EXPLANATORY MEMORANDUM TO

THE AMENDMENTS OF THE LAW (RESOLUTION OF SILICON VALLEY BANK UK LIMITED) (NO. 2) ORDER 2023

2023 No. 694

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to make certain amendments to the law, in order to enable powers under Part 1 of the Banking Act 2009 (c. 1) to be used effectively in connection with the sale of Silicon Valley Bank UK Limited (SVB UK) to HSBC UK Bank plc (HSBC UK). Additionally, the instrument makes some minor amendments to the Amendments of the Law (Resolution of Silicon Valley Bank UK Limited) Order 2023 (2023/319).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 The Economic Secretary to the Treasury (Andrew Griffith) has made the following statement regarding Human Rights:

"In my view the provisions of the Amendments of the Law (Resolution of Silicon Valley Bank UK Limited) (No. 2) Order 2023 are compatible with the Convention rights".

6. Legislative Context

6.1 This instrument is made under Part 1 of the Banking Act 2009 (c. 1), which established a special resolution regime. The special resolution regime establishes a framework within which the Bank of England, the Prudential Regulation Authority (PRA), the Financial Conduct Authority (FCA), and the Treasury can effectively resolve failing banks and building societies, while protecting depositors, taxpayers and the wider economy. The tools available under the special resolution regime include the power to make orders to transfer shares or property, rights and liabilities of a failing firm to a private sector purchaser or a bridge bank (a company wholly owned by the Bank of England), to bail-in a failing firm, or to place a failing firm into temporary public ownership.

6.2 Specifically, this Order is made under section 75 (power to change law) of the Banking Act 2009, which provides the Treasury the power to amend primary and secondary legislation and common law, for the purpose of enabling effective use of powers under the special resolution regime in Part 1 of that Act.

6.3 This Order is related to the Amendments of the Law (Resolution of Silicon Valley Bank UK limited) Order 2023, which was also made under section 75 of the Banking Act 2009.

7. Policy background

What is being done and why?

7.1 On Monday 13th March 2023, the Bank of England exercised its stabilisation power under section 11 of the Banking Act 2009 to transfer the shares of SVB UK to a private sector purchaser - HSBC UK.

7.2 A transfer to a private sector purchaser involves the transfer of a failed bank's shares to a willing and appropriately authorised private sector purchaser without need for the consent of the failed bank, or its shareholders, customers or counterparties.

7.3 The Bank of England took this action, following a decision that the conditions for resolution were met, after consultation with the PRA, FCA and the Treasury. In reaching its decision, the Bank of England concluded that a resolution in the form of a private sector purchase of SVB UK by HSBC UK was in the public interest, and that the public interest would not be met to the same extent by the winding up of SVB UK.

7.4 The Bank of England reached its decision in line with the special resolution objectives, which include the continuity of banking services in the UK and of critical functions, protecting and enhancing public confidence in the stability of the UK financial system, and the protection of public funds.

7.5 Section 75 of the Banking Act 2009 allows the Treasury to amend the law in connection with the exercise of a stabilisation power, having regard to the special resolution objectives. The Treasury, in consultation with the Bank of England, is exercising its power under section 75 to amend the law to facilitate the resolution of SVB UK by the Bank of England, in line with the public interest, and to protect public funds, depositors and financial stability. These amendments are a necessary condition of the private sector purchase of SVB UK by HSBC UK and comprise a number of modifications to the ring-fencing regime.

7.6 The first modification, in the Amendments of the Law (Resolution of Silicon Valley Bank UK limited) Order 2023, was made on 13th March 2023. It allows HSBC UK to provide intra-group lending or funding to SVB UK on non-arm's length terms, enabling HSBC to provide liquidity to SVB UK and supporting the effective operation of SVB UK in the future.

7.7 The second modification, which is included in this Order, amends the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 (S.I. 2014/1960) (CAO) in connection with the application of ring-fencing rules. It provides an ongoing exemption for SVB UK from the ring-fencing regime beyond the existing four-year transition period set out in the ring-fencing regime, subject to certain conditions.

What are the current rules and what do they seek to achieve?

7.7.1 SVB UK has become a subsidiary of HSBC's ring-fenced bank. Under current rules and in accordance with article 11(2)(b) CAO, the ring-fencing regime provides a transition period in relation to a resolution scenario, meaning SVB UK has four years before it becomes subject to ring-fencing requirements. As a result of this existing provision in legislation, SVB UK is not currently subject to ring-fencing requirements. However, HSBC UK, now the parent company of SVB UK, remains subject to ring-fencing requirements. These rules are intended to help facilitate the acquisition of an entity by a ring-fenced body in a resolution scenario by providing time for the acquired entity to become compliant with the regime.

How are the current rules being changed and why is the change necessary?

7.7.2 This Order uses the Treasury's power under section 75 of the Banking Act 2009 to apply article 11(2)(b) CAO with modification in relation only to SVB UK and any subsidiary undertaking it may have from time to time. The modification means that, in this context, Article 11(2)(b) is to be read as if the words "not more than four years have passed since the date of that relevant event" were omitted, and in its place a provision that SVB UK and any subsidiaries it may have are exempt from the ring-fencing regime on an ongoing basis, subject to the conditions that:

(i) SVB UK remains below the core deposit level condition in article 12 CAO,

(ii) HSBC does not transfer its business to SVB UK (or any subsidiary undertakings it may have), other than "permitted business", and

(iii) SVB UK (or any subsidiary undertakings it may have) does not undertake any new business, other than "permitted business".

7.7.3 The first condition is intended to ensure that SVB UK (or its subsidiaries) will not be able to hold core deposits above the existing core deposits threshold in the ring-fencing regime, which is currently £25bn. The core deposits threshold is used to determine whether a bank becomes subject to the ring-fencing regime. "Core deposits" are defined in the ring-fencing regime and in practice cover deposits made by many retail and SME customers.

7.7.4 The second and third conditions together are intended to ensure that SVB UK (or its subsidiaries) will only be allowed to undertake new business activities that are closely connected with, directly related to, or of a similar nature to SVB UK's existing business at the time of the acquisition by HSBC UK.

7.7.5 This permits SVB UK to remain exempt from the ring-fencing rules, beyond the four-year transition period, subject to the above-mentioned conditions. This exemption was a necessary condition of the sale, ensuring that SVB UK can be a commercially viable and stand-alone business as part of the HSBC group. The wider HSBC group remains subject to the ring-fencing regime.

7.7.6 Alongside the conditions set out in this order, the PRA has a range of tools that it can use to ensure the effective supervision of HSBC and SVB UK and will continue to supervise HSBC in line with its objectives. This Order is not intended to restrict the existing powers of the PRA, or otherwise restrict the PRA's use of its existing powers in any respect.

Other changes

7.8 This instrument also makes several technical corrections to the Amendments of the Law (Resolution of Silicon Valley Bank UK Limited) Order 2023.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 Consolidation is not a relevant consideration for this instrument.

10. Consultation outcome

10.1 Due to the circumstances under which the Bank of England's powers have been exercised and the need to make urgent amendments to the law to facilitate exercise of those powers, no consultation has been carried out with regards to the making of this instrument.

11. Guidance

11.1 No guidance has been issued in relation to this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies, or on the public sector. The changes made by the Order are intended to allow wider measures taken under Part 1 of the Banking Act 2009 to operate effectively.

12.2 A full Impact Assessment has not been prepared for this instrument because the instrument is intended to allow measures taken under Part 1 of the Banking Act 2009 to operate effectively.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 Monitoring and review is not applicable for this instrument.

15. Contact

15.1 Salvatore Ferrara, Head of Ring-fencing Policy, HM Treasury: salvatore.ferrara@hmtreasury.gov.uk.

15.2 James Fairburn, Deputy Director for Financial Stability Strategy and Analysis, HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Economic Secretary to the Treasury (Andrew Griffith) can confirm that this Explanatory Memorandum meets the required standard.