

**EXPLANATORY MEMORANDUM TO**  
**THE AMENDMENTS OF THE LAW (RESOLUTION OF SILICON VALLEY BANK**  
**UK LIMITED) ORDER 2023**

**2023 No. 319**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**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 to be used effectively in connection with the sale of Silicon Valley Bank UK Limited to HSBC UK Bank plc.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The Committee is asked to note that the Treasury have determined that it is necessary to make this Order without a draft of it having been approved by a resolution of each House of Parliament, in accordance with section 75(8) of the Banking Act 2009. Accordingly it is made under the 28-day affirmative procedure.
- 3.2 The Treasury further considered it necessary to make the Order before laying it before Parliament, and gave notification and explanation of this to the Speakers of both Houses.
- 3.3 In connection with the conclusions in paragraphs 3.1 and 3.2, the Treasury note that the Order needed to be in force in connection with the resolution of Silicon Valley Bank UK Limited under the Banking Act 2009 and in particular that it needed to come into force alongside the share transfer instrument, made by the Bank of England in exercise of its powers under the Banking Act 2009, which itself needed to come into force before business hours on Monday 13 March 2023.

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

**5. European Convention on Human Rights**

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

“In my view the provisions of the Amendments to Law (Resolution of Silicon Valley Bank UK Limited) 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, 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 business 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 of the Banking Act 2009, which allows primary and secondary legislation and common law to be modified, where it is necessary to do so to enable the effective use of the powers in Part 1.

## **7. Policy background**

### *What is being done and why?*

- 7.1 On Monday 13 March, the Bank of England exercised its power under section 11 of the Banking Act 2009 to transfer the shares of Silicon Valley Bank UK Limited to HSBC UK. The Bank of England exercised its power after consulting the PRA, FCA and the Treasury and determining that it was necessary to make the transfer, having regard to the public interest in the matters set out in section 7 of the Banking Act 2009.
- 7.2 In order to facilitate the Bank of England's exercise of this power, it has been determined that a number of amendments to the law are required. These amendments are judged to be necessary in order to ensure that the transfer of shares from SVB Bank Ltd to HSBC UK is effective and executed in a way that best meets the public interest.
- 7.3 The Order amends the law to make that transfer effective by:
- Amending the Financial Services and Markets Act 2000 (Excluded and Prohibited Activities) Order 2014 in connection with the application of ring-fencing rules, permitting the provision of liquidity from HSBC UK Bank plc to Silicon Valley Bank UK Limited.
  - Making modifications to certain sections of the Financial Services and Markets Act 2000 with respect to PRA and FCA rule-making powers and duties to consult on rule changes, in relation to Silicon Valley Bank UK Limited.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 Consolidation is not a relevant consideration for this instrument.

## **10. Consultation outcome**

- 10.1 Due to the circumstances and urgency 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.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 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: 07815 991204 or email: [salvatore.ferrara@hmtreasury.gov.uk](mailto:salvatore.ferrara@hmtreasury.gov.uk).
- 15.2 James Fairburn, Deputy Director for Financial Stability, HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Economic Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.