

Title: Review of the sale and rent back ‘by way of business’ amendment Lead department or agency: HM Treasury Contact for enquiries: Ed Moore	Post Implementation Review
	Date: 03/11/2017
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force: 16/09/2011
	Recommendation: Keep
	RPC Opinion: N/A

1. What were the policy objectives of the measure?

A sale and rent back product allows a homeowner to sell their home, typically at a discounted price, and to continue to reside in the property as a rental tenant. These have typically been used by borrowers struggling to meet mortgage repayments.

The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2011 sought to meet two objectives:

1. To prevent providers of sale and rent back agreements from evading regulation, except where these fall into the categories of spouse, civil partner, parent, brother, sister, child, grandparent, or grandchild, in relation to the customer.
2. To reduce the likelihood of significant instances of consumer detriment as a result of sale and rent back agreements.

The By Way of Business Amendment is intended to clarify the scope of regulation, by clarifying that those transactions not conducted between related persons are to be regarded as carrying on that activity by way of business.

2. What evidence has informed the PIR?

The Financial Conduct Authority has conducted, on behalf of HM Treasury, a review of the available market intelligence, including:

- The number of firms currently authorised to conduct these agreements.
- The volume of new and outstanding regulated agreements.
- Unregulated activity in this market.

UK Finance, the UK’s leading financial services trade body, has also provided views on sale and rent back products in response to queries. UK Finance indicated that their policy is to advise borrowers to exercise caution (particularly in regard to eviction risks) before taking out a sale and rent back product, and to explore other options with their lender first before resorting to sale and

rent back products, implying that lenders do not anticipate or desire a major role for sale and rent back products in the market in the future.

The FCA have also noted that Buy-to-Let mortgage contracts frequently exclude landlords from letting to sale and rent back tenants, further demonstrating the aversion of lenders to this product category.

3. To what extent have the policy objectives been achieved?

The impact assessment carried out in 2011 defined the objective as “[increasing] product quality by driving providers to improve or exit the market.”

The market is currently largely dormant. Two firms currently hold entering into or administering permissions, one of which has indicated an intention to surrender its permissions. No new transactions have been reported in the last three years. The number of existing agreements being administered is six.

Regarding unregulated transactions, the FCA have opened enquiries into 15 cases on the basis of information received from sources such as consumers, advice agencies, trading standards departments and housing authorities. All but two have been closed, either because the activity is not sale and rent back, or the suspect activity cannot be evidenced. This indicates that the first objective (to prevent providers from evading regulation) is being met.

The low volume of transactions in the market indicates that the second objective (to reduce the likelihood of significant instances of consumer detriment) is being met. Given activity is virtually dormant, it follows that consumers are not being exposed to detriment in connection to these products. Further, the FCA have shared their view the sale and rent back market has, in principle, the potential to expose consumers to particular harm, and that the modified ‘by way of business’ test strengthens the ability of the regulator to prevent this.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

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

Signed: ***David Raw, Banking and Credit Team***

Date: ***03/11/2017***

Signed: ***Johanna Cowan, Better Regulation Unit***

Date: ***07/02/2018***

Signed: ***John Glen, Economic Secretary to the Treasury***

Date: ***12/04/18***

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions?

Costs were estimated at £12.8m over 10 years, at 2009 prices. Costs were based on the assumption that 120 sale and rent back providers currently outside regulation will incur one-off costs of £16,000 each, totalling £1.9million, and annual costs of £10,000 per year, totalling £1.2 million. Given that virtually all providers have exited the market following the making of the amendment, these costs to business will not have been directly incurred.

There may have been costs to consumers for whom sale and rent back products may be an appropriate option, from the reduction in choice. However, given that consumers are not prevented from entering into agreements with regulated firms, and have not elected to do so, we assume this impact to be minimal.

Benefits were estimated at £79.2m over 10 years at 2009 prices, based on prevention of a net welfare loss of £9.2 million per year. Unmonetised benefits include the wider benefits of consumer protection, including longer security of tenure, fairer treatment or reduced stress incurred through poor treatment. Given that the market has become virtually dormant since the making of the amendment, these benefits are assumed to have been realised.

5. Were there any unintended consequences?

The regulation has correlated with the virtual elimination of the sale and rent back sector. This was not explicitly intended in the regulatory intervention. However, a previous impact assessment did acknowledge the objective of “[increasing] product quality by driving providers to improve or exit the market.” The widespread exit of providers therefore implies that it has not been possible to design a product of improved quality (i.e. one not risking consumer detriment).

We therefore view the exit of providers from the market as an acceptable trade-off for preventing the consumer detriment seen previously. Providers are not prevented from entering the market altogether, merely from acting in an unregulated capacity where inappropriate.

6. Has the evidence identified any opportunities for reducing the burden on business?

There is no evidence to suggest that, if the regulation was reduced or no longer in place, the consumer detriment that the regulation was intended to prevent would not return. We therefore do not anticipate opportunities for reducing the burden on business without increasing consumer detriment.

Recommended Next Steps (Keep, Amend, Repeal or Replace)

It is recommended that this measure is kept.

The measure does not prevent firms from offering sale and rent back products, but simply prevents them from doing so in an unregulated capacity, except for immediate relatives.

The significant consumer detriment associated with sale and rent back products means that we would not advise reducing consumer protections in this way.