



HM TREASURY

Special resolution regime:

the FSMA (Contribution to Costs of Special Resolution Regime) Regulations 2009

July 2009



HM TREASURY

Special resolution regime:

the FSMA (Contribution to Costs of Special Resolution Regime) Regulations 2009

July 2009



Official versions of this document are printed on 100% recycled paper. When you have finished with it please recycle it again.

If using an electronic version of the document, please consider the environment and only print the pages which you need and recycle them when you have finished.

© Crown copyright 2009

The text in this document (excluding the Royal Coat of Arms and departmental logos) may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified.

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

For any other use of this material please write to Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey TW9 4DU or e-mail: licensing@opsi.gov.uk

ISBN 978-1-84532-622-7
PU820

Contents

		Page
Chapter 1	Introduction	3
Chapter 2	Background	5
Chapter 3	The SRR Costs Regulations	7
Chapter 4	How to respond	13
Annex A	Impact assessment	17

1

Introduction

1.1 The recent period of sustained disruption in global financial markets has had a widespread impact on financial markets, firms and economies across the world. In the UK, the most visible consequence of this has been the difficulties faced by a number of financial institutions, including the Dunfermline Building Society.

1.2 The government has taken a number of steps to strengthen the financial sector, stabilise the banking system, protect savers and taxpayers, and support the wider economy. These measures include bringing in the Banking Act 2009, which received Royal Assent on 12 February 2009, to strengthen the statutory framework for financial stability and depositor protection. The Act introduced a special resolution regime (SRR) for banks and building societies, and special insolvency and administration procedures for banks, with provision to allow these to be applied to building societies. Many of the provisions in the Act came into force on 21 February 2009 so that the new special resolution regime powers were available when the property and share transfer powers in the Banking (Special Provisions) Act 2008 expired.

1.3 The Banking Act contains a large number of powers to make secondary legislation. This approach was necessary to avoid including considerable technical detail in the Act itself, which had to be enacted on a compressed timescale. In line with its normal practice, the Government indicated that it would consult on this secondary legislation before it was made where it was appropriate to do so. However, it was recognised that it might be necessary to make secondary legislation urgently, without consultation (or before a consultation had finished), in the event that it was necessary to use some of the new powers provided in the Banking Act. As a result, where the Banking Act provided for secondary legislation to be made using the draft affirmative procedure, the Act normally also provided for the first use of the relevant power to follow the made affirmative procedure.¹

1.4 This consultation document seeks views on the Financial Services and Markets Act 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2009² ('the SRR Costs Regulations') which were made on 29 March 2009 in order to enable the Treasury to require the Financial Services Compensation Scheme (FSCS) to make payments in connection with the exercise of SRR powers by the Bank of England in relation to the Dunfermline Building Society.

¹ Under the draft affirmative procedure, statutory instruments must be laid in draft and approved by both Houses of Parliament before they are made. Under the made affirmative procedure, statutory instruments are made and laid before Parliament but will lapse unless they are approved by both Houses of Parliament within 28 sitting days of being made. (This procedure is also known as the 28-day affirmative procedure.)

² S.I. 2009/807.

Consultation process

1.5 The SRR Costs Regulations are available on the OPSI website.³ Although these regulations had to be made sooner than originally envisaged, they are complete and the Government does not have any specific proposals at this stage for their revision or amendment. Comments are therefore sought on all aspects of the regulations. However, Chapter 3 of this consultation document sets out a number of points regarding the regulations that have come to the Treasury's attention, and on which views would be particularly welcome. Following the consultation, the Treasury will consider whether to bring forward proposals to amend the regulations. Any amending regulations would be subject to the draft affirmative procedure.

³ www.opsi.gov.uk.

2

Background

2.1 The Banking Act 2009 establishes a permanent special resolution regime (SRR) which provides the Authorities with the tools to deal with banks or other deposit-taking firms (for simplicity referred to as 'banks' in this consultation document) that are in severe financial difficulties. The SRR is designed to achieve five high-level objectives:

- to protect and enhance the stability of financial systems of the United Kingdom;
- to protect and enhance public confidence in the stability of the banking systems of the United Kingdom;
- to protect depositors;
- to protect public funds; and
- to avoid interfering with property rights (in contravention of a right in the European Convention on Human Rights (ECHR)).

2.2 The SRR gives the Authorities a broad set of powers including the ability to transfer shares in the bank, or all or part of the bank's business to a new private sector owner, to a publicly-controlled bridge bank (to pave the way for a sale to the private sector) or take the bank into temporary public ownership. These new powers were used for the first time to resolve the Dunfermline Building Society ('Dunfermline'). On that occasion, Dunfermline's core member business (including retail liabilities and own originated mortgages), wholesale funding, branches, headquarters and staff were transferred to the Nationwide Building Society; Dunfermline's social housing book was placed in a bridge bank owned by the Bank of England. The rest of Dunfermline's business (including commercial loans, acquired residential mortgages and subordinated debt) remained with the Society itself, which was placed in Building Society Special Administration.

2.3 A bank can only enter the SRR if the Financial Services Authority (FSA) considers that the bank is failing, or is likely to fail, to satisfy the threshold conditions for carrying on regulated activities under the Financial Services and Markets Act 2000 (FSMA), and that it is not reasonably likely that action will be taken which will enable the bank to satisfy the threshold conditions. If it were not put into the SRR, the bank would generally no longer be permitted to accept deposits (or carry on other regulated activities), would therefore have to close and would, in almost all cases, go into default for the purposes of the Financial Services Compensation Scheme (FSCS). Default would trigger the payment of compensation to eligible depositors under the FSCS.

2.4 A resolution using the share or property transfer powers under the SRR is, therefore, an alternative to an FSCS compensation payout. So it is a key feature of the SRR that any appropriate costs incurred by the Authorities under the SRR can be recovered from the FSCS. These costs are capped at the costs that the FSCS would have incurred in paying compensation to eligible depositors less the recoveries it would have made from the assets of the failed bank when it was wound up.

2.5 The Banking Act 2009 put this general principle into law by inserting a new section (section 214B) into FSMA which requires the Treasury to make regulations setting out detailed provisions. The regulations must:

- specify the expenses to which the FSCS can be required to contribute;
- provide for independent verification of those expenses;
- provide for the method of calculation;
- ensure that the payments do not exceed the compensation that the FSCS would otherwise have paid less the recoveries it would otherwise have made from the assets of the failed bank; and
- provide for the appointment of an independent valuer to estimate the recoveries the FSCS would otherwise have made.

2.6 The regulations may also make provision for:

- making payments before the calculations or verification have been completed;
- timing;
- procedures; and
- dispute resolution.

2.7 The following chapter describes the provision made by the SRR Costs Regulations in more detail and seeks views on a number of points which have come to the Treasury's attention since the regulations were made. The impact assessment included in the Annex to this consultation document reflects the relevant part of the Banking Bill Impact Assessment published in October 2008 and changes to the Banking Bill which were made during its passage.

2.8 The Treasury made the SRR Costs Regulations on 29 March 2009 in order to be able to require the FSCS to contribute towards the costs of the resolution of Dunfermline. Following a notification under those regulations, the FSCS will be required to make a contribution to the Dunfermline resolution costs at the end of the resolution process. The regulations were approved by Parliament under the made affirmative procedure on 5 May and 6 May.

2.9 The Treasury has not identified any errors or mistakes in the SRR Costs Regulations which need correcting. However, it would welcome respondents' views on all aspects of the regulations and on the detailed points set out in Chapter 3. The Treasury will consider, in the light of comments received, whether to make any amendments to the regulations and will, if necessary, bring forward amending regulations (which will be subject to the draft affirmative procedure) in the next session of Parliament, subject to the Parliamentary timetable.

3

The SRR Costs Regulations

3.1 This chapter describes the substantive provisions of the SRR Costs Regulations in more detail and sets out a number of specific points where the views of respondents are particularly sought. However, comments on all aspects of the regulations are welcome and, accordingly, general questions on each regulation are not included in the boxes in this chapter. The Treasury will consider all comments on the regulations in deciding whether to make any amending regulations.

Regulation 3 – Liability of the scheme

3.2 Regulation 3 is the core provision in the regulations. It sets out the SRR costs to which the FSCS can be required to contribute. These are essentially any cost which could arise in consequence of using the SRR including:

- costs incurred (including costs incurred by either the Treasury or the Bank of England) in connection with the transfers of any property, rights or liabilities of the bank - including but not limited to, the bank's liability in respect of deposits that are protected under the FSCS, whether or not that deposit is held by a person who is eligible to claim under the FSCS or the amount in that deposit exceeds the compensation limit for protected deposits (currently £50,000);
- costs incurred in taking the bank into temporary public ownership; and
- costs incurred by a bank administrator appointed under Part 3 of the Banking Act 2009 in connection with objective 1 of a bank administration – ensuring the supply of services and facilities to a private sector purchaser or bridge bank which it needs to operate effectively.

3.3 In addition, under section 61 of the Banking Act 2009, the FSCS may also be required to contribute towards the compensation payable to the residual bank or to third parties under compensation scheme orders, resolution fund orders or third party compensation orders made under Part 1 of the Banking Act.

3.4 The Government recognises that there are questions about whether the costs that the FSCS could be required to meet should:

- be specified in more detail in Regulation 3;
- be limited only to costs arising directly from transferring protected deposits; and
- provide more clarity that costs incurred by the Treasury or the Bank of England in relation to the operation, authorisation, or capitalisation of a bridge bank are recoverable from the FSCS (to the extent they are not covered by the proceeds from the eventual sale of the bridge bank).

3.5 The Government also appreciates that there are concerns around the FSCS having to contribute towards costs not connected with protecting depositors who would have been eligible to claim compensation from it. However, it considers that the Banking Act and the SRR Costs Regulations have put in place safeguards to address these concerns. The SRR is an

alternative to an FSCS compensation payout. The SRR can only be triggered if the bank is failing, or is likely to fail, to satisfy the threshold conditions for carrying on regulated financial business which are set out in FSMA.¹ If the bank were not put into the SRR, it would have to close and would, in all conceivable cases, go into default for the purposes of the FSCS. This would trigger an FSCS compensation payout.

3.6 The Government considers, therefore, that all costs incurred in an SRR should be recoverable from the FSCS. These are the costs of preventing a compensation payout so it is right that the FSCS should meet them, irrespective of type. Listing the types of cost would be potentially restrictive if a type of cost not originally foreseen was incurred in a future resolution. Furthermore, the FSCS should not have to contribute more than it would have had to have paid on a net basis in the event that the bank was in default and compensation payout took place in the normal way. That cap is provided by Regulation 5. There is no need, therefore, to have a restriction on the types of costs to which the FSCS should be required to make a contribution.

Consultation question

- 1 What are your views on the costs to which the FSCS can be required to contribute?

Regulation 4 – Notification

3.7 Regulation 4 makes detailed provision for the notification which the Treasury has to give the FSCS requiring it to make a contribution towards SRR costs. The substantive requirements are that:

- the notification must include information about the activities for which contributions are required;
- a calculation of the amount involved and either the information and assumptions on which the calculation is based or the information to underpin an estimated amount;
- the timing of payments – this allows for payment to be required at the end of the resolution process or at the start and during the resolution process; and
- (if appropriate) any conditions before payment is made.

3.8 The Government recognises that there are questions about whether the expression “information and assumptions” (see Regulation 4(2)(a)(vii)) is sufficiently precise to enable the FSCS to understand the nature, scale and scope of the costs it is required to fund. The final amount the FSCS has to pay is the lower of:

- the Treasury’s estimate of the costs incurred in the SRR (and, if payment is required before the end of resolution, of the FSCS’s total liability); and
- the excess of the FSCS’s estimate of the compensation it would have paid over the amount of the recoveries, estimated by the independent valuer (appointed under Regulation 7), which the FSCS would have made from the assets of the bank on its winding-up.

¹ See Schedule 6 to FSMA.

3.9 The Treasury’s estimate can be adjusted during the resolution process and will take account of costs incurred (or to be incurred) and recoveries made (or to be made). It is possible, therefore, that the Treasury’s estimate could be the lower of the two figures. The Treasury will not have an incentive to reduce its estimate and the FSCS may need to understand how the Treasury’s estimate was calculated in more detail in order to inform the levy payers of the basis on which they are expected to contribute (through the FSCS) to resolution costs.

Consultation questions

- 2 What are your views on whether the “information and assumptions” required to be given to the FSCS should be set out in more detail?
- 3 What additional information is needed to enable the nature, scale and scope of the costs to be understood?

Regulation 5 – payment after the end of resolution

3.10 Regulation 5 sets out the detailed steps required when payment is to be made on the completion of the resolution process. Some of the steps are also used when payment is required at an earlier stage of the resolution process. The key steps are:

- the FSCS must calculate the compensation it would have paid in the event of default. This amount can be adjusted from time to time if further information comes to light;
- the FSCS’s liability is then reduced by deducting estimated recoveries (calculated by the independent valuer appointed under Regulation 7), any compensation the FSCS has actually paid to eligible claimants and any payments the FSCS is required to make under a compensation scheme order, a resolution fund order or a third party compensation order. This gives the FSCS’s “total liability”; and
- when the Treasury consider that there will be no further revisions to the amounts calculated by either the Treasury or the FSCS, or the Treasury and the FSCS agree that it would not be appropriate or reasonable for there to be any further notifications, the Treasury calculates the final amount of the total liability and appoints a person to carry out an independent verification of the amounts notified.

3.11 The Government recognises that there are questions about whether greater clarity is needed in Regulation 5(7)(b) about the measure against which verification should be undertaken. Verification is not intended to allow decisions taken by the Authorities to incur costs as part of the resolution process to be reviewed. However, it is appropriate for checks to be made of whether the expenses being charged to the FSCS have properly been incurred in connection with the exercise of an SRR stabilisation power and correctly calculated.

Consultation question

- 4 What are your views on whether there should be greater clarity about the purpose of the independent verification process?

Regulation 6 – payment before the end of resolution

3.12 Regulation 6 provides for the process for making payment before the completion of the resolution process, including for a payment at the outset. Regulation 5 largely applies but in addition:

- the Treasury notification (or a later revised notification) must contain the Treasury's estimate of the FSCS's total liability (rather than of the amount the Treasury would require the FSCS to pay);
- the FSCS must pay this amount in line with the timetable notified to it by the Treasury; and
- if there is an overpayment by the FSCS, the Treasury must refund the overpayment and pay interest at an agreed rate.

3.13 Overpayments are possible since the Treasury may require the FSCS to pay the notified amount before the FSCS can calculate the compensation it would have had to pay or the independent valuer has been able to estimate the recoveries the FSCS would have been expected to make. Overpayments could also arise from the normal process of revising either the contribution the Treasury requires or the limit on that contribution. As the FSCS may well have had to borrow money (or drawn down funds) and have paid (or lost) interest as a result, it is appropriate for the Treasury to pay interest on the overpaid amount.

Regulation 7 and Part 1 of the Schedule – Independent valuer

3.14 Regulation 7 makes provision for the appointment of an independent valuer to estimate the recoveries the FSCS would have made from the assets of a failed bank if the SRR was not used to resolve the bank and it had gone into default and been wound up. The regulation also allows for the person who has been appointed as the independent valuer under section 54 of the Banking Act 2009 to determine the compensation payable under a compensation scheme order, a resolution fund order or a third party compensation order made as part of the SRR. This approach has been taken in the appointment of a single independent valuer for work in relation to Dunfermline Building Society.² If a person other than the valuer under section 54 is appointed, Part 1 of the Schedule makes provision for his or her appointment and remuneration. (The functions of the independent valuer or valuers are different from those of the person appointed under Regulation 5 to carry out the independent verification. While the same person can be appointed to carry out both independent valuer roles, he cannot also carry out the independent verification.)

Regulation 8 and Part 2 of the Schedule – Function of the independent valuer

3.15 Regulation 8 sets out the duties of the independent valuer and the assumptions to be made. The independent valuer is to calculate the amount that would have been likely to have been recovered by the scheme from the banking institution. The key assumptions to be made in calculating this are that:

- the bank is in default for the purposes of the FSCS;

² See the Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009 laid before Parliament in draft on 4 June 2009.

- the bank is insolvent (or is subject to a particular insolvency procedure as specified in a compensation scheme order, resolution fund order or third party compensation order); and
- that the FSCS had paid out the amount of compensation that depositors of the bank in question would have been entitled to receive.

The independent valuer may apply to the court to compel the provision of information from the bank and Part 2 of the Schedule makes more detailed provision for that situation.

Regulations 9 and 10 – Appeal against the amount of recovery, and application to the court

3.16 Regulation 9 allows the Treasury or the FSCS to require the independent valuer to reconsider his estimate of the amount of recoveries and, if unhappy with the revised determination, to apply to the High Court or the Court of Session for a review of the independent valuer’s decision.

3.17 If there is a dispute about any other matter under these regulations, Regulation 10 allows the Treasury or the FSCS to apply to court to resolve the dispute.

3.18 The Treasury is considering whether to replace the High Court or Court of Session with the Financial Services and Markets Tribunal (established under Part IX of FSMA) for the purposes of Regulations 9 and 10. This would be consistent with the approach proposed in the draft Dunfermline Building Society Independent Valuer Order 2009 for appeals from the independent valuer in respect of decisions about compensation payable under the Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009.³

Consultation question

- 5 What are your views on replacing the High Court or Court of Session with the Financial Services and Markets Tribunal as the forum for review of the independent valuer’s decisions?

Regulation 11 – Payments made under these Regulations to constitute payment of compensation under the scheme

3.19 Regulation 11 provides that contributions made by the FSCS to SRR costs are to be deemed to be expenditure under the FSCS and provides for the consequences of this deeming. The regulation makes clear that:

- the payments by the FSCS under the regulations are to be treated as payments of FSCS compensation to eligible depositors in the bank;
- the bank is in default for FSCS purposes; and

³ The Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Order 2009 (‘the Compensation Order’) was laid before Parliament in draft on 4 June 2009 under the draft affirmative procedure (and must be debated and approved by Parliament before it can come into force). The Explanatory Memorandum for the Order includes the draft Dunfermline Building Society Independent Valuer Order 2009, which sets out the provisions the Treasury would propose to make in respect of the independent valuer to be appointed under the Compensation Order in the event the Compensation Order is approved by Parliament. Articles 12 and 13 of that Order make provision for reconsideration of decisions by the independent valuer and references to the Financial Services and Markets Tribunal. The draft Dunfermline Building Society Compensation Scheme, Resolution Fund and Third Party Compensation Scheme Order 2009 and the Explanatory Memorandum are available on the Office of Public Sector Information website (www.opsi.gov.uk).

- each eligible depositor has made a claim, accepted an offer of compensation from the FSCS and so has no further right to claim compensation from the FSCS.

3.20 New section 214B FSMA (which was inserted by section 171 of the Banking Act 2009) makes clear that the payments the FSCS is required to make as contributions to SRR costs are expenditure of the scheme for all FSCS purposes. The purpose of Regulation 11 is to allow for provisions of Part XV FSMA (which deals with the FSCS), the related rules made by the FSA in the Compensation Sourcebook (COMP) and Chapter 6 of the Fees Manual (FEES) to be engaged where necessary. However, the Government is aware that there are questions about whether Regulation 11 is needed, whether it could have some unintended consequences in some situations or whether the effects of making payments to meet SRR costs should be specified more precisely.

3.21 The Treasury is considering whether to provide in Regulation 11 for:

- the assignment of rights of action of the depositors against third parties in relation to the depositors' claims against the failed bank. Normally these would just 'follow the claim' but it might be appropriate to assign these rights to the FSCS if the FSCS were better placed to pursue any action; and
- the FSCS to obtain information from the failed bank, which it would normally be able to do if the bank were in default and the FSCS were paying compensation in the normal way.

Consultation questions

- 6 What are your views on the need for Regulation 11?
- 7 Are there any specific consequences of making contributions to SRR costs which need to be included or excluded by the regulations?

4

How to respond

4.1 This consultation will last until 30 October 2009. Please ensure that your response reaches us by the closing date. Please send responses to:

Chris Rusbridge

Financial Regulation Strategy team

International & Finance Directorate

HM Treasury

1 Horse Guards Road

London

SW1 2HQ

Email: christopher.rusbridge@hm-treasury.gov.uk

4.2 When responding please state if you are responding as an individual or representing the views of an organisation. In accordance with the code of practice on open government comments will be made publicly available unless respondents specifically request otherwise.

4.3 The annex to this consultation document includes the text on Funding the special resolution regime from the Banking Bill Impact Assessment published in October 2008 and includes some comments on relevant changes to the Banking Bill which were made during its passage.

CONFIDENTIALITY DISCLOSURES

4.4 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act (DPA) and the Environmental Information Regulations 2004. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply with and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances.

4.5 An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. Your personal data will be processed in accordance with the DPA, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

FREEDOM OF INFORMATION CONTACT

4.6 Any Freedom of Information Act queries should be directed to:

Correspondence and Enquiry Unit

Freedom of Information Section

HM Treasury

1 Horse Guards Road

London

SW1A 2HQ

Tel: (+44) (0) 20 7270 4558

Fax: (+44) (0) 20 7270 4681

Email: public.enquiries@hm-treasury.gov.uk

CODE OF PRACTICE ON CONSULTATION

4.7 This consultation is being conducted in line with the criteria in the Government's Code of Practice on Consultation.¹ The seven consultation criteria are:

- **When to consult** - formal consultation should take place at a stage when there is scope to influence the policy outcome.
- **Duration of consultation exercises** - consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- **Clarity of scope and impact** - consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- **Accessibility of consultation exercises** - consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- **The burden of consultation** - keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- **Responsiveness of consultation exercises** - consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- **Capacity to consult** - officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

¹ Available on the Department for Business, Innovation and Skills at <http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44458.html>.

4.8 If you feel this consultation does not fulfil these criteria, please contact:

Luke McInerney

HM Treasury

1 Horse Guards Road

London

SW1A 2HQ

Email: luke.mcinerney@hm-treasury.gov.uk

A Impact assessment

Summary: Intervention & Options

Department /Agency: HM Treasury	Title: Impact Assessment of the FSMA 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2009	
Stage: Implementation	Version:	Date: 21 July 2009
Related Publications: Banking Bill: Impact Assessment (October 2008) - see in particular paragraphs 1.173 to 1.182 on pages 31 and 32.		

Available to view or download at:

- http://www.hm-treasury.gov.uk/fin_banking_act2009.htm

Contact for enquiries: Chris Rusbridge

Telephone: 020 7270 4552

What is the problem under consideration? Why is government intervention necessary?

The Banking Act introduced a special resolution regime (SRR) to give the Authorities new powers to resolve a bank in difficulties without putting the bank into default and so triggering compensation payout to depositors under the Financial Services Compensation Scheme (FSCS). Government intervention is needed to enable the FSCS to contribute towards the costs of the use of the SRR tools. Without legislation, the costs of bank failure could only be borne by financial services providers (as levy payers to the FSCS) at the point at which the FSCS is engaged to pay depositors.

What are the policy objectives and the intended effects?

The policy objective and intended effects are to allow the FSCS to contribute to SRR costs in a flexible manner, either at the point at which the bank is placed in the SRR or at a later stage.

What policy options have been considered? Please justify any preferred option.

The only policy options are the preferred option and the 'do nothing' option in which the FSCS would not be able to contribute to bank resolution costs other than by paying compensation to depositors when the bank was in default. The preferred option gives the Authorities more flexibility in managing the costs of resolving banks in difficulties and reduces the chances that the Authorities would put banks in difficulties into default in order to reduce the public expenditure cost of any intervention.


When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The effectiveness of this policy will be kept under review as part of ongoing monitoring of the SRR.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



Date: 20 July 2009

Summary: Analysis & Evidence

Policy Option:	Description:
-----------------------	---------------------

COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Negligible.		
	One-off (Transition) Yrs			
	£			
	Average Annual Cost (excluding one-off)			
	£	Total Cost (PV)	£	
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' See evidence. It is not feasible to quantify the benefits: they will vary from case to case, and depend on size and frequency of bank failures, whether the SRR is used and whether the FSCS is required to contribute to SRR costs.		
	One-off Yrs			
	£			
	Average Annual Benefit (excluding one-off)			
	£	Total Benefit (PV)	£	
Other key non-monetised benefits by 'main affected groups'				

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
-----------------	-------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?	UK
On what date will the policy be implemented?	March 2009
Which organisation(s) will enforce the policy?	Not applicable
What is the total annual cost of enforcement for these organisations?	£
Does enforcement comply with Hampton principles?	Yes/No
Will implementation go beyond minimum EU requirements?	Yes/No
What is the value of the proposed offsetting measure per year?	£
What is the value of changes in greenhouse gas emissions?	£
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	Yes/No Yes/No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease of £	Net Impact £

Key:

Annual costs and benefits: Constant Prices
 (Net) Present Value

Evidence Base (for summary sheets)

Introduction

The Banking Act provides for the FSCS, in addition to its role in ensuring payout to depositors in the event of the failure of a deposit-taking firm, to contribute to costs arising from the use of resolution tools in the new special resolution regime (SRR). Use of the SRR is pre-insolvency intervention to resolve a bank in difficulties; if the SRR was not used the bank would normally become insolvent and would be in default for the purposes of the Financial Services Compensation Scheme (FSCS). This would trigger the payment of compensation to depositors by the FSCS. It is appropriate, therefore, to require the FSCS to contribute to SRR costs as it, and ultimately the FSCS levy payers in the financial services industry, are saved the compensation and also to limit the contribution required at the hypothetical net cost the FSCS would have suffered (i.e. the amount of compensation that would have been paid less recoveries that would have been made from the winding up of the bank concerned). The FSMA 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2009 provide the detailed arrangements to give effect to the policy.

Detail: benefits

The use of pre-insolvency SRR tools to resolve a failing bank is undertaken on the grounds of a number of public interest considerations, including the need to preserve financial stability, to protect the public finances, to protect depositors, and maintain the availability of key banking services for consumers. These considerations point to significant benefits resulting from the use of the SRR to the economy as a whole.

In the case of levy payers, the direct benefit of the use of pre-insolvency SRR tools is the hypothetical net cost to the FSCS of paying compensation to depositors if the failing bank been put into insolvency including both compensation costs and management expenses less the recoveries the FSCS would have made by taking over the depositors' claims in the winding-up of the failed bank less the contribution that is required from the FSCS under the Regulations. It is anticipated that the cost of resolution through pre-insolvency tools may be significantly below the cost of payout in most cases so the benefit should be positive but it can never be negative as the Regulations limit the FSCS contribution to the hypothetical net cost of compensation. So in a worst-case scenario, the benefit would be nil, rather than any additional cost.

During the passage of the Banking Bill, the relevant provisions were amended to allow for the costs incurred as a result of compensation scheme orders, resolution fund orders and third party compensation orders to be paid by the FSCS without changing the cap on the overall contribution the FSCS can be required to make to SRR costs. These orders provide for compensation to the failed bank, its shareholders or third parties for the loss of assets which is transferred using SRR powers. These provisions were reflected in the SRR Costs Regulations in Regulation 5(6)(c).

The effect of these amendments is that the costs that could fall on FSCS could be greater and, therefore, that the benefit to the FSCS levy payers would be reduced. However because the cap on the FSCS contribution to SRR costs is unchanged, this has the effect of reducing the potential benefit to the FSCS levy payers in the best case scenario while leaving nil benefit and nil cost as the position in the worst case scenario.

Quantification: It is not feasible to quantify these benefits: they will vary from circumstance to circumstance.

Detail: costs

There are no significant ongoing or one-off resource costs associated with this measure. It is likely that in most cases the FSCS would incur lower management expenses (which would be resource costs) in making a contribution to SRR costs than in paying compensation. This forms part of the benefits discussed above.

Quantification: Negligible.

Groups affected

Directly: the FSCS, the failing bank, and the FSCS levy payers.

Risks

There is a risk that the Authorities may not estimate correctly either the costs of the SRR tools or of the hypothetical net cost to the FSCS had the bank failed. Therefore, both of these measures will be subject to independent assessment.

Competition assessment and impact on small firms

Requiring the FSCS to contribute towards the costs of an SRR should not affect competition. The financial services industry will be affected by the need to pay levies to the FSCS but, as previously explained, these levies should be less (and cannot be greater) than they would have been if the bank concerned had been placed in default. The levies are allocated to classes of levy payers and apportioned between firms in each class in accordance with rules made by the Financial Services Authority. In general, an individual firm's share of any levy is proportional to its size measured in suitable ways. The Regulations should not therefore have an adverse effect on competition or have a disproportionate effect on small firms.

Specific impact tests (see following table)

No other specific impact test is relevant.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

HM Treasury contacts

This document can be found in full on our website at:
hm-treasury.gov.uk

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

Correspondence and Enquiry Unit
HM Treasury
1 Horse Guards Road
London

SW1A 2HQ

Tel: 020 7270 4558

Fax: 020 7270 4861

E-mail: public.enquiries@hm-treasury.gov.uk

ISBN 978-1-84532-622-7



9 781845 326227