Status: *Point in time view as at 25/02/2001. This version of this part contains provisions that are not valid for this point in time.*
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Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XVII

COLLECTIVE INVESTMENT SCHEMES

CHAPTER I

INTERPRETATION

235 Collective investment schemes.

(1) In this Part "collective investment scheme" means any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(2) The arrangements must be such that the persons who are to participate ("participants") do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions.

(3) The arrangements must also have either or both of the following characteristics—

(a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;

(b) the property is managed as a whole by or on behalf of the operator of the scheme.

(4) If arrangements provide for such pooling as is mentioned in subsection (3)(a) in relation to separate parts of the property, the arrangements are not to be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.

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(5) The Treasury may by order provide that arrangements do not amount to a collective investment scheme—
  (a) in specified circumstances; or
  (b) if the arrangements fall within a specified category of arrangement.

236 Open-ended investment companies.

(1) In this Part "an open-ended investment company" means a collective investment scheme which satisfies both the property condition and the investment condition.

(2) The property condition is that the property belongs beneficially to, and is managed by or on behalf of, a body corporate ("BC") having as its purpose the investment of its funds with the aim of—
  (a) spreading investment risk; and
  (b) giving its members the benefit of the results of the management of those funds by or on behalf of that body.

(3) The investment condition is that, in relation to BC, a reasonable investor would, if he were to participate in the scheme—
  (a) expect that he would be able to realize, within a period appearing to him to be reasonable, his investment in the scheme (represented, at any given time, by the value of shares in, or securities of, BC held by him as a participant in the scheme); and
  (b) be satisfied that his investment would be realized on a basis calculated wholly or mainly by reference to the value of property in respect of which the scheme makes arrangements.

(4) In determining whether the investment condition is satisfied, no account is to be taken of any actual or potential redemption or repurchase of shares or securities under—
  (a) Chapter VII of Part V of the [M1]Companies Act 1985;
  (b) Chapter VII of Part VI of the [M2]Companies (Northern Ireland) Order 1986;
  (c) corresponding provisions in force in another EEA State; or
  (d) provisions in force in a country or territory other than an EEA state which the Treasury have, by order, designated as corresponding provisions.

(5) The Treasury may by order amend the definition of "an open-ended investment company" for the purposes of this Part.

Marginal Citations

M1 1985 c. 6.

M2 S.I. 1986/1032 (N.I. 6.)

237 Other definitions.

(1) In this Part "unit trust scheme" means a collective investment scheme under which the property is held on trust for the participants.

(2) In this Part—

"trustee", in relation to a unit trust scheme, means the person holding the property in question on trust for the participants;

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"depositary", in relation to—

(a) a collective investment scheme which is constituted by a body incorporated by virtue of regulations under section 262, or

(b) any other collective investment scheme which is not a unit trust scheme,

means any person to whom the property subject to the scheme is entrusted for safekeeping;

"the operator", in relation to a unit trust scheme with a separate trustee, means the manager and in relation to an open-ended investment company, means that company;

"units" means the rights or interests (however described) of the participants in a collective investment scheme.

(3) In this Part—

"an authorised unit trust scheme" means a unit trust scheme which is authorised for the purposes of this Act by an authorisation order in force under section 243;

"an authorised open-ended investment company" means a body incorporated by virtue of regulations under section 262 in respect of which an authorisation order is in force under any provision made in such regulations by virtue of subsection (2)(l) of that section;

"a recognised scheme" means a scheme recognised under section 264, 270 or 272.

CHAPTER II

RESTRICTIONS ON PROMOTION

Modifications etc. (not altering text)

C1 Pt. XVII Ch. II (ss. 238-241) modified (31.10.2001) by S.I. 2001/3347, **Sch. para. 8**

238 Restrictions on promotion.

(1) An authorised person must not communicate an invitation or inducement to participate in a collective investment scheme.

(2) But that is subject to the following provisions of this section and to section 239.

(3) Subsection (1) applies in the case of a communication originating outside the United Kingdom only if the communication is capable of having an effect in the United Kingdom.

(4) Subsection (1) does not apply in relation to—

(a) an authorised unit trust scheme;

(b) a scheme constituted by an authorised open-ended investment company; or

(c) a recognised scheme.

(5) Subsection (1) does not apply to anything done in accordance with rules made by the Authority for the purpose of exempting from that subsection the promotion otherwise than to the general public of schemes of specified descriptions.

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(6) The Treasury may by order specify circumstances in which subsection (1) does not apply.

(7) An order under subsection (6) may, in particular, provide that subsection (1) does not apply in relation to communications—

(a) of a specified description;

(b) originating in a specified country or territory outside the United Kingdom;

(c) originating in a country or territory which falls within a specified description of country or territory outside the United Kingdom; or

(d) originating outside the United Kingdom.

(8) The Treasury may by order repeal subsection (3).

(9) "Communicate" includes causing a communication to be made.

(10) "Promotion otherwise than to the general public" includes promotion in a way designed to reduce, so far as possible, the risk of participation by persons for whom participation would be unsuitable.

(11) "Participate", in relation to a collective investment scheme, means become a participant (within the meaning given by section 235(2)) in the scheme.

Commencement Information

I1 S. 238 wholly in force at 1.12.2001; s. 238 not in force at Royal Assent see s. 431(2); s. 238 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 238 in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 238 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

239 Single property schemes.

(1) The Treasury may by regulations make provision for exempting single property schemes from section 238(1).

(2) For the purposes of subsection (1) a single property scheme is a scheme which has the characteristics mentioned in subsection (3) and satisfies such other requirements as are prescribed by the regulations conferring the exemption.

(3) The characteristics are—

(a) that the property subject to the scheme (apart from cash or other assets held for management purposes) consists of—

(i) a single building (or a single building with ancillary buildings) managed by or on behalf of the operator of the scheme, or

(ii) a group of adjacent or contiguous buildings managed by him or on his behalf as a single enterprise,

with or without ancillary land and with or without furniture, fittings or other contents of the building or buildings in question; and

(b) that the units of the participants in the scheme are either dealt in on a recognised investment exchange or offered on terms such that any agreement for their acquisition is conditional on their admission to dealings on such an exchange.

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(4) If regulations are made under subsection (1), the Authority may make rules imposing duties or liabilities on the operator and (if any) the trustee or depositary of a scheme exempted by the regulations.

(5) The rules may include, to such extent as the Authority thinks appropriate, provision for purposes corresponding to those for which provision can be made under section 248 in relation to authorised unit trust schemes.

Commencement Information

I2 S. 239 wholly in force at 18.6.2001; s. 239 not in force at Royal Assent see s. 431(2); s. 239(1)-(3) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), **Sch. Pt. 1**; s. 239 in force in so far as not already in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**

VALID FROM 01/12/2001

240 Restriction on approval of promotion.

(1) An authorised person may not approve for the purposes of section 21 the content of a communication relating to a collective investment scheme if he would be prohibited by section 238(1) from effecting the communication himself or from causing it to be communicated.

(2) For the purposes of determining in any case whether there has been a contravention of section 21(1), an approval given in contravention of subsection (1) is to be regarded as not having been given.

VALID FROM 01/12/2001

241 Actions for damages.

If an authorised person contravenes a requirement imposed on him by section 238 or 240, section 150 applies to the contravention as it applies to a contravention mentioned in that section.

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VALID FROM 18/06/2001

CHAPTER III

AUTHORISED UNIT TRUST SCHEMES

Applications for authorisation

242 Applications for authorisation of unit trust schemes.

(1) Any application for an order declaring a unit trust scheme to be an authorised unit trust scheme must be made to the Authority by the manager and trustee, or proposed manager and trustee, of the scheme.

(2) The manager and trustee (or proposed manager and trustee) must be different persons.

(3) The application—
- (a) must be made in such manner as the Authority may direct; and
- (b) must contain or be accompanied by such information as the Authority may reasonably require for the purpose of determining the application.

(4) At any time after receiving an application and before determining it, the Authority may require the applicants to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(5) Different directions may be given, and different requirements imposed, in relation to different applications.

(6) The Authority may require applicants to present information which they are required to give under this section in such form, or to verify it in such a way, as the Authority may direct.

Modifications etc. (not altering text)

C2 S. 242 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 39(1) (with art. 23(2))

Commencement Information

I3 S. 242 wholly in force at 1.12.2001; s. 242 not in force at Royal Assent see s. 431(2); s. 242(3) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 242 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 242 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 03/09/2001

243 Authorisation orders.

(1) If, on an application under section 242 in respect of a unit trust scheme, the Authority—

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(a) is satisfied that the scheme complies with the requirements set out in this section,

(b) is satisfied that the scheme complies with the requirements of the trust scheme rules, and

(c) has been provided with a copy of the trust deed and a certificate signed by a solicitor to the effect that it complies with such of the requirements of this section or those rules as relate to its contents,

the Authority may make an order declaring the scheme to be an authorised unit trust scheme.

(2) If the Authority makes an order under subsection (1), it must give written notice of the order to the applicant.

(3) In this Chapter "authorisation order" means an order under subsection (1).

(4) The manager and the trustee must be persons who are independent of each other.

(5) The manager and the trustee must each—

(a) be a body corporate incorporated in the United Kingdom or another EEA State, and

(b) have a place of business in the United Kingdom,

and the affairs of each must be administered in the country in which it is incorporated.

(6) If the manager is incorporated in another EEA State, the scheme must not be one which satisfies the requirements prescribed for the purposes of section 264.

(7) The manager and the trustee must each be an authorised person and the manager must have permission to act as manager and the trustee must have permission to act as trustee.

(8) The name of the scheme must not be undesirable or misleading.

(9) The purposes of the scheme must be reasonably capable of being successfully carried into effect.

(10) The participants must be entitled to have their units redeemed in accordance with the scheme at a price—

(a) related to the net value of the property to which the units relate; and

(b) determined in accordance with the scheme.

(11) But a scheme is to be treated as complying with subsection (10) if it requires the manager to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in that subsection.

Modifications etc. (not altering text)

C3 S. 243(1) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 65(1); S.I. 2001/3538, **art. 2(1)**

Status: *Point in time view as at 25/02/2001. This version of this part contains provisions that are not valid for this point in time.*
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Commencement Information

I4 S. 243 wholly in force at 1.12.2001; s. 243 not in force at Royal Assent see s. 431(2); s. 243 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 243 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 03/09/2001

244 Determination of applications.

(1) An application under section 242 must be determined by the Authority before the end of the period of six months beginning with the date on which it receives the completed application.

(2) The Authority may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it first receives the application.

(3) The applicant may withdraw his application, by giving the Authority written notice, at any time before the Authority determines it.

Modifications etc. (not altering text)

C4 S. 244 applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 39(1) (with art. 23(2))

Commencement Information

I5 S. 244 wholly in force at 1.12.2001; s. 244 not in force at Royal Assent see s. 431(2); s. 244 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 244 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 03/09/2001

Applications refused

245 Procedure when refusing an application.

(1) If the Authority proposes to refuse an application made under section 242 it must give each of the applicants a warning notice.

(2) If the Authority decides to refuse the application—
   (a) it must give each of the applicants a decision notice; and
   (b) either applicant may refer the matter to the Tribunal.

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Commencement Information

I6 S. 245 wholly in force at 1.12.2001; s. 245 not in force at Royal Assent see s. 431(2); s. 245 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 245 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 03/09/2001

Certificates

246 Certificates.

(1) If the manager or trustee of a unit trust scheme which complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument so requests, the Authority may issue a certificate to the effect that the scheme complies with those conditions.

(2) Such a certificate may be issued on the making of an authorisation order in respect of the scheme or at any subsequent time.

Modifications etc. (not altering text)

C5 S. 246 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 65(3); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I7 S. 246 wholly in force at 1.12.2001; s. 246 not in force at Royal Assent see s. 431(2); s. 246 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 246 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Rules

247 Trust scheme rules.

(1) The Authority may make rules ("trust scheme rules") as to—
- (a) the constitution, management and operation of authorised unit trust schemes;
- (b) the powers, duties, rights and liabilities of the manager and trustee of any such scheme;
- (c) the rights and duties of the participants in any such scheme; and
- (d) the winding up of any such scheme.

(2) Trust scheme rules may, in particular, make provision—
- (a) as to the issue and redemption of the units under the scheme;
- (b) as to the expenses of the scheme and the means of meeting them;
- (c) for the appointment, removal, powers and duties of an auditor for the scheme;

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(d) for restricting or regulating the investment and borrowing powers exercisable in relation to the scheme;

(e) requiring the keeping of records with respect to the transactions and financial position of the scheme and for the inspection of those records;

(f) requiring the preparation of periodical reports with respect to the scheme and the provision of those reports to the participants and to the Authority; and

(g) with respect to the amendment of the scheme.

(3) Trust scheme rules may make provision as to the contents of the trust deed, including provision requiring any of the matters mentioned in subsection (2) to be dealt with in the deed.

(4) But trust scheme rules are binding on the manager, trustee and participants independently of the contents of the trust deed and, in the case of the participants, have effect as if contained in it.

(5) If—

(a) a modification is made of the statutory provisions in force in Great Britain or Northern Ireland relating to companies,

(b) the modification relates to the rights and duties of persons who hold the beneficial title to any shares in a company without also holding the legal title, and

(c) it appears to the Treasury that, for the purpose of assimilating the law relating to authorised unit trust schemes to the law relating to companies as so modified, it is expedient to modify the rule-making powers conferred on the Authority by this section,

the Treasury may by order make such modifications of those powers as they consider appropriate.

248 Scheme particulars rules.

(1) The Authority may make rules ("scheme particulars rules") requiring the manager of an authorised unit trust scheme—

(a) to submit scheme particulars to the Authority; and

(b) to publish scheme particulars or make them available to the public on request.

(2) "Scheme particulars" means particulars in such form, containing such information about the scheme and complying with such requirements, as are specified in scheme particulars rules.

(3) Scheme particulars rules may require the manager of an authorised unit trust scheme to submit, and to publish or make available, revised or further scheme particulars if there is a significant change affecting any matter—

(a) which is contained in scheme particulars previously published or made available; and

(b) whose inclusion in those particulars was required by the rules.

(4) Scheme particulars rules may require the manager of an authorised unit trust scheme to submit, and to publish or make available, revised or further scheme particulars if—

(a) a significant new matter arises; and

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(b) the inclusion of information in respect of that matter would have been required in previous particulars if it had arisen when those particulars were prepared.

(5) Scheme particulars rules may provide for the payment, by the person or persons who in accordance with the rules are treated as responsible for any scheme particulars, of compensation to any qualifying person who has suffered loss as a result of—

(a) any untrue or misleading statement in the particulars; or

(b) the omission from them of any matter required by the rules to be included.

(6) "Qualifying person" means a person who—

(a) has become or agreed to become a participant in the scheme; or

(b) although not being a participant, has a beneficial interest in units in the scheme.

(7) Scheme particulars rules do not affect any liability which any person may incur apart from the rules.

VALID FROM 01/12/2001

249 Disqualification of auditor for breach of trust scheme rules.

(1) If it appears to the Authority that an auditor has failed to comply with a duty imposed on him by trust scheme rules, it may disqualify him from being the auditor for any authorised unit trust scheme or authorised open-ended investment company.

(2) Subsections (2) to (5) of section 345 have effect in relation to disqualification under subsection (1) as they have effect in relation to disqualification under subsection (1) of that section.

Modifications etc. (not altering text)

C6 S. 249(1) applied (with modifications) (N.I.) (1.11.2004) by Open-Ended Investment Companies Regulations (Northern Ireland) (S.R. 2004/335), regs. 1(1)(b), 69, {Sch. 5 para. 20} (with reg. 1(2))

VALID FROM 03/09/2001

250 Modification or waiver of rules.

(1) In this section "rules" means—

(a) trust scheme rules; or

(b) scheme particulars rules.

(2) The Authority may, on the application or with the consent of any person to whom any rules apply, direct that all or any of the rules—

(a) are not to apply to him as respects a particular scheme; or

(b) are to apply to him, as respects a particular scheme, with such modifications as may be specified in the direction.

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(3) The Authority may, on the application or with the consent of the manager and trustee of a particular scheme acting jointly, direct that all or any of the rules—
  (a) are not to apply to the scheme; or
  (b) are to apply to the scheme with such modifications as may be specified in the direction.

(4) Subsections (3) to (9) and (11) of section 148 have effect in relation to a direction under subsection (2) as they have effect in relation to a direction under section 148(2) but with the following modifications—
  (a) subsection (4)(a) is to be read as if the words "by the authorised person" were omitted;
  (b) any reference to the authorised person (except in subsection (4)(a)) is to be read as a reference to the person mentioned in subsection (2); and
  (c) subsection (7)(b) is to be read, in relation to a participant of the scheme, as if the word "commercial" were omitted.

(5) Subsections (3) to (9) and (11) of section 148 have effect in relation to a direction under subsection (3) as they have effect in relation to a direction under section 148(2) but with the following modifications—
  (a) subsection (4)(a) is to be read as if the words "by the authorised person" were omitted;
  (b) subsections (7)(b) and (11) are to be read as if references to the authorised person were references to each of the manager and the trustee of the scheme;
  (c) subsection (7)(b) is to be read, in relation to a participant of the scheme, as if the word "commercial" were omitted;
  (d) subsection (8) is to be read as if the reference to the authorised person concerned were a reference to the scheme concerned and to its manager and trustee; and
  (e) subsection (9) is to be read as if the reference to the authorised person were a reference to the manager and trustee of the scheme acting jointly.

Modifications etc. (not altering text)

C7 S. 250(2) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(6); S.I. 2001/3538, **art. 2(1)**

VALID FROM 03/09/2001

Alterations

251 Alteration of schemes and changes of manager or trustee.

(1) The manager of an authorised unit trust scheme must give written notice to the Authority of any proposal to alter the scheme or to replace its trustee.

(2) Any notice given in respect of a proposal to alter the scheme involving a change in the trust deed must be accompanied by a certificate signed by a solicitor to the effect

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that the change will not affect the compliance of the deed with the trust scheme rules.

(3) The trustee of an authorised unit trust scheme must give written notice to the Authority of any proposal to replace the manager of the scheme.

(4) Effect is not to be given to any proposal of which notice has been given under subsection (1) or (3) unless—
  (a) the Authority, by written notice, has given its approval to the proposal; or
  (b) one month, beginning with the date on which the notice was given, has expired without the manager or trustee having received from the Authority a warning notice under section 252 in respect of the proposal.

(5) The Authority must not approve a proposal to replace the manager or the trustee of an authorised unit trust scheme unless it is satisfied that, if the proposed replacement is made, the scheme will continue to comply with the requirements of section 243(4) to (7).

Modifications etc. (not altering text)

C8 S. 251 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(7); S.I. 2001/3538, **art. 2(1)**

C9 S. 251(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 40(1) (with art. 23(2))

C10 S. 251(3) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 41(1) (with art. 23(2))

Commencement Information

I8 S. 251 wholly in force at 1.12.2001; s. 251 not in force at Royal Assent see s. 431(2); s. 251 (except subsection (4)(b)) in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 251 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

252 Procedure when refusing approval of change of manager or trustee.

(1) If the Authority proposes to refuse approval of a proposal to replace the trustee or manager of an authorised unit trust scheme, it must give a warning notice to the person by whom notice of the proposal was given under section 251(1) or (3).

(2) If the Authority proposes to refuse approval of a proposal to alter an authorised unit trust scheme it must give separate warning notices to the manager and the trustee of the scheme.

(3) To be valid the warning notice must be received by that person before the end of one month beginning with the date on which notice of the proposal was given.

(4) If, having given a warning notice to a person, the Authority decides to refuse approval—
  (a) it must give him a decision notice; and
  (b) he may refer the matter to the Tribunal.

Modifications etc. (not altering text)

C11 S. 252 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(7); S.I. 2001/3538, **art. 2(1)**

Status: *Point in time view as at 25/02/2001. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 12 October 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

C12 S. 252(3) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 40(3), 41(2) (with art. 23(2))

Commencement Information

I9 S. 252 wholly in force at 1.12.2001; s. 252 not in force at Royal Assent see s. 431(2); s. 252 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 252 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 01/07/2011

[F1[F1252A Proposal to convert to a non-feeder UCITS

(1) This section applies where the manager of an authorised unit trust scheme which is a feeder UCITS proposes to make an alteration to the scheme which—
  (a) involves a change in the trust deed, and
  (b) will enable the scheme to convert into a UCITS which is not a feeder UCITS.

(2) The manager must give written notice of the proposal to the Authority.

(3) Any notice given in respect of such a proposal must be accompanied by—
  (a) a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the trust scheme rules; and
  (b) the specified information.

(4) The Authority must, within 15 working days after the date on which it received the notice under subsection (2), give—
  (a) written notice to the manager of the scheme that the Authority approves the proposed amendments to the trust deed, or
  (b) separate warning notices to the manager and trustee of the scheme that the Authority proposes to refuse approval of the proposed amendments.

(5) Effect is not to be given to any proposal of which notice has been given under subsection (2) unless the Authority, by written notice, has given its approval to the proposal.

(6) If, having given a warning notice to a person, the Authority decides to refuse approval—
  (a) it must give that person a decision notice; and
  (b) that person may refer the matter to the Tribunal.

(7) Subsection (8) applies where—
  (a) the notice given under subsection (2) relates to a proposal to amend the trust deed of a feeder UCITS to enable it to convert into a UCITS which is not a feeder UCITS following the winding-up of its master UCITS; and
  (b) the proceeds of the winding-up are to be paid to the feeder UCITS before the date on which the feeder UCITS proposes to start investing in accordance with the new investment objectives and policy provided for in its amended trust deed and scheme rules.

(8) Where this subsection applies, the Authority may only approve the proposal subject to the conditions set out in section 283A(5) and (6).

Status: *Point in time view as at 25/02/2001. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 12 October 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(9) In this section, "specified" means—

(a) specified in rules made by the Authority to implement the UCITS directive, or

(b) specified in any directly applicable Community regulation or decision made under the UCITS directive.**]]**

Textual Amendments

F1 S. 252A inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(19)**

VALID FROM 01/12/2001

Exclusion clauses

253 Avoidance of exclusion clauses.

Any provision of the trust deed of an authorised unit trust scheme is void in so far as it would have the effect of exempting the manager or trustee from liability for any failure to exercise due care and diligence in the discharge of his functions in respect of the scheme.

VALID FROM 03/09/2001

Ending of authorisation

254 Revocation of authorisation order otherwise than by consent.

(1) An authorisation order may be revoked by an order made by the Authority if it appears to the Authority that—

(a) one or more of the requirements for the making of the order are no longer satisfied;

(b) the manager or trustee of the scheme concerned has contravened a requirement imposed on him by or under this Act;

(c) the manager or trustee of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular;

(d) no regulated activity is being carried on in relation to the scheme and the period of that inactivity began at least twelve months earlier; or

(e) none of paragraphs (a) to (d) applies, but it is desirable to revoke the authorisation order in order to protect the interests of participants or potential participants in the scheme.

(2) For the purposes of subsection (1)(e), the Authority may take into account any matter relating to—

Status: *Point in time view as at 25/02/2001. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 12 October 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the scheme;
(b) the manager or trustee;
(c) any person employed by or associated with the manager or trustee in connection with the scheme;
(d) any director of the manager or trustee;
(e) any person exercising influence over the manager or trustee;
(f) any body corporate in the same group as the manager or trustee;
(g) any director of any such body corporate;
(h) any person exercising influence over any such body corporate.

Modifications etc. (not altering text)

C13 S. 254 applied (with modifications) (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 46(4)(5) (with art. 23(2))

C14 S. 254(1)(a) modified (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 65(2); S.I. 2001/3538, **art. 2(1)**

C15 S. 254(1)(d) excluded (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(2); S.I. 2001/3538, **art. 2(1)**

255 Procedure.

(1) If the Authority proposes to make an order under section 254 revoking an authorisation order ("a revoking order"), it must give separate warning notices to the manager and the trustee of the scheme.

(2) If the Authority decides to make a revoking order, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

Modifications etc. (not altering text)

C16 S. 255(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 46(1) (with art. 23(2))

256 Requests for revocation of authorisation order.

(1) An authorisation order may be revoked by an order made by the Authority at the request of the manager or trustee of the scheme concerned.

(2) If the Authority makes an order under subsection (1), it must give written notice of the order to the manager and trustee of the scheme concerned.

(3) The Authority may refuse a request to make an order under this section if it considers that—
(a) the public interest requires that any matter concerning the scheme should be investigated before a decision is taken as to whether the authorisation order should be revoked; or
(b) revocation would not be in the interests of the participants or would be incompatible with a Community obligation.

(4) If the Authority proposes to refuse a request under this section, it must give separate warning notices to the manager and the trustee of the scheme.

Status: *Point in time view as at 25/02/2001. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 12 October 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) If the Authority decides to refuse the request, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

Modifications etc. (not altering text)

C17 S. 256(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 46(6) (with art. 23(2))

VALID FROM 03/09/2001

Powers of intervention

257 Directions.

(1) The Authority may give a direction under this section if it appears to the Authority that—

(a) one or more of the requirements for the making of an authorisation order are no longer satisfied;

(b) the manager or trustee of an authorised unit trust scheme has contravened, or is likely to contravene, a requirement imposed on him by or under this Act;

(c) the manager or trustee of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular; or

(d) none of paragraphs (a) to (c) applies, but it is desirable to give a direction in order to protect the interests of participants or potential participants in such a scheme.

(2) A direction under this section may—

(a) require the manager of the scheme to cease the issue or redemption, or both the issue and redemption, of units under the scheme;

(b) require the manager and trustee of the scheme to wind it up.

(3) If the authorisation order is revoked, the revocation does not affect any direction under this section which is then in force.

(4) A direction may be given under this section in relation to a scheme in the case of which the authorisation order has been revoked if a direction under this section was already in force at the time of revocation.

(5) If a person contravenes a direction under this section, section 150 applies to the contravention as it applies to a contravention mentioned in that section.

(6) The Authority may, either on its own initiative or on the application of the manager or trustee of the scheme concerned, revoke or vary a direction given under this section if it appears to the Authority—

(a) in the case of revocation, that it is no longer necessary for the direction to take effect or continue in force;

(b) in the case of variation, that the direction should take effect or continue in force in a different form.

Status: *Point in time view as at 25/02/2001. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 12 October 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Modifications etc. (not altering text)

C18 S. 257(1) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 69(1); S.I. 2001/3538, **art. 2(1)**

C19 S. 257(1)(b) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(7); S.I. 2001/3538, **art. 2(1)**

C20 S. 257(6) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 69(3); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I10 S. 257 wholly in force at 1.12.2001; s. 257 not in force at Royal Assent see s. 431(2); s. 257 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 257 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 01/12/2001

258 Applications to the court.

(1) If the Authority could give a direction under section 257, it may also apply to the court for an order—
  (a) removing the manager or the trustee, or both the manager and the trustee, of the scheme; and
  (b) replacing the person or persons removed with a suitable person or persons nominated by the Authority.

(2) The Authority may nominate a person for the purposes of subsection (1)(b) only if it is satisfied that, if the order was made, the requirements of section 243(4) to (7) would be complied with.

(3) If it appears to the Authority that there is no person it can nominate for the purposes of subsection (1)(b), it may apply to the court for an order—
  (a) removing the manager or the trustee, or both the manager and the trustee, of the scheme; and
  (b) appointing an authorised person to wind up the scheme.

(4) On an application under this section the court may make such order as it thinks fit.

(5) The court may, on the application of the Authority, rescind any such order as is mentioned in subsection (3) and substitute such an order as is mentioned in subsection (1).

(6) The Authority must give written notice of the making of an application under this section to the manager and trustee of the scheme concerned.

(7) The jurisdiction conferred by this section may be exercised by—
  (a) the High Court;
  (b) in Scotland, the Court of Session.

Status: *Point in time view as at 25/02/2001. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 12 October 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 01/07/2011

[F2[F2258A Winding up or merger of master UCITS

(1) Subsection (2) applies if a master UCITS which has one or more feeder UCITS which are authorised unit trust schemes is wound up, whether as a result of a direction given by the Authority under section 257, an order of the court under section 258, rules made by the Authority or otherwise.

(2) The Authority must direct the manager and trustee of any authorised unit trust scheme which is a feeder UCITS of the master UCITS to wind up the feeder UCITS unless—

(a) the Authority approves under section 283A the investment by the feeder UCITS of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in units of another UCITS or master UCITS; or

(b) the Authority approves under section 252A an amendment of the trust deed of the feeder UCITS which would enable it to convert into a UCITS which is not a feeder UCITS.

(3) Subsection (4) applies if a master UCITS which has one or more feeder UCITS which are authorised unit trust schemes—

(a) merges with another UCITS, or

(b) is divided into two or more UCITS.

(4) The Authority must direct the manager and trustee of any authorised unit trust scheme which is a feeder UCITS of the master UCITS to wind up the scheme unless—

(a) the Authority approves under section 283A the investment by the scheme of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in the units of—

(i) the master UCITS which results from the merger;

(ii) one of the UCITS resulting from the division; or

(iii) another UCITS or master UCITS;

(b) the Authority approves under section 252A an amendment of the trust deed of the scheme which would enable it to convert into a UCITS which is not a feeder UCITS.**]]**

Textual Amendments

F2 S. 258A inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(21)**

259 Procedure on giving directions under section 257 and varying them on Authority's own initiative.

(1) A direction takes effect—

(a) immediately, if the notice given under subsection (3) states that that is the case;

Status: *Point in time view as at 25/02/2001. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 12 October 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) on such date as may be specified in the notice; or

(c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

(2) A direction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its power under section 257, considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If the Authority proposes to give a direction under section 257, or gives such a direction with immediate effect, it must give separate written notice to the manager and the trustee of the scheme concerned.

(4) The notice must—

(a) give details of the direction;

(b) inform the person to whom it is given of when the direction takes effect;

(c) state the Authority's reasons for giving the direction and for its determination as to when the direction takes effect;

(d) inform the person to whom it is given that he may make representations to the Authority within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and

(e) inform him of his right to refer the matter to the Tribunal.

(5) If the direction imposes a requirement under section 257(2)(a), the notice must state that the requirement has effect until—

(a) a specified date; or

(b) a further direction.

(6) If the direction imposes a requirement under section 257(2)(b), the scheme must be wound up—

(a) by a date specified in the notice; or

(b) if no date is specified, as soon as practicable.

(7) The Authority may extend the period allowed under the notice for making representations.

(8) If, having considered any representations made by a person to whom the notice was given, the Authority decides—

(a) to give the direction in the way proposed, or

(b) if it has been given, not to revoke the direction,

it must give separate written notice to the manager and the trustee of the scheme concerned.

(9) If, having considered any representations made by a person to whom the notice was given, the Authority decides—

(a) not to give the direction in the way proposed,

(b) to give the direction in a way other than that proposed, or

(c) to revoke a direction which has effect,

it must give separate written notice to the manager and the trustee of the scheme concerned.

(10) A notice given under subsection (8) must inform the person to whom it is given of his right to refer the matter to the Tribunal.

Status: *Point in time view as at 25/02/2001. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 12 October 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(11) A notice under subsection (9)(b) must comply with subsection (4).

(12) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(13) This section applies to the variation of a direction on the Authority's own initiative as it applies to the giving of a direction.

(14) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

Commencement Information

I11 S. 259 wholly in force at 1.12.2001; s. 259 not in force at Royal Assent see s. 431(2); s. 259 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 259 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

260 Procedure: refusal to revoke or vary direction.

(1) If on an application under section 257(6) for a direction to be revoked or varied the Authority proposes—

(a) to vary the direction otherwise than in accordance with the application, or

(b) to refuse to revoke or vary the direction,

it must give the applicant a warning notice.

(2) If the Authority decides to refuse to revoke or vary the direction—

(a) it must give the applicant a decision notice; and

(b) the applicant may refer the matter to the Tribunal.

Commencement Information

I12 S. 260 wholly in force at 1.12.2001; s. 260 not in force at Royal Assent see s. 431(2); s. 260 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 260 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

261 Procedure: revocation of direction and grant of request for variation.

(1) If the Authority decides on its own initiative to revoke a direction under section 257 it must give separate written notices of its decision to the manager and trustee of the scheme.

(2) If on an application under section 257(6) for a direction to be revoked or varied the Authority decides to revoke the direction or vary it in accordance with the application, it must give the applicant written notice of its decision.

(3) A notice under this section must specify the date on which the decision takes effect.

(4) The Authority may publish such information about the revocation or variation, in such way, as it considers appropriate.

Status: *Point in time view as at 25/02/2001. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 12 October 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I13 S. 261 wholly in force at 1.12.2001; s. 261 not in force at Royal Assent see s. 431(2); s. 261 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, **art. 2 Sch. Pt. 2**; s. 261 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 01/07/2011

[F3[F3261A Information for home state regulator

(1) Subsection (2) applies if, in accordance with rules made by the Authority to implement Article 66 of the UCITS directive, the Authority is informed by the manager of an authorised unit trust scheme which is a master UCITS that a feeder UCITS which invests in units of the scheme is an EEA UCITS.

(2) The Authority must immediately inform the home state regulator of the feeder UCITS of the investment made by that UCITS in the master UCITS.**]**

Textual Amendments

F3 Ss. 261A, 261B inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(23)**

VALID FROM 01/07/2011

261B Information for feeder UCITS

(1) The Authority must immediately inform the operator of any authorised unit trust scheme which is a feeder UCITS of an authorised unit trust scheme or an authorised open-ended investment company (the master UCITS) of—

(a) any failure of which the Authority becomes aware by the master UCITS to comply with a provision made in implementation of Chapter VIII of the UCITS directive;

(b) any warning notice or decision notice given to the master UCITS in relation to a contravention of any provision made in implementation of Chapter VIII of the UCITS directive by or under any enactment or in rules of the Authority;

(c) any information reported to the Authority pursuant to rules of the Authority made to implement Article 106(1) of the UCITS directive which relates to the master UCITS, or to one or more of its directors, or its management company, trustee, depositary or auditor.

(2) The Authority must immediately inform the operator of any authorised unit trust scheme which is a feeder UCITS of an EEA UCITS of any information received from the home state regulator of the EEA UCITS in relation to—

(a) any failure by the EEA UCITS to comply with any requirement in Chapter VIII of the UCITS directive;

Status: *Point in time view as at 25/02/2001. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 12 October 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) any decision or measure imposed on the EEA UCITS under provisions implementing Chapter VIII of the UCITS directive;

(c) any information reported to the home state regulator pursuant to Article 106(1) of the UCITS directive relating to the EEA UCITS, its operator, depositary or auditor.

(3) Where the Authority has the information described in subsection (1)(a), (b) or (c) in relation to an authorised unit trust scheme which is a master UCITS for one or more feeder UCITS which are EEA UCITS, the Authority must immediately give that information to the home state regulator of each feeder UCITS established outside the United Kingdom.**]**

Textual Amendments

F3 Ss. 261A, 261B inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(23)**

CHAPTER IV

OPEN-ENDED INVESTMENT COMPANIES

262 Open-ended investment companies.

(1) The Treasury may by regulations make provision for—

(a) facilitating the carrying on of collective investment by means of open-ended investment companies;

(b) regulating such companies.

(2) The regulations may, in particular, make provision—

(a) for the incorporation and registration in Great Britain of bodies corporate;

(b) for a body incorporated by virtue of the regulations to take such form as may be determined in accordance with the regulations;

(c) as to the purposes for which such a body may exist, the investments which it may issue and otherwise as to its constitution;

(d) as to the management and operation of such a body and the management of its property;

(e) as to the powers, duties, rights and liabilities of such a body and of other persons, including—

(i) the directors or sole director of such a body;

(ii) its depositary (if any);

(iii) its shareholders, and persons who hold the beneficial title to shares in it without holding the legal title;

(iv) its auditor; and

(v) any persons who act or purport to act on its behalf;

(f) as to the merger of one or more such bodies and the division of such a body;

(g) for the appointment and removal of an auditor for such a body;

(h) as to the winding up and dissolution of such a body;

Status: *Point in time view as at 25/02/2001. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 12 October 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(i) for such a body, or any director or depositary of such a body, to be required to comply with directions given by the Authority;

(j) enabling the Authority to apply to a court for an order removing and replacing any director or depositary of such a body;

(k) for the carrying out of investigations by persons appointed by the Authority or the Secretary of State;

(l) corresponding to any provision made in relation to unit trust schemes by Chapter III of this Part.

(3) Regulations under this section may—

(a) impose criminal liability;

(b) confer functions on the Authority;

(c) in the case of provision made by virtue of subsection (2)(l), authorise the making of rules by the Authority;

(d) confer jurisdiction on any court or on the Tribunal;

(e) provide for fees to be charged by the Authority in connection with the carrying out of any of its functions under the regulations (including fees payable on a periodical basis);

(f) modify, exclude or apply (with or without modifications) any primary or subordinate legislation (including any provision of, or made under, this Act);

(g) make consequential amendments, repeals and revocations of any such legislation;

(h) modify or exclude any rule of law.

(4) The provision that may be made by virtue of subsection (3)(f) includes provision extending or adapting any power to make subordinate legislation.

(5) Regulations under this section may, in particular—

(a) revoke the [M3]Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996; and

(b) provide for things done under or in accordance with those regulations to be treated as if they had been done under or in accordance with regulations under this section.

Marginal Citations

M3 S.I. 1996/2827.

VALID FROM 01/12/2001

263 Amendment of section 716 Companies Act 1985.

In section 716(1) of the [M4]Companies Act 1985 (prohibition on formation of companies with more than 20 members unless registered under the Act etc.), after "this Act," insert " is incorporated by virtue of regulations made under section 262 of the Financial Services and Markets Act 2000 ".

Status: *Point in time view as at 25/02/2001. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Financial Services and Markets Act 2000, Part XVII is up to date with all changes known to be in force on or before 12 October 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations

M4 1985 c. 6.

CHAPTER V

RECOGNISED OVERSEAS SCHEMES

Schemes constituted in other EEA States

264 Schemes constituted in other EEA States.

(1) A collective investment scheme constituted in another EEA State is a recognised scheme if—

(a) it satisfies such requirements as are prescribed for the purposes of this section; and

(b) not less than two months before inviting persons in the United Kingdom to become participants in the scheme, the operator of the scheme gives notice to the Authority of his intention to do so, specifying the way in which the invitation is to be made.

(2) But this section does not make the scheme a recognised scheme if within two months of receiving the notice under subsection (1) the Authority notifies—

(a) the operator of the scheme, and

(b) the authorities of the State in question who are responsible for the authorisation of collective investment schemes,

that the way in which the invitation is to be made does not comply with the law in force in the United Kingdom.

(3) The notice to be given to the Authority under subsection (1)—

(a) must be accompanied by a certificate from the authorities mentioned in subsection (2)(b) to the effect that the scheme complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument;

(b) must contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act; and

(c) must contain or be accompanied by such other information and documents as may be prescribed.

(4) A notice given by the Authority under subsection (2) must—

(a) give the reasons for which the Authority considers that the law in force in the United Kingdom will not be complied with; and

(b) specify a reasonable period (which may not be less than 28 days) within which any person to whom it is given may make representations to the Authority.

(5) For the purposes of this section a collective investment scheme is constituted in another EEA State if—

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(a) it is constituted under the law of that State by a contract or under a trust and is managed by a body corporate incorporated under that law; or

(b) it takes the form of an open-ended investment company incorporated under that law.

(6) The operator of a recognised scheme may give written notice to the Authority that he desires the scheme to be no longer recognised by virtue of this section.

(7) On the giving of notice under subsection (6), the scheme ceases to be a recognised scheme.

Modifications etc. (not altering text)

C21 S. 264 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 66(1); S.I. 2001/3538, **art. 2(1)**

C22 S. 264(1)(b) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 42(1) (with art. 23(2))

C23 S. 264(2) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 42(4) (with art. 23(2))
S. 264(2) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(8); S.I. 2001/3538, **art. 2(1)**

Commencement Information

I14 S. 264 wholly in force at 1.12.2001; s. 264 not in force at Royal Assent see s. 431(2); s. 264(1)(3)(c) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 264 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 264 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 03/09/2001

265 Representations and references to the Tribunal.

(1) This section applies if any representations are made to the Authority, before the period for making representations has ended, by a person to whom a notice was given by the Authority under section 264(2).

(2) The Authority must, within a reasonable period, decide in the light of those representations whether or not to withdraw its notice.

(3) If the Authority withdraws its notice the scheme is a recognised scheme from the date on which the notice is withdrawn.

(4) If the Authority decides not to withdraw its notice, it must give a decision notice to each person to whom the notice under section 264(2) was given.

(5) The operator of the scheme to whom the decision notice is given may refer the matter to the Tribunal.

Commencement Information

I15 S. 265 wholly in force at 1.12.2001; s. 265 not in force at Royal Assent see s. 431(2); s. 265 (except subsection (3)) in force at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 265 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Status: *Point in time view as at 25/02/2001. This version of this part contains provisions that are not valid for this point in time.*
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VALID FROM 18/06/2001

266 Disapplication of rules.

(1) Apart from—
  (a) financial promotion rules, and
  (b) rules under section 283(1),

rules made by the Authority under this Act do not apply to the operator, trustee or depositary of a scheme in relation to the carrying on by him of regulated activities for which he has permission in that capacity.

(2) "Scheme" means a scheme which is a recognised scheme by virtue of section 264.

VALID FROM 01/12/2001

267 Power of Authority to suspend promotion of scheme.

(1) Subsection (2) applies if it appears to the Authority that the operator of a scheme has communicated an invitation or inducement in relation to the scheme in a manner contrary to financial promotion rules.

(2) The Authority may direct that—
  (a) the exemption from subsection (1) of section 238 provided by subsection (4)(c) of that section is not to apply in relation to the scheme; and
  (b) subsection (5) of that section does not apply with respect to things done in relation to the scheme.

(3) A direction under subsection (2) has effect—
  (a) for a specified period;
  (b) until the occurrence of a specified event; or
  (c) until specified conditions are complied with.

(4) The Authority may, either on its own initiative or on the application of the operator of the scheme concerned, vary a direction given under subsection (2) if it appears to the Authority that the direction should take effect or continue in force in a different form.

(5) The Authority may, either on its own initiative or on the application of the operator of the recognised scheme concerned, revoke a direction given under subsection (2) if it appears to the Authority—
  (a) that the conditions specified in the direction have been complied with; or
  (b) that it is no longer necessary for the direction to take effect or continue in force.

(6) If an event is specified, the direction ceases to have effect (unless revoked earlier) on the occurrence of that event.

(7) For the purposes of this section and sections 268 and 269—
  (a) the scheme's home State is the EEA State in which the scheme is constituted (within the meaning given by section 264);

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(b) the competent authorities in the scheme's home State are the authorities in that State who are responsible for the authorisation of collective investment schemes.

(8) "Scheme" means a scheme which is a recognised scheme by virtue of section 264.

(9) "Specified", in relation to a direction, means specified in it.

VALID FROM 01/12/2001

268 Procedure on giving directions under section 267 and varying them on Authority's own initiative.

(1) A direction under section 267 takes effect—

(a) immediately, if the notice given under subsection (3)(a) states that that is the case;

(b) on such date as may be specified in the notice; or

(c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

(2) A direction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to its reasons for exercising its power under section 267, considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If the Authority proposes to give a direction under section 267, or gives such a direction with immediate effect, it must—

(a) give the operator of the scheme concerned written notice; and

(b) inform the competent authorities in the scheme's home State of its proposal or (as the case may be) of the direction.

(4) The notice must—

(a) give details of the direction;

(b) inform the operator of when the direction takes effect;

(c) state the Authority's reasons for giving the direction and for its determination as to when the direction takes effect;

(d) inform the operator that he may make representations to the Authority within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and

(e) inform him of his right to refer the matter to the Tribunal.

(5) The Authority may extend the period allowed under the notice for making representations.

(6) Subsection (7) applies if, having considered any representations made by the operator, the Authority decides—

(a) to give the direction in the way proposed, or

(b) if it has been given, not to revoke the direction.

(7) The Authority must—

(a) give the operator of the scheme concerned written notice; and

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(b) inform the competent authorities in the scheme's home State of the direction.

(8) Subsection (9) applies if, having considered any representations made by a person to whom the notice was given, the Authority decides—
(a) not to give the direction in the way proposed,
(b) to give the direction in a way other than that proposed, or
(c) to revoke a direction which has effect.

(9) The Authority must—
(a) give the operator of the scheme concerned written notice; and
(b) inform the competent authorities in the scheme's home State of its decision.

(10) A notice given under subsection (7)(a) must inform the operator of his right to refer the matter to the Tribunal.

(11) A notice under subsection (9)(a) given as a result of subsection (8)(b) must comply with subsection (4).

(12) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(13) This section applies to the variation of a direction on the Authority's own initiative as it applies to the giving of a direction.

(14) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

VALID FROM 01/12/2001

269 Procedure on application for variation or revocation of direction.

(1) If, on an application under subsection (4) or (5) of section 267, the Authority proposes—
(a) to vary a direction otherwise than in accordance with the application, or
(b) to refuse the application,
it must give the operator of the scheme concerned a warning notice.

(2) If, on such an application, the Authority decides—
(a) to vary a direction otherwise than in accordance with the application, or
(b) to refuse the application,
it must give the operator of the scheme concerned a decision notice.

(3) If the application is refused, the operator of the scheme may refer the matter to the Tribunal.

(4) If, on such an application, the Authority decides to grant the application it must give the operator of the scheme concerned written notice.

(5) If the Authority decides on its own initiative to revoke a direction given under section 267 it must give the operator of the scheme concerned written notice.

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(6) The Authority must inform the competent authorities in the scheme's home State of any notice given under this section.

Schemes authorised in designated countries or territories

270 Schemes authorised in designated countries or territories.

(1) A collective investment scheme which is not a recognised scheme by virtue of section 264 but is managed in, and authorised under the law of, a country or territory outside the United Kingdom is a recognised scheme if—
  (a) that country or territory is designated for the purposes of this section by an order made by the Treasury;
  (b) the scheme is of a class specified by the order;
  (c) the operator of the scheme has given written notice to the Authority that he wishes it to be recognised; and
  (d) either—
    (i) the Authority, by written notice, has given its approval to the scheme's being recognised; or
    (ii) two months, beginning with the date on which notice was given under paragraph (c), have expired without the operator receiving a warning notice from the Authority under section 271.

(2) The Treasury may not make an order designating any country or territory for the purposes of this section unless satisfied—
  (a) that the law and practice under which relevant collective investment schemes are authorised and supervised in that country or territory affords to investors in the United Kingdom protection at least equivalent to that provided for them by or under this Part in the case of comparable authorised schemes; and
  (b) that adequate arrangements exist, or will exist, for co-operation between the authorities of the country or territory responsible for the authorisation and supervision of relevant collective investment schemes and the Authority.

(3) "Relevant collective investment schemes" means collective investment schemes of the class or classes to be specified by the order.

(4) "Comparable authorised schemes" means whichever of the following the Treasury consider to be the most appropriate, having regard to the class or classes of scheme to be specified by the order—
  (a) authorised unit trust schemes;
  (b) authorised open-ended investment companies;
  (c) both such unit trust schemes and such companies.

(5) If the Treasury are considering whether to make an order designating a country or territory for the purposes of this section—
  (a) the Treasury must ask the Authority for a report—
    (i) on the law and practice of that country or territory in relation to the authorisation and supervision of relevant collective investment schemes,
    (ii) on any existing or proposed arrangements for co-operation between it and the authorities responsible in that country or territory for

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the authorisation and supervision of relevant collective investment schemes,

having regard to the Treasury's need to be satisfied as mentioned in subsection (2);

(b) the Authority must provide the Treasury with such a report; and

(c) the Treasury must have regard to it in deciding whether to make the order.

(6) The notice to be given by the operator under subsection (1)(c)—

(a) must contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act; and

(b) must contain or be accompanied by such information and documents as may be specified by the Authority.

Modifications etc. (not altering text)

C24 S. 270 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 67(2); S.I. 2001/3538, **art. 2(1)**

C25 S. 270(1) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 67(1); S.I. 2001/3538, **art. 2(1)**

C26 S. 270(1)(c) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 43(1) (with art. 23(2))

Commencement Information

I16 S. 270 wholly in force at 1.12.2001; s. 270 not in force at Royal Assent see s. 431(2); s. 270 in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 270 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 270 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 03/09/2001

271 Procedure.

(1) If the Authority proposes to refuse approval of a scheme's being a recognised scheme by virtue of section 270, it must give the operator of the scheme a warning notice.

(2) To be valid the warning notice must be received by the operator before the end of two months beginning with the date on which notice was given under section 270(1)(c).

(3) If, having given a warning notice, the Authority decides to refuse approval—

(a) it must give the operator of the scheme a decision notice; and

(b) the operator may refer the matter to the Tribunal.

Modifications etc. (not altering text)

C27 S. 271(2) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 43(4) (with art. 23(2))

Commencement Information

I17 S. 271 wholly in force at 1.12.2001; s. 271 not in force at Royal Assent see s. 431(2); s. 271 (except subsection (2)) in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 271 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Status: *Point in time view as at 25/02/2001. This version of this part contains provisions that are not valid for this point in time.*
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VALID FROM 18/06/2001

Individually recognised overseas schemes

VALID FROM 03/09/2001

272 Individually recognised overseas schemes.

(1) The Authority may, on the application of the operator of a collective investment scheme which—
  (a) is managed in a country or territory outside the United Kingdom,
  (b) does not satisfy the requirements prescribed for the purposes of section 264,
  (c) is not managed in a country or territory designated for the purposes of section 270 or, if it is so managed, is of a class not specified by the designation order, and
  (d) appears to the Authority to satisfy the requirements set out in the following provisions of this section,

make an order declaring the scheme to be a recognised scheme.

(2) Adequate protection must be afforded to participants in the scheme.

(3) The arrangements for the scheme's constitution and management must be adequate.

(4) The powers and duties of the operator and, if the scheme has a trustee or depositary, of the trustee or depositary must be adequate.

(5) In deciding whether the matters mentioned in subsection (3) or (4) are adequate, the Authority must have regard to—
  (a) any rule of law, and
  (b) any matters which are, or could be, the subject of rules,

applicable in relation to comparable authorised schemes.

(6) "Comparable authorised schemes" means whichever of the following the Authority considers the most appropriate, having regard to the nature of scheme in respect of which the application is made—
  (a) authorised unit trust schemes;
  (b) authorised open-ended investment companies;
  (c) both such unit trust schemes and such companies.

(7) The scheme must take the form of an open-ended investment company or (if it does not take that form) the operator must be a body corporate.

(8) The operator of the scheme must—
  (a) if an authorised person, have permission to act as operator;
  (b) if not an authorised person, be a fit and proper person to act as operator.

(9) The trustee or depositary (if any) of the scheme must—
  (a) if an authorised person, have permission to act as trustee or depositary;

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(b) if not an authorised person, be a fit and proper person to act as trustee or depositary.

(10) The operator and the trustee or depositary (if any) of the scheme must be able and willing to co-operate with the Authority by the sharing of information and in other ways.

(11) The name of the scheme must not be undesirable or misleading.

(12) The purposes of the scheme must be reasonably capable of being successfully carried into effect.

(13) The participants must be entitled to have their units redeemed in accordance with the scheme at a price related to the net value of the property to which the units relate and determined in accordance with the scheme.

(14) But a scheme is to be treated as complying with subsection (13) if it requires the operator to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in that subsection.

(15) Subsection (13) is not to be read as imposing a requirement that the participants must be entitled to have their units redeemed (or sold as mentioned in subsection (14)) immediately following a demand to that effect.

Modifications etc. (not altering text)

C28 S. 272(1) extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 68(1); S.I. 2001/3538, **art. 2(1)**

C29 S. 272(8)(9) modified (31.10.2001) by S.I. 2001/3374, art. 1, **Sch. para. 9**

Commencement Information

I18 S. 272 wholly in force at 1.12.2001; s. 272 not in force at Royal Assent see s. 431(2); s. 272 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 272 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 03/09/2001

273 Matters that may be taken into account.

For the purposes of subsections (8)(b) and (9)(b) of section 272, the Authority may take into account any matter relating to—

(a) any person who is or will be employed by or associated with the operator, trustee or depositary in connection with the scheme;

(b) any director of the operator, trustee or depositary;

(c) any person exercising influence over the operator, trustee or depositary;

(d) any body corporate in the same group as the operator, trustee or depositary;

(e) any director of any such body corporate;

(f) any person exercising influence over any such body corporate.

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Commencement Information

I19 S. 273 wholly in force at 1.12.2001; s. 273 not in force at Royal Assent see s. 431(2); s. 273 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 273 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

274 Applications for recognition of individual schemes.

(1) An application under section 272 for an order declaring a scheme to be a recognised scheme must be made to the Authority by the operator of the scheme.

(2) The application—

(a) must be made in such manner as the Authority may direct;

(b) must contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act;

(c) must contain or be accompanied by such information as the Authority may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(4) Different directions may be given, and different requirements imposed, in relation to different applications.

(5) The Authority may require an applicant to present information which he is required to give under this section in such form, or to verify it in such a way, as the Authority may direct.

Modifications etc. (not altering text)

C30 S. 274 extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 44(1) (with art. 23(2))

Commencement Information

I20 S. 274 wholly in force at 1.12.2001; s. 274 not in force at Royal Assent see s. 431(2); s. 274(2) in force for specified purposes at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 274 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 274 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 03/09/2001

275 Determination of applications.

(1) An application under section 272 must be determined by the Authority before the end of the period of six months beginning with the date on which it receives the completed application.

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(2) The Authority may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it first receives the application.

(3) If the Authority makes an order under section 272(1), it must give written notice of the order to the applicant.

Modifications etc. (not altering text)

C31 S. 275(1)(2) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 44(2)(3) (with art. 23(2))

Commencement Information

I21 S. 275 wholly in force at 1.12.2001; s. 275 not in force at Royal Assent see s. 431(2); s. 275 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 275 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 03/09/2001

276 Procedure when refusing an application.

(1) If the Authority proposes to refuse an application made under section 272 it must give the applicant a warning notice.

(2) If the Authority decides to refuse the application—
- (a) it must give the applicant a decision notice; and
- (b) the applicant may refer the matter to the Tribunal.

Commencement Information

I22 S. 276 wholly in force at 1.12.2001; s. 276 not in force at Royal Assent see s. 431(2); s. 276 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 276 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 03/09/2001

277 Alteration of schemes and changes of operator, trustee or depositary.

(1) The operator of a scheme recognised by virtue of section 272 must give written notice to the Authority of any proposed alteration to the scheme.

(2) Effect is not to be given to any such proposal unless—
- (a) the Authority, by written notice, has given its approval to the proposal; or
- (b) one month, beginning with the date on which notice was given under subsection (1), has expired without the Authority having given written notice to the operator that it has decided to refuse approval.

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(3) At least one month before any replacement of the operator, trustee or depositary of such a scheme, notice of the proposed replacement must be given to the Authority—
  (a) by the operator, trustee or depositary (as the case may be); or
  (b) by the person who is to replace him.

Modifications etc. (not altering text)

C32 S. 277(1) amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(9); S.I. 2001/3538, **art. 2(1)**
S. 277(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 45(1) (with art. 23(2))

C33 S. 277(2)(b) modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 45(2) (with art. 23(2))

C34 S. 277(3) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 45(3) (with art. 23(2))

Commencement Information

I23 S. 277 wholly in force at 1.12.2001; s. 277 not in force at Royal Assent see s. 431(2); s. 277 in force for specified purposes at 3.9.2001 by S.I. 2001/2632, art. 2(2), **Sch. Pt. 2**; s. 277 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 18/06/2001

Schemes recognised under sections 270 and 272

278 Rules as to scheme particulars.

The Authority may make rules imposing duties or liabilities on the operator of a scheme recognised under section 270 or 272 for purposes corresponding to those for which rules may be made under section 248 in relation to authorised unit trust schemes.

VALID FROM 03/09/2001

279 Revocation of recognition.

The Authority may direct that a scheme is to cease to be recognised by virtue of section 270 or revoke an order under section 272 if it appears to the Authority—
  (a) that the operator, trustee or depositary of the scheme has contravened a requirement imposed on him by or under this Act;
  (b) that the operator, trustee or depositary of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular;
  (c) in the case of an order under section 272, that one or more of the requirements for the making of the order are no longer satisfied; or

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(d) that none of paragraphs (a) to (c) applies, but it is undesirable in the interests of the participants or potential participants that the scheme should continue to be recognised.

Modifications etc. (not altering text)

C35 S. 279 applied (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 47(4)(b) (with art. 23(2))
S. 279 applied (with modifications) (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 48(4)(5) (with art. 23(2))

C36 S. 279(c) modified (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 68(2); S.I. 2001/3538, **art. 2(1)**

VALID FROM 03/09/2001

280 Procedure.

(1) If the Authority proposes to give a direction under section 279 or to make an order under that section revoking a recognition order, it must give a warning notice to the operator and (if any) the trustee or depositary of the scheme.

(2) If the Authority decides to give a direction or make an order under that section—

(a) it must without delay give a decision notice to the operator and (if any) the trustee or depositary of the scheme; and

(b) the operator or the trustee or depositary may refer the matter to the Tribunal.

Modifications etc. (not altering text)

C37 S. 280(1) extended (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**, 47(1), 48(1) (with art. 23(2))

VALID FROM 03/09/2001

281 Directions.

(1) In this section a "relevant recognised scheme" means a scheme recognised under section 270 or 272.

(2) If it appears to the Authority that—

(a) the operator, trustee or depositary of a relevant recognised scheme has contravened, or is likely to contravene, a requirement imposed on him by or under this Act,

(b) the operator, trustee or depositary of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular,

(c) one or more of the requirements for the recognition of a scheme under section 272 are no longer satisfied, or

(d) none of paragraphs (a) to (c) applies, but the exercise of the power conferred by this section is desirable in order to protect the interests of

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participants or potential participants in a relevant recognised scheme who are in the United Kingdom,

it may direct that the scheme is not to be a recognised scheme for a specified period or until the occurrence of a specified event or until specified conditions are complied with.

Modifications etc. (not altering text)

C38 S. 281 extended (1.12.2001) by S.I. 2001/2636, **arts. 1(2)(b)**, 70(b), 71(b); S.I. 2001/3538, **art. 2(1)**

S. 281 amended (*temp.* from 3.9.2001 to 1.12.2001) by S.I. 2001/2659, **arts. 1(2)**, 3(9); S.I. 2001/3538, **art. 2(1)**

VALID FROM 03/09/2001

282 Procedure on giving directions under section 281 and varying them otherwise than as requested.

(1) A direction takes effect—

(a) immediately, if the notice given under subsection (3) states that that is the case;

(b) on such date as may be specified in the notice; or

(c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

(2) A direction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its power under section 281, considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If the Authority proposes to give a direction under section 281, or gives such a direction with immediate effect, it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.

(4) The notice must—

(a) give details of the direction;

(b) inform the person to whom it is given of when the direction takes effect;

(c) state the Authority's reasons for giving the direction and for its determination as to when the direction takes effect;

(d) inform the person to whom it is given that he may make representations to the Authority within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and

(e) inform him of his right to refer the matter to the Tribunal.

(5) The Authority may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by a person to whom the notice was given, the Authority decides—

(a) to give the direction in the way proposed, or

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(b) if it has been given, not to revoke the direction,

it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.

(7) If, having considered any representations made by a person to whom the notice was given, the Authority decides—

(a) not to give the direction in the way proposed,

(b) to give the direction in a way other than that proposed, or

(c) to revoke a direction which has effect,

it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.

(8) A notice given under subsection (6) must inform the person to whom it is given of his right to refer the matter to the Tribunal.

(9) A notice under subsection (7)(b) must comply with subsection (4).

(10) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(11) This section applies to the variation of a direction on the Authority's own initiative as it applies to the giving of a direction.

(12) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

VALID FROM 18/06/2001

Facilities and information in UK

283 Facilities and information in UK.

(1) The Authority may make rules requiring operators of recognised schemes to maintain in the United Kingdom, or in such part or parts of it as may be specified, such facilities as the Authority thinks desirable in the interests of participants and as are specified in rules.

(2) The Authority may by notice in writing require the operator of any recognised scheme to include such explanatory information as is specified in the notice in any communication of his which—

(a) is a communication of an invitation or inducement of a kind mentioned in section 21(1); and

(b) names the scheme.

(3) In the case of a communication originating outside the United Kingdom, subsection (2) only applies if the communication is capable of having an effect in the United Kingdom.

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Commencement Information

I24 S. 283 wholly in force at 1.12.2001; s. 283 not in force at Royal Assent see s. 431(2); s. 283(1) in force at 18.6.2001 by S.I. 2001/1820, art. 2, **Sch.**; s. 283 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

VALID FROM 01/07/2011

[F4 CHAPTER 5A

MASTER-FEEDER STRUCTURES

Textual Amendments

F4 Ch. 5A inserted (1.7.2011) by The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613), **reg. 2(26)**

283A Master-feeder structures

(1) The operator of a UK UCITS may not invest a higher proportion of the property which is subject to the collective investment scheme constituted by that UCITS in units of another UCITS than is permitted by rules made by the Authority implementing Article 55 of the UCITS directive unless the investment is approved by the Authority in accordance with this section.

(2) An application for approval under subsection (1) of an investment must be made by the operator of the UK UCITS in such manner, and accompanied by such information, as is required by rules made by the Authority.

(3) The Authority must grant an application made under subsection (2) if it is satisfied—

(a) that the UCITS, its operator, trustee or depositary and auditor and the UCITS in which it proposes to invest, and its operator, have complied with—

(i) the requirements laid down in Chapter VIII of the UCITS directive, and

(ii) any other requirements imposed by the Authority in relation to the application;

(b) in a case where the application is made by the operator of a feeder UCITS in respect of the investment of the proceeds of the winding-up of its master UCITS, that the proceeds of the winding up are to be paid to the feeder UCITS before the date on which the investment is to be made.

(4) In a case within subsection (3)(b), approval must be subject to the conditions in subsections (5) and (6).

(5) The first condition is that the feeder UCITS is to receive the proceeds of the winding-up—

(a) in cash; or

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(b) wholly or partly in assets other than cash in a case where the feeder UCITS so elects and each of the following so permits—

(i) the decision of the master UCITS that it should be wound up;

(ii) the trust deed or instrument of incorporation of the feeder UCITS; and

(iii) either the agreement between the feeder UCITS and its master UCITS, or the internal conduct of business rules operated by the feeder UCITS and the master UCITS in accordance with rules made by the Authority.

(6) The second condition is that cash received by the feeder UCITS in accordance with paragraph (5)(a) may not be reinvested before the date on which the feeder UCITS proposes to invest in the new UCITS, except for the purpose of efficient cash management.

(7) The Authority must, within 15 working days of the date on which the Authority had received all the information required in relation to the application, give written notice to the operator—

(a) that the Authority approves its application, or

(b) that the Authority objects to the application.

(8) Following receipt of notice that the Authority objects to the application, the operator may refer the Authority's decision to the Tribunal.

283B Reports on derivative instruments

(1) An authorised person who is the management company in relation to a UCITS must report to the Authority at specified intervals of not more than 12 months about any investment in derivative instruments during the specified period to which the report relates.

(2) The report must be in the specified form and contain the specified information.

(3) The Authority must review the regularity and completeness of the information provided by each management company under subsection (1).

(4) In this section, "specified" means specified—

(a) in rules made by the Authority to implement the UCITS directive, or

(b) in any directly applicable Community regulation or decision made under the UCITS directive.**]**

CHAPTER VI

INVESTIGATIONS

284 Power to investigate.

(1) An investigating authority may appoint one or more competent persons to investigate on its behalf—

(a) the affairs of, or of the manager or trustee of, any authorised unit trust scheme,

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(b) the affairs of, or of the operator, trustee or depositary of, any recognised scheme so far as relating to activities carried on in the United Kingdom, or

(c) the affairs of, or of the operator, trustee or depositary of, any other collective investment scheme except a body incorporated by virtue of regulations under section 262,

if it appears to the investigating authority that it is in the interests of the participants or potential participants to do so or that the matter is of public concern.

(2) A person appointed under subsection (1) to investigate the affairs of, or of the manager, trustee, operator or depositary of, any scheme (scheme "A"), may also, if he thinks it necessary for the purposes of that investigation, investigate—

(a) the affairs of, or of the manager, trustee, operator or depositary of, any other such scheme as is mentioned in subsection (1) whose manager, trustee, operator or depositary is the same person as the manager, trustee, operator or depositary of scheme A;

(b) the affairs of such other schemes and persons (including bodies incorporated by virtue of regulations under section 262 and the directors and depositaries of such bodies) as may be prescribed.

(3) If the person appointed to conduct an investigation under this section ("B") considers that a person ("C") is or may be able to give information which is relevant to the investigation, B may require C—

(a) to produce to B any documents in C's possession or under his control which appear to B to be relevant to the investigation,

(b) to attend before B, and

(c) otherwise to give B all assistance in connection with the investigation which C is reasonably able to give,

and it is C's duty to comply with that requirement.

(4) Subsections (5) to (9) of section 170 apply if an investigating authority appoints a person under this section to conduct an investigation on its behalf as they apply in the case mentioned in subsection (1) of that section.

(5) Section 174 applies to a statement made by a person in compliance with a requirement imposed under this section as it applies to a statement mentioned in that section.

(6) Subsections (2) to (4) and (6) of section 175 and section 177 have effect as if this section were contained in Part XI.

(7) Subsections (1) to (9) of section 176 apply in relation to a person appointed under subsection (1) as if—

(a) references to an investigator were references to a person so appointed;

(b) references to an information requirement were references to a requirement imposed under section 175 or under subsection (3) by a person so appointed;

(c) the premises mentioned in subsection (3)(a) were the premises of a person whose affairs are the subject of an investigation under this section or of an appointed representative of such a person.

(8) No person may be required under this section to disclose information or produce a document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless subsection (9) or (10) applies.

(9) This subsection applies if—

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(a) the person to whom the obligation of confidence is owed consents to the disclosure or production; or

(b) the imposing on the person concerned of a requirement with respect to information or a document of a kind mentioned in subsection (8) has been specifically authorised by the investigating authority.

(10) This subsection applies if the person owing the obligation of confidence or the person to whom it is owed is—

(a) the manager, trustee, operator or depositary of any collective investment scheme which is under investigation;

(b) the director of a body incorporated by virtue of regulations under section 262 which is under investigation;

(c) any other person whose own affairs are under investigation.

(11) "Investigating authority" means the Authority or the Secretary of State.

Modifications etc. (not altering text)

C39 S. 284(1) extended (with modifications) (1.12.2001) by S.I. 2001/3646, **arts. 1(2)**, 8

Commencement Information

I25 S. 284 wholly in force at 1.12.2001; s. 284 not in force at Royal Assent see s. 431(2); s. 284(2) in force for certain purposes at 25.2.2001 by S.I. 2001/516, art. 2(b), **Sch. Pt. 2**; s. 284 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

Status:
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Changes to legislation:
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