

Title: UK Implementation of the EU Regulation on Short Selling and certain aspects of credit default PIR No: Original IA/RPC No: HMT 1203 Lead department or agency: HM Treasury Other departments or agencies: Contact for enquiries: Samuel Hill	Post Implementation Review
	Date: 06/02/2018
	Type of regulation: EU
	Type of review: Statutory
	Date measure came into force: 01/11/2012
	Recommendation: Keep
	RPC Opinion: N/A

1. What were the policy objectives of the measure? (Maximum 5 lines)

Currently, the Short Selling Regulation (SSR) is being reviewed by the European Commission. The European Securities and Markets Authority (ESMA) has been given a mandate to provide technical advice and the Financial Conduct Authority (FCA) is sitting on the member taskforce which is supporting this. ESMA provided its technical advice to the Commission in December 2017. Therefore, this is a light-touch PIR as it concerns itself with the domestic implementation elements of the regulation, rather than the full EU regulation.

SSR is an EU Regulation that has a binding legal effect in the UK. Certain amendments were required in domestic legislation to address inconsistencies with the Regulation and introduce appropriate provisions for the Financial Conduct Authority (FCA) to enforce the Regulation.

The Short Selling Regulation aims to:

- Lay down a common regulatory framework for the requirements and powers relating to short selling and Credit Default Swaps (CDS);
- Ensure a more coordinated and consistent approach by Member States when measures need to be taken in exceptional situations such as threats to financial stability or market confidence; and
- Tackle a downward spiral in the prices of shares, notably in financial institutions, in a way which could ultimately threaten their viability and create systemic risks in times of market stress.

In 2010 the Commission estimated that the main cost for industry was the increase in compliance and administrative costs for market participants. Ahead of the regulation being introduced in 2010, the Association for Financial Markets in Europe (AFME), the International Securities Lending Association (ISLA) and the International Swaps and Derivatives Association (ISDA) commented that the costs of complying and the negative effect of the regulation on financial markets would be significant.

2. What evidence has informed the PIR? (Maximum 5 lines)

Engagement with industry participants, trade associations and the FCA has informed the PIR. The SSR is currently being reviewed by the European Commission and responses to the public consultation in July 2017 have also been utilised along with quantitative analysis undertaken by ESMA on the transparency regime and market maker exemption.

3. To what extent have the policy objectives been achieved? (Maximum 5 lines)

The FCA has never introduced a ban on short selling under the SSR but had used powers under an earlier domestic regime to ban short selling twice prior to the introduction of the EU regime. This demonstrates that the SSR has met the regulation's objective to provide a clear regime around short selling and disclosing significant net short positions.

At a Union level, National Competent Authorities (NCAs) have adopted different approaches with regards to the market maker exemption and to imposing short selling bans on financial instruments under Articles 20 and 23. Market makers (an individual or a company that provide liquidity to the market by selling and buying securities) benefit from certain exemptions provided by the EU SSR regime, i.e. they do not have to disclose short positions. Our approach to the market maker guidelines also minimises costs to businesses. The UK only requires a market maker to be a member of one trading venue in order to qualify for the exemption rather than requiring membership of every venue on which it intends to make markets as in some other European jurisdictions.

SCS of Securities, Markets and Banking

Signed: ***Clare Bolingford***

Date: ***29/08/2018***

SCS of Better Regulation Unit

Signed: ***Johanna Cowan***

Date: ***31/07/2018***

Sign-off for Post Implementation Review: Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: ***John Glen MP, Economic Secretary to the Treasury***

Date: ***19/09/2018***

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions?(Maximum 5 lines)

The original IA for the SSR states that total costs are expected to increase as a result of SSR implementation, however, as the changes were anticipated to be incremental over an existing regime the marginal cost of the Regulation should be smaller.

5. Were there any unintended consequences? (Maximum 5 lines)

There have been no significant unintended consequences.

6. Has the evidence identified any opportunities for reducing the burden on business? (Maximum 5 lines)

Market participants have suggested that the thresholds for reporting significant public and private net short positions could be increased to reduce the burden on business.

Alongside this, it has been suggested that the process for submitting a market maker notification could be streamlined and the exemption extended to exempt market makers from the settlement discipline provisions contained in Article 15. Finally, participants have argued that a centrally published register of issued share capital would assist investors in calculating accurately their net short positions. Some of these issues are being considered as part of the European Commission's review of the SSR.

7. For EU measures, how does the UK's implementation compare with that in other EU member states in terms of costs to business? (Maximum 5 lines)

According to ESMA's analysis, the UK has received the highest number of notifications of distinct net short positions in EU shares since 2012, representing 31% of the reports received.

The UK does not charge investors for submitting significant net short positions for publication. The systems utilised by other NCAs can incur a charge for investors.

The UK only requires market makers to be a member of one trading venue to qualify for the exemption.