Title: The Securitisation (Amendment) Regulations 2024	De minimis assessment
SI (Statutory Instrument) No: 2024/705	**Date: 12/04/2024**
Other departments or agencies: None	**Type of regulation: Domestic**
Contact for enquiries: Shiphrah Dixon, Jon Newton, Green and Prudential Team, HMT	**Date measure comes into force:** 01/11/2024
Cost of Preferred (or more likely) Option Under £5m	**Equivalent Annual Net Direct Cost to Business per year** (EANDCB in 2022 prices) - None

1. **What is the problem under consideration? Why is government intervention necessary?**

The Financial Services and Markets Act 2023 (FSMA 2023) repeals assimilated law relating to financial services. This enables the government to deliver a Smarter Regulatory Framework (SRF) for financial services. Assimilated law will be replaced with rules set by the UK's financial services regulators, operating within a framework set by government and Parliament.

Securitisation is the process of pooling various exposures to form a financial instrument that can be marketed to investors. This packaging allows lenders (such as banks) to transfer the risks of loans or assets (such as mortgages, auto loans, or consumer loans) to other banks or investors (such as insurance companies, asset managers and Occupational Pension Schemes. These financial instruments are 'tranched', which means that they carry different levels of risk and return to suit the appetite of different investors.

Securitisation is an important part of well-functioning financial markets and a useful source of finance for UK businesses. It can aid capital, liquidity, and risk management. Soundly structured securitisation is a useful channel for diversifying funding sources and allows for a broader distribution of financial-sector risk. Securitisation can also help free up lenders' balance sheets to allow for further lending to the real economy. Overall, it can make the financial system more efficient and provide additional investment opportunities.

Until 2024, the activity of securitisation has been regulated by assimilated law, including the Securitisation Regulation (Regulation (EU) 2017/2402). This aimed to strengthen the legislative framework for securitisations after the Global Financial Crisis and to revive high-quality securitisation markets.

The Securitisation Regulations 2024 (S.I. 2024/102) replaced assimilated law in relation to securitisation and established a new legislative framework for securitisation. The revocation of the EU Securitisation Regulation 2017, which is to be commenced on 1 November, allow the FCA and the PRA to replace relevant provisions with rules tailored to the UK under the regulators' new objectives.

This second instrument, the Securitisation (Amendment) Regulations 2024, makes further changes to the UK's securitisation regime to ensure the functioning of the regulation of securitisation. This includes restatement in legislation of due diligence requirements for Occupational Pension Schemes investing in securitisations, which are set in legislation rather than through financial services regulator rules; and also the restatement of prohibitions on securitisations transacted through vehicles located in high-risk jurisdictions. Requirements for Occupational Pension Schemes must be restated in legislation to avoid a regulatory gap, given the 2017 Securitisation Regulation is revoked by the Securitisation Regulation 2024. The restated requirements are also proportionate and principles-based, to ensure consistency in the treatment of firms, between Occupational Pension Schemes and those whose rules are set by the financial services regulators. The prohibition on securitisations in high-risk jurisdictions is restated in legislation, with requirements on both parties in a securitisation transaction (investor and manufacturer), with a more streamlined and clearer statutory requirement.

2. What are the policy objectives and the intended effects?

The Securitisation Regulations 2024 (S.I. 2024/102) establishes the new legislative framework under which the financial services regulators will make rules on general requirements for securitisation that apply to firms. The new framework will come fully into force at the same time as the revocation of the Securitisation Regulation, facilitating the application of the new Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) rules on this subject.

The Securitisation (Amendment) Regulations 2024 (referred to hereafter as 'this SI' or 'this instrument') makes further changes, to support investor protection and coherence in regulatory framework:

1) This SI restates due diligence requirements for OPS, currently dealt with in the Securitisation Regulation. This is because the Pensions Regulator (which supervises OPS) does not have statutory rule-making powers, unlike the financial services regulators. These due diligence requirements apply at three points in the investment process: before OPS trustees or managers invest in securitisations, while they hold securitisations, and when they delegate investment management decisions to third party investors. The minor targeted adjustments for due diligence requirements for Occupational Pension Schemes make these requirements more principles-based and proportionate. This will help Occupational Pension Schemes to participate in the UK securitisation market and maintain consistency with the requirements set by the FCA and the PRA for other institutional investors.

2) This instrument restates the requirement in the Securitisation Regulation that Securitisation Special Purpose Entities (SSPEs) must not be established in high-risk jurisdictions. Broadly, SSPEs are legal entities other than an originator or sponsor, which are established specifically to create securities and sell them into the market, which isolates the obligations of the SSPE from those of the originator. Countries subject to Financial Action Task Force (FATF) measures are prohibited as the location of SSPEs linked to UK securitisations. This prohibition previously also applied in relation to countries that were not parties to treaties ensuring compliance with standards in two OECD tax treaties.[1] This change will reduce administrative burdens for firms while being consistent with the UK's wider approach to maintaining good governance for tax without compromising the integrity of the UK securitisation framework.

3) The instrument also expands the prohibition on the establishment of SSPEs in high-risk jurisdictions, to apply to investors. At present this prohibition only applies to originators and manufacturers. This helps to maintain the UK's investor protection framework.

4) Lastly, this instrument contains a range of consequential amendments of other enactments, resulting from the Securitisation Regulations 2024 or the revocation of the Securitisation Regulation.

[1] Organisation for Economic Cooperation and Development (OECD) Model Tax Convention on Income and on Capital and the OECD Model Agreement on the Exchange of Information on Tax Matters.

3. What policy options have been considered, including any alternatives to regulation? Please justify preferred option

[Option 1] Do nothing – do not replace assimilated law

The government could choose not to make this replacement legislation when the relevant assimilated law is repealed. This would result in a regulatory gap which would prevent the UK's new regulatory framework for securitisation under the SRF from functioning without excessive risk for the securitisation market segment occupied by Occupational Pension Schemes.

Additionally, without restating appropriate due diligence requirements for Occupational Pension Schemes acting as institutional investors in securitisations, these could invest in securitisations which could pose undue risks.

[Option 2] Retain EU Law – continue assimilated law

While assimilated law is repealed by FSMA 2023, the government could put in place equivalent legislation in order to maintain the status quo for firms. However, this would not enable Occupational Pension Schemes to take advantage of reforms.

Additionally, the existing assimilated EU law is incompatible with consequential amendments needed for the Securitisation Regulations 2024.

[Option 3] Preferred option – proposed legislation

The preferred option is to restate the existing requirements with minor, targeted adjustments to the due diligence requirements which apply to Occupational Pension Schemes and the restrictions on SSPEs in high-risk jurisdictions.

The minor targeted adjustments for due diligence requirements for Occupational Pension Schemes make these requirements more principles-based and proportionate. This will help Occupational Pension Schemes to participate in the UK securitisation market and maintain consistency with the requirements set by the FCA and the PRA for other institutional investors.

The restatement of the prohibition on SSPEs increases the competitiveness of the UK framework by removing certain duplicative restrictions and enhances the protection for UK investors by specifying that investments cannot be in high-risk jurisdictions.

4. Please justify why the net impacts (i.e., net costs or benefits) to business will be less than £10 million a year.

The only significant cost to this SI is the restatement of due diligence requirements for Occupational Pension Schemes acting as institutional investors, which will be affected by revised due diligence requirements for investing in securitisations, as set out in this SI. The principal cost here will be familiarisation costs.

This instrument restates due diligence requirements on Occupational Pension Schemes, reflecting requirements under the 2017 Securitisation Regulation. These are largely restated with only minor modifications to improve the due diligence requirements by making them more principles-based and proportionate. Making the requirements more usable in this way should reduce the ongoing costs to Occupational Pension Schemes. In addition, we are maintaining the effect of the current regulations for existing securitisations, so impacts on existing securitisations are mitigated.

Occupational Pension Schemes often delegate investment decisions to an authorised entity (typically a fund manager), which is authorised and supervised by the FCA. Under due diligence requirements, this also means that responsibility for the due diligence is outsourced. This means that the number of market participants directly affected by these changes is likely to be low (fewer than twenty firms).

There are two costs associated with this:

1) Familiarisation costs:

Number of words in SI (rounded up to nearest 100)	Words read per minute	How many hours	Hourly rate (£) (total for number of hours)	Number of businesses affected	Familiarisation costs per firm (£) (rounded to 2 significant figures)	Total familiarisation costs (£) (rounded to 2 significant figures)
7800	100	1.33	385	339	£449	£174,015

Note of methodology: We have based the cost of this legal advice on the government guidelines on solicitors' hourly rates, using an hourly rate of £385, based on the following assumptions:

a. As legal expertise in financial services resides predominantly among City law firms, we have used a London, rather than UK-wide value for legal costs.
b. As this work will be undertaken by a variety of individuals with varying levels of experience at different firms, therefore we have used the middle range value for a Solicitor/Associate with 2-5 years' experience.

It is assumed that, as legal experts, readers will generally be familiar with this type of literature, so we have taken the upper bound of the reading speed of difficult text, i.e., 100 words per minute. Furthermore, it is assumed that this form of familiarisation will be undertaken on a one-off basis. These assumptions are the same as the approach that HM Treasury took in its assessment of impact of financial services-related SIs made under the European Union (Withdrawal) Act.

2) Ongoing costs

It is not possible to provide a quantitative assessment of the ongoing costs for firms.

Our qualitative assessment is that the proposals in this SI should provide an ongoing benefit to Occupational Pension Schemes which invest in securitisations by providing a more principles-based and proportionate framework, which will reduce Occupational Pension Schemes' compliance costs.

This benefit will be limited because many Occupational Pension Schemes delegate investment decisions to fund managers. Therefore, they are not directly affected by the restatement of the due diligence requirements in this legislation.

Benefits

More widely, the SI also facilitates the development of regulator rules, which will provide more tailored and proportionate regulation of securitisation to UK business.

5. Please confirm whether your measure could be subject to call-in by BRE (Better Regulation Executive) under the following criteria. If yes, please provide a justification of why a full impact assessment is not appropriate:

a) **Significant distributional impacts (such as significant transfers between different businesses or sectors)**
   No
b) **Disproportionate burdens on micro, small, and medium businesses (below 500 employees).**
   No
c) **Significant gross effects despite small net impacts**
   No
d) **Significant wider social, environmental, financial or economic impacts**
   No
e) **Significant novel or contentious elements**
   No

Sign-off for de minimis assessment: SCS

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

SCS of Green and Prudential team

Signed: ***Fayyaz Muneer*** Date: 15/04/2024

SCS of Better Regulation Unit

Signed: ***Jonathan Edwards*** Date: 15/04/2024

Sign-off for de minimis assessment: Minister

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

Signed: ***Bim Afolami, Economic Secretary to the Treasury*** Date: 18/04/2024

Further information sheet

Please provide additional evidence in subsequent sheets, as required.