

**EXPLANATORY MEMORANDUM TO**  
**THE SECURITISATION REGULATIONS 2023**

**2023 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. Purpose of the instrument**

- 2.1 The Financial Services and Markets Act 2023 (FSMA 2023) repeals retained EU law relating to financial services. This enables the government to deliver a Smarter Regulatory Framework for financial services. Retained EU law will be repealed and replaced with rules set by the independent and expert regulators, operating within a framework set by government and Parliament.
- 2.2 This instrument replaces retained EU law in relation to securitisation and establishes a new legislative framework for securitisation. This instrument will come fully into force alongside new FCA and PRA rules and the commencement of the repeal of retained EU law in relation to securitisation.
- 2.3 The exercise to replace retained EU law in relation to securitisation includes restating, with appropriate modifications, some provisions of retained EU law. The instrument also exercises powers in the Financial Services and Markets Act 2000 (FSMA 2000) so as to give the FCA new rule-making powers while allowing both the FCA and the PRA to exercise existing rule-making powers.
- 2.4 As a result of this instrument and the commencement of the revocation of relevant retained EU law, the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) will be able to make rules that replace existing provisions in retained EU law.

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

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

3.1 None.

**4. Extent and Territorial Application**

- 4.1 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

**5. European Convention on Human Rights**

5.1 The Economic Secretary to the Treasury (Bim Afolami) has made the following statement regarding Human Rights:

“In my view the provisions of the Securitisation Regulations 2023 are compatible with the Convention rights.”

## **6. Legislative Context**

- 6.1 When the UK left the EU, the body of EU legislation that applied directly in the UK at the point of exit was transferred onto the UK statute book by the European Union (Withdrawal) Act 2018. This is known as “retained EU law”. From 1st January 2024 this will become “assimilated law” as a result of the Retained EU Law (Revocation and Reform) Act 2023.
- 6.2 The retained EU law for certain activities relating to securitisation that is being replaced by this instrument and rules of the regulators is contained in:
  - Regulation (EU) 2017/2402 of the European Parliament and of the Council (referred to as ‘the Sec Reg’);
  - the Securitisation Regulations 2018;
  - the Securitisation (Amendment) (EU Exit) Regulations 2019, which adapted the EU Securitisation Regulation so that it could work as retained EU law in the UK once the UK had left the EU.
- 6.3 All relevant technical standards relating to the Sec Reg are also repealed by FSMA 2023.
- 6.4 FSMA 2023 contains a number of new legislative powers, which work together as a set of tools as the government repeals retained EU law to deliver a Smarter Regulatory Framework for financial services.
- 6.5 Section 1 of FSMA 2023 repeals the retained EU law relating to financial services, listed in Schedule 1 to that Act, subject to commencement by HM Treasury. A separate commencement instrument will commence the repeal of retained EU law and technical standards relating to the Sec Reg.
- 6.6 Section 4 of FSMA 2023 contains a power to restate retained EU law into domestic legislation as it had effect immediately before its repeal. Section 4 also permits the Treasury to modify the legislation that is being restated where it considers that to be necessary or desirable for or in connection with one or more of a specified set of purposes. These purposes include those mentioned in Section 3(2) (c), (d), (e), (f), and (j) of FSMA 2023. This instrument uses the section 4 powers to restate parts of certain provisions in the Sec Reg with appropriate modifications, which are aligned to those purposes.
- 6.7 This instrument exercises powers in Part 5A of FSMA 2000 – the Designated Activities Regime (DAR) – to create a new regulatory framework that will replace the UK Securitisation Regulation. The DAR was created by FSMA 2023 in order to provide a proportionate framework for regulating activities related to financial markets, exchanges, instruments, products or investments, including those currently regulated through retained EU law.
- 6.8 In accordance with the role that HM Treasury has in setting the perimeter of financial services regulation, Part 5A of FSMA 2000 gives HM Treasury the power to designate an activity in order to bring it into regulation under the DAR. The FCA has powers for making rules related to each designated activity, as described further in the instrument. Any person conducting a designated activity will be required to follow the rules and regulations related to it.

## 7. Policy background

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

- 7.1 This instrument forms part of HM Treasury’s programme to deliver a Smarter Regulatory Framework for financial services. It establishes a new legislative framework for the regulation of certain activities related to securitisation.

### *What did any law do before the changes to be made by this instrument?*

- 7.2 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 or asset managers). These financial instruments are ‘tranching’, which means that they carry different levels of risk and return to suit the appetite of different investors.
- 7.3 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.
- 7.4 The Sec Reg sets out general provisions about securitisation, such as but not limited to risk retention, transparency, and due diligence requirements, and creates a framework for Simple, Transparent and Standardised (STS) securitisations.<sup>1</sup>
- 7.5 The Sec Reg aimed to strengthen the legislative framework for securitisations and revive high-quality securitisation markets after the Global Financial Crisis.
- 7.6 HM Treasury conducted a review of the Sec Reg in 2021 (Sec Reg Review).<sup>2</sup> This fulfilled a legal obligation to review the functioning of the Regulation. HM Treasury identified a number of areas where reforms could usefully be considered to ensure the regime is as effective as it can be. The review’s overarching aims were:
- To bolster securitisation standards in the UK in order to enhance investor protection and promote market transparency;
  - To support and develop securitisation markets in the UK, including through the increased issuance of STS securitisations, in order to ultimately increase their contribution to the real economy.
- 7.7 HM Treasury has committed to deliver the outcomes of the Sec Reg Review in line with the outcomes of the FRF review. This means that the financial services regulators will generally be responsible for making the rules that directly apply to firms, within a framework set by government and Parliament.

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<sup>1</sup> STS securitisations are designed to make it easier for investors to understand and assess the risks of a securitisation investment by excluding more complex features. The UK STS framework is in line with the international standards for Simple, Transparent, and Comparable securitisations, set by the Basel Committee on Banking Supervision and International Organization of Securities Commission.

<sup>2</sup> HM Treasury’s [2021 Review of the Securitisation Regulation](#).

What will it now do?

- 7.8 This SI creates a new framework within which the FCA and the PRA can make rules in relation to securitisation.
- 7.9 This new legislative framework also provides for the regulation of securitisation by introducing powers for the FCA to make rules (both for firms that are authorised under FSMA 2000 and for those that are not) in relation to the designated activities as specified in Regulation 4.
- 7.10 All providers of securitisations, including firms who are not authorised by the FCA or PRA, are currently subject to requirements in the Sec Reg. This instrument maintains this scope and provide an appropriate framework to enable the financial services regulators to make rules in relation to securitisations. To give this effect, HM Treasury is using the designated activities power to enable the FCA to make rules in respect of certain activities, products, or conduct for facilitating securitisations. These apply to FCA-authorized, PRA-authorized (with respect to activities not specified in regulation 5 of the SI) and unauthorised firms. The PRA can use its general FSMA rule-making power in relation to rules for PRA-authorized firms.
- 7.11 As this SI sets the scope of the regime for regulating securitisations, it also provides the FCA with a specific rule-making power for small registered UK Alternative Investment Fund Managers (AIFMs), so that it can make due diligence requirements for these AIFMs, where they invest in securitisations as institutional investors. This specific rule-making power is required as the general rule-making power of the FCA does not extend to small registered AIFMs. The FCA also has powers to make rules for Securitisation Repositories (SRs).
- 7.12 This SI makes some changes to the regulatory perimeter, including scoping out non-UK AIFMs from the definition of institutional investor. This change arose from the Sec Reg Review and will mean that non-UK AIFMs will not be subject to UK due diligence requirements. Consequently, it may remove a disincentive for them from investing in UK securitisations. Additionally, the responsibility for the supervision of providing securitisations by occupational pension schemes will be given to the FCA (rather than The Pensions Regulator (TPR) who is responsible at present), in line with the FCA's wider remit to supervise these requirements for other entities.
- 7.13 There are no other changes to the scope of institutional investors as defined in the Sec Reg. As such, the types of firms within the regulatory perimeter will otherwise be the same as under the Sec Reg.
- 7.14 This SI also places an obligation on the FCA and PRA to make due diligence rules for certain types of institutional investors. Due diligence requirements for occupational pension schemes will remain in legislation and be supervised by TPR. These requirements will be restated as part of a further SI in 2024. This is to ensure clarity in legislation as to which firms should be subject to due diligence requirements.
- 7.15 In restating provisions of the Sec Reg, this SI makes various modifications, some of which were identified in the Sec Reg Review, that must be enacted via legislation because they either relate to the scope of application of these regulations, or international matters for which the government is responsible .
- 7.16 This SI makes changes to streamline the regulation of securitisation, such as renaming the process for Third Party Verifier (TPV) 'authorisation' as 'registration' to bring it

in line with registration for Securitisation Repositories (SRs). This will distinguish this process from authorisation by the FCA under Part 4A FSMA 2000.

- 7.17 The SI aligns enforcement powers over authorised persons with unauthorised persons within this SI by including requirements made under this regulation as a relevant requirement at for the purposes of section 204A FSMA.
- 7.18 This SI does not restate Article 30 of the Sec Reg, which is duplicative of existing monitoring arrangements that are in line with the regulators' statutory objectives.
- 7.19 This SI makes other changes to ensure the effective functioning of securitisations. This includes modifying HM Treasury's existing power to recognise STS-equivalent non-UK securitisations in line with these regulations, under a refreshed 'overseas simple, transparent and standardised securitisations regime'. It also requires the FCA and PRA to have regard to the coherence of the overall framework for the regulation of securitisation when making their rules for different firms.
- 7.20 Finally, this instrument exercises sections 71N(3) and 71N(4) FSMA to allow the FCA to disapply or modify their rules in relation to securitisation activity. This will allow the FCA to adjust their securitisation rules for specific purposes.
- 7.21 For a more detailed policy background, see HM Treasury's Securitisation Regulations 2023 policy note, published as part of Mansion House 2023.<sup>3</sup>

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

- 8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act.
- 8.2 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it relates to HM Treasury's programme to deliver a smarter regulatory framework for the UK.

## **9. Consolidation**

- 9.1 There are currently no plans to consolidate the relevant legislation.

## **10. Consultation outcome**

- 10.1 In 2021 HM Treasury conducted the Sec Reg Review, which considered how to bolster securitisation standards and develop securitisation markets in the UK. The outcomes of that review have been considered for this SI and have also been considered for corresponding FCA and PRA proposals for securitisation rules in their recent consultations.
- 10.2 A draft of this instrument was published on 10 July 2023 and the Government invited technical comments by 21 August 2023. Responses to the draft instrument came from a small number of financial services industry bodies and law firms. Comments on the draft instrument were carefully considered by HM Treasury, and some were adopted within this instrument.
- 10.3 Some of the comments asked for clarification of the regulatory treatment of securitisations which exist before these regulations come into force. The Government's intention is that instruments delivered under the Smarter Regulatory

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<sup>3</sup> [Mansion House 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/mansion-house-2023)

Framework minimise unnecessary disruption. In line with this, HM Treasury intends that clarity is provided as to the requirements which apply to existing securitisations, including both securitisations issued before the Sec Reg (pre-2019), and those issued after. The regulators will be responsible for most firm-facing requirements for securitisations which existed before the revocation of the Sec Reg, while the SI restates certain transitional provisions that remain relevant.

- 10.4 The financial services regulators have consulted separately on the rules they intend to make, including rules made using the powers granted to them in this SI.<sup>4</sup> The outcomes of these consultations are expected to be published by the FCA and PRA by Q2 2024. When considering the outcomes of their rules consultations, the FCA and PRA will consider proportionately the best approach to requirements for securitisations which predate this instrument. As part of this, they will consider a number of factors including the balance between minimising regulatory burden while enabling firms to benefit from new rules.
- 10.5 Certain provisions, particularly in relation to due diligence requirements for occupational pension schemes acting as institutional investors in securitisations, that were included in the draft version of this SI published on 10 July 2023 are not included in this instrument. In the case of the pension scheme provisions, this is because those provisions need to be consistent with FCA and PRA rules on due diligence requirements for other institutional investors, about which the regulators' consultation processes and governance has not yet concluded. In 2024, HM Treasury intends to lay further legislation dealing with due diligence requirements for occupational pension schemes, as well as any other outstanding matters.
- 10.6 Also, further legislation will address consequential amendments and deliver HMT's intention to clarify the requirement on the establishment of Securitisation Special Purpose Entities (SSPEs)

## **11. Guidance**

- 11.1 HM Treasury does not propose to provide any guidance 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 impact of this SI is small (the cost to businesses is < £5m per year). A de minimis Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

## **13. Regulating small business**

- 13.1 The amendments made by this instrument are not expected to have an impact on small businesses, and therefore no action is needed to mitigate the impact on them.

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<sup>4</sup> See the [PRA](#) and [FCA](#) consultations on securitisation rules for details on the regulators' proposed reforms.

#### **14. Monitoring & review**

14.1 The instrument does not include a statutory review clause, and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Economic Secretary to the Treasury (Bim Afolami) has made the following statement:

“It is not proportionate to include a review clause in this instrument because the estimated annual net direct cost to business is less than £10 million and the number of small businesses in scope is very low.”

#### **15. Contact**

15.1 Zia Shakeel at HM Treasury (zia.shakeel@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Fayyaz Muneer, Deputy Director for Green and Prudential at HM Treasury, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Bim Afolami, Economic Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.