

**EXPLANATORY MEMORANDUM TO
THE ALTERNATIVE INVESTMENT FUND MANAGERS (AMENDMENT)
REGULATIONS 2013**

2013 No. 1797

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1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations implement elements of Directive 2011/61/EU of the European Parliament and the Council (“the Directive”) relating to the authorisation of non-EEA managers of alternative investment funds, the management and marketing of funds by such managers, and the marketing of non-EEA alternative investment funds by UK managers, which will not apply until dates that will be specified in delegated acts to be made under the Directive by the European Commission. The Directive requires Member States to put in place a harmonised regulatory framework for investment funds currently not within the scope of European regulation.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Most provisions of these Regulations will not come into force until dates that will be specified in delegated acts to be made by the European Commission, likely not to be before 2016. However regulations 5 and 6 will come into force less than 21 days after the Regulations are laid before Parliament. The reason for this is that the Directive is required to be transposed by 22 July 2013, but because these Regulations make amendments to the Alternative Investment Fund Managers Regulations 2013 (“the principal regulations”) and to other legislation as amended by the principal regulations, these Regulations could not be made until the principal regulations had been made. Both the principal regulations and these Regulations have been made, and these Regulations have been laid, as soon as practicable after obtaining the approval of both Houses of Parliament to the principal regulations.

3.2 Regulation 5 comes into force immediately after the principal regulations come into force (on 22 July 2013). It makes two amendments to correct a minor error in the principal regulations which came to light only after the principal regulations had been laid in draft and which are required in order to ensure full transposition of the Directive. It is unlikely that these amendments will have any practical effect within the 21 days after the Regulations are laid. The first amendment is to the information that is to be provided to the Financial Conduct Authority (“FCA”) by regulatory authorities in other EEA states, which authorities will be acting under their own legislation and so should be required to provide the information in any event. The second amendment is to the information that is to be provided by UK fund managers when, having already been through a notification process set up by the principal regulations, the information previously given needs to be changed; it is unlikely that this point would be reached until several weeks after the principal regulations come into force.

3.3 Regulation 6 comes into force on 22 July 2013. It makes provision for the FCA or the Prudential Regulation Authority (“PRA”) to make rules to transpose the relevant provisions of the Directive without complying with the obligation under the Financial Services and Markets Act 2000 (c. 8) (“the Act”) to consult on a draft of the rules before making them. If the FCA or PRA does so, it must instead comply with an equivalent consultation requirement before the rules come into force. This enables the relevant provisions to be transposed within the time required by the Directive while ensuring that there is still effective consultation on the rules before they take effect, which (as with the remaining provisions of the Regulations) is not likely to be before 2016. A later consultation is likely to be more effective, since at this stage it is not known when the provisions will come into force.

4. Legislative Context

4.1 These Regulations transpose the majority of Articles 35 and 37 to 41 of the Directive (“the third country provisions”). The FCA is responsible for the transposition of other elements of the third country provisions in rules. A transposition note setting out how the Directive will be transposed into UK law is attached to this Memorandum at Annex A.

4.2 These Regulations make amendments to the principal regulations and to related legislation, including the Act. The effect of the amendments in Schedule 1 is to apply the regime for authorisation or registration of United Kingdom managers of alternative investment funds to managers from outside the EEA that have the UK as their “Member State of reference” (as defined in the Directive – generally the state in which the manager conducts most of its management or marketing activity in the EEA). The amendments also apply provisions relating to the managing and marketing of alternative investment funds by UK managers to managers from outside the EEA that become authorised or registered in the UK. The separate national private placement regime permitting managers from outside the EEA and UK managers of funds from outside the EEA to market their funds in the UK is, however, retained as an alternative. Schedule 1 also amends the principal regulations to enable EEA managers of non-EEA funds to market those funds in the UK on the same basis as EEA funds.

4.3 Schedule 2 makes further amendments at a later date, to revoke the separate national regime for managers from outside the EEA and UK managers of funds from outside the EEA to market their funds in the UK, with the result that from that point all managers of alternative investment funds within scope of the Directive which manage UK funds or market funds in the UK must be authorised in the UK or in another EEA state.

4.4 The proposal for the Directive was considered by the House of Commons European Scrutiny Committee following the March 2009 European Council meeting proposing regulatory and supervisory reform and this was reported on in the Committee’s Twentieth Report of the 2008-2009 Session. The Directive was debated in European Committee B following consideration of the Committee in its Seventh Report of the 2009-10 Session.

4.5 The proposal for the Directive was considered and reported on by the House of Lords European Union Committee in its Third Report of 2009-2010 Session. The Government provided an update to that Committee following political agreement on the Directive, the text of which can be found at page two of the Committee's published correspondence from 1 December 2010 to 31 May 2011. The Directive was also the subject of a debate in the House of Lords on 6th July 2010.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury, Sajid Javid MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Alternative Investment Fund Managers (Amendment) Regulations 2013 are compatible with the Convention rights.”

7. Policy background

7.1 The aim of the Directive is to establish an EU-wide harmonised framework for monitoring, reporting on and supervising risks posed by Alternative Investment Fund Managers (AIFMs) and the funds they manage and for strengthening the internal market in alternative funds.

7.2 The Directive introduces a passport procedure allowing fund managers authorised in one Member State to manage and market funds in other Member States. AIFMs from other Member States will be able to manage and market alternative investment funds in the UK.

7.3 Initially, authorisation under the Directive is available only to fund managers from EEA states and the passporting procedure is only available in respect of EEA funds managed by such managers. However the Directive requires the European Securities and Markets Authority (“ESMA”) to issue advice to the European Parliament, the Council, and the Commission on the application of the passporting procedure to non-EEA fund managers, by 22 July 2015. In the event of positive advice, the Commission must adopt a delegated EU act that will specify a date from which non-EEA fund managers are able to be authorised by an EEA competent authority in accordance with the Directive and benefit from the passport. These Regulations put in place the necessary arrangements in the UK, to take effect from the date specified by the Commission. The national private placement regimes put in place by the principal regulations for the marketing of non-EEA funds and funds managed by non-EEA managers remain in place as an alternative.

7.4 The Directive also requires that, three years after the entry into force of that delegated act, ESMA must issue advice on the termination of national private placement regimes. In the event of positive advice, the Commission must adopt a delegated EU act that will specify a date from which national private placement regimes must be terminated. These Regulations put in place the necessary

arrangements to terminate the availability of national private placement in the UK from that date.

- ***Consolidation***

7.5 The Regulations amend the Financial Services and Markets Act 2000 and related legislation. There are no current plans to consolidate the Act.

8. Consultation outcome

8.1 No consultation was carried out as the Directive does not allow room for policy decisions of any significance in respect of these particular provisions of the Directive. However the Financial Conduct Authority will be consulting on operational aspects in due course.

9. Guidance

9.1 The Treasury is not planning to issue any further guidance on these Regulations.

10. Impact

10.1 An impact assessment of the effect of the principal regulations on the costs of business and the voluntary sector has been prepared and 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 those Regulations on www.legislation.gov.uk.

10.2 Firms affected by these Regulations will be subject to the same requirements as firms under the principal regulations.

11. Regulating small business

11.1 The opportunity to lower requirements in the principal regulations for small AIFMs including those that qualify as micro-businesses was considered but rejected in line with the consensus from consultation feedback.

11.2 Firms in scope of these provisions of the Directive will be subject to the same requirements as firms in scope of the principal regulations.

12. Monitoring & review

12.1 The Government will review the principal regulations (including the amendments to them made by these Regulations) and publish a report setting out the conclusions of the review by 22 July 2018. The Directive itself may be reviewed at a European level before the Government has reviewed the principal regulations. This may have an impact upon the Government's review.

13. Contact

Queries regarding this statutory instrument should be directed to

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