# EXPLANATORY MEMORANDUM TO

# THE SHORT SELLING (NOTIFICATION THRESHOLD) REGULATIONS 2023

## 2023 No. 1258

## 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 This instrument amends the retained EU regulation on short selling and certain aspects of credit default swaps (EUR 2012/236, as amended by SI 2018/1321 and SI 2021/5), commonly known as the Short Selling Regulation (SSR). It increases the notification threshold for the reporting of net short positions to the Financial Conduct Authority (FCA) from 0.1% to 0.2% of total issued share capital. This change will reduce regulatory burdens on industry, while still ensuring that the FCA has sufficient data to carry out its functions.

## 3. Matters of special interest to Parliament

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

3.1 None.

## 4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the United Kingdom.

4.2 The territorial application of this instrument is the whole of the United Kingdom.

## 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 Short Selling (Notification Threshold) Regulations 2023 are compatible with the Convention rights."

## 6. Legislative Context

6.1 Article 5 of the SSR requires holders of net short positions in shares to notify the FCA once certain thresholds have been passed.

6.2 Article 5(2) of the SSR, as amended by the Short Selling (Notification Thresholds) Regulations 2021, set the notification threshold for the reporting of net short positions to the FCA, in relation to the issued share capital of a company that has shares admitted to trading on a UK trading venue, at 0.1%.

6.3 Article 5(4) of the SSR provides that HM Treasury may by regulations modify the thresholds referred to in Article 5(2). This instrument amends Article 5(2), increasing the notification threshold for the reporting of net short positions to the FCA from 0.1% to 0.2%.

## 7. Policy background

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

7.1 Short selling is the practice of selling a security that is not owned by the seller with the intention of buying it back later at a lower price to make a profit. Short selling is a legitimate practice that supports liquidity, risk management and effective price discovery. However, there can also be risks associated with short selling, which can impact wider market confidence. For this reason, the UK has a regulatory regime for short selling, recognising the need to facilitate the benefits short selling provides to orderly and effective market functioning, while protecting against risks.

7.2 The SSR requires persons to notify the FCA of net short positions in the shares of listed companies once certain thresholds are passed. A net short position is the position remaining after deducting any long position that a person holds from a short position. These thresholds are set as a proportion of the total issued share capital of the company. The FCA uses these notifications to monitor net short positions in the market and to proactively engage with firms to address how their net short positions and related trading activities are impacting on the market. They also help the FCA identify possible misconduct by companies.

7.3 The Chancellor’s Edinburgh Reforms, announced on 9 December 2022, set out a package of changes to drive growth and competitiveness in the financial services sector. As part of this, the government launched a Call for Evidence on the SSR. In the Call for Evidence, the government sought feedback on requirements to report net short positions in shares to the FCA. Feedback highlighted that the reduction in the notification threshold from 0.2% to 0.1% during the Covid-19 pandemic has led to a significant increase in the number of reports that they are required to submit to the FCA, resulting in a regime that is disproportionately burdensome on reporting firms.

7.4 In response to the feedback received, in July 2023, the government announced its intention to increase the notification threshold from 0.1% to 0.2%. This instrument makes this change to the notification threshold. The requirement to report increments of 0.1% of issued share capital above this initial notification threshold will remain the same.

## 8. European Union Withdrawal and Future Relationship

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 There are currently no plans to consolidate the relevant legislation.

## 10. Consultation outcome

10.1 HM Treasury’s Call for Evidence on the SSR sought views on whether the notification threshold was set at the appropriate level. The Call for Evidence received responses from across the financial services sector, including funds, issuers, market makers, securities lenders and investment banks, as well as academics and individual retail investors. Responses highlighted burdens associated with reporting requirements under the SSR, and advocated for measures to reduce cost, such as the increase in the notification threshold implemented by this instrument.

## 11. Guidance

11.1 HM Treasury does not propose to provide any guidance in relation to this instrument. The FCA provides information to reporting persons in relation to notification requirements under the SSR, including any changes to the notification threshold introduced by HM Treasury.

## 12. Impact

12.1 There is no, or no significant impact on business, charities or voluntary bodies.

12.2 The FCA will be required to update its systems to reflect the higher threshold, but there is no significant impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because, in line with Better Regulation guidance, HM Treasury considers that the net impact of this instrument on businesses will be less than £5 million Equivalent Annual Net Direct Costs to Business. Due to this limited impact, a de minimis impact has been carried out, a copy of which is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

## 13. Regulating small business

13.1 The legislation applies to activities that are undertaken by all businesses within scope of the SSR notification requirements, including small businesses. As set out above, the purpose of this instrument is to reduce costs for all reporting persons, including any small businesses in scope of the SSR.

## 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 HM 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 £5 million".

## 15. Contact

15.1 Charlie Graham at HM Treasury (email: charlie.graham@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Tom Duggan, Deputy Director for the Securities and Markets Team at HM Treasury, can confirm that this Explanatory Memorandum meets the required standard.

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