

**EXPLANATORY MEMORANDUM TO**  
**THE EUROPEAN LONG-TERM INVESTMENT FUNDS REGULATIONS 2015**  
**2015 No. 1882**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 These Regulations make changes to primary and secondary legislation required in order to give effect to Regulation (EU) No. 760/2015 of the European Parliament and of the Council of 29 April 2015 on European Long-term Investment Funds ('the ELTIF Regulation').

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The ELTIF Regulation, which creates the regulatory framework for a new type of European alternative investment fund, is binding in its entirety and directly applicable in the United Kingdom. However, some minor amendments to both primary and secondary legislation are needed to make its provisions workable in the existing UK regime.
- 4.2 This statutory instrument makes those minor amendments. These include amending the Financial Services and Markets Act 2000 (c.8) to enable the Financial Conduct Authority ("FCA") to act against managers who contravene the ELTIF Regulation, and to clarify that it is a criminal offence to mislead the FCA in relation to purported compliance with a requirement imposed by the ELTIF Regulation.
- 4.3 The instrument also inserts a new Part 3A into the Alternative Investment Fund Manager Regulations 2013 (S.I. 2013/1773) giving the FCA power to direct the procedure for authorising a fund as an ELTIF and when revoking authorisation.
- 4.4 The instrument amends the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 (S.I. 2013/419) to specify the ELTIF Regulation as a qualifying EU provision, thus enabling the FCA to enforce directly applicable requirements arising from the ELTIF Regulation and any directly applicable EU Regulations made under it.
- 4.5 A transposition table is submitted with this Explanatory Memorandum.

## **5. Extent and Territorial Application**

- 5.1 This instrument extends to all of the United Kingdom.
- 5.2 These Regulations apply in relation to all the United Kingdom.

## **6. European Convention on Human Rights**

- 6.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

In my view, the provisions of the European Long-term Investment Funds Regulations 2015 are compatible with the Convention rights.

## **7. Policy background**

- 7.1 There is currently no harmonised European fund model for investors targeting long term illiquid assets. In the absence of a common model, national frameworks have proliferated in the EU, fragmenting the market. Furthermore in markets where no framework exists, investors are unable to invest in pooled vehicles with a focus on long term investments.
- 7.2 The Alternative Investment Fund Managers Directive (2011/61/EU) ('AIFMD') which was transposed into UK domestic law in 2013, allows managers to market funds across borders. However, for funds investing in long term illiquid assets, member states can still add additional requirements on who the funds can be marketed to or can ban their marketing. Ensuring that funds comply with different regulations on a country by country basis is time consuming for managers and makes it unviable to set up such funds.
- 7.3 The ELTIF Regulation is intended to address these issues, by enabling investment in a new type of alternative investment fund investing in illiquid long term assets such as infrastructure, small and medium sized enterprises (SMEs) and real estate. Managers whose funds comply with the Regulation will be able to market their funds as an ELTIF across Europe.
- 7.4 The potential uptake of this fund structure is hard to predict. However, if Alternative Investment Fund Managers start to offer funds set up with this structure, we can expect to see an increase in access to capital market financing for SMEs and long-term investment projects.

## **8. Consultation outcome**

- 8.1 Her Majesty's Treasury consulted informally with respect to the drafting of this instrument. The draft instrument was circulated to industry members by the Investment Association, the trade association for the investment management industry. Participants were given one week to respond to the consultation, and we received a collated response from the Investment Association which provided some comments about drafting approaches, which have been taken into account.
- 8.2 A short and informal consultation process was chosen because of the low impact of this regulatory change. It is an optional regime which businesses will only choose to participate in if there is a net benefit to them. The Regulatory Policy Committee approved this Regulation for fast track implementation due to the low costs involved.
- 8.3 The FCA are consulting separately on the changes to their rulebooks, which are also required in order to incorporate the ELTIF Regulation provisions into the UK system.

## **9. Guidance**

- 9.1 Her Majesty's Treasury is working closely with the FCA on the implementation of the ELTIF Regulation, and the FCA intends to provide guidance more generally for businesses who want to use the ELTIF framework.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies. This is an optional scheme which businesses will only take part in if there are benefits to them which outweigh the costs of launching an ELTIF.
- 10.2 There is no impact on the public sector. All processes of authorising, supervising and enforcing the Regulation lie with the FCA, which is funded by private sector levies.
- 10.3 An Impact Assessment has not been prepared for this instrument. The Regulatory Policy Committee approved this Regulation for fast-track implementation without the requirement to submit an Impact Assessment, because it was estimated that the cost to businesses would be less than £100,000 per year, consisting of the cost of seeking authorisation from the FCA.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 However, this is an optional regime with no obligation for small businesses to participate. While there is a cost to launching an ELTIF, this is not a burden on firms as we anticipate a net benefit for firms who choose to opt in. Furthermore, only businesses authorised under AIFMD are eligible to apply for authorisation to market an ELTIF, so businesses affected by the ELTIF Regulation will already be affected by many of the same rules under the wider regulatory framework of AIFMD.

## **12. Monitoring & review**

- 12.1 The instrument includes a provision for regular review and a requirement to publish a report of conclusions at least every five years.

## **13. Contact**

- 13.1 Chiara Crean at Her Majesty's Treasury Telephone: 0207 2704480 or email: [chiara.crean@hmtreasury.gsi.gov.uk](mailto:chiara.crean@hmtreasury.gsi.gov.uk) can answer any queries regarding the instrument.