

EXPLANATORY MEMORANDUM TO
THE SECURITISATION REGULATIONS 2018
2018 No. 1288

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument gives effect to Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulation (EC) No 1060/2009 and (EU) No 648/2012 (“the Securitisation Regulation”). These Regulations also make changes to UK law to ensure that the Securitisation Regulation is fully effective and enforceable in the UK.
- 2.2 The Securitisation Regulation applies in the UK from 1 January 2019. Although the Securitisation Regulation is directly applicable, HM Treasury must make legislative changes to ensure processes are in place relating to the supervision of compliance with the new rules and that the Financial Conduct Authority (FCA) and the Prudential Regulatory Authority (PRA) as designated competent authorities have the necessary powers to fulfil their duties under the Securitisation Regulation from the date that it applies.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is 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 Financial Services and Markets Act 2000 (Securitisations) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument gives effect to the Securitisation Regulation, which harmonises and reforms existing EU rules on due diligence, risk retention, disclosure and credit granting (“the general requirements”) which will apply in a uniform way to all securitisations, securitising entities and all types of EU regulated institutional investors.
- 6.2 The Securitisation Regulation also creates a new framework for simple, transparent and standardised (STS) long-term securitisations and asset-backed commercial paper programmes.
- 6.3 In order to make UK law compatible with the Securitisation Regulation, and to ensure that the Securitisation Regulation is fully effective and enforceable in the UK, this instrument designates the FCA and the PRA as competent authorities under the Securitisation Regulation. It also amends the Financial Services and Markets Act 2000 (c.8) and other UK legislation to both create the new supervisory, investigative and sanctioning powers required by the Securitisation Regulation and ensure UK legislation is compatible with the Regulation.
- 6.4 The instrument follows an approach consistent with existing enforcement regimes elsewhere in the sector.
- 6.5 An Explanatory Memorandum relating to the proposal for the Securitisation Regulation was sent to both EU Parliamentary scrutiny committees on 13 October 2015. It was cleared by the House of Lords EU Committee on 20 July 2017 and by the House of Commons European Scrutiny Committee on 23 February 2017.

7. Policy background

What is being done and why?

- 7.1 Securitisation refers to the process of packaging and converting loans into securities, which can then be sold to investors. Through this process, banks can transfer some of the risk attached to these assets to other banks or long-term investors, freeing up their capital that was set aside to cover risk to generate new lending.
- 7.2 The aim of the EU proposal is to simplify the current framework for all securitisations by replacing the various rules on the process with a uniform regime, and to create a framework to identify simple, transparent and standardised securitisations with the final aim to increase investor confidence and restore market activity following the 2008 financial crisis.
- 7.3 The new rules represent a significant reform of securitisation regulation in the EU which include:
- harmonising and reforming existing rules on due diligence, risk retention, disclosure and credit-granting which will apply in a uniform way to all securitisations, securitising entities and all types of EU regulated institutional investors;
 - creating a new framework for simple, transparent and standardised (STS) securitisations and asset-backed commercial paper programmes; and
 - implementing the revised securitisation framework from Basel international standards, including hierarchy of approaches and risk weights and

recalibrating the prudential treatment for credit institutions investing in STS securitisations.

- 7.4 This new framework regulates the activities of the main parties taking part in a securitisation including:
- the *original lender* which is any entity that has trade receivables, or ‘exposures’ (e.g. a car company) and wishes to securitise them;
 - a *sponsor* which is a bank or an investment firm that establishes a securitisation programme by purchasing exposures from another entity (e.g. the original lender);
 - the *originator* which is an entity such as a bank or insurance company that initiates securitisation transactions, either by pooling income-producing assets and selling them to an SSPE, or by purchasing another party’s exposures for its own account and then securitising them;
 - the *Securitisation Special Purpose Entity (SSPE)* is a legal entity other than an originator or sponsor established to isolate or securitise assets and sell them to the market (such that the SSPE is the ‘issuer’). SSPEs have no personnel, physical location, and no additional purpose.

7.5 The Securitisation Regulation is directly applicable EU law which will come into force on 1 January 2019.

7.6 EU Regulations are binding in domestic law in their entirety and directly applicable in all Member States. However, the UK is obliged to ensure that its domestic law is compatible with such EU Regulations, and that such EU Regulations are enforceable within the UK.

7.7 *Designation of competent authorities*

The PRA is designated as the competent authority for PRA authorised persons with respect to the general requirements of securitisations (due diligence, risk retention, disclosure, credit granting).

The FCA is designated as the competent authority for the supervision of these general requirements for originators, original lenders and securitisation special purpose entities (SSPEs) established in the UK and not authorised by the PRA.

The FCA is also designated as the competent authority for the compliance with the relevant requirements of the Securitisation Regulation for or concerning:

- sellers of a securitisation position;
- restrictions on establishing SSPEs in a third country;
- the simple, transparent and standardised (STS) requirements;
- the authorisation of third party verifiers (TPVs) established in the UK

7.8 *Powers of competent authorities*

The relevant regulator is given powers, when a relevant requirement is breached, to:

- impose financial penalties on persons involved in securitisations as original lenders, originators, sponsors, SSPEs, sellers, TPVs etc but not authorised under FSMA 2000 (securitisation regulation unauthorised persons);
- make statements in relation to a contravention by such persons;
- publicly censure such persons;

- impose a temporary ban preventing an originator, sponsor or SSPE from making an STS notification (which notifies ESMA where a securitisation meets the STS requirements);
 - temporarily prohibit any individual in contravention of or knowingly concerned in a contravention of a Securitisation Regulation requirement from exercising management functions in an originator, sponsor or SSPE;
 - require an originator, sponsor or SSPE to take reasonable care that no individual exercises management functions in contravention of a temporary prohibition imposed on them.
- 7.9 Originators, sponsors, or SSPEs may use the services of a regulated third-party entity to check whether a securitisation complies with the STS criteria. The Securitisation Regulation contains criteria for the authorisation of these third-party verifiers (TPVs). The instrument provides for the authorisation, the cancellation of the authorisation and the temporary withdrawal of the authorisation of TPVs.
- 7.10 The instrument requires that the FCA maintain and update a register of all persons it has authorised as TPVs.
- 7.11 FSMA 2000 is modified and amended to give effect to the requirements of the Securitisation Regulation and the provisions of the Regulations and secondary legislation is modified and consequentially amended.
- 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**
- 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 HM Treasury does not propose to consolidate any legislation in consequence of this instrument.
- 10. Consultation outcome**
- 10.1 The Securitisation Regulation is a directly applicable EU Regulation with requirements and obligations that apply without implementation in domestic law. The domestic legislative requirement is therefore to ensure that existing domestic legislation is consistent with the Securitisation Regulation. No formal consultation was necessary as the changes to domestic legislation required are minor, and the enforcement approach taken is in line with existing enforcement regimes elsewhere in the sector.
- 10.2 HM Treasury has consulted with the designated competent authorities extensively in the preparation of this instrument.
- 11. Guidance**
- 11.1 It is not considered necessary for HM Treasury to issue specific guidance in connection with this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. Any significant impact stemming from the enforcement of these powers is a result of the Securitisation Regulation itself, not from the amendments to UK legislation.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the instrument only amends the supervisory framework in a limited and precedented way, and does not itself significantly impact individuals or business.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise the effects of the instrument in relation to small business.

14. Monitoring & review

- 14.1 A statutory review clause is included in the instrument. This instrument will be reviewed, and a report published setting out the conclusions of the review within five years of this instrument coming into force.

15. Contact

- 15.1 Gabriella Astrini at HM Treasury. Telephone: 020 7270 2488 or email: gabriella.astrini@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Clare Bolingford, Deputy Director for the Securities, Markets and Banking Team at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Economic Secretary to the Treasury at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.