

EXPLANATORY MEMORANDUM TO
THE SECURITISATION (AMENDMENT) REGULATIONS 2024

2024 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. Declaration

2.1 Bim Afolami MP, Economic Secretary to the Treasury, confirms that this Explanatory Memorandum meets the required standard.

2.2 Fayyaz Muneer, Deputy Director for Green and Prudential policy at HM Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Shiphrah Dixon at HM Treasury shiphrah.dixon@hmtreasury.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument forms part of HM Treasury’s programme to deliver a Smarter Regulatory Framework for financial services. It makes amendments to the UK’s securitisation regime.

4.2 The Financial Services and Markets Act 2023 (“FSMA 2023”) repeals assimilated law relating to financial services, allowing the government to deliver a Smarter Regulatory Framework that is tailored to the UK. Under the Smarter Regulatory Framework (SRF), firm-facing provisions in assimilated law relating to financial services will generally be replaced with rules set by the financial services regulators, operating within a framework set by government and Parliament.

4.3 The UK is delivering this in relation to the assimilated EU law in Regulation (EU) 2017/2402 of 12th December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent, and standardised securitisation (the “Securitisation Regulation”) through two instruments: the Securitisation Regulations (S.I. 2024/102) and Securitisation (Amendment) Regulations 2024 (S.I. 2024/XX) (known hereafter as ‘this S.I.’):

4.4 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 (defined below), facilitating the application of the new Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) rules on this subject.

4.5 This S.I. restates due diligence requirements for Occupational Pension Schemes, currently dealt with in the Securitisation Regulation. This is because The Pensions

Regulator (which supervises Occupational Pension Schemes) does not have statutory rule-making powers, unlike the financial services regulators. Therefore, provisions relating to Occupational Pension Schemes are restated and set out in this instrument.

- 4.6 This S.I. also restates the prohibition on the establishment of Securitisation Special Purpose Entities (SSPEs) in high-risk jurisdictions, with a modification to specify its application to institutional investors, as well as originators or sponsors.
- 4.7 Lastly, this S.I. contains a range of consequential amendments of other enactments, resulting from the Securitisation Regulations 2024 or the revocation of the Securitisation Regulation.
- 4.8 The commencement of the repeal of relevant legislation will be dealt with in a separate commencement instrument to come into force concurrently with these regulations and regulator rules.

Where does the legislation extend to, and apply?

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

5. Policy Context

What is being done and why?

- 5.1 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 ‘tranching’, which means that they carry different levels of risk and return to suit the appetite of different investors.
- 5.2 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.
- 5.3 S.I. 2024/102 implements the SRF for the purpose of the policy on general requirements for securitisation. Under the SRF, assimilated law relating to financial services sector will be replaced by regulators’ rules. Revoking the Securitisation Regulation allows the FCA and the PRA to replace relevant provisions with rules tailored to the UK.
- 5.4 This S.I. makes further changes to the UK’s securitisation regime to ensure the functioning of the regulation of securitisation, including for firms supervised by authorities other than the FCA or PRA.
- 5.5 This S.I. maintains the government’s approach where most rules governing Occupational Pension Scheme investors, including the requirements in relation to securitisation, are set through primary and secondary legislation. The Pensions Regulator is responsible for supervising Occupational Pension Schemes investing in

securitisations for compliance with due diligence requirements. Unlike the FCA and PRA, The Pensions Regulator does not have powers under the Financial Services and Markets Act 2023 to make rules for firms.

- 5.6 This S.I. restates due diligence requirements for trustees and managers of Occupational Pension Schemes, at three points: before they invest in securitisations, while they hold securitisations, and when they delegate investment management decisions to third party investors. This ensures the requirements can continue to apply and that The Pensions Regulator can continue to supervise Occupational Pension Schemes for compliance with them. 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.
- 5.7 This S.I. designates the FCA as responsible for supervising Occupational Pension Schemes' compliance with requirements, where those Occupational Pension Schemes are originators, sponsors, and original lenders (i.e., manufacturers) of securitisations. This applies both to securitisations manufactured before and after Securitisation Regulations 2024.
- 5.8 This S.I. restates the requirement in the Securitisation Regulation that SSPEs must not be established in high-risk jurisdictions. SSPEs are legal entities other than an originator or sponsor, which are established specifically to create and sell securities, which isolates the obligations of the SSPE from those of the originator. SSPEs linked to UK securitisations must not be established in countries subject to certain Financial Action Task Force (FATF) measures. This S.I. removes a prohibition which previously applied in relation to countries that were not parties to treaties ensuring compliance with standards in two OECD tax treaties¹. 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.
- 5.9 This S.I. also specifies that institutional investors are prohibited from investing in securitisations with SSPEs in high-risk jurisdictions. The high-risk jurisdictions are the same as for the prohibition applying to originators and sponsors. This helps to maintain the UK's investor protection framework.
- 5.10 Finally, this S.I. makes consequential amendments in connection with the revocation of the EU Securitisation Regulation 2017, and the provisions of this instrument and the Securitisation Regulation 2024 (S.I. 2024/102).

6. Legislative and Legal Context

How has the law changed?

- 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 was known as retained EU law, which became assimilated law through the Retained EU Law (Revocation and Reform) Act 2023.
- 6.2 The assimilated law restated by this S.I. includes:

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.

- Articles 4, 5, 28A(7), 29(1)(d), and Art 43 of Regulation (EU) 2017/2402 ‘the Securitisation Regulation’);
 - related provisions of the Securitisation (Amendment) (EU Exit) Regulations 2019, which adapted the Securitisation Regulation so that it could work as retained EU law in the UK once the UK had left the EU;
 - relevant provisions in Securitisation Regulations 2018.
- 6.3 FSMA 2023 contains a number of new legislative powers, which work together as a set of tools as the government repeals assimilated law to deliver a Smarter Regulatory Framework for financial services.
- 6.4 Section 1 of FSMA 2023 repeals assimilated 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 revocation of the Securitisation Regulation and other assimilated law relating to securitisation (including technical standards) on 1st November 2024.
- 6.5 Section 4 of FSMA 2023 contains a power to restate assimilated law (as it had effect immediately before its revocation) in domestic law. 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 certain provisions of the EU Securitisation Regulation 2017 with modifications that are made for those purposes.

Why was this approach taken to change the law?

- 6.6 This instrument makes textual amendments of the Securitisation Regulations 2024 so that the resulting law will be contained in a single set of Regulations.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 HM Treasury published a Policy Note and draft S.I. relating to its proposed reforms to the Sec Reg in July 2023.² This included changes to due diligence for Occupational Pension Schemes supervised by The Pensions Regulator (Chapter 4 and Annex: Due Diligence Requirements for OPS). The government welcomed technical legal comments on this by 21 August 2023.
- 7.2 HM Treasury held roundtables with industry on its proposed reforms and received written comments from a trade body and a major law firm which provided specific technical comments on transitional provisions and grandfathering. These comments on the draft instrument were carefully considered by HM Treasury, and some were adopted within the instrument.

8. Applicable Guidance

- 8.1 No guidance accompanies this instrument.

² <https://www.gov.uk/government/publications/securitisation-regulations-2023-draft-si-and-policy-note>

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 There is no, or no significant, impact on business, charities, or voluntary bodies.
- 9.2 There is no, or no significant, impact on the public sector.
- 9.3 A full Impact Assessment has not been prepared for this instrument because the impact of this S.I. is small (the cost to businesses is < £10m per year). A de minimis Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.
- 9.4 Regulating small business: 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.

10. Monitoring and review

- 10.1 The approach to monitoring this legislation is engagement with industry to understand its initial and ongoing impact.
- 10.2 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, M.P. 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.”

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 None.

12. European Convention on Human Rights

- 12.1 The Economic Secretary to the Treasury, Bim Afolami MP, has made the following statement regarding Human Rights:
“In my view the provisions of the Securitisation (Amendment) Regulations 2024 are compatible with the Convention rights.”

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”). It does however relate to the withdrawal of the United Kingdom from the European Union because this instrument replaces assimilated law under powers in the Financial Services and Markets Act 2023.