Amendments to the Bank of England’s approach to setting a minimum requirement for own funds and eligible liabilities (MREL)

Consultation paper

Published on 15 October 2024

Content

Update 25 November 2024: The Bank has extended the consultation closing date from 15 January 2025 to 24 January 2025. References to the closing date within the consultation have been updated.

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The response will be assessed to inform our work as a regulator and central bank, both in the public interest and in the exercise of our official authority, as UK resolution authority. We may use your details to contact you to clarify any aspects of your response.

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Responses are requested by Friday 24 January 2025.

Consent to publication

The Bank intends to publish a list of respondents to this consultation, where respondents have consented to such publication.

When you respond to this consultation, please tell us in your response if you agree to the publication of your name, or the name of the organisation you are responding on behalf of, in the Bank's feedback response to this consultation.

Please make it clear if you are responding as an individual or on behalf of an organisation.

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Please note that you do not have to give your consent to the publication of your name. If you do not give consent to your name being published in the Bank's feedback response to this consultation, please make this clear with your response.

If you do not give consent, the Bank may still collect, record and store it in accordance with the information provided above.

You have the right to withdraw, amend or revoke your consent at any time. If you would like to do this, please contact the Bank using the contact details set out below.

Responses can be sent by email to:

✉ **MREL_SoP_Revisions@bankofengland.co.uk**

1: Introduction

This consultation brings together proposals relating to the Bank of England's (the Bank) statement of policy on its approach to setting a minimum requirement for own funds and eligible liabilities (the MREL SoP). The proposals are designed to ensure that the UK's MREL framework:

- is simplified and consolidated where possible, to make it easier to navigate and implement;
- keeps up to date with, and is responsive to, wider developments in financial regulation and markets;
- remains aligned with international standards; and
- adapts over time to reflect lessons learnt from its implementation.

The proposals are grouped around three themes:

- Section 2: restating, with modifications, certain UK Capital Requirements Regulation (CRR) total loss-absorbing capacity (TLAC) provisions in the MREL SoP and other related changes;
- Section 3: updates to the Bank's indicative thresholds for setting a stabilisation power preferred resolution strategy; and
- Section 4: revisions to reflect **findings** from the second assessment of the Bank's Resolvability Assessment Framework (RAF) for major UK firms, published on 6 August, and other lessons from policy implementation.

The proposed changes to the Bank's MREL SoP are set out in Annex 2.

The Bank's overall framework for setting MREL

The Bank aims to maintain a fit for purpose and ready for use resolution regime. The bank failures of 2023 underline the importance of credible resolution arrangements. The Bank's overall approach to ensuring resolvability supports financial stability through strong, effective and proportionate standards appropriate for the maintenance of a credible resolution regime.

The Bank, as the UK resolution authority, is responsible for taking action to manage the failure of certain regulated financial firms and/or their groups – including UK-headquartered banking groups, UK-incorporated banks and building societies, and certain PRA-designated investment firms – a process known as 'resolution'. Resolution allows the shareholders and unsecured creditors of failed firms to be fully exposed to losses, while ensuring the critical functions and banking services of the firm can continue thereby helping to preserve financial stability. Resolution reduces risks to depositors, the financial system, and public funds that could arise due to the failure of a firm. By ensuring shareholders and investors are first in line to bear the costs of failure, rather than depositors or public funds, resolution can both reduce the risk of firm failures by supporting market discipline and limit the impact of failure when it does occur.

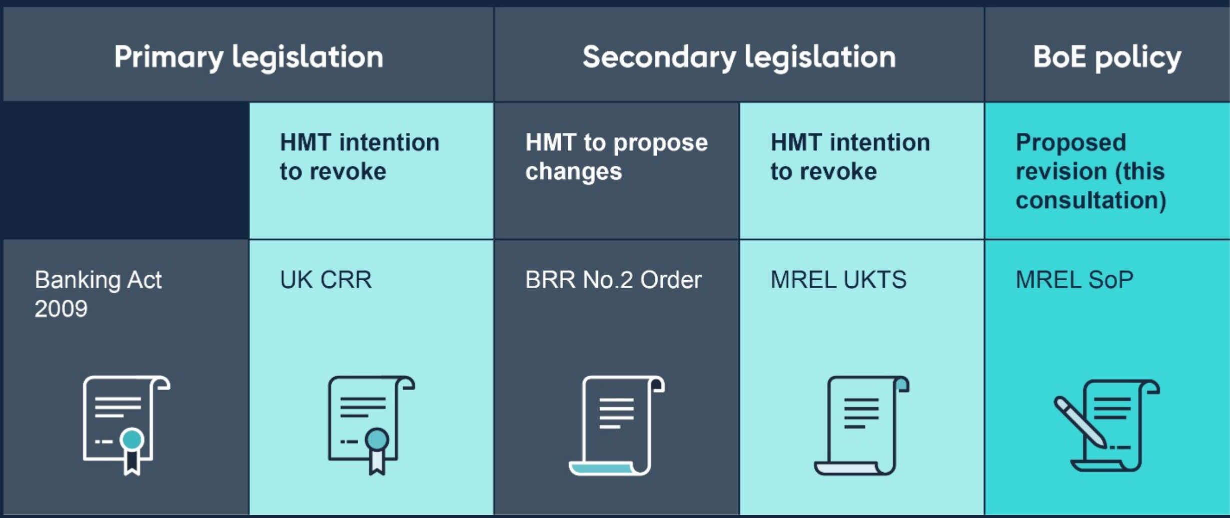
MREL is a requirement for firms to maintain a minimum level of equity and eligible debt, typically above minimum capital requirements (MCR), so they can be 'bailed in' or otherwise support a resolution should a firm fail. The purpose of MREL is to help ensure that, when firms fail, the resolution authority can use these financial resources to absorb losses and recapitalise the continuing business and support its restructuring. This reduces the likelihood that governments use public funds to rescue failing firms and in effect 'bail out' their creditors as was the case during the global financial crisis that began in 2007. During that crisis the bailouts were the only means of avoiding the negative consequences which firm insolvencies would have had on their depositors, the wider financial system, and the economy as a whole – in other words, the firms were 'too big to fail'. MREL is therefore a critical element of an effective resolution regime.

Consultation in the context of wider developments

The Bank first published its MREL policy in 2016, updating it in 2018 to reflect the Bank's approach to the intragroup distribution of MREL resources. The MREL SoP was last amended in 2021 following the conclusion of the Bank's review of its MREL framework (**the MREL Review**). The MREL Review considered the indicative thresholds for setting a stabilisation power preferred resolution strategy, the calibration of MREL, instrument eligibility and the application of MRELs within banking groups. Among other changes, the Bank introduced several measures to support growing firms. The Bank also initiated **work** in conjunction with the FSCS to develop alternative processes which may reduce disruption to transactional accounts in the event of an insolvency procedure.

The Bank is now consulting to enable the restatement, where appropriate and with modifications, of UK CRR TLAC provisions to the MREL SoP.[1] This reflects the government's approach to repealing and replacing retained EU law on financial services. On 12 September 2024 HMT published its intention to bring into force the revocation of the TLAC provisions among others using powers under the **Financial Services and Markets Act 2023** (FSMA 2023).[2] This provides an opportunity to consolidate and simplify – see Figure 1 below. These proposals are set out in **Section 2**.

Figure 1: Summary of the UK’s MREL regulatory framework



Note: The policy sources above contain both firm and regulator-facing requirements. The list is not exhaustive: for example, parts of the PRA Rulebook and PRA supervisory statements will be relevant to firms in complying with the MREL framework.

As with all its policies, in its last **MREL consultation in 2021**, the Bank said it would continue to keep its approach under review and respond to market developments and broader changes as appropriate. This consultation has provided an opportunity to consider several developments since the conclusion of the Bank’s MREL Review that could have some bearing on the appropriate level and nature of the indicative thresholds for setting a stabilisation power preferred resolution strategy. They include lessons from the early 2023 global banking sector stress, proposals for a new mechanism for small bank resolution, improvements to depositor outcomes in bank and building society insolvency, and the wider economic environment. These proposals are set out in **Section 3**.

Finally, the Bank is proposing several technical adjustments to reflect lessons learnt from the implementation of its MREL policy. These include findings from the Bank’s **second assessment** of major UK firms’ resolvability, as well as responding to some areas where firms and practitioners have sought further clarity. These proposals are set out in **Section 4**.

Impact of the proposals

The resolution regime is a key part of the post financial crisis reforms of the financial system. In setting resolution strategies, and MRELs, for individual firms, the Bank considers its statutory objective to protect and enhance UK financial stability. This is in addition to the statutory objectives of the UK’s special resolution regime, to which the authorities must have regard when using, or considering the use of, stabilisation powers and the Bank's general public law duties.

One of the key purposes of resolution is to reduce risks to public funds. Under the UK special resolution regime, HMT has sole responsibility for authorising the use by the Bank of England of any stabilisation power which would have implications for public funds. Consistent with the **Memorandum of Understanding** between the Bank and HMT on Resolution Planning and Financial Crisis Management, in producing this consultation the Bank has consulted HM Treasury. As noted in a **written ministerial statement** published on 15 October 2024, the government welcomes the publication of these proposals for consultation and recognises the importance of ensuring the MREL regime maintains financial stability while being calibrated in a way that supports competition and competitiveness within the UK's financial services sector.

The package of proposals in this consultation is intended to simplify the framework by consolidating several disparate requirements together in the MREL SoP, to ensure that the framework remains in step with wider developments, and to respond to some requests for further guidance from firms and practitioners. Overall, the Bank anticipates that the proposals in this consultation are likely to increase certainty and reduce compliance costs for firms, although some individual proposals may result in additional, but manageable, costs for some firms.

The Bank considers the proposals set out in this consultation would not result in fundamental changes in the overall impact of its MREL policy, although the proposal relating to MREL calibration for transfer preferred resolution strategy firms would likely reduce costs for these firms, all else equal. More detailed consideration of policy impacts is set out with the detailed proposals in subsequent sections – an overview of key themes is set out below.

For firms that are subject to MREL above MCR, the Bank has sought to take opportunity of the government's revocation of UK CRR TLAC provisions to consolidate, simplify, and (where useful) clarify provisions, and to remove opportunities for arbitrage between the existing TLAC and MREL regimes. If proposals in this consultation were implemented, firms would benefit from a single and less complex TLAC/MREL regime. In some cases, such as the requirement for prior permission from the Bank to call, redeem, repay or repurchase MREL eligible liabilities instruments (ELIs) that currently applies to global systemically important banks (G-SIBs), the relevant proposal would reduce regulatory burden and its associated costs. Some of the proposals in this consultation, such as those related to deductions and contractual triggers, seek to extend existing requirements beyond the current scope, but the Bank considers that any potentially negative impact of this extension would likely be limited in practice – this is set out in more detail with the proposals in Section 2.

For new and growing firms, the Bank is seeking to ensure that the framework remains proportionate and in step with wider economic and regulatory developments. The proposal in Section 3 to increase the indicative total assets threshold in the MREL SoP recognises nominal growth of the UK's economy since the MREL Review. And the proposal relating to MREL for transfer preferred resolution strategy firms considers the potential for a new mechanism, currently before Parliament, to support small bank resolution.

The proposals relating to the indicative thresholds do not reflect a change to the Bank's risk appetite for the protection of public funds in resolution. The proposed changes would provide smaller firms with additional growing space before being potentially brought into a bail-in preferred resolution strategy and being set an MREL above MCR. The Bank considers these proposals are timely and proportionate updates to its policy to reflect recent developments. The Bank is also proposing to amend the MREL SoP to specifically recognise that transitional arrangements and adjustments to support firms meeting their MREL may be considered in the context of a merger or acquisition.

Clarifications to some aspects of the Bank's policy, including where further guidance has been sought by firms and practitioners, aim to improve certainty on what firms should expect from the policy and also ensure a proportionate and level playing field between firms. For example, the Bank is proposing to clarify that the accounting value of an eligible liability instrument should be used as the basis for measuring the value that can be used to meet a firm's MREL. This is intended to promote consistent practice in the industry and ensure that firms maintain sufficient loss-absorbing resources at all times. The Bank acknowledges this proposal may result in greater variability in the value of MREL eligible liabilities over time. Such variations in value are currently a feature of Tier 2 debt and the Bank considers firms would be able to manage such variations through their capital planning.

The Bank considers the MREL framework is already closely aligned and consistent with the Financial Stability Board (FSB) TLAC standard. Notwithstanding this some of the proposals in this consultation seek to ensure further alignment with these standards. For example, the proposed policy on MREL deductions and MREL surplus reallocation for multiple point of entry (MPE) resolution strategy firms.

The Bank is required by the Equality Act 2010 to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services, and functions. The Bank considers that the proposals in this consultation would not give rise to adverse equality and diversity implications.

Firms in scope and approach to policy implementation

The proposals in this consultation are relevant to all firms which the Bank has directed must meet an MREL above MCR (MREL firms). They may also be of interest to new and growing firms that are not currently subject to MREL above MCR but who are approaching, or may approach in future, the indicative thresholds. This is summarised in Table A.

The Bank anticipates finalising its response to consultation during the first half of 2025. Subject to the outcome of this consultation, it is proposed the revised policy would apply from the dates set out in Table A.

Table A: Summary of firms in scope and proposed approach to policy implementation

<table>
<tr><th colspan="2">Proposals</th><th>Firms the proposals relate to</th><th>Proposed implementation date</th></tr>
<tr><td>Section 2</td><td>All proposals</td><td>Stabilisation power preferred resolution strategy firms</td><td rowspan="3">1 January 2026</td></tr>
<tr><td>Section 3</td><td>Indicative thresholds for stabilisation power preferred resolution strategies</td><td>Firms close to the indicative thresholds, including new and growing firms not currently subject to a stabilisation power preferred resolution strategy</td></tr>
<tr><td rowspan="2">Section 4</td><td>Appropriate basis for measuring MREL eligible liabilities</td><td rowspan="2">Stabilisation power preferred resolution strategy firms</td></tr>
<tr><td>All other proposals</td><td>Soon after policy finalised (not before July 2025)</td></tr>
</table>

The Bank will also work with the PRA to consider what consequential changes may be needed to PRA policy in due course reflecting the proposals in this consultation. This includes existing rules relating to TLAC disclosure, and the MRL 001–3 reporting templates and guidance in the **appendix** to PRA supervisory statement SS19/13 **Resolution planning**.

Questions for public consideration and comment

The Bank invites feedback on the proposals set out in this consultation by 24 January 2024. Please provide those responses by email to

✉ **MREL_SoP_Revisions@bankofengland.co.uk**

The Bank welcomes respondents' views on all the proposals in this consultation, including the proposed approach to policy implementation as set out in Table A. Please also indicate in your response if you believe any of the proposals in this consultation are likely to impact persons who share protected characteristics under the Equality Act 2010, and if so, please explain which groups and what the impact on such groups might be.

Respondents may wish to include responses to the following questions:

Q1. Do you agree that the Bank's proposals for consolidating and unifying the existing eligibility regimes in the MREL SoP would provide benefits in terms of simplification and greater clarity, without significantly increasing the burden on firms in practice?

Q2. Given that firms would continue to be responsible for ensuring that liabilities and instruments are eligible for MREL, do you agree the proposed revised MREL SoP would provide sufficient information for firms on eligibility?

Q3. Do you agree with the proposed scope of the deductions regime and that the impact in practice on firms would be limited?

Q4. Do you agree with the Bank ceasing to maintain a general prior permissions process for redemptions and reductions of G-SIB issued ELIs, and the clarification of when all firms should seek permission from the Bank for redemptions or reductions of ELIs?

Q5. As regards both contractual triggers for iMREL instruments and other expectations for non-CET1 own funds instruments, are there material implications arising from the proposed policy changes for non-CET1 own funds instruments, beyond those that also apply with respect to ELIs?

Q6. Do you agree with the Bank's proposed approach to updating its indicative total assets threshold for setting a bail-in preferred resolution strategy?

Q7. Do you agree with the Bank's proposed approach to its indicative transactional accounts threshold and amendments to setting MREL for firms with transfer as their preferred resolution strategy?

Q8. Do you agree with the Bank's rationale for adopting accounting value as the appropriate measurement basis for eligible liabilities? Are there other considerations which may have a material impact on firms that the Bank should consider before finalising its approach?

Q9. Do you agree with the proposed clarifications to the Bank's expectations regarding provision of legal advice and maintenance of effective internal processes relating to instrument eligibility and regulatory reporting?

2: UK CRR TLAC provisions and other related changes

Sections 1 and 4 of **FSMA 2023** provide for the revocation and restatement of financial services assimilated law in secondary legislation. This is to give way to a '**comprehensive FSMA model of regulation**' and means that most firm-facing provisions of the UK CRR will be revoked and restated in regulator policies. In the case of the TLAC provisions, the Bank proposes to restate these provisions, where appropriate and with modifications, in the Bank's MREL SoP.

On 12 September 2024 HMT announced its intention to bring into force the revocation of certain UK CRR requirements, including the TLAC provisions. This section sets out the Bank's proposals to restate in the MREL SoP, with modifications, most of the TLAC provisions. Under the UK CRR, the TLAC provisions apply only to G-SIBs but are in many respects duplicative of the standards applicable to MREL firms.

The Bank aims to take the opportunity of the UK CRR revocation to consolidate, simplify, clarify (where useful) and remove opportunities for arbitrage between the two existing regimes, without significantly increasing the burden on firms in practice. This would be achieved by combining the previously separate (but largely similar) onshored TLAC regime with the existing UK MREL regime set out in the Bank's MREL SoP. The changes would ensure the UK's regime remains closely aligned with the FSB's **TLAC Standard**.

This section sets out the TLAC provisions the Bank has considered for potential restatement, with modifications, in the MREL SoP (insofar as applicable to ELIs). Annex 3 provides a destination mapping table showing whether or not the following TLAC provisions would be restated and, if so, in which section or paragraph of the proposed revised MREL SoP:

- Compliance on an individual or consolidated basis and approach to consolidation – Articles 6(1a), 11(3a), 12a and 18(1) second paragraph.
- Eligible liabilities items – Article 72a(1).
- Exclusions from ELIs – Article 72a(2).
- Eligibility criteria for ELIs – Articles 72b and 73.
- Amortisation of ELIs – Article 72c.
- Consequences of eligibility conditions ceasing to be met – Article 72d.
- Deductions from eligible liabilities items and hedging – Article 72e to Article 72j and Articles 75, 76 and 79.
- Conditions for reducing eligible liabilities – Articles 77 and 78a.
- Assessment of compliance with the conditions for own funds and ELIs – Article 79a.

- Requirements for own funds and eligible liabilities for G-SIIs – Article 92a.[3]

Eligibility criteria for ELIs

ELIs are non-own funds debt instruments, contributing to loss-absorbing capacity, that firms may issue to meet their recapitalisation requirements in resolution. The UK CRR, which in this respect applies only to UK G-SIBs, sets out specific conditions or eligibility criteria, which these instruments have to meet. In addition, the MREL SoP and BRR No. 2 Order set out certain conditions that liabilities have to meet in order to qualify as MREL eligible liabilities. Consequently, there are currently two overlapping sets of exclusions and eligibility criteria that apply to ELIs issued by UK G-SIBs. The Bank proposes to address this overlap and consolidate the two sets of eligibility criteria for MREL eligible liabilities/ELIs within the Bank's MREL SoP (supplementing the BRR No. 2 Order), and to apply these to all MREL firms.

For all firms, including G-SIBs, the exclusions from ELIs are set out in the BRR No. 2 Order, with additional exclusions and eligibility requirements set out in the **Banking Act 2009** (the Banking Act)[4] and the MREL SoP. In addition, for G-SIBs only, further exclusions and criteria for ELIs are set out in UK CRR. The Bank is proposing to take the opportunity of the consolidation to remove duplication, simplify the language where necessary, and adopt a clearer drafting style without significantly increasing the requirements or burden on firms in practice.

The Bank proposes to introduce a modified version of the UK CRR eligibility criteria in a new Annex 1 to the MREL SoP. This would supplement, with necessary modifications, the existing sections 5 and 8 of the MREL SoP which set out the eligibility criteria for, respectively, external, and internal MREL (iMREL) liabilities. The Bank's proposed changes are set out in the accompanying draft revised MREL SoP, including the proposed new Annex 1 (see Annex 2 of this consultation).

In the proposed consolidation the Bank has aimed to retain and combine the core requirements from the UK CRR and existing MREL SoP to create a single, consolidated and more easily comprehensible regime without imposing disproportionate new requirements on firms or reducing standards of loss absorbency. In some cases, the Bank is proposing adaptations to these requirements to ensure the proposed unified regime reflects best practice. Some examples of proposed adaptations include:

- Regarding the requirement for liabilities not to be subject to set-off or netting arrangements, the Bank is proposing to combine the two different existing provisions into a more comprehensive provision that better addresses the underlying regulatory concerns, and which is aligned with how the Bank understands firms generally approach this subject in practice.[5]

- On investor acceleration rights, the Bank is proposing to extend the UK CRR requirement that ELIs should not include full investor acceleration rights to all MREL eligible liabilities. This is not set out explicitly in the current MREL SoP but is consistent with the established principle that firms should not structure their MREL eligible liabilities so as to reduce their effective maturity. The Bank understands that MREL firms, including those that are not subject to the UK CRR requirement, generally avoid the inclusion of full investor acceleration rights in the issuance of their ELIs (as they do when issuing own funds instruments), and considers this should now be made an explicit criterion for all MREL eligible liabilities.[6]
- The Bank is proposing to clarify interactions between the Tier 2 capital and MREL regimes by stating that once a Tier 2 instrument has reached a residual maturity of less than one year, it may continue to be reported as contributing to MREL resources but only to the extent of its reported daily amortising Tier 2 capital value.

For the avoidance of doubt, the Bank is not proposing to make any changes to the requirements around maturity of ELIs as currently stated in the MREL SoP. However, the Bank proposes to clarify in the revised SoP that Tier 2 instruments with a residual maturity of at least one year qualify as MREL eligible liabilities to the extent they no longer qualify as Tier 2 instruments due to having reached the final five years of their contractual tenor.

Certain of the derogations from eligibility criteria that currently apply to ELIs issued prior to 27 June 2019, by virtue of Article 494b(3) of UK CRR, would be restated in the revised SoP. The Bank's intention has been to maintain, in the MREL SoP, existing TLAC-related transitional provisions in UK CRR where the Bank understands these to be relied upon by firms.

As under the current MREL SoP, firms will continue to be responsible for ensuring their liabilities and instruments are eligible for inclusion in their MREL resources.

> **Q1. Do you agree that the Bank's proposals for consolidating and unifying the existing eligibility regimes in the MREL SoP would provide benefits in terms of simplification and greater clarity, without significantly increasing the burden on firms in practice?**

> **Q2. Given that firms would continue to be responsible for ensuring that liabilities and instruments are eligible for MREL, do you agree the proposed revised MREL SoP would provide sufficient information for firms on eligibility?**

Deductions from MREL eligible liabilities resources

The UK CRR sets out an eligible liabilities deductions regime that applies to UK resolution entities of G-SIBs. In light of the government's intended revocation of these UK

CRR provisions and in order to manage the risk of contagion and to promote consistency with relevant international standards, the Bank is proposing to maintain through its MREL SoP an eligible liabilities deductions regime on broadly similar terms, but applicable to a broader population of banking firms. This is summarised in Figure 2. In this section the Bank has also set out more detail on two important aspects of the regime relating to holdings of G-SIB-issued ELIs and cross-holdings for MPE groups. The UK CRR provisions regarding deductions for holdings of own ELIs and reciprocal cross-holdings would be restated in the MREL SoP without substantial changes.

Holdings of G-SIB issued ELIs

Figure 2: Overview of deductions regime for holdings of other firms' ELIs and proposed changes

	Current UK regime *UK CRR*	**Proposed UK regime** *MREL SoP*
Issuing firms		
Issues eligible liability debt instrument to the market. ELI	G-SIBs	G-SIBs *(unchanged)*
Investing firm deduction		
Other firms might choose to purchase an issuing firm's eligible liability instrument. If other MREL firms* purchase an issuing firm's eligible liability instrument they must, subject to meeting materiality thresholds and a limited 30-day exemption for holdings in the trading book, make a corresponding deduction from eligible liabilities resources available to meet their MREL.	G-SIBs	All MREL firms* *Materiality thresholds unchanged*

* Other than Small Domestic Deposit Takers (SDDTs) and SDDT consolidation entities as defined by the PRA. 'SDDT' and 'SDDT consolidation entity' are defined respectively in rules 3.1 and 3.2 of SDDT Regime – General Application Part of the PRA Rulebook.

Under UK CRR, UK G-SIBs' resolution entities are currently required to deduct from eligible liabilities resources any holdings they have of ELIs issued by other G-SIBs.[7] The aim of this requirement is to reduce the risk of contagion through the banking system from the failure of an individual G-SIB. The contagion risk arises where the write-down or conversion of ELIs issued by such G-SIBs and held by other firms could result in the reduction in the capital or loss-absorbing resources of such firms. The deduction of G-SIB issued ELIs from a firm's holdings would reduce the likelihood of such contagion.

The Bank is proposing to extend the deductions regime, beyond UK resolution entities of G-SIBs, to apply to all MREL firms. This is because MREL firms are considered by the Bank to be firms where the use of stabilisation powers may be necessary to advance the statutory resolution objectives.[8] This includes consideration of the size and nature of the critical functions[9] of the firm and, in such cases, the Bank considers it important to manage the risk of contagion from the failure of a G-SIB.

In order to avoid unintended consequences, to ensure a proportionate approach, and to promote consistency between the prudential and resolution frameworks, the Bank proposes not to require deductions from eligible liabilities resources for:

- Holdings by a firm, or a consolidated entity, in the PRA's Small Domestic Deposit Taker regime (SDDT)[10] of ELIs issued by G-SIBs.[11] The Bank's expectation in the case of SDDTs that are MREL firms, is that these firms should generally not invest in, or hold, ELIs issued by G-SIBs more than on isolated occasions and only for a short period of time (not more than 30 days). The Bank proposes that SDDTs which hold, or intend to hold, ELIs issued by G-SIBs other than on such a very occasional and short-term basis should notify the Bank as soon as reasonably practicable, so that its MREL may be reviewed and (if in the Bank's view appropriate) re-set by the Bank in the light of that notification.
- Holdings by an intermediate entity of internal ELIs issued by a subsidiary. This position is already addressed in paragraph 7.14 of the current MREL SoP.

As proposed, the UK CRR eligible liabilities deductions regime would otherwise remain largely unchanged but with a broader application. The relevant changes to the MREL SoP would include:

- except in cases of holdings of own ELIs and reciprocal cross-holdings, only ELIs issued by G-SIBs would give rise to a potential deduction;
- for the purposes of the deductions regime only, non-ELI instruments ranking pari passu with ELIs would continue to be treated as ELIs;
- firms in scope would continue to apply the regime with respect to UK resolution entities' holdings of G-SIB issued ELIs. In addition, the regime would also apply to operating entities and intermediate companies. This would ensure that instruments are not held at subsidiary level to avoid the intended effect of the policy;
- provisions with respect to direct, indirect and synthetic holdings would remain unchanged in substance and will now be set out in the MREL SoP;
- the definition of 'significant investment' in the issuing bank, which is important in the determination of whether a deduction for ELIs issued by G-SIBs is required, is proposed to be restated by the PRA in the Own Funds (CRR) Part of the PRA Rulebook;[12]
- the trading book exception would continue to apply; and
- the interaction between the regime and the PRA's framework for own funds would be maintained such that deductions of MREL ELIs, where required, would be made from MREL eligible liabilities resources first, and only if those resources are exhausted then from own funds.

The Bank considers it is important to maintain and extend the scope of the deductions regime beyond G-SIB resolution entities in this way to manage the risk of contagion and to promote consistency with relevant international standards. These include the FSB's TLAC Standard,[13] and the **Basel III Definition of Capital standard**, which broadens the scope of investing firms from G-SIBs to internationally active banks. The importance of maintaining a deductions regime was also highlighted in the April 2022 **International Monetary Fund's Financial Sector Assessment Program report** on the UK, which noted the potential for cross-holdings of MREL instruments to 'hamper' the effectiveness of bail-in resolution strategies.

The Bank has carefully considered the impact of its proposals. The Bank conducted a survey of MREL firms in 2024 Q1 which showed it is not common practice for non-G-SIB firms to hold G-SIB-issued ELIs in sufficient amounts to give rise to a deduction under the UK CRR eligible liabilities deductions regime. The Bank has also considered alternative options, such as extending the scope of issuing firms to include firms beyond just G-SIBs but considers that such an extension would go beyond international standards and would not be proportionate at this time.

The Bank considers that firms would have sufficient time to prepare for the revised regime as it is not proposed to come into force until January 2026. For firms growing into MREL above MCR, the Bank proposes the new regime will only apply once end-state MREL is first required to be reached; that is, that firms which have not yet reached their end-state MREL will not be required to deduct any holdings of eligible liability instruments issued by G-SIBs from their transitional MREL resources. By the time end-state MREL is reached, the Bank considers that affected firms would also be likely to have non-own funds MREL resources from which the deduction could be made, avoiding the need for a potentially more expensive deduction from Tier 2 or Tier 1 capital.

Partial redistribution of the requirement to deduct cross-holdings of ELIs issued between MPE firm resolution groups

The EU CRR, and consequently the UK CRR, followed the FSB's TLAC Standard in applying the eligible liabilities deductions regime to the cross-holdings of ELIs issued between resolution groups, based in different countries, of an MPE firm. Under the CRR regime, the cross-holdings are treated for this purpose as if they were issued to, and held by, two different firms. However, this is subject to the ability of the home authority for the MPE firm, after consultation with relevant overseas resolution authorities, to allow the ultimate group parent to deduct a lower amount in respect of its holdings of MREL eligible liabilities issued by the subsidiary resolution entity, to the extent that the subsidiary's MREL resources include any surplus that is attributable to the parent.

Where the MPE firm's home authority agrees that the parent may deduct such a lower amount, it may make its agreement conditional. The condition would be that the overseas authority with responsibility for the subsidiary resolution entity requires an additional amount to be deducted by the subsidiary from its own eligible liabilities resources. The additional amount should be equal to the difference between the lower amount and the amount that would otherwise have been deductible by the parent in the normal course.

To maintain alignment with FSB standards, the Bank proposes to include this mechanism for the partial redistribution of the requirement to deduct in Annex 2 to the MREL SoP. The Bank proposes the mechanism should be capable of being applied both where the Bank is the home authority for the relevant MPE firm, and where the Bank is the authority with responsibility for the subsidiary that has issued ELIs to its ultimate parent.

While wishing to maintain alignment with international standards, the Bank notes that this mechanism could be considered to conflict with the objectives of an MPE resolution strategy, including that each of an MPE firm's resolution groups is resolvable on a standalone basis.

Before the Bank agreed to any such redistribution, whether as home authority for a parent or host authority for a subsidiary, the Bank would have to be satisfied that a proposed redistribution would not compromise the feasibility or credibility of the relevant resolution plan, and that any practical concerns as to the ability to transfer resources from subsidiary to parent in a resolution situation have been or could be addressed.

> **Q3. Do you agree with the proposed scope of the deductions regime and that the impact in practice on firms would be limited?**

Redemptions and reductions of instruments

> The UK CRR requires UK G-SIBs to seek prior permission from the Bank, as resolution authority, to call, redeem, repay or repurchase ELIs. The subject of redemptions of eligible liabilities is already covered by the Bank's MREL SoP and therefore the Bank does not intend to restate these equivalent provisions from the UK CRR, or the associated framework for issuing a general prior permission. Notwithstanding this, the Bank proposes to clarify, for all firms in scope of MREL above MCR, the circumstances when the prior permission of the Bank must be sought.

The Bank's general practice in operating the current UK CRR reductions regime has been to grant annually to each G-SIB firm in the UK a 'general prior permission' (GPP). This is intended to allow those firms to carry out reductions without seeking further permission from the Bank, as long as the reduction would not result in a breach of its MREL or its applicable capital buffers[14] would start to deplete. This broadly reflects the position that applies, under the MREL SoP, to all MREL firms. The Bank does not therefore propose to restate these articles of the UK CRR in the MREL

SoP following revocation.

Following revocation, the Bank proposes to stop issuing a GPP to UK G-SIBs. G-SIBs would, therefore, be in the same position as other MREL firms whereby no permission or approval from the Bank would be required for a reduction as long as the firm is not at that time in breach of its MREL and the reduction itself would not cause a breach of its MREL. The Bank considers that this proposal would reduce compliance costs for UK G-SIBs as the additional costs associated with the general prior permission would no longer apply.

The Bank also proposes to amend the MREL SoP to clarify that, without specific approval from the Bank, firms should not redeem, repay, call, repurchase, choose to treat as ineligible or derecognised or otherwise reduce an MREL eligible liability if that would cause a firm to breach its MREL, or start to deplete its applicable capital buffers, or if the firm is already in breach of its MREL or has started to deplete its applicable capital buffers. Including capital buffers in this assessment would bring the position into line with FSB standards and recognises the interaction of MREL and applicable capital buffers as set out in **PRA supervisory statement 16/16**.

The Bank expects the requirement to seek prior permission in cases where a firm would either breach its MREL, or start to deplete its applicable capital buffers, would only apply in a very limited number of cases, and that in those circumstances there would in any case likely be increased engagement between the firm and its PRA supervision team.

> **Q4. Do you agree with the Bank ceasing to maintain a general prior permissions process for redemptions and reductions of G-SIB issued ELIs, and the clarification of when all firms should seek permission from the Bank for redemptions or reductions of ELIs?**

Contractual triggers for internal MREL instruments

Contractual triggers in iMREL instruments, as described in the Bank’s existing MREL SoP, enable the Bank as resolution authority to write down and/or convert these instruments to internal CET1 instruments in certain circumstances,[15] independently of the use of the Bank’s statutory mandatory reduction at the point of non-viability or use of stabilisation powers. This supports the effective execution of a resolution involving multiple entities within a group, and potentially across jurisdictions. The Bank proposes to bring the policy as it applies for internal non-CET1 own funds instruments (ie internal Additional Tier 1 (AT1) and internal Tier 2 capital), into line with that for internal MREL eligible liabilities.

As set out when the Bank's iMREL policy was **first consulted** on, one of the principal purposes of iMREL is to avoid the need to use statutory resolution powers on material subsidiaries that sit below the resolution entity. By limiting the use of stabilisation powers solely to the resolution entity, iMREL removes the execution risk associated with co-ordinating the use of tools simultaneously across multiple entities and potentially across jurisdictions, as well as reducing the risk that counterparties of a material subsidiary seek to close-out or terminate arrangements at operating subsidiaries. To achieve this, iMREL eligible liabilities must be capable of being written down, or converted to equity without, or ahead of, any use of resolution powers in relation to the entity that issues them.

Since June 2018, the MREL SoP has required that iMREL eligible liabilities must contain a contractual clause that allows the Bank to write down and/or convert the instrument to equity when certain conditions are met.[16] This is consistent with the FSB's TLAC Term Sheet.[17]

For internal non-CET1 own funds instruments, however, paragraph 8.10 of the current MREL SoP states that 'with respect to non-CET1 own funds instruments, institutions should consider whether the absence of such contractual triggers, covering the circumstances described in (b) in paragraph 8.8 above could create difficulties for resolution'. At the time of the introduction of the Bank's iMREL policy, the requirements for such contractual provisions were not imposed on internal AT1 and internal Tier 2 capital because to do so may have created a conflict with the then directly applicable EU CRR.

The Bank proposes to use the opportunity afforded by the revocation of the UK CRR, following EU withdrawal, to amend paragraph 8.10 of the MREL SoP and bring the treatment of internal AT1 and internal Tier 2 capital instruments into line with the current policy on contractual triggers applicable to internally issued MREL eligible liabilities. The Bank therefore proposes to extend the existing requirement to include contractual triggers, covering the specified circumstances, to internally issued non-CET1 own funds instruments.[18]

For the avoidance of doubt, this trigger should be included in addition to any other write-down or conversion trigger, in different terms, that would be included in the instruments to meet other requirements.

The proposed change would apply to the stock of internal non-CET1 own funds instruments at the date of implementation of this policy change. This is expected to be January 2026. The Bank proposes to also introduce an 'impracticability' exception in the case of non-UK material subsidiaries of UK-headquartered firms, to apply where the subsidiary's host regulatory authority will not permit the inclusion of contractual triggers in the form the Bank requires. To maintain consistency between internal non-CET1 own funds and internal MREL eligible liabilities, this exception would also apply in relation to internal MREL eligible liabilities. It nevertheless remains important that firms can meet the adequate financial resources outcome for resolvability under the RAF.

The Bank is also clarifying, in relation to both internal non-CET1 own funds instruments and internal MREL eligible liabilities, that the requirements for contractual triggers apply where the resolution entities of a UK headquartered group with an MPE resolution strategy issues MREL liabilities internally to a group parent.

The Bank observes that some firms have already taken steps to introduce contractual triggers in internal non-CET1 own funds instruments. The proposed change would therefore promote consistency among firms. Where such triggers are not already included in internal non-CET1 own funds instruments, the Bank considers firms should have sufficient time to implement the changes in the terms of those internal instruments ahead of an implementation date in January 2026. The Bank notes its previous view that there is likely to be significant merit in including the contractual trigger features in a single ‘umbrella’ agreement.[19]

When the Bank consulted on introducing the iMREL policy in 2017, some respondents noted the inclusion of contractual triggers in internal MREL instruments could give rise to tax and accounting issues. Given this issue may also apply to Tier 2 capital instruments, the Bank has given due consideration to the extent to which the current policy proposal would have a material impact on firms. Internal Tier 2 capital instruments constitute a smaller proportion of the total stock of iMREL instruments, compared to MREL eligible liabilities (for which the inclusion of contractual triggers is already a requirement). Accordingly, the Bank’s view is that this is a proportionate extension and harmonisation of the policy between own funds and eligible liabilities. The Bank welcomes feedback on the impact of this proposal, in particular as to material implications beyond those that also apply with respect to internal MREL eligible liabilities.

Other expectations for non-CET1 own funds instruments

> The Bank could determine that it needs to use its powers to direct relevant persons to address impediments to resolution where it is not possible to write down and/or convert non-CET1 own funds instruments to CET1 by using its statutory powers. The Bank proposes to state explicitly that in these circumstances, the Bank may also simply direct a firm to exclude the relevant non-CET1 own funds instruments from its MREL resources, with the possible consequence that the firm might have to issue additional MREL liabilities or raise additional CET1 capital in order to meet its requirement.

As mentioned in the earlier proposal on ‘Contractual triggers for internal MREL instruments’, following the UK’s withdrawal from the EU, and in light of the proposed revocation of UK CRR, the Bank is able to align, for purposes of MREL eligibility, certain requirements for AT1 and Tier 2 capital instruments with those for MREL eligible liabilities. Therefore, in addition to the proposed amendments to paragraph 8.10 of the current MREL SoP, to bring the policy on contractual triggers for AT1 and Tier 2 capital instruments into line with that for MREL eligible liabilities, the Bank is proposing amendments to paragraph 5.10 of the MREL SoP.

Paragraph 5.10 states that the Bank will want assurance as to the quantum of loss-absorbing capacity that will be available should a firm find itself in stress. It also sets out that where it is not possible to write down and/or convert non-CET1 own funds instruments to CET1 using statutory powers, the Bank could determine that it needs to use its powers under section 3A of the Banking Act to direct relevant persons to address impediments to resolution. An example is an instrument governed by non-UK law where there is no statutory or contractual recognition of UK bail-in rules.

The Bank is also proposing minor changes to align the wording more closely with the corresponding language in the BRR No. 2 Order applicable to eligible liabilities. In addition, the Bank proposes to amend paragraph 5.10 to state explicitly that, in these circumstances, the Bank may also simply direct a firm to exclude the relevant non-CET1 own funds instruments from its MREL resources, with the possible consequence that the firm might have to issue additional MREL liabilities or raise additional CET1 capital in order to meet its requirement.

> **Q5. As regards both contractual triggers for iMREL instruments and other expectations for non-CET1 own funds instruments, are there material implications arising from the proposed policy changes for non-CET1 own funds instruments, beyond those that also apply with respect to ELIs?**

Revocation of the MREL UK technical standards

As set out in HMT's recent Policy Update, **Applying the Financial Services and Markets Act 2000 model to the Capital Requirements Regulation**, the government intends to bring into force the revocation of the MREL UK technical standards (MREL UKTS) as part of its broader plans to apply the FSMA model to financial services assimilated law. The Bank has therefore removed or updated references to the MREL UKTS in its proposed revised MREL SoP and proposed a small number of minor consequential changes. The Bank is proposing to update the SoP to maintain an expectation that any MREL transition periods are as short as practicable – this language does not reflect a change in the policy intent. The Bank does not consider that more significant consequential changes to the MREL SoP are required because the more important substantive content of the MREL UKTS is already reflected in the BRR No. 2 Order and the MREL SoP. The revocation of the MREL UKTS will help create a more streamlined MREL regime for the UK.

3: Updates to the Bank's indicative thresholds for setting a stabilisation power preferred resolution strategy

The Bank's MREL SoP sets out indicative thresholds at which the Bank will carry out a firm-specific assessment to determine whether a stabilisation power preferred resolution strategy is more likely to be appropriate. The two existing thresholds, which were last reviewed as part of the Bank's MREL Review that concluded in 2021, are:

- 40,000–80,000 transactional accounts, where the Bank will consider whether a transfer preferred resolution strategy (eg sale to a private sector purchaser) is appropriate; and
- £15 billion–£25 billion total assets, where the Bank will consider whether a bail-in preferred resolution strategy is appropriate.

It is important the Bank's MREL framework is kept up to date and is responsive to regulatory and market developments. The Bank is also mindful of the importance of stability and clarity for firms subject to the framework. The Bank has therefore considered whether there have been developments, since it concluded its MREL Review, which suggest the indicative thresholds should be updated. As a result, the Bank is consulting on:

- increasing the indicative total assets threshold, from £15 billion–£25 billion to £20 billion–£30 billion, reflecting nominal economic growth; and
- making a targeted change to MREL calibration such that, for transfer preferred resolution strategy firms, MREL would generally be expected to be set equal to MCR. This proposal is subject to several dependencies that are set out **below**.

Figure 3: Overview of indicative thresholds over time

	Total assets £15 billion–£25 billion	Transactional accounts 40,000–80,000
MREL SoP introduced 2016	• Indicative threshold when determining a bail-in preferred resolution strategy set at a range of £15 billion–£25 billion total assets.	• Indicative threshold when determining a transfer preferred resolution strategy at a range of 40,000–80,000 transactional accounts.
MREL Review 2021	• Maintained threshold at existing level. • Introduced measures to support firms growing into MREL above minimum capital requirements.	• Work began to consider whether innovations in technology in the banking system could improve depositor outcomes in the event of bank or building society insolvency.
Regulatory and market developments	• Lessons from the stresses in parts of the global banking system in 2023, including the resolution of Silicon Valley Bank UK. • The Bank Resolution (Recapitalisation) Bill to support small bank resolution (currently before Parliament). • FSCS delivery of a digital payment portal (refer to Box B for details). • Wider economic environment.	
This publication	• Judgement around the use of bail-in resolution strategy unchanged from the 2021 MREL Review. • Consultation: increasing threshold by £5 billion to £20 billion–£30 billion considering post-MREL Review nominal growth.	• Supervisory intervention point for resolvability capabilities. • Consultation: potentially changing the consequence of a transfer preferred resolution strategy for MREL.

The indicative thresholds

The Bank sets MREL for individual firms, and if applicable, their groups to achieve one of three broad resolution strategies – modified insolvency, transfer, or bail-in. These preferred strategies are designed to reflect the scale and nature of the impact of a firm's failure. More information about each strategy is set out in Box A. The Bank, in line with its legislative obligations, determines a preferred resolution strategy for each firm, taking into account the statutory resolution objectives and sets the firm's MREL to support the effective execution of that strategy. The Bank must ensure that, if a firm met the four conditions for resolution set out in section 7 of the Banking Act, it could use the stabilisation powers effectively to resolve the firm in line with the statutory resolution objectives.

To guide the setting of individual firms' preferred resolution strategies, and therefore MRELs, the Bank has published thresholds above which MREL is likely to be set above MCR. These thresholds are indicative and expressed as ranges (40,000–80,000 transactional accounts for transfer strategies, and total assets of £15 billion–£25 billion for bail-in strategies).[20] The Bank will make a case-by-case judgement for firms that exceed, or expect to exceed, either indicative threshold, and endeavour to engage with these firms as early as possible (including during the authorisation process for new firms where relevant).The Bank will consider the firm's total assets, and number of transactional accounts, alongside other factors in its assessment, such as the firm's business model and whether it performs functions critical to the UK economy, to determine whether the use of stabilisation powers would likely be necessary in order best to meet the statutory resolution objectives if the firm were to fail.

At the point of failure, the choice of the actual resolution strategy in the event of a firm's failure will take into account the specific circumstances of that failure and may therefore vary from the preferred resolution strategy adopted during resolution planning. In the event of an actual failure, the Bank may consider it necessary in the public interest to use transfer and/or bail-in powers, despite it having previously set a modified insolvency strategy. This could be due, for example, to wider market dislocation and instability at the point of actual failure.

The MREL Review (2021)

The Bank's **MREL Review** concluded in 2021. It considered the indicative thresholds among other aspects of the framework. For the total assets threshold, the Bank's judgement at that time remained that above £15 billion–£25 billion total assets, a bail-in resolution strategy was more likely to be appropriate. Taking into account the Bank's statutory resolution objectives, the Bank considered that entry into modified insolvency for a firm of that size would be unlikely to serve the public interest effectively, and MREL would therefore be required to support the resolution of that firm.

During the MREL Review, some respondents noted that smaller firms faced difficulties accessing the funding market, and that the 2016 MREL policy (to meet full MREL after a three-year notification period) led to a regulatory cliff-edge. In response to the feedback, the Bank introduced a stepped glide-path where firms were given up to six years to incrementally build up their MREL to their end-state requirements, with a potential further two-year flexible add-on if needed. Additionally, to assist with transitional arrangements, the Bank added a requirement that firms must notify the Bank if they forecast their total assets to exceed £15 billion within the following three years. This enables the Bank to consider whether a change to the firm's preferred resolution strategy would be required and, if relevant, set MREL transitional arrangements accordingly.

The Bank also did not make changes to the transactional account threshold, judging that under the framework for depositor protection and preparedness for insolvency at the time, the statutory resolution objectives would unlikely be met through the modified insolvency of a firm with a large number of transactional accounts. However, the Bank **announced work** to consider whether recent innovations in technology in the banking system could provide opportunities to mitigate disruptions that occur in the insolvency of a failing mid-tier firm whose business model is dominated by transactional account banking. Subject to the outcomes of that work to improve depositor outcomes in bank insolvency (IDOBI), the Bank said it was considering whether it could significantly raise or remove the transactional account threshold. Further information on IDOBI is included in Box B.

Developments since the MREL Review

There have been several relevant developments since the completion of the MREL Review that could have some bearing on the Bank's indicative thresholds.

Lessons from early 2023 global banking sector stress

The Financial Policy Committee (FPC) set out several lessons from the stresses in parts of the global banking system in early 2023 in its **July 2023 Financial Stability Report**. The FPC noted that events in early 2023 showed the importance of being able to resolve firms effectively, and of maintaining confidence in resolution frameworks. The FPC also noted that it supported work to ensure there are resolution options that improve continuity of access to deposits and, therefore, outcomes for depositors (see subsequent section, **below**).

The failure of Silicon Valley Bank (SVB) in March 2023 was of particular relevance to judgements around the boundary between firms subject to a stabilisation power preferred resolution strategy and those expected to be placed into a modified insolvency procedure. As a result of the failure of its Californian parent bank, SVB's UK subsidiary (SVB UK) experienced severe difficulties and suffered a rapid outflow of deposits. At the time of its failure, SVB UK had a balance sheet of around £12 billion and fewer than 40,000 transactional accounts. As such its preferred resolution strategy was a modified insolvency procedure.

On the evening of Friday 10 March 2023, the Bank indicated that it intended to place SVB UK into modified insolvency absent any meaningful further information. However, over the course of the weekend several potential buyers came forward with HSBC emerging as a credible purchaser. The Bank concluded that transferring all SVB UK's shares to HSBC for a nominal consideration would best meet its objectives of protecting covered depositors, ensuring continuity of banking services, protecting public funds, and protecting and enhancing public confidence in the stability of the UK financial system while avoiding undue interference with property rights. The Bank undertook a provisional valuation of SVB UK. SVB UK's AT1 and Tier 2 regulatory capital instruments were mandatorily written down and the whole of SVB UK's equity was transferred to HSBC at 7am on 13 March with HSBC paying the nominal sum of £1 as part of its bid.

Development of a new mechanism to support small bank resolution

On 18 July 2024, the government introduced the **Bank Resolution (Recapitalisation) Bill** (the Bill) to Parliament. The Bill, currently before Parliament, proposes to establish a new mechanism to support small bank resolution where that is in the public interest. The proposals, which are part of learning lessons from the resolution of SVB UK, would introduce modest enhancements to the resolution regime to give the Bank increased flexibility to manage the failure of a small bank. The government has also set out a response to the related consultation – **Enhancing the Special Resolution Regime**.

As proposed in the Bill currently before Parliament, the new mechanism could be deployed alongside the exercise of the Bank's resolution powers to transfer a failed bank to a Bank of England-owned bridge bank or to a willing private sector purchaser. The mechanism provides for greater optionality in terms of sources of capital for a resolved firm. Specifically, the new mechanism would allow the Bank to use funds provided by the banking sector to cover certain costs associated with resolution. As with the current depositor protection arrangements, these funds would be provided by the FSCS as needed in the event of a failure, and subsequently recouped by a levy on the industry. How the new mechanism could be used in practice, should it complete the legislative process, is described in Box C. This is consistent with the government's expectations set out in a **written ministerial statement** published on 15 October 2024.

Improvements to depositor outcomes in bank and building society insolvency (IDOBI)

FSCS has now completed the development and implementation of a new digital payment portal for customers, achieving a major deliverable of the **IDOBI project**. The digital payment portal can facilitate electronic compensation for the sum total of any covered deposits for former depositors of the failed bank or building society who already have a second or alternative account at a second bank, as a faster, convenient alternative to a cheque, which would take a number of days to be processed, sent, delivered by post, and then paid in to an existing or new account. More information about this work is set out in Box B. FSCS continues to enhance the portal as part of its regular processes, with a focus on resilience and continuous improvement. The Bank remains engaged and will continue to work closely with FSCS.

Wider economic environment

Over time nominal economic growth, driven by real economic growth and by nominal price inflation, means some firms may become subject to tighter regulatory requirements without an increase in their underlying risk relative to the economy they serve. The impact of this varies for different regulatory thresholds. For the total assets threshold, this may have the impact of the Bank considering setting a bail-in preferred resolution strategy relatively earlier in time. The transactional accounts threshold is not affected by this phenomenon.

Adjusting the total assets indicative threshold

In line with the conclusions of the MREL Review, the Bank's view is that its judgement about the boundary between modified insolvency and a bail-in preferred resolution strategy remains broadly appropriate. The Bank also notes that this is not an automatic or binary regulatory threshold – the Bank must determine the preferred resolution strategy on a firm-specific basis. Notwithstanding this, the Bank recognises that the nominal economic growth effect described above means that firms may be subject to tighter regulatory thresholds over time than may have been intended. The Bank has also considered relevant feedback received by HMT in response to its consultation on Enhancing the Special Resolution Regime. To keep the framework up to date the Bank is therefore consulting on increasing the total assets thresholds from £15 billion–£25 billion to £20 billion–£30 billion to account for the recent period of higher nominal UK economic growth.

The Bank has considered several possible approaches to indexing this threshold.[21] Based on these approaches, and the value of consistent and stable thresholds over time, the Bank is proposing to set a range of £20 billion–£30 billion for the total assets threshold. This reflects an indexation of the existing threshold, using the UK's nominal GDP, from the point in time at which it was last reviewed as part of the MREL Review.[22] On its own this implies an indicative total assets threshold of around £18 billion–£29 billion. The Bank's proposal rounds this up to £20 billion–£30 billion, recognising the value of consistent and stable thresholds over time.

This proposed increase will also help to 'future-proof' the threshold somewhat – the Bank will keep this threshold under review, although does not expect to update it frequently. The revised threshold would remain indicative of the Bank's risk appetite for setting a bail-in preferred resolution strategy; individual firm strategy setting will remain a firm-specific judgement. The requirement in paragraph 9.7 of the MREL SoP for firms to notify the Bank when they are forecasting to exceed the lower bound of the threshold range would also be updated to £20 billion.

The Bank's proposal is not anticipated to result in immediate changes to the preferred resolution strategies of particular firms. The proposed change will nevertheless provide growing firms currently subject to modified insolvency or transfer preferred resolution strategies, additional growing space before being potentially set a bail-in preferred resolution strategy. Subject to the outcome of this consultation, the adjustment to the total assets threshold would take effect in January 2026.

Planning for, and determining, a transfer preferred resolution strategy

In light of developments since the MREL Review, the Bank has considered the MREL calibration for firms subject to a transfer preferred resolution strategy, and the level and purpose of the transactional accounts threshold in setting it. These developments include the delivery of the FSCS digital payment portal, lessons learnt from the resolution of SVB UK, and the potential ability to use transfer tools for non-MREL firms under the proposed new mechanism to support small bank resolution that is currently before Parliament.

Transactional accounts indicative threshold

The Bank is required to assess the feasibility and credibility of resolution strategies for firms with stabilisation power preferred resolution strategies and identify potential impediments to the implementation of the preferred resolution strategy. The Bank considers the transactional accounts threshold remains an important supervisory intervention point for ensuring resolvability and, in particular, for its firm-specific judgement on whether a firm should, in the public interest, be set a transfer preferred resolution strategy. It helps to ensure that smaller firms who are below the total assets threshold for a preferred bail-in resolution strategy, but on whom large numbers of people rely for their day-to-day banking services have adequate capabilities to be resolved through a transfer to a private sector purchaser, or to a Bank of England-controlled bridge bank.

The resolution of SVB UK, which had fewer than 40,000 transactional accounts, may have implied a lower level for this threshold as an indicator of the provision of a significant amount of transactional banking services. This recognises that continuity of access to banking services (including for deposits that are not largely or wholly covered by the FSCS, including business accounts) is an important consideration in the Bank's assessment of the statutory resolution objectives. However, the Bank also recognises the benefits provided by the FSCS's digital payment portal to offer, in certain cases and for some customers, digital payment as an alternative to a cheque when paying out depositor protection compensation in insolvency. Where a firm has a suitable Single Customer View (SCV) file and a significant proportion of deposits covered by the FSCS, this may reduce the potential disruption caused by insolvency for depositors. This development may inform the judgement, at the point of a firm's failure, about whether the use of stabilisation powers is necessary in the public interest.[23] Having considered both of those opposite factors on the level of the transactional account threshold, the Bank does not propose to change the level of the indicative threshold at this time.

The transactional accounts threshold would remain indicative and continue to be part of a range of factors taken into account in determining the appropriate preferred resolution strategy for an individual firm; for example, but not exclusively, whether a firm performs critical functions for the UK economy, its business model, the level and proportion of uncovered deposits and vulnerable customers. The suitability of a firm's SCV file could also be a relevant consideration where a firm has a significant proportion of deposits covered by the FSCS, as it would indicate the likelihood of being able to make a depositor payout using the FSCS digital payment portal.

The Bank does not propose any changes in relation to non-MREL policies under the RAF that apply to transfer preferred resolution strategy firms. The policies concern capabilities which help to ensure that any transfer resolution strategy would be effective.[24] This means that the need for these firms to start to meet requirements for non-MREL resolvability capabilities will continue.

MREL calibration for a transfer preferred resolution strategy

Under the existing MREL framework, transfer preferred strategy firms are required to meet an MREL of twice MCR, although in certain cases this can and has been reduced to closer to MCR. Firms with this preferred strategy may therefore require loss-absorbing capacity greater than MCR to enable them to be recapitalised in resolution. The Bank proposes to make a targeted change such that, for transfer preferred resolution strategy firms, MREL would generally be expected to be set equal to MCR.

The Bank is proposing this change having considered the developments since the MREL review. Where additional loss-absorbing capacity is required in resolution for these firms, after having written down regulatory capital, this could, where needed, be met through the new mechanism to support small bank resolution that is currently before Parliament.

This change, if taken forward, could therefore result in a reduction of the MREL that transfer preferred resolution strategy firms would otherwise have needed to meet. As set out in the Bank's most recent **disclosure of firms' MRELs**, the transfer preferred resolution strategy population currently consists of two firms. If the proposals are implemented, the Bank would anticipate setting MREL equal to MCR for smaller firms – both transfer preferred resolution strategy and (as is the case now) modified insolvency preferred strategy firms, all else equal.

The Bank does not propose to change its approach to setting MREL for firms with bail-in preferred strategies. The new mechanism can only be deployed to support a transfer resolution. There are currently 15 bail-in preferred strategy firms with a resolution entity incorporated in the UK for which an MREL above MCR has been communicated. How the new mechanism could be used in practice, should it complete the legislative process, is described in more detail in Box C. This is consistent with the government's expectations set out in a **written ministerial statement** published on 15 October 2024.

This proposed targeted change to MRELs for transfer firms, remains subject to the passage of the Bank Resolution (Recapitalisation) Bill, and to the targeted amendments to secondary legislation which would be necessary to support it and which HMT has committed to exploring and engaging on separately with industry.

Resolution planning for all firms

More generally, the Bank will continue to take an approach to its engagement with firms that considers risks to the statutory resolution objectives, to ensure appropriate preparations for resolution or an otherwise orderly exit from the market in the event of failure.

This involves continuing to work closely with the PRA on initiatives relating to orderly market exit. For firms that are anticipated to be subject to modified insolvency, the Bank will consider whether additional information from, or engagement with, specific firms may be appropriate as part of considering the appropriate preferred resolution strategy.

To ensure the policy framework remains up to date, and with a view to learning lessons from the resolution of SVB UK and facilitating the effective use of the proposed new mechanism, the Bank and the PRA will work together to consider if the existing content of resolution packs, as set out in PRA supervisory statement SS19/13, and other resolution reporting under COREP13, remains appropriate.

> **Q6. Do you agree with the Bank's proposed approach to updating its indicative total assets threshold for setting a bail-in preferred resolution strategy?**

> **Q7. Do you agree with the Bank's proposed approach to its indicative transactional accounts threshold and amendments to setting MREL for firms with transfer as their preferred resolution strategy?**

Box A: Resolution strategies: bail-in, transfer or modified insolvency

Bail-in: the largest UK firms have a resolution strategy which involves the use of the bail-in tool. The indicative threshold for such 'bail-in' firms is currently total assets of £15 billion–£25 billion (subject to the proposals in this consultation). This covers the UK's G-SIBs, other systemically important firms (O-SIIs), and a number of medium-sized firms.

Bail-in enables a firm to be recapitalised by its own investors without the need, over a short period, to find a buyer for its business or to have to split up its operations. The Bank believes that UK firms above this balance sheet size are generally too large for there to be sufficient comfort that these options would be available. This also reflects the fact that many of the largest UK firms have complex and highly interconnected legal and operational structures.

Transfer: a transfer of the firm or of all or part of its business may be a credible and feasible resolution strategy for smaller and medium-sized firms which may nevertheless likely be significant enough in the event of their failure to meet the public interest test for use of resolution tools. Factors indicating that it may be possible to rely on transfer include size, the feasibility of rapid separation and transfer of critical functions, and likely attractiveness to some or all the firm's business and assets and liabilities to a private sector purchaser.

Firms with more than 40,000–80,000 transactional accounts can currently expect to be set a transfer strategy if their total assets are less than £15 billion–£25 billion and be required to hold additional loss-absorbing capacity. For the purpose of the policy, the Bank considers a transactional account to be one used at least nine times in the three months prior to an annual monitoring date. At a minimum, the resolution strategy would then involve the transfer of deposits that are preferred to senior unsecured claims in the creditor hierarchy (ie at least all FSCS-protected deposits plus the uncovered component of deposits from individuals and small and medium-sized enterprises (SMEs) from the firm, backed by good-quality assets, to a private sector purchaser or bridge bank (on a temporary basis pending onwards sale to a private sector purchaser). In the case of such partial transfer, the rest of the firm could be placed into insolvency or, if services were still required to be provided by the firm to the transferee, bank administration.

Modified insolvency: for firms whose impact on the resolution objectives is not likely to justify the use of resolution tools, the preferred resolution strategy is expected to be the bank or building society insolvency procedure.[25] If the level of FSCS eligible deposits does not support the use of the bank or building society insolvency procedure, the normal insolvency procedure under the Insolvency Act would be applied. Under the Banking Act modified insolvency procedure, the firm’s business and assets are sold or wound up after protected depositors have been paid by the FSCS or had their account transferred by the liquidator to another firm using FSCS funds. The proceeds of this liquidation are paid to creditors on their claims in the order that applies under a normal insolvency and once the costs of the insolvency have been deducted.

Box B: Improving depositor outcomes in bank or building society insolvency

The FSCS aims to pay out covered deposits within seven days of a bank or building society failing. Payments to individuals in more complex cases, such as trust accounts, will take longer. Customers who have FSCS eligible deposits would then receive compensation by cheque, which would then need to be cashed, or banked and cleared, before the customer could use the funds to buy goods and services. Even with compensation within FSCS coverage limits being paid within the seven-day limit, customers may need to open another current account to deposit their funds into. This may not be straightforward, especially for more vulnerable members of society. Thus, while an FSCS pay-out is under way, depositors are likely to temporarily lose access to their funds at the bank or building society in insolvency.

Following the conclusion of the MREL Review in August 2021, the Bank launched **work** to improve depositor outcomes in the event of bank or building society insolvency (IDOBI). The Bank, working with other authorities, industry, and other stakeholders, explored opportunities to minimise the disruption caused by insolvency to those depositors who are protected by the FSCS, but are reliant on their accounts with the failed firm for day-to-day banking and access to money.

FSCS has completed the development of a new digital payment portal for customers, achieving a major deliverable of the IDOBI project. This is a significant milestone in the work to improve depositor outcomes in bank or building society insolvency. As well as existing cheque payments, the digital payment portal can be used to facilitate electronic transfers into an alternative bank account for customers of the failed bank or building society, provided that the necessary information (eg, a valid email address to which to send a notification) is available in the appropriate form. This means, in some instances, FSCS may be able to offer digital payment as an alternative to a cheque and therefore faster compensation for these customers.

Not all customers will be able to receive compensation electronically; it might not, therefore, be possible or appropriate for the FSCS to use the portal in all cases of bank or building society insolvency. The digital payment portal is reliant on the failed firm having a suitable SCV file, with complete and up-to-date email addresses for its customers. The digital payment portal relies on accurate email addresses to contact the customers of failed firms and to verify their identity, alongside other customer data in the SCV file. Secondly, the digital payment portal requires customers to have alternative UK bank account details, in their name, or to be able to open a new bank account quickly in which to receive compensation. This will not be possible for all customers and may be even more difficult for vulnerable members of society or those with limited digital access (eg, the internet and email).

The ability to make compensation payments digitally reduces the time taken for customers to receive compensation, thereby reducing disruption to customers. Customers eligible for digital compensation can expect to have access to their covered deposit almost immediately from the point of the payment, rather than having to deposit a cheque and wait for their money to become available. This is subject to the customer successfully accessing the portal and passing identification and confirmation of payee checks.

Box C: Potential use of the new mechanism in practice

The new mechanism is set out in the Bank Resolution (Recapitalisation) Bill currently before Parliament. This box sets out how it could be used in practice, as proposed and should it complete the legislative process.

Before deciding to use a resolution power, and which resolution power or powers to use, the Bank must determine, having consulted the PRA, FCA and HMT, that such action is necessary to advance the statutory resolution objectives in the public interest. This assessment includes considering the size and nature of the critical functions of the failed firm, and conditions in the wider financial system at the time. The Bank must also consider whether the resolution objectives would be met to the same extent by placing the firm into the relevant statutory insolvency process. These considerations, and other safeguards, are in place to ensure authorities only take actions which may directly affect property rights including, in the case of the new mechanism, funds drawn down from the wider industry, if justified in the public interest.

The Bank is mindful that funds made available through the new mechanism are drawn down from the wider industry and it is important for the Bank to be satisfied that any use of them is necessary in the public interest. In line with established safeguards, the Bank will not utilise the new mechanism inappropriately to protect creditors from losses.. The modified insolvency procedure remains an important and essential mechanism for firms to exit the market if they fail and the conditions for using resolution powers are not met.

The new mechanism can only be used to support a resolution involving the use of a transfer stabilisation power. The Bank does not intend to take the new mechanism into account when setting the MREL that bail-in preferred resolution strategy firms must meet. And the Bank does not expect to rely on the mechanism for firms subject to a preferred bail-in resolution strategy which have reached their end-state MRELs. Such firms would have been required to maintain additional loss-absorbing capacity to ensure they can be recapitalised sufficiently to effect an orderly bail-in resolution, without a transfer to a third party.

In some cases, it is possible that a transfer to a willing third-party purchaser or to a Bank of England-owned bridge bank would be deemed better to satisfy the public interest in a resolution: the Bank must choose the resolution action that best meets the special resolution objectives taking into account the circumstances of the firm's failure.

The potential availability of the new mechanism is an important backstop which reduces the risk to public funds in those cases where additional loss-absorbing capacity may be needed to provide capital to support a transfer to a private sector purchaser or to capitalise a Bank of England-owned bridge bank.

If a transfer resolution is necessary in the public interest, it would (all else equal) be preferrable for the Bank to execute a transfer resolution without using the new mechanism if it were possible so to do while achieving the special resolution objectives, including the protection of public funds. SVB UK was successfully transferred to a willing purchaser without any need of additional capital resources, although this may not be the case in future transfer resolutions.

The new mechanism would be used only after the failed firm's regulatory capital had been written down. It would also be the Bank's intention to write down, or otherwise expose any additional MREL resources that are readily available for bail-in. In certain circumstances, having regard to the statutory resolution objectives, it may also be possible that other non-MREL liabilities that are eligible for bail-in could also be written down or converted to equity, as a precursor to a transfer. The 'No Creditor Worse Off' safeguard would continue to apply.

4: Revisions to reflect findings from the Resolvability Assessment Framework and lessons from policy implementation

This section sets out proposals developed in light of experience from MREL policy implementation. This includes findings from the assessment of firms under the RAF. The RAF is the Bank's approach to assessing whether firms operating in the UK are prepared for resolution. It requires firms to achieve three resolvability outcomes on an ongoing basis, including having adequate financial resources in the context of resolution. All MREL firms are subject to the RAF, with major UK firms also subject to a PRA requirement to provide a self-assessment of resolvability and disclose publicly a summary of it.[26] The Bank has carried out two assessments of the resolvability of the eight major UK firms and the **latest assessment** was published on 6 August 2024.

These proposals are intended to provide additional clarity and flexibility. They also seek to respond to some areas where firms and practitioners have sought further guidance. They relate to:

- the appropriate basis for measuring MREL eligible liabilities;
- transitional arrangements for growing firms; and
- assurance and information relating to MREL.

Appropriate basis for measuring MREL eligible liabilities

It is important there is clarity as to whether a firm has sufficient eligible resources to meet its MREL at all times. The Bank is therefore proposing to clarify in the MREL SoP that the accounting value of an eligible liability instrument should be used as the basis for measuring the value that can be used to meet a firm's MREL. This is intended to promote a consistent approach in the industry and ensure loss-absorbing capacity is sufficient to meet minimum requirements at all times.

Proposed approach

The Bank recognises there is some uncertainty among firms and market participants about the appropriate basis for measuring MREL eligible liabilities. This is reflected in current firm practices, with some firms using an accounting measure, while others use the instruments' nominal value.

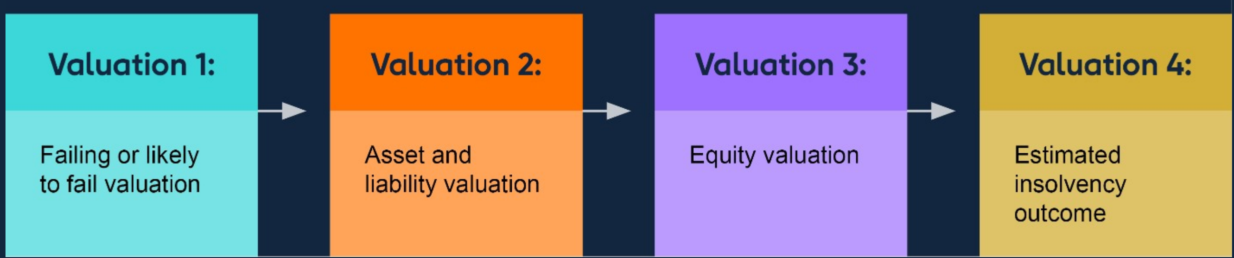
This is a subject where the Bank considers further clarity is important to ensure there is consistency among firms, that sufficient resources are maintained to meet MREL at all times, and to avoid any circumstances where the reported loss-absorbing capacity of a firm is revealed upon entry into resolution to have been materially overestimated.

The Bank has considered the appropriate measurement basis for MREL eligible liabilities, considering the different stages of a resolution. The Bank proposes to clarify in the MREL SoP that the full accounting value of an eligible liability instrument (ie including accrued interest and fair value hedge adjustments if applicable) should be used as the basis for measuring the value of an eligible liability instrument that can be used to meet a firm’s MREL. This is because the Bank considers the full accounting value of the eligible liability instrument, plus any amount removed from, or minus any amount added to, CET1 through the prudential filter for changes in own creditworthiness, to reflect the amount that would be available to absorb, and recapitalise for, potential losses in the event of write-down or conversion to equity.

The necessary monetary amount of equity and liabilities which the Bank determines should be written down, cancelled, or converted to equity is informed by profit and loss (P&L) and balance sheet forecasts. These forecasts, which are prepared based on accounting values, are developed as part of the statutory resolution valuations (Figure 4). Valuations in resolution support the effective use of resolution tools and are critical to ensuring that resolution action is sufficient to address the full extent of losses, and that risks to public funds are minimised.

The nominal value of instruments potentially subject to write down or conversion in resolution, including MREL eligible liabilities and liability accounted own funds, remains relevant for executing the resolution action. For example, it would be used when entering the amount of debt being written down in the systems of central securities depositories (CSDs/ICSDs). It would also be used to inform estimates of counterfactual outcomes in insolvency.

Figure 4: Overview of valuations process during a bail-in resolution



Wider regulatory framework and international context

The proposed approach is in general consistent with UK firms' existing practices for measurement and reporting of Tier 2 instruments.

In developing its proposed approach, the Bank has considered relevant international standards and the approach adopted in other jurisdictions. The FSB's TLAC Standard does not provide for a particular measurement basis for MREL eligible liabilities. The EBA published a **report** on 27 June 2024 in which it was highlighted that, according to their analysis, it appears the carrying amount would also be a relevant value to be considered as part of the resolution valuations. For that reason, the EBA will seek to consult in the near term on amendments of its current implementing technical standards (ITS) on reporting and disclosure for TLAC MREL instruments to complement the nominal value of instruments with the carrying value of the instruments.[27]

Impact and implementation considerations

The Bank has considered the potential impact of its proposed approach.

The Bank notes that using accounting value, rather than nominal value, may result in greater variability in the value of MREL eligible liabilities over time. The extent of those changes will depend on a firm's elected accounting treatment of the instrument under relevant accounting standards. It will also depend upon several other factors such as changes in interest rates, the firm's own credit standing, exchange rates and any associated prudential filters. Stylised examples on the measurement of MREL under different accounting treatments are set out in Annex 4. The Bank is reassured that the management of those changes in value would not be unduly burdensome because this is already a feature of Tier 2 debt that firms manage through their capital planning. There would be no additional costs for those firms that have already adopted this approach for eligible liability instruments.

The Bank's analysis, based on regulatory reporting as at end 2023, suggests that no MREL firm would fail to meet its MREL, plus risk-weighted capital and leverage buffers due to the proposed approach. Notwithstanding this, with a view to avoiding any unintended consequences for firms' funding arrangements, the Bank welcomes feedback on the proposal and does not intend to make this change in the MREL SoP effective until January 2026.

> **Q8. Do you agree with the Bank's rationale for adopting accounting value as the appropriate measurement basis for eligible liabilities? Are there other considerations which may have a material impact on firms that the Bank should consider before finalising its approach?**

Transitional arrangements for growing firms

In 2021, the Bank **introduced** several new arrangements to support firms who are transitioning towards meeting MREL above MCR. These included the introduction of a 'notice period' for firms approaching the indicative thresholds for a preferred resolution strategy involving the use of a stabilisation power, a stepped glide-path to reach end-state MREL that is ordinarily six years, and an option to apply for a 'flexible add-on' of up to a further two years. The Bank now also proposes to clarify that it may set transitional requirements or make other adjustments in the context of a merger or acquisition that may affect such firms' MREL or the MREL eligibility of existing liabilities.

The Bank recognises that in a merger or acquisition there may be case-specific issues relating to meeting MREL for the post-transaction combined group. For example, externally issued liabilities that would otherwise be eligible as MREL may be ineligible due to no longer being issued by the group's resolution entity following its acquisition. Such issues should persist for as short a time as practicable and firms should consider all actions available to remedy them, including engaging with investors through liability management exercises. Firms should actively consider MREL and broader resolvability considerations as part of preparing any merger or acquisition plans. Notwithstanding this, the Bank acknowledges that such actions may not always be immediate and considers that it may not be proportionate to require firms to meet MREL immediately on completion of the transaction.

The Bank therefore proposes to confirm in paragraph 9.13 of the MREL SoP that its existing ability to set further 'transitional' MRELs, or make other adjustments, applies in these situations. Whether to provide an adjustment, and if so the nature of the adjustment, would remain a case-specific judgement for the Bank.

In its 2021 MREL **policy statement**, the Bank noted that firms transitioning to a simple single-HoldCo/single OpCo structure on becoming a bail-in firm may encounter issues relating to an instrument's eligibility due to the consequences of previously OpCo-issued instruments not being easily migrated up to the new HoldCo and subsequently becoming excluded from MREL. The Bank stated that on request from a firm, it may make temporary, time-limited adjustments as to how, or when, the policy applies provided such adjustments do not materially affect the overall amount of loss-absorbing and recapitalisation capacity available in resolution. Consistent with the PRA's supervisory statement 3/21 **Non-systemic UK banks: The Prudential Regulation Authority's approach to new and growing banks**, the Bank notes that such firms are expected to plan for changes to their preferred resolution strategy well in advance and consider how they will transition to meet relevant policies, such as on MREL. The Bank considers the proposals set out in this consultation are consistent with the Bank's existing approach for such circumstances.

Assurance for meeting MREL policy

Firms and the Bank need to have sufficient confidence that instruments used to meet MREL meet all applicable eligibility criteria and would not create difficulties in resolution. This is important to ensure the Bank could effectively exercise its statutory powers of write-down and conversion into equity of ELIs in resolution.

As part of the second resolvability assessment of the major UK firms under the RAF, the Bank assessed firms' capabilities under the Adequate Financial Resources outcome. In light of the RAF findings, set out in more detail in section 4.2, of the Bank's **2024 resolvability assessment**, the Bank proposes to update its MREL SoP to emphasise and clarify that:

- firms should have effective and documented processes to ensure they are able to meet their MREL at all times. This includes ensuring all relevant instruments are eligible and the provision of complete and accurate reporting;
- firms should obtain an external legal opinion confirming the eligibility of each ELI at the time of issuance; and
- in the case of ELIs governed by non-UK law, an additional external legal opinion confirming that the Bank's decision to write down or convert into equity the ELI would be effective under the principal governing law will normally be required at the time of issuance.

Effective and documented processes

Firms are responsible for ensuring their ELIs always meet all applicable eligibility criteria. Information about these instruments should also be provided to the PRA and the Bank as the UK resolution authority to enable monitoring of firm's MREL resources and, if needed, to support the write-down and conversion of MREL instruments.

The Bank expects firms to maintain robust information in business as usual, and firms should consider and implement improvements to MRL003 and other regulatory returns through remediation and enhanced processes and controls. This is consistent with the PRA's broader **findings** around controls over data, governance, systems, and production related to regulatory reporting.

The Bank therefore proposes to revise the MREL SoP to make clear the importance of maintaining effective internal processes relating to instrument eligibility and regulatory reporting.

Independent legal advice

The Bank's current MREL SoP sets out that firms should obtain independent legal advice on an ELI's eligibility as MREL. In its recent assessment of major UK firms' capabilities as part of the second RAF assessment, the Bank found variations in the firms' interpretations of the expectations in the MREL SoP regarding the need to obtain independent legal advice on each ELI's eligibility. The Bank is therefore taking this opportunity to clarify that:

- UK firms and other entities in scope of MREL above MCR should obtain external legal advice on each liability's eligibility to be included in a firm's MREL resources. The advice should be obtained from an appropriately qualified independent, external legal advisor such as a law firm with expertise in this area and would normally be expected to take the form of a legal opinion which discusses each of the applicable eligibility criteria in turn, with reference to the terms of the specific issuance in question.
- Advice from in-house counsel is not considered to be 'independent' for this purpose. Further, it is not sufficient for the independent legal advice to be generic in nature, such as a non-issuance specific guide or checklist or the advice given in relation to a Medium-Term Notes programme (as opposed to a specific ELI issuance under the programme).
- The legal opinion is expected to be instrument-specific for both external and internal ELIs. This is important because during a resolution, write-down or conversion is exercised at the instrument level.
- For instruments governed by non-UK law, in addition to a legal opinion confirming the eligibility of the ELI, an additional legal opinion is expected to confirm that the Bank's decision to convert or write down the ELI would be effective under the principal governing law of the relevant instrument. Without this assurance, the Bank may judge that it is required under the BRR No. 2 Order to exclude the liability from a firm's MREL resources.[28]

This policy would continue to apply both to external and internal MREL eligible liabilities. Legal opinions should continue to be provided to the Bank upon request, without which the Bank may not be able to verify eligibility.

For firms that are already fully meeting these expectations, the Bank's proposed clarifications as to its expectations for obtaining independent legal advice should not result in additional costs. For firms that have to adapt their ELI issuance processes in order to meet these expectations by, for example, obtaining additional external legal opinions there may be some additional costs, which the Bank considers are unlikely to be material in the context of ELI issuance generally, especially for repeat issuers. The Bank also notes that, while the BRR No. 2 Order provisions referred to apply only to eligible liabilities, firms are subject to a similar legal opinion requirement, under the

Contractual Recognition Of Bail-in Part of the PRA's Rulebook, when issuing AT1 or Tier 2 capital instruments.

The Bank, therefore, considers this is a proportionate and effective approach to providing assurance on instrument eligibility. Firms remain responsible for ensuring that liabilities intended to qualify as MREL liabilities meet the applicable eligibility criteria. An alternative approach would be for the Bank to introduce a pre-issuance notification process similar to that undertaken by the PRA for certain categories of own funds instruments. However, the Bank believes the proposed approach offers a more proportionate and efficient means of achieving the outcome sought.

> **Q9. Do you agree with the proposed clarifications to the Bank's expectations regarding provision of legal advice and maintenance of effective internal processes relating to instrument eligibility and regulatory reporting?**

Miscellaneous

The Bank has also proposed several minor updates in the revised SoP (see Annex 2 to this consultation), including to support clarity and to keep references up to date. They are not intended to change the effect of the policy in practice.

Annexes

Annex 1: Abbreviations

AT1 – Additional Tier 1.

Bank – Bank of England.

BRR Bill – Bank Resolution (Recapitalisation) Bill.

BRR No. 2 Order – Bank Recovery and Resolution (No. 2) Order 2014 (2014 No. 3348).

CET1 – Common Equity Tier 1.

CPI – consumer prices index.

CRR – Capital Requirements Regulation – the assimilated UK law version of Regulation 575/2013/EU.

CSD – central securities depositories.

EBA – European Banking Authority.

ELI – eligible liabilities instrument.

FPC – Financial Policy Committee.

FSB – Financial Stability Board.

FSCS – Financial Services Compensation Scheme.

FSMA 2023 – Financial Services and Markets Act 2023.

GDP – gross domestic product.

GPP – general prior permission.

G-SIB – global systemically important bank.

G-SII – global systemically important institution.

HMT – His Majesty's Treasury.

IDOBI – improving depositor outcomes in bank or building society insolvency.

iMREL – internal minimum requirement for own funds and eligible liabilities.

ITS – implementing technical standards.

MCR – minimum capital requirements.

MPE – multiple point of entry.

MREL – minimum requirement for own funds and eligible liabilities.

MREL UKTS – MREL UK Technical Standards – the assimilated law version of European Commission Delegated Regulation (EU) 2016/1450.

OCI – other comprehensive income.

O-SII – other systemically important institution.

PRA – Prudential Regulation Authority.

RAF – Resolvability Assessment Framework.

SCV – single customer view.

SDDTs – Small Domestic Deposit Takers.

SoP – statement of policy.

SPE – single point of entry.

SVB – Silicon Valley Bank.

TLAC – total loss-absorbing capacity.

Annex 2: Proposed revised MREL SoP

Proposed revised MREL SoP

Annex 3: Destination table for UK CRR TLAC provisions

The following table sets out the UK CRR provisions in scope of the exercise described in Section 2. The table indicates whether the provision is proposed to be permanently revoked, whether it is already considered to exist elsewhere in the UK MREL regime, or whether it is proposed to be restated, with modifications, in the MREL SoP.[29]

The proposed treatment is indicated as follows:

- R – restated, with appropriate modifications, in proposed revised MREL SoP;
- E – not restated as substance already present in existing UK MREL regime; or
- NR – not restated as outcome not required or not aligned with UK MREL regime.

UK CRR Article	Proposed treatment	Proposed destination or relevant existing provision
General principles		
Article 6(1a)	NR	MREL SoP, paras 6.1, 7.4
General treatment		
Article 11(3a)	NR	MREL SoP, paras 6.1, 7.4
Consolidated calculation for G-SIIs with multiple resolution entities		
Article 12a	NR	MREL SoP, paras 6.8, 6.9
Methods of prudential consolidation		
Article 18(1) second paragraph	NR	MREL SoP, para 6.1, 7.5
Eligible liabilities items		
Article 72a(1)(a)	R	MREL SoP Annex 1, para 1
Article 72a(1)(b)	R	MREL SoP Annex 1, para 6(b)
Article 72a(2)(a–j)	E	MREL SoP, para 2.3; Banking Act section 48B(8)
Article 72a(2)k and l	E	MREL SoP, para 5.6
Eligible liabilities instruments		
Article 72b(1)	R	MREL SoP Annex 1, para 1
Article 72b(2)(a)	R	MREL SoP Annex 1, para 1(a)
Article 72b(2)(b)	R	MREL SoP Annex 1, para 1(b)
Article 72b(2)(c)	R	MREL SoP Annex 1, para 1(c)

Article 72b(2)(d)	R	MREL SoP Annex 1, para 1(d)
Article 72b(2)(e)	R	MREL SoP Annex 1, para 1(e)
Article 72b(2)(f)	R	MREL SoP Annex 1, para 1(f)
Article 72b(2)(g)	R	MREL SoP Annex 1, para 1(g)
Article 72b(2)(h)	R	MREL SoP Annex 1, para 1(h)
Article 72b(2)(i)	R	MREL SoP Annex 1, para 1(i)
Article 72b(2)(j)	R	MREL SoP Annex 1, para 1(j)
Article 72b(2)(k)	NR	Restriction not considered necessary taking into account other MREL SoP provisions relating to reductions of ELIs
Article 72b(2)(l)	R	MREL SoP Annex 1, para 1(k)
Article 72b(2)(m)	R	MREL SoP Annex 1, para 1(l)
Article 72b(2)(n)	R	MREL SoP Annex 1, para 1(m)
Article 72b(3)	NR	Resolution authority discretion not aligned with the Bank’s policy requiring subordination of ELIs
Article 72b(4)	NR	As above
Article 72b(5)	NR	As above
Article 72b(6)	NR	Requirement to consult PRA not considered necessary in the UK context
Article 72b(7)	NR	The Bank does not require a power to make additional technical standards
Amortisation of eligible liabilities instruments		
Article 72c(1)	R	MREL SoP Annex 1, para 6(a)
Article 72c(2)	E	MREL SoP, para 5.4
Article 72c(3)	E	MREL SoP, para 5.4
Article 72c(4)	E	MREL SoP, para 5.4
Consequences of the eligibility conditions ceasing to be met		
Article 72d (first para)	R	MREL SoP Annex 1, para 1

Article 72d (second para)	NR	Relates to use of resolution authority discretion that is not aligned with the Bank's policy requiring subordination of ELIs
Deductions from eligible liabilities items		
Article 72e(1)(a)	R	MREL SoP Annex 2, section 1, para 1(a)
Article 72e(1)(b)	R	MREL SoP Annex 2, section 1, para 1(b)
Article 72e(1)(c)	R	MREL SoP Annex 2, Section 1, para 1(c)
Article 72e(1)(d)	R	MREL SoP Annex 2, section 1, para 1(d)
Article 72e(2)	R	MREL SoP Annex 2, section 1, para 2
Article 72e(3)	NR	Relates to use of resolution authority discretion that is not aligned with the Bank's policy requiring subordination of ELIs
Article 72e(4)	R	MREL SoP Annex 2, section 1, para 3
Deductions of holdings of own eligible liabilities instruments		
Article 72f(a)	R	MREL SoP Annex 2, section 2
Article 72f(b)	R	MREL SoP Annex 2, section 2
Article 72f(c)	R	MREL SoP Annex 2, section 2
Deduction base for eligible liabilities items		
Article 72g	R	MREL SoP Annex 2, section 3
Deduction of holdings of eligible liabilities of other G-SII entities		
Article 72h(a)	R	MREL SoP Annex 2, section 4
Article 72h(b)	R	MREL SoP Annex 2, section 4
Deduction of eligible liabilities where the institution does not have a significant investment in G-SII entities		
Article 72i (1)(a)	R	MREL SoP Annex 2, section 5, para 1(a)
Article 72i (1)b	R	MREL SoP Annex 2, section 5, para 1(b)
Article 72i (2)	R	MREL SoP Annex 2, section 5, para 2
Article 72i (3)(a)	R	MREL SoP Annex 2, section 5, para 3(a)
Article 72i (3)(b)	R	MREL SoP Annex 2, section 5, para 3(b)

Article 72i (4)	R	MREL SoP Annex 2, section 5, para 4
Article 72i (5)	R	MREL SoP Annex 2, section 5, para 5
Trading book exception from deductions from eligible liabilities items		
Article 72j (1)(a)	R	MREL SoP Annex 2, section 6, para 1(a)
Article 72j (1)(b)	R	MREL SoP Annex 2, section 6, para 1(b)
Article 72j (2)	R	MREL SoP Annex 2, section 6, para 2
Article 72j (3)	R	MREL SoP Annex 2, section 6, para 3
Eligible liabilities		
Article 72k	R	MREL SoP Annex 2, section 1, para 1
Own funds and eligible liabilities		
Article 72l	E	Banking Act section 3A(4) and section 3A(4B)
Distributions on instruments		
Article 73(1)	R	MREL SoP, Annex 1, para 2
Article 73(2)	NR	The Bank's decision to grant permission for liabilities in relation to which an institution has the sole discretion to pay distributions in a form other than cash or own funds instruments as set out in MREL SoP, Annex 1, para 2 will be a case by case judgment
Article 73(3)	R	MREL SoP, Annex 1, para 3
Article 73(4)	R	MREL SoP, Annex 1, para 4
Article 73(5)(a)	R	MREL SoP, Annex 1, para 4
Article 73(5)(b)	R	MREL SoP, Annex 1 para 4
Article 73(6)	NR	Reporting and disclosure will be addressed separately (see '1: Introduction')
Article 73(7)	NR	MREL SoP, Annex 1, para 4
Deduction and maturity requirements for short positions		
Article 75	R	MREL SoP Annex 2, section 7
Index holdings of capital instruments		
Article 76(1)(a)	R	MREL SoP Annex 2, section 8, para 1(a)

Article 76(1)(b)	R	MREL SoP Annex 2, section 8, para 1(b)
Article 76(1)(c)	R	MREL SoP Annex 2, section 8, para 1(c)
Article 76(1)(d)	R	MREL SoP Annex 2, section 8, para 1(d)
Article 76(2)(a)	R	MREL SoP Annex 2, section 8, Para 2(a)
Article 76(2)(b)	R	MREL SoP Annex 2, section 8, Para 2(b)
Article 76(2)(c)	R	MREL SoP Annex 2, section 8, Para 2(c)
Article 76(3)	R	MREL SoP Annex 2, section 8, para 3
Article 76(4)(a)	NR	MREL SoP Annex 2, section 8, para 2
Article 76(4)(b)	NR	SoP Annex 2, section 8, para 4
Conditions for reducing own funds and eligible liabilities		
Article 77	NR	MREL SoP, para 5.5
Permission to reduce eligible liabilities instruments		
Article 78a	NR	MREL SoP, para 5.5
Temporary waiver from deduction from own funds and eligible liabilities		
Article 79	R	MREL SoP Annex 2, section 9
Assessment of compliance with conditions for own funds and eligible liabilities instruments		
Article 79a	R	MREL SoP, para 5.13
Requirements for own funds and eligible liabilities for G-SIIs		
Article 92a(1)(a)	R	MREL SoP, para 4.10(a)
Article 92a(1)(b)	R	MREL SoP, para 4.10(a)
Article 92a(2)(a)	NR	The Bank could consider using its power to set a ‘transitional’ MREL under MREL SoP, paragraph 9.13
Article 92a(2)(b)	NR	MREL SoP, para 9.6
Article 92a(2)(c)	NR	The Bank could consider using its power to set a ‘transitional’ MREL under MREL SoP, paragraph 9.13
Grandfathering of own funds instruments and eligible liabilities instruments		
Article 494b(1)	NR	Relates only to AT1 instruments

Article 494b(2)	NR	Relates only to Tier 2 instruments
Article 494b(3)	R	MREL SoP Annex 1, para 5(b)

Annex 4: Stylised examples on measurement of MREL

This annex sets out stylised balance sheet mechanics of changes in the value under different accounting treatments, assuming a rise in interest rates (scenarios 1 to 3) or a deterioration of a firm's creditworthiness (scenario 4). Simplifying assumptions have been set out for each scenario. The scenarios do not consider the treatment of any prudential filters.

Scenario 1: Eligible liability held at amortised cost with no designated hedge

Assumptions

At T=0:

- Firm issues a £100 million fixed-rate senior non-preferred debt instrument and holds it at amortised cost.
- Firm enters a pay floating, receive fixed swap arrangement to hedge interest rate risk.
- No designated fair value hedge.
- No change in firm's creditworthiness.

At T=1:

- Interest rates increase.

Balance sheet worked example 1

	Hedge inception (T=0)	Interest rate rise (T=1)
Assets:		
Cash	100	100
Loans	100	100
Derivative assets	0	0
Total assets	200	200
Liabilities:		
Deposits	70	70
Derivative liabilities	0	**10**
Senior non-preferred debt	100	100
Equity:		
Share capital	10	10
Retained earnings	20	**10**
Total equity and liabilities	200	200

Description

As interest rate increase, the mark-to-market on the swap is negative and as such it is recorded as a liability.

This has a negative impact on retained earnings, creating volatility in profit or loss (P/L).

Overall, the value of the eligible liability remains unchanged.

Scenario 2: Eligible liability held at amortised cost with a designated fair value hedge

Assumptions

At T=0:

- Firm issues a £100 million fixed-rate senior non-preferred debt instrument and holds it at amortised cost.

- Firm enters a pay floating, receive fixed swap arrangement to hedge interest rate risk.
- The firm applies fair value hedge accounting.
- No change in firm's creditworthiness.

At T=1:

- Interest rates increase.

Balance sheet worked example 2

	Hedge inception (T=0)	Interest rate rise (T=1)
Assets:		
Cash	100	100
Loans	100	100
Derivative assets	0	0
Total assets	200	200
Liabilities:		
Deposits	70	70
Derivative liabilities	0	**10**
Senior non-preferred debt	100	**90**
Equity:		
Share capital	10	10
Retained earnings	20	**20**
Total equity and liabilities	200	200

Description

As interest rates increase, the mark-to-market on the swap is negative and as such it is recorded as a liability, while the value of the eligible liability decreases.

Assuming 100% hedge effectiveness, the increase in derivative liabilities has a negative impact on retained earnings (-10) while the decrease in the value of the debt liability has an offsetting positive impact on retained earnings (+10), eliminating P/L volatility.

Scenario 3: Eligible liability held at fair value through profit and loss

Assumptions

At T=0:

- Firm issues a £100 million fixed-rate senior non-preferred debt instrument and holds it at fair value.
- Firm enters a pay floating, receive fixed swap arrangement to hedge interest rate risk.
- No designated fair value hedge.
- No change in firm's creditworthiness.

At T=1:

- Interest rates increase.

Balance sheet worked example

(same as scenario 2, balance sheet worked example 2)

Description

(same as scenario 2)

Scenario 4: Eligible liability held at fair value through profit and loss with a deterioration of the issuer's creditworthiness

Assumptions

At T=0:

- Firm issues a £100 million fixed-rate senior non-preferred debt instrument and holds it at fair value.
- Firm enters a pay floating, receive fixed swap arrangement to hedge interest rate risk.
- No designated fair value hedge.
- No change in interest rates.

At T=1:

- Firm's creditworthiness deteriorates.

Balance sheet worked example 3

	Hedge inception (T=0)	Interest rate rise (T=1)
Assets:		
Cash	100	100
Loans	100	100
Derivative assets	0	0
Total assets	200	200
Liabilities:		
Deposits	70	70
Derivative liabilities	0	0
Senior non-preferred debt	100	**90**
Equity:		
Share capital	10	10
Retained earnings	20	**30**
Total equity and liabilities	200	200

Description

As the firm's creditworthiness deteriorates, the value of the eligible liability decreases. This creates a gain (+10) in retained earnings via other comprehensive income (OCI).

The firm applies a prudential filter to the gain. As a result, the regulatory value of CET1 remains unchanged. For the purpose of this illustration, this is not demonstrated in the table above.

1. As set out in more detail in Section 2.
2. Applying the Financial Services and Markets Act 2000 model to the Capital Requirements Regulation, HM Treasury, 12 September 2024. See Section 3, 'Total loss absorbing capacity' section.
3. Article 92b, which applied in relation to material subsidiaries of non-UK G-SIIs, was revoked separately by HMT, effective from 1 January 2024. See Regulation 5(b) of the Financial Services and Markets Act 2023 (Commencement No. 1) Regulations 2023 (SI 2023/779).

4. Via the definition of 'bail-in liabilities' in section 3(1) of the Banking Act which excludes the 'excluded liabilities' listed in section 48B(8) of that Act.

5. The Bank proposes to replace UK CRR Article 72b(2)(f) and current MREL SoP paragraph 5.7 with revised MREL SoP Annex 1, paragraph 1(f).

6. Also aligns with section 9f of the FSB's **TLAC Term Sheet**.

7. Subject to meeting materiality thresholds and a limited 30-day exemption for holdings in the trading book, and in addition to deductions required for holdings of own ELIs and reciprocal cross-holdings.

8. Banking Act, Section 4.

9. The Bank is also proposing to clarify in the MREL SoP that the Banking Act definition of 'critical functions' encompasses activities, services or operations 'wherever carried out', if discontinuance would be likely to cause disruption of services that are essential to the economy of the UK, or to disrupt UK financial stability. This is in connection with the Bank's expectation to set internal MREL above MCR in the case of 'material' UK subsidiaries of overseas groups delivering critical functions in the United Kingdom. The effect of the Banking Act definition is that a subsidiary could be a 'material subsidiary' if it is incorporated in the United Kingdom and it is material to the delivery of critical functions by its group, even though the critical functions are carried out by other parts of the group from outside the United Kingdom.

10. See the **PRA's Strong and Simple framework** for more detail on the SDDT definition.

11. As defined in rule 3.1 of the SDDT Regime – General Application Part of the PRA Rulebook.

12. PRA consultation paper 8/24 – **Definition of Capital: restatement of CRR requirements in PRA Rulebook**, September 2024.

13. FSB's **TLAC Term Sheet**, November 2015, paragraph xii notes 'Authorities should place appropriate prudential restrictions on G-SIBs' and other internationally active banks' holdings of instruments issued by G-SIBs that are eligible to meet the Minimum TLAC requirement. To reduce the potential for a G-SIB resolution to spread contagion into the global banking system, it will be important to strongly disincentivise internationally active banks from holding TLAC issued by G-SIBs.'

14. The amount of CET1 that a firm is required to maintain (in sterling terms) in addition to the largest minimum of either the risk-weighted capital or leverage regimes. See PRA supervisory statement 16/16 – **The minimum requirement for own funds and eligible liabilities (MREL) – buffers and Threshold Conditions**, paragraph 2.B, December 2020.

15. These circumstances have been specified in paragraph 8.8 MREL SoP.

16. Paragraphs 8.8 and 8.9 of the MREL SoP.

17. The FSB's **TLAC Term Sheet** (2015), section 19, states that 'internal TLAC must be subject to write-down and/or conversion to equity by the relevant host authority at the point of non-viability, as determined by the host authority in line with the relevant legal framework, without entry of the subsidiary into statutory resolution proceedings. Any write down or conversion to equity of internal TLAC is subject to consent from the relevant authority in the jurisdiction of the relevant resolution entity'.

18. Limb (b) would give the Bank a contractual power to write down and/or convert to equity an internal AT1 or Tier 2 capital instrument if a resolution entity in the issuing material subsidiary's resolution group is subject to resolution proceedings in the UK or elsewhere. See paragraph 8.8 (b) of the MREL SoP.

19. MREL SoP, paragraph 8.11.

20. Transactional accounts are defined as accounts from which withdrawals have been made nine or more times within a three-month period.

21. Other measures considered include the consumer prices index (CPI) and the GDP Deflator measures. These result in

a slightly lower level of indexation compared to the nominal growth approach.

22. The Bank has used the 1 January 2022 effective date of the changes introduced following the conclusion of the MREL Review. The MREL Review concluded in December 2021. The Bank indexed the threshold using end-2023 GDP data, published by the ONS in March 2024.

23. The SCV is an electronic file prepared by a firm that contains individual depositor information necessary to prepare for a repayment of covered deposits by FSCS.

24. For more information see **The Bank of England's Approach to Assessing Resolvability**, statement of policy, May 2021.

25. The bank insolvency procedure is contained in the Banking Act and was applied to building societies subject to modifications by **The Building Societies (Insolvency and Special Administration) Order 2009 (SI 2009/805)**.

26. **Resolution Assessment, Prudential Regulation Authority Handbook and Rulebook**.

27. See paragraph 155 of **EBA report**.

28. The BRR No. 2 Order provides that an eligible liability 'must be excluded' from the MREL resources of a UK firm or other entity in scope of MREL if 'the instrument that creates the liability is governed by the law of a third country and the Bank is not satisfied that a decision by the Bank to convert or write down the liability would be effective under that law'. These liabilities are also referred to in paragraph 5.8 of the current MREL SoP which cross-refers to the EU Bank Recovery and Resolution Directive (BRRD) and signals the significance of legal opinions. Under the No. 2 Order, the Bank has no discretion on whether or not to exclude a liability on this ground. The only question is whether the Bank can, in the relevant circumstances, be 'satisfied' as to whether the conversion or write-down decision of the liability would be effective under the (non-UK) governing law. The Bank's view is that, in most cases, there will not be a reasonable basis for the Bank to be satisfied unless it is provided with a legal opinion confirming that the decision to write down or convert the liability would be effective under the principal governing law of the specific instrument and that such an opinion should be given by an appropriately qualified external and independent law firm with expertise in this area.

29. This consultation covers the Bank's proposed treatment of UK CRR provisions, as they relate to eligible liabilities only.