



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XVII

#### COLLECTIVE INVESTMENT SCHEMES

#### CHAPTER III

#### AUTHORISED UNIT TRUST SCHEMES

##### *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.

*Status: Point in time view as at 01/12/2004. This version of this cross heading contains provisions that are not valid for this point in time.*

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A direction may be given under this section in relation to a scheme in the case of which the authorisation order has been revoked if a direction under this section was already in force at the time of revocation.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

#### **Modifications etc. (not altering text)**

- C1** S. 257(1) extended (1.12.2001) by [S.I. 2001/2636](#), [arts. 1\(2\)\(b\)](#), 69(1); [S.I. 2001/3538](#), [art. 2\(1\)](#)
- C2** [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\(1\)](#)
- C3** 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**

- II** 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\(1\)](#)

## **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.

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- (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.

VALID FROM 01/07/2011

### **Winding up or merger of master UCITS**

- [F1] 258A**
- (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.]]

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### Textual Amendments

**F1** 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;
  - (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,

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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.
- (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

- I2** 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

- I3** 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)

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## 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.

### Commencement Information

- I4** 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

### <sup>F2</sup> <sub>F2</sub> 261A 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

- F2** 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;

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- (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;
  - (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

- F2** 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)**

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