THE NEW UK SECURITISATION RULES – WHAT IMPACT WILL THEY HAVE?

Key Points

- The new UK regime offers a couple of notable advantages over the EU regime, largely in relation to investor due diligence and the STS designation of transactions originating from outside the "home" legal framework
- A big advantage for UK institutional investors is flexibility to invest in non-UK transactions which do not provide reporting on prescribed regulatory forms
- The EU regime continues to offer some options not available under the UK one, such as in relation to synthetic STS and retention by a servicer for NPE securitisations
- While there are other apparent differences, notably in the context of risk retention (for example as to the "sole purpose" requirement), the impact of such variation is expected to be limited
- The UK securitisation framework remains subject to ongoing reform and, coupled with an extensive review of the EU regime, there is potential for further divergence between the EU and UK rules
- In the short term, the market will begin to see new and longer drafting in transaction documents to reflect this new framework but otherwise deal processes are expected to be minimally affected

INTRODUCTION

The United Kingdom ("**UK**") regulations on securitisation are to change on 1 November 2024. The pre-existing rules which comprise of the European Union ("**EU**") Securitisation Regulation (Regulation (EU) 2017/2402) (the "**EU Securitisation Regulation**") as assimilated into domestic UK law upon Brexit will be replaced by an entirely new framework. As part of the UK's post-Brexit "Smarter Regulatory Framework", much of the rule-making power is granted to the financial regulators, namely the Prudential Regulatory Authority of the Bank of England ("**PRA**") and the Financial Conduct Authority ("**FCA**"). Broadly, the new regime applies to new transactions entered into on or after 1 November (including new securitisation positions created under amendments).

By and large, these new regulations maintain the existing policy position. This briefing offers short-form summaries of the main changes and notes the potential impacts.

THE STRUCTURE OF NEW FRAMEWORK

Three elements form the basis of the new legislative framework (which we will refer to simply as the "**New UK Rules**"):

- The Securitisation Regulations 2024 (SI 2024/102) made under the Financial Services and Markets Act 2000 (the "**SI**"), which sets up the FCA-PRA architecture and contains certain specific securitisation requirements (including investor due diligence requirements for occupational pension schemes).
- The Securitisation Part of the PRA rulebook (the "**PRA Rulebook**"), which applies to PRA-authorised original lenders, originators, sponsors, securitisation special purpose entities ("**SSPEs**") and institutional investors ("**manufacturers**") established in the UK.
- The securitisation sourcebook within the FCA's handbook ("**FCA Handbook**"), which in general applies to any other original lenders, originators, sponsors, SSPEs and institutional investors established in the UK.

Due to this set-up, multiple sources may need to be consulted when looking at the rules. The different locations, varying order and sometimes divergent wording can make it difficult to compare provisions meaningfully.

For easy reference, we provide below an "at a glance" summary table of the new legislative structure with a breakdown of the topics covered (please note that this summary is for convenience only – for the sake of brevity it leaves out many legal details).

Split of main substantive text in new UK framework:

	SI	PRA	FCA
Application (UK established)	General, due diligence for regulated pension investors	Credit institutions & investment firms, insurance & reinsurance entities	Everyone else i.e. not regulated pension investor or PRA regulated firm
Definitions	✔	✔	✔
Transitional provisions	✔	✔	✔
Due diligence	✔	✔	✔
SSPE jurisdiction	✔	x	x
Risk Retention	x	✔	✔
Transparency	x	✔	✔
Re-securitisation	x	✔	✔
Credit granting	x	✔	✔
No retail sales	x	x	✔
STS regime	x	x	✔

WHAT WILL CHANGE PRACTICALLY?

Documentation drafting

There will be practical impacts in terms of preparation of transaction documents, which will need to expand to cover the multiple forms of text and different sources. Notably, there will be several additional definitions. To mitigate against multiple forms of wording appearing across transactions, a common set of definitions is emerging among securitisation law firms.

Deal process

Currently, the transparency and due diligence requirements specify only that the relevant information is to be made available "before pricing". The New UK Rules clarify that the relevant information is to be made available "before pricing or original commitment to invest in draft or initial form" and the final documentation must made available to investors at the latest 15 days after closing of the transaction but such clarification is not expected to make much change in practice. That said, the reference to "commitment to invest" will give reassurance to institutional investors acquiring securitisation positions in the secondary market given pricing or signing would have already occurred before their involvement.

For private securitisations, another transactional process currently required is the notification on a short form template to the FCA or PRA (as applicable) under Regulation 25 of the Securitisation Regulations 2018. Despite the extensive reshaping of the regulatory framework, the transitional provisions in the SI explicitly provide that these requirements are to remain in force until specifically revoked.

WHAT ARE THE MAIN POLICY CHANGES AND THEIR EFFECTS?

While the extent of policy changes to the existing regime is relatively limited, it is useful to be aware of them and how they might be viewed by market participants. To this end, we have loosely grouped a non-exhaustive selection of the main changes into three categories below with brief overviews of the same in table form. Nevertheless, any potential advantages conferred by one regime over another may perhaps be of limited import given that transactions commonly seek to comply with both EU and UK regimes.

Positive changes

The features of the New UK Rules that appear most helpful generally relate to the requirements applying to institutional investors and the "simple, transparent and standardised" or "STS" designation.

Perhaps the most impactful new position of all is the flexibility conferred to UK institutional investors in relation to the obligations to verify compliance with transparency requirements. These requirements have been made more principles-based, with the new provisions requiring "information sufficient to assess the risks of holding the securitisation position" rather than centring on detailed templates. The rules simply prescribe types of information at a high level (e.g. loan level data, investor reports covering key topics) to be made available within required timeframes.

Topic	EU Securitisation Regulation	New UK Rules	Remarks
Institutional Investor definition	An AIFM that manages and / or markets alternative investment funds in the Union	An AIFM with 'managing an AIF' permission which markets or manages an AIF in the United Kingdom ... A small registered UK AIFM	UK regime offers more flexibility – under New UK rules only UK authorised AIFMs in scope
Institutional Investor - delegation	Silent as to ability to delegate to non-institutional investors	Delegation to non-institutional investors investor expressly permitted but delegating party remains responsible	Literal difference but UK rules are potentially just a clarification
Investor DD – transparency requirements for out-of-scope transactions	Prescriptive, Article 7 templates required	Principles based, information sufficient to assess the risks of holding the securitisation position. Certain types of information described at a high level in required timeframes rather than templates	Clear substantive difference allowing more flexibility for UK institutional investors
STS – jurisdictional eligibility	Originator/sponsor and SSPE established in EU	Originator/sponsor established in UK	Clear substantive difference allowing more flexibility for UK institutional investors
STS – equivalence of other jurisdictions	No equivalence	EU designated transactions recognised until June 2025, provision made for 'overseas STS securitisation' regime	Clear substantive difference allowing more flexibility for UK institutional investors

Effect unclear

Our second category highlights certain prominent areas on which the position has changed from the present regulations but do not align with the equivalent EU provision. This is most noticeable on risk retention, where the EU enacted the applicable regulatory technical standards ("**RTS**") in 2023 (Commission Delegated Regulation (EU) 2023/2175) while the UK has been applying the prior Capital Requirements Regulation RTS from 2014. While the New UK Rules have taken on some of the aspects of EU RTS compared to the 2014 RTS, they take a different path on others.

Notably, the UK has taken a different approach from the EU in relation to the "sole purpose" test for retainers. While the elements to be considered to satisfy the test are largely the same, the New UK Rules are principles-based with such elements being factors to be taken into account rather than a prescriptive list. The UK rules also do not include the more recent EU wording as to the entity relying on securitised exposures and retained interests as its "sole or predominant source of revenue". On the face it, this may appear to provide the UK regulators with more leeway in applying the test and to be a visible point of divergence from the EU position. However, considering also the context and history of these rules, the general sense among market participants is that the approach of the respective regulators and the features of typical risk retention holders may not result in much change in practice going forward.

Topic	EU Securitisation Regulation	New UK Rules	Remarks
Risk retention - sole purpose	All characteristics must apply Includes "sole or predominant source of revenue" wording	Characteristics which should be taken into account No "sole or predominant source of revenue" wording	Difference in literal wording but may not be materially different purposively or in practice in the context of typical transactions
Risk retention – change of retainer	Transfer allowed on the retainer's insolvency and in "other circumstances … for legal reasons beyond its control"	Transfer allowed on the retainer's insolvency but not "other circumstances … for legal reasons beyond its control"	Substantive difference but only likely to arise in limited circumstances such as illegality
Risk retention – embedded mechanisms	Prohibits embedded mechanisms declining the value of the retention faster than the interest transferred Detailed prescriptive provision prohibiting arrangements on fees payable to the retainer on a priority basis	Prohibits embedded mechanisms declining the value of the retention faster than the interest transferred No detailed prescriptive provision prohibiting arrangements on fees payable to the retainer on a priority basis	Difference in literal wording on fee arrangements but may not be materially different purposively in the context of typical transactions, noting the principles based UK approach. UK regulators would presumably take an equally dim view of any fee arrangements that undermine the purpose of the retention
Transparency – timing of upfront disclosure of transaction information / documents etc.	Before pricing, according to guidance in at least draft or initial form Secondary market trades not envisaged	Before pricing or initial commitment to invest in draft or initial form Final versions within 15 days of closing	Substantive difference but UK rules are potentially more of a clarification, albeit offering comfort to secondary market investors Introduces clear deadline for post-closing disclosure of final documents

Unchanged, EU positions not adopted

While the New UK Rules largely remains close to the positions in the EU Securitisation Regulation, there are some instances where the UK has not yet reflected post-Brexit features available under the EU regime. Our final category highlights two prominent examples:

Synthetic STS - The UK has not followed the EU in allowing synthetic transactions to qualify as "STS" securitisations. Given the growing significance of the Significant Risk Transfer market, the UK's approach seem to provide a clear disadvantage to UK entities.

Retention by the servicer - In relation to risk retention on NPE securitisations, while the UK has tracked the updated EU position in allowing the net value of the NPE exposures to be used to calculate the retention value, the UK has not done so in relation to the servicer acting as retainer. This reduces the options available to UK entities in structuring transactions.

Credit-granting for NPEs - Similarly, unlike the EU, the UK has not provided a derogation from the credit-granting requirements for NPE acquisitions.

WHAT WILL HAPPEN NEXT?

Other questions may materialise in due course, such as whether the new UK model of parallel rules for different regulators could produce unforeseen anomalies. For example, while to date the PRA and FCA have overtly sought to maintain a mutually consistent approach and are required to have regard to the coherence of the overall framework, the structure of this model lays open the possibility of differing technical interpretations of the same provisions between the PRA and the FCA.

The UK authorities are considering further changes to the securitisation regime and the approaches as to the topics discussed under '**Unchanged, EU positions not adopted**' above could be revisited. A consultation will be carried out to explore this, currently expected to be launched in the second half of 2025. Critically, the consultation will look at the regulatory capital treatment of securitisations. Transparency and reporting will also form a major part of the consultation, including in relation to the current distinction for such purposes between "public" and "private" securitisations and as to environmental, social and governance ("**ESG**") aspects.

Others possibilities have been mentioned, such as the option of an "L shaped" retention.

Meanwhile, substantial change may be coming on the EU side following the growing political momentum behind the urgent need to revitalise the European securitisation market. On 9 October 2024, the European Commission announced a wide-ranging consultation on the EU Securitisation Regulation and its related capital requirement regulations, with an extensive list of questions covering most of the topics in the EU Securitisation Regulation. Some new ideas were also included, such as the creation of a central EU securitisation platform.

It is difficult to estimate the time frame for any resulting new legislation. The Commission has indicated an intention to reach a legislative proposal by the summer of 2025, a pace considerably faster than has been seen in the past. Even if this aim is achieved, the proposal will need to wind its way through the multi-staged EU legislative process, a process that can take months rather than weeks. Even if the Commission hits its intended timeline, the UK may not even have started the consultations for its next phase by that time.

As result of these reviews, each regime may change in substantive ways. Given the stated aims behind the proposals, it is hoped that the changes resulting from the reviews will be net positive for the securitisation market. Nevertheless, they may result in much more divergence between the rules than as at 1 November 2024, which is itself a downside for market participants.

FOR MORE INFORMATION

Our Structured Finance team is available to discuss any of these issues with you and answer any specific questions you may have. If you would like more information, please contact us:

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