EXPLANATORY MEMORANDUM TO

THE SILICON VALLEY BANK UK LIMITED COMPENSATION ORDER 2024

2024 No. [XXXX]

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 Tulip Siddiq MP, the Economic Secretary to the Treasury, confirms that this Explanatory Memorandum meets the required standard.

2.2 Mario Pisani, Deputy Director for Financial Stability at HM Treasury, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 HM Treasury's Contingency Planning Unit (contingency_planning_unit@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 The purpose of the instrument is to confirm in law that no compensation is due to the persons who held shares in Silicon Valley Bank UK Limited (SVB UK) before those shares were transferred to HSBC UK Bank plc on 13th March 2023 as part of the resolution of SVB UK. This determination has been made by HM Treasury following consultation with the Bank of England, who undertook a provisional valuation of SVB UK prior to its resolution and subsequently commissioned an independent valuation of SVB UK which confirmed the provisional valuation.

Where does the legislation extend to, and apply?

4.2 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

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

5. Policy Context

What is being done and why?

5.1 In early March 2023, Silicon Valley Bank experienced rapid deposit outflows and quickly became unsustainable as a going concern. This stress experienced by the US parent entity transmitted to the UK subsidiary, which also underwent a customer run. On Friday 10 March, the Bank of England – acting as resolution authority – declared that it was going to place the UK entity into a Bank Insolvency Procedure, absent any

further meaningful information. Over the course of the weekend, a private sector purchaser was able to be found for the firm.

5.2 On Monday 13 March 2023, the Bank of England exercised its power under section 11 of the Banking Act 2009 to transfer the shares of SVB UK to HSBC UK Bank plc. The Bank of England exercised its power after consulting the PRA, FCA and HM Treasury and determining that the resolution conditions set out in section 7 of the Banking Act 2009 had been met.

5.3 HM Treasury is required to make a Compensation Scheme Order where the private sector purchaser option has been exercised, in order to facilitate any compensation due to shareholders. The Compensation Scheme Order is a mechanism by which HM Treasury can create a scheme to compensate affected shareholders, in the event that any compensation is due.

5.4 HM Treasury has consulted the Bank of England, which discharged its statutory duty to make a provisional valuation of SVB UK prior to its resolution, where it considers that the urgency of the case makes it appropriate, and then to obtain an ex-post independent valuation of SVB UK. The valuations concluded that no compensation is due to shareholders of SVB UK.

5.5 More information about the resolution of Silicon Valley Bank UK, including the valuations undertaken by the Bank and the independent valuer (Grant Thornton), is available on the Bank of England's website.[1]

What was the previous policy, how is this different?

5.6 Section 50 of the Banking Act 2009 requires HM Treasury to make a Compensation Scheme Order, following the exercise of the private sector purchaser option by the Bank of England under the Banking Act 2009 (see section 6.1 which provides an outline of the special resolution regime).

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument is made under Part 1 of the Banking Act 2009 (c.1), which establishes a special resolution regime. The special resolution regime sets out a framework within which the Bank of England 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 The Bank of England previously exercised its power under section 11 of the Banking Act 2009 ("the private sector purchaser option") to transfer the shares of SVB UK to HSBC UK Bank plc.

6.3 In relation to this transfer, two Statutory Instruments were made under section 75 of the Banking Act 2009, which allows the law to be modified, where necessary to enable the effective use of the powers in Part 1. These are The Amendments of the Law (Resolution of Silicon Valley Bank UK Limited) Order 2023 (S.I. 2023/319) and

[1] https://www.bankofengland.co.uk/paper/2024/report-under-section-79a-of-the-banking-act-2009-on-the-transfer-of-svb-uk-to-hsbc-uk

The Amendments of the Law (Resolution of Silicon Valley Bank UK Limited) (No.2) Order 2023 (S.I. 2023/694).

6.4 The special resolution regime sets out a process by which the need to compensate interested parties can be addressed (sections 49-62 of the Banking Act 2009). There is a requirement for HM Treasury to make a Compensation Scheme Order where the "private sector purchaser" option has been exercised (see paragraph 5.3).

6.5 The law is only being changed insofar as HM Treasury is making a determination that no compensation is due to the persons who held shares in SVB UK before those shares were transferred to HSBC UK Bank plc on 13th March 2023, following the exercise of the private sector purchaser option by the Bank of England.

Why was this approach taken to change the law?

6.6 This approach is in line with the requirements of the Banking Act 2009.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation took place. Consultation was not applicable as the instrument was made to satisfy a legal requirement and does not relate to an open policy question.

8. Applicable Guidance

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

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 it will have no impact on businesses, charities or voluntary bodies. In particular, the Compensation Scheme Order will not make changes to how the special resolution regime operates, therefore firms do not need to take any action.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because they do not need to take any action as a result of the instrument.

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 instrument does not relate to the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that no monitoring is required as there is no impact on businesses.

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 has made the following statement: "Monitoring and review is not applicable for this instrument as there is no impact on businesses."

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 Silicon Valley Bank UK Limited Compensation Scheme Order 2024 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.