
STATUTORY INSTRUMENTS

2019 No. 328

The Alternative Investment Fund Managers
(Amendment etc.) (EU Exit) Regulations 2019

PART 2

Amendment of secondary legislation

CHAPTER 2

Amendment of the Alternative Investment Fund Managers (Amendment) Regulations 2013

Alternative Investment Fund Managers (Amendment) Regulations 2013

16. The Alternative Investment Fund Managers (Amendment) Regulations 2013⁽¹⁾ are amended in accordance with this Chapter.

Commencement

17. In regulation 1—

(a) for paragraphs (3) and (4), substitute—

“(3) Regulations 3 and 4 and Schedules 1 and 2 come into force on such day as the Treasury may by regulations appoint.”;

(b) after paragraph (5), insert—

“(6) Regulations made by the Treasury under paragraph (3) may make different provision for different purposes.

(7) The power to make regulations under paragraph (3) is exercisable by statutory instrument.”.

Amendments

18.—(1) In the heading to regulation 3, for “implement” substitute “implemented”.

(2) In the heading to regulation 4, for “on termination of Articles 36 and 42 of the directive” substitute “on appointment by the Treasury”.

Consultation on rules for the purposes of Article 35 or 37 to 41 of the directive

19.—(1) In regulation 6, for paragraph (1) substitute—

“(1) Before the date on which the Treasury makes regulations under regulation 1(3) appointing the day when the amendments in Schedule 1 to these Regulations come into

force, the FCA or the PRA may make rules for the purpose of the provisions amended by Schedule 1 without complying with sections 138I to 138L of the Act (consultation)(2).”.

(2) In the heading to regulation 6, for “Article 35 or 37 to 41 of the directive” substitute “the provisions amended by Schedule 1”.

Schedule 1

20.—(1) Schedule 1 is amended as follows.

(2) In paragraph 1—

- (a) omit sub-paragraph (3);
- (b) omit sub-paragraph (4)(a);
- (c) in sub-paragraph (4)(b)(3), in new subsection (5B)—
 - (i) in paragraph (b), for “an EEA state”, in both places, substitute “the United Kingdom”;
 - (ii) in paragraph (c)—
 - (aa) for “an EEA state” substitute “the United Kingdom”;
 - (bb) for “provisions made under Article 42 of the alternative investment fund managers directive,” substitute “regulation 59 of the Alternative Investment Fund Managers Regulations 2013(4), and”;
 - (iii) in paragraph (d)—
 - (aa) for “an EEA state” substitute “the United Kingdom”;
 - (bb) at the end, omit “and”;
 - (iv) omit paragraph (e);
- (d) in sub-paragraph (5)(b), in the opening words of the substituted paragraph (aa), for “is subject to the conditions of” substitute “derives from”;
- (e) in sub-paragraph (6), in paragraph (b) of the new text, for “country that is not an EEA State” substitute “third country”.

(3) In paragraph 2—

- (a) in sub-paragraph (2)—
 - (i) in paragraph (a), in the inserted text, for “provisions implementing Article 42 of the directive” substitute “regulation 59 of these Regulations”;
 - (ii) omit paragraphs (b) and (c);
 - (iii) in paragraph (d), in the inserted text—
 - (aa) omit “mentioned in Article 3.4 of the directive”;
 - (bb) for “of the directive” the second time it is mentioned, substitute “applying to a full-scope AIFM”;
 - (iv) in sub-paragraph (e), in the new definition of “third country feeder AIF”—
 - (aa) after “UK AIF” insert “, Gibraltar AIF”;
 - (bb) for “an EEA State” substitute “the United Kingdom or Gibraltar”;

(2) Sections 138I to 138L was substituted, with the rest of Part 9A for the original Part X by section 24(1) of Financial Services Act 2012 (c. 21).

(3) Sub-paragraph (4) was amended by S.I. 2014/1292.

(4) S.I. 2013/1773. Regulations 50 is amended and regulation 59 is revoked by S.I. 2013/1797, but those amendments have not yet come into force.

- (v) in sub-paragraph (f)—
 - (aa) for paragraph (b) of the new definition of “UK AIFM” substitute—
 - “(b) has its registered office in a third country, and the United Kingdom is—
 - (i) the only country in which the AIFM intends to market AIFs;
 - (ii) the country in which—
 - (aa) most of the AIFs managed by that AIFM are established; or
 - (bb) the largest amount of assets is being managed; or
 - (iii) the country in which an AIFM intends to develop effective marketing for most of the AIFs it is managing.”;
 - (bb) omit paragraph (c);
- (b) in sub-paragraph (5), in new regulation 5A—
 - (i) omit paragraphs (1) and (2);
 - (ii) in paragraph (3)—
 - (aa) omit sub-paragraph (a);
 - (bb) in sub-paragraph (b)(i), omit “, other competent authorities, ESMA”;
 - (cc) in sub-paragraph (b)(ii) for “pursuant to the directive” substitute “pursuant to the Financial Services and Markets Act 2000(5), these Regulations, and any EU tertiary legislation made under the directive which forms part of EU retained law”;
 - (dd) for sub-paragraph (c), substitute—
 - “(c) appropriate co-operation arrangements are in place between the FCA, the competent authority in relation to any EEA AIF managed by the applicant and the supervisory authorities of the third country in which the applicant has its registered office, in order to ensure an efficient exchange of information that enables the FCA to carry out its duties in accordance with the Financial Services and Markets Act 2000, these Regulations, and any EU tertiary legislation made under the directive which forms part of EU retained law”;
 - (ee) in sub-paragraph (f), for “or the competent authority in relation to any EEA AIF managed by the applicant of its supervisory functions under the directive” substitute “of its supervisory functions under the Financial Services and Markets Act 2000, these Regulations and any EU tertiary legislation made under the directive which forms part of EU retained law”;
 - (iii) in sub-paragraph (4)(a) for “an EEA State” substitute “the United Kingdom or in Gibraltar”;
 - (iv) omit sub-paragraph (5);
 - (v) in sub-paragraph (6)—
 - (aa) omit paragraph (a);
 - (bb) in paragraph (b), for “an EEA State” substitute “the United Kingdom or in Gibraltar”;
 - (cc) in paragraph (c), in the closing words, for “ESMA” substitute “the FCA”;

- (c) omit sub-paragraph (6);
- (d) in sub-paragraph (8), in the words inserted into regulation 29(1)—
 - (i) in paragraph (a), for “an EEA AIFM” substitute “a Gibraltar AIFM”;
 - (ii) in paragraph (b)(ii), for “provisions implementing Article 36 or Article 42 of the directive” substitute “regulations 57 or 59 of these Regulations”;
- (e) omit sub-paragraph (10);
- (f) in sub-paragraph (11), in the table—
 - (i) in the fourth entry, in the first column, for “EEA AIFM with its registered office in an EEA State other than the United Kingdom” substitute “Gibraltar AIFM with its registered office in Gibraltar”;
 - (ii) in the fifth entry, in the first column, for “EEA AIFM” substitute “Gibraltar AIFM”;
 - (iii) in the sixth entry, in the first column, for “or a full-scope EEA AIFM” substitute “or a Gibraltar AIFM”;
 - (iv) in the seventh entry, in the first column, for “a full-scope EEA AIFM” substitute “a full-scope Gibraltar AIFM”;
- (g) in sub-paragraph (12)(a), in new paragraph (1)(b), for “EEA AIFM” substitute “Gibraltar AIFM”;
- (h) in sub-paragraph (12)(b), in the new paragraph (9)—
 - (i) in paragraph (a)—
 - (aa) for “in an EEA State other than the UK, the competent authority in that EEA State”, substitute “in Gibraltar, the Financial Services Commission”; and
 - (bb) for “the FCA or competent authority to carry out its duties in accordance with the directive” substitute—
 - “—
 - (i) the FCA to carry out its duties in accordance with the Financial Services and Markets Act 2000, these Regulations, and any EU tertiary legislation made under the directive which forms part of EU retained law, and
 - (ii) the Financial Services Commission to carry out its duties in accordance with the Financial Services (Alternative Investment Fund Managers) Regulations 2013 of Gibraltar;”;
 - (ii) in paragraph (c)—
 - (aa) for “in an EEA State other than the UK, with that EEA State” substitute “in Gibraltar, with Gibraltar”; and
 - (bb) for “each other EEA State” substitute “each EEA State”;
- (i) in sub-paragraph (15)(b)—
 - (i) in the opening words, for “paragraph (4)” substitute “paragraph (4A)(6)”;
 - (ii) in the new paragraph (5)—
 - (aa) at the end of paragraph (a), omit “, or”;
 - (bb) omit paragraph (b).

(6) Paragraph 4A is inserted by regulation 10(9)(e) of these Regulations.

Schedule 2

21.—(1) Schedule 2 is amended as follows.

(2) In paragraph 3—

(a) in sub-paragraph (2), in paragraph (a), for “provisions implementing Article 42 of the directive”, substitute “regulation 59 of these Regulations”;

(b) in sub-paragraph (7)—

(i) in the heading to new regulation 56, for “EEA” substitute “Gibraltar”;

(ii) in new regulation 56, for “EEA AIFM” substitute “Gibraltar AIFM”.

(3) In paragraph 4(1)(c)—

(a) for sub-paragraph (i) substitute—

“(i) an authorised person with permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of managing an AIF, or registered under Part 3 of the principal regulations in respect of the AIF otherwise than by virtue of that notification.”;

(b) omit sub-paragraph (ii).