

EXPLANATORY MEMORANDUM TO
THE ALTERNATIVE INVESTMENT FUND MANAGERS (AMENDMENT)
REGULATIONS 2018

2018 No. 134

1. Introduction

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

2. Purpose of the instrument

2.1 These Regulations make changes to UK legislation to ensure alignment with Regulation (EU) 2017/1991 of the European Parliament and of the Council of 25 October 2017 amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds (OJ L293, 10/11/2017) (“EuVECA EuSEF II”).

2.2 These Regulations also amend the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 to update the definition of “care home”, in order to align with new Welsh legislation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

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

4. Legislative Context

4.1 These Regulations make the required changes to domestic legislation to ensure UK legislation complies with EuVECA EuSEF II.

4.2 Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds (the “EuVECA Regulation” and “EuSEF Regulation”) set the EU wide regulatory regime for European venture capital funds and European social entrepreneurship funds. In the UK, the Financial Conduct Authority (FCA) is the national competent authority responsible for the registration and oversight of UK EuVECA and EuSEF funds.

4.3 The instrument amends the Alternative Investment Fund Managers Regulations 2013 to make the necessary technical changes to ensure that the UK legislation is aligned with directly applicable EU law.

4.4 The instrument also amends the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 to update the definitions of the EuSEF Regulation and EuVECA Regulation to take account of EuVECA EuSEF II

- 4.5 Prior to agreement in the European Council, the amending EuVECA and EuSEF Regulation was submitted to Parliament for scrutiny. It was cleared by the House of Lords Scrutiny Committee on 19 October 2016 and the House of Commons Scrutiny Committee on 14 December 2016.
- 4.6 An unrelated amendment to article 63B of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 is made to maintain the effect of that article following the coming into force of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The policy objective is to ensure that UK legislation is aligned with and complies with amended EU legislation. The instrument amends the existing UK procedures for EuVECA and EuSEF funds in the Alternative Investment Fund Managers Regulations 2013 and related definitions in the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013 in order to achieve this.
- 7.2 The EuVECA Regulation and EuSEF Regulation set the EU wide regulatory regime for venture capital funds and social entrepreneurship funds. As at 15 January 2018, there were 136 EuVECA funds (55 registered in the UK) and 7 EuSEF funds (1 registered in the UK).
- 7.3 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.
- 7.4 EuVECA EuSEF II (“the amending Regulation”) updates the existing EuVECA Regulation and EuSEF Regulation with a view to allowing more funds to access the “EuVECA” and “EuSEF” labels. The amendments form part of the European Commission’s drive to increase venture capital investment in the EU, a core objective of its Capital Markets Union (CMU) project. The aims of the EU legislation are consistent with the overall approach to venture capital in the UK.
- 7.5 The amending Regulation sets out the revised regime for European venture capital funds and European social entrepreneurship funds and provides an open-ended exemption on own funds and capital requirements for EuVECA and EuSEF funds registered before 1 March 2017.

- 7.6 The amending Regulation also sets specific amounts for initial capital and own funds levels for EuVECA and EuSEF managers. Under the existing regime there are no explicit initial capital and own funds levels; managers are required to have *sufficient own funds* to ensure the continuity and management of the fund, which has led to different interpretations by Member States. The amending Regulation sets a €50,000 initial capital requirement, plus own funds requirements which shall at all times amount to at least one-eighth of the fixed overheads incurred by the manager in the preceding year. Where the value of assets in the fund exceeds €250 million, the manager shall provide an additional amount of own funds equal to 0.02% of the amount by which the total value of the fund exceeds €250 million.
- 7.7 The amending Regulation broadens the potential assets that EuVECA and EuSEF funds can invest in. Under the existing EuVECA Regulation and EuSEF Regulation, the definition of qualifying investments limits eligible investments to unlisted companies with less than 250 employees and either a maximum annual turnover of €50 million or a maximum balance sheet total of €45 million. The amending Regulation extends the definition of qualifying investments to include companies with less than 500 employees (not trading on regulated markets) and SMEs listed on SME growth markets.
- 7.8 The amending Regulation sets a maximum review period of two months, during which time the national competent authority of the EuVECA or EuSEF – in the UK, the FCA – is required to inform the manager whether a fund has been registered as an EuVECA or EuSEF.
- 7.9 The amending Regulation also sets additional responsibilities for the European Securities and Markets Authority (ESMA) including the ability to develop regulatory technical standards and implementing technical standards for national competent authorities to follow, and the ability to receive information from national competent authorities in order to conduct peer reviews.

Consolidation

- 7.10 The Treasury does not currently intend to consolidate the legislation amended by this instrument.

8. Consultation outcome

- 8.1 No elements of this instrument required consultation, as the instrument will not impact business beyond the impact already generated by EuVECA EuSEF II and there are no feasible alternative approaches which could lessen the impact.

9. Guidance

- 9.1 It is not considered necessary to issue specific guidance in connection with these Regulations. The FCA is able to give guidance on its procedures in relation to EuVECA and EuSEF funds.
- 9.2 The Treasury has had informal engagement with industry representatives and the FCA during the negotiation phases of the amendments to EuVECA and EuSEF.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is minimal. No financial impact on business is foreseen as a result of this instrument. The instrument will introduce

changes to procedure that affect businesses with EuVECA and EuSEF funds. These businesses may experience minor changes to their regulatory processes, the impact of which is not easily quantifiable but expected to be negligible.

- 10.2 The Treasury do not consider that there will be any impact on the public sector stemming from this instrument.
- 10.3 In line with Better Regulation guidance, the Treasury considers that the impact on businesses will be less than £5 million a year. Due to the limited impact, a business impact assessment was not required.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

12. Monitoring & review

- 12.1 The Alternative Investment Fund Managers Regulations 2013, which are amended by these Regulations, contain a requirement for the Treasury to review the legislation every five years, and set out the conclusions of each review in a published report.

13. Contact

- 13.1 Jasmine Kaur at HM Treasury Telephone: 020 7270 1351 or email: Jasmine.Kaur@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.