
STATUTORY INSTRUMENTS

2019 No. 325

**The Collective Investment Schemes
(Amendment etc.) (EU Exit) Regulations 2019**

PART 2

Amendments of the Financial Services and Markets Act 2000

Introductory provision

3. The 2000 Act is amended in accordance with this Part.

Persons authorised as a result of Schedule 5

4. For section 36 substitute—

“Authorised open-ended investment companies

- 36.** Schedule 5 makes provision about authorised open-ended investment companies.”

Open-ended investment companies

5. In section 236 (open-ended investment companies), in subsection (4)—
- (a) omit paragraph (c) (but not the “or” at the end);
 - (b) in paragraph (d), omit “other than an EEA state”.

Meaning of “UCITS”

6. After section 236 insert—

“Meaning of “UCITS”

236A.—(1) For the purposes of this Act, and subject to subsection (4), “UCITS” means an undertaking established in the United Kingdom or an EEA State—

- (a) with the sole object of collective investment, operating on the principle of risk-spreading, in transferable securities or other liquid financial assets mentioned in subsection (3), of capital raised from the public; and
 - (b) with units which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of the undertaking’s assets.
- (2) A UCITS may consist of several sub-funds (see section 237(4)).
- (3) The transferable securities or other liquid financial assets referred to in subsection (1) (a) are—

- (a) in the case of an undertaking established in the United Kingdom, those permitted by section 2 of chapter 5 of the Collective Investment Schemes sourcebook⁽¹⁾; or
 - (b) in the case of an undertaking established in an EEA State, those referred to in Article 50(1) of the UCITS directive⁽²⁾.
- (4) For the purposes of subsection (1)(b), action taken by the undertaking to ensure that the price of its units on an investment exchange does not significantly vary from their net asset value is to be regarded as equivalent to the repurchase or redemption of units at the request of holders.
- (5) An undertaking is not a UCITS if it is any of the following—
- (a) a collective investment undertaking of the closed-ended type;
 - (b) a collective investment undertaking which raises capital without promoting the sale of its units to the public within the relevant area or any part of it;
 - (c) an open-ended investment company, or other collective investment undertaking, the units of which may, under its fund rules or instruments of incorporation, be sold only to the public in countries or territories outside the relevant area.
- (6) In subsection (5) “the relevant area” means—
- (a) in the case of an undertaking established in the United Kingdom, the United Kingdom;
 - (b) in the case of an undertaking established in an EEA State, the EEA States.”.

Other definitions for Part 17

- 7.—(1) Section 237 (other definitions for Part 17) is amended as follows.
- (2) In subsection (2)—
- (a) for the definition of “management company” substitute—

““management company” means an undertaking, as defined in section 1161 of the Companies Act 2006⁽³⁾, whose regular business is the management of UK UCITS;”;
 - (b) in the definition of “the operator”⁽⁴⁾—
 - (i) at the end of paragraph (ab), insert “and”;
 - (ii) omit the “and” at the end of paragraph (b);
 - (iii) omit paragraph (c).
- (3) In subsection (3)—
- (a) after the definition of “an authorised open-ended investment company”⁽⁵⁾ insert—

““the Collective Investment Schemes sourcebook” means the Collective Investment Schemes sourcebook made under this Act by the FCA, as it has effect on exit day;

“EEA UCITS” means a UCITS which is authorised pursuant to Article 5 of the UCITS directive in an EEA State;”;
 - (b) for the definition of “feeder UCITS”⁽⁶⁾ substitute—

(1) Sourcebooks made by the Financial Conduct Authority are available on <https://www.handbook.fca.org.uk/handbook> and copies of the rules referred to can be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN, where they are also available for inspection.

(2) OJ L 174, 1.7.2011, p.1.

(3) 2006 c. 46.

(4) The definition of “the operator” was inserted by S.I. 2013/1388.

(5) A previous definition of “EEA UCITS” was inserted by S.I. 2013/1388 and omitted by S.I. 2018/698.

(6) The definition of “feeder UCITS” was inserted by S.I. 2011/1613 and amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012 (c. 21).

““feeder UCITS” means—

- (a) a UK UCITS which has been approved by the FCA to invest 85% or more of the total property which is subject to the collective investment scheme constituted by the UK UCITS in units of—
 - (i) another UK UCITS,
 - (ii) a sub-fund of another UK UCITS,
 - (iii) an EEA UCITS, or
 - (iv) a sub-fund of an EEA UCITS, or
- (b) a sub-fund of a UK UCITS which has been approved by the FCA to invest 85% or more of the sub-fund’s separate pool of the property of the UK UCITS in units of—
 - (i) another UK UCITS,
 - (ii) another sub-fund of a UK UCITS,
 - (iii) an EEA UCITS, or
 - (iv) a sub-fund of an EEA UCITS;

“master UCITS”, in relation to a feeder UCITS, means (as the case may be)—

- (a) the other UK UCITS mentioned in paragraph (a)(i) or (b)(i) of the definition of “feeder UCITS”,
 - (b) the EEA UCITS mentioned in paragraph (a)(iii) or (b)(iii) of that definition, or
 - (c) the sub-fund mentioned in paragraph (a)(ii) or (iv) or (b)(ii) or (iv) of that definition;”;
- (c) in the definition of “a recognised scheme”(7), omit “264 or”;
- (d) before the definition of “UK UCITS” insert—

““UCITS-related direct EU legislation” means—

- (a) Commission Regulation (EU) 2010/583 of 1 July 2010 implementing [Directive 2009/65/EC](#) of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website, or
- (b) Commission Delegated Regulation (EU) 2016/438 of 17 December 2015 supplementing [Directive 2009/65/EC](#) of the European Parliament and of the Council with regard to obligations of depositaries;”.

Authorisation orders: unit trust schemes

8.—(1) Section 243 (authorisation orders) is amended as follows.

(2) In subsection (5)(8)—

- (a) omit “or another EEA State”;
- (b) for “country in which it is incorporated” substitute “United Kingdom”.

(3) For subsection (5A) substitute—

“(5A) The manager and the trustee must each have a place of business in the United Kingdom.”.

(7) In subsection (3), the definition of “recognised scheme” was amended by [S.I. 2013/1773](#).

(8) Subsections (5) and (5A) were substituted for subsection (5) by [S.I. 2011/1613](#).

- (4) Omit subsection (6).

Certificates: unit trust schemes

9. In section 246 (certificates), in subsection (1)(9), for the words from “enjoy” to “instrument” substitute “be a UK UCITS”.

Proposal to convert to a non-feeder UCITS: unit trust schemes

- 10.—(1) Section 252A(10) (proposal to convert to a non-feeder UCITS) is amended as follows.
- (2) In subsection (1)(b), after “convert into a” insert “UK”.
- (3) In subsection (7)(a), after “convert into a” insert “UK”.
- (4) In subsection (9), for paragraphs (a) and (b) substitute—
- “(a) specified in rule 11.6.3(2) of the Collective Investment Schemes sourcebook, or
- (b) specified in UCITS-related direct EU legislation.”.

Requests for revocation of authorisation order: unit trust schemes

11. In section 256(11) (requests for revocation of authorisation order), in subsection (3)(b), omit “or would be incompatible with an EU obligation”.

Directions: unit trust schemes

12. In section 257(12) (directions), in subsection (1)(b)—
- (a) in sub-paragraph (ii), for the words from “any” to “UCITS directive” substitute “UCITS-related direct EU legislation;”;
- (b) in sub-paragraph (iii), after “that Regulation” insert “which constitutes retained direct EU legislation”.

Winding up or merger of master UCITS: unit trust schemes

- 13.—(1) Section 258A(13) (winding up or merger of master UCITS) is amended as follows.
- (2) In subsection (2)(b), after “convert into a” insert “UK”.
- (3) In subsection (4)(b), after “convert into a” insert “UK”.

Information for home state regulator: unit trust schemes

14. Omit section 261A(14) (information for home state regulator).

Information for feeder UCITS: unit trust schemes

- 15.—(1) Section 261B(15) (information for feeder UCITS) is amended as follows.

(9) Section 246(1) was amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012.

(10) Section 252A was inserted by [S.I. 2011/1613](#) and amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012.

(11) Section 256 was amended by [S.I. 2011/1043](#) and by paragraph 9 of Schedule 18 to the Financial Services Act 2012.

(12) Section 257 was amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012. Subsection (1)(b) was substituted by [S.I. 2011/1613](#) and amended by [S.I. 2018/698](#).

(13) Section 258A was inserted by [S.I. 2011/1613](#). Subsections (2)(b) and (4)(b) were amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012.

(14) Section 261A was inserted by [S.I. 2011/1613](#) and amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012.

(15) Section 261B was inserted by [S.I. 2011/1613](#) and amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012. There are other amendments but none is relevant.

- (2) In subsection (1)(a), after “made” insert “by or under any enactment”.
- (3) Omit subsections (2) and (3).

Authorisation orders: contractual schemes

- 16.**—(1) Section 261D(**16**) (authorisation orders) is amended as follows.
- (2) In subsection (5)—
 - (a) omit “or another EEA State”;
 - (b) for “country in which it is incorporated” substitute “United Kingdom”.
- (3) For subsection (6) substitute—
 - “(6) The operator and the depositary must each have a place of business in the United Kingdom.”.
- (4) Omit subsection (7).

Authorisation orders: holding of units

17. In section 261E(**17**) (authorisation orders: holding of units), in the definition of “professional investor” in subsection (4), for “(1) to (4) of Section I of Annex II to the markets in financial instruments directive (professional clients for the purpose of that directive)” substitute “(a) to (d) of paragraph 3 of Schedule 1 to the markets in financial instruments regulation”(**18**).

Certificates: contractual schemes

18. In section 261H(**19**) (certificates), in subsection (1), for “enjoy the rights conferred by any relevant EU instrument” substitute “be a UK UCITS”.

Proposal to convert to a non-feeder UCITS: contractual schemes

- 19.**—(1) Section 261S(**20**) (proposal to convert to a non-feeder UCITS) is amended as follows.
- (2) In subsection (1)(b), after “convert into a” insert “UK”.
- (3) In subsection (7)(a), after “convert into a” insert “UK”.
- (4) In subsection (9), for paragraphs (a) and (b) substitute—
 - “(a) specified in rule 11.6.3(2) of the Collective Investment Schemes sourcebook, or
 - (b) specified in UCITS-related direct EU legislation.”.

Requests for revocation of authorisation order: contractual schemes

20. In section 261W(**21**) (requests for revocation of authorisation order), in subsection (3)(b), omit “or would be incompatible with an EU obligation”.

Directions: contractual schemes

- 21.** In section 261X(**22**)(directions), in subsection (1)(b)—

(16) Section 261D was inserted by [S.I. 2013/1388](#). There are amendments but none is relevant.

(17) Section 261E was inserted by [S.I. 2013/1388](#).

(18) Schedule 1 to Regulation (EU) No. 600/2014 is inserted by S.I. 2018/.

(19) Section 261H was inserted by [S.I. 2013/1388](#).

(20) Section 261S was inserted by [S.I. 2013/1388](#).

(21) Section 261W was inserted by [S.I. 2013/1388](#).

(22) Section 261X was inserted by [S.I. 2013/1388](#) and amended by [S.I. 2018/698](#).

- (a) in sub-paragraph (ii), for the words from “any” to “UCITS directive” substitute “UCITS-related direct EU legislation;”;
- (b) in sub-paragraph (iii), after “that Regulation” insert “which constitutes retained direct EU legislation”.

Winding up or merger of master UCITS: contractual schemes

- 22.**—(1) Section 261Z(23) (winding up or merger of master UCITS) is amended as follows.
- (2) In subsection (2)(b), after “convert into a” insert “UK”.
 - (3) In subsection (4)(b), after “convert into a” insert “UK”.

Information for home state regulator: contractual schemes

- 23.** Omit section 261Z4(24) (information for home state regulator).

Information for feeder UCITS: contractual schemes

- 24.**—(1) Section 261Z5(25) (information for feeder UCITS) is amended as follows.
- (2) In subsection (1)(a), after “made” insert “by or under any enactment”.
 - (3) Omit subsections (2) and (3).

Schemes constituted in other EEA States

- 25.** Omit sections 264 to 269 (schemes constituted in other EEA States).

Individually recognised overseas schemes

- 26.** In section 272 (individually recognised overseas schemes), in subsection (1)—
- (a) at the end of paragraph (a) insert “and”;
 - (b) omit paragraph (b) and the “and” immediately following it.

Master-feeder structures

- 27.**—(1) Section 283A(26) (master-feeder structures) is amended as follows.
- (2) In subsection (1), for the words from “rules made” to “directive” substitute “rule 5.2.11(9) of the Collective Investment Schemes sourcebook”.
 - (3) In subsection (3)(a)—
 - (a) for “that the UCITS” substitute “that the UK UCITS”;
 - (b) in sub-paragraph (i) for “Chapter VIII of the UCITS directive,” substitute “the Chapter 8 provisions,”.
 - (4) After subsection (3) insert—

“(3A) In subsection (3)(a)(i) “the Chapter 8 provisions” means—

(23) Section 261Z was inserted by [S.I. 2013/1388](#).

(24) Section 261Z4 was inserted by [S.I. 2013/1388](#).

(25) Section 261Z5 was inserted by [S.I. 2013/1388](#).

(26) Section 283A was inserted by [S.I. 2011/1613](#); amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012 and by [S.I. 2013/1388](#).

- (a) in relation to a UK UCITS or its operator, trustee or depositary, or auditor, any provision made by or under an enactment in implementation of Chapter 8 of the UCITS directive, and
- (b) in relation to an EEA UCITS or its operator, Chapter 8 of the UCITS directive.”

Reports on derivative instruments

- 28.**—(1) Section 283B(**27**) (reports on derivative instruments) is amended as follows.
- (2) In subsection (1), after “in relation to a” insert “UK”.
 - (3) In subsection (4), for paragraphs (a) and (b) substitute—
 - “(a) in rules 6.12.3 and 6.12.3A, and annex 2R to chapter 6, of the Collective Investment Schemes sourcebook, or
 - (b) in UCITS-related direct EU legislation.”.

FCA’s and PRA’s procedures

- 29.** In section 395 (procedures of the FCA and PRA), omit subsection (13)(e).

Definitions

- 30.** In section 417 (definitions), in subsection (1), in the definition of “UCITS”(**28**), for “Article 1.2 of the UCITS directive” substitute “section 236A”.

Expressions relating to authorisation elsewhere in the single market

- 31.** In section 425 (expressions relating to authorisation elsewhere in the single market), in subsection (1), omit paragraph (aa) (but not the “and” at the end).

Persons concerned in collective investment schemes

- 32.**—(1) Schedule 5 (persons concerned in collective investment schemes) is amended as follows.
- (2) In paragraph 1(**29**)—
 - (a) omit sub-paragraphs (1) and (2), and
 - (b) in sub-paragraph (4), for paragraph (b) substitute—
 - “(b) which is a UCITS as defined in section 236A,”.
 - (3) In paragraph 2, omit sub-paragraph (1).

(27) Section 283B was inserted by [S.I. 2011/1613](#) and amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012.

(28) The definition of “UCITS” was inserted by [S.I. 2018/698](#).

(29) Paragraphs 1(4) and (5) were inserted by [S.I. 2003/2066](#).