

UCITS V Transposition Table

Glossary of terms used in this table

ACS	Authorised Contractual Scheme
AUT	Authorised Unit Trust
COLL	The FCA's Handbook on Collective Investment Schemes
DEPP	The FCA's Decision Procedure and Penalties Manual
FCA	Financial Conduct Authority
FCA Glossary	The FCA's Glossary of terms used in its Handbook
FSMA	The Financial Services and Markets Act 2000
OEIC	Open Ended Investment Company
OEIC Regulations 2011	The Open Ended Investment Company Regulations 2011 (SI 2001/1228)
SUP	The FCA's Handbook on Supervision
SYSC	The FCA's Handbook on Senior Management Arrangements, Systems and Controls
UCITS V	Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014, amending Directive 2009/65/EC on the co-ordination of laws, regulations and administrative provisions relating to Undertakings for Collective Investment in Transferable Securities (UCITS) as regards depositary functions, remuneration policies and sanctions
UCITS Regulations 2011	The Undertakings for Collective Investment in Transferable Securities Regulations 2011 (SI 2011/1613)
UCITS Regulations 2016	The Undertakings for Collective Investment in Transferable Securities Regulations 2016, which transpose (in part) the UCITS V Directive

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION	
		Legislation	FCA rules
Article 1	Directive 2009/65/EC is amended as follows:		
1 (1)	<p>in Article 2(1), the following points are added:</p> <p>‘(s) ‘management body’ means the body with ultimate decision-making authority in a management company, investment company or depositary, comprising the supervisory and the managerial functions, or only the managerial function if the two functions are separated. Where, according to national law, the management company, investment company or depositary has in place different bodies with specific functions, the requirements laid down in this Directive directed at the management body or at the management body in its supervisory function shall also, or shall instead, apply to those</p>	Regulation 3 UCITS Regulations 2016 - references in the UCITS Regulations 2011 have the same meaning as in the UCITS Directive.	FCA Glossary definition: “management body” (amended)

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION	
1 (1)	<p>members of other bodies of the management company, investment company or depository to whom the applicable national law assigns the respective responsibility;</p> <p>(t) 'financial instrument' means a financial instrument specified in Section C of Annex I to Directive 2014/65/EU of the European Parliament and of the Council.</p>	<p>Regulation 3 of the UCITS Regulations 2016 - references in the UCITS Regulations 2011 have the same meaning as in the UCITS Directive.</p>	<p>FCA Glossary definition: "financial instrument" (amended)</p>
1(2)	<p>the following articles are inserted:</p>		
1(2)	<p><i>Article 14a</i></p>		
	<p>1. Member States shall require management companies to establish and apply remuneration policies and practices that are consistent with, and promote, sound and effective risk management and that neither encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of</p>		<p>SYSC 4.1.1D R (new)</p> <p>SYSC 19E.2.1R(1),(2),(3) (new)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>the UCITS that they manage nor impair compliance with the management company's duty to act in the best interest of the UCITS.</p>	
	<p>2. The remuneration policies and practices shall include fixed and variable components of salaries and discretionary pension benefits.</p>	<p>SYSC 19E.2.1R(4) (new)</p>
	<p>3. The remuneration policies and practices shall apply to those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls within the remuneration bracket of senior management and risk takers whose professional activities have a material impact on the risk profiles of the management companies or of the UCITS that they manage.</p>	<p>SYSC 19E.2.2R (new)</p>
	<p>4. In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall issue</p>	

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>guidelines addressed to competent authorities or to financial market participants concerning the persons referred to in paragraph 3 of this Article and the application of the principles referred to in Article 14b. Those guidelines shall take into account the principles on sound remuneration policies set out in Commission Recommendation 2009/384/EC (*), the size of the management company and the size of the UCITS that they manage, their internal organisation, and the nature, scope and complexity of their activities. In the process of the development of those guidelines, ESMA shall cooperate closely with the European Supervisory Authority (European Banking Authority ('EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (**), in order to ensure consistency with requirements developed for</p>	<p>No transposition required</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	other financial services sectors, in particular credit institutions and investment firms.	
1(2)	<i>Article 14b</i>	
	1. When establishing and applying the remuneration policies referred to in Article 14a, management companies shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:	SYSC 19E.2.4R (new)
	(a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that the management company manages;	SYSC 19E.2.5R (new)
	(b) the remuneration policy is in line with the business strategy,	SYSC 19E.2.6R (new)

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	<p>objectives, values and interests of the management company and the UCITS that it manages and of the investors in such UCITS, and includes measures to avoid conflicts of interest;</p>		
	<p>(c) the remuneration policy is adopted by the management body of the management company in its supervisory function, and that body adopts, and reviews at least annually, the general principles of the remuneration policy and is responsible for, and oversees, their implementation; the tasks referred to in this point shall be undertaken only by members of the management body who do not perform any executive functions in the management company concerned and who have expertise in risk management and remuneration;</p>		<p>SYSC 19E.2.7R (new)</p>
	<p>(d) the implementation of the remuneration policy is, at least annually, subject to central and</p>		<p>SYSC 19E.2.8R (new)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;	
	(e) staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independently of the performance of the business areas that they control;	SYSC 19E.2.10R (new)
	(f) the remuneration of the senior officers in the risk management and compliance functions is overseen directly by the remuneration committee, where such a committee exists;	SYSC 19E.2.11R (new)
	(g) where remuneration is performance-related, the total amount of remuneration is based on a combination of the assessment as to the performance of the individual and of the business unit or UCITS concerned and as to	SYSC 19E.2.12R (new)

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>their risks and of the overall results of the management company when assessing individual performance, taking into account financial and non-financial criteria;</p>	
	<p>(h) the assessment of performance is set in a multi-year framework appropriate to the holding period recommended to the investors of the UCITS managed by the management company in order to ensure that the assessment process is based on the longer-term performance of the UCITS and its investment risks and that the actual payment of performance-based components of remuneration is spread over the same period;</p>	<p>SYSC 19E.2.13R (new)</p>
	<p>(i) guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year of engagement;</p>	<p>SYSC 19E.2.14R (new)</p>

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	<p>(j) fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component;</p>		SYSC 19E.2.15R (new)
	<p>(k) payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;</p>		SYSC 19E.2.16R (new)
	<p>(l) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;</p>		SYSC 19E.2.24R (new)

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>(m) subject to the legal structure of the UCITS and its fund rules or instruments of incorporation, a substantial portion, and in any event at least 50 %, of any variable remuneration component consists of units of the UCITS concerned, equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the instruments referred to in this point, unless the management of the UCITS accounts for less than 50 % of the total portfolio managed by the management company, in which case the minimum of 50 % does not apply.</p> <p>The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the management company and the UCITS that it manages and the investors of</p>	<p>SYSC 19E.2.18R (new)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION	
	<p>such UCITS. Member States or their competent authorities may place restrictions on the types and designs of those instruments or ban certain instruments as appropriate. This point shall apply to both the portion of the variable remuneration component deferred in line with point (n) and the portion of the variable remuneration component not deferred;</p>		
	<p>(n) a substantial portion, and in any event at least 40 %, of the variable remuneration component, is deferred over a period which is appropriate in view of the holding period recommended to the investors of the UCITS concerned and is correctly aligned with the nature of the risks of the UCITS in question.</p> <p>The period referred to in this point shall be at least three years; remuneration payable under deferral arrangements</p>		<p>SYSC 19E.2.20R (new)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION	
	<p>vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60 % of the amount shall be deferred;</p>		
	<p>(o) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the management company as a whole, and justified according to the performance of the business unit, the UCITS and the individual concerned.</p>		SYSC 19E.2.22R (new)
	<p>The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the management company or of the UCITS concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously</p>		SYSC 19E.2.23G (new)

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION	
	<p>earned, including through malus or clawback arrangements;</p>		
	<p>(p) the pension policy is in line with the business strategy, objectives, values and long-term interests of the management company and the UCITS that it manages.</p> <p>If the employee leaves the management company before retirement, discretionary pension benefits shall be held by the management company for a period of five years in the form of instruments referred to in point (m). In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments referred</p>		<p>SYSC 19E.2.25R (new)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	to in point (m), subject to a five-year retention period;	
	(q) staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;	SYSC 19E.2.26R (new)
	(r) variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements laid down in this Directive.	SYSC 19E.2.27R (new)
	2. In accordance with Article 35 of Regulation (EU) No 1095/2010, ESMA may request	No transition required

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>information from competent authorities on the remuneration policies and practices referred to in Article 14a of this Directive.</p> <p>ESMA shall, in close cooperation with EBA, include in its guidelines on remuneration policies provisions on how different sectoral remuneration principles, such as those set out in Directive 2011/61/EU of the European Parliament and of the Council (***) and in Directive 2013/36/EU of the European Parliament and of the Council (****), are to be applied where employees or other categories of personnel perform services subject to different sectoral remuneration principles.</p>	
	<p>3. The principles set out in paragraph 1 shall apply to any benefit of any type paid by the management company, to any amount paid directly by the UCITS itself, including performance fees, and to any</p>	<p>SYSC 19E.2.3R (new)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>transfer of units or shares of the UCITS, made for the benefit of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls into the remuneration bracket of senior management and risk takers, whose professional activities have a material impact on their risk profile or the risk profile of the UCITS that they manage.</p>	
	<p>4. Management companies that are significant in terms of their size or of the size of the UCITS that they manage, their internal organisation and the nature, scope and complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and</p>	<p>SYSC 19E.2.9R (new)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION	
	practices and the incentives created for managing risk.		
	<p>The remuneration committee that is, where appropriate, set up in accordance with the ESMA guidelines referred to in Article 14a(4) shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the management company or the UCITS concerned and which are to be taken by the management body in its supervisory function.</p> <p>The remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the management company concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive</p>		SYSC 19E.2.9R (new)

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	functions in the management company concerned.	
	If employee representation on the management body is provided for by national law, the remuneration committee shall include one or more employee representatives.	No transposition required as employee representation on the management body is not provided for in UK national law
	When preparing its decisions, the remuneration committee shall take into account the long-term interest of investors and other stakeholders and the public interest.	SYSC 19E.2.9R (new)
1(3)	in Article 20(1), point (a) is replaced by the following: '(a) the written contract with the depositary referred to in Article 22(2)';;	COLL 12.2.7G (amended)
1(4)	Article 22 is replaced by the following: 'Article 22	
	1. An investment company and, for each of the common funds	COLL 6.6A.7R (new)

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	that it manages, a management company shall ensure that a single depositary is appointed in accordance with this Chapter.	
	2. The appointment of the depositary shall be evidenced by a written contract.	COLL 6.6A.11R(1) (new)
	That contract shall, inter alia, regulate the flow of information deemed to be necessary to allow the depositary to perform its functions for the UCITS for which it has been appointed as depositary, as laid down in this Directive and in other relevant laws, regulations and administrative provisions.	COLL 6.6A.11R(2) (new)
	3. The depositary shall:	
	(a) ensure that the sale, issue, repurchase, redemption and cancellation of units of the UCITS are carried out in accordance with the applicable national law and the fund rules or instruments of incorporation;	COLL 6.6B.16R(1) (new)

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	(b) ensure that the value of the units of the UCITS is calculated in accordance with the applicable national law and the fund rules or the instruments of incorporation;	COLL 6.6B.16R(2) (new)
	(c) carry out the instructions of the management company or an investment company, unless they conflict with the applicable national law, or with the fund rules or the instruments of incorporation;	COLL 6.6B.16R(3) (new)
	(d) ensure that in transactions involving the assets of the UCITS any consideration is remitted to the UCITS within the usual time limits;	COLL 6.6B.16R(4) (new)
	(e) ensure that the income of the UCITS is applied in accordance with the applicable national law and the fund rules or the instruments of incorporation.	COLL 6.6B.16R(5) (new)
	4. The depositary shall ensure that the cash flows of the UCITS	COLL 6.6B.17R (new)

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION	
	<p>are properly monitored, and, in particular, that all payments made by, or on behalf of, investors upon the subscription of units of the UCITS have been received, and that all cash of the UCITS has been booked in cash accounts that are:</p>		
	<p>(a) opened in the name of the UCITS, of the management company acting on behalf of the UCITS, or of the depository acting on behalf of the UCITS;</p>		As above
	<p>(b) opened at an entity referred to in points (a), (b) and (c) of Article 18(1) of Commission Directive 2006/73/EC (*); and</p>		As above
	<p>(c) maintained in accordance with the principles set out in Article 16 of Directive 2006/73/EC. Where the cash accounts are opened in the name of the depository acting on behalf of the UCITS, no cash of the entity referred to in point (b) of the first</p>		As above

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION	
	<p>subparagraph and none of the own cash of the depository shall be booked on such accounts.</p>		
	<p>5. The assets of the UCITS shall be entrusted to the depository for safekeeping as follows:</p>		
	<p>(a) for financial instruments that may be held in custody, the depository shall:</p> <ul style="list-style-type: none"> (i) hold in custody all financial instruments that may be registered in a financial instruments account opened in the depository's books and all financial instruments that can be physically delivered to the depository; (ii) ensure that all financial instruments that can be registered in a financial instruments account opened in the depository's 		<p>COLL 6.6B.18R (new)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>books are registered in the depository's books within segregated accounts in accordance with the principles set out in Article 16 of Directive 2006/73/EC, opened in the name of the UCITS or the management company acting on behalf of the UCITS, so that they can be clearly identified as belonging to the UCITS in accordance with the applicable law at all times;</p>	
	<p>(b) for other assets, the depository shall:</p> <p>(i) verify the ownership by the UCITS, or by the management company acting on behalf of the UCITS, of such assets by assessing whether the UCITS or the management</p>	<p>COLL 6.6B.19R (new)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>company acting on behalf of the UCITS holds the ownership based on information or documents provided by the UCITS or by the management company and, where available, on external evidence;</p> <p>(ii) maintain a record of those assets for which it is satisfied that the UCITS or the management company acting on behalf of the UCITS holds the ownership and keep that record up to date.</p>	
	<p>6. The depositary shall provide the management company or the investment company, on a regular basis, with a comprehensive inventory of all of the assets of the UCITS.</p>	<p>COLL 6.6B.20R (new)</p>
	<p>7. The assets held in custody by the depositary shall not be reused by the depositary, or by</p>	<p>COLL 6.6B.21R (new)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>any third party to which the custody function has been delegated, for their own account. Reuse comprises any transaction of assets held in custody including, but not limited to, transferring, pledging, selling and lending.</p> <p>The assets held in custody by the depositary are allowed to be reused only where:</p> <ul style="list-style-type: none"> (a) the reuse of the assets is executed for the account of the UCITS; (b) the depositary is carrying out the instructions of the management company on behalf of the UCITS; (c) the reuse is for the benefit of the UCITS and in the interest of the unit holders; and (d) the transaction is covered by high-quality and liquid collateral received by the UCITS under a title transfer arrangement. <p>The market value of the collateral shall, at all times,</p>	<p>COLL 5.4.3R (amended)</p> <p>COLL 5.4.4R (amended)</p> <p>COLL 5.4.6R (amended)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>amount to at least the market value of the reused assets plus a premium.</p>	
	<p>8. Member States shall ensure that in the event of insolvency of the depository and/or of any third party located in the Union to which custody of UCITS assets has been delegated, the assets of a UCITS held in custody are unavailable for distribution among, or realisation for the benefit of, creditors of such a depository and/or such a third party.</p>	<p>The assets of a UCITS held in custody for the purposes of Article 22.8 are financial instruments that may be registered in a financial instruments account opened in the depository's books, and financial instruments that can be physically delivered to the depository.</p> <p>Article 22.8 captures only those financial instruments that are actually held in custody at the point of insolvency. Those assets that a depository (or delegate) does not hold in custody (whether or not as a result of a compliance failure) would not be caught by the Article.</p> <p>UK domestic legislation, FCA rules and insolvency law operate in conjunction to ensure that custody assets are protected from creditor distribution upon the insolvency of a UK depository. Under UK insolvency law, client property held on trust does not form part of the insolvency estate so as to be available for creditors.</p> <p>Article 22.5 states that financial instruments must be registered in segregated accounts in the name of the UCITS or the management company so that they can be clearly identified as belonging to the UCITS at all times. In the UK, these requirements will be imposed by the FCA's Collective Investment Schemes Sourcebook (COLL) rules. The UK legislation setting out the framework for depositaries and trustees of collective investment schemes (namely FSMA and the Open Ended Investment Companies Regulations 2001) provides that property held by a depository or trustee is entrusted or held on trust for the participants in the scheme. In many cases the contractual or trust arrangements between the depository and the UCITS/management company or with the delegated third party will expressly impose a trust arrangement over the assets held in custody. Additionally, the nature and purpose of depositaries and trustees (or any third party delegates) of UCITS funds, namely their express role in the safe-keeping of client assets, implies a trust or fiduciary relationship in relation to assets held on behalf of the fund. These elements combined either expressly create or imply</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
		a trust over client assets held in custody, and therefore effectively ringfence those assets from the pool of assets available to creditors upon insolvency.
1(5)	the following article is inserted:	No specific implementation measure is required to transpose Article 22.8.
	<i>Article 22a</i>	
	1. The depository shall not delegate to third parties the functions referred to in Article 22(3) and (4).	COLL 6.6B.22R (new)
	<p>2. The depository may delegate to third parties the functions referred to in Article 22(5) only where:</p> <ul style="list-style-type: none"> (a) the tasks are not delegated with the intention of avoiding the requirements laid down in this Directive; (b) the depository can demonstrate that there is an objective reason for the delegation; (c) the depository has exercised all due skill, care and diligence in the selection and the appointment of any third 	COLL 6.6B.25R (new)

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>party to whom it intends to delegate parts of its tasks, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it.</p>	
	<p>3. The functions referred to in Article 22(5) may be delegated by the depository to a third party only where that third party at all times during the performance of the tasks delegated to it:</p> <ul style="list-style-type: none"> (a) has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the UCITS or the management company acting on behalf of the UCITS which have been entrusted to it; (b) for custody tasks referred to in point (a) of Article 22(5), is subject to: 	<p>COLL 6.6B.25R (new)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>(i) effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned;</p> <p>(ii) an external periodic audit to ensure that the financial instruments are in its possession;</p> <p>(c) segregates the assets of the clients of the depository from its own assets and from the assets of the depository in such a way that they can, at any time, be clearly identified as belonging to clients of a particular depository;</p> <p>(d) takes all necessary steps to ensure that in the event of insolvency of the third party, assets of a UCITS held by the third party in custody are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and</p> <p>(e) complies with the general obligations and prohibitions laid down in Article 22(2), (5) and (7) and in Article 25.</p>	

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>Notwithstanding point (b)(i) of the first subparagraph, where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that point, the depositary may delegate its functions to such a local entity only to the extent required by the law of that third country, only for as long as there are no local entities that satisfy the delegation requirements, and only where:</p> <ul style="list-style-type: none"> (a) the investors of the relevant UCITS are duly informed, prior to their investment, of the fact that such a delegation is required due to legal constraints in the law of the third country, of the circumstances justifying the delegation and of the risks involved in such a delegation; (b) the investment company, or the 	<p>COLL 6.6B.26R (new) COLL 6.6B.27R (new)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>management company on behalf of the UCITS, has instructed the depository to delegate the custody of such financial instruments to such a local entity.</p> <p>The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, Article 24(2) shall apply <i>mutatis mutandis</i> to the relevant parties.</p>	
	<p>4. For the purposes of this Article, the provision of services as specified by Directive 98/26/EC of the European Parliament and of the Council (*) by securities settlement systems as designated for the purposes of that Directive or the provision of similar services by third-country securities settlement systems shall not be considered to be a delegation of custody functions.</p>	<p>COLL 6.6B.23G (new)</p>
1(6)	<p>Article 23 is amended as follows:</p>	

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	(a) paragraphs 2, 3 and 4 are replaced by the following:	
	<p>2. The depositary shall be:</p> <p>(a) a national central bank;</p> <p>(b) a credit institution authorised in accordance with Directive 2013/36/EU; or</p> <p>(c) another legal entity, authorised by the competent authority under the law of the Member State to carry out depositary activities under this Directive, which is subject to capital adequacy requirements not less than the requirements calculated depending on the selected approach in accordance with Article 315 or 317 of Regulation (EU) No 575/2013 of the European Parliament and of the Council (*) and which has own funds not less than the amount of initial capital under Article 28(2) of Directive 2013/36/EU.</p> <p>A legal entity as referred to in point (c) of the first subparagraph shall be subject to prudential regulation and ongoing supervision and shall</p>	<p>COLL 6.6A.8R (new)</p> <p>COLL 6.6B.11R (new)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>satisfy the following minimum requirements:</p> <p>(a) it shall have the infrastructure necessary to keep in custody financial instruments that can be registered in a financial instruments account opened in the depository's books;</p> <p>(b) it shall establish adequate policies and procedures sufficient to ensure compliance of the entity, including its managers and employees, with its obligations under this Directive;</p> <p>(c) it shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment and effective control and safeguard arrangements for information processing systems;</p> <p>(d) it shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest;</p>	

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>(e) it shall arrange for records to be kept of all services, activities and transactions that it undertakes, which shall be sufficient to enable the competent authority to fulfil its supervisory tasks and to perform the enforcement actions provided for in this Directive;</p> <p>(f) it shall take reasonable steps to ensure continuity and regularity in the performance of its depositary functions by employing appropriate and proportionate systems, resources and procedures including to perform its depositary activities;</p> <p>(g) all members of its management body and senior management, shall, at all times, be of sufficiently good repute, possess sufficient knowledge, skills and experience;</p> <p>(h) its management body shall possess adequate collective knowledge, skills and experience to be able to understand the depositary's activities, including the main risks;</p>	

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	(i) each member of its management body and senior management shall act with honesty and integrity.	
	3. Member States shall determine which of the categories of institutions referred to in the first subparagraph of paragraph 2 shall be eligible to be depositaries.	COLL 6.6A.8R (new)
	4. Investment companies or management companies acting on behalf of the UCITS that they manage, which, before 18 March 2016, appointed as a depositary an institution that does not meet the requirements laid down in paragraph 2, shall appoint a depositary that meets those requirements before 18 March 2018.	COLL TP1 36 and 37 (new)
	(b) paragraphs 5 and 6 are deleted.	No transposition required.

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
1(7)	<p>Article 24 is replaced by the following:</p> <p><i>Article 24</i></p>	
	<p>1. Member States shall ensure that the depository is liable to the UCITS and to the unit-holders of the UCITS for the loss by the depository or a third party to whom the custody of financial instruments held in custody in accordance with point (a) of Article 22(5) has been delegated.</p> <p>In the case of a loss of a financial instrument held in custody, Member States shall ensure that the depository returns a financial instrument of an identical type or the corresponding amount to the UCITS or the management company acting on behalf of the UCITS without undue delay. The depository shall not be liable if it can prove that the loss has arisen as a result of an</p>	<p>Regulation 3, UCITS Regulations 2016: added regulation 15C to the UCITS Regulations 2011</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.</p> <p>Member States shall ensure that the depositary is also liable to the UCITS, and to the investors of the UCITS, for all other losses suffered by them as a result of the depositary's negligent or intentional failure to properly fulfil its obligations pursuant to this Directive.</p>	
	<p>2. The liability of the depositary referred to in paragraph 1 shall not be affected by any delegation as referred to in Article 22a.</p>	<p>Regulation 3, UCITS Regulations 2016 - added regulation 15B to the UCITS Regulations 2011</p>
	<p>3. The liability of the depositary referred to in paragraph 1 shall not be excluded or limited by agreement.</p>	<p>Regulation 3, UCITS Regulations 2016 - added regulation 15B to the UCITS Regulations 2011</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	4. Any agreement that contravenes paragraph 3 shall be void.	Regulation 3, UCITS Regulations 2016 - added regulation 15B to the UCITS Regulations 2011
	5. Unit-holders in the UCITS may invoke the liability of the depositary directly or indirectly through the management company or the investment company provided that this does not lead to a duplication of redress or to unequal treatment of the unit-holders.’;	Regulation 3, UCITS Regulations 2016 - added regulation 15B to the UCITS Regs 2011
1(8)	Article 25 is replaced by the following:	
	1. No company shall act as both management company and depositary. No company shall act as both investment company and depositary.	This requirement is already implemented by s.243 & 261D of FSMA (for UCITS funds constituted as Authorised Unit Trusts (AUTs) and Authorised Contractual Schemes (ACSSs)) and regulation 15(8) of the OEIC Regulations 2011 (for UCITS funds constituted as Open-Ended Investment Companies (OEICs)).
	2. In carrying out their respective functions, the management company and the depositary shall act honestly, fairly, professionally, independently and solely in the	COLL 6.6A.2R (amended – covering management companies) COLL 6.6B.2R (new – covering depositaries)

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	interest of the UCITS and the investors of the UCITS.	
	A depositary shall not carry out activities with regard to the UCITS or the management company on behalf of the UCITS that may create conflicts of interest between the UCITS, the investors in the UCITS, the management company and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the UCITS.';	COLL 6.6B.3R (new)
1(9)	Article 26 is replaced by the following:	
	'Article 26	
	1. The law or the fund rules of the common fund shall lay down the conditions for the	This requirement is already implemented by ss.251/252 of FSMA (for AUTs), 261Q/261R of FSMA (for ACSs) and regulations 21 & 22 of the OEIC Regulations 2001 (for OEICs).

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>replacement of the management company and of the depositary and rules to ensure the protection of unit-holders in the event of such a replacement.</p>	
	<p>2. The law or the instruments of incorporation of the investment company shall lay down the conditions for the replacement of the management company and of the depositary and rules to ensure the protection of unit-holders in the event of such a replacement.';</p>	<p>This requirement is already implemented by ss.251/252 of FSMA (for AUTs) 261Q/261R of FSMA (for ACSs) and regulations 21 & 22 of the OEIC Regulations 2001 (for OEICs).</p>
1(10)	<p>the following articles are inserted:</p>	
	<p><i>'Article 26a</i> The depositary shall make available to its competent authorities, on request, all information which it has obtained while performing its duties and that may be necessary for its competent authorities or for the competent</p>	<p>SUP 2 (Information gathering by FCA on its own initiative) (current) COLL 6.6B.29 G (new)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>authorities of the UCITS or of the management company.</p>	
	<p>If the competent authorities of the UCITS or of the management company are different from those of the depositary, the competent authorities of the depositary shall without delay share the information received with the competent authorities of the UCITS and of the management company.</p>	<p>Regulation 3 of UCITS Regulations 2016 - added regulation 15F to the UCITS Regulations 2011</p>
	<p><i>Article 26b</i> The Commission shall be empowered to adopt delegated acts in accordance with Article 112a specifying:</p>	<p>No transposition required</p>
	<p>(a) the particulars that need to be included in the written contract referred to in Article 22(2); (b) the conditions for performing the depositary functions pursuant to Article 22(3), (4) and (5), including:</p>	<p>No transposition required</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>(i) the types of financial instrument to be included in the scope of the custody duties of the depository in accordance with point (a) of Article 22(5);</p> <p>(ii) the conditions subject to which the depository is able to exercise its custody duties over financial instruments registered with a central depository;</p> <p>(iii) the conditions subject to which the depository is to safekeep the financial instruments issued in a nominative form and registered with an issuer or a registrar, in accordance with point (b) of Article 22(5);</p> <p>€ the due diligence duties of depositaries pursuant to point € of Article 22a(2);</p> <p>(d) the segregation obligation pursuant to point € of Article 22a(3);</p> <p>€ the steps to be taken by the third party pursuant to point (d) of Article 22a(3);</p>	

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>(f) the conditions subject to which and circumstances in which financial instruments held in custody are to be considered to be lost for the purpose of Article 24;</p> <p>(g) what is to be understood by external events beyond reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary, pursuant to Article 24(1);</p> <p>(h) the conditions for fulfilling the independence requirement referred to in Article 25(2).;</p>	
1(11)	<p>in Article 30, the first paragraph is replaced by the following: ‘Articles 13 to 14b shall apply <i>mutatis mutandis</i> to investment companies that have not designated a management company authorised pursuant to this Directive.’;</p>	<p>N/A – the current UK regime does not provide for self-managed investment companies so no need to specifically transpose this.</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
1(12)	Section 3 of Chapter V is deleted;	Where needed, rules and guidance implementing provisions in section 3 of Chapter V have been deleted, amended or moved in the FCA Handbook.
1(13)	Article 69 is amended as follows:	
	<p>(a) in paragraph 1, the following subparagraph is added:</p> <p>“The prospectus shall include either:</p> <p>(a) the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identities of persons responsible for awarding the remuneration and benefits including the composition of the remuneration committee, where such a committee exists; or</p> <p>(b) a summary of the remuneration policy and a statement to the effect that the details of the up-to-date</p>	COLL 4.2.5R(28)(new)

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION	
	<p>remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.’;</p>		
	<p>(b) in paragraph 3, the following subparagraph is added: ‘The annual report shall also include: (a) the total amount of remuneration for the financial year, split into fixed and variable remuneration paid by the management company and by the investment company to its staff, and the number of beneficiaries, and where relevant, any amount paid</p>		<p>COLL 4.5.7R(7) (new)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>directly by the UCITS itself, including any performance fee;</p> <p>(b) the aggregate amount of remuneration broken down by categories of employees or other members of staff as referred to in Article 14a(3);</p> <p>(c) a description of how the remuneration and the benefits have been calculated;</p> <p>(d) the outcome of the reviews referred to in points (c) and (d) of Article 14b(1) including any irregularities that have occurred;</p> <p>(e) material changes to the adopted remuneration policy.;</p>	
1(14)	<p>Article 78 is amended as follows:</p>	
	<p>(a) in paragraph 3, point (a) is replaced by the following: ‘(a) identification of the UCITS and of the competent authority of the UCITS’;</p>	<p>COLL 4.7.2R(4)(a) (amended)</p>
	<p>(b) in paragraph 4, the following subparagraph is added:</p>	<p>COLL 4.7.2(6A) (new)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>'Key investor information shall also include a statement to the effect that the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits including the composition of the remuneration committee, where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.';</p>	
1(15)	<p>in Article 98(2), point (d) is replaced by the following:</p>	
	<p>'(d) require:</p> <ul style="list-style-type: none"> (i) in so far as permitted by national law, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of an 	<p>This is already implemented by s.175(1) FSMA (information and documents: supplemental provisions), sections 22 (obtaining and disclosing communications data) & 25(2) (interpretation) of the Regulation of Investigatory Powers Act 2000 and article 2(c) (additional purposes of section 22(2) of the Act) and Part 1, Schedule 2 (Individuals in additional relevant public authorities that may acquire any communications data within section 21(4)) of the Regulation of Investigatory Powers (Communications Data) Order 2010 (SI 2010/480).</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>infringement and where such records may be relevant to an investigation into infringements of this Directive;</p>	
(ii)	<p>(iii) existing recordings of telephone conversations or electronic communications or other data traffic records held by UCITS, management companies, investment companies, depositaries or any other entities regulated by this Directive;;</p>	<p>This is already implemented by ss. 165 (regulators' power to require information: authorised persons etc.), 167 (appointment of persons to carry out general investigations), 168 (appointment of persons to carry out investigations in particular cases), 171-175 (powers of persons appointed under ss.167 & 168, admissibility of statements made to investigators, information & documents: supplemental provisions) of FSMA and Regulation 30 (power to investigate) of the OEIC Regulations 2001.</p>
1(16)	<p>Article 99 is replaced by the following: <i>Article 99</i></p>	
	<p>1. Without prejudice to the supervisory powers of competent authorities referred to in Article 98 and the right of</p>	<p>The FCA currently have the powers (derived from FSMA) required to impose administrative sanctions and measures for infringements of national provisions imposing this Directive. Regulation 2 of the UCITS Regulations 2016 makes amendments to sections 55J (variation or cancellation on initiative of regulator), 66A (misconduct: action by the FCA), 168 (appointment of persons to carry out investigations in particular cases), 204A (meaning of "relevant</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>Member States to provide for and impose criminal sanctions, Member States shall lay down rules on administrative sanctions and other administrative measures to be imposed on companies and persons in respect of infringements of national provisions transposing this Directive and shall take all measures necessary to ensure that they are implemented.</p>	<p>requirement” and “appropriate regulator”) and 380 (injunctions) of FSMA, to ensure that infringements of the free-standing provisions in the UCITS Regulations 2011 trigger the FCA’s enforcement powers.</p>
	<p>Where Member States decide not to lay down rules for administrative sanctions for infringements which are subject to national criminal law, they shall communicate to the Commission the relevant criminal law provisions.</p>	<p>No specific transposing measure required.</p>
	<p>Administrative sanctions and other administrative measures shall be effective, proportionate and dissuasive.</p>	<p>This is already transposed by sections 69 and 210 of FSMA (the requirement on FCA to have a policy on penalties) and the FCA’s DEPP policy.</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>By 18 March 2016, Member States shall notify the laws, regulations and administrative provisions transposing this Article, including any relevant criminal law provisions, to the Commission and ESMA. Member States shall notify the Commission and ESMA without undue delay of any subsequent amendments thereto.</p>	<p>No specific transposing measure required.</p>
	<p>2. Where Member States have chosen, in accordance with paragraph 1, to lay down criminal sanctions for infringements of the provisions referred to in that paragraph, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information relating to criminal investigations or proceedings commenced for possible infringements of this Directive and provide the same to other competent authorities and ESMA in order to fulfil their</p>	<p>N/A as the UK has not chosen to lay down criminal sanctions for infringements of the provisions of the UCITS Directive.</p>

		TRANSPOSITION
ARTICLE	DIRECTIVE TEXT	
	obligation to cooperate with each other and ESMA for the purposes of this Directive.	
	Competent authorities may also cooperate with competent authorities of other Member States with respect to facilitating the recovery of pecuniary sanctions.	This requirement is already implemented by section 354A FSMA (FCA's duty to co-operate with others), which imposes a duty on FCA to co-operate with others (whether in UK or elsewhere) who have functions similar to those of FCA.
	3. As part of its overall review of the functioning of this Directive, the Commission shall review, not later than 18 September 2017, the application of the administrative and criminal sanctions, and in particular the need to further harmonise the administrative sanctions laid down for infringements of the requirements laid down in this Directive.	No implementation required.
	4. A competent authority may refuse to act on a request for information or a request to cooperate with an investigation only in the following exceptional circumstances, namely where:	Regulation 3 of the UCITS Regulations 2016 - added regulation 15G to the UCITS Regulations 2011
	a) communication of relevant information might adversely affect the security of the Member State addressed, in	As above

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>particular the fight against terrorism and other serious crimes;</p> <p>b) compliance with the request is likely to affect adversely its own investigation, enforcement activities or, where applicable, a criminal investigation;</p> <p>c) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed; or</p> <p>(d) a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.</p>	
	<p>5. Member States shall ensure that where obligations apply to UCITS, management companies, investment companies or depositaries, in the event of an infringement of national provisions transposing this Directive, administrative penalties or other administrative measures may be applied, in accordance with national law, to the members of the</p>	<p>This is already implemented by ss. 56-71 (sanctions relating to performance of regulated activities), 138D (breaches of FCA rules actionable by private person), 204A-211 (disciplinary measures for breaches of relevant requirements) and 380-386 (injunctions and restitution).</p> <p>Members of the management body would be caught by the sanctions under ss.59-71 applying to controlled persons or senior managers/employees.</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>management body and to other natural persons who are responsible, under national law, for the infringement.</p> <p>6. In accordance with national law, Member States shall ensure that, in all cases referred to in paragraph 1, the administrative penalties and other administrative measures that may be applied include at least the following:</p> <p>(a) a public statement which identifies the person responsible and the nature of the infringement;</p> <p>(b) an order requiring the person responsible to cease the conduct and to desist from a repetition of that conduct;</p> <p>(c) in the case of a UCITS or a management company, suspension or withdrawal of the authorisation of the UCITS or the management company;</p> <p>(d) a temporary or, for repeated serious infringements, a permanent ban against a member of the management body of the management company or investment company or against any other</p>	<p>This is already implemented under various provisions in FSMA:</p> <p>(a) public statement – section 66(3)(b) – power to publish a statement of misconduct (applying to approved persons or senior managers) and section 205 – power to publish a statement of a contravention of a relevant requirement (applying to authorised persons)</p> <p>(b) order requiring the person responsible to cease and desist repetition of conduct – section 380 – regulator can apply to court to make an order restraining conduct in the case of a likely or actual contravention of a relevant requirement (applies to any person)</p> <p>(c) suspension/withdrawal of authorisation of the UCITS or the management company – section 55J – power to vary or cancel permission to undertake regulated activity where (a) failure to satisfy threshold conditions (b) failure to carry on the activity for which permission relates or (c) where desirable to advance FCA operational objectives (applies to authorised persons) [N.B. we are extending this to contraventions of requirements imposed by the UCITS Regulations 2011, in regulation 2 of the UCITS Regulations 2016] and 206A – suspension of permission to carry on regulated activity where contravention of relevant requirement (applies to authorised persons) [N.B. we are adding the UCITS Regulations 2011 to the list of relevant requirements in regulation 2 of the UCITS Regulations 2016].</p> <p>(d) temporary or permanent ban against the management body from exercising management functions in those or other companies – section 56 – power to make a prohibition order if a person not fit and proper to perform functions in relation to a regulated activity carried on by an authorised person (applies to authorised persons) and section 63 – power to withdraw an approval of an approved person if the FCA considers they are not fit and proper (applies to approved persons) and section 66 – disciplinary powers applying to approved persons/senior managers – including power to suspend approval for the performance of any function to which</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>natural person who is held responsible, from exercising management functions in those or in other such companies;</p> <p>(e) in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 5 000 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 September 2014, or 10 % of the total annual turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council (*), the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts</p>	<p>the approval relates, or impose conditions or limitations requiring or refraining specified action (applies to approved persons or senior managers/employees).</p> <p>(e) – administrative pecuniary sanctions for legal persons – section 206 – power to impose a penalty of such amount as appropriate on an authorised person who has contravened a relevant requirement (including requirements imposed by or under the Act) and sections 69 & 210 – requirement on FCA to have a penalty policy and DEPP 6 (FCA’s statement of policy with respect to penalties under the Act)</p> <p>(f) administrative pecuniary sanctions for natural persons – section 206 above will also apply to authorised persons who are natural persons, section 66 – disciplinary powers, including a penalty of such amount as considered appropriate, applying to approved persons or senior managers where they have knowingly contravened a relevant requirement (requirement by or under the Act) [N.B. we are adding contraventions of the UCITS Regulations 2011 to the list of relevant requirements, by regulation 2 the UCITS Regulations 2016.]</p> <p>(g) this does not require specific implementation as is only an “in the alternative” requirement.</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>approved by the management body of the ultimate parent undertaking;</p> <p>(f) in the case of a natural person, maximum administrative pecuniary sanctions of at least EUR 5 000 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 September 2014;</p> <p>(g) as an alternative to points (e) and (f), maximum administrative pecuniary sanctions of at least twice the amount of the benefit derived from the infringement where that benefit can be determined, even if that exceeds the maximum amounts in points (e) and (f).</p>	
	<p>7. Member States may empower competent authorities, under national law, to impose types of penalty in addition to those referred to in paragraph 6 or to impose pecuniary penalties exceeding the amounts referred to in points (e), (f) and (g) of paragraph 6.</p>	<p>No specific implementation required.</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
1(17)	<p>the following articles are inserted:</p> <p><i>Article 99a</i></p> <p>Member States shall ensure that their laws, regulations or administrative provisions transposing this Directive provide for penalties, in particular when:</p> <p>(a) the activities of UCITS are pursued without obtaining authorisation, thus infringing Article 5;</p> <p>(b) the business of a management company is carried out without obtaining prior authorisation, thus infringing Article 6;</p> <p>(c) the business of an investment company is carried out without obtaining prior authorisation, thus infringing Article 27;</p> <p>(d) a qualifying holding in a management company is acquired, directly or indirectly, or such a qualifying holding in a management company is further increased so that the proportion of the voting rights or of the capital held would reach or</p>	<p>These penalties are already provided for under various provisions in FSMA, secondary legislation and FCA rules:</p> <p>(a) pursuing UCITS activities without obtaining authorisation – section 23 (contravention of the general prohibition) or 25 (breach of the financial promotions restriction) and section 20 (authorised persons acting without permission)</p> <p>(b) business of a management company carried out without obtaining authorisation – section 23 (contravention of the general prohibition) or 25 (breach of the financial promotions restriction) and section 20 (authorised persons acting without permission)</p> <p>(c) business of an investment company carried out without authorisation - section 23 (contravention of the general prohibition) or 25 (breach of the financial promotions restriction) and section 20 (authorised persons acting without permission)</p> <p>(d) acquiring or increasing a qualifying holding without notifying FCA - Part XII of FSMA (section 178) requires a person acquiring holdings of 10% or more of the shares or voting power, or such shares or voting power as to exercise significant influence, in respect of an authorised person or their parent undertaking, to notify the FCA (who must determine whether to approve the transaction). This directly replicates the definition of qualifying holding for the purposes of the UCITS directive definition (Art 2). Section 178 also requires a person increasing control to 20, 30 or 50% or becoming a parent undertaking of an authorised person to notify the FCA. It is an offence under section 191F to breach section 178(1) of FSMA and would be a breach of the relevant FCA rules.</p> <p>(e) reducing or ceasing to have a qualifying holding without notifying the FCA - Section 191D requires a person reducing by 20, 30 or 50%, or ceasing to have control (i.e. a qualifying</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>exceed 20 %, 30 % or 50 % or so that the management company would become its subsidiary ('the proposed acquisition'), without notifying in writing the competent authorities of the management company in which the acquirer is seeking to acquire or increase a qualifying holding, thus infringing Article 11(1);</p> <p>(e) a qualifying holding in a management company is disposed of, directly or indirectly, or reduced so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the management company would cease to be a subsidiary, without notifying in writing the competent authorities, thus infringing Article 11(1);</p> <p>(f) a management company has obtained an authorisation through false statements or any other irregular means, thus infringing point (b) of Article 7(5);</p> <p>(g) an investment company has obtained an authorisation through false statements or any</p>	<p>holding) in an authorised person to give notice to the FCA. Breach of this requirement is also an offence under section 191F and would be a breach of the relevant FCA rules.</p> <p>(f) Management company obtaining an authorisation through false statements or any other irregular means – section 398 – giving the FCA false or misleading information in purported compliance with the requirements by or under the Act (including authorisation requirements)</p> <p>(g) Investment company obtaining an authorisation through false statements or any other irregular means – as above</p> <p>(h) a management company, on becoming aware of any relevant acquisition or disposal of holdings, failing to notify FCA – as above for (d) and (e) and imposed by requirements in FCA rules</p> <p>(i) Breaches of requirements in FCA rules constituting relevant requirements would trigger FSMA sanctions and disciplinary powers.</p> <p>(j) The FCA's prudential rules constitute relevant requirements and would trigger FSMA sanctions and disciplinary powers.</p> <p>(k) as above – would be a breach of an FCA rule which would trigger FSMA sanctions and disciplinary powers</p> <p>(l) - as above – would be a breach on an FCA rule which would trigger FSMA sanctions and disciplinary powers</p> <p>(m) as above – would be a breach of an FCA rule which would trigger FSMA sanctions and disciplinary powers</p> <p>(n) as above – would be a breach of an FCA rule which would trigger FSMA sanctions and disciplinary powers</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>other irregular means, thus infringing point (b) of Article 29(4);</p> <p>(h) a management company, on becoming aware of any acquisition or disposal of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in Article 11(1) of Directive 2014/65/EU fails to inform the competent authorities of those acquisitions or disposals, thus infringing Article 11(1) of this Directive;</p> <p>(i) a management company fails to inform the competent authority, at least once a year, of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings, thus infringing Article 11(1);</p> <p>(j) a management company fails to comply with procedures and arrangements imposed in accordance with the national provisions transposing point (a) of Article 12(1);</p> <p>(k) a management company fails to comply with structural and organisational requirements</p>	<p>(o) as above - COLL rules applying to depositaries, breach of which would trigger FSMA sanctions and disciplinary powers</p> <p>(p) as above – would be a breach of an FCA rule which would trigger FSMA sanctions and disciplinary powers</p> <p>(q) as above – would be a breach of an FCA rule which would trigger FSMA sanctions and disciplinary powers</p> <p>(r) as above – would be a breach of an FCA rule which would trigger FSMA sanctions and disciplinary powers</p> <p>(s) This is a requirement under FSMA (Schedule 3) para 20B – so the sanctions applying to breaches of relevant requirements imposed by or under FSMA would apply here.</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>imposed in accordance with the national provisions transposing point (b) of Article 12(1);</p> <p>(l) an investment company fails to comply with procedures and arrangements imposed in accordance with the national provisions transposing Article 31;</p> <p>(m) a management company or an investment company fails to comply with requirements related to delegation of its functions to third parties imposed in accordance with the national provisions transposing Articles 13 and 30;</p> <p>(n) a management company or an investment company fails to comply with rules of conduct imposed in accordance with the national provisions transposing Articles 14 and 30;</p> <p>(o) a depository fails to perform its tasks in accordance with national provisions transposing Article 22(3) to (7);</p> <p>(p) an investment company or, for each of the common funds that it manages, a management company, repeatedly fails to comply with obligations</p>	

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>concerning the investment policies of UCITS laid down in national provisions transposing Chapter VII;</p> <p>(q) a management company or an investment company fails to employ a risk-management process or a process for accurate and independent assessment of the value of OTC derivatives as laid down in national provisions transposing Article 51(1);</p> <p>(r) an investment company or, for each of the common funds that it manages, a management company, repeatedly fails to comply with obligations concerning information to be provided to investors imposed in accordance with the national provisions transposing Articles 68 to 82;</p> <p>(s) a management company or an investment company marketing units of UCITS that it manages in a Member State other than the UCITS home Member State fails to comply</p>	

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	with the notification requirement laid down in Article 93(1).	
	<p><i>Article 99b</i></p> <p>1. Member States shall ensure that competent authorities publish any decision against which there is no appeal imposing an administrative sanction or measure for infringements of the national provisions transposing this Directive on their official websites without undue delay after the person on whom the sanction or measure was imposed has been informed of that decision. The publication shall include at least information on the type and nature of the infringement and the identity of the persons responsible. That obligation does not apply to decisions imposing measures that are of an investigatory nature.</p> <p>However, where the publication of the identity of the legal persons or of the personal data of the natural persons is</p>	Regulation 2 of UCITS Regs 2016 (inclusion of new section 391C in FSMA)

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an ongoing investigation, Member States shall ensure that competent authorities do one of the following:</p> <ul style="list-style-type: none"> (a) defer the publication of the decision to impose the sanction or measure until the reasons for non-publication cease to exist; (b) publish the decision to impose the sanction or measure on an anonymous basis in a manner which complies with national law, if such anonymous publication ensures effective protection of the personal data concerned; or (c) not publish the decision to impose a sanction or measure in the event that the options laid down in points (a) and (b) are considered to be insufficient to ensure: 	

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>(i) that the stability of the financial markets would not be put in jeopardy;</p> <p>(ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.</p> <p>In the case of a decision to publish a sanction or measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication shall cease to exist.</p>	
	<p>2. Competent authorities shall inform ESMA of all administrative sanctions imposed but not published in accordance with point (c) of the second subparagraph of paragraph 1 including any appeal in relation thereto and the outcome of such an appeal. Member States shall ensure that competent authorities receive information and the final judgement in relation to any</p>	<p>Regulation 2 of UCITS Regs 2016 (inclusion of new section 391C in FSMA)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>criminal sanction imposed and submit it to ESMA. ESMA shall maintain a central database of sanctions communicated to it solely for the purpose of exchanging information between competent authorities. That database shall be accessible only to competent authorities and it shall be updated on the basis of the information provided by the competent authorities.</p>	
	<p>3. Where the decision to impose a sanction or measure is subject to appeal before the relevant judicial or other authorities, competent authorities shall also publish immediately on their official website such information and any subsequent information on the outcome of such an appeal. Any decision annulling a previous decision to impose a sanction or a measure shall also be published.</p>	<p>Regulation 2 of UCITS Regs 2016 (inclusion of new section 391C in FSMA)</p>
	<p>4. Competent authorities shall ensure that any publication in accordance with this Article shall remain on their official website for a period of at least five years from its publication.</p>	<p>Regulation 2 of UCITS Regs 2016 (inclusion of new section 391C in FSMA)</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>Personal data contained in the publication shall be kept on the official website of the competent authority only for the period which is necessary in accordance with the applicable data protection rules.</p>	
	<p><i>Article 99c</i></p>	
	<p>1. Member States shall ensure that when determining the type of administrative penalties or measures and the level of administrative pecuniary penalties, the competent authorities ensure that they are effective, proportionate and dissuasive and take into account all relevant circumstances, including, where appropriate:</p>	<p>This requirement is already implemented by the requirement on FCA in sections 69 and 210 FSMA to have a penalty policy, and the factors to be considered by FCA when determining penalties – i.e. DEPP 6 - which includes these considerations</p>
	<p>(a) the gravity and the duration of the infringement; (b) the degree of responsibility of the person responsible for the infringement; (c) the financial strength of the person responsible for the infringement, as indicated, for example, by its total turnover in the case of a legal person or the</p>	<p>As above.</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>annual income in the case of a natural person;</p> <p>(d) the importance of the profits gained or losses avoided by the person responsible for the infringement, the damage to other persons and, where applicable, the damage to the functioning of markets or the wider economy, in so far as they can be determined;</p> <p>(e) the level of cooperation with the competent authority of the person responsible for the infringement;</p> <p>(f) previous infringements by the person responsible for the infringement;</p> <p>(g) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.</p>	
	<p>2. In the exercise of their powers to impose penalties under Article 99, competent authorities shall cooperate closely to ensure that the supervisory and investigative powers and administrative penalties produce the results pursued by this Directive. They</p>	<p>This requirement is already implemented by sections 169 (investigations in support of overseas regulator) and 354 (FCA duty to co-operate with others, including outside the UK, who have functions similar to those of the FCA) of FSMA.</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION	
	<p>(b) appropriate protection for employees of investment companies, management companies and depositaries, who report infringements committed within those entities, at least against retaliation, discrimination and other types of unfair treatment;</p> <p>(c) protection of personal data concerning both the person who reports the infringements and the natural person who is allegedly responsible for an infringement, in accordance with Directive 95/46/EC of the European Parliament and of the Council (*);</p> <p>(d) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports an infringement, unless disclosure is required by national law in the context of further investigations or subsequent judicial proceedings.</p>	<p>Article 99d.4) protects employees appropriately.</p> <p>2(c): the FSMA (Disclosure of Confidential Information) Regulations 2001 implements this provision</p> <p>2(d): FCA specific procedures above can establish clear rules</p>	<p>that disclosures made to us are “protected disclosures” and the employee making the disclosure enjoys protection from suffering detriment as a result of having made the disclosure (see Part IVA and s. 47B Employment Rights Act 1998). Further it states that the FCA will protect anonymity of the whistleblower unless required to disclose it in court.</p>
3.	<p>ESMA shall provide one or more secure communication channels for reporting infringements of the national provisions transposing this</p>	<p>No implementation required.</p>	

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>Directive. ESMA shall ensure that those communication channels comply with points (a) to (d) of paragraph 2.</p>	
	<p>4. Member States shall ensure that the reporting by employees of investment companies, management companies and depositaries referred to in paragraphs 1 and 3 shall not be considered to be an infringement of any restriction on disclosure of information imposed by contract or by any law, regulation or administrative provision, and shall not subject the person reporting to liability of any kind relating to such reporting.</p>	<p>As regards reports to the FCA, this requirement is already implemented by the whistleblowers protections afforded to employees/workers reporting to FCA under the Employment Rights Act 1996 and the Public Interest Disclosure (Prescribed Persons) Order 2014.</p> <p>In terms of reports to ESMA, regulation 5 of the UCITS Regulations 2016 makes amendments to secondary legislation made under the Employment Rights Act 1996 (the Public Interest Disclosure (Prescribed Persons) Order 2014) to ensure that reports to ESMA (as opposed to NCAs only) are protected in this context.</p>
	<p>5. Member States shall require management companies, investment companies and depositaries to have in place appropriate procedures for their employees to report infringements internally through a specific, independent and autonomous channel.</p>	<p>SYSC 4.1.1E R (new)</p> <p>SYSC 4.1.1F G (new)</p> <p>COLL 6.6B.30R (new)</p> <p>COLL 6.6B.31 G (new)</p>
	<p><i>Article 99e</i></p>	

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>1. Competent authorities shall provide ESMA annually with aggregated information regarding all penalties and measures imposed in accordance with Article 99. ESMA shall publish that information in an annual report.</p>	<p>Regulation 3 of UCITS Regulations 2016 – added regulation 15l to the UCITS Regulations 2011</p>
	<p>2. Where the competent authority has disclosed administrative penalties or measures to the public, it shall simultaneously report those administrative penalties or measures to ESMA. Where a published penalty or measure relates to a management company or investment company, ESMA shall add a reference to the published penalty or measure in the list of management companies published under Article 6(1).</p>	<p>Regulation 2 of UCITS Regulations 2016 – new section 391C(7) of FSMA</p>
	<p>3. ESMA shall develop draft implementing technical standards to determine the procedures and forms for submitting information as referred to in this Article.</p>	<p>No transposition required.</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>ESMA shall submit those draft implementing technical standards to the Commission by 18 September 2015.</p> <p>Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.</p>	
1(18)	the following Article is inserted:	
	<i>Article 104a</i>	
	<p>1. Member States shall apply Directive 95/46/EC to the processing of personal data carried out in the Member States pursuant to this Directive.</p>	<p>Regulation 4 of the UCITS Regulations 2016 adds Article 104a.1 of the UCITS Directive to the definition of “single market restrictions” on the disclosure of confidential information in the FSMA (Disclosure of Confidential Information) Regulations 2001</p>
	<p>2. Regulation (EC) No 45/2001 of the European Parliament and of the Council (*) shall apply to the processing of personal data carried out by ESMA pursuant to this Directive.</p>	<p>No transposition required.</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
1(19)	in Article 12(3), Article 14(2), Article 43(5), Article 51(4), Article 60(6), Article 61(3), Article 62(4), Article 64(4), Article 75(4), Article 78(7), Article 81(2), Article 95(1) and Article 111, the words: 'in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b' are replaced by the words: 'in accordance with Article 112a';	No transposition required.
1(20)	in Article 50a, the words: 'in accordance with Article 112a and subject to conditions of Articles 112b and 112c' are replaced by the words: 'in accordance with Article 112a';	No transposition required.
1(21)	in the third subparagraph of Article 52(4), the reference to 'Article 112(1)' is replaced by a reference to 'Article 112';	No transposition required.
1(22)	Article 112 is replaced by the following: <i>Article 112</i> The Commission shall be assisted by the European Securities Committee	No transposition required.

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	established by Commission Decision 2001/528/EC (*).	
1(23)	Article 112a is replaced by the following:	
	<p><i>Article 112a</i></p> <p>1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.</p>	No transposition required.
	<p>2. The power to adopt the delegated acts referred to in Articles 12, 14, 43, 60, 61, 62, 64, 75, 78, 81, 95 and 111 shall be conferred on the Commission for a period of four years from 4 January 2011.</p> <p>The power to adopt the delegated acts referred to in Article 26b shall be conferred on the Commission for a period of four years from 17 September 2014.</p> <p>The power to adopt the delegated acts referred to in Article 50a shall be conferred on the Commission for a period of four years from 21 July 2011.</p> <p>The power to adopt the delegated acts referred to in</p>	No transposition required.

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>Article 51 is conferred on the Commission for a period of four years from 20 June 2013.</p> <p>The Commission shall draw up a report in respect of delegated power not later than six months before the end of the four-year periods. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.</p>	
	<p>3. The delegation of power referred to in Articles 12, 14, 26b, 43, 50a, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p>	<p>No transposition required.</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</p>	<p>No transposition required.</p>
	<p>5. A delegated act adopted pursuant to Articles 12, 14, 26b, 43, 50a, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.;</p>	<p>No transposition required.</p>
1(24)	<p>Article 112b is deleted;</p>	<p>No transposition required.</p>
1(25)	<p>in Schedule A of Annex I, point 2 is replaced by the following;</p>	<p>COLL 4.5.8R (amended)</p>
	<p>‘2. Information concerning the depositary: 2.1. the identity of the depositary of the UCITS and a</p>	

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>description of its duties and of conflicts of interest that may arise;</p> <p>2.2. a description of any safekeeping functions delegated by the depositary, the list of delegates and sub-delegates and any conflicts of interest that may arise from such a delegation;</p> <p>2.3. a statement to the effect that up-to-date information regarding points 2.1 and 2.2 will be made available to investors on request'.</p>	
Article 2 2(1)	<p>1. Member States shall adopt and publish, by 18 March 2016 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.</p> <p>They shall apply the laws, regulations and administrative provisions referred to in the first subparagraph from 18 March</p>	<p>No specific transposing measure required.</p>

ARTICLE	DIRECTIVE TEXT	TRANSPOSITION
	<p>2016. When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.</p>	
	<p>2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.</p>	<p>No specific transposing measure required.</p>
	<p>This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i>.</p>	<p>No transposition required.</p>
	<p>This Directive is addressed to the Member States.</p>	<p>No transposition required.</p>