

Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and section 429(2) of the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2020 No.

FINANCIAL SERVICES AND MARKETS

**The Bearer Certificates (Collective
Investment Schemes) Regulations 2020**

Made - - - -

Coming into force in accordance with regulation 1(2)

The Treasury are a government department designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the prevention of money laundering and terrorist financing.

The Treasury make the following Regulations in exercise of the powers conferred by section 2(2) of that Act and by section 262 of the Financial Services and Markets Act 2000⁽³⁾.

A draft of these Regulations has been approved by a resolution of each House of Parliament in accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and section 429(2) of the Financial Services and Market Act 2000.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Bearer Certificates (Collective Investment Schemes) Regulations 2020.

(2) These Regulations come into force on 1st January 2021.

(3) These Regulations extend to the whole of the United Kingdom.

(1) [S.I. 2007/2133](#).

(2) [1972 c.68](#). The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 ([c.16](#)) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 ([c.1](#))). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 ([c.51](#)) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 ([c.7](#)).

(3) [2000 c.8](#).

Bearer shares, and other bearer units, in collective investment schemes

2. In the Financial Services and Markets Act 2000, in Part 17 (collective investment schemes), after section 241 insert—

“CHAPTER 2A

PROHIBITION ON ISSUE OF BEARER UNITS

Bearer units no longer to be issued

241A.—(1) No bearer units in a collective investment scheme may be issued, converted or cancelled after 1 January 2021.

(2) Subsection (1) applies in relation to a collective investment scheme even if the arrangements constituting the scheme purport to authorise the issue, conversion or cancellation of bearer units in the scheme.

(3) In this section “bearer units”, in relation to a collective investment scheme, means units in the scheme evidenced by a certificate, or any other documentary evidence of title, which indicates—

- (a) that the holder of the document is entitled to the units specified in it; and
- (b) that no entry identifying the holder of those units will be made in any register, or other record, of participants in the scheme.

(4) Subsection (1) does not apply to a collective investment scheme constituted by an open-ended investment company, but regulation 48 of the Open-Ended Investment Companies Regulations 2001 (S.I. 2001/1228) makes corresponding provision.”

3. In the Open-Ended Investment Companies Regulations 2001, in regulation 48 (OEIC authorised before 26 June 2017 may issue bearer shares if its instrument of incorporation so provides), after paragraph (1)(4) insert—

“(1A) An open-ended investment company authorised before the relevant date may not issue, convert or cancel bearer shares after 1 January 2021 (irrespective of whether its instrument of incorporation purports to authorise it to do so).”

Transitional provision

4. The Schedule makes transitional provision enabling the conversion and cancellation on or before 1 January 2022 of bearer shares in open-ended investment companies and bearer units in other collective investment schemes held at the end of the day on which these Regulations take effect.

Date _____
Two of the Lords Commissioners of Her Majesty’s Treasury
Name _____
Name _____

(4) S.I. 2001/1228. Paragraph (1) of regulation 48 was numbered as such by the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), regulation 109 and Schedule 7, Part 2, paragraph 18(a).

SCHEDULE

Regulation 4

TRANSITIONAL PROVISION

PART 1

CONVERSION AND CANCELLATION OF EXISTING BEARER SHARES IN OPEN-ENDED INVESTMENT COMPANIES ON OR BEFORE 1 JANUARY 2022

1.—(1) An open-ended investment company may convert or cancel bearer shares on or before 1 January 2022 in accordance with this Part.

(2) This Part applies as if it were contained in the Open-Ended Investment Companies Regulations 2001 and accordingly—

- (a) words and expressions used in those Regulations have the same meaning when used in this Part; and
- (b) references in this Part to particular regulations are references to those Regulations.

Meaning of “outstanding bearer share” and “the surrender year”

2. In this Part—

“outstanding bearer share” means a bearer share which has been issued by an open-ended investment company before the surrender year and has not been cancelled;

“the surrender year” means the year beginning with the end of 1 January 2021.

Right to convert bearer share to registered share

3.—(1) Sub-paragraphs (2) and (3) apply where, at a time in the surrender year, the person who is the bearer of an outstanding bearer share delivers to the company—

- (a) the instrument mentioned in regulation 48 relating to the share,
- (b) a request for the share to be converted to a registered share, and
- (c) a statement of the person’s name and address.

(2) Delivery of the instrument to the company does not operate as a transfer of the share.

(3) The company must—

- (a) cancel the instrument,
- (b) register the person as the holder of the share, and
- (c) prepare a share certificate in respect of the share as registered.

(4) Sub-paragraphs (2) and (3) do not apply in relation to outstanding bearer shares of which the designated person is the bearer (but see paragraph 4).

(5) Regulation 46(2) (expeditious preparation of certificates prepared in accordance with regulation 46(1)(a) to (e)) applies also in relation to a certificate prepared in accordance with sub-paragraph (3)(c).

Cancellation of bearer shares held by the designated person

4. Where the bearer of any outstanding bearer shares is the designated person—

- (a) the designated person may not, after the start of the surrender year, transfer the shares to any person other than the company, and
- (b) the designated person must, as soon after the start of the surrender year as is reasonably practicable, transfer the shares to the company (so that the shares may be cancelled in accordance with paragraph 3).

Payment of dividends and other distributions during the surrender year

5.—(1) A dividend or other distribution paid in the surrender year in respect of an outstanding bearer share must be paid into the account opened by the company in accordance with sub-paragraph (3).

(2) Where a share is converted under paragraph 3, the person registered under paragraph 3(3) in respect of the share is entitled to—

- (a) any amounts paid into that account in respect of the share under sub-paragraph (1), and
- (b) any interest accrued on those amounts while held in that account.

(3) Where any payments are to be made under sub-paragraph (1) or paragraph 6 in respect of shares of a particular open-ended investment company, the company must open a separate bank account for the purpose of receiving the payments, and must do so before the first of any such payments is to be made.

(4) The terms of the account must be such that its balance—

- (a) bears interest at an appropriate rate, and
- (b) can be withdrawn during bank hours without having to give prior notice.

Cancellation of bearer shares still held at the end of the surrender year

6.—(1) Where a person is the bearer of an outstanding bearer share immediately before the end of the surrender year, the company must—

- (a) cancel the share with effect from the end of that year, and
- (b) pay the value (if any) of the share into the account opened by the company in accordance with paragraph 5(3).

(2) The person is entitled to—

- (a) any amounts paid into that account in respect of the share under sub-paragraph (1) or paragraph 5(1), and
- (b) any interest accrued on those amounts while held in that account.

(3) If after the surrender year the company receives the documentary evidence of title mentioned in regulation 48 relating to the share, the company may conclusively treat the person sending the documentary evidence of title as being the person entitled to those amounts and that interest.

Notifications

7.—(1) This paragraph applies to an open-ended investment company if, at the start of the surrender year, any persons other than the designated person are bearers of outstanding bearer shares issued by the company.

(2) The company must, no later than 2 months after the start of the surrender year, give a notice to those persons—

- (a) of their right during the surrender year to convert their bearer shares into registered shares,

- (b) of what they need to do to exercise that right,
 - (c) of the company's duty to retain dividends and other distributions paid in the surrender year in respect of bearer shares until the shares are converted or any proceeds of their cancellation are claimed,
 - (d) of the company's duty to cancel bearer shares still outstanding at the end of the surrender year, and
 - (e) of how any proceeds of such cancelled shares may be claimed.
- (3) The notice must be given by being—
- (a) published in the Gazette,
 - (b) communicated to each of the persons in the same way (if any) as the company normally communicates with that person for other purposes relating to the person's bearer shares in the company, and
 - (c) published in a prominent position on the company's website (if it has one).
- (4) The company must keep the notice as published on its website in a prominent position on its website until—
- (a) the first anniversary of the end of the surrender year, or
 - (b) if earlier, the time when—
 - (i) the company no longer has any bearer shares in issue, and
 - (ii) all amounts (if any) paid into the account opened by the company in accordance with paragraph 5(3) have been paid out in accordance with paragraphs 5(2) and 6(2) and (3).
- (5) Sub-paragraphs (2) to (4) do not apply in relation to a company if, before it gives the notice that would be required by sub-paragraph (2), it has ceased to have any bearer shares in issue.
- (6) An open-ended investment company which contravenes this paragraph commits an offence.
- (7) A person guilty of an offence under sub-paragraph (6) is liable on summary conviction—
- (a) in England and Wales, to a fine;
 - (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale.

PART 2

CONVERSION AND CANCELLATION OF EXISTING BEARER UNITS IN OTHER COLLECTIVE INVESTMENT SCHEMES ON OR BEFORE 1 JANUARY 2022

8.—(1) The operator of a collective investment scheme which is not an open-ended investment company may convert or cancel bearer units on or before 1 January 2022 in accordance with this Part.

(2) This Part applies as if it were contained within Part 17 of the Financial Services and Markets Act 2000 ("Part 17") and accordingly-

- (a) words and expressions used in Part 17 have the same meaning when used in this Part; and
- (b) references in this Part to particular sections and their associated subsections are references to the relevant provisions of Part 17.

General definitions

9. In this Part—

“the Gazette” means—

- (a) as respects companies registered in England and Wales, the London Gazette,
- (b) as respects companies registered in Scotland, the Edinburgh Gazette, and
- (c) as respects companies registered in Northern Ireland, the Belfast Gazette;

“outstanding bearer unit” means a bearer unit which has been issued by a collective investment scheme (except for collective investment schemes constituted by an open-ended investment company) before the surrender year and has not been cancelled;

“scheme” means a collective investment scheme other than one constituted by an open-ended investment company;

“the surrender year” means the year beginning with the end of 1 January 2021.

Right to convert bearer unit to registered unit

10.—(1) Subparagraphs (2) and (3) apply where, at a time in the surrender year, the person who is the bearer of an outstanding bearer unit delivers to the scheme—

- (a) the instrument mentioned in section 241A relating to the unit,
- (b) a request for the unit to be converted to a registered unit, and
- (c) a statement of the person’s name and address.

(2) Delivery of the instrument to the scheme does not operate as a transfer of the unit.

(3) The operator of the scheme must—

- (a) cancel the instrument,
- (b) register the person as the holder of the unit, and
- (c) prepare a certificate in respect of the unit as registered.

(4) Subparagraphs (2) and (3) do not apply in relation to outstanding bearer units of which the operator of the scheme is the bearer (but see paragraph 11).

(5) The operator of a scheme must exercise due diligence and take all reasonable steps to ensure that a certificate prepared in accordance with subparagraph (3)(c) is ready for delivery as soon as reasonably practicable.

Cancellation of bearer units held by the operator of the scheme

11. Where the bearer of any outstanding bearer units is the operator of the scheme—

- (a) the operator may not, after the start of the surrender year, transfer the shares to any person other than the scheme, and
- (b) the operator must, as soon after the start of the surrender year as is reasonably practicable, transfer the shares to the scheme (so that the shares may be cancelled in accordance with paragraph 10).

Payment of dividends and other distributions during the surrender year

12.—(1) A dividend or other distribution paid in the surrender year in respect of an outstanding bearer unit must be paid by the operator into the account opened by the scheme in accordance with subparagraph (3).

(2) Where a unit is converted under paragraph 10, the person registered under paragraph 10(3) in respect of the unit is entitled to—

- (a) any amounts paid into that account in respect of the unit under subparagraph (1), and
 - (b) any interest accrued on those amounts while held in that account.
- (3) Where any payments are to be made under subparagraph (1) or paragraph 13 in respect of units of a particular scheme, the operator of the scheme must open a separate bank account for the purpose of receiving the payments, and must do so before the first of any such payments is to be made.
- (4) The terms of the account must be such that its balance—
- (a) bears interest at an appropriate rate, and
 - (b) can be withdrawn during banking hours without having to give prior notice.

Cancellation of bearer units still held at the end of the surrender year

- 13.**—(1) Where a person is the bearer of an outstanding bearer unit immediately before the end of the surrender year, the operator of the scheme must—
- (a) cancel the unit with effect from the end of that year, and
 - (b) pay the value (if any) of the unit into the account opened by the scheme in accordance with paragraph 12(3).
- (2) The person is entitled to—
- (a) any amounts paid into that account in respect of the unit under subparagraph (1) or paragraph 12(1), and
 - (b) any interest accrued on those amounts while held in that account.
- (3) If after the surrender year the scheme receives the documentary evidence of title mentioned in section 241A(3) relating to the unit, the operator of the scheme may conclusively treat the person sending the documentary evidence of title as being the person entitled to those amounts and interest.

Right to amend governing documents

- 14.** The operator of a scheme may amend any provision which is contained in its governing documents (including any trust deed) which enables the scheme to issue bearer units.

Notifications

- 15.**—(1) This paragraph applies to the operator of a scheme if, at the start of the surrender year, any persons other than the operator of the scheme are bearers of outstanding bearer units issued by the scheme.
- (2) The operator of the scheme must, no later than 2 months after the start of the surrender year, give a notice to those persons—
- (a) of their right during the surrender year to convert their bearer units into registered units,
 - (b) of what they need to do to exercise that right,
 - (c) of the operator’s duty to retain dividends and other distributions paid in the surrender year in respect of bearer units until the bearer units are converted or any proceeds of their cancellation are claimed,
 - (d) of the operator’s duty to cancel bearer units still outstanding at the end of the surrender year, and
 - (e) of how any proceeds of such cancelled units may be claimed.
- (3) The notice must be given by being—

- (a) published in the Gazette,
 - (b) communicated to each of the persons in the same way (if any) as the scheme normally communicates with that person for other purposes relating to the person's bearer units in the company, and
 - (c) published in a prominent position on the scheme's website (if it has one).
- (4) The operator of the scheme must keep the notice as published on its website in a prominent position on its website until—
- (a) the first anniversary of the end of the surrender year, or
 - (b) if earlier, the time when—
 - (i) the scheme no longer has any bearer units in issue, and
 - (ii) all amounts (if any) paid into the account opened by the scheme in accordance with paragraph 12(3) have been paid out in accordance with paragraphs 12(2) and 13(2) and (3).
- (5) Subparagraphs (2) to (4) do not apply in relation to the operator of a scheme if, before it gives the notice that would be required by subparagraph (2), the scheme has ceased to have any bearer units in issue.
- (6) The operator of a scheme which contravenes this paragraph commits an offence.
- (7) A person guilty of an offence under subparagraph (6) is liable on summary conviction—
- (a) in England and Wales, to a fine;
 - (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

From 26 June 2017, regulation 48 of the Open-Ended Investment Companies Regulations 2001⁽⁵⁾ (amended by the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017⁽⁶⁾), prohibited most business entities in the UK from issuing bearer certificates. These Regulations prohibit bearer certificates for all collective investment schemes based in the UK. Provision is made for the conversion or cancellation of existing bearer certificates within the year from the Regulations coming into force; the payment of dividends or other distributions during that year; and the giving of notice to those who hold bearer certificates.

The provisions regarding collective investment schemes that are not open-ended investment companies implement the obligations under Article 10(2) of the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing⁽⁷⁾ and therefore fall under section 2(2) of the European Communities Act 1972⁽⁸⁾. The provisions regarding open-ended investment companies fall under the Financial Services and Markets Act 2000⁽⁹⁾.

⁽⁵⁾ S.I. 2001/1228.

⁽⁶⁾ S.I. 2017/692.

⁽⁷⁾ Directive (EU) 2015/849 L 141/73.

⁽⁸⁾ 1972 c.68.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the costs of business or the voluntary sector is foreseen.