



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XVII

#### COLLECTIVE INVESTMENT SCHEMES

#### CHAPTER V

#### RECOGNISED OVERSEAS SCHEMES

#### *Schemes constituted in other EEA States*

#### **264 Schemes constituted in other EEA States**

- (1) A collective investment scheme constituted in another EEA State is a recognised scheme if—
  - (a) it satisfies such requirements as are prescribed for the purposes of this section; and
  - (b) not less than two months before inviting persons in the United Kingdom to become participants in the scheme, the operator of the scheme gives notice to the Authority of his intention to do so, specifying the way in which the invitation is to be made.
- (2) But this section does not make the scheme a recognised scheme if within two months of receiving the notice under subsection (1) the Authority notifies—
  - (a) the operator of the scheme, and
  - (b) the authorities of the State in question who are responsible for the authorisation of collective investment schemes,that the way in which the invitation is to be made does not comply with the law in force in the United Kingdom.
- (3) The notice to be given to the Authority under subsection (1)—

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- (a) must be accompanied by a certificate from the authorities mentioned in subsection (2)(b) to the effect that the scheme complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument;
  - (b) must contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act; and
  - (c) must contain or be accompanied by such other information and documents as may be prescribed.
- (4) A notice given by the Authority under subsection (2) must—
- (a) give the reasons for which the Authority considers that the law in force in the United Kingdom will not be complied with; and
  - (b) specify a reasonable period (which may not be less than 28 days) within which any person to whom it is given may make representations to the Authority.
- (5) For the purposes of this section a collective investment scheme is constituted in another EEA State if—
- (a) it is constituted under the law of that State by a contract or under a trust and is managed by a body corporate incorporated under that law; or
  - (b) it takes the form of an open-ended investment company incorporated under that law.
- (6) The operator of a recognised scheme may give written notice to the Authority that he desires the scheme to be no longer recognised by virtue of this section.
- (7) On the giving of notice under subsection (6), the scheme ceases to be a recognised scheme.

## **265 Representations and references to the Tribunal**

- (1) This section applies if any representations are made to the Authority, before the period for making representations has ended, by a person to whom a notice was given by the Authority under section 264(2).
- (2) The Authority must, within a reasonable period, decide in the light of those representations whether or not to withdraw its notice.
- (3) If the Authority withdraws its notice the scheme is a recognised scheme from the date on which the notice is withdrawn.
- (4) If the Authority decides not to withdraw its notice, it must give a decision notice to each person to whom the notice under section 264(2) was given.
- (5) The operator of the scheme to whom the decision notice is given may refer the matter to the Tribunal.

## **266 Disapplication of rules**

- (1) Apart from—
  - (a) financial promotion rules, and
  - (b) rules under section 283(1),

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rules made by the Authority under this Act do not apply to the operator, trustee or depositary of a scheme in relation to the carrying on by him of regulated activities for which he has permission in that capacity.

(2) “Scheme” means a scheme which is a recognised scheme by virtue of section 264.

## **267 Power of Authority to suspend promotion of scheme**

(1) Subsection (2) applies if it appears to the Authority that the operator of a scheme has communicated an invitation or inducement in relation to the scheme in a manner contrary to financial promotion rules.

(2) The Authority may direct that—

- (a) the exemption from subsection (1) of section 238 provided by subsection (4) (c) of that section is not to apply in relation to the scheme; and
- (b) subsection (5) of that section does not apply with respect to things done in relation to the scheme.

(3) A direction under subsection (2) has effect—

- (a) for a specified period;
- (b) until the occurrence of a specified event; or
- (c) until specified conditions are complied with.

(4) The Authority may, either on its own initiative or on the application of the operator of the scheme concerned, vary a direction given under subsection (2) if it appears to the Authority that the direction should take effect or continue in force in a different form.

(5) The Authority may, either on its own initiative or on the application of the operator of the recognised scheme concerned, revoke a direction given under subsection (2) if it appears to the Authority—

- (a) that the conditions specified in the direction have been complied with; or
- (b) that it is no longer necessary for the direction to take effect or continue in force.

(6) If an event is specified, the direction ceases to have effect (unless revoked earlier) on the occurrence of that event.

(7) For the purposes of this section and sections 268 and 269—

- (a) the scheme’s home State is the EEA State in which the scheme is constituted (within the meaning given by section 264);
- (b) the competent authorities in the scheme’s home State are the authorities in that State who are responsible for the authorisation of collective investment schemes.

(8) “Scheme” means a scheme which is a recognised scheme by virtue of section 264.

(9) “Specified”, in relation to a direction, means specified in it.

## **268 Procedure on giving directions under section 267 and varying them on Authority’s own initiative**

(1) A direction under section 267 takes effect—

- (a) immediately, if the notice given under subsection (3)(a) states that that is the case;

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- (b) on such date as may be specified in the notice; or
  - (c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.
- (2) A direction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to its reasons for exercising its power under section 267, considers that it is necessary for the direction to take effect immediately (or on that date).
- (3) If the Authority proposes to give a direction under section 267, or gives such a direction with immediate effect, it must—
  - (a) give the operator of the scheme concerned written notice; and
  - (b) inform the competent authorities in the scheme’s home State of its proposal or (as the case may be) of the direction.
- (4) The notice must—
  - (a) give details of the direction;
  - (b) inform the operator of when the direction takes effect;
  - (c) state the Authority’s reasons for giving the direction and for its determination as to when the direction takes effect;
  - (d) inform the operator that he may make representations to the Authority within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and
  - (e) inform him of his right to refer the matter to the Tribunal.
- (5) The Authority may extend the period allowed under the notice for making representations.
- (6) Subsection (7) applies if, having considered any representations made by the operator, the Authority decides—
  - (a) to give the direction in the way proposed, or
  - (b) if it has been given, not to revoke the direction.
- (7) The Authority must—
  - (a) give the operator of the scheme concerned written notice; and
  - (b) inform the competent authorities in the scheme’s home State of the direction.
- (8) Subsection (9) applies if, having considered any representations made by a person to whom the notice was given, the Authority decides—
  - (a) not to give the direction in the way proposed,
  - (b) to give the direction in a way other than that proposed, or
  - (c) to revoke a direction which has effect.
- (9) The Authority must—
  - (a) give the operator of the scheme concerned written notice; and
  - (b) inform the competent authorities in the scheme’s home State of its decision.
- (10) A notice given under subsection (7)(a) must inform the operator of his right to refer the matter to the Tribunal.
- (11) A notice under subsection (9)(a) given as a result of subsection (8)(b) must comply with subsection (4).

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- (12) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.
- (13) This section applies to the variation of a direction on the Authority's own initiative as it applies to the giving of a direction.
- (14) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

## **269 Procedure on application for variation or revocation of direction**

- (1) If, on an application under subsection (4) or (5) of section 267, the Authority proposes—
  - (a) to vary a direction otherwise than in accordance with the application, or
  - (b) to refuse the application,it must give the operator of the scheme concerned a warning notice.
- (2) If, on such an application, the Authority decides—
  - (a) to vary a direction otherwise than in accordance with the application, or
  - (b) to refuse the application,it must give the operator of the scheme concerned a decision notice.
- (3) If the application is refused, the operator of the scheme may refer the matter to the Tribunal.
- (4) If, on such an application, the Authority decides to grant the application it must give the operator of the scheme concerned written notice.
- (5) If the Authority decides on its own initiative to revoke a direction given under section 267 it must give the operator of the scheme concerned written notice.
- (6) The Authority must inform the competent authorities in the scheme's home State of any notice given under this section.

### *Schemes authorised in designated countries or territories*

## **270 Schemes authorised in designated countries or territories**

- (1) A collective investment scheme which is not a recognised scheme by virtue of section 264 but is managed in, and authorised under the law of, a country or territory outside the United Kingdom is a recognised scheme if—
  - (a) that country or territory is designated for the purposes of this section by an order made by the Treasury;
  - (b) the scheme is of a class specified by the order;
  - (c) the operator of the scheme has given written notice to the Authority that he wishes it to be recognised; and
  - (d) either—
    - (i) the Authority, by written notice, has given its approval to the scheme's being recognised; or

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- (ii) two months, beginning with the date on which notice was given under paragraph (c), have expired without the operator receiving a warning notice from the Authority under section 271.
- (2) The Treasury may not make an order designating any country or territory for the purposes of this section unless satisfied—
  - (a) that the law and practice under which relevant collective investment schemes are authorised and supervised in that country or territory affords to investors in the United Kingdom protection at least equivalent to that provided for them by or under this Part in the case of comparable authorised schemes; and
  - (b) that adequate arrangements exist, or will exist, for co-operation between the authorities of the country or territory responsible for the authorisation and supervision of relevant collective investment schemes and the Authority.
- (3) “Relevant collective investment schemes” means collective investment schemes of the class or classes to be specified by the order.
- (4) “Comparable authorised schemes” means whichever of the following the Treasury consider to be the most appropriate, having regard to the class or classes of scheme to be specified by the order—
  - (a) authorised unit trust schemes;
  - (b) authorised open-ended investment companies;
  - (c) both such unit trust schemes and such companies.
- (5) If the Treasury are considering whether to make an order designating a country or territory for the purposes of this section—
  - (a) the Treasury must ask the Authority for a report—
    - (i) on the law and practice of that country or territory in relation to the authorisation and supervision of relevant collective investment schemes,
    - (ii) on any existing or proposed arrangements for co-operation between it and the authorities responsible in that country or territory for the authorisation and supervision of relevant collective investment schemes,
 having regard to the Treasury’s need to be satisfied as mentioned in subsection (2);
  - (b) the Authority must provide the Treasury with such a report; and
  - (c) the Treasury must have regard to it in deciding whether to make the order.
- (6) The notice to be given by the operator under subsection (1)(c)—
  - (a) must contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act; and
  - (b) must contain or be accompanied by such information and documents as may be specified by the Authority.

## 271 Procedure

- (1) If the Authority proposes to refuse approval of a scheme’s being a recognised scheme by virtue of section 270, it must give the operator of the scheme a warning notice.

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- (2) To be valid the warning notice must be received by the operator before the end of two months beginning with the date on which notice was given under section 270(1)(c).
- (3) If, having given a warning notice, the Authority decides to refuse approval—
  - (a) it must give the operator of the scheme a decision notice; and
  - (b) the operator may refer the matter to the Tribunal.

#### *Individually recognised overseas schemes*

### **272 Individually recognised overseas schemes**

- (1) The Authority may, on the application of the operator of a collective investment scheme which—
  - (a) is managed in a country or territory outside the United Kingdom,
  - (b) does not satisfy the requirements prescribed for the purposes of section 264,
  - (c) is not managed in a country or territory designated for the purposes of section 270 or, if it is so managed, is of a class not specified by the designation order, and
  - (d) appears to the Authority to satisfy the requirements set out in the following provisions of this section,make an order declaring the scheme to be a recognised scheme.
- (2) Adequate protection must be afforded to participants in the scheme.
- (3) The arrangements for the scheme’s constitution and management must be adequate.
- (4) The powers and duties of the operator and, if the scheme has a trustee or depository, of the trustee or depository must be adequate.
- (5) In deciding whether the matters mentioned in subsection (3) or (4) are adequate, the Authority must have regard to—
  - (a) any rule of law, and
  - (b) any matters which are, or could be, the subject of rules,applicable in relation to comparable authorised schemes.
- (6) “Comparable authorised schemes” means whichever of the following the Authority considers the most appropriate, having regard to the nature of scheme in respect of which the application is made—
  - (a) authorised unit trust schemes;
  - (b) authorised open-ended investment companies;
  - (c) both such unit trust schemes and such companies.
- (7) The scheme must take the form of an open-ended investment company or (if it does not take that form) the operator must be a body corporate.
- (8) The operator of the scheme must—
  - (a) if an authorised person, have permission to act as operator;
  - (b) if not an authorised person, be a fit and proper person to act as operator.
- (9) The trustee or depository (if any) of the scheme must—
  - (a) if an authorised person, have permission to act as trustee or depository;

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- (b) if not an authorised person, be a fit and proper person to act as trustee or depositary.
- (10) The operator and the trustee or depositary (if any) of the scheme must be able and willing to co-operate with the Authority by the sharing of information and in other ways.
- (11) The name of the scheme must not be undesirable or misleading.
- (12) The purposes of the scheme must be reasonably capable of being successfully carried into effect.
- (13) The participants must be entitled to have their units redeemed in accordance with the scheme at a price related to the net value of the property to which the units relate and determined in accordance with the scheme.
- (14) But a scheme is to be treated as complying with subsection (13) if it requires the operator to ensure that a participant is able to sell his units on an investment exchange at a price not significantly different from that mentioned in that subsection.
- (15) Subsection (13) is not to be read as imposing a requirement that the participants must be entitled to have their units redeemed (or sold as mentioned in subsection (14)) immediately following a demand to that effect.

### **273 Matters that may be taken into account**

For the purposes of subsections (8)(b) and (9)(b) of section 272, the Authority may take into account any matter relating to—

- (a) any person who is or will be employed by or associated with the operator, trustee or depositary in connection with the scheme;
- (b) any director of the operator, trustee or depositary;
- (c) any person exercising influence over the operator, trustee or depositary;
- (d) any body corporate in the same group as the operator, trustee or depositary;
- (e) any director of any such body corporate;
- (f) any person exercising influence over any such body corporate.

### **274 Applications for recognition of individual schemes**

- (1) An application under section 272 for an order declaring a scheme to be a recognised scheme must be made to the Authority by the operator of the scheme.
- (2) The application—
  - (a) must be made in such manner as the Authority may direct;
  - (b) must contain the address of a place in the United Kingdom for the service on the operator of notices or other documents required or authorised to be served on him under this Act;
  - (c) must contain or be accompanied by such information as the Authority may reasonably require for the purpose of determining the application.
- (3) At any time after receiving an application and before determining it, the Authority may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.



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- (4) Different directions may be given, and different requirements imposed, in relation to different applications.
- (5) The Authority may require an applicant to present information which he is required to give under this section in such form, or to verify it in such a way, as the Authority may direct.

#### **275 Determination of applications**

- (1) An application under section 272 must be determined by the Authority before the end of the period of six months beginning with the date on which it receives the completed application.
- (2) The Authority may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it first receives the application.
- (3) If the Authority makes an order under section 272(1), it must give written notice of the order to the applicant.

#### **276 Procedure when refusing an application**

- (1) If the Authority proposes to refuse an application made under section 272 it must give the applicant a warning notice.
- (2) If the Authority decides to refuse the application—
  - (a) it must give the applicant a decision notice; and
  - (b) the applicant may refer the matter to the Tribunal.

#### **277 Alteration of schemes and changes of operator, trustee or depositary**

- (1) The operator of a scheme recognised by virtue of section 272 must give written notice to the Authority of any proposed alteration to the scheme.
- (2) Effect is not to be given to any such proposal unless—
  - (a) the Authority, by written notice, has given its approval to the proposal; or
  - (b) one month, beginning with the date on which notice was given under subsection (1), has expired without the Authority having given written notice to the operator that it has decided to refuse approval.
- (3) At least one month before any replacement of the operator, trustee or depositary of such a scheme, notice of the proposed replacement must be given to the Authority—
  - (a) by the operator, trustee or depositary (as the case may be); or
  - (b) by the person who is to replace him.

*Schemes recognised under sections 270 and 272*

#### **278 Rules as to scheme particulars**

The Authority may make rules imposing duties or liabilities on the operator of a scheme recognised under section 270 or 272 for purposes corresponding to those for which rules may be made under section 248 in relation to authorised unit trust schemes.

## **279 Revocation of recognition**

The Authority may direct that a scheme is to cease to be recognised by virtue of section 270 or revoke an order under section 272 if it appears to the Authority—

- (a) that the operator, trustee or depositary of the scheme has contravened a requirement imposed on him by or under this Act;
- (b) that the operator, trustee or depositary of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular;
- (c) in the case of an order under section 272, that one or more of the requirements for the making of the order are no longer satisfied; or
- (d) that none of paragraphs (a) to (c) applies, but it is undesirable in the interests of the participants or potential participants that the scheme should continue to be recognised.

## **280 Procedure**

- (1) If the Authority proposes to give a direction under section 279 or to make an order under that section revoking a recognition order, it must give a warning notice to the operator and (if any) the trustee or depositary of the scheme.
- (2) If the Authority decides to give a direction or make an order under that section—
  - (a) it must without delay give a decision notice to the operator and (if any) the trustee or depositary of the scheme; and
  - (b) the operator or the trustee or depositary may refer the matter to the Tribunal.

## **281 Directions**

- (1) In this section a “relevant recognised scheme” means a scheme recognised under section 270 or 272.
- (2) If it appears to the Authority that—
  - (a) the operator, trustee or depositary of a relevant recognised scheme has contravened, or is likely to contravene, a requirement imposed on him by or under this Act,
  - (b) the operator, trustee or depositary of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the Authority information which is false or misleading in a material particular,
  - (c) one or more of the requirements for the recognition of a scheme under section 272 are no longer satisfied, or
  - (d) none of paragraphs (a) to (c) applies, but the exercise of the power conferred by this section is desirable in order to protect the interests of participants or potential participants in a relevant recognised scheme who are in the United Kingdom,

it may direct that the scheme is not to be a recognised scheme for a specified period or until the occurrence of a specified event or until specified conditions are complied with.

## **282 Procedure on giving directions under section 281 and varying them otherwise than as requested**

- (1) A direction takes effect—
  - (a) immediately, if the notice given under subsection (3) states that that is the case;
  - (b) on such date as may be specified in the notice; or
  - (c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.
- (2) A direction may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its power under section 281, considers that it is necessary for the direction to take effect immediately (or on that date).
- (3) If the Authority proposes to give a direction under section 281, or gives such a direction with immediate effect, it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.
- (4) The notice must—
  - (a) give details of the direction;
  - (b) inform the person to whom it is given of when the direction takes effect;
  - (c) state the Authority's reasons for giving the direction and for its determination as to when the direction takes effect;
  - (d) inform the person to whom it is given that he may make representations to the Authority within such period as may be specified in it (whether or not he has referred the matter to the Tribunal); and
  - (e) inform him of his right to refer the matter to the Tribunal.
- (5) The Authority may extend the period allowed under the notice for making representations.
- (6) If, having considered any representations made by a person to whom the notice was given, the Authority decides—
  - (a) to give the direction in the way proposed, or
  - (b) if it has been given, not to revoke the direction,it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.
- (7) If, having considered any representations made by a person to whom the notice was given, the Authority decides—
  - (a) not to give the direction in the way proposed,
  - (b) to give the direction in a way other than that proposed, or
  - (c) to revoke a direction which has effect,it must give separate written notice to the operator and (if any) the trustee or depositary of the scheme concerned.
- (8) A notice given under subsection (6) must inform the person to whom it is given of his right to refer the matter to the Tribunal.
- (9) A notice under subsection (7)(b) must comply with subsection (4).
- (10) If a notice informs a person of his right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

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- (11) This section applies to the variation of a direction on the Authority's own initiative as it applies to the giving of a direction.
- (12) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

*Facilities and information in UK*

**283 Facilities and information in UK**

- (1) The Authority may make rules requiring operators of recognised schemes to maintain in the United Kingdom, or in such part or parts of it as may be specified, such facilities as the Authority thinks desirable in the interests of participants and as are specified in rules.
- (2) The Authority may by notice in writing require the operator of any recognised scheme to include such explanatory information as is specified in the notice in any communication of his which—
  - (a) is a communication of an invitation or inducement of a kind mentioned in section 21(1); and
  - (b) names the scheme.
- (3) In the case of a communication originating outside the United Kingdom, subsection (2) only applies if the communication is capable of having an effect in the United Kingdom.