FSMA 2023) introduced the UK's expanded resolution regime for CCPs, which came into force on 31st December 2023. The resolution regime for CCPs is not considered as part of this code of practice, as a separate Code of Practice for the CCP resolution regime has been produced in accordance with requirements of Schedule 11 to FSMA 2023, which sets out how that regime will operate in practice[2].

1.8 The Code of Practice also reflects changes made to the Act and the Financial Services and Markets Act (FSMA 2000) by the Bank Resolution (Recapitalisation) Act 2025, which introduced a new source of funding in certain resolution scenarios.

Revising and maintaining the Code

1.9 The Treasury will update the Code on a periodic basis, in the light of evolving experience. The Treasury will consult the Bank of England, PRA, FCA and the Financial Services Compensation Scheme (FSCS) on any changes. When making material changes to the Code the Treasury will also consult the Banking Liaison Panel, which has a statutory remit to advise the Treasury on the Code of Practice under section 10(2)(b) of the Act.

1.10 The Treasury has issued this Code having consulted the PRA, FCA, the Bank of England and the FSCS in accordance with section 6 of the Act. The Code was first laid before the Parliament on 22 November 2010 and was revised on 12 March 2015, 27 March 2017, 17 December 2020 and 15 July 2025.

Banking Liaison Panel

1.11 The Banking Liaison Panel (the Panel) advises the Treasury on certain matters relating to the SRR. The statutory remit of the Panel includes advising the Treasury on the effect of the SRR on: banking institutions, banking group companies, and investment firms; the persons with whom they do business; and the financial markets.

1.12 The Panel may advise the Treasury about the exercise of powers to make statutory instruments, this Code of Practice, and anything else referred to the panel by the Treasury.

---

[1] An investment firm which the PRA has not designated under the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013

[2] https://assets.publishing.service.gov.uk/media/65982b8c614fa2000df3a975/FINAL_CCP_Resolution_Regime_Code_of_Practice.pdf

1.13 The main purpose of the Panel is to provide advice to the Treasury on the impact of the regime as a whole on financial markets – not only specific effects (those which arise in relation to particular financial products or instruments as a result of specific provision in the regime), but also the wider issues relating to the position of the UK as a leading international centre for financial services.

1.14 Summaries of the proceedings of meetings of the Banking Liaison Panel are published by the Treasury, subject to considerations of commercial and market confidentiality.

Chapter 2
Overview

2.1 This section provides guidance on the use of the SRR set out in Parts 1 to 3 of the Banking Act 2009 (the Act) as it applies to banks, building societies, PRA-regulated investment firms and banking group companies (collectively referred to as banking institutions) in circumstances in which their failure has become highly likely. It consists of:

- the five stabilisation options: transfer to a private sector purchaser, transfer to a bridge entity, the asset management vehicle tool, the bail-in tool and transfer to temporary public sector ownership;
- the bank (or building society) insolvency procedure which facilitates the Financial Services Compensation Scheme (FSCS) in providing prompt pay-out to depositors or transfer of their accounts to another institution; and
- the bank administration procedure, for use where there has been a partial transfer of business from a failing institution.

2.2 This Code also provides guidance on the application of the Investment Bank Special Administration Regime (IBSAR) as set out by the Investment Bank Special Administration Regulations 2011. The IBSAR may be used by the authorities (and firms) to enable the speedy distribution of the clients' assets to the firm's clients, as well as distributing firm funds amongst creditors and others with claims.

2.3 The special resolution tools may be used by the authorities to resolve a failing banking institution[3]. The temporary public ownership powers do not extend to banking group companies (with the exception of holding companies). The bank insolvency procedures apply to banks and building societies. The bank administration procedure applies to banks, building societies and investment firms.

Contents of the Code

2.4 In accordance with section 5 of the Act, this Code sets out guidance on:

- the mandatory write-down and conversion of capital instruments and relevant internal liabilities;

[3] In describing the use of statutory powers under the SRR (Chapters 3-10), the Code uses the general term 'banking institution' to refer to a bank, building society, banking group company or PRA- regulated investment firms except where otherwise stated.

- how the special resolution objectives are to be understood and achieved;
- the choice between different resolution options;
- the information to be provided as part of any consultation between the authorities and the giving of advice between one authority and another;
- the giving of advice by one relevant authority to another about whether, when and how the stabilisation powers are to be used;
- how to determine whether Condition 2 in section 7 of the Act is met (this condition stipulates that, before a banking institution can be placed into the SRR, the Bank of England must have determined that it is not reasonably likely that action will be taken by or in respect of the institution that will mean it is no longer failing or likely to fail);
- how to determine whether the test for the use of stabilisation powers in section 7 is satisfied (i.e., how the Bank of England will determine the public interest test for the use of the private sector purchaser, bridge bank, bail-in and asset management vehicle stabilisation options will be satisfied);
- sections 63 and 66 of the Act (general continuity obligations, i.e., the continuity of provision of service and facilities where the transfer powers are used);
- compensation that may be payable as a result of the use of the SRR; and
- the contents of reports under section 214F of the Financial Services and Markets Act 2000 (FSMA 2000), following the exercise of the recapitalisation payment power under section 214E of FSMA 2000.

2.5 Sections 12 and 13 of the Act also require the inclusion in the Code of certain matters relating to the governance of bridge banks, asset management vehicles and temporary public ownership. The Code therefore describes the legal powers under the Act, including the legal constraints on the authorities. This element of the Code expands on the Explanatory Notes that were laid with the Act and the explanatory memoranda that are published with the relevant statutory instruments made under Parts 1-3 and under section 2(2) of the European Communities Act 1972 and section 8(1) of, and paragraph 21 of Part 3 of Schedule 7 to, the European Union (Withdrawal) Act 2018; the Code describes the legally binding provisions of Parts 1-3.

The authorities' regard to the Code

2.6 The authorities are legally obliged to have regard to the Code under section 5(4) of the Act.

2.7 The Treasury considers that one of the primary purposes of the Code is to provide a clear guide, for banking institutions and the financial markets, to how the authorities will seek to achieve the special

resolution objectives and how the SRR powers may be used in practice. Therefore, in addition to describing the legal powers, the Code also sets out the authorities' policy approach to using these powers. The authorities must 'have regard' to these statements of policy intention (under section 5(4) of the Act) when exercising the SRR powers. The statements of policy intention in the Code should therefore provide a greater insight into how the authorities would expect to act in order to achieve the special resolution objectives.

2.8 The Code should be viewed as a guide to the most likely use of the powers. The resolution tools may be exercised in a range of ways, provided these are consistent with the special resolution objectives. So, while the authorities must have regard to it, they are not necessarily bound to adopt an approach set out in the Code where circumstances arise which mean that the alternative approach better meets these SRR objectives.

Chapter 3

Special resolution objectives

3.1 Section 4 of the Act provides for the special resolution objectives in relation to banking institutions:

- Objective 1 is to ensure the continuity of banking services in the UK, and of critical functions;
- Objective 2 is to protect and enhance the stability of the financial system of the UK, in particular by:
    - preventing contagion (including contagion to market infrastructures such as investment exchanges and clearing houses); and
    - maintaining market discipline;
- Objective 3 is to protect and enhance public confidence in the stability of the financial system of the UK;
- Objective 4 is to protect public funds, including by minimising reliance on extraordinary public financial support (as defined in section 3(1) of the Banking Act 2009);
- Objective 5 is to protect investors and depositors to the extent that they have investments or deposits covered by the Financial Services Compensation Scheme;
- Objective 6, which applies in any case in which client assets, including client money may be affected, is to protect those assets; and
- Objective 7 is to avoid interfering with property rights in contravention of a Convention Right (within the meaning of the Human Rights Act 1998).

Matters to be considered in having regard to the objectives

3.2 Some of the terms used within the special resolution objectives are not defined by the Act. The objectives set out in the Act are also context specific. Their relevance and application of the objectives may change over time, for example, as the threats to financial stability change over time.

3.3 This Code therefore provides further explanation as to how the objectives may be achieved by outlining the factors that the authorities may consider in relation to them.

The continuity of banking services in the UK and critical functions

3.4 The continuity of banking services and critical functions refers to the stable and continued functioning and provision of day-to-day banking operations. Continuity of banking services is relevant not only for the protection of insured depositors under Objective 5 but has wider relevance to the stability of confidence in the financial system of the UK.

3.5 The term "critical functions" means activities, services or operations that, if discontinued, would likely lead to disruption of services that are essential to the real economy or disrupt financial stability.

3.6 In carrying out a resolution the authorities will seek, where possible and in a manner consistent with the special resolution objectives, to minimise operational disruption to critical market infrastructure. Where appropriate, this may involve liaising with the relevant parties in order to understand the different risks and stresses associated with the timing of resolution actions and market openings; and taking steps to minimise disruptions which may arise where the failed institution is a member of a payment system.

Stability of the financial system of the UK

3.7 The term "stability of the financial system of the UK" refers to the stable functioning of the systems and institutions (including trading, payment and settlement infrastructure) supporting the efficient operation of financial services and markets for purposes including capital-raising, risk-transfer, and the facilitation of domestic and international commerce.

3.8 Section 7A requires that when the Bank of England is considering the exercise of one of the stabilisation powers in relation to an institution then it must have regard to the need to minimise the effect on other institutions within the same group as the institution and any adverse effects on the financial stability of the United Kingdom. The Bank of England must also have regard to the effects on financial stability of countries other than the UK.

3.9 The term "contagion" in this objective refers to a situation where difficulties of one failing institution spread across the market to other participants. This may be due to exposures to the failing institution which result in losses to the firm, or from a more a general loss of confidence in the financial system caused by the failure of one or more institutions (preventing this helps ensure the wider financial stability across the market).

3.10 The intention of the second objective is to (a) recognise the wider systemic risks posed by the potential or actual failure of a banking institution or group of companies containing a banking institution; and (b) require the authorities to have regard to the likely systemic impact

of their actions, including a decision not to act, when considering whether to use a SRR tool.

3.11 The authorities will aim to ensure that stabilisation powers are not exercised in a manner that is likely to harm financial stability. As part of this, in transferring rights and obligations with a particular status (for example, rights and obligations of a settlement or clearance bank), the authorities will seek to ensure that this status is not transferred to an unsuitable entity.

3.12 The term "market discipline" refers to the behaviour exercised by market participants which ensures financial markets continue to operate in an efficient and rational manner. As is the case with its other stabilisation powers, before deciding whether it is in the public interest to exercise the bail-in option and if so how to react, the Bank of England will consult with the PRA, the FCA and the Treasury and have regard to their representations in relation to the condition in section 7(4).

3.13 In exercising its powers, the Bank of England will also have regard to issues relating to the orderly functioning of financial markets that may have implications for the stability of the financial system. In accordance with the Act, the Bank of England will consult the FCA and have regard to its views on conduct issues that impact the FCA's objectives or remit which may be relevant to financial stability.

Public confidence in the stability of the financial system

3.14 The term "public confidence in the stability of the financial system" refers to the crucial role that public confidence has in maintaining the stable and efficient operation of financial services and markets. The confidence of the general public is of particular significance in maintaining stability in a banking system based on a fractional reserve model, where institutions' deposit liabilities exceed the liquid assets that they hold at any one time.

3.15 Public confidence in the financial system has a number of dimensions. For example, it refers to the expectation that (a) deposits will be repaid in accordance with their terms; (b) normal banking services will continue to be available; (c) problems (or perceived problems) in one institution will not extend to other institutions (contagion); and (d) if an institution does fail, systems exist to protect the interests of depositors.

3.16 The intention of the third objective is to provide that the authorities have regard to the need to act so that a failing institution will be resolved in a manner that protects and enhances public confidence in the banking system as a whole.

Protection of public funds

3.17 The term "protection of public funds" refers primarily to the protection of taxpayers' interest in the effective expenditure of public money. The intention of the fourth objective is to recognise the duty of the authorities, and particularly the Treasury, to protect public funds. The use of resolution financing arrangements and the recapitalisation payment mechanism under section 214E of FSMA 2000 mean that

public funds are less likely to bear the costs of bank failure than they were in the past.

Extraordinary public financial support

3.18 The term extraordinary public financial support in the fourth objective is defined in section 3(1)[4] of the Act and refers (subject to certain exceptions, including use of the recapitalisation payment mechanism under section 214E of FSMA 2000) to financial assistance which is provided by the Treasury or the Bank of England to restore the viability, liquidity or solvency of a banking institution.

Protection of investors and depositors covered by the FSCS

3.19 The term "protect investors and depositors to the extent that they have investments or deposits covered by the FSCS" refers specifically to the objective of protecting investors and depositors covered by the FSCS from the effects of the failure of an institution, as an end in itself. This objective goes beyond the need to ensure public confidence in the banking systems (although protection of investors and depositors covered by the FSCS may be an important element of such confidence), and recognises the important public policy objective of ensuring that investors and depositors covered by the FSCS in a failed institution are adequately protected.

3.20 Under the Act such protection can be delivered in different ways. For example, by (a) under the Bank Insolvency Procedure (BIP) facilitating fast compensation to eligible depositors up to the compensation limit under the FSCS, or arranging a bulk transfer of accounts; or (b) facilitating continuity of banking services through use of the stabilisation options provided in the SRR.

Protecting client assets

3.21 Objective 6 relating to the protection of client assets means the protection of assets (including client money) which an institution has undertaken to hold for a client whether or not on trust, and whether or not the undertaking has been complied with.

3.22 The client assets that are the subject of Objective 6 will include those client assets and client money that the institution (whether a bank or a PRA-regulated investment firm) is required to protect under the Client Assets sourcebook[5] and under Principle 10 of the Principles for Business in the FCA Handbook[6].

3.23 Where an institution holds such client assets the authorities will take this into account when determining which tools to use and whilst using those tools.

---

[4] Section 3(1) of the Act has been amended to deal with deficiencies arising from the UK's withdrawal from the EU, but no wider change is intended.

[5] Available at: https://www.handbook.fca.org.uk/handbook/CASS.pdf

[6] Available at: https://www.handbook.fca.org.uk/

Avoiding interference with property rights

3.24 The term "avoiding interfering with property rights in contravention of a Convention right" (objective 7) refers to holders of property rights in a failed or failing banking institution. These holders can include the institution itself, its shareholders (or, in the case of a building society, members), creditors (including clients holding client assets), counterparties, or other third parties. Such persons may hold property in the failing institution, or have a right of control over such property, or both. The primary Convention right at issue is Article 1 of Protocol 1 to the European Convention on Human Rights (right to property). Other Convention rights (including Article 6, the right to a fair trial and Article 14, prohibition of discrimination) may also be relevant. The inclusion of this objective acknowledges the importance of ensuring that any interference with Convention rights is lawful, in the public interest and proportionate.

Balancing the objectives

3.25 Neither the Act, nor this Code, ranks the SRR objectives. Section 4(10) of the Act states that the objectives are of equal significance and to be balanced according to the circumstances in each case. This provision recognises that the relative weighting and balancing of objectives will vary according to the particular circumstances of each failure, including both (a) circumstances specific to the failing institution; and (b) general circumstances relating to the wider financial system.

Authorities' regard to objectives

3.26 The special resolution objectives in the Act serve three purposes:

- they reflect the purpose of the SRR measures in the Act;
- they set out the objectives to which the authorities must have regard when using or considering the use of their powers under the SRR; and
- they support a consistent approach to bank resolution across the G20 in accordance with the Financial Stability Board's Key Attributes of Effective Resolution Regimes for Financial Institutions.

3.27 This means that the authorities must consider the effect of their likely actions (including inaction) and assess them in light of the objectives. This applies to the exercise of all powers under Parts 1, 2 and 3 of the Act.

3.28 However, the authorities do not have to have regard to the special resolution objectives when making a determination under section 7(2) of the Act that the banking institution is failing or is likely to fail. One element of this test in section 7(5C)(a) relates to whether the institution in question satisfies the threshold conditions. This decision will be taken in the context of the PRA's objectives under FSMA 2000. The Bank of England under section 7(3) of the Act, will decide whether or not it is not reasonably likely that action will be taken that will result

in the firm no longer being likely to fail, which includes being able to satisfy the threshold conditions.

3.29 In accordance with section 7A of the Act, when considering the exercise of a stabilisation power, the Bank of England must have regard to:

- the need to minimise the effect of the exercise of the power on other undertakings in the same group;
- the need to minimise any adverse effects on the financial stability of the United Kingdom; and
- the potential effect on the financial stability of other countries, particularly those countries in which a member of the group is operating.

3.30 In exercising the powers under Parts 1, 2 and 3 of the Act, the authorities will also, as is the case with any public body in the exercise of its functions, necessarily have regard to restrictions and conventions of public law, in particular the requirement for the authorities to act reasonably and to have respect for the rule of law and principle of legal certainty. The authorities must also act in accordance with common law principles of procedural fairness when exercising the SRR tools.

3.31 Following actions taken under the SRR, the authorities shall make a public statement (a) how they have acted with regard to the special resolution objectives; and (b) how they have balanced the objectives against each other. They shall publish the instrument or order through which they took action. The form that such an explanation will take will depend on the circumstances.

3.32 However, it should be noted that it may not be possible to divulge certain information. Any information that, if released could threaten financial stability or confidence in the banking systems will not be made available by the authorities in any public statement.

Chapter 4

Role of the UK authorities

4.1 The resolution of failing banking institutions will involve intensive coordination, cooperation and information sharing between the authorities at each stage of the decision-making process. Each of the authorities will take lead responsibility for specified aspects of the resolution.

4.2 As set out in section 7 of the Act, a stabilisation power can only be exercised if all of the following conditions are met:

1. the institution is failing or likely to fail;
2. it is not reasonably likely that action will be taken by or in respect of the institution that will prevent the failure of the firm;
3. the action is necessary in the public interest; and
4. the SRR objectives would not be met to the same extent by winding up the firm.

4.3 The PRA is responsible for determining whether condition 1 in section 7 is met; the Bank of England is responsible for determining whether conditions 2, 3 and 4 are met. Before determining whether condition 1 is met, the PRA must consult the Bank of England. Before determining whether conditions 2, 3 and 4 are met, the Bank of England must consult with the PRA, FCA and the Treasury. As part of this consultation, the PRA or FCA may make recommendations to the Bank of England as to whether condition 2 has been met.

4.4 In circumstances where the PRA decide that condition 1 has been met, it may be appropriate for the firm to be placed into an insolvency process. This may include, for example, the bank insolvency procedure (BIP) – although in this case the Bank of England would also need to have determined that condition 2 has been met – or special administration, depending on the type of firm. In the context of investment firms, parties including the firm itself or its directors may apply to appoint special administrators, which will require the Bank of England, the PRA and the FCA to be notified in accordance with requirements in the Banking Act 2009 and applicable special administration regulations and rules. In turn, the Bank will at that time determine whether any stabilisation powers are to be exercised, and the PRA or FCA will determine whether it intends to make its own application to appoint special administrators. The conditions for the use of these options are set out in more detail in paragraphs 6.79 and 6.81 respectively.

4.5 Under Section 57A of the Financial Services Act 2012, the Bank of England is obliged to provide information on request to the Treasury that is considered by the Treasury to be material to the Bank's assessment of the public funds implications of a failing firm. Further, under Section 57B of the Financial Services Act 2012, the Bank has a duty to inform the Treasury of its resolution plans for firms and any material changes that are made to these plans. In addition to its obligations in respect of resolution planning, the Bank has a statutory duty under Section 58(1) of the 2012 Act to notify the Treasury immediately when there is a material risk of circumstances arising in which public funds would be put at risk. Further details on these arrangements are set out in the Memorandum of Understanding on resolution planning and financial crisis management.[7]

4.6 The Bank of England has primary responsibility for the operation of the SRR, including the decision to use the private sector purchaser, bridge bank, asset management or bail-in tools. The Treasury is responsible for the temporary public ownership option. The Bank will also remain responsible for the provision of liquidity support which uses the Bank's balance sheet.

4.7 The PRA will be responsible for the authorisation of a bridge bank and the PRA and FCA as appropriate will be responsible for different aspects of ongoing supervision and regulation of the authorised institution in the SRR (i.e., assessing compliance with the threshold conditions and other regulatory requirements) in the usual way.

4.8 The PRA has the power to direct an institution to do certain things, such as implement actions from its recovery plan. The PRA has the power to remove one or more members of the board or senior managers of an institution if they are not fit to perform their duties.

4.9 The Bank of England has responsibility for communications to the market: about the use of its balance sheet; about measures concerning critical financial infrastructure arising from its oversight under the Act and the Financial Services Act 2012; through the PRA, about the PRA's regulation and supervision of individual firms; and about any measures taken by the Bank under the SRR, excepting any use of public money by the Treasury in association with those measures.

4.10 Under Section 78 of the Banking Act 2009, the Treasury has sole responsibility for decisions with implications for public funds, including authorising the use of any stabilisation power which would have implications for public funds, and authorising any proposal by the Bank of England to provide liquidity assistance to one or more individual firms, including Emergency Liquidity Assistance and liquidity assistance via the Resolution Liquidity Framework or any other public sector

[7] Section 65 of the 2012 Act requires the Treasury and the Bank of England, including in its capacity as the PRA, to prepare and maintain a memorandum of understanding on certain matters relating to financial crisis management, available here: https://www.bankofengland.co.uk/-/media/boe/files/memoranda-of-understanding/resolution-planning-and-financial-crisis-management.pdf

backstop funding mechanism that goes beyond the Bank's published frameworks.

4.11 Authorisation of decisions with implications for public funds is necessary as the Chancellor is accountable for those decisions to Parliament and the public. As public funds are not an unlimited resource, their use requires consideration against other policy priorities which only the Chancellor is in a position to judge. Ministerial approval for any intervention with implications for public funds adds clarity around the availability of the public funds, which supports the effectiveness of the resolution action.

4.12 As any use of public funds is the responsibility of the Chancellor and must be accounted for to Parliament and the public, there is no minimum threshold below which Treasury authorisation would not be required. The implication for public funds could include obligations to make public money available (for example, through a loan), but also includes decisions to enter into contingent liabilities, with respect to a firm undergoing resolution or the Bank of England itself

4.13 The Treasury will consider any indemnity requests from the Bank of England for operations covered under the Memorandum of Understanding on resolution planning and financial crisis management, on a case-by-case basis[8].

4.14 Setting foreign policy and ensuring compliance with the UK's international obligations are responsibilities of the government. To facilitate the successful undertaking of these functions, the Treasury has sole responsibility for authorising the recognition of foreign resolution decisions. It also has responsibility for authorising the use of any resolution tool for the resolution of a UK branch of a foreign bank.

4.15 The Treasury has sole responsibility for authorising the use of general continuity obligations and certain special continuity obligations placed on firms to allow consideration of the wider public interest, including to help ensure that such obligations do not place a disproportionate burden on firms.

4.16 The Treasury is accountable for keeping Parliament and the public informed of action taken to manage a crisis.

4.17 The Treasury will also exercise a number of the ancillary powers under the SRR (particularly those where Parliamentary scrutiny is required), including the power to modify the law and powers in relation to compensation.

4.18 The authorities will also work closely with the FSCS. Under the bank or building society insolvency procedure, the FSCS compensates covered deposits or funds a transfer of those deposits to a private sector

[8] For further information on the types of operation that would be backed by the Bank of England's capital and the types of operation for which the Bank may request an indemnity from the Treasury, see Section 2A of the Memorandum of Understanding for the Financial relationship between HM Treasury and the Bank of England, available here: https://www.bankofengland.co.uk/-/media/boe/files/memoranda-of-understanding/financial-relationship-between-hmt-and-boe-mou.pdf

purchaser. Further, under Part 15 of FSMA 2000, the FSCS may be a contributor to the cost of the SRR.

4.19 The FSCS will need to assess and prepare for any payout, and its assessment of the possibilities for payout, or account transfer, will be relevant to the selection of the SRR tool by the Bank of England. For a depositor payout, an account transfer, funds provided through the recapitalisation payment mechanism, or for any contribution to SRR costs, information-sharing protocols have been put in place to ensure that the FSCS has access to information relating to the failing institution and its systems at the appropriate time. For example, under PRA rule 12.2 on depositor protection, a firm must provide all single customer views and exclusion views to the PRA or FSCS within 24 hours of a request by the PRA or FSCS.

4.20 When the Bank of England uses the recapitalisation payment mechanism set out in Chapter 12, it must first consult the FSCS. As in the case of depositor payouts in insolvency, the PRA is responsible for determining that FSCS levies would be affordable for FSCS levy payers. If the FSCS is unable to provide the full amount requested by the Bank of England because of a PRA determination, the FSCS will be able to make a request to the Treasury to borrow from the National Loans Fund. In such a case, use of the recapitalisation payment mechanism would be subject to approval from the Treasury. See Chapter 12 for further details on the recapitalisation payment mechanism.

Chapter 5

Mandatory transfer or write-down and conversion of capital instruments and relevant internal liabilities

5.1 Sections 6A and 6B of the Act, and section 81AA, which applies section 6B to banking group companies, require the Bank of England to ensure that capital holders bear losses when a banking institution fails. This involves cancelling, diluting or transferring common shares (known as common equity tier 1, "CET1") away from the original owners so that they bear first losses, and writing down (i.e., reducing the principal value of) 'relevant capital instruments' or converting them into CET1 when certain conditions are met. Relevant capital instruments are instruments that meet the definition of Additional Tier 1 and Tier 2 instruments under the Capital Requirements Regulation[9].

5.2 When the test set out in the second bullet of paragraph 5.3 below is met, the 'relevant internal liabilities' of a banking institution or banking group company, which is not a resolution entity, must also be written down or converted into CET1. The 'relevant internal liabilities' of a banking institution or banking group company are instruments used to meet any of the requirements imposed on banking institutions or banking group companies to issue or maintain instruments that will absorb losses in resolution.[10] The expression is further limited to such instruments that are held internally within the banking group, meaning they are held (directly or indirectly) by a resolution entity in the same resolution group as the banking institution or banking group company. A resolution entity is an entity that is identified by the Bank of England in the resolution plan as an entity in respect of which either the Bank of England might exercise a stabilisation power or a resolution authority in

[9] Regulation (EU) 575/2013 as retained in UK law by section 3 of the European Union (Withdrawal) Act 2018 and modified in accordance with s.8 of the European Union (Withdrawal) Act 2018, in particular by The Capital Requirements (Amendment) (EU Exit) Regulations 2018.

[10] These are the requirements set by the Bank of England under the Banking Act 2009 by reference to "The Bank of England's approach to setting a minimum requirement for own funds and eligible liabilities (MREL)"

another country might take resolution action. A resolution group is a resolution entity together with any subsidiary that is not a resolution entity itself and which (in the case of a subsidiary established outside the UK) is stated by the resolution plan to be included in the resolution group.

5.3 Capital instruments and, in the case of the second bullet only, relevant internal liabilities, must be cancelled, transferred, written down or converted in any of the following circumstances:

- the banking institution meets the conditions for resolution (as described in Chapter 6) and the Bank of England or the Treasury has decided to exercise a stabilisation power other than bail-in[11];
- the banking institution would no longer be viable unless the write down power were applied, and there is no reasonable prospect of other non-resolution actions restoring it to viability;
- extraordinary public financial support has been provided to the banking institution, except in the case of an injection of own funds or a purchase of capital instruments at prices and terms which do not confer an advantage to the institution, where the application of the write-down power is necessary to address a capital shortfall;
- even if the banking institution itself does not otherwise meet the conditions for mandatory write down, where the banking institution's capital instruments count towards the capital requirements of the consolidated banking group, and the group would no longer be viable unless the write down power were applied to the banking institution.

5.4 A banking institution within a resolution group may be owned by the relevant resolution entity via a number of intermediate holding companies. These intermediate holding companies may purchase (directly or indirectly) relevant capital instruments and/or relevant internal liabilities from the banking institution. They may, in turn, have their own relevant capital instruments and relevant internal liabilities purchased (directly or indirectly) by the resolution entity. Where that is the case, if any of the circumstances in paragraph 5.3 above apply such that the relevant capital instruments and/or relevant internal liabilities of the banking institution are written down or converted, the Bank of England may also write down or convert the relevant capital instruments and/or relevant internal liabilities of each intermediate holding company. The write down or conversion in the case of an intermediate holding company must contribute to producing the result that the losses of the banking institution are effectively passed on to, and the banking institution is recapitalised by, the resolution entity.

5.5 The power can be applied either in conjunction with a stabilisation option (if the conditions for the use of the stabilisation options are met) or separately if the banking institution would no

[11] There is an equivalent write-down and conversion power in the case of bail-in in section 12AA of the Banking Act

longer be viable in the absence of a write down or conversion but should be restored to long term viability by the write-down or conversion. Where stabilisation powers will be exercised, it is anticipated that this will occur at the same time as the write-down. The Bank of England would in any case generally aim to make a single resolution instrument, either exercising the write-down or conversion power on its own, or doing so in combination with any other resolution powers.

5.6 The Bank of England is required to exercise the write down or conversion power in accordance with the CRR regulatory status of the instruments of the entity in relation to which the Bank is exercising its powers. Creditors of other entities in a banking group need not be considered for these purposes. This means that the entity's CET1 must be cancelled, transferred or diluted first, with AT1 and then T2 instruments written down or converted as required to meet the special resolution objectives, or to the maximum extent possible (whichever is lower), followed by relevant internal liabilities in the limited cases described above.

5.7 The Act prevents the Bank of England, when writing down regulatory capital in a banking institution or entity that is not itself failing in order to restore viability to an otherwise non-viable group, from doing so to an extent greater than the write-down of equivalent instruments at the parent company of the group.

Chapter 6
Conditions for resolution

SRR tools

6.1 The Act provides the Bank of England and the Treasury with the following stabilisation options for resolving a failing banking institution:

- transfer by the Bank of England of some or all of the business (i.e., the shares or property) of the failed firm to a private sector purchaser;
- transfer by the Bank of England of some or all of its business to a bridge institution;
- transfer by the Bank of England of assets, rights or liabilities of an institution or bridge institution to an asset management vehicle;
- cancellation, reduction or conversion by the Bank of England of certain liabilities of the institution to the extent necessary to absorb losses and recapitalise the institution or the successor entity to a level necessary to restore market confidence (the bail-in stabilisation option); and
- transfer by the Treasury of the institution into temporary public ownership. This option applies to a holding company of a bank, but not to other banking group companies

6.2 Each of the five stabilisation options is achieved through the exercise of one or more of the "stabilisation powers", which are the powers to affect the transfer of shares and other securities or property, rights and liabilities, by operation of law. These stabilisation powers include the onward supplemental and reverse transfer powers, which are discussed in paragraphs 7.2 to 7.10 of this Code.

6.3 The Act also provides the PRA and the Bank of England with the ability to apply to the court for a bank or building society insolvency order to enable a liquidator to arrange for a fast FSCS payout to eligible depositors or transfer of their accounts to another institution, after which the bank or building society is wound up in the interest of creditors as a whole.

6.4 Where the institution holds client assets, the FCA may apply to the court to put the institution into special administration under the IBSAR. If the institution is deposit taking, the Bank of England (or the PRA or FCA) may place it, under the SRR, into the special administration (bank insolvency) or special administration (bank administration) procedure, as the case may be. Parties including the firm or its directors may also apply to appoint special administrators, which is subject to the notification procedures under the Banking Act 2009 and applicable special administration regulations and rules which apply to investment

firms entering any winding up or administration proceedings. The purpose of the notification procedures is to give the Bank the opportunity to exercise stabilisation powers, or to give the PRA or FCA (as applicable) the opportunity to make its own application.

6.5 The Bank of England can also apply for a bank administration order to facilitate the transfer of part of a failing banking institution's business to a private sector purchaser or bridge bank.

General principles of resolution

6.6 In exercising the stabilisation powers, the authorities are required to act in accordance with certain general principles of resolution.

6.7 Firstly, shareholders of the institution under resolution should bear first losses. This is reflected in section 12AA of the Act, which sets out the sequence of write-down and conversion applicable to bail-in. The principle that creditors should bear losses after shareholders, in accordance with the order or priority of their claim under normal insolvency proceedings, is also reflected in Section 12AA. These principles also apply to the use of the recapitalisation payment mechanism under section 214E of FSMA 2000, where shareholders and certain creditors would bear losses before funds are requested from the FSCS.

6.8 In exercising the resolution powers, the Bank of England has the power to replace the management body, and expects to remove senior management considered responsible for the failure of the firm, and to appoint new senior management as necessary. Where senior management is retained, or any new members of senior management appointed, they will have a role in assisting the Bank of England to meet the special resolution objectives. In particular, the Bank has extensive powers under section 83ZA of the Act to require directors and management of a banking institution to provide the Bank with information that it reasonably needs in connection with the exercise of the stabilisation powers or other functions relating to resolution.

6.9 Natural and legal persons should be made liable, subject to the UK law, under civil or criminal law, for their responsibility for the failure of the institution. This is delivered by section 36 of the Financial Services (Banking Reform) Act 2013, which provides for a criminal offence where a senior manager of a bank or investment firm has taken a decision which caused the failure of a financial institution in the same group if the conduct of the senior manager falls far below what could reasonably be expected of someone in their position. In addition to this, it may be possible for proceedings to be brought against anyone responsible for the institution's failure under the law on negligence.

6.10 Creditors of the same class will be treated in an equitable manner, except where otherwise stated. Section 12AA(4) provides that, where writing down or converting liabilities, the Bank of England must allocate losses equally between bail-in liabilities of the same rank by reducing the principal amount, or outstanding amount payable, in proportion to their value. The exception to this rule is where the Bank of England has excluded a bail-in liability from the bail-in powers in accordance with section 48B(10) and (11).

6.11 Deposits covered by the FSCS will be fully protected from the exercise of such bail-in powers by virtue of being an excluded liability under section 48B(8). In addition, where deposits covered by the FSCS would otherwise be exposed to losses (for example where the bank goes into insolvency) holders of these deposits will be entitled to protection from the FSCS. This may be in the form of a payment of compensation or maintained access to their account.

6.12 No creditor should, through the exercise of the stabilisation powers, be left in a worse position than they would have been had the banking institution been wound up under normal insolvency proceedings. This principle is reflected in the Act, and the statutory instruments made under it, in particular the Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009, and the Banking Act 2009 (Mandatory Compensation Arrangements Following Bail-in) Regulations 2014.

6.13 As noted in para 3.8 above, when the Bank of England is considering the exercise of one of the stabilisation powers in relation to an institution then it must have regard to the need to minimise the effect on other institutions within the same group as the institution and any adverse effects on the financial stability of the United Kingdom. The Bank of England must also have regard to the effects on financial stability of countries other than the UK. These principles are reflected in Section 7A of the Act.

Determining that the conditions for exercising the SRR tools are satisfied

6.14 A stabilisation power may be exercised in respect of a banking institution only if the PRA and Bank of England are satisfied that the conditions set out in section 7 of the Act have been met. The first condition is that the PRA determines that the institution is failing, or is likely to fail.

6.15 A banking institution is considered to be failing or likely to fail in one or more of the following circumstances:

- if the banking institution is failing, or is likely to fail to satisfy the threshold conditions in circumstances where that failure would justify the variation or cancellation by the PRA of the banking institution's permission to carry on one or more regulated activities;
- the value of the assets of the banking institution are or are likely soon to be less than the value of its liabilities;
- the banking institution is unable or likely to become unable to pay its debts as they fall due;
- extraordinary public financial support is required except when, in order to remedy a serious disturbance to the economy and preserve financial stability, it takes the form of either a State guarantee to back liquidity facilities provided by the central bank according to the central bank's conditions, a State guarantee of newly issued liabilities, or an injection of own funds or purchase of capital

instruments at prices and on terms that do not confer an advantage on the institution.

6.16 The threshold conditions represent the minimum conditions that a firm is required to satisfy, and continue to satisfy, in order to have permission to undertake regulated activities. In making the determination of whether a firm is meeting its threshold conditions or not, the PRA and Bank of England are required to discount financial assistance provided by the Treasury or Bank of England (disregarding ordinary market assistance offered by the Bank on its usual terms). The concept of 'ordinary market assistance' contained in section 7(5A) is not defined. The Bank of England provides banks with a spectrum of assistance in all types of different circumstances. Whether or not financial assistance from the Bank of England constitutes "ordinary market assistance… on its usual terms" will depend on a combination of factors, including the terms of the Bank's operation, the circumstances of the bank receiving liquidity from the Bank, and conditions in the relevant markets in which the firm was, or would otherwise be, seeking to access funding. Furthermore, these factors may vary during the period that any assistance is given. The provision does not imply whether a particular facility is, for all banks using it, "ordinary market assistance" or not.

6.17 The PRA makes rules and issues supervisory statements that are relevant to, among other things, threshold conditions for PRA regulated firms. There are a range of conditions, including: legal status and location of offices; the adequacy of the firm's resources (financial and nonfinancial) in relation to the regulated activities which the firm undertakes; and suitability issues (for example competent and prudent management, conducting business with integrity and in compliance with proper standards).

6.18 To inform the determination of whether the conditions for write-down or conversion, or the use of stabilisation options are met, and ensuring that any losses on the assets of the institution are fully recognised at the moment resolution tools are applied, an independent valuation shall be carried out. This valuation shall be considered definitive, and the Bank of England must ensure that this is carried out in a fair and realistic way by an independent valuer. In certain circumstances where an independent valuation is not possible (due to urgent circumstances), the Bank of England may carry out a provisional valuation with a buffer for additional losses.

6.19 In the period prior to resolution, the Bank of England will appoint an independent valuer to conduct a valuation to inform the decision on whether Condition 1 is met. This is expected to be based on the firm's updated accounting balance sheet with appropriate regulatory capital adjustments.

6.20 The independent valuer will also prepare indicative estimates of the valuations following different resolution actions. This will help to inform the Bank of England's decisions on whether the firm should enter resolution, and which stabilisation options to use.

6.21 Further detail on valuations can be found in the publication "The Bank of England's Approach to Resolution".[12] The EBA has made two technical standards which the Bank of England has amended in light of the UK's withdrawal from the EU and for which the Bank of England is now responsible.[13]

6.22 Condition 2 is that the Bank of England, in consultation with the PRA , FCA and the Treasury, is satisfied that, having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers that are available to exercise the stabilisation options) action will be taken by or in respect of the banking institution that would enable it not to fail, and to satisfy the threshold conditions.

6.23 Section 7 requires that a banking institution could only enter the SRR at a point where it is clear that there is no realistic prospect that it will be able to continue as an authorised person. Other than in the case of an unforeseen or very rapid failure, the authorities will, in practice, have undertaken contingency planning and sought commercial solutions to address the problems of a failing institution, such as a commercial sale or a liability management exercise, prior to the PRA and Bank of England reaching a decision that the conditions for use of the SRR powers have been satisfied.

6.24 The Bank of England may only exercise a stabilisation power if satisfied that the exercise of the power is necessary having regard to the public interest in the advancement of one or more of the special resolution objectives, and that one or more of the special resolution objectives would not be met to the same extent by the winding up of the bank – including through the use of the bank insolvency procedure. These are the third and fourth conditions set out in section 7 of the Act. The Bank of England must consult the Treasury, FCA and the PRA before making such a determination, and deciding how to proceed. In determining whether to proceed with the bank insolvency procedure or to use the recapitalisation payment mechanism, the Bank of England will also consult with the FSCS.

6.25 The test of "necessity" is a high one, and the Bank of England and the Treasury will necessarily have regard to public law restrictions and the duty to act compatibly with the Convention rights.

6.26 The assessment must seek to balance the short and long-term effects on financial stability, public confidence and depositor protection of different resolution options.

6.27 When considering the need to protect covered depositors, the Bank of England may take into account not only the implications of

---

[12] Available at: https://www.bankofengland.co.uk/paper/2023/the-bank-of-englands-approach-to-resolution

[13] The Technical Standards relate to Methodologies for Difference in Treatment in Valuation and Methodologies for Valuing Assets and Liabilities. The Technical Standards have been updated to reflect the UK's withdrawal from the EU pursuant to the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018. The Technical Standards are the retained UK law versions of Commission Delegated Regulations 2018/344 and 2018/345 respectively. https://www.legislation.gov.uk/ukdsi/2018/9780111171394/contents

losses but also the consequences of a temporary loss of access to depositor services. While the special resolution objectives relate specifically to the protection of deposits covered by the FSCS, the special resolution objectives may be best met by protecting a wider range of depositors of a failing institution. At other times, the preferred option might be to use the bank insolvency procedure to facilitate fast FSCS payout of FSCS-covered deposits, or a transfer of such accounts to another institution (a 'BIP transfer'), thereby maintaining access for eligible depositors up to their covered deposit amount. In a BIP transfer, the remaining liabilities, which may include uncovered deposit balances, other operating liabilities and the firm's assets remain in the insolvency.

6.28 In assessing the degree of continuity required to protect depositors, the Bank will take into account the diverse nature of deposits as a liability class. That is to say, different types of deposit liabilities require a greater or lesser degree of continuity of access in resolution or to avoid depositor hardship due to lack of access to their funds.

6.29 Given this diversity, a BIP payout to FSCS eligible depositors may not always provide the degree of continuity of access to some kinds of deposit services necessary to ensure those depositors are protected. For example, term savings deposits may be less sensitive to a temporary discontinuity in access (and therefore may be protected adequately by payout by the FSCS within seven days). However, discontinuity of access to current accounts or other transactional deposit accounts may be a serious problem where the account holder depends on daily access to their funds. In such cases, a BIP transfer (funded by the FSCS) may be more appropriate. In addition, the Bank of England may judge that the covered depositor protection element of the public interest test merits use of stabilisation powers irrespective of whether the failure of the banking institution is considered a risk to the stability of, or confidence in, the UK financial system.

6.30 If, having had regard to the public interest, the Bank of England determines that it is necessary to exercise one of the SRR tools, the Bank of England will need to have considered which of the tools it will use; and whether use of the tool would be compatible with the Bank of England's legal obligations and the special resolution objectives.

The choice between the tools

6.31 In choosing between the resolution tools, the Bank of England will consider the relative merits of the stabilisation options and the bank insolvency procedure given the circumstances. There are, however, some general considerations that may be taken into account. Some of these are detailed below. Resolution by way of the bank insolvency procedure (BIP) may be the option that best meets the special resolution objectives where the most appropriate outcome would be the prompt payout of FSCS-covered deposits or the bulk transfer of their accounts to another institution using FSCS funds, followed by winding up of the failed institution's affairs in the interests of creditors as a whole. The BIP is the default option unless the public interest considerations weigh in favour of an exercise of a stabilisation

option. It is also generally important for market discipline that firms' shareholders and creditors of– including banks and building societies – should bear losses, and therefore should not be immune to the costs of from failure.

6.32 Resolution by way of a transfer to a private sector purchaser is generally likely to be the resolution option that best meets the special resolution objectives if it can be achieved in a cost-effective way. This may be combined with the bank administration procedure (BAP), where part of the institution is transferred to a commercial purchaser and the residual bank enters the BAP, in accordance with section 11 and Part 3 of the Act. It provides the flexibility for both whole-bank and part-bank solutions, and for a swift and certain transfer. It does, however, require a willing purchaser.

6.33 Resolution by way of a transfer to a bridge entity (which may also be used with the BAP) also may be appropriate where an immediate private sector sale is not possible, and where a stable platform is needed to prepare for and effect the onward sale of all or part of the banking institution to a private sector purchaser.

6.34 The asset management vehicle (AMV) tool can only be used in conjunction with another resolution tool (transfer to a private sector purchaser, transfer to a bridge bank or the bail-in tool). Its use may be preferred when it is necessary to remove certain assets, rights and liabilities from the institution under resolution in order to ensure that the rest of the business under resolution can continue to function or to improve market interest and the likelihood of a sale of the remaining business to a private purchaser. The removed assets, rights and liabilities are placed into one or more AMVs, which manage the assets and liabilities with a view toward maximising their value through an eventual sale or orderly wind down. Further conditions on the use of the asset management vehicle tool are specified in paragraphs 6.49 to 6.52 and information on the governance of AMVs is set out in paragraphs 9.47 to 9.74 of this Code.

6.35 Resolution by way of the bail-in tool may be preferred where the complexity or interconnectedness of a firm makes it difficult to apply a transfer power immediately without risks to financial stability or confidence in the banking system, costs or operational disruption to depositors. For example, bail-in may be appropriate where transferring the property or business of the firm would result in unacceptable disruption to continuity of banking services or raise other financial stability concerns. The bail-in option allows a failing institution to be recapitalised and remain a going concern without the need to split up its business immediately, or recourse to public funds. In such cases, bail-in will need to be accompanied by a later restructuring of the institution to address the causes of its failure.

6.36 The bail-in stabilisation option is intended to recapitalise all or part of a firm or successor entity such that it is put onto a stable footing so that it can be restructured as necessary. Bail-in can be characterised as 'open bank' bail-in or 'closed bank' bail-in, depending on the expected changes to be made to the firm following the application of the stabilisation option.

6.37 In an 'open bank' bail-in all, or a significant portion of, the firm will continue to operate as an ongoing business following the bail-in. The firm will then be restructured as necessary to address the causes of failure and meet the requirements of the Act. In a 'closed bank' bail-in the firm is stabilised with the intention for it to be sold or wound down in an orderly manner, i.e., it will cease to operate as an ongoing business over the course of time required for this to be effected without undue disruption. In a closed bank bail-in, the bank's critical functions may be transferred to a bridge bank and other assets and liabilities may be transferred using the sale of business or asset management vehicle tools.

Special bail-in provision

6.38 Where the bank is subject to bail-in, the Bank of England may make special bail-in provision. In particular this allows the Bank of England to:

- cancel a liability of the bank, including any contract under which the bank specified in the instrument has a liability;
- modify the terms, or the effect of the terms, or any contract under which the bank has a liability.

6.39 The powers could be used for the purposes of:

- reducing a liability, including the principal or outstanding amount payable under the contract;
- discharging the bank from obligations created by the contract – for example cancelling future coupon payments.

6.40 The Bank of England also has a conversion power which enables it to convert a liability from one form to another, including a conversion of all or part of the liabilities attaching to securities into another form, type or class of new or pre-existing securities. For example, this power could be used to convert a debt instrument partially into shares and partially into another type of debt security. The Bank of England also has the power to transfer the existing shares previously held by the bank's former shareholders to the bailed-in creditors.

6.41 These powers can be used to recapitalise the bank by reducing the liabilities of the bank.

6.42 A power to make a special bail-in provision may be exercised only for the purpose of, or in connection with, reducing or deferring a liability of the bank.

6.43 Temporary public ownership is the least preferred option, and a tool of last resort, which can only be used after creditors of a failing firm have been bailed in and borne considerable losses (see paragraph 6.53). It involves the Treasury taking control and ownership of a failing banking institution through the transfer of shares, in order to provide a stable platform for restructuring.

6.44 A key determinant of the practicality of implementation of any option will be the amount and quality of information available to the

authorities on the balance sheet and operations of the banking institution and on any interests of third parties.

6.45 Further issues which the authorities will need to take into account in determining the feasibility of different tools include:

- the existence of, or likelihood of finding, a private sector purchaser;
- the time available to implement a private sector sale, including for due diligence by potential purchasers;
- the likely saleability of assets and liabilities of the failing banking institution, including whether a whole institution sale is viable;
- the feasibility of effecting a partial transfer in compliance with the safeguards set out in primary and secondary legislation; and
- the operational risks of managing a bridge institution or asset management vehicle, and the amount of public funding that may be required to keep it operational.

6.46 If the Treasury notifies the Bank of England that it has provided financial assistance in respect of a banking institution for the purpose of resolving or reducing a serious threat to financial stability, then the Bank of England may only exercise its stabilisation powers under the private sector purchaser, bridge bank or asset management vehicle with the Treasury's approval.

Specific conditions for the asset management vehicle

6.47 As noted above, the asset management vehicle can only be used in conjunction with one or more of the other resolution tools (transfer to a private sector purchaser, transfer to a bridge bank or the bail-in tool). The asset management vehicle tool can only be used where the Bank of England is satisfied that:

- the situation in the particular market for the assets transferred is of such a nature that the liquidation of those assets under normal insolvency proceedings could have an adverse effect on one or more financial markets;
- the transfer is necessary to ensure the proper functioning of the institution under resolution, or a bridge institution which holds other assets, rights or liabilities of the failing institution; and
- the transfer is necessary in order to maximise the proceeds of liquidation.

6.48 When assessing whether liquidating the transferred assets would have an "adverse effect on one or more financial markets", the Bank of England should review the following elements:

- whether the market for such assets is impaired;
- the impact of the disposal of such assets on the markets where they are traded; and

- the situation of the financial markets and the direct and indirect effects of an impairment of the market for such assets.

6.49 Subject to the urgency of the review, the Bank of England should analyse, with a particular view to the risk of causing additional pressure on prices or contagion, each of the following: (i) the situation of the markets for the assets concerned and comparable asset classes; (ii) the general condition of financial markets; and (iii) competitors of the institution in resolution. However, neither a deterioration in the quality of the assets concerned nor dysfunctional markets are required to arrive at the conclusion that the liquidation of such assets could have an adverse effect on one or more financial markets.

6.50 The asset management vehicle must be a legal person wholly or partially owned (directly or indirectly) by the Bank of England or the Treasury, controlled by the Bank of England and created for the purpose of receiving some or all of the assets, rights and liabilities of the institution under resolution or bridge bank.

Specific conditions for temporary public ownership

6.51 Under section 9, if the Treasury believes that an institution should be taken into temporary public ownership, specific conditions must be met in addition to the general conditions for resolution. The specific conditions are that the Treasury must be satisfied that such action is necessary to:

- resolve or reduce a serious threat to the stability of the financial systems of the UK; or
- protect the public interest, where the Treasury have provided financial assistance in respect of the banking institution for the purpose of resolving or reducing a serious threat to the stability of the financial systems of the UK, or where the Bank of England has provided emergency liquidity assistance in respect of the banking institution.

6.52 The temporary public ownership tool is a “last resort” option and will only be used once the other stabilisation options have been exploited to the extent practicable while maintaining financial stability. The Treasury will make this determination after consulting the Bank of England.

6.53 The Treasury may only use the temporary public ownership option where shareholders and creditors of the banking institution have made a contribution to loss absorption and recapitalisation that is equivalent to at least 8% of the liabilities of the institution, measured at the point when the action is taken. The Treasury may require the Bank of England to confirm whether or not this condition has been met, for the purposes of deciding whether to exercise the temporary public ownership option.

6.54 The use of the tool is only possible if the exercise of the other stabilisation options would be insufficient to avoid a significant adverse effect on the financial system or where the application of the other

stabilisation options would be insufficient to protect the public interest, where emergency liquidity assistance has already been provided.

Specific considerations relevant to building societies

6.55 Sections 84-88 allow the stabilisation options to be applied to building societies.

6.56 Building societies have different corporate structures to banks. Individuals who have a share account or a mortgage with a building society are members and therefore have certain rights including rights to vote (with some limited exceptions) and receive information.[14] Each member of a building society has one vote, regardless of how much money they have invested or borrowed, or how many accounts they hold. Further, building society shares are not like company shares. Generally, shares in a building society can be withdrawn by investors in line with the society's rules and terms of issue. So, in practice they are more like deposits. For these reasons, some of the SRR tools need to be modified to allow for their use on building societies.

6.57 In order to bail in a failing building society, the Bank of England may convert the building society into a company, or transfer all the property, rights and liabilities of the society to a company. The Bank of England may also cancel shares and membership rights of the building society, and convert shares of the building society into deposits of the successor company. The effect of bailing in a building society in this manner would mean the society is demutualised. Customers would lose their voting and other membership rights. Deposits in the successor company would be protected in accordance with the creditor hierarchy. The resulting entity – the successor bank – would then be bailed in in the same way as a bank under the bail-in stabilisation option.

6.58 When using the bail-in tool, the Bank of England must ensure that the shares of the institution are severely diluted or cancelled. For a building society, its shares are in the form of member deposits. In a bail-in, the value of the deposit will not be affected as part of the demutualisation but may be affected by bail-in in accordance with the creditor hierarchy in the same way as a bank (subject to the exclusion for deposits covered by the FSCS). This means deposits above the FSCS coverage limit may be subject to bail-in.

6.59 The temporary public sector ownership stabilisation option for building societies is different to that for banks. This is because, given the ownership structure for building societies, it would not be possible to effect public ownership of a building society through a share transfer.

6.60 When using the private sector purchaser tool on a building society, the Bank of England would consider the transfer, if an offer were made, to another mutual, which may enable the mutual status of

[14] Minors do not have voting rights, and societies can require shareholding members to hold at least £100 in shares to enjoy voting rights. Mortgage holders in subsidiaries of a building society will not have membership rights in the society itself, unless they also have a share account or mortgage directly with the society.

the firm to be preserved. Any transfer to a mutual would need to best meet the special resolution objectives. Where another offer best meets these objectives, the Bank of England retains its discretion to pursue that option instead.

6.61 The Act therefore provides the Treasury with the power to take a building society into temporary public ownership through cancelling private membership rights and becoming a member of the society in question either by transferring all deferred shares (constituting the society's existing capital base) to the Government or by issuing new deferred shares to the Government on the building society's behalf.

6.62 The effect of taking a building society into temporary public ownership will be that customers lose voting and other membership rights, but their savings and mortgages will be unaffected. Under section 86 these "former members" may be given a right to participate in the distribution of any surplus on the winding up of the society, once all creditors and any remaining members of the society had been paid in respect of their liabilities and shares.

Building societies and insolvency set off

6.63 Where a creditor petitions for the insolvency of a building society, section 90D of the Building Societies Act 1986 requires that they give the PRA and the Bank of England seven days' notice of the petition to enable them to consider whether to apply for a building society insolvency order, or to exercise a stabilisation power under Part 1 of the Act.

6.64 When considering whether to use an SRR tool in respect of a failing building society, the authorities will have regard to the benefits of ensuring that if a building society is to enter liquidation proceedings, it is done under the building society insolvency procedure (BSIP), rather than under the Insolvency Act 1986.

6.65 In particular, the authorities will have regard to the fact that the Building Society Insolvency (England and Wales) Rules 2010 and the Building Society Insolvency (Scotland) Rules 2010 introduce statutory provision for mutual credit and set-off to apply in the BSIP, whereas other insolvency proceedings do not make this provision for building societies.

Specific considerations relevant to bank holding companies and other banking group companies

6.66 Banking group companies are defined in section 81D of the Act and the Banking Act 2009 (Banking Group Companies) Order 2014 (SI/2014/1831). Under sections 81ZZBA, 81ZBB and 81BB of the Act, the Bank of England may exercise its stabilisation options in respect of a banking group company located in the UK that is a holding company where that holding company has failed or is in breach of regulatory requirements, provided certain conditions are met. This is regardless of the position of any banking institution in the group. In more detail, the Bank of England may only exercise its powers under these sections if at least these conditions are met: first the PRA is satisfied that the holding

company is failing or likely to fail; and second, the Bank of England is satisfied that equivalent conditions to Conditions 2, 3 and 4 in section 7 of the Act are met in respect of that holding company. When the Bank of England is using powers under these sections, instead of considering whether the holding company is failing or likely to fail to satisfy threshold conditions, the PRA must consider whether the holding company is either:

- contravening or likely to contravene a regulatory requirement where the contravention is serious in nature or directly related to a deterioration in the financial situation of the holding company that threatens the viability of the holding company or another undertaking in the same resolution group; or
- failing or likely to fail to meet approval conditions set out in the Financial Services and Markets Act 2000, where that failure would justify taking of measures in relation to the holding company by the PRA under section 192T(1) of that Act and is serious in nature.

6.67 Equivalents of the other tests under section 7 as to whether the holding company is failing or likely to fail also apply.

6.68 In addition, under sections 81B, 81ZBA and 81BA, the Bank of England may exercise its stabilisation options in respect of a banking group company located in the UK where a banking institution in the same group has failed, regardless of whether the banking group company itself has failed. In more detail the Bank of England may only exercise these powers if at least these conditions are met: first, the PRA is satisfied that a banking institution in the same group satisfies Condition 1 in section 7 (that it is failing or likely to fail), or an authority in a country other than the UK is satisfied that similar tests are met for a bank or investment firm in that country; second, the Bank is satisfied that Conditions 2, 3 and 4 in section 7 are met in respect of that bank or investment firm; and third, that the exercise of the power in respect of the banking group company is necessary, having regard to the public interest in the advancement of one or more of the resolution objectives.

6.69 Where the Treasury has previously provided financial assistance, condition 4 in section 7 (referred to in paragraph 6.24) is replaced by a different condition for exercising a stabilisation power (other than the bail-in tool) in respect of a holding company or any other banking group company. The Treasury must recommend that the Bank of England exercise a stabilisation power on the grounds that it is necessary in the public interest in the advancement of the special resolution objectives, and in the Bank of England's opinion the exercise of the power in respect of a banking group company must be an appropriate way to provide that protection.

6.70 To use the asset management vehicle tool under section 81ZBA or 81ZBB, further specific conditions must also be met. The power to transfer all or part of the business of a bank holding company or any other banking group company to an asset management vehicle may only be exercised together with another stabilisation power (transfer to a private sector purchaser, transfer to a bridge bank or the bail-in tool),

and the Bank of England must be satisfied that one of the following applies:

- The liquidation of the assets proposed to be transferred to the asset management vehicle in normal insolvency proceedings could have an adverse effect on one or more financial markets;
- The banking group company will not function properly unless the transfer is made;
- The transfer is necessary to maximise the proceeds available for distribution.

6.71 When determining whether Condition 1 is met for the purposes of sections 81B, 81ZBA and 81BA, the PRA (or other relevant authority in the case that the bank is located outside the UK) may disregard any transfer of losses or capital between members of the banking group. This may be appropriate where there are mechanisms in place to transfer losses from a bank in the group to a holding company (for example where the bank's liabilities to its holding company are cancelled or written down in order to recapitalise the bank) which means that Condition 1 is not met with respect to the bank despite its operational failure.

6.72 In all cases where the Bank of England is considering exercising its stabilisation powers in respect of a banking group company (except in the case of a transfer of all or part of its business to an asset management vehicle), it must have regard to the need to minimise the effect of the exercise of the power on other undertakings in the same group.

6.73 Where a banking institution is in a group that carries out a mix of financial and non-financial activities, headed by a mixed-activity holding company, if the banking institution is a subsidiary of a financial holding company, then the Bank of England may only exercise the stabilisation powers in respect of the financial holding company or any of its subsidiaries: the powers may not be used in relation to the mixed-activity holding company where a financial holding company exists in the group.

6.74 Under section 82, where it is necessary, the Treasury may bring the holding company of a banking institution into temporary public ownership. This option should be viewed as a last resort after having assessed and exploited other resolution tools to the greatest extent possible whilst maintaining financial stability. To use this tool while providing funding, the Treasury must ensure that 8% of the liabilities of the bank or holding company (whichever is greater) have been bailed in.

6.75 A bank holding company may only be taken into temporary public ownership if the PRA and Bank of England are satisfied that a bank in the group satisfies the general conditions set out in section 7. The Treasury must also be satisfied that it is necessary to take action for the purposes specified in the specific conditions for temporary public ownership set out in section 9, to resolve or reduce a serious threat to

the stability of the financial systems of the UK or to protect the public interest where financial assistance has been provided.

6.76 In determining whether it is necessary to take action in relation to the holding company, the Treasury will consider whether action in relation to the bank alone would be sufficient for the purposes specified in section 9.

6.77 Only the Treasury is able to exercise the power to take a bank holding company into temporary public ownership. In taking a decision to exercise the temporary public ownership tool in relation to a holding company, the Treasury will balance the interests of relevant parties against the public interest in resolving the difficulties caused by the failing bank.

6.78 Although holding company temporary public ownership is an option involving the whole of the holding company, partial transfers of the company's property may be carried out by the Treasury in onwards or other subsequent transfers to private sector purchasers. The limitations on partial property transfers provided for in sections 47, 48 and 60 of the Act, and secondary legislation made under them (and described in Chapter 9 of this Code), will also apply to bank holding companies.

6.79 The Treasury's powers under section 82 may be exercised only in relation to a parent undertaking of a bank. They are not limited to undertakings which are financial holding companies. However, it is considered highly unlikely that circumstances would arise under which it would be possible or desirable for the Treasury to take a holding company into public ownership, where that holding company did not have a close connection with the operation of the bank or where the primary activities of the holding company were not closely related to financial services.

Determining that the conditions for the use of the Bank Insolvency Procedure are satisfied

6.80 Under section 96, an application to the court for a bank insolvency order may be made on one of three grounds:

- that a banking institution is insolvent, i.e., it is unable, or is likely to become unable, to pay its debts;
- that winding up the banking institution would be 'fair';
- that winding up the affairs of the banking institution would be in the public interest (Secretary of State only).

6.81 Conditions 1 and 2 in section 7 must also be met in relation to the banking institution. Therefore, before the Bank of England or the PRA makes an application to the court for a bank insolvency order or a building society insolvency order, the PRA must be satisfied that Condition 1 is met, and the Bank of England must be satisfied that Condition 2 is met. As explained above, Condition 2 will be met at the point where it is clear that there is no realistic prospect the banking institution can continue as an authorised person. If the Bank of England determines it would not be in the public interest to exercise one of the

SRR tools in relation to a banking institution with eligible depositors, the banking institution's inability to continue as an authorised person means the special resolution objectives would generally be best achieved by applying to place it into the bank insolvency procedure. Where the banking institution does not meet the insolvency test, an application would normally be made on the basis that the winding up of the banking institution was fair, having regard to the purpose of the bank insolvency procedure and the special resolution objectives.

The Investment Bank Special Administration Regulations 2011 (IBSAR)

6.82 As noted in paragraph 4.4, one of the procedures available to the Bank of England, PRA or FCA in certain cases where the Bank of England decides not to put the firm in the special resolution regime is the Investment Bank Special Administration Regime (IBSAR), as set out by the Investment Bank Special Administration Regulations 2011 (a firm may also opt to enter on its own accord). The regime is available for "investment banks", which may include some FCA solo-regulated firms which are not in scope of the special resolution regime. The specific grounds for applying to the court for an investment firm that holds client money or custody assets to be placed into the IBSAR are:

- Ground A - that the firm is, or is likely to become, unable to pay its debts;
- Ground B - that it would be fair to put the firm into special administration; and
- Ground C - that it is expedient in the public interest to put the firm into special administration.

6.83 The PRA or FCA may apply for a special administration order if they consider that Ground A or Ground B is met.

6.84 The Secretary of State for Business and Trade may apply for a special administration order if it appears to the Secretary of State that Grounds B and C are met.

6.85 Where the investment bank has deposits protected by the FSCS as well as client assets, the Bank of England may apply for an order to put the firm into special administration (bank administration) or special administration (bank insolvency) under the IBSAR. The special administration objectives outlined in paragraph 2.2 still apply but, in addition, the administrator is required to prioritise working with the FSCS to ensure that the deposits are either transferred or paid out as soon as reasonably practicable (special administration (bank insolvency)) or to support a private sector purchase/bridge bank where there has been a partial business transfer (special administration (bank administration)).

6.86 Where an investment firm or its directors resolves to apply to court to appoint special administrators, the notification procedures under the Banking Act 2009 and applicable special administration regulations and rules will apply. The purpose of the notification

procedures is to give the Bank the opportunity to exercise stabilisation powers, or for the PRA and/or FCA to make its own application.

Procedural requirements

6.87 The Bank of England will notify, as soon as reasonably practicable after taking resolution action, the institution under resolution and where relevant:

- The PRA and the FCA
- The regulator of any branch of the institution under resolution
- The FSCS
- The home resolution authority
- The home supervisor
- The Treasury
- The Financial Policy Committee of the Bank of England in its capacity as the UK's macroprudential authority
- the operators of any designated settlement systems (designated in accordance with the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979) in which the institution under resolution participates.

6.88 This notification shall include a copy of the resolution instrument. The Bank is required to publish the instrument on its own website and, generally, to arrange for the publication of a copy on the website of the institution under resolution.

Announcement of tools

6.89 When publicly announcing any action to exercise the stabilisation options or initiate the bank insolvency procedure, the Bank of England will explain the grounds on which it considers that the conditions for the exercise of the tool (set out in section 7 or, in the case of banking group company, in section 81B, 81ZBA or 81BA, and for the bank insolvency procedure, section 96) are met.

6.90 When publicly announcing any action to take a banking institution into temporary public ownership the Treasury will explain the grounds on which it considers that the conditions set out in section 9 (or, in the case of a holding company, the conditions in section 82) are met.

6.91 It should be noted that it may not be possible to divulge certain information where, for example, its release would threaten financial stability or confidence in the banking system.

Chapter 7

Ensuring resolutions are effective

7.1 There are a number of supplementary and ancillary powers that may be used to ensure that resolutions are effective. This section of the Code provides further information on powers that are covered by sections 26-31 (supplemental, reverse and onward share transfers), 42-46 (supplemental, reverse and onward property transfers), 63-70 (continuity obligations) and 75 (power to change law).

Bridge Bank, Asset Management Vehicle and Private Sector Purchaser: Supplemental, reverse and onward transfers

7.2 The Bank of England may make supplemental, reverse or onward transfer instruments in relation to property or securities. Supplemental share transfers allow further transfers of securities issued by a bank from the original owner to a bridge bank or private sector purchaser. Supplemental property transfers allow further transfers of property from the original owner to a bridge bank, asset management vehicle or private sector purchaser. Reverse transfers provide for property to be moved back from a bridge bank, asset management vehicle or private sector purchaser to the previous owner, subject to certain restrictions. Onward transfers allow for the property of or shares in the bridge bank or asset management vehicle to be transferred to a private sector purchaser or a Treasury-owned or Bank of England-owned or –controlled company. These powers can be used to increase the chances of a private-sector solution, reducing the barriers to an onward sale.

7.3 This may become necessary, for example, if additional details come to light about the nature of the transferred securities, property or business, or the quality of these assets changes materially, after the initial transfer. Such a change may affect the saleability of the bridge bank, asset management vehicle or assets held by an asset management vehicle, or the achievement of the SRR objectives more widely. The Bank of England must consult the Treasury, PRA and the FCA before making any of these types of transfer instrument.

7.4 The conditions for SRR intervention do not apply to these transfer instruments as they form part of the continuing resolution, and the authorities will already have determined that the conditions have been met by the failing banking institution on its entry into the SRR.

7.5 However, these tools can only be used in a manner consistent with the SRR objectives, and the general public law responsibilities governing the action of public bodies. In particular, where these further transfers interfere with property rights, the Bank of England must be

satisfied that the action is in the public interest and is proportionate to the public interest aim being pursued.

7.6 Furthermore, such transfers can only be conducted in accordance with the safeguards for partial property transfers provided for in secondary legislation made under sections 47, 48 and 60 of the Act.

7.7 These considerations also apply to the Treasury, in its exercise of supplemental, reverse and onward transfers, as described in the next sections.

TPO: Supplemental, reverse and onward transfers

7.8 Where a banking institution has been taken into temporary public ownership, the Treasury may make supplemental and reverse transfers of securities. Supplemental transfers provide for transfers of further classes of securities from the holders of those securities to public ownership. Reverse transfers provide for property to be moved back from public ownership to the original holders.

7.9 The Treasury may also effect an onward transfer of the shares or business of a bank in temporary public ownership. These powers can be used to increase the chances of an eventual private-sector solution, reducing the barriers to an onwards sale of a bank in temporary public ownership.

7.10 These subsequent transfers may become necessary, for example, if additional details come to light about the nature of the transferred securities or business after the initial transfer. As with all other forms of transfer, the Treasury must consult with the Bank of England, the PRA and the FCA before making the order.

Powers in relation to holding companies in temporary public ownership

7.11 Under section 82, the Act provides for powers in relation to holding companies in temporary public ownership, similar to those for banking institutions in temporary public ownership. These are limited in important respects. In particular, the Treasury's powers in respect of banking entities within the group are limited in that the full range of onward transfer powers only applies to banking entities in the group and the holding company itself. The Treasury may:

- make an onward share transfer or reverse share transfer of the securities issued by the failing banking institution or another banking institution within the group;
- make an onward share transfer or reverse share transfer of the securities of the bank holding company;
- make an onwards property transfer of the property of the bank holding company, or a banking institution within the group (including property which takes the form of securities, for example shares held in a subsidiary undertaking).

7.12 However, it is not otherwise possible under the Act for the Treasury to transfer the shares or property of any non-bank subsidiaries within the group. Resolution of these parts of the group (i.e. their return to the private sector) will therefore need to be undertaken via normal commercial routes.

Continuity obligations

7.13 Where it is necessary to use a stabilisation option in respect of a banking institution that forms part of a group of companies, the general continuity obligations will apply (see sections 63 to 70D of the Act).

7.14 Group companies will be obliged under the continuity obligations to provide services and facilities that the Bank of England or Treasury considers are required to enable the acquirer of the transferred business to operate it effectively. This general duty, however, is subject to a right to receive reasonable consideration (see section 63(4) and 66(4)).

7.15 A general continuity obligation will arise following a transfer automatically, by operation of law.

7.16 In addition, it may be appropriate to impose special continuity obligations. These obligations will be restricted to ensuring that necessary services and facilities continue to be provided in order to ensure that what part of the business is transferred can continue to be operated effectively.

7.17 The special obligations provide powers to create, modify or cancel contracts and confer or impose rights and obligations between a transferee and the group companies of a residual bank and the residual bank itself – but only in relation to services and facilities required to operate the banking business effectively. As far as is reasonably practicable, provision will be made to ensure that providers receive reasonable consideration for any services provided.

7.18 For example, where there is a pre-existing committed funding arrangement, continuity obligations may provide for that arrangement to be continued to prevent cash flow from being disrupted while new funding arrangements are being put in place. Section 64(3) provides that the Bank of England shall aim to preserve or include provision for reasonable consideration and any other provision which would be expected in arrangements undertaken between two parties dealing at arm's length. In addition, subsection (5) provides that the powers under subsection (2) may be exercised only in so far as the Bank of England thinks it necessary to ensure the provision of such services and facilities as are required to operate the transferred business effectively, and that the Treasury must consent to the exercise of this power. These measures ensure that providers will not be placed under a disproportionate burden as a result of being subject to special continuity obligations.

7.19 The Bank of England may only exercise these powers to impose special continuity obligations with Treasury consent, and Ministers will assess the broad public interest of the particular situation.

7.20 In addition, the Bank of England has powers to impose a temporary suspension, lasting for no more than one business day, on any obligations to make a payment or delivery in any contract where one of the parties is a banking institution which is being resolved by the Bank of England. Such a suspension would apply to the obligations of all parties to the contract, not just the banking institution being resolved. A similar temporary suspension may be imposed by the Bank of England on the rights of a secured creditor to enforce any security interest they may have over assets of the banking institution, or termination rights in a contract (provided in the case of a suspension of termination rights, that all obligations under the contract to make a payment or delivery or provide collateral continue to be performed).

Power to change the law

7.21 Where necessary for the purpose of enabling the powers of Part 1 of the Act to be used effectively, the Treasury may exercise its power under section 75 of the Act to modify legislation. This power may be used in respect of both primary and secondary legislation, and the provisions of common law.

7.22 The power may only be used to facilitate or in connection with the use of one of the stabilisation options. The power may be used in two ways:

- to make a specific amendment to a piece of legislation for the purposes of making the resolution of a specific banking institution effective. Generally, such an amendment would only apply to that banking institution or a related institution (e.g., a group company). It would not generally apply to any other banks.
- to make an amendment to legislation that is applied to all resolutions or a class of resolutions carried out under the SRR. This would then apply in each resolution or class of resolutions where the Bank of England or the Treasury used a stabilisation tool.

7.23 Examples of legislative provisions that may need to be disapplied in a resolution are provisions on liabilities in relation to pensions. The power can be used retrospectively if this is necessary or desirable for giving effect to the particular exercise of a power under the Act. However, in using the power, the Treasury must have regard to the fact that it is in the public interest to avoid retrospection. The Treasury will also necessarily have regard to existing public law restrictions, in particular the requirement on the Treasury to have respect for the rule of law and legal certainty. In addition, the Treasury must have regard to the special resolution objectives and act compatibly with the Convention rights. Thus, the power could not be used for purposes unconnected with the use of the powers under the Act, for example to change the law for wider public policy objectives.

7.24 The power cannot be used to amend the Act itself, or any standing secondary legislation made under it. The power can be used in relation to an instrument or order made in the exercise of a stabilisation power, including transfer orders and instruments.

7.25 In general, exercise of the power to change law will be approved in advance by Parliament under the draft affirmative resolution procedure. Where the Treasury consider it to be necessary to make an order without prior Parliamentary approval, the 28-day procedure will be used. Under this procedure, the order can be made and brought into force immediately but will cease to have effect 28 days later unless approved by both Houses of Parliament.

7.26 The Banking Liaison Panel has a statutory right to provide advice on use of the power to change law. However, this does not include a right to provide advice on an exercise of this power that is carried out in connection with or to facilitate a particular use (proposed or actual) of a stabilisation power.

Using section 75 to amend a transfer order or transfer instrument

7.27 A section 75 order may be used to amend a transfer instrument or order. Unlike a typical commercial merger and acquisition process, the timetable for carrying out due diligence and preparing the legal documentation is likely to be compressed into a few weeks or even days and the direct channels of communication with the management of a failing bank are necessarily limited to ensure confidentiality and avoid premature disclosure. In some circumstances, it may therefore become necessary or desirable to use a section 75 order to amend a transfer instrument or order (with or without retrospective effect), for example:

- in the event of further information coming to light that results in a transfer instrument incorrectly reflecting the commercial terms of the transfer;
- where it is necessary to make a change to avoid a transferee inadvertently being in breach of a law or regulation.

7.28 The authorities will make every effort to ensure that transfer instruments and orders are drafted accurately to reduce the likelihood of recourse being had to the power under section 75 for this purpose and that it is only where there are serious difficulties that consideration will be given to an amendment made in exercise of this power.

Box A.1 : Example – use of section 75 in the resolution of Dunfermline Building Society

The definition of "commercial loan" was intended to exclude Dunfermline Building Society's commercial property portfolio (of approximately £660m) from the transfer of part of Dunfermline's business to Nationwide Building Society. The legal effect of the definition as originally drafted in the Property Transfer Instrument, however, was to transfer a significant proportion of this commercial property portfolio and a small number of social housing loans to Nationwide. The loans transferred were not included in the transaction agreed between HM Treasury, the Bank of England, and Nationwide and had been managed in the period following the resolution on the assumption that they had not been transferred to Nationwide.

Conversion and delisting

7.29 Sections 19, 39B and 48L can be used when the Bank of England makes a share transfer instrument, property transfer instrument or resolution instrument, and section 19 can be used where the Treasury makes a share transfer order to exercise temporary public ownership to discontinue or suspend the listing of securities. Sections 19 and 48L also allow the instruments or order to convert securities into another form or class of security.

7.30 Where the property rights of third parties are affected by provisions of a transfer instrument or order to the extent that it appears to the Treasury that those parties have suffered interferences in their property rights that may entitle them to compensation, the Treasury will make provision in a third-party compensation order for compensation to be assessed.

Termination rights and events of default

7.31 Section 48Z ensures that making a mandatory reduction instrument or exercising a stabilisation power will not trigger any default event provision in any contract to which a banking institution under resolution, its subsidiary or a member of the same group is a party, provided that the substantive obligations in the contract (such as payment and delivery obligations) continue to be performed. These provisions take effect automatically when the relevant powers are exercised. In addition, the Bank of England may provide in any mandatory reduction instrument, share transfer instrument, property transfer instrument or resolution instrument that a default event provision should be disapplied in a particular case even where the general provision would not apply.

7.32 Without these provisions a bail-in or a transfer of property or shares under the Banking Act powers could result in the triggering of an event of default, allowing counterparties to exercise termination rights. The purpose of section 48Z is therefore to ensure that the effectiveness of a bail-in or a transfer of a bank's business is not undermined through the termination of key contracts.

7.33 The provisions do not prevent the operation of default clauses which are based on a failure to perform the substantive obligations under the contract (e.g., payments or delivery of collateral) or events not directly linked to the application of a crisis prevention measure or a crisis management measure. Rather, they prevent the making of the order or instrument and its operation from being a specified event which could enable a counterparty to exercise their default event rights. They also prevent any event directly linked to the application of the stabilisation powers (such as a change of control of the bank or an automatic credit rating downgrade) triggering default event rights.

7.34 Section 48Z enables the Bank of England or the Treasury, in a Part 1 instrument or share transfer order, to depart from the general position described in 7.31 above and provide for a default event provision to take effect, or take effect to the extent specified in the instrument or order. This will only be necessary for a narrow range of contracts, where the activation of default event provisions (the definition of which includes modifications to the terms of as well as the termination of the contract) support the resolution of the firm and/or a member of its group. These include:

- Contractual bail-in instruments, where the contract specifies the instrument may be written down or converted to the extent required on the occurrence of a specified event- for instance upon a mandatory write-down of capital instruments or relevant internal liabilities under the Act or when a stabilisation power is exercised by the Bank of England;
- Certain service contracts specifying the terms on which services will continue to be provided following a resolution and are therefore triggered by the resolution action.

7.35 As the UK's resolution authority, the Bank of England will seek to identify any default event provisions which the Bank would wish to take effect as part of resolution planning.

The effect of a property transfer instrument on property held on trust

7.36 Section 34 provides that a transfer of property, rights and liabilities by property transfer instrument takes place by virtue of the instrument, and that such a transfer takes effect regardless of any restrictions. Under section 34(7) a property transfer instrument may make provision about property held on trust.

7.37 However, the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 (S.I. 2009/322)[15] makes express provision in article 7A in respect of section 34(7) that a relevant partial transfer may only remove or alter the terms of a trust to the extent necessary or expedient to transfer the legal or beneficial interest of the banking

[15] As amended by the Banking Act 2009 (Restriction of Partial Property Transfers) (Amendment) Order 2009 (S.I. 2009/1826) and the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations (S.I. 2018/1394).

institution in the property held on trust to the transferee or to transfer any powers, rights or obligations of the banking institution in respect of the property held on trust.

7.38 Section 34(8) (inserted by the Financial Services Act 2012) sets limits on the extent to which the Bank may modify or remove the terms on which trust property is held. The same applies in the case of property transfer orders made by the Treasury (see sections 45(5A) and 46(5A).

7.39 The authorities will act consistently with this limitation where a property transfer instrument is used to transfer all (rather than part) of the property of a failing bank. The powers under section 34(7) may only be used to the extent necessary to facilitate the transfer of property held on trust, any trust property held by the bank to the custody of the new trustee, and where relevant, the bank's role as trustee in respect of any property. The authorities will also take steps to ensure, wherever possible that all property held subject to any particular trust will be transferred together.

7.40 The property held on trust includes client assets and client money that the institution (whether a bank or an investment firm) is required to protect under the Client Assets sourcebook and under Principle 10 of the Principles for Business in the FCA Handbook.

The Resolution Administrator

7.41 The Bank of England has power to appoint a resolution administrator to perform such functions as may be specified in the resolution instrument. The resolution administrator may be given all the powers of shareholders, senior management and the board of directors, but will be subject to the control of the Bank of England. The administrator will have a statutory duty to take all the measures necessary to promote the resolution objectives, and will also be required to have regard to any other objectives specified by the Bank. A resolution administrator should generally not be appointed for more than one year, though this period may be renewed in exceptional circumstances.

7.42 The Bank of England will have the power to appoint one or more resolution administrators. It may also appoint itself as resolution administrator. The powers the Bank of England can confer on the resolution administrator include (and are not limited to): holding, on a temporary basis, such securities as may be transferred to the resolution administrator; preparing a business reorganisation plan; and performing management functions in relation to the bank under resolution. The split of responsibilities between the resolution administrator and the directors of the bank will be determined by the Bank of England and set out in the instrument appointing the administrator. The resolution administrator may be granted all the powers of the shareholders and management and perform that function without involvement from other directors. Alternatively, the administrator may act as part of the management team and be involved in management decisions along with the directors of the bank. To enable the resolution administrator to carry out any of the functions which the Bank of England can confer on it, including acting as part of

the management team, section 62E(3) is designed to protect the resolution administrator from incurring liability for anything done for the purposes of or in connection with their office (except in very limited circumstances).

7.43 In the case of a transfer of the whole business of a failing banking institution to a private sector purchaser, the appointment of a resolution administrator is not needed as the business will be owned by the new purchaser. In the case of a transfer of part of the business to a private sector purchaser or to a bridge bank, the rest of the bank may be placed into bank administration, in which case a bank administrator will be appointed over the residual business.

7.44 Under the bank administration procedure, a bank administrator is responsible for the management of the company's business. The bank administration procedure imposes on the bank administrator the additional objective of ensuring the supply of essential services and facilities to the transferee (the private sector purchaser or the bridge bank). This objective has priority over the objective of rescuing the residual bank as a going concern or winding up its affairs in the best interests of creditors. A formal reporting structure will be agreed between the Bank of England and the administrator to allow for formal consultation and sign-off of the administrator's actions and ongoing monitoring, until the first objective is complete. The Bank of England will perform the functions of a creditors' committee until the achievement of the first objective.

7.45 In a resolution by way of a full transfer to a bridge bank, the Bank of England must have full control of the bridge bank. That is, the Bank of England must either wholly own the bridge bank or control voting rights in shares issued by the bridge bank. The Bank will therefore take steps to put in place appropriate arrangements for its management.

Valuation

7.46 In order to ensure that a resolution is effective, the authorities will require a valuation of the banking institution's assets and liabilities in order to estimate the scale of the losses that need to be addressed and to act accordingly. In addition to an accounting valuation, this valuation will take into account factors such as the nature of the stabilisation option to be used; the losses expected; the restructuring plan for the firm following resolution; and the costs of restructuring. It will also be necessary to have an estimate of the value of the firm's equity post-resolution. This represents the value that will be available to be allocated to creditors as compensation (following a bail-in, for example) or distributed to creditors (for example, in the form of proceeds of a sale to a private sector purchaser).

7.47 The authorities will use the final asset and liability valuation and the equity valuation, which together comprise the "exchange valuations", to inform the terms of resolution. That might determine the equity allocated to bailed-in creditors, or the allocation of assets and liabilities to a bridge bank, for example.

7.48 The EBA has made two technical standards on valuation which the Bank of England has amended in light of the UK's withdrawal from the EU and for which the Bank of England is now responsible.[16]

[16] The Technical Standards relate to Methodologies for Difference in Treatment in Valuation and Methodologies for Valuing Assets and Liabilities. The Technical Standards have been updated to reflect the UK's withdrawal from the EU pursuant to the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018. The Technical Standards are the retained UK law versions of Commission Delegated Regulations 2018/344 and 2018/345 respectively. Further detail can be found here.

Chapter 8
Safeguards

Safeguards for partial property transfers

8.1 Partial property transfers under the Act are subject to restrictions imposed by secondary legislation that certain types of contractual arrangement are adequately protected, thereby mitigating any negative market consequences to banking institution creditors and counterparties. These legislative safeguards are intended to continue to allow the flexibility to execute a bank partial transfer where necessary. The Treasury will keep the safeguards under review.

8.2 The safeguards for partial property transfers are set out in the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 (S.I. 2009/322) (referred to as the 'Partial Property Transfer Safeguards Order') and the Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009.

8.3 These Orders are kept under review by the authorities, in particular where specific concerns may arise that an activity analogous to those otherwise protected by explicit safeguards itself falls outside the Partial Property Transfer Safeguards Order.

Safeguard for set-off and netting arrangements

8.4 The Partial Property Transfer Safeguards Order provides broad protection for set-off and netting arrangements, ensuring that property included under a counterparty's set-off and netting arrangement with a bank may not be "split up" through the exercise of a property partial transfer. However, in order to allow the flexibility to carry out partial transfers in the interests of financial stability and depositor protection, the Order features a number of carve outs from this protection ('excluded rights' and 'excluded liabilities'). These include excluded rights and liabilities in connection with:

- deposits held in a class or brand of account mainly used or marketed to depositors eligible for compensation under the FSCS; (this includes most individuals and most businesses);
- subordinated debt issued by the failing bank or the failing bank's counterparty.

8.5 In addition, the Order provides that where a transfer order or instrument has purported to respect the safeguard for netting and set-off, the fact that some of the property being transferred is foreign property, and so may not have been effectively transferred, does not give rise to a breach of the safeguard.

Protection for secured liabilities

8.6 This safeguard protects financial collateral and other secured arrangements to which the bank in SRR is party. It provides that where the bank or its counterparty has a security interest over an asset securing a liability owed to it by the other party, the charged asset may not be "split up" from this liability under a partial transfer. In this way, counterparties can continue to be confident that they will be able to have recourse to collateral assets over which they have taken security.

Protection for structured finance arrangements

8.7 There is a safeguard for financial arrangements broadly covered by the term "structured finance". These arrangements are referred to in the Order as "capital markets arrangements" and refer to, for example, covered bonds, and securitisation vehicles. The safeguard provides that partial property transfers may not interfere in the operation of such arrangements to which a bank is party by transferring some, but not all, of the relevant property, rights or liabilities.

Protection for default rules of clearing houses and investment exchanges and market contracts

8.8 The safeguards protect the operations of important central market counterparties, such as clearers and settlement houses, from possible disruption under a partial property transfer. For example, clearing house "default rules", which are given legal force by Part VII of the Companies Act 1989, are given explicit protection.

Restrictions on reverse partial transfers

8.9 The Act allows for the use of reverse transfer powers to transfer property, rights and liabilities from certain entities (including a bridge bank) back to the residual bank. However, the safeguards prevent the Bank of England or the Treasury from transferring back certain types of property, rights and liabilities. Broadly speaking, the restriction applies to property, rights and liabilities acquired or created by the transferee after the transfer, assets that subsequently become liabilities and financial instruments, loans and deposits. This safeguard is provided to ensure that those transferred to the new company can have confidence in their position.

Continuity obligations

8.10 The safeguards include a prohibition on use of the powers to provide for continuity of intra-group services and facilities in a way that would contravene the key safeguards provided for in the Partial Property Safeguards Order.

Remedies for breaches

8.11 Remedies in the event of a breach of a safeguard are set out in the secondary legislation. The authorities are under a statutory duty to comply with the safeguards, and this duty is unaffected by the existence of such remedies. The remedy provisions exist to provide

certainty to the market as to the outcome should the safeguards be inadvertently contravened.

8.12 The authorities consider that the provision of certainty is relevant to achievement of special resolution objectives 2, 3 and 7. And further, the authorities will necessarily have regard to restrictions and conventions of public law, in particular the requirement on the Government to have respect for the rule of law and legal certainty.

8.13 The remedies apply where any person considers that a partial property transfer has been made in contravention of any provision of the Partial Property Transfer Safeguards Order and that as a result his property, rights or liabilities have been affected. The authorities will require parties who believe that the Order has been contravened to provide a notification:

- specifying the provision of this Order which is alleged to have been contravened and the manner in which that contravention has occurred;
- identifying the property, rights or liabilities to which the alleged contravention relates;
- providing other such information as the relevant authority may reasonably require. In particular, this is likely to include information how a party's property, rights or liabilities have been affected by the contravention.

8.14 If the relevant authority considers that the matters raised in the notice are of such complexity that it is impracticable to take a decision about the remedy for the breach within 60 days of receipt of the notice, the relevant authority may extend the period by no more than a further 60 days. In such cases the relevant authority must inform the party of the duration of the extension, within 60 days of receipt of the notice. In practice, the timetable will be dependent on the complexity of the resolution.

8.15 The authorities will make use of all regulatory and supervisory information available to them to avoid breaching the safeguards order, including any relevant information available in the failed firm's recovery and resolution plan.

Safeguards for Asset Management Vehicles

8.16 If the Bank of England makes a transfer to an asset management vehicle, the Treasury shall make a resolution fund Order, which may include a compensation scheme order or a third-party compensation order. In case of a partial property transfer, such resolution fund order must include a third-party compensation order (see sections 49-60B of the Act and chapter 12 of this Code).

Safeguards for Bail-in

Excluded liabilities

8.17 Certain liabilities are excluded from the power to make special bail-in provision (the power to write down or convert liabilities). The

powers conferred by the special bail-in provision cannot be used in relation to:

- liabilities representing deposits protected by the FSCS;
- any liability, so far as it is secured;
- liabilities that the institution has by virtue of holding client assets;
- liabilities with an original maturity of less than seven days which are owed to a credit institution or investment firm (save in relation to credit institutions or investment firms which are banking group companies in relation to the bank). This includes liabilities which have no maturity date and are callable on demand (with a less than 7-day notice period);
- liabilities with a remaining maturity of less than 7 days arising from participation in a designated settlement system and owed to such systems, or to operators or participants in such systems;
- liabilities with a remaining maturity of less than 7 days which are owed to a recognised central counterparty or a third country central counterparty (both as defined in FSMA 2000);
- liabilities to employees or former employees in relation to salary or other remuneration except variable remuneration that is not regulated by a collective bargaining agreement, and variable remuneration of material risk takers within the meaning of rule 3 of Part 152 (remuneration) of the PRA rulebook (other than persons deemed by virtue of rule 3.2 not to be material risk takers and notified to the PRA in accordance with rule 3.2);
- liabilities owed to a pension scheme, except for liabilities in connection with the variable component of remuneration that is not regulated by a collective bargaining agreement;
- liabilities owed to a commercial or trade creditor arising from the provision of goods or services that are critical to the daily functioning of the institution's operations;
- liabilities to the scheme manager of the FSCS in relation to levies imposed by the scheme manager under section 213(3)(b) of FSMA 2000;
- liabilities owed to another bank or a banking group company which is part of the same resolution group and is not itself a resolution entity, where the liabilities do not rank below ordinary non-preferential debts in the insolvency hierarchy.

8.18 In the case of partially secured liabilities, the secured amount shall be excluded from bail-in, but the bail-in powers may be applied to the unsecured part. For example, if a liability of £100m is secured with an asset worth £80m, then the bail-in provisions may be applied to the £20m representing the unsecured part of that liability.

8.19 Special bail-in provision cannot be applied to any liability so far as it is secured. This includes covered bonds. Consistent with this, with respect to UK covered bond structures which involve a claim against each of the bank issuer and a cover pool owning entity which provides a guarantee secured over the cover pool, the authorities will take into account the guarantee and, in particular, the secured obligations under the guarantee in determining whether there is a residual unsecured claim in connection with the covered bonds which may be subject to bail-in.

8.20 The determination of whether the provision of goods and services are critical to the continuing operation of the banking institution may be made by the Bank of England in consultation with the PRA. This exclusion does not apply to creditors that are companies within the same banking group as the banking institution subject to the exercise of the powers. For example, liabilities to a service provider within the same banking group will not automatically be excluded from the scope of the bail-in provision. It could only be excluded if it met the tests for a discretionary exclusion in section 48B(10).

8.21 Where the Bank of England exercises its powers to make special bail-in provision, it will have regard to the principle that the exercise of the powers should respect the creditor hierarchy in insolvency. This means that creditors' claims will not generally be written down or converted until more junior liabilities have been, and that the Bank of England will seek to treat creditors of equal rank equally.

8.22 The primary exception to this principle is that the liabilities excluded from the bail-in provisions are not included in this consideration. Liabilities in the same class as excluded liabilities can be modified or cancelled, notwithstanding the fact that liabilities in that class have been excluded through statutory provision.

8.23 Liabilities owed to a pension scheme, except for liabilities in connection with the variable component of remuneration that is not regulated by a collective bargaining agreement (paragraph 8.19), are excluded from bail-in. In cases where the bail-in powers are used to bail-in variable remuneration, the liability of the banking institution to a pension scheme or provider would be written down. However, this would not write down the liability the pension scheme or provider owes to its members. This may result in the scheme being underfunded. In circumstances where it is necessary, the Government would use its powers under section 75 of the Act to amend legislation to ensure that a write down of the members' entitlement is also achieved.

8.24 As is the case when allocating losses using its powers in a partial transfer, the Bank of England will also have flexibility to choose not to make special bail-in provision, or to make different special bail-in provision in relation to different liabilities of the bank (including as regards liabilities in the same class). This discretion will only be exercised in exceptional circumstances, where:

- it is not possible (including for operational reasons) to bail in certain liabilities within a reasonable timeframe;

- different treatment is necessary and proportionate to achieve the continuity of critical functions and core business lines in a manner that maintains the ability of the institution under resolution to continue key operations, services and transactions;
- different treatment is necessary and proportionate to avoid giving rise to widespread contagion, in particular as regards to eligible deposits from natural persons and SMEs that would severely disrupt the functioning of financial markets;
- absent different treatment, there would be loss of value so that the losses borne by other creditors would be higher than if these liabilities were not bailed in.

Set off and netting safeguards order

8.25 Certain liabilities, such as derivatives and financial contracts, benefit from greater protection in insolvency due to set off and netting arrangements. It is important these rights are respected under bail-in in order to ensure that creditors are not treated worse than they would have been in insolvency. The Banking Act 2009 (Restriction of Special Bail-in Provision, etc.) Order 2014 (S.I 2014/3350) defines "protected liabilities" and will be likely to apply to the majority of the bank's liabilities which are subject to valid and enforceable contractual set-off rights, with certain exceptions set out in the Order. Liabilities subject to other, non-contractual, set-off rights arising by operation of law are not caught by the definition of "protected liabilities." However, to the extent creditors would benefit from the application of noncontractual set-off rights in insolvency, they are otherwise protected through the "no creditor worse off" safeguard and compensation arrangements described further in Chapter 13 below.

8.26 Where the protected liability relates to a derivative, financial contract or a qualifying master agreement, it must be converted into a net debt, claim or obligation before it can be bailed in. This may be done either in accordance with the relevant arrangement specified in the contract, or by special bail-in provision, which allows the Bank of England to, for example, make provision that a contract is closed out under the specified contract arrangement.

8.27 Other protected liabilities may be converted into a net debt, claim or obligation, or treated as if they had been. For example, if a counterparty of the banking institution has both a liability to the bank and holds a liability of the bank as an asset, and they are subject to valid and enforceable contractual set-off rights, then the Bank of England may treat these as if contractual set off had been applied, rather than actually closing the contracts to create a net liability. The Bank of England would then exercise the bail-in powers in such a way that results in the counterparty being exposed to a loss that is equivalent to the loss they would have experienced had the contracts been closed out and the net liability bailed in.

8.28 This is preferable to requiring close-out, since close-out could result in many contracts being terminated which is not usually desirable or consistent with the special resolution objectives, which are

designed to ensure continuity of critical functions and minimise disruption.

8.29 The liabilities which are not protected by the order are:

- liabilities under unsecured debt securities (including bonds and commercial paper);
- liabilities under any capital instrument (including preferred shares);
- subordinated liabilities;
- unsecured liabilities with an original maturity of 1 year or more, except any liabilities in relation to derivatives financial contracts or qualifying master agreements;
- unsecured intragroup liabilities, except any liability in relation to derivatives, financial contracts or qualifying master agreements; and
- liabilities related to claims for damages.

8.30 These contracts need not be closed out prior to bail-in, or treated as if they had been closed out. However, they remain protected by the "No shareholder or creditor worse off" safeguard which will take into account any set-off or netting rights that would have been respected in insolvency.

Remedies for breaches

8.31 Remedies in the event of a breach of a safeguard are set out in the Banking Act 2009 (Restriction of Special Bail-in Provision, etc.) Order 2014 (S.I.2014/3350) ("the 2014 Order"). The authorities must comply with the requirements set out in the 2014 Order and this duty is unaffected by the existence of such remedies. The remedy provisions provide additional certainty to the market as to the outcome should the safeguards be inadvertently contravened.

8.32 The authorities consider that the provision of certainty is relevant to achievement of special resolution objectives 2, 3 and 7. Further, the authorities will necessarily have regard to their obligations under public law, in particular the requirement on the Government to have respect for the rule of law and legal certainty.

8.33 The remedies apply where any person considers that a resolution instrument has been made in contravention of any provision of the 2014 Order and that as a result the liabilities owed to the person have been affected by the making of special bail-in provision. Parties who believe that the Order has been contravened may provide a written notification to the Bank of England:

- specifying the provision of this Order which is alleged to have been contravened and the manner in which that contravention has occurred;
- identifying the property, rights or liabilities to which the alleged contravention relates;

- providing, on request, other such information as the relevant authority may reasonably require.

8.34 Within 120 days of this notification being received, and acting as soon as is reasonably practicable, the Bank of England must, if it agrees that a provision of the Order has been breached, take steps to remedy the breach.

8.35 In the case of an "open bank" bail-in, the Bank of England must either:

- Require the relevant banking institution to issue securities, or transfer existing securities to the affected person. The value of these shares should be the Bank's estimate of the amount necessary to put the person in the position they would have been in had the contravention not occurred.
- Require the relevant banking institution to transfer a sum equal to the Bank's estimate of the amount necessary to put the person in the position they would have been in had the contravention not occurred.

8.36 In the case of a "closed bank" bail-in, i.e., where the bail-in powers are used in conjunction with the bridge bank stabilisation option, the Bank of England may require either the relevant banking institution or the bridge bank to issue or transfer the securities, or to transfer the relevant sum.

8.37 If the Bank of England does not agree that a provision of the Order had been contravened in the manner specified by the notice, the Bank must give reasons to the person explaining why it does not agree.

8.38 If the Bank of England considers that the matters raised in the notice are of such complexity that it is impracticable to take a decision about the remedy for the breach within 120 days of receipt of the notice, the Bank may extend the period by up to 120 days. In such cases the Bank must inform the party of the duration of the extension as soon as is reasonably practicable. In practice, the timetable will be dependent on the complexity of the resolution. The longer period in the 2014 Order (by comparison with the period in the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009) reflects the greater complexity of considering the operation and effect of special bail-in provision, when compared to partial property transfers.

8.39 The authorities will make use of all regulatory and supervisory information available to them to avoid breaching the safeguards order, including any relevant information available in the failed firm's recovery and resolution plan.

Chapter 9

Governance arrangements

Governance arrangements for bridge bank

Bridge bank objectives

9.1 A bridge bank is intended to be a short-term operation, until appropriate private sector solutions can be arranged and implemented.

9.2 To this end, the primary objective of a bridge bank shall be to maintain access to critical functions and to facilitate the sale of a bridge bank – in whole or in part – to one or more private sector purchasers, or otherwise to transfer ownership to new owners (for example creditors of the bank whose liabilities have been bailed in) following the stabilisation of the banking institution.

9.3 Insofar as the pursuance of those objectives is not compromised, the Bank of England shall take steps to manage its relationship with the bridge bank at arm's length. However, an arm's length arrangement may not be appropriate if a bridge bank is only in existence for a short period of time as is intended and envisaged.

9.4 It may also not be appropriate in circumstances where only a small part of the failed institution's business has been transferred to the bridge bank. Paragraphs 9.14-9.18 of this Code provide further guidance on this point.

9.5 In some circumstances, it may not be feasible for some or all of a bridge bank's business to be transferred to a private sector purchaser (for example, where a buyer cannot be found), or otherwise to transfer it to new owners. In these circumstances, unless the condition in section 12(3B) is satisfied, the bridge bank will be wound up, in a manner that meets the special resolution objectives and is in the interests of the remaining creditors of the bridge bank.

9.6 It should be noted that the bridge bank objectives are subordinate to the special resolution objectives. In situations where there is a conflict between the two sets of objectives, the special resolution objectives take precedence.

Contents of property and share transfer instruments for a bridge bank

9.7 The Bank of England may transfer shares or property of the failing banking institution to the bridge bank with either a share transfer instrument or a property transfer instrument. In both cases, the Bank of England shall ensure that the total value of liabilities

transferred to the bridge bank does not exceed the total value of the rights and assets transferred from the institution under resolution or provided by other sources.

9.8 Section 15 of the Act describes the provisions that a share transfer instrument may make. The Bank of England may make a share transfer instrument that provides for the transfer of securities of a specified banking institution or makes other provision in connection with the transfer of securities to a bridge bank. The Bank of England may subsequently make a bridge bank share transfer instrument to a third party.

9.9 Section 33 of the Act describes the provisions that a property transfer instrument may make. There are a number of options for how an instrument may describe which property, rights and liabilities have been transferred. Section 33(2) provides that "a property transfer instrument may relate to– (a) all property, rights and liabilities of the specified bank, (b) all its property, rights and liabilities subject to specified exceptions, (c) specified property, rights or liabilities, or (d) property, rights or liabilities of a specified description."

9.10 Where it is envisaged that the bridge bank will be in operation for a period in which longer-term operational management decisions will need to be taken, the Treasury are likely to impose a management duty on the Bank including a requirement to minimise costs.

9.11 The Bank of England shall take steps to specify appropriately in the given circumstances which property, rights and liabilities of a failing banking institution have been transferred.

9.12 Once a share or property transfer instrument is made, the Treasury shall lay a copy in the Houses of Parliament.

Establishment

9.13 The Bank of England shall establish or acquire an incorporated company to which securities, or property, rights and liabilities will be transferred. The Bank of England will work with the PRA and FCA to arrange appropriate authorisations where necessary to carry on the relevant regulated activities. The company will need to comply with authorisation requirements on an ongoing basis and will be subject to PRA and FCA supervision.

Nature of the shareholder relationship

9.14 A bridge bank when it is established or acquired will be a company limited by shares that is wholly or partially owned by the Bank of England. The Bank of England shall maintain control over the bridge bank, and shall ensure that control is not compromised by any use of the bail-in tool to provide capital to the bridge bank. A bail-in that turns creditors of the bridge bank into shareholders could be effected so that the new shareholders do not receive voting rights until the entity ceases to be a bridge bank, for example.

9.15 The nature of the shareholder relationship with a bridge bank will vary depending on the nature of each resolution and the particular

'phase' of the resolution. In broad terms, a bridge bank might go through a number of phases, including:

- the stabilisation phase, immediately following the transfer;
- the sale phase, where the Bank manages the bridge bank on a conservative basis while working with one or more private sector purchasers to transfer the business.

9.16 In many cases the sale phase may immediately follow the stabilisation phase. In these situations, it is likely that arm's length management may not be appropriate. The Bank of England would be expected to take an active role in managing the affairs of the bank, first to ensure stabilisation, and second to ensure a successful transaction.

9.17 However, in situations where there is expected to be a lengthy period of time prior to a sale, the Bank shall put in place an appropriate governance structure. This structure shall be based on the objective of taking steps to manage the relationship with the bridge bank at arm's length.

9.18 Arm's length is defined as leaving the day-to-day management of the bridge bank to its board of directors and keeping the Bank's shareholder involvement at a strategic level. For example, the Bank of England would have an oversight role to ensure that its objectives continue to be met in the face of changing circumstances.

Articles of association

9.19 The articles of association of a bridge bank will provide for the company regulations governing the relationship between the Bank of England (in its capacity as shareholder) and the directors of the company. These articles will be based on the model articles prescribed by the Secretary of State for a limited liability company but with such modifications as are necessary or appropriate, and shall be judged by the Bank of England. Such modifications shall be based on what best meets the bridge bank objectives.

Directors

9.20 The Bank of England shall take steps to put in place appropriate arrangements for the management of a bridge bank.

9.21 As noted above, the nature of the management structure put in place will depend on the particular circumstances of the resolution. Over the period of stabilisation, the management arrangements may involve a relatively small core of directors with appropriate skills and experience. If a bridge bank is, as intended, only in existence for a short period of time, then this arrangement may remain suitable.

9.22 In circumstances where the bridge bank exists for a longer period of time, the Bank shall take steps to ensure the composition of the board of directors continues to remain appropriate. This may include appointing additional directors. The composition of the board will be decided by the Bank on a case-by-case basis, and having regard to relevant regulations and legislation.

9.23 At any time over the course of the resolution, the bridge bank's board of directors may or may not include employees of the Bank of England.

9.24 In addition, board members and senior managers performing key functions will need to be approved persons, although there may be transitional arrangements in appropriate cases. In all cases, the Bank of England will approve the remuneration of the members of the management body and determine their appropriate responsibilities.

Operating strategy

9.25 The operating strategy for a bridge bank shall be decided by the Bank of England according to what best meets the bridge bank objectives. This is likely to involve the bridge bank operating on a conservative basis, to protect the franchise value of the business, and provide continuity of banking services.

9.26 The Bank of England shall take steps to ensure that the bridge bank meets its regulatory requirements for its relevant regulated activities, including taking necessary steps to comply with relevant PRA or FCA requirements.

9.27 In its role as shareholder, the Bank of England shall work with the board of directors to decide on how the bridge bank should be operated. A business plan will be required for authorisation purposes. Where appropriate, the board shall produce a business plan setting out how the directors intend to operate the bridge bank in a manner pursuant to meeting the objectives. This business plan shall be presented to the Bank of England, who must approve the plan and shall ensure that it meets the Bank of England's objectives for the resolution. If a bridge bank exists for only a short amount of time it may be unnecessary to go through this process.

Reporting

9.28 Bridge banks are covered by a number of reporting requirements. These are:

- the provision of section 80(1) of the Act (a "resolution company report");
- the provision of section 80(5) of the Act (a "specific report");
- any other reports as agreed between the directors of the bridge bank and the Bank of England;
- In the event that the Bank of England exercises its power to transfer a firm to a bridge bank in conjunction with the recapitalisation payment mechanism under section 214E of FSMA 2000, additional reporting requirements will apply. See Chapter 12 for more details of these requirements.

Resolution company report

9.29 Bridge banks and asset management vehicles are resolution companies, and are subject to the reporting requirements set out in

section 80 of the Act. Under section 80 of the Act, the Bank of England is required to report to the Chancellor about the activities of a resolution company and under section 80(2), the Bank is required to submit the first report as soon as is reasonably practicable after the period of one year from the date of the first transfer to the resolution company. This obligation to produce a report exists whether or not the resolution company exists for a whole year. As soon as a section 80(2) report is submitted, the Chancellor must lay the report in the Houses of Parliament.

9.30 A similar report must also be made as soon as is reasonably practicable after the end of each subsequent year that the resolution company is in existence. Such reports shall include:

- the management accounts of the resolution company;
- a report on the activities of the resolution company over the year;
- a report on the costs of advisers engaged by the resolution company;
- how the Bank of England is intending to achieve the resolution company objectives.

9.31 When compiling the report, the Bank of England may choose not to reveal market-sensitive information.

9.32 These reports to the Chancellor are supplementary to the reporting arrangements that the Bank of England in its role as shareholder will put in place to ensure it receives appropriate management information from a resolution company.

Specific reports

9.33 The contents of specific reports will be determined on a case-by-case basis, dependent on the specific request of the Treasury.

Other reports

9.34 In addition to resolution company reports and specific reports, and the reporting requirements imposed on the resolution company pursuant to the Companies Act 2006, the Bank of England shall consider, in each case, whether the resolution company should have regard to any additional reporting requirements to which similar commercial banks may be subject. In addition, the Bank of England shall make arrangements to provide for regulatory reporting appropriate to the activities undertaken by the resolution company.

9.35 Whilst there will be a presumption towards applying the same requirements as another bank of that type and size when determining these arrangements, the Bank of England will take into account the size and nature of the resolution company's activities, the risk of competitive distortions, the length of time since creation, the foreseeable life of the resolution company, and the need for information for financial stability purposes. The decision to remove reporting requirements will be kept under review.

Disposal and onward transfer

9.36 The primary bridge bank objective, beyond maintaining access to critical functions, is to facilitate the sale of a bridge bank – in whole or in part – to one or more private sector purchasers, or otherwise ensure that substantially all of the bridge bank's assets, rights and liabilities have been transferred to a third party or third parties.

9.37 It is envisaged that, where the bridge bank is being sold, a sale of business should follow as soon as possible after the initial transfer of property to a bridge bank. The Bank of England will be responsible for marketing the institution or parts thereof. The marketing shall comply with the rules in Section 11A(1) to (3) of the Act, unless the Bank determines that would be likely to undermine one of the resolution objectives, and particularly if that would present a threat to financial stability or would undermine the sale and the use of this tool.

9.38 In most cases an auction will be arranged to determine the sale price, but this may not be appropriate in all cases.

9.39 The Bank of England shall ensure that the bridge bank, or the relevant assets and liabilities, is marketed openly and transparently, in such a way that the sale does not misrepresent the assets, rights and liabilities of the bridge bank or the bridge bank itself, and in a way that does not unduly favour or discriminate between potential purchasers. The sale shall be made on commercial terms, having regard to the circumstances.

9.40 In each case, the Bank of England shall establish an appropriate mechanism for selecting a preferred purchaser and agreeing on a price for the business of the bridge bank. In its assessment the Bank of England shall take account of the special resolution objectives (section 4 of the Act). It shall also work with the PRA or FCA (as relevant) to ensure that the acquiring party is suitable for taking on the bridge bank's business.

9.41 Following this process, the Bank of England shall complete the transaction. This may be achieved through a standard commercial agreement (for example, a sale of securities, or an asset sale using the process provided for in Part 7 of FSMA) or by exercising the onward transfer powers provided in the Act, either by making a resolution company share transfer instrument (section 30) or an onward property transfer instrument (section 43).

9.42 Where creditors of the bridge bank are bailed in, with the intention of providing those bailed-in creditors with shares in the institution as a means of compensation, then the bridge bank will cease to exist where the Bank of England no longer owns the bridge bank or the shares of the bridge bank, and no longer controls the bridge bank (i.e. when the new shareholders have assumed their normal shareholder rights).

9.43 In some circumstances it may be appropriate to transfer some or all of a bridge bank's business to a public-sector transferee, either a company wholly owned by the Treasury or an onward bridge bank (defined in section 12(4) of the Act). However, this would only occur if it best met the bridge bank objectives.

9.44 The Bank of England may only operate a bridge bank for a two-year period unless an extension is permitted under section 12(3D). Once this period expires, the bridge bank must be wound up under normal insolvency proceedings if a private sector buyer cannot be found.

9.45 The Bank of England may extend this period by one or more years where the extension is necessary to ensure the continuity of essential banking or financial services, or it would support one of the following outcomes:

- the bridge bank merging with another entity;
- the bridge bank ceasing to be wholly or partially owned by the Bank, or controlled by the Bank;
- the sale of all or substantially all of the bridge bank's rights, assets, and liabilities to a third party;
- the bridge bank's assets being completely wound down and its liabilities completely discharged.

9.46 The Bank of England shall ensure that it documents its reasons for extending the period, which must include consideration of any market conditions that justify it.

Governance arrangements for Asset Management Vehicles

Asset management vehicle objectives

9.47 An asset management vehicle is intended to maximise the value of the assets transferred to it through their eventual sale or orderly wind down, while supporting the continuity of critical functions of the institution in resolution.

9.48 In order to maximise value, an asset management vehicle should try to facilitate the sale of its assets to purchasers in the private sector. The assets may be sold in whole or in part to one or more purchasers. If it is not feasible for some or all of the assets to be transferred to a private sector purchaser, such assets will be wound down, in a manner that meets the special resolution objectives and is in the interests of the remaining creditors of the asset management vehicle.

9.49 It should be noted that the asset management vehicle objectives are subordinate to the special resolution objectives. In situations where there is a conflict between the two sets of objectives, the special resolution objectives take precedence.

Transfers of assets, rights and liabilities

9.50 The Bank of England may transfer assets, rights or liabilities from an institution under resolution or a bridge bank to one or more asset management vehicles without the consent of the shareholders of the institution under resolution or any third party (other than the bridge bank where assets are being transferred from a bridge bank to an asset management vehicle), and without complying with any procedural requirements under company or securities law.

9.51 The Bank of England may transfer assets, rights or liabilities on more than one occasion pursuant to one or more property transfer instruments. The Bank may also make one or more supplemental property transfer instruments transferring any of the assets, rights or liabilities held by one asset management vehicle to one or more other asset management vehicles.

9.52 The Bank of England may also transfer assets, rights or liabilities back from one or more asset management vehicles to the institution under resolution in either of the following circumstance:

- the relevant transfer instrument expressly stated that the specific assets, rights or liabilities might be transferred back;
- the specific assets, rights or liabilities do not in fact fall within the classes of assets, rights or liabilities, or satisfy the conditions to transfer, specified in the transfer instrument.

9.53 Reverse transfers may be within any period stated within the relevant transfer instrument and must comply with any conditions specified in the relevant transfer instrument. If these conditions are met, the institution under resolution shall be obliged to take back any such assets, rights or liabilities.

9.54 Transfers between the institution under resolution or bridge bank and an asset management vehicle shall be subject to the safeguards for partial property transfers.

Contents of property transfer instruments

9.55 Section 33 of the Act describes the provisions that a property transfer instrument may make. There are a number of options for how an instrument may describe which property, rights and liabilities have been transferred. Section 33(2) provides that "a property transfer instrument may relate to– (a) all property, rights and liabilities of the specified bank, (b) all its property, rights and liabilities subject to specified exceptions, (c) specified property, rights or liabilities, or (d) property, rights or liabilities of a specified description."

9.56 Where it is envisaged that the asset management vehicle will be in operation for a period in which longer-term operational management decisions will need to be taken, the Treasury are likely to impose a management duty on the Bank including a requirement to minimise costs.

9.57 The Bank of England shall take steps to specify appropriately in the given circumstances which property, rights and liabilities of a failing banking institution have been transferred.

9.58 Once a property transfer instrument is made, the Treasury shall lay a copy in the House of Parliament.

Establishment

9.59 The asset management vehicle shall be a company established for the purpose of receiving some or all of the assets, rights and liabilities of one or more:

- institutions under resolution;
- bridge banks to which assets, rights or liabilities of one or more institutions under resolution have been transferred;
- or a combination of the two.

9.60 An asset management vehicle when it is established or acquired will be a company or a limited liability partnership that is wholly or partially owned (directly or indirectly) by the Bank of England or the Treasury, but the asset management vehicle must be controlled by the Bank of England.

Articles of association

9.61 The governing document (e.g., articles of association, partnership agreement) of an asset management vehicle will provide for the regulations governing the relationship between the Bank of England (in its capacity as controller and, if applicable, shareholder) and the directors (or their equivalent if the asst management vehicle is not a limited company) of the asset management vehicle. The governing documents will be based on the model articles prescribed by the Secretary of State for a limited liability company but with such modification as are necessary or appropriate. Such modifications shall be based on what best meets the asset management vehicle objectives. The governing document of an asset management vehicle shall be approved by the Bank of England.

Directors

9.62 Subject to the asset management vehicle's ownership structure, the Bank of England shall either appoint or approve the asset management vehicle's directors (or their equivalent). The Bank of England shall approve the remuneration of the directors and determine their appropriate responsibilities.

9.63 The Bank of England shall take steps to put in place appropriate arrangements for the management of an asset management vehicle.

9.64 The nature of the management structure put in place will depend on the particular circumstances of the resolution. Initially, the management arrangements may involve a relatively small core of directors (or their equivalent) with appropriate skills and experience. As the asset management vehicle continues to operate over time, the Bank shall take steps to ensure the composition of the board of directors continues to remain appropriate. This may include appointing additional directors. The appropriate composition of the board will be determined by the Bank of England on a case-by-case basis, and having regard to relevant regulation and legislation.

9.65 At any time over the course of the resolution, the asset management's vehicle's board of directors may or may not include employees of the Bank of England.

9.66 Where appropriate, board members and senior managers performing key functions may need to be approved persons, although there may be transitional arrangements in appropriate cases.

Operating strategy

9.67 The operating strategy for an asset management vehicle shall be decided by what best meets the asset management vehicle objectives. This is likely to involve the asset management vehicle operating on a conservative basis, with a long-term view toward maximising the value received for the assets held and providing continuity of services to the remainder of the institution in resolution, where applicable.

9.68 The Bank of England shall take steps to ensure that the asset management vehicle meets its regulatory requirements for any relevant regulated activities.

9.69 The Bank of England shall approve the strategy and risk profile of the asset management vehicle. If the asset management vehicle is carrying out activities that require authorisation, then a business plan from the asset management vehicle's senior management will be required if authorisation is necessary. Where appropriate, the board shall produce a business plan setting out how the directors (or their equivalent) intend to operate the asset management vehicle in a manner pursuant to meeting the objectives approved by the Bank of England. This business plan shall be presented to the Bank of England, who shall ensure that it meets the Bank of England's objectives for the resolution.

Reporting

9.70 The reporting requirements for an asset management vehicle are the same as for a bridge bank, as set out in paragraphs 9.29 to 9.35.

Disposal and onward transfer

9.71 The primary asset management vehicle objective is to facilitate the sale or orderly wind down of its assets. The sale of assets may be made – in whole or in part – to one or more private sector purchasers. There is not a set time period for the sale of assets held by an asset management vehicle; however, it should maximise the value for such assets. The asset management vehicle should wind down in an orderly manner any assets or class of assets for which a suitable private sector purchaser cannot be identified.

9.72 The Bank of England shall establish an appropriate mechanism for identifying which assets should be sold and which assets should be wound down. In addition, the Bank of England shall establish an appropriate process for selecting a preferred purchaser and agreeing on a price for the assets of the asset management vehicle that are to be sold. In its assessment the Bank of England shall take account of the special resolution objectives (section 4 of the Act); it shall also work with the PRA (and/or FCA where relevant) to ensure that the acquiring party is suitable for taking on the assets in question.

9.73 Following this process, the Bank of England shall complete the transaction. This may be achieved through a standard commercial agreement (for example, an asset sale using the process provided for in Part 7 of FSMA) or by exercising the onward transfer powers provided in the Act by making an onward property transfer instrument (section 43).

9.74 In some circumstances it may be appropriate to transfer some or all of an asset management vehicle's assets, rights or liabilities to another asset management vehicle. However, this would only occur if it best met the asset management vehicle's objectives.

Governance arrangements following bail-in

Directors

9.75 The Bank of England may appoint new directors of the banking institution on which the bail-in powers are used and/or at the level of the operating bank where bail-in powers are used on a parent company, (see section 81CA of the Act).

9.76 General or specific directions can be given to the directors either in the resolution instrument or in writing by the Bank of England. In complying with those directions, section 48O of the Act seeks to protect directors from liability for complying with those directions. Directors are protected from being liable for complying with any duty owed to any person, which, for example, would cover breach of their duties under the Companies Act 2006 or statutory offences such as wrongful trading.

9.77 At the end of the resolution process, when the shares or other instruments of ownership and control of the bank are transferred to the new owners, these shareholders will be able to exercise all normal shareholder rights, and will therefore have the ability to appoint directors as they see fit (subject to the normal approval and supervision of the PRA and the FCA).

Business reorganisation plans

9.78 In the resolution instrument that performs the bail-in, and where this is an 'open' firm bail- in, the Bank of England will require a resolution administrator or one or more directors of the bank under resolution (including either or both of the parent undertaking or the operating company) to prepare a business reorganisation plan, to be submitted within a period specified in that instrument. This plan must assess the factors that led to the bank's failure and set out how the business will be returned to viability (including by reference to compliance with PRA and FCA regulatory requirements), and operate as a going concern.

9.79 The plan may include (but is not limited to):

- selling parts of the business;
- reorganisation of the business;
- withdrawal from certain activities.

9.80 The plan (and any later revisions to it) must be approved by the Bank of England following consultation with the appropriate regulator. The resolution instrument will require the institution under resolution to submit a report to the Bank of England at least every six months on the progress of the implementation of the plan.

9.81 The business reorganisation plan may include recommendations by the person submitting the plan as to the exercise by the Bank of England of any of its resolution powers in relation to the bank. This may be relevant where, for example, a resolution administrator has identified a buyer for part of the business of the bank, and recommends that the Bank of England use its property transfer powers to affect a sale. In practice, the Bank of England may use its powers in such a manner until control of the bank is handed over to the shareholders.

Temporary public ownership objectives

9.82 The objectives of an institution in temporary public ownership will reflect the special resolution objectives. Where possible, the intention shall be to return the business of the banking institution to the private sector as soon as commercial and financial circumstances allow, in a manner that maintains financial stability and protects depositors and the taxpayer while acting in a way that promotes competition.

Contents of share transfer orders

9.83 Section 16 of the Act describes the provision a share transfer order may make. A share transfer order may relate to either specified securities or securities of a specified description.

9.84 The Treasury shall take steps to specify appropriately which securities of a failing institution have been transferred.

The nature of institutions in temporary public ownership

9.85 The securities of a bank in temporary public ownership shall either be held by a nominee of the Treasury (for example, the Treasury Solicitor) or by a company wholly owned by the Treasury.

9.86 Provision will be made as to the relationship between the Treasury (in its capacity as shareholder) and the directors of the company. As shareholder, the Treasury will have the power to exercise normal shareholder rights. The bank will be managed on a commercial basis.

9.87 Immediately following the transfer of securities and for the initial period of stabilisation, the Treasury may take a 'hands on' role in managing the affairs of the bank. However, once stabilised, the Treasury shall seek to introduce corporate governance arrangements in line with best practice, as soon as is reasonably practicable. The nature of these arrangements will depend on how likely the bank is to remain in public ownership. If a bank is likely to remain in public ownership for longer than a short period (to be determined on a case-by-case basis), the Treasury shall set out for the director's objectives as to how the bank should be operated. Based on these objectives, the board shall produce a business plan setting out how the directors intend to operate the bank.

9.88 The plan may include:

- a commercial strategy;

- a funding plan, including arrangements for repaying any public money that has been provided;
- a risk management strategy;
- an approach for complying with competition issues, and regulatory requirements.

9.89 This business plan shall be presented to the Treasury, who shall ensure that it meets the Treasury's objectives for the banking institution.

9.90 The Treasury shall then take an oversight role to ensure that the plan continues to meet its objectives in the face of changing circumstances.

9.91 In many cases, it will be appropriate for the Treasury to develop and implement an investment strategy for disposing of the investments in an orderly way.

9.92 Insofar as the banking institution carries on relevant regulated activities, the PRA and/or FCA shall continue to authorise and regulate it where appropriate.

Arms' length management of institutions in temporary public ownership

9.93 In circumstances where an institution is likely to remain in public ownership for longer than a short period, the Treasury may seek to put in place arrangements to operate the bank at arm's length, for example through UK Government Investments Limited (UKGI), which is a company wholly owned by the Government[17].

9.94 The March 2021 Memorandum of Understanding between UKGI and HM Treasury, available from the UKGI website, sets out:

- the scope of UKGI's decision-making responsibilities with respect to its management of the Investments, the Loan Arrangements and the Guarantee Arrangements;
- the extent to which decision-making requires the prior approval of HM Treasury before being taken or implemented; and
- the anticipated dialogue between UKGI and HM Treasury in relation to UKGI's responsibilities in relation to the Assets.

9.95 In such circumstances, the Treasury may set out objectives for UKGI's directors as to how the Government's holdings should be managed. It is likely that these objectives would include protecting and creating value with due regard to the special resolution objectives. The Treasury shall also take steps to ensure that the bank is operated in a manner that does not distort competition.

[17] Further information is available from the UKGI website (www.ukgi.org.uk)

Disposal of institutions in temporary public ownership

9.96 Sale of the institution in temporary public ownership may be carried out through normal commercial means, or existing statutory mechanisms. However, the Treasury may alternatively make an onward share transfer, by order (under section 28), or onward property transfer, by order (under section 45). These may be more expeditious and therefore command more confidence than a transfer through existing commercial or statutory processes. The powers to make such orders provide for swift and effective transfer to a private sector purchaser, maximising the commercial opportunities and minimising risks to the purchaser.

9.97 Where an institution in temporary public ownership is being managed at arm's length by a separate body, it will be the responsibility of the arm's length body, with appropriate consultation with the Treasury, to develop and execute an investment strategy for disposing of the investments in an orderly and active way.

Reporting

9.98 The Treasury shall make arrangements to ensure that a bank in temporary public ownership reports on a similar basis to other commercial banks. This includes regulatory reporting appropriate to the activities undertaken by the bank. In addition, section 81 of the Act requires the Treasury to report to Parliament on an annual basis about the activities of a bank in temporary public ownership.

Chapter 10

International cooperation on resolution

Supporting a foreign resolution

10.1 Many banks operate across borders, with operations in many different countries in the form of branches or subsidiaries. Due to the interconnectedness of different entities in the group, failure of any one part of the group could cause the failure of another part of the group, or of the group as a whole.

10.2 International cooperation is important to deliver resolutions on a cross-border basis. The UK has implemented the Financial Stability Board (FSB) Key Attributes of Effective Resolution Regimes for Financial Institutions[18], which strongly encourage cooperation to ensure cross-border resolution actions are successful. This section deals with the way that the UK will cooperate with resolution authorities in countries or territories other than the United Kingdom (references to other countries in this Code include references to territories other than the UK).[19]

10.3 Subsidiaries of foreign banks[20] that are located in the UK and authorised by the appropriate UK authority are subject to the special resolution powers in the same way as any other UK banking institution. However, in circumstances where the group as a whole is failing, it may not be necessary for the Bank of England to apply resolution stabilisation powers to a failing UK subsidiary, if the resolution occurs at the level of the foreign parent undertaking.

10.4 For UK branches of foreign banks, the assumption is that, in general, the failure of a branch will be managed by the resolution authority and other relevant authorities in the jurisdiction where the bank is headquartered. This is reflected in the fact that, when authorising a branch to operate in the UK, the PRA's authorisation applies to the whole firm, and will take into account amongst other things the extent to which the PRA, in consultation with the Bank of England (acting in its capacity as resolution authority), has appropriate

---

18 https://www.fsb.org/wp-content/uploads/r_141015.pdf

19 Further detail on the how the Bank of England cooperates with counterparts in third countries to plan for a cross-border resolution are available in 'The Bank of England's approach to resolution': https://www.bankofengland.co.uk/paper/2023/the-bank-of-englands-approach-to-resolution

20 i.e., banks incorporated in a country or territory other than the UK.

assurance over the resolution arrangements for the firm and its UK operations. Where the PRA does not have assurance on these arrangements, and neither the bank nor the home regulator can adequately address these concerns, the PRA may exercise its power to revoke the branch's authorisation to operate in the UK. In this circumstance, the firm would wind-down its regulated activities or it may apply to operate a subsidiary in the UK, which would need to be authorised by the PRA and/or the FCA. The UK subsidiary would then be subject to full PRA and/or FCA supervision, and, if PRA-regulated, to the Bank of England's stabilisation powers in the event of its failure (assuming that the conditions for use of the powers were met).

10.5 For significant UK subsidiaries and branches of foreign banks, if the banking group in question is a Globally Systemically Important Financial Institution (G-SIFI)[21], the Bank of England will be a member of the Crisis Management Group (CMG) for that banking group.

10.6 While it is expected that any resolution will be led by the resolution authority where the bank is located, it may be necessary for the Bank of England to take actions that recognise or support those foreign resolution proceedings. There may also be cases where a foreign resolution authority takes actions that affect a subsidiary of the group located in the UK.

10.7 Where the Bank of England is notified that a resolution authority in another country has taken a resolution action (a third-country resolution action),[22] the objective and results of which are comparable to the exercise of a stabilisation option in the SRR, the Bank of England is obliged by section 89H of the Act to make a "third-country instrument" which either recognises the action, refuses to recognise it, or recognises some parts of the action but not others. This will provide certainty in the UK as to whether a third-country resolution action has effect here, for example by recognising the transfer of property located in the UK, or the write-down of liabilities governed by UK law.

10.8 In addition to recognising a third-country resolution action, the Bank of England may exercise one or more of the stabilisation powers in respect of an entity or branch in the UK of a third-country banking institution in order to support the third-country resolution action with a view to promoting objectives which, in that other country, correspond to the special resolution objectives in the Act.

10.9 The Bank of England may for example, use the property transfer powers to transfer property of the foreign bank located in the UK to a new owner, in accordance with the foreign resolution. Section 48Z of the Act provides that recognised third-country resolution actions shall

---

21 A list of Globally Systemically Important Banks can be found at https://www.fsb.org/work-of-the-fsb/market-and-institutional-resilience/global-systemically-important-financial-institutions-g-sifis/.

22 An action under the law of a country or territory outside the UK is referred to as a "third-country resolution action". The use of "third-country" originated when the United Kingdom was a Member State of the European Union, to indicate countries that were outside both the UK and the EEA. It is still used in this Code and in section 89H of the Act, but now just indicates a country or territory outside the UK. The same principle applies to "third-country instrument" and to "third-country institution" in this Code and other "third-country" terms in section 89H.

not trigger contractual termination rights: they shall be treated in the same way as a UK crisis prevention measure or crisis management measure, and are to be disregarded in determining whether a default event provision in a relevant contract applies.

10.10 The Bank of England may only refuse to recognise a third-country resolution action, and instead take independent resolution actions if appropriate, if both the Bank of England and the Treasury are satisfied that one or more of the following conditions in section 89H(4) are met:

- recognition would have an adverse effect on financial stability in the UK;
- in order to achieve one of more of the special resolution objectives, it is necessary for UK authorities to take action in respect of a branch of the bank in question located in the UK;
- the third-country resolution action treats creditors (particularly depositors) who are located or payable in the UK less favourably than creditors who are located or payable in the country concerned and have similar legal rights;
- recognition would have material fiscal implications for the UK;
- recognition would contravene rights under the ECHR protected by the Human Rights Act 1998.

10.11 When exercising resolution tools and powers, the Bank of England shall take into account the interest of other jurisdictions and must have regard to the potential effect on the financial stability of other countries. This is consistent with the FSB Key Attributes.

Independent resolution of UK branches of third-country institutions

10.12 In line with the FSB Key Attributes, the Bank of England has powers (with the approval of HM Treasury) to independently resolve the UK branch of a third country institution, when it has refused to recognise third-country resolution action or where the resolution authority in that other country has not commenced resolution proceedings.

10.13 Powers to act independently in relation to the UK branch of a third-country institution are “back-stop” powers to be used in the event that co-operation between resolution authorities proves ineffective, and where action is required to protect the public interest. There is significant work underway at international level, primarily through the firm-specific crisis management groups, to ensure that resolution authorities co-operate in the case of cross border banks. This includes drawing up and agreeing ex ante resolution plans, and co-operation agreements which set out the roles and responsibilities of each authority.

10.14 Nevertheless, it is important the Bank of England has the necessary powers to resolve the UK branch of a third-country institution independently, should the need arise. The following stabilisation

powers, set out in chapter 6A of the Act, are available to the Bank of England to independently resolve a UK branch of a third-country institution:

- powers to transfer some or all of the business of the branch to a private sector purchaser, to a bridge bank or to an asset management vehicle (AMV); and
- the power to bail in liabilities in connection with the transfer to the private-sector purchaser, the bridge bank, or the AMV.

10.15 The Bank of England has property transfer powers over the 'business of the UK branch', which is defined as:

- Any property in the United Kingdom of the relevant third-country institution; and
- Any rights and liabilities of the relevant third-country institution arising as a result of the operations of a UK branch.

10.16 Provided the relevant conditions in chapter 6A are met, the Bank of England would make a property transfer instrument to exercise the independent resolution powers. Transferring the business of the branch could maintain the continuity of critical functions and be achieved without the support of the resolution authority of the other country. Following the transfer to a private sector purchaser, a bridge bank or an AMV, the bail-in of transferred liabilities could be used to improve the position of the entity as necessary.

10.17 Similar to resolution powers over UK established entities, the independent resolution powers are broadly framed in terms of assets, rights and liabilities in order to ensure the resolution authority can act in relation to any business of the branch. The scope of these powers is limited by the fact that the resolution authority must apply the powers in line with the special resolution objectives, including the objective of avoiding interfering with property rights in contravention of the ECHR. The safeguards on partial property transfers in SI 2009/322 also apply, which ensure the powers are applied to the extent appropriate.

Chapter 11

Resolution financing

11.1 The stabilisation options are designed to provide a mechanism for managing the failure of banking institutions in accordance with the special resolution objectives – including the protection of public funds. Losses in a banking institution, and any need for recapitalisation, should in general be provided by the shareholders and creditors of the failing institution.

11.2 However, the UK has established resolution financing arrangements, financed through contributions from industry that would be available to facilitate the exercise of the resolution powers. They may be used, for example, to:

- guarantee the assets or the liabilities of, or make loans to, the banking institution under resolution, or a bridge bank or asset management vehicle;
- purchase assets of the banking institution under resolution;
- make contributions to a bridge bank or an asset management vehicle;
- pay compensation to shareholders or creditors where necessary to ensure that they are not left worse off than they would have been had the banking institution entered insolvency.

11.3 These actions may be used in any combination, and in the case of the private sector purchaser stabilisation option, may be used in relation to the purchaser or the banking institution subject to the stabilisation powers.

11.4 Note that the provision of funds through the recapitalisation payment mechanism in section 214E of FSMA 2000 is primarily detailed in Chapter 12 of this Code, which addresses the use of this mechanism in more detail.

11.5 In exceptional cases, and after shareholders and creditors have borne considerable losses, resolution financing arrangements may be used to absorb losses and recapitalise an institution under resolution indirectly, for example by making a contribution equivalent to the contribution that creditors would have made through the bail-in of liabilities, where those liabilities have been excluded from bail-in in accordance with section 48B(10) of the Act. Normal practice would be for other liabilities to be bailed-in to a greater extent, in order fully to recapitalise the institution. The use of external resolution financing arrangements may be considered where this is not possible or desirable – for example where it would damage financial stability, resulting in the bailed in creditors being worse off than in insolvency, or would materially impede the achievement of a resolution objective.

11.6 The resolution financing arrangements may only be used to contribute indirectly to loss absorption or recapitalisation of the banking institution where the shareholders and creditors of the failing institution have made a contribution equal in value to at least 8% of the liabilities of the institution, measured at the point where the stabilisation power is exercised. The contribution of the resolution financing arrangements may not exceed an amount equal to 5% of the liabilities of the institution, measured at the same point in time. In the very unlikely scenario that further contributions are required, the Bank of England would be expected to bail-in all liabilities that are not excluded under Section 48B of the Act (apart from any unprotected amount of deposits belonging to depositors eligible for FSCS cover) before a contribution from resolution financing arrangements or from alternative financing sources was made.

11.7 In the case where resolution action is taken at the level of a bank holding company, resolution financing arrangements will only be made available where the contribution made by shareholders and creditors is equal to at least 8% of whichever is the greater of (i) the liabilities of the banking group company that is subject to the stabilisation powers; or (ii) the sum of the liabilities of any of the banking subsidiaries in the group that meet the conditions for use of the stabilisation powers.

11.8 In order to determine whether these conditions have been met, before providing any financial assistance, the Treasury would expect to require the Bank of England to inform it as to whether they have ensured this contribution through use of the stabilisation options.

11.9 The disapplication of the 5% and 8% thresholds when the recapitalisation payment mechanism in section 214E of FSMA 2000 is used is set out in Chapter 12.

11.10 Banking groups operating in the UK are subject to general taxation and additional taxes and rules, including the Bank Levy, which are paid to the Exchequer. As a last resort, the Bank of England may request funding from the Exchequer as part of resolution financing arrangements. The Bank of England is entitled to the amounts raised as payments to the resolution financing arrangements. With the Chancellor of the Exchequer's agreement as part of any approval of the use of stabilisation powers, such funding will be made available to the Bank of England as necessary (on the Bank of England's request) in order to support the exercise of the resolution powers. Where the recapitalisation payment mechanism in section 214E of FSMA 2000 is available, the Bank of England would be expected to use the mechanism to meet the costs of resolution where required. See Chapter 12 for further detail.

FSCS contribution to SRR costs apart from under s214E FSMA 2000

11.11 The Financial Services Compensation Scheme (FSCS) is the scheme established to compensate (among others) depositors of a bank when the bank is in default (i.e., unable, or likely to be unable, to satisfy claims against it). Under section 214E of FSMA 2000, it also

functions as a provider to the Bank of England of funds upon request, to be used where necessary to support the resolution of a failing bank.

11.12 Preference has been granted to deposits in the creditor hierarchy upon insolvency. Deposits are preferred over ordinary unsecured creditors. FSCS-covered deposits rank equally with other preferential debts, and other deposits are preferred over ordinary unsecured debts, but rank after other preferential debts. The FSCS will be required to make a contribution to resolution of an amount that reflects losses that FSCS-covered depositors would have suffered in a hypothetical insolvency counterfactual. As deposits covered by the FSCS are preferred debts, it is likely that the loss that FSCS-covered deposits would have experienced in insolvency would be very low, and in many cases zero. This means that it is likely that the loss that FSCS-covered deposits would have experienced in insolvency would be very low, and in many cases zero. This means that it is much less likely (though still possible) that the FSCS will be required to contribute to resolution.

11.13 Sections 214B, 214C and 214D of the Financial Services and Markets Act 2000 allow the Treasury to require the FSCS to contribute to the cost of using the SRR to resolve a failing bank or building society.

11.14 Where depositors continue to have access to their FSCS-covered deposits, and in the case where the bail-in stabilisation power is used, the FSCS will be required to make a contribution up to the amount that FSCS-covered deposits would have been written down by had they not been an excluded liability. This amount may not be greater than the losses that the FSCS would have had to bear had the bank been wound up under normal insolvency proceedings (described in paragraph 11.19 below). much less likely (though still possible) that the FSCS will be required to contribute to resolution.

11.15 Where other stabilisation options are used, and depositors continue to have access to their FSCS-covered deposits, the FSCS will be required to make a contribution up to an amount equal to the losses that it would have had to bear had the bank been wound up under normal insolvency proceedings. This in turn is equal to the amount that the FSCS would have had to pay out if the failing banking institution had instead gone into default without any Government intervention, less any recoveries that the FSCS would have made from the insolvency of the failed bank. Such amount will include the costs that would have been incurred in funding a pay-out.

11.16 Where both the bail-in tool and another stabilisation tool is used and if the amounts under paragraphs 11.18 and 11.19 are different, the FSCS would be required to contribute the higher of the two amounts. In any case, the FSCS contribution shall not be greater than the amount of the "mandatory contributions" as defined in the Depositor Protection Part of the PRA Rulebook.

11.17 Subject to the caps mentioned above, costs that have been incurred by the authorities in the resolution (including cost of funding) can be charged to the FSCS, except in the case of bail-in, where costs may be charged to the bailed-in bank (although the FSCS may be charged for valuation costs). The FSCS shall not be required to make a

contribution to restoring the capital ratio of a bank or bridge bank where the bail-in tool has been used to enable the failing bank to continue operations.

11.18 The Act provides for the appointment of a valuer to calculate the amounts the FSCS would recover from the bank under a hypothetical insolvency and the timing of such recoveries, and ensures that the cap on the FSCS's contribution is reduced to reflect this calculated recovery.

11.19 Whilst the authorities do not have a specific objective to minimise costs charged to the FSCS, it should be noted that the FSCS is, in any event, protected by the cap on its contributions which ensures that the industry will have to contribute no more than it would have had to pay if the authorities had not intervened (by applying the stabilisation tools). If the authorities do not intervene, the bank will enter the BIP and the FSCS will proceed to a payout to depositors or will fund a transfer of deposits.

11.20 Furthermore, the statutory requirement on the authorities to have regard to protecting public funds is likely to result in the authorities sharing the FSCS's interest in maximising recoveries for creditors of an insolvent bank. The authorities are accountable through Parliament to the wider public for the way that they have gone about achieving the special resolution objectives.

11.21 As noted above, the provision of funds by the FSCS through the recapitalisation payment mechanism under section 214E of FSMA 2000 is detailed in Chapter 12.

Role of the FSCS in the bank insolvency procedure (BIP) and building society insolvency (BSIP)

11.22 The BIP provides for the orderly winding up of a failed bank and to facilitate rapid FSCS payments to eligible deposits or a transfer of such accounts to another financial institution. The BSIP makes similar provision for building societies.

11.23 The bank liquidator or building society liquidator will have specific statutory objectives:

- to work with the FSCS to enable prompt payouts to eligible depositors or to facilitate the bulk transfer of accounts to another institution; and
- to wind up the affairs of the failed bank in the interests of creditors as a whole.

11.24 The first objective has precedence over the second.

11.25 The FSCS will compensate most FSCS-covered deposits within 7 days. This has been the target for the FSCS for some time and has been a requirement since 2024.

11.26 The authorities and the FSCS will have a key role in the early stages of the proceedings to oversee and work with the bank liquidator to ensure that this objective can be met.

11.27 Section 102 of the Act provides that the initial liquidation committee (made up of individuals nominated by the Bank of England, the FCA, PRA and the FSCS) must advise the bank liquidator as to whether to pursue a bulk transfer of accounts or to work with the FSCS to enable prompt payments to eligible depositors. Section 123 which makes provision for the funding of compensation payments to eligible depositors or a transfer of accounts by the FSCS, requires the bank liquidator to provide information to the FSCS and allows the FSCS to participate in court proceedings relating to a bank insolvency order.

Chapter 12

The Recapitalisation Payment Mechanism

12.1 The Bank Resolution (Recapitalisation) Act 2025 (BRRA 25) introduced a mechanism to allow the Bank of England to use funds from the banking sector to cover certain costs associated with resolving a failing banking institution.

12.2 BRRA 25 amends the Banking Act 2009 (the Act) and the Financial Services and Markets Act 2000 (FSMA 2000) to do the following:

- allow the Bank of England to require the FSCS to provide funds to recapitalise a failing banking institution;
- allow the FSCS to recover these funds by charging levies on all UK banks and building societies;
- allow the Bank of England to require the banking institution in resolution to issue new shares to facilitate the use of FSCS funds to meet the failing institution's recapitalisation costs; and
- require the Bank of England to report to the Treasury and Parliament on the use of the recapitalisation payment mechanism.

12.3 The recapitalisation payment mechanism can only be deployed in connection with the exercise of a stabilisation power under Part 1 of the Act to achieve a sale of all or part of the institution to a private sector purchaser or the transfer of the institution to a bridge bank.

Scope of application

12.4 The recapitalisation payment mechanism is available to allow the Bank of England to respond flexibly to circumstances at the time of failure.

12.5 The recapitalisation payment mechanism is primarily designed to support the resolution of small banks for whom the Bank of England has set a preferred resolution strategy of modified insolvency or transfer. Where special resolution conditions three and four are not met, the Bank of England will continue to place a failing banking institution into insolvency.

12.6 The Bank of England would be able to use the recapitalisation payment mechanism where it has judged that it is necessary to recapitalise the failing institution, in order achieve a sale of all or part of the institution to a private sector purchaser or the transfer of the institution to a bridge bank in pursuit of the special resolution

objectives, and the failing firm holds insufficient resources. Firms with a preferred resolution strategy of modified insolvency or transfer are unlikely to have sufficient resources that can be readily written down, bailed-in or converted into equity to help restore the firm to viability.

Box A.2 : Glossary – loss-absorbing resources

MREL resources: equity and debt liabilities that are maintained by an institution in order to meet a minimum requirement for own funds and eligible liabilities (MREL) as required by the Bank of England

Non-MREL resources: liabilities that are in scope of the bail-in tool that are not MREL resources. These liabilities may not be readily available to be bailed in. Liabilities may be excluded from a specific bail-in in whole or in part at the discretion of the Bank in one or more exceptional circumstances set out in the Act. Certain liabilities are statutorily excluded from being bailed in.

12.7 The Bank of England will not assume use of the recapitalisation payment mechanism when setting a preferred resolution strategy of bail-in for a bank, and the corresponding MREL requirements for such a bank have been met.

12.8 For any firm, before any use of the mechanism in conjunction with a transfer, the Bank of England would be expected to write down or otherwise expose to loss any MREL resources maintained by the firm.

12.9 The recapitalisation payment mechanism would not be used to manage the failure of a third-country branch operating in the UK. This is because the responsibility for resolving such a firm ultimately lies with the relevant home resolution authority. In addition, the UK already has a number of separate powers that can be used with respect to branches, as set out in Chapter 6A of the Act. More detail on these powers is set out in Chapter 10 of this Code.

Assessing the request for funds

12.10 The Bank of England is responsible for assessing the amount to require from the FSCS. The pre-resolution valuation set out in section 6E of the Act will inform that assessment.[23] The valuation process is consistent with the approach followed for use of all stabilisation powers and informs the Bank's decision on what, if any, resolution action is appropriate.

Bridge bank

12.11 When exercising a stabilisation option to transfer a failing firm to a bridge bank, the Bank of England would have regard to a number of factors to determine the required recapitalisation payment. The Bank of England would consider how to maintain and to restore the capital ratio of the firm in resolution to the extent necessary to sustain

23 When resolution action is deemed sufficiently urgent, the Bank may perform a provisional valuation, which would then be replaced by an independent valuation, as set out in section 48X of the Banking Act 2009

sufficient market confidence and enable it to continue to meet, for at least one year after the resolution action takes place, the conditions for authorisation and to continue to carry out the activities for which it is authorised. The decision on what is required to sustain market confidence over the period would be informed by the valuation, whether the capital position of the institution after the resolution would be appropriate in comparison with the current capital position of peer institutions, and the Bank of England's determination of the level required taking these factors in to account over the projected period.

12.12 Where the Bank of England exercises its mandatory reduction power under Section 6B of the Act, the recapitalisation payment would be set on the basis of the amount deemed necessary from the expected position of the firm after that mandatory reduction. The target capitalisation would be the same as provided for under the definition of the "shortfall amount" set out in section 12AA of the Act.

12.13 Where the Bank of England uses the bail-in tool in connection with effecting the transfer to a bridge bank, the Bank of England will exercise its discretion as to the extent to which that target capitalisation is met through bailing in non-MREL resources or a recapitalisation payment under section 214E of FSMA 2000, in such a way as is consistent with the special resolution objectives (see section 4 of the Act). In such instances, the Bank of England would first look to write down or otherwise expose to loss all readily available MREL resources before obtaining a recapitalisation payment from the FSCS, if required. Further unsecured liabilities that are eligible for bail-in may also be bailed in, with consideration given to the impact on financial stability and market confidence, among other factors.

Private sector purchaser

12.14 When the Bank of England uses a stabilisation option to transfer a failing banking institution to a private sector purchaser, the Bank of England will follow the process outlined in paragraphs 9.37-9.41 to pursue a sale. In determining if any recapitalisation payment is necessary, the Bank of England will consider many of the same factors in determining the level to which the failing firm must be recapitalised. When assessing whether funds are required from the FSCS, similarly to exercising a transfer to a bridge bank, the Bank of England would first look to write down or otherwise expose to loss all readily available MREL resources before obtaining a recapitalisation payment from the FSCS. The Bank of England will also have regard to the desirability for the purchaser to make appropriate contributions to the recapitalisation.

12.15 In the case of a partial property transfer, the Bank of England will need to establish an appropriate transfer perimeter to achieve the special resolution objectives. It may be necessary to ensure resources are available to support a sale, or absorb any losses arising through disposal of assets and liabilities, or costs expected to operate and, if necessary, to wind up parts of a failed institution that are not transferred. In taking forward a partial property transfer, the appropriate contribution from, and allocation of costs to, a purchaser would be established.

All uses of the recapitalisation payment mechanism

12.16 In any resolution, the Bank would take into account other potential amounts that may be required to support achieving the resolution objectives, including costs that may arise. This includes those associated with the operation of a bridge bank and costs to the Treasury (see section on "Eligible costs and expenses" below).

12.17 The Bank of England is not limited in the number of times it can obtain a recapitalisation payment from the FSCS in respect of a single resolution. Subsequent recapitalisation payments may be required if, for example, contingent or deferred recapitalisation payments are required to support a recapitalisation, or unforeseen circumstances cause the sum already obtained to be insufficient, or where the Bank is operating a bridge bank and further funds are required. Throughout a resolution, authorities will continue to coordinate and have regard to the special resolution objectives. Any decision to request further recapitalisation payments will involve consideration of the special resolution objectives and engage the governance outlined below in terms of assessing the affordability and, if necessary, public funds implications. This will include consideration of whether insolvency would better serve the public interest.

Eligible costs and expenses

12.18 Where the Bank of England uses the recapitalisation mechanism, it would be able to use the funds provided through the mechanism to cover certain costs associated with a resolution as specified in BRRA 25. This includes costs of achieving the recapitalisation of the firm in resolution. It also includes expenses incurred by the Bank of England or the Treasury in connection with the recapitalisation of the institution or exercise of the stabilisation power, executing a sale, or running a bridge bank or a Bank of England-owned asset management vehicle. This may include ancillary expenses incurred by these persons, such as the costs of operating these entities, receiving professional advisory, accountancy or legal advice. It may also include any compensation due to relevant parties under sections 49 to 62 of the Act.

12.19 In determining whether to include certain expenses when calculating the recapitalisation payment required from the FSCS, the Bank would carefully consider what is reasonable and prudent in a particular resolution scenario.

FSCS and PRA levies

12.20 The FSCS will recoup the funds provided to the Bank of England via levies under PRA rules which will be made under section 213 of FSMA 2000. The same class of firms will be subject to the levies as is the case for depositor payouts under insolvency, with the exception of credit unions, who are not subject to levies related to the recapitalisation payment mechanism under section 214E of FSMA 2000, as they are not covered by the special resolution regime.

12.21 There is a limit on the amount the FSCS can levy on each funding class within a given year. For the deposit-taking classes, this is set by the PRA, which reviews the cap on an ongoing basis and sets it in line with its safety and soundness objective. The PRA will consider affordability and determine (as required under the Deposit Guarantee Scheme Regulations 2015) whether the FSCS can levy.

12.22 In the event that the Bank of England requires a recapitalisation payment, the FSCS would look to meet the payment in the first instance through commercial borrowing repaid by levies on the deposit-taking sector (excluding credit unions). Where the Bank of England calls for more funds than the FSCS can provide due to private borrowing constraints, the levy limit or a PRA determination that a levy is unaffordable to industry, the FSCS will be able to request to borrow from the National Loans Fund (NLF). This loan (including interest) would be repaid via FSCS levies at the appropriate time. Levies to repay such loans from the NLF would be expected to be in keeping with the limit set by the PRA on what the FSCS can levy within a given year and affordability considerations.

12.23 As set out in 4.10, the Treasury has sole responsibility for decisions with implications for public funds. This includes the NLF, and so the Treasury may arrange for money to be paid out of the NLF following a request from the FSCS, if the Treasury deemed doing so to be necessary in the public interest.

12.24 In keeping with its approach to exercising its stabilisation powers, the Bank of England would make its decision as to whether to use the recapitalisation payment mechanism on an individual firm-by-firm basis. As a result, it is possible that the Bank of England could request funds from the FSCS to meet the costs of resolving multiple firms simultaneously. The limits on the amount the FSCS can levy in such a case would continue to apply. As set out above, where the Bank of England calls for more funds than the FSCS can provide due to private borrowing constraints, the levy limit or a PRA determination that a levy is unaffordable to industry, it would be able to request to borrow from the NLF, subject to approval from the Treasury.

12.25 Section 214H of FSMA 2000 sets out that the Bank must reimburse the FSCS for any recapitalisation payment, or part of a recapitalisation payment, that is not needed to cover the eligible costs and expenses associated with the resolution. This could be because these costs and expenses were lower than the Bank of England had expected, or there are recoveries from the sale or winding up of part or all of the failed institution. The FSCS would either remit any unspent funds or recoveries to levy payers or would use them to offset levies on this class. Whether such funds are remitted to levy payers or used to offset levies on this class would be a judgement for the FSCS to make in the circumstances, recognising its obligation to be efficient in discharging its functions, its payment processes and the use of its funds.

Taking account of relative costs to the FSCS

12.26 The decision to request a recapitalisation payment from the FSCS would be taken by the Bank of England, in consultation with the relevant authorities, as part of its assessment of the resolution conditions. When assessing the third and fourth resolution conditions, the Bank of England must consider whether resolution is necessary in the public interest having regard to the Special Resolution Objectives, and whether one or more of the Special Resolution Objectives would be met to a lesser extent if the institution were put into insolvency. The Bank of England must therefore weigh the various potential outcomes against these objectives when considering different courses of action.

12.27 As part of the pre-resolution valuation, an estimate would be made of the likely outcomes in insolvency. This would inform a judgment on the estimated costs to the FSCS of making payouts to covered depositors and potential recoveries to the FSCS.

12.28 Such an estimate would be expected to consider, among other things:

- the covered depositor base of the institution;
- potential recoveries from the failed institution's estate;
- the position of eligible depositors in the creditor hierarchy;
- interest payments on any borrowing; and
- potential durations for the insolvency and associated costs.

12.29 Where appropriate, estimated ranges would be included.

12.30 The assessment of the cost to the FSCS under the recapitalisation mechanism is determined by the amount requested. This would also include interest payments in the event the FSCS is required to borrow. These would ultimately be borne by levy payers. The extent and value of interest payments would depend on the circumstances at the time, including whether the FSCS has borrowed commercially or from the NLF and the amount of time taken to repay any loans.

12.31 To aid in the assessment of the relative costs to the FSCS, the PRA would produce an estimate of the levy amount across the deposit-taking class for both insolvency and the recapitalisation mechanism.

12.32 When resolution action is considered sufficiently urgent, the Bank may perform a provisional valuation, which would consider the relative costs to the FSCS of different options. This provisional valuation should, to the extent possible, follow the same methodology as an independent valuation, as set out in section 6E of the Act. This provisional would then be replaced by an independent valuation as detailed in section 48X of the Act.

12.33 The Bank of England would take into account the information contained in its assessments of the costs of both the recapitalisation mechanism and the estimated insolvency counterfactual, when making its assessment of whether the resolution conditions are met. As noted, the Bank of England is required to have regard to the special resolution objectives to ensure its decision is in pursuit of the public

interest, and that the objectives would not be met to the same extent by winding up the firm. The Bank of England will therefore consider all appropriate options and impacts, as well as the assessments of the relative costs to the FSCS. This would include, among other things, the objective to protect public funds, and the potential wider impacts of an insolvency on financial stability through contagion to the rest of the financial system and on individual banking customers.

Reporting

12.34 Sections 214F and 214G of FSMA 2000 impose requirements on the Bank of England to notify and report to Parliament and the Treasury when the recapitalisation payment mechanism is used.

12.35 Section 214G requires the Bank of England to notify the Chair of each relevant Parliamentary Committee in writing as soon as reasonably practicable when the recapitalisation payment mechanism is used. Currently these Committees are the Treasury Committee of the House of Commons and the Financial Services Regulation Committee of the House of Lords.

12.36 Section 214F requires the Bank of England to report to the Chancellor of the Exchequer on the use of the recapitalisation payment mechanism. The Bank must comply with any requirements as to the content specified by the Treasury.

12.37 Whilst the Treasury would have discretion to specify any contents of a report on a case-by-case basis, it is expected that such a final report to the Chancellor would include the following:

- an explanation of the choice to use the recapitalisation mechanism;
- how the resolution conditions and objectives were considered and had regard to;
- an assessment of the costs of using the recapitalisation mechanism compared to the insolvency counterfactual (or, as appropriate, other resolution options), in line with the expectations set out in paragraphs 12.26-12.32; and
- an explanation of why any ancillary costs were considered reasonable and prudent.

12.38 The Treasury can specify the timing of final reports. In practice, this means the Treasury could request the Bank of England to make the report available as soon as reasonably practicable after the exercise of the recapitalisation payment mechanism. The Treasury may also specify that the final report should be made in conjunction with a report on the use of a share or property instrument or bail-in instrument, or the operation of a bridge bank, as appropriate. The requirements for these reports are set out in sections 79A, 80 and 80A of the Act, respectively. Details regarding reports following the exercise of the Bridge Bank stabilisation option are also set out in Chapter 9 of this Code.

12.39 In determining the timings for a final report, the Treasury, with regard to the special resolution objectives, would consider carefully a range of factors, including:

- whether requesting a report and laying a report in Parliament at a particular point in time would be in the public interest;
- the availability of the relevant information and analysis carried out by the Bank of England or an independent valuer;
- whether the resolution action by the Bank of England was still "ongoing", and therefore the implications of publicly disclosing certain information about the use of the mechanism and use of stabilisation powers in that context; and
- the impact of the specific use of the recapitalisation mechanism on FSCS levy payers.

12.40 The Bank of England must submit an interim report to the Chancellor if it does not produce a final report within three months after using the recapitalisation payment mechanism in respect of a firm. This interim report must be provided within those three months. The Treasury would have the discretion to specify the content of such interim reports, and would make prudent decisions at that point as to which information should be shared to avoid jeopardising the success of the resolution.

12.41 The Chancellor must lay the Bank of England's final report on the use of the recapitalisation payment mechanism in Parliament, though has discretion to omit any information from reports where they judge that doing so would be in the public interest. This would include, for example, if public disclosure were to be in breach of any commercial confidentiality arrangements.

5% and 8% thresholds

12.42 Paragraph 11.6 sets out that shareholders and creditors of a failing banking institution must contribute an amount equal in value to at least 8% of the liabilities of the institution before resolution financing arrangements may be used. Further, the resolution financing arrangement may not exceed an amount equal to 5% of the liabilities of the institution. Henceforth, these are referred to as the 8% and 5% thresholds. Paragraph 11.7 sets out these thresholds in relation to bank holding companies.

12.43 These thresholds will not be enforced when the recapitalisation mechanism under section 214E of FSMA 2000 is used on a banking institution with a preferred resolution strategy of modified insolvency or transfer. This is because the recapitalisation mechanism is primarily designed for use on small banks, who may have insufficient subordinated resources to write-down without creating other risks to the resolution objectives. If 8% of liabilities cannot be written down, it is unlikely that resolution finance equal to 5% of liabilities will be sufficient to recapitalise the firm and restore market confidence. The enforcement of the 5% and 8% thresholds could therefore impede the

use of the recapitalisation mechanism in instances where it would be in the public interest to use it.

12.44 To reflect this, section 78A of the Act specifies that the requirement for the Bank of England to inform the Treasury in writing whether or not a condition for financial assistance has been met in relation to a particular bank does not apply where the Bank of England has required a recapitalisation payment from the FSCS. This will facilitate the Bank of England's use of the recapitalisation mechanism for failing small banks where meeting the requirements may have undesirable adverse effects on the special resolution objectives.

12.45 Where larger banks maintain liabilities that can be bailed-in and are eligible for MREL, these liabilities (at a minimum) should generally be written down or otherwise exposed to loss before any use is made of the recapitalisation mechanism. It is therefore expected that, for banks with a bail-in resolution strategy that have met their end-state MREL requirements, the 8% and 5% thresholds will be adhered to in resolution, to the extent that this is consistent with the special resolution objectives.

Chapter 13

Compensation

13.1 Sections 49-62 of the Act make provision for the compensation measures that must or may be put in place by the Treasury following an exercise of the stabilisation powers. Provision is made for three types of orders: compensation scheme orders, resolution fund orders and third-party compensation orders.

13.2 These measures are designed to ensure that appropriate provision for compensation is made to secure the compatibility of the actions of the authorities under the SRR with Article 1 Protocol 1 of the European Convention on Human Rights ("A1P1"). A1P1 provides that the right of a person (such as a bank or a shareholder) to the peaceful enjoyment of his own property should only be interfered with where that interference is proportionate, and a balance is struck between wider public interests and the protection of a person's interests in his property. In order to strike a balance between public and private interests where property has been transferred compulsorily (for example, as a result of an exercise of the share or property transfer powers) it is appropriate to make provision for compensation to be paid which is normally required to be an amount reasonably related to the market value of the property in question.

13.3 In addition, further measures have been put in place to ensure that shareholders and creditors of a banking institution are left in no worse position as a result of the exercise of the stabilisation powers than they would have been in had the powers not been exercised and the bank gone into insolvency. This is the 'no creditor worse off' safeguard (NCWO).

Nature of the compensation measures to be put in place following an exercise of stabilisation options

13.4 Where the Bank of England has affected a transfer of shares or business to a private sector purchaser in accordance with section 11(2) of the Act, the Treasury must make a compensation scheme order (section 50(2)). In the case of a transfer of shares or business to a bridge bank or assets to an asset management vehicle the Treasury must make a resolution fund order (section 52(2)).

13.5 Where the Treasury has transferred a failing banking institution or bank holding company into temporary public ownership, the Treasury must make either a compensation scheme order or a resolution fund order (section 51(2)).

13.6 In addition, where any of the stabilisation options have been effected the Treasury may make a third-party compensation order which establishes a scheme for paying compensation to third parties

(persons who are not transferors). Where a partial property transfer has been effected, the Treasury must make a third-party compensation order in accordance with the Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009 (S.I. 2009/319).

Compensation scheme orders

13.7 A compensation scheme order should establish a scheme for compensation payable to the transferors (i.e., the persons whose shares have been transferred, or in the case of a property transfer, the failing bank). It should incorporate any independent valuation arranged by the Bank of England either before it exercises its powers to transfer property, or where it has carried out a provisional valuation under section 6E(3) of the Act, or a subsequent independent valuation under section 48X of the Act.

13.8 The Treasury must provide for the appointment of an independent valuer to assess the value of the shares or property immediately before the transfer was made. Examples of this arrangement exist in relation to Northern Rock plc and Bradford & Bingley plc, the shares of which were transferred into temporary public ownership by the Treasury in exercise of powers conferred on the Treasury by the Act's predecessor, the Banking (Special Provisions) Act 2008 (see the Northern Rock plc Compensation Scheme Order 2008 (S.I. 2008/718) and the Bradford & Bingley plc Compensation Scheme Order 2008 (S.I. 2008/3249)).

13.9 When determining the amount of compensation due, the independent valuer must disregard any financial assistance provided by the Bank of England or the Treasury. This includes funds provided through the recapitalisation payment mechanism detailed in Chapter 12.

Resolution fund orders

13.10 A resolution fund order provides for the transferors, i.e., the residual of the failing bank in the case of property transfers or the shareholders in the event of a share transfer, to receive a contingent economic interest in the proceeds of resolution in specified circumstances and to a specified extent.

13.11 As for compensation scheme orders, compensation due will be calculated net of any public financial assistance, including funds provided through the recapitalisation payment mechanism detailed in Chapter 12.

Bridge banks and asset management vehicles

13.12 Where some or all of the business of a failing banking institution has been transferred to a bridge bank or asset management vehicle the resolution fund arrangements provide that the residual of the failing bank is to receive the proceeds achieved from the sale or disposal of that business. As the residual bank is likely to be in an insolvency procedure, the net proceeds of the resolution will constitute an asset of the insolvency estate to be applied for the benefit of creditors in

accordance with normal insolvency priorities, which now give preference to certain depositors.

13.13 A resolution fund order was made following the transfer of some of Dunfermline Building Society's business to a bridge bank discussed in the case study below.

Temporary public ownership

13.14 The requirement that 8% of the losses of the failing banking institution be absorbed by shareholders and creditors before the Treasury may use the temporary public ownership tool makes it much less likely to be needed in future. Nevertheless, it remains an option. Where a failing banking institution has been transferred into temporary public ownership, a bank resolution fund order will provide for the former shareholders to receive any proceeds of the resolution, for example, any consideration paid by a private sector purchaser to acquire the shares from the Treasury.

13.15 However, it may not be appropriate for the Treasury to put in place a bank resolution fund order in relation to a failing bank that has received a significant amount of public financial assistance or where it is anticipated that the Treasury will be unable to make disposals for some time following the initial transfer. In such circumstances, the Treasury would make a compensation scheme order.

Costs of resolution

13.16 The proceeds of resolution may be calculated net of any resolution costs. For example, such costs could include the costs of financial assistance – including loans or guarantees provided from or backed by public funds during the course of the resolution. This is to ensure that the taxpayer receives a suitable return for public funds that have been invested or put at risk during the course of the resolution. "Costs" may also include administrative costs such as advisers' fees incurred in relation to, or in consequence of, the transfer of the shares or property and the incorporation or authorisation of a bridge bank and compensation costs.

13.17 The authorities do not intend to profit from a resolution of a failing firm. Typically, Compensation Scheme Orders, Resolution Fund Orders and Third-Party Compensation Order will specify:

- the Treasury's right to retain discretion over payments made to the Bank of England and the Treasury bank resolution fund;
- that costs which may be deducted from the fund relate to costs incurred in connection with the bridge bank or asset management vehicle;
- that an independent valuer must be appointed to certify that any costs to be deducted from the fund are certified as having been reasonably and properly incurred by the authorities.

13.18 The resolution fund Order may also include provision for the determination of any disputes about the application of its provisions.

Management duties

13.19 The Treasury may specify in a resolution fund Order that the Bank of England or the Treasury, is required to maximise the proceeds available for distribution (a "management duty"). However, the management duty must be complied with only in so far as compatible with the pursuit of the special resolution objectives (section 4), and compliance with this Code of Practice.

13.20 It is likely that a duty will be imposed in cases where it is anticipated that a bridge bank, asset management vehicle or a bank in temporary public ownership will be under the control of the relevant authority for a period of time in which longer-term operational management decisions will need to be taken.

Third party compensation orders

13.21 The Treasury has the discretion to provide for a third-party compensation order in a compensation scheme order or a resolution fund order (sections 51(3) and (4)) to make provision for the assessment of any compensation payable to persons other than transferors, such as commercial counterparties of a bank.

13.22 Generally the order will provide for the appointment of an independent valuer to assess the compensation, if any, payable to certain parties whose property rights have been affected by virtue of provision made in a transfer instrument or order, for example, those parties whose termination rights are modified by virtue of the application of section 48Z of the Act (see the case study below for a brief discussion of the way an independent valuer may approach this task).

Third party compensation scheme orders in the case of partial property transfers – the "No creditor worse off safeguard"

13.23 Where a partial property transfer is effected the Treasury must make provision for a third party compensation order in accordance with the Banking Act 2009 (Third Party Compensation Arrangements for Partial Property Transfers) Regulations 2009 (S.I. 2009/319 as amended), which establish the "no creditor worse off" (NCWO), safeguard to compensate pretransfer shareholders and creditors of a bank (defined in section 60(3)(b) of the Act). This measure is intended to reassure commercial counterparties of a bank who are creditors that their position (as compared to that of the insolvency of the banking institution had the authorities not effected a transfer) will not be seriously prejudiced as a result of the transfers of property from the residual bank. This measure applies to all pre-transfer creditors whether or not left behind in a residual bank. The safeguard provides that, in the event of a partial transfer, the Treasury must make provision for an independent valuer to be appointed to assess the treatment the pre-transfer creditors would have received had the bank entered into insolvency immediately before the transfer was effected ("the insolvency treatment") and to compare this with the treatment the creditors have received as a result of the transfer ("the actual

treatment"). The insolvency treatment is calculated on a counter-factual basis, with an independent valuer modelling what would have happened had the transfer not been made in accordance with any principles specified by the Treasury in the third-party compensation order. Compensation must then be paid to pre-transfer shareholders or creditors (or to persons to whom these claims have been assigned) to the extent that the actual treatment is worse than the insolvency treatment.

13.24 The independent valuer may also require the Treasury to pay interim compensation before the actual treatment has been finally established where appropriate, having regard to the merits of ensuring that the creditor receives compensation in a timely manner. For example, the winding up of a residual company may take a long period of time so it may not be possible for the actual treatment of creditors to be established for several years after a transfer is affected. A more detailed discussion of the third-party compensation arrangements is set out in the case study below.

Compensation orders following bail-in – the 'No creditor worse off safeguard'

13.25 The safeguards also include a requirement to establish compensation arrangements to ensure that no person is worse off as a result of the application of the bail-in option than they would have been had the bank gone into insolvency. This will take into account any compensation that they would have been entitled to receive from any statutory compensation schemes which covered those creditors' claims. This is similar to the safeguard which applies in the case of partial property transfers.

13.26 The NCWO provisions are established in the Banking Act 2009 (Mandatory Compensation Arrangements following Bail-in) Regulations 2014 (SI 2014/3330), and will be kept under review by the Treasury. The Regulations require:

- the appointment of an independent valuer;
- the valuer to assess the treatment that the creditor of the failing bank would have received had the bail-in option not been deployed and the banking institution had been put into insolvency (the "insolvency treatment"); and
- the valuer to assess the treatment which creditors have received, are receiving or are likely to receive if no compensation (or further compensation) is paid (the "actual treatment").

13.27 If the independent valuer determines that there is a difference between the insolvency treatment and the actual treatment and a person in such a situation had been made worse off than they would have been had the bank entered insolvency, compensation would generally be payable to that person. In assessing the amount of any compensation, the valuer will be obliged to follow any mandatory principles specified in the regulations or orders and may, for example, be required to take account of any equity instruments issued to the

person concerned during the course of the bail-in in assessing the difference in treatment.

13.28 By contrast with the use of the bail-in option, the NCWO safeguard does not apply to the exercise of the Bank of England's mandatory transfer or write-down and conversion powers under sections 6A and 6B or section 81AA of the Act. Instead, when using these powers to convert relevant capital instruments or relevant internal liabilities to CET1, the Bank of England must ensure the conversion rate represents appropriate compensation to the affected creditor compatible with A1P1 for any loss incurred as a consequence of the conversion.

Onward, supplemental and reverse transfers

13.29 Where the Treasury or the Bank of England exercise onward, supplemental and reverse transfer powers, the Treasury may make compensation scheme or resolution fund orders (section 53(2)).

Independent valuer

13.30 A compensation scheme, resolution fund or third-party compensation order may provide for an independent valuer to be appointed to perform certain functions. Sections 54 to 56 make provision for safeguarding the independence of the valuer[1]. For example:

- the valuer must be appointed by a person appointed by the Treasury. This person may be an individual or a panel of persons selected by the Treasury. In previous resolutions, a panel has been appointed to select the independent valuer from any applications received following the publication of an invitation for applicants on the Treasury's website. A number of criteria will be relevant for an applicant to be considered for appointment as valuer, including the ability to demonstrate independence from Government and interested parties, freedom from conflicts of interest, professional skills and experience, particularly in relation to the valuation of complex companies, ability to carry out a high-profile public process and also deliver value for money;
- A monitor must be appointed to oversee the operation of the arrangements for remuneration and payment of allowances to independent valuers;
- The valuer may only be removed from office by a person appointed by the Treasury on the grounds of incapacity or serious misconduct.

13.31 To ensure that independent valuers have the power necessary to obtain all information reasonably required to conduct their functions,

[1] The EBA has made a technical standard on the independence of valuers which the Bank of England has amended in light of the UK's exit from the EU and for which the Bank of England is now responsible, pursuant to the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018. The Technical Standard is the retained UK law version of Commission Delegated Regulation 2016/1075. https://www.legislation.gov.uk/ukdsi/2018/9780111171394/contents

the Treasury can confer a power on a valuer to apply to the court for an order requesting any information reasonably required for those purposes to be supplied to the independent valuer.

Appeals against determinations of the independent valuer

13.32 An independent valuer will be required to set out his or her determinations as to the compensation, if any, payable in assessment notices.

13.33 Consistent with provision made for the independent valuers appointed for the purposes of the Northern Rock plc, Bradford and Bingley plc and Dunfermline Building Society compensation arrangements, we envisage the following provisions would be made in exercise of the power conferred by section 55(6):

- The Treasury or any person affected by a determination of the independent valuer set out in an assessment notice would be able to require the independent valuer to reconsider his or her determination and must set out his or her revised determination in a revised assessment notice;
- If the Treasury or any person affected by a determination set out in a revised assessment notice are dissatisfied with the determination, they may refer the matter to the Tribunal and the Tribunal may remit the matter to the independent valuer for further consideration.

Valuation principles

13.34 Where the Treasury provide for an independent valuer to be appointed, they may specify the valuation principles to be applied by the valuer in determining the amount of compensation payable (section 57). These may require, for example, the valuer to apply or not to apply specified methods of valuation, assess values or average values, or take specified matters into account. Valuation principles may also require or permit the valuer to make certain assumptions, for example, that the bank has had a permission under Part 4A of the Financial Services and Markets Act 2000 varied or cancelled and that it is unable to continue as a going concern, is in administration or is being wound up. The Treasury will consider whether to specify these assumptions on a case-by-case basis. This valuation is distinct from the valuation carried out to determine whether the conditions for resolution or use of the write down and conversion powers are met, and will be carried out by an independent person as soon as practicable after resolution action has been taken.

13.35 However, in determining any amount of compensation payable an independent valuer must disregard financial assistance that was, or could have been, provided by the Bank of England or the Treasury (disregarding ordinary market operations offered by the Bank of England on its usual terms (section 57(3)), including use of the recapitalisation payment mechanism under section 214E of FSMA 2000. The authorities consider that there are extremely strong public interest

justifications for each of these assumptions. For example, it would be entirely inappropriate for the assessment of any compensation payable to former shareholders of a bank that has been transferred into temporary public ownership, to include the value in the distressed bank created by public financial assistance.

13.36 The EBA has made two technical standards on valuation which the Bank of England has amended in light of the UK's withdrawal from the EU and for which the Bank of England is now responsible.[2] The independent valuer will also have to comply with these standards.

Box A.3 : Case study – Dunfermline Building Society

On 30 March 2009, the Bank of England exercised its powers under the Act to transfer some of the property, rights and liabilities ("business") of Dunfermline Building Society ("Dunfermline") to:

- Nationwide Building Society; and
- a bridge bank (wholly owned and controlled by the Bank of England).

This action was taken to protect depositors and to safeguard financial stability and the transfers were effected by virtue of the Dunfermline Building Society Property Transfer Instrument ("the Transfer Instrument"). Following these transfers Dunfermline was placed into building society special administration. The Act required the Treasury to make:

- a compensation scheme order because the Bank of England effected a transfer of Dunfermline's business to a private sector purchaser (in this case Nationwide) (section 50(2) of the Act);
- a resolution fund order because the Bank of England transferred some of this business to a bridge bank (section 52(2)); and
- a third-party compensation order as the Bank of England effected two partial property transfers (sections 50(4) and 52(4)).

In accordance with these obligations the Treasury made the Dunfermline Building Society Compensation Scheme, Resolution Fund and Third-Party Compensation Order 2009 (S.I. 2009/1800) ("the Compensation Order"), which combined these orders into one instrument, which provides for the appointment of an independent valuer to perform the functions referred to in article 4 of that Order. Detailed provision for the independent valuer is made in the Dunfermline Building Society Independent Valuer Order 2009 (S.I.

[2] The Technical Standards relate to Methodologies for Difference in Treatment in Valuation and Methodologies for Valuing Assets and Liabilities. The Technical Standards have been updated to reflect the UK's withdrawal from the EU pursuant to the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018. The Technical Standards are the retained UK law versions of Commission Delegated Regulations 2018/344 and 2018/345 respectively. .https://www.legislation.gov.uk/ukdsi/2018/9780111171394/contents

2009/1810) ("the Independent Valuer Order"). The Explanatory Memoranda to the Orders provide a detailed explanation of the various provisions of the Orders. However, a general overview is provided below:

Compensation scheme

It was determined that no compensation was payable to Dunfermline in respect of the business assets and liabilities transferred to Nationwide as the Treasury was satisfied that the auction process put in place by the Bank of England effectively established the market price.

Resolution fund

As the powers under Part 1 of the Act were exercised for the first time to effect the resolution of Dunfermline, the arrangements put in place in relation to this resolution (see Part 4 of, and Schedule 2 to, the Compensation Order) may be taken as something of a precedent for the way in which the resolution fund arrangements work (although of course the Treasury could exercise their powers under the Act to make such provision as they consider to be appropriate in any subsequent resolutions).

The Treasury was required to establish an account at the Bank of England to be known as the Dunfermline Resolution Account ("the Account"), which is the resolution fund. Although the authorities may have an interest in the monies in the Account for the purposes of recovering any cost incurred in connection with the bridge bank aspect of the resolution, it would be inappropriate for the monies in the Account to be treated as public funds as the principal beneficiary is Dunfermline. As such, the Account must be held in the name of an independent person ("the Account Holder") appointed by the Treasury (paragraph 1(2) of Schedule 1 to the Order). The Bank of England (as the owner of the bridge bank and lead resolution authority) must pay monies into the Account in specified circumstance (see paragraph 3 of Schedule 1 to the Order), for example any consideration received following the sale of the shares of the bridge bank or following the sale of the business transferred to the bridge bank. Payments out of the Account may only be made by the Account Holder on the direction of the Treasury (paragraph 4 of Schedule 1 to the Order) and the Treasury may only direct payments to be made to specified persons. In the case of the Dunfermline resolution, payments to the Bank of England or the Treasury may only be made for the purpose of reimbursing the authorities for certain costs and following certification by an independent valuer that the costs have been reasonably and properly incurred (see paragraphs 5 and 7 of the Schedule).

Third party compensation

Article 9 of the Compensation Order specifies the arrangements to be put in place for the assessment of compensation payable to third parties. The detailed arrangements are set out in Schedule 2 to the Order.

Third parties affected by provisions of the transfer instrument

An independent valuer is required to assess the amount of any compensation payable to third parties whose default event provisions were affected by the application of section 38(6) of the Act. The independent valuer may put in place whatever procedure he or she considers appropriate for the purposes of identifying those parties and for the purposes of assessing the compensation, if any, payable. However, the independent valuer must take into account any diminution in the value of a person's property or right or any increase in liability on that person.

"No creditor worse off" provisions

Part 3 of the Schedule makes provision for the "no creditor worse off safeguard". Under these arrangements an independent valuer is required to determine the compensation, if any, payable to the pre-transfer creditors of Dunfermline (defined in section 60(3)(b) of the Act) (article 9(3) of, and Part 3 of Schedule 2 to, the Compensation Order) as discussed in chapter 8. This requires the independent valuer to assess the treatment the pre-transfer creditors would have received had Dunfermline entered into insolvency immediately before the Transfer Instrument was made ("the insolvency treatment") and to compare this with the treatment the creditors have received (e.g. on being transferred to Nationwide or to the bridge bank, or in special administration of Dunfermline) ("the actual treatment").

The independent valuer has a discretion to determine that the Treasury must make interim payments to pre-transfer creditors before the determination of the actual treatment of the pre-transfer creditors has been made (paragraph 11 of Schedule 2 to the Compensation Order).

Where the independent valuer has determined that the Treasury must make interim payments, the independent valuer must determine what, if any, balancing payments are required to be paid to ensure that the pre-transfer creditors receive the relevant amount of compensation, if any, assessed to be payable under the "no creditor worse off" arrangements (paragraph 12 of Schedule 2 to the Compensation Order).

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