
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the formation of undertakings for collective investment constituted in accordance with contract law. Such undertakings are called contractual schemes and are a new class of collective investment scheme (as defined by section 235 of the Financial Services and Markets Act 2000 (c.8) (“FSMA”). A contractual scheme may be either a co-ownership scheme, which has no legal personality distinct from the persons who take part as investors, or a partnership scheme, which is a limited partnership under the Limited Partnerships Act 1907 (c.24). The Regulations also provide for the authorisation and supervision of contractual schemes by the Financial Conduct Authority (“the FCA”).

Provision for the formation of contractual schemes arises out of and is related to the right conferred by Article 1.3 of Directive [2009/65/EC](#) of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (OJNo. L 302, 17.11.2009, p.32). Article 1.3 confers a right to constitute undertakings of this description (“UCITS”) as common funds managed by management companies.

Part 2 (regulations 3, 4, 5 and 6) provides for contractual schemes by amending Part 17 of FSMA (collective investment schemes) and other primary legislation. Unless otherwise specified in this note, a reference to a section is a reference to a section of FSMA.

Regulation 3(5) inserts section 235A, which defines “contractual scheme” and “contractual scheme deed”. The operator of a co-ownership scheme has authority to acquire, manage and dispose of scheme property, and for that purpose to enter into contracts on behalf of the participants in the scheme. The operator of a partnership scheme is the general partner of the limited partnership.

Regulation 3(6) amends section 237 to take account of contractual schemes—

- sub-paragraph (a) amends section 237(1) to exclude contractual schemes from the definition of “unit trust scheme”;
- sub-paragraph (b) amends section 237(2) to specify who the operator is for a co-ownership scheme and a partnership scheme;
- sub-paragraph (d) inserts definitions for co-ownership schemes that consist of segregated sub-schemes and those that do not.

Regulation 3(12) inserts Chapter 3A into Part 17 of FSMA (collective investment schemes).

Chapter 3A consists of sections 261C to 261Z5.

Sections 261C to 261G provide for the determination of applications for authorisation of contractual schemes. In order to be authorised, a scheme must meet specified requirements, including a requirement that the scheme must not allow units in the scheme to be issued to anyone other than—

- a professional client for the purpose of Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ No. L 145, 30.4.2004, p.1); or
- someone who makes a payment or contributes property having a value of not less than £1,000,000 in exchange for the units or already holds units in the scheme.

Sections 261I and 261J extend to authorised contractual schemes the power which the FCA has under sections 247 and 248 to make rules in relation to authorised unit trust schemes. Rules may be modified or waived under section 261L.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Sections 261M to 261P make provision about the contracts and the rights and liabilities of the participants in an authorised co-ownership scheme. Section 261O limits their liability for debts incurred under, or in connection with, contracts which the operator is authorised to enter into on their behalf. Section 261P provides for the segregation of the liabilities of participants in sub-schemes (where a co-ownership scheme is constituted as an umbrella co-ownership scheme). Sections 261Q to 261S provide for the alteration of authorised contractual schemes, including the replacement of the operator or the depositary and the conversion of a UCITS which is a feeder UCITS into a UCITS which is not a feeder UCITS.

Sections 261U, 261V and 261W provide for the revocation of an authorisation order made for a contractual scheme.

Sections 261X to 261Z5 confer intervention powers on the FCA and on the court on application by the FCA. Powers of direction include powers exercisable where a master UCITS which has one or more feeder UCITS which are authorised contractual schemes is wound up, merges with another UCITS or is divided into two or more UCITS.

Regulation 4 amends the Stock Transfer Act 1963 (c.18) so that provision made by that Act for the simplified transfer of securities applies to the transfer of units of an authorised contractual scheme.

Regulation 5 amends the Corporation Tax Act 2010 (c.4) so that no charge to corporation tax arises in relation to a co-ownership scheme.

Part 3 (regulations 7 to 15) amends secondary legislation. Regulation 13 amends the Limited Partnerships (Forms) Rules 2009 (S.I. 2009/2160) by substituting the form which is required to be used for registering changes to limited partnerships. The form in Schedule 1 allows for the registration of additional changes required to be registered in relation to partnership schemes.

Part 4 (regulation 16) modifies the Limited Partnerships Act 1907 (c.24) in relation to a limited partnership which is a partnership scheme for which an authorisation order under Part 17 of FSMA has been made. The modifications include the following—

- the general partner's liability for partnership debts and obligations is qualified by regulations 18 and 19 of these Regulations;
- a limited partner is not liable for partnership debts and obligations beyond the amount of partnership property which is available to the general partner to meet them, and a person who ceases to be a limited partner ceases to have any liability for debts and obligations;
- the exercise of rights conferred on participants in a contractual scheme by FCA rules does not constitute taking part in the management of the partnership; and
- modified provision is made in relation to the registration of changes in the partnership.

Part 5 (regulations 17, 18 and 19) provide for winding up insolvent contractual schemes.

Regulation 17 and Schedules 2 to 5 provide for winding up a stand-alone co-ownership scheme or a sub-scheme of an umbrella co-ownership scheme (a “relevant scheme”) by the court as if it were an unregistered company, including provision—

- for determining which court has jurisdiction to wind up a relevant scheme;
- applying with modifications specified provisions of the Insolvency Act 1986 (c.45) and the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));
- enabling a winding up petition to be presented by the operator or a creditor of a relevant scheme or by the FCA on the ground that the operator is unable to meet the debts of the relevant scheme, or that it is just and equitable that the relevant scheme should be wound up;
- enabling a winding up petition to be presented by the Secretary of State (or the Department of Enterprise, Trade and Investment if a relevant scheme is being wound up in Northern Ireland) on the ground that winding up is just and equitable in the public interest; and
- requiring the operator of a relevant scheme, if a petition is presented, immediately to cease investment activity and the issue and redemption of units.

Regulations 18 and 19 limit the liability of the general partner of an insolvent authorised partnership. The general partner of an authorised partnership which is wound up by the court as an

Changes to legislation: There are outstanding changes not yet made by the [legislation.gov.uk](https://www.legislation.gov.uk) editorial team to *The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

unregistered company (in England and Wales or Northern Ireland) or whose estate is sequestrated under the Bankruptcy (Scotland) Act 1985 (c.66) is not personally liable for partnership debts incurred at a time when the authorisation order was in force. This does not affect the power of the court to award a remedy for misapplying partnership property or for misfeasance or breach of duty or, in the case of a partnership wound up as an unregistered company, for fraudulent or wrongful trading.

Part 6 (regulations 20 to 23) modifies the application to authorised contractual schemes of—

- the Law of Property Act 1925 (c.20) and the Statute of Frauds (Ireland) 1695 (c.12 (Ir)), which would require transfers of title to units in a co-ownership scheme to be in writing; and
- the Requirements of Writing (Scotland) Act 1995 (c.7), which would require gifts of title to units in any contractual scheme to be in writing.

The modifications allow such transfers to be made by electronic communication.

Part 7 (regulation 24) makes transitional provision in relation to depositaries of authorised contractual schemes. A person who already has permission under Part 4A of FSMA to act as the trustee of an authorised unit trust scheme and as the depositary of an open-ended investment company, if that person gives the FCA notice in accordance with the regulation, is treated as having permission under that Part to act as the depositary of an authorised contractual scheme. Part 8 (regulation 25) requires the Treasury to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Treasury to consider whether the Regulations should remain as they are or be revoked or amended. A further instrument would be needed to revoke the Regulations or to amend them.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on www.hm-treasury.gov.uk, and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- Regulations power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 2](#)
- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)