

# Bank Resolution (Recapitalisation) Bill [HL]

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SECOND MARSHALLED  
LIST OF AMENDMENTS  
TO BE MOVED  
IN GRAND COMMITTEE

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*[Amendments marked ★ are new or have been altered]*

**Amendment  
No.**

**Clause 1**

BARONESS BOWLES OF BERKHAMSTED

- 13 Clause 1, page 2, line 3, at end insert—
- “(6) Use of the Financial Services Compensation Scheme for bank recapitalisation and associated costs must not reduce bank depositors’ entitlement to the full amount of Deposit Guarantee Insurance.”

BARONESS NOAKES

- 14 Clause 1, page 2, line 3, at end insert—
- “214F Recapitalisation payments: reporting**
- (1) The Bank must report to the Chancellor of the Exchequer about the exercise of the power in section 214E.
  - (2) The report must comply with any requirements as to content specified by the Treasury.
  - (3) The report must be made as soon as is practicable after the use of the power.
  - (4) The Treasury must lay a copy of the report before Parliament.”

***Member's explanatory statement***

*This amendment ensures that that information about the use of a recapitalisation payment is made to the Treasury and to Parliament.*

## BARONESS NOAKES

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

**“214F Engagement with Parliamentary Committees**

- (1) If the Bank of England exercises the power under section 214E it must, as soon as reasonably practicable, notify in writing the chair of each relevant Parliamentary Committee that the power has been exercised.
- (2) Relevant Parliamentary Committees are –
  - (a) the Treasury Committee in the House of Commons, and
  - (b) the Financial Services Regulation Committee in the House of Lords.
- (3) References to the committees referred to in subsection (2) –
  - (a) if the name of the Committee is changed, are references to that Committee by its new name, and
  - (b) if the functions of that Committee (or substantially corresponding functions) become functions of a different Committee of the House of Commons or the House of Lords, are to be treated as references to the Committee by which the functions are exercisable.
- (4) Any question arising under subsection (3) is to be determined by the Speaker of the House of Commons in relation to committees of the House of Commons and by the Senior Deputy Speaker of the House of Lords in relation to committees of the House of Lords.”

***Member's explanatory statement***

*This amendment provides that the Bank of England must notify the Treasury Committee of the House of Commons and the Financial Services Regulation Committee in the House of Lords if the recapitalisation power is used.*

**Clause 2**

LORD VAUX OF HARROWDEN

16 Clause 2, page 2, line 20, after “up” insert “or from the management or shareholders of the institution being sold or wound up”

***Member's explanatory statement***

*This is a probing amendment to ascertain under what circumstances the Bank may be able to recover all or part of previously paid management bonuses, dividends to shareholders, or otherwise require a shareholder (foreign or UK) to cover all or part of the recapitalisation costs.*

LORD VAUX OF HARROWDEN

17 Clause 2, page 2, line 20, at end insert –

- “(aa) on a winding up of the institution, any recapitalisation payment is to be treated as a debt of the institution and paid out of the

institution’s assets in preference to all other claims except any prescribed fees or expenses of the official receiver;”

***Member's explanatory statement***

*Because the recapitalisation payment is not paid by the FSCS to the institution, but is paid to the Bank of England, it is not clear how it would be treated on a winding up of the institution. This probing amendment aims to ensure that it is treated as a debt of the institution and to ensure that recapitalisation payments are recovered first in any insolvency process, in preference to other creditors or shareholders, other than the expenses of the receiver.*

**Clause 3**

BARONESS VERE OF NORBITON

- 18 Clause 3, page 2, line 36, at end insert “nor on financial institutions that the Bank of England has directed to maintain a Minimum Requirement for Own Funds and Eligible Liabilities (MREL) or issue eligible liabilities.”

***Member's explanatory statement***

*This probing amendment seeks to clarify the rationale for the scope of financial institutions liable to pay the levy versus those that are likely to benefit from a recapitalisation payment.*

BARONESS VERE OF NORBITON

- 19 Clause 3, page 2, line 41, at end insert –
- “(5C) The compensation scheme may not allow the scheme manager to impose levies on liable financial institutions in relation to recapitalisation payments under 214E in financial years following that in which the recapitalisation payments occurred without the consent of the Treasury.”

***Member's explanatory statement***

*This probing amendment is designed to test the anticipated scale of the levy, and period of payment, in a reasonable worst case of the resolution of several financial institutions in a single financial year.*

**Clause 4**

BARONESS NOAKES

- 20 Clause 4, page 3, line 15, at end insert –
- “(2A) In section 4 (special resolution objectives), at the end of subsection (9) insert –
- “(9A) Objective 8, which applies in any case in which the Bank of England uses the power in section 214E of the Financial Services and Markets Act (recapitalisation payments), is to ensure that the costs which are born through the Financial Services Compensation Scheme do not exceed those

which would have been born if the bank insolvency procedure had been used.””

***Member's explanatory statement***

*This amendment adds to the special resolution objectives so that the Bank of England has to consider the net costs recouped via the FSCS if it uses the recapitalisation power with the counterfactual of the use of the bank insolvency procedure.*

BARONESS NOAKES  
BARONESS VERE OF NORBITON

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

“(2A) In section 5 (code of practice), at the end of subsection (1) insert “and –

(iv) the bank recapitalisation power under section 214E of the Financial Services and Markets Act 2000.””

***Member's explanatory statement***

*This amendment requires the Treasury to include the use of the recapitalisation power created in this Bill in the Code of Practice issued in respect of the special resolution regime.*

BARONESS BOWLES OF BERKHAMSTED

22 Clause 4, page 3, line 16, leave out subsection (3)

BARONESS BOWLES OF BERKHAMSTED

23 Clause 4, page 3, line 20, after “question” insert “and, for such a bank, the shortfall may only be reduced insofar as necessary to cover recapitalisation.”

***Member's explanatory statement***

*This amendment seeks to ensure that the FSCS should only be used for recapitalisation not for bailing out shareholders.*

LORD VAUX OF HARROWDEN

24 Clause 4, page 3, line 39, at end insert –

“(8) In section 79A (private sector purchaser: report), at the end insert –

“(5) Where the sale to a private sector purchaser followed a recapitalisation payment under section 214E of the Financial Services and Markets Act 2000, the Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament.””

***Member's explanatory statement***

*This amendment would require reports made by the Bank of England to the Chancellor of the Exchequer regarding the sale of all or part of a bank’s business to a commercial purchaser to be*

*laid before Parliament, bringing this in line with the requirements that already apply when a bank's business is transferred to a resolution company in accordance with section 80 of the Banking Act 2009.*

**After Clause 4**

BARONESS BOWLES OF BERKHAMSTED

**25** After Clause 4, insert the following new Clause—

**“Impact assessment: appropriateness of the minimum total asset value level for imposition of MREL on smaller banks**

The Secretary of State must, within 12 months of the passing of this Act, publish an assessment of the impact of this Act on the appropriateness of the minimum total asset value level at which Minimum Requirement for Own Funds and Eligible Liabilities (MREL) is imposed on smaller banks.”

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