EXPLANATORY MEMORANDUM TO

THE BANK RECOVERY AND RESOLUTION (AMENDMENT) REGULATIONS 2025

2025 No. 862

1. Introduction

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

2. Declaration

2.1 Emma Reynolds, Economic Secretary to the Treasury at His Majesty's Treasury, confirms that this Explanatory Memorandum meets the required standard.

2.2 George Barnes, Deputy Director for Banking Assets and Resolution Strategy at His Majesty's Treasury, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Prakash Parameshwar at His Majesty's Treasury (prakash.parameshwar@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This S.I. amends the Bank Recovery and Resolution (No. 2) Order 2014 (S.I. 2014/3348) – "the No. 2 Order". These amendments enable the Bank of England to take into account the potential availability of funds that could be required from the Financial Services Compensation Scheme under, and in the circumstances set out in, section 214E of the Financial Services and Markets Act 2000 (2000 c. 8) ("FSMA 2000") (as introduced by the Bank Resolution (Recapitalisation) Act 2025 (2025 c. 15)) when it sets the Minimum Requirement for own funds and Eligible Liabilities (MREL) for any bank or building society, or any group or group institution for which the Prudential Regulation Authority or the Financial Conduct Authority is the consolidating supervisor.

4.2 MREL is the layer of equity and debt in addition to regulatory capital requirements that firms of a certain size are required to hold to absorb losses and provide for recapitalisation in the event they fail. As such, these amendments allow the Bank of England to reduce MREL requirements or remove them altogether for banks or building societies where it judges that the Bank Resolution (Recapitalisation) Act 2025 could provide an additional or alternative source of funding to meet the costs of recapitalising and transferring those firms in a resolution.

4.3 This S.I. also updates the No. 2 Order to reflect the fact the UK is no longer in the European Union by requiring that, when setting the MREL for a firm, the Bank of England must take into account relevant assessment criteria set out in the Bank of

England's Statement of Policy on MREL, rather than such criteria in any technical standards set out in assimilated law. The Bank of England's statement of policy can be obtained at https://www.bankofengland.co.uk/paper/2021/the-boes-approach-to-setting-mrel-sop or in hard copy from the Bank of England, Threadneedle Street, London, EC2R 8AH.

4.4 This S.I. also removes the Bank of England's related power to make technical standards relating to the assessment criteria for determining MREL requirements, and clarifies that the Bank of England may set firms a transitional MREL requirement for a transitional period, and that it is not limited in the number of times it may do this in respect of any individual firm.

Where does the legislation extend to, and apply?

4.5 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

The MREL regime

5.1 The Bank of England is the UK's resolution authority, and responsible for operating the Special Resolution Regime – hereafter referred to as the "resolution regime". As part of administering this regime, the Bank of England requires certain banks and building societies to hold additional equity and debt that can be "bailed in" to absorb losses and provide for recapitalisation – otherwise known as MREL. The purpose of MREL policy is to ensure banks and building societies of a certain size have the necessary resources in place to support their own failure, ensuring the costs of failure do not fall to taxpayers.

Taking into account funds that could be required under the Bank Resolution (Recapitalisation) Act 2025 when setting MREL requirements

5.2 The No. 2 Order imposes a duty on the Bank of England to exercise its powers under section 3A of the Banking Act 2009 (2009 c. 1) (to remove impediments to the exercise of stabilisation powers) by ensuring firms are set an MREL requirement. A firm's MREL requirements are linked to the preferred resolution strategy that is set for it by the Bank of England. As explained further below, a firm's MREL requirements currently depend on whether a firm is set a strategy of: "bail-in", whereby equity and debt holders are written down in order to absorb losses and provide for recapitalisation; or "transfer", whereby the firm is expected to be sold to a commercial buyer.

5.3 The Bank Resolution (Recapitalisation) Act 2025 introduced a new mechanism (in new section 214E of FSMA 2000) to allow the Bank of England to use funds provided by the Financial Services Compensation Scheme to recapitalise a failing banking institution and cover certain costs associated with its resolution and the achievement of its sale in whole or in part. On 15th October 2024, the Bank of England consulted on some proposed changes to its MREL policy, including its approach to thresholds for setting resolution strategies. Under the proposals consulted on, the Bank of England would remove the MREL requirements associated with being set a transfer

strategy, on the basis that funds to facilitate that strategy may be available through the Bank Resolution (Recapitalisation) Act 2025 instead. This approach was confirmed in the Bank of England's updated MREL Statement of Policy, published on 15 July 2025.

5.4 This S.I. gives effect to this proposed approach by amending the No. 2 Order, to allow the Bank of England to take into account that funds may be available under, and in the circumstances set out in, section 214E of FSMA 2000 when it sets firms' MREL requirements. These changes should postpone the point at which firms of a certain size become subject to the costs associated with MREL and, in some cases, remove those costs altogether.

Transitional MREL requirements

5.5 Following the Bank of England's review of MREL policy in 2021 – the "2021 MREL review" (the outcome of which can be found at https://www.bankofengland.co.uk/paper/2021/boes-review-of-its-approach-to-setting-mrel-consultation-paper-july-2021) – the Bank of England introduced a "glide-path", to smooth the transition for growing firms to build up their MREL resources until such time as they would be required to meet their "end-state" MREL. For firms on the glide-path, the Bank of England has set a transitional MREL requirement (meaning a requirement for the firm to hold a lower amount of MREL than the end-state amount the firm would be required to hold), for a transitional period. This S.I. makes provision to include transitional MREL requirements within the scope of the No. 2 Order.

Amendments following EU exit

5.6 Further, this S.I. replaces the requirement for the Bank of England's determination of a firm's MREL requirement to be based on relevant assessment criteria specified in regulatory technical standards set out in assimilated law; it replaces this with a requirement for the determination to be based on the Bank of England's Statement of Policy on MREL, issued pursuant to section 3B(9) of the Banking Act 2009. This substitution has been made because the UK is no longer a member of the European Union and therefore is no longer subject to Commission Regulations.

5.7 Finally, for the same reason, the S.I. removes the Bank of England's power to make technical standards relating to assessment criteria upon which it must base its determination of MREL requirements – assessment criteria would instead be set out in the Statement of Policy on MREL. The S.I. also makes equivalent changes for resolution groups and group institutions so that the MREL regime can be applied in the same way to them as it is for firms with a simpler corporate structure.

5.8 This S.I. is made under section 3(1) of the Financial Services and Markets Act 2023, on the basis that the Treasury considers the amendments it makes to be necessary or desirable in connection with the protection and enhancement of the integrity or stability of the financial system operating in the United Kingdom (in accordance with section 3(2)(a) of the Financial Services and Markets Act 2023).

What was the previous policy, how is this different?

5.9 Under the Bank of England's previous policy, firms above an indicative total assets threshold of £15 – 25 billion are likely to be set a bail-in strategy and required to hold additional MREL above minimum capital requirements to facilitate that strategy. In the event of their failure, the holders of the MREL bonds could have these instruments "bailed in", which effectively means the debt instruments are converted into equity

such that the bondholders become the new shareholders of the bank (with the previous shareholders having been written down).

5.10 Firms above an indicative threshold of 40,000 – 80,000 transactional accounts ("active" accounts that have been used for nine or more transactions over a three-month period) were expected to be set a transfer strategy if their balance sheet does not meet the £15 – 25 billion indicative threshold for a bail-in strategy. In the event of their failure, the Bank of England's preferred approach to resolving such firms would be to transfer them to a private sector purchaser or, in the event a buyer could not be secured immediately, to a Bank-of-England-owned bridge bank until such time as a buyer could be found. Under this policy, transfer strategy firms are required to hold additional MREL above minimum capital requirements to facilitate that strategy.

5.11 As explained above, the Bank of England's consultation (published on 15 October 2024) proposed a change to the way MREL is set for firms with a transfer strategy. This change, along with other revisions to the MREL Statement of Policy, was subsequently confirmed by the Bank in its updated MREL Statement of Policy, published on 15 July 2025. This S.I. gives effect to this proposed change by allowing the Bank of England to take into account the availability of funds that could be required under the mechanism introduced by the Bank Resolution (Recapitalisation) Act 2025 when it sets MREL requirements for firms. Without this change, the Bank of England would not be able to take the potential availability of funds under this Act into account.

6. Legislative and Legal Context

How has the law changed?

6.1 Regulation 2(3)(a) of this S.I. makes provision relating to the Bank's ability to set a transitional MREL requirement for relevant institutions by amending Article 123 of the No. 2 Order (determination of minimum requirement). Article 123 of the No. 2 Order sets out the basis upon which the Bank can make a determination of full ("end-state") MREL requirements in respect of a financial institution. In particular, the assessment criteria which apply to end-state MREL requirements are set out in Article 123(6). Regulation 2(3)(a) inserts new paragraphs (1A) to (1D) into Article 123 which make provision for the Bank to set a transitional MREL requirement for a transitional period. Regulation 2(2) makes a related amendment in Article 121 (interpretation) to the definition of "minimum requirement for own funds and eligible liabilities", to include transitional MREL within that definition.

6.2 For the reasons set out above, regulation 2(3)(b) makes amendments to Article 123(6) of the No. 2 Order to ensure that the Bank can take account of the potential availability of recapitalisation payments under section 214E (recapitalisation payments) of the Financial Services and Markets Act 2000 (c. 29) when making an MREL determination, and to require the Bank to base any MREL determination on the criteria specified in its Statement of Policy on its approach to setting a minimum requirement for own funds and eligible liabilities issued under section 3B(9) of the Banking Act 2009 (in addition to other factors already set out in Article 123(6)).

6.3 Regulation 2(3)(c) omits Article 123(8) of the No. 2 Order which provides the Bank's power to make technical standards relating to the assessment criteria upon which it must base a determination of MREL requirements. This change in the law reflects the fact the Bank of England no longer requires a power to make technical standards, as the contents of such standards will now instead be set out in its Statement of Policy on MREL taken together with the No. 2 Order.

6.4 Regulation 2(4) and (5) makes equivalent amendments to Chapter 2 of the No. 2 Order, which sets out the Bank's duties in relation to the determination of MREL requirements for relevant groups where the PRA or FCA is the consolidating supervisor. Regulation 2(4) amends the definition of "minimum requirement" and "minimum consolidated requirement" in Article 125 of the No. 2 Order (interpretation for Chapter 2) so that those definitions include the transitional MREL requirements for groups. Regulation 2(5) amends Article 126 of the No. 2 Order to include the main provisions relating to transitional minimum consolidated requirements for groups.

6.5 Regulation 2(6) makes equivalent amendments to Chapter 4 of the No. 2 Order, which relates to the determination of MREL requirements for group institutions where the PRA or FCA is the consolidating supervisor. Regulation 2(6) amends Article 135 (determination of minimum requirement for group institutions) to include transitional minimum requirements. Article 133 of the No. 2 Order (interpretation for Chapter 4) provides that, in Chapter 4 of the No. 2 Order, the terms "minimum requirement" and minimum consolidated requirement" have the same meanings as given in Chapter 2; accordingly, the amendment made by regulation 2(5) will read across to those terms as they appear in Chapter 4 of the No. 2 Order.

Why was this approach taken to change the law?

6.6 This approach was taken because the No. 2 Order is where the Bank of England's duty to set MREL requirements for firms is set out. It was therefore considered to be the most suitable vehicle for amending the law to allow the Bank of England to be able to take into account potential recapitalisation payments under the mechanism in the Bank Resolution (Recapitalisation) Act 2025 when setting MREL requirements for firms.

6.7 For the same reason, it was considered the appropriate vehicle for making amendments following EU exit, namely the substitution of technical standards under any Commission Regulation with the Bank of England's Statement of Policy on MREL for making assessments to determine a firm's MREL requirement. The amendments made through this S.I. are made using the power to make transitional amendments in section 3 of the Financial Services and Markets Act 2023, as the No. 2 Order is assimilated law relating to financial services as set out in Schedule 1 of that Act.

7. Consultation

Summary of consultation outcome and methodology

7.1 On 15 October 2024, the Bank of England consulted on changes to its MREL policy. This included proposals to take into account that funds may be available under, and in the circumstances set out in, the Bank Resolution (Recapitalisation) Act 2025 when setting MREL requirements for firms, as set out in this S.I. The Bank of England's response to this consultation was published on 15 July 2025 (https://www.bankofengland.co.uk/paper/2025/ps/amendments-to-the-boes-approach-to-setting-a-mrel).

7.2 The statutory Banking Liaison Panel was also consulted via written correspondence on a draft text of this S.I. This panel consists of a cross-section of industry and regulatory stakeholders and their feedback has been considered. By virtue of this consultation, the PRA and the FCA have also been consulted as per the requirement under section 3(6) of the Financial Services and Markets Act 2023.

8. Applicable Guidance

8.1 Not applicable.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because neither this S.I. nor the No. 2 Order it amends impose any direct costs on firms. Rather, they impose duties upon and grant powers to the Bank of England.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this S.I. does not impose any direct costs or burdens on businesses, charities or voluntary bodies. This S.I. amends the No. 2 Order, which imposes duties upon and grants powers to the Bank of England. Any subsequent impact on businesses would arise as a result of the Bank of England's decision-making pursuant to those duties and powers.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the Bank of England is already required to set resolution strategies and MREL requirements under existing policy and legislation. The changes resulting from this S.I. may alter how those strategies are determined and the calibration of MREL requirements, but they are not expected to alter the burdens on the Bank of England in undertaking those activities.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that, while there are no requirements to review this legislation, the government will keep it under review alongside the wider policy it facilitates on an ongoing basis.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Economic Secretary to the Treasury, Emma Reynolds MP, has made the following statement: "It is not proportionate to include a statutory review clause in this instrument because it does not introduce new ongoing regulatory burdens on businesses or have any direct impact on existing regulatory burdens.".

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

"In my view the provisions of the Bank Recovery and Resolution (Amendment) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).