

STATUTORY INSTRUMENTS

2001 No. 1783

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001

<i>Made</i>	- - - -	<i>9th May 2001</i>
<i>Laid before Parliament</i>		<i>9th May 2001</i>
<i>Coming into force</i>	- -	<i>18th June 2001</i>

The Treasury, in exercise of the powers conferred on them by sections 213(10), 214(5), 224(4), 417(1)^{M1} and 428(3) of the Financial Services and Markets Act 2000^{M2} (“the Act”), hereby make the following Regulations:

Modifications etc. (not altering text)

- C1** Regulations modified (31.12.2020) by 2000 c. 8, s. 409(11)(h) (as inserted by [The Financial Services \(Gibraltar\) \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/589), regs. 1(3), 2(5) (with reg. 12) (as amended by S.I. 2020/1274, regs. 1, 2)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- C2** Regulations modified (31.12.2020) by [The Gibraltar \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/680), regs. 1(2), 11(3)(4)(6) (with reg. 11(8)-(10)) (as amended by S.I. 2020/1301, regs. 1, 3, [Sch. para. 40\(f\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

Marginal Citations

- M1** See the definition of “prescribed”.
- M2** 2000 c. 8.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001 and come into force on 18th June 2001.

(2) In these Regulations—

[^{F1}“authorised contractual scheme” has the meaning given at section 237(3) of the Act;]

[^{F1}“authorised open-ended investment company” has the meaning given at section 237(3) of the Act;]

[^{F1}“authorised unit trust scheme” has the meaning given at section 237(3) of the Act;]

“branch”—

- (a) in relation to an investment firm, has the meaning given by Article 1.5 of the investor-compensation schemes directive;
- (b) in relation to a credit institution, has the meaning given by Article 1.5 of the deposit-guarantee schemes directive;
- (c) [^{F2}in relation to a relevant management company, has the meaning given by Article 1.5 of the investor-compensation schemes directive (as applied by [^{F3}Article 12.2] of the UCITS directive);]

“credit institution” has the meaning given by [^{F4}Article 4(1)(1) of the capital requirements regulation];

“deposit-guarantee schemes directive” means Council and European Parliament Directive [94/19/EC](#) on deposit-guarantee schemes ^{M3};

“depositor” has the same meaning as in the deposit-guarantee schemes directive;

[^{F5}“ELTIF” means a UK AIF that has been authorised by the FCA as a European long-term investment fund under Article 6 of the ELTIF Regulation];

[^{F5}“ELTIF Regulation” means Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29th April 2015 on European Long-term Investment Funds];

“Financial Services Compensation Scheme” means the compensation scheme established pursuant to Part XV of the Act;

“home State deposit-guarantee scheme” means—

- (a) in relation to a credit institution which is exempted by the EEA State in which that institution has its head office from the obligation to belong to a deposit-guarantee scheme by virtue of belonging to a system which protects the credit institution as mentioned in Article 3 of the deposit-guarantee schemes directive, that system; and
- (b) in all other cases, the deposit-guarantee scheme officially recognised by that EEA State for the purposes of Article 3.1 of the deposit-guarantee schemes directive;

“home State investor-compensation scheme” means—

- (a) in relation to a credit institution which is exempted by the EEA State in which that institution has its head office from the obligation to belong to an investor-compensation scheme by virtue of Article 2.1 of the investor-compensation schemes directive (participation in a system that protects the credit institution), that system; and
- (b) in all other cases, the investor-compensation scheme officially recognised by that EEA State for the purposes of Article 2.1 of the investor-compensation schemes directive;

[^{F6}“insurance intermediary” means an insurance intermediary (as defined in Article 2.1(3) of the insurance distribution directive), an ancillary insurance intermediary (as defined in Article 2.1(4) of the insurance distribution directive) or a reinsurance intermediary (as defined in Article 2.1(5) of the insurance distribution directive);]

“investment firm” has the meaning given by Article 1.1 of the investor-compensation schemes directive;

“investor” has the meaning given by Article 1.4 of the investor-compensation schemes directive;

“investor-compensation schemes directive” means the Council and European Parliament Directive [97/9/EC](#) on investor-compensation schemes ^{M4};

[^{F1}“relevant AIFM” means an EEA firm falling within paragraph 5(h) of Schedule 3 to the Act which—

- (a) is authorised by its home state regulator to provide services specified by Annex I to the alternative investment fund managers directive; and
- (b) is providing those services, or services specified by Article 6.4 of that directive (discretionary portfolio management and non-core services), in the United Kingdom;]

[^{F7}“relevant management company” means an EEA firm falling within paragraph 5(f) of Schedule 3 to the Act which—

- (a) is authorised by its home state regulator to provide services of the kind specified by [^{F8}Article 6.3] of the UCITS directive (management of portfolios of investments); and
- (b) is providing those services in the United Kingdom].

[^{F9}“relevant mortgage intermediary” means a mortgage intermediary falling within paragraph 5(i) of Schedule 3 to the Act which is providing all or part of the credit intermediation activities set out in Article 4(5) of the mortgages directive or which is providing advisory services (as defined in Article 4(21) of the mortgages directive) in the United Kingdom;]

[^{F1}“UKAIF” has the meaning given in regulation 2 of the Alternative Investment Fund Managers Regulations 2013.]

Textual Amendments

- F1** Words in reg. 1(2) inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 11(2)**
- F2** Words in reg. 1(2) inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), regs. 1(1), **7(a)(i)**
- F3** Words in reg. 1(2) substituted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), regs. 1, **4(2)(a)**
- F4** Words in reg. 1(2) substituted (1.1.2014) by [The Capital Requirements Regulations 2013 \(S.I. 2013/3115\)](#), reg. 1(2), **Sch. 2 para. 54**
- F5** Words in reg. 1(2) substituted (8.12.2016) by [The Financial Services and Markets \(Disclosure of Information to the European Securities and Markets Authority etc. and Other Provisions\) Regulations 2016 \(S.I. 2016/1095\)](#), regs. 1, **4**
- F6** Words in reg. 1(2) substituted (1.10.2018) by [The Insurance Distribution \(Regulated Activities and Miscellaneous Amendments\) Order 2018 \(S.I. 2018/546\)](#), arts. 1(2), **20**
- F7** Words in reg. 1(2) inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), regs. 1(1), **7(a)(ii)**
- F8** Words in reg. 1(2) substituted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), regs. 1, **4(2)(b)**
- F9** Words in reg. 1 inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 6(2)** (with Pt. 4)

Marginal Citations

- M3** OJ L135 31.5.1994 p. 5.
- M4** OJ L084 26.3.1997 p 22.

Persons not to be regarded as relevant persons

2.—[^{F10}(1)] For the purposes of section 213(10) of the Act (certain persons not to be regarded as relevant persons unless they elect to participate), the following categories are prescribed—

- (a) any investment firm; ^{F11}...

- (b) any credit institution [^{F12}, ^{F13} ...
- (c) any insurance intermediary][^{F14}, ^{F15} ...
- (d) any relevant management company][^{F16}, ^{F17} ...
- (e) any relevant AIFM][^{F18}; and
- (f) any relevant mortgage intermediary.]

[^{F19}(2) The persons mentioned in paragraph (1)(a), [^{F20}(b), (c) and (f)] are prescribed in relation to all authorised activities.

(3) A relevant management company is prescribed in relation to all authorised activities other than any collective portfolio management services set out in Annex II to the UCITS directive which it is providing to a UCITS in the United Kingdom.]

[^{F21}(4) A relevant AIFM is prescribed in relation to all authorised activities other than—

- (a) any services specified by Annex I to the alternative investment fund managers directive provided in respect of an authorised trust scheme, an authorised contractual scheme or an authorised open-ended investment company; or
- (b) any activities undertaken as an authorised manager of an ELTIF, as permitted by the ELTIF Regulation.]

Textual Amendments

- F10** Reg. 2(1): reg. 2 renumbered as reg. 2(1) (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), regs. 1, **4(3)**
- F11** Word in reg. 2(a) omitted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1476\)](#), arts. 1(3), **15(3)(a)**
- F12** Reg. 2(c) and word inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1476\)](#), arts. 1(3), **15(3)(b)**
- F13** Word in reg. 2(b) omitted (13.2.2004) by virtue of [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), regs. 1(1), **7(b)(i)**
- F14** Reg. 2(d) and word inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), regs. 1(1), **7(b)(ii)**
- F15** Word in reg. 2(1) omitted (22.7.2013) by virtue of [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 11(3)(a)**
- F16** Reg. 2(1)(e) and word inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 11(3)(b)**
- F17** Word in reg. 2(1) omitted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 6(3)(a)** (with Pt. 4)
- F18** Reg. 2(1)(f) and word inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 6(3)(b)** (with Pt. 4)
- F19** Reg. 2(2)(3) inserted (1.7.2011) by [The Undertakings for Collective Investment in Transferable Securities Regulations 2011 \(S.I. 2011/1613\)](#), regs. 1, **4(4)**
- F20** Words in reg. 2(2) substituted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 6(3)(c)** (with Pt. 4)
- F21** Reg. 2(4) substituted (3.12.2015) by [The European Long-term Investment Funds Regulations 2015 \(S.I. 2015/1882\)](#), regs. 1, **7(3)**

Persons who may elect to participate

3.—(1) For the purposes of section 214(5) of the Act (persons who may elect to participate), the following categories are prescribed—

- (a) any investment firm [^{F22}or relevant management company] which has established a branch in the United Kingdom in exercise of an EEA right and is a member of a home State investor-compensation scheme which meets the condition in paragraph (2); ^{F23} ...
- (b) any credit institution which has established a branch in the United Kingdom in exercise of an EEA right and is a member of a home State deposit-guarantee scheme which meets the condition in paragraph (3) [^{F24}; ^{F25} ...
- (c) any insurance intermediary which is not an investment firm or a credit institution][^{F26}; ^{F27} ...
- (d) any relevant AIFM which has established a branch in the United Kingdom in exercise of an EEA right to the extent that it—
 - (i) provides services specified by Annex I to the alternative fund managers directive in respect of a UKAIF which is not an authorised unit trust scheme, an authorised contractual scheme or an authorised open-ended investment company, unless the relevant AIFM is a member of another investor-compensation scheme which affords investors protection which equals or exceeds that provided by the Financial Services Compensation Scheme; ^{F28} ...
[undertakes activities as an authorised manager of an ELTIF, as permitted by the ^{F29}(ai) ELTIF Regulation; or]
 - (ii) provides services specified in Article 6.4 of the alternative investment fund managers directive (discretionary portfolio management and non-core services), and is a member of a home State investor-compensation scheme which meets the condition in paragraph (2);][^{F30}and
- (e) any relevant mortgage intermediary which has established a branch in the United Kingdom in exercise of an EEA right and which is not an investment firm, a credit institution or an insurance intermediary.]

(2) The condition mentioned in paragraph (1)(a) is that the scope or level (including percentage) of the protection afforded to investors by the Financial Services Compensation Scheme exceeds that afforded by the home State investor-compensation scheme.

(3) The condition mentioned in paragraph (1)(b) is that the scope or level (including percentage) of the protection afforded to depositors by the Financial Services Compensation Scheme exceeds that afforded by the home State deposit-guarantee scheme.

Textual Amendments

- F22** Words in reg. 3(1)(a) inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), regs. 1(1), **7(c)**
- F23** Word in reg. 3(1)(a) omitted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1476\)](#), arts. 1(3), **15(4)(a)**
- F24** Reg. 3(1)(c) and word inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1476\)](#), arts. 1(3), **15(4)(b)**
- F25** Word in reg. 3(1) omitted (22.7.2013) by virtue of [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 11(4)(a)**
- F26** Reg. 3(1)(d) and word inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 11(4)(b)**

- F27** Word in [reg. 3\(1\)](#) omitted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 6(4)(a)** (with Pt. 4)
- F28** Word in [reg. 3\(1\)\(d\)\(i\)](#) removed (3.12.2015) by [The European Long-term Investment Funds Regulations 2015 \(S.I. 2015/1882\)](#), regs. 1, **7(4)(a)**
- F29** [Reg. 3\(1\)\(d\)\(ai\)](#) inserted (3.12.2015) by [The European Long-term Investment Funds Regulations 2015 \(S.I. 2015/1882\)](#), regs. 1, **7(4)(b)**
- F30** [Reg. 3\(1\)\(e\)](#) and word inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 6(4)(b)** (with Pt. 4)

Persons in respect of whom inspection under section 224 does not apply

4. For the purposes of section 224(4) of the Act (power to inspect documents held by Official Receiver), the following categories are prescribed—

- (a) any investment firm; ^{F31} ...
- (b) any credit institution [^{F32}, ^{F33} ...
- (c) any insurance intermediary which is not an investment firm or a credit institution][^{F34}, ^{F35} ...
- (d) any relevant management company][^{F36}, ^{F37} ...
- ^{F38}(e) any relevant AIFM to the extent that it provided services in the United Kingdom other than—
 - (i) services specified by Annex I to the alternative investment fund managers directive that were provided in respect of an authorised unit trust scheme, an authorised contractual scheme or an authorised open-ended investment company; or
 - (ii) activities undertaken as an authorised manager of an ELTIF, as permitted by the ELTIF Regulation][^{F39}; and
- (f) any relevant mortgage intermediary.]

Textual Amendments

- F31** Word in [reg. 4\(a\)](#) omitted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1476\)](#), arts. 1(3), **15(5)(a)**
- F32** [Reg. 4\(c\)](#) and word inserted (31.10.2004 for specified purposes, 14.1.2005 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2003 \(S.I. 2003/1476\)](#), arts. 1(3), **15(5)(b)**
- F33** Word in [reg. 4\(b\)](#) omitted (13.2.2004) by virtue of [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), regs. 1(1), **7(d)(i)**
- F34** [Reg. 4\(d\)](#) and word inserted (13.2.2004) by [The Collective Investment Schemes \(Miscellaneous Amendments\) Regulations 2003 \(S.I. 2003/2066\)](#), regs. 1(1), **7(d)(ii)**
- F35** Word in [reg. 4](#) omitted (22.7.2013) by virtue of [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 11(5)(a)**
- F36** [Reg. 4\(e\)](#) and word inserted (22.7.2013) by [The Alternative Investment Fund Managers Regulations 2013 \(S.I. 2013/1773\)](#), reg. 1, **Sch. 2 para. 11(5)(b)**
- F37** Word in [reg. 4](#) omitted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by virtue of [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 6(5)(a)** (with Pt. 4)
- F38** [Reg. 4\(e\)](#) substituted (3.12.2015) by [The European Long-term Investment Funds Regulations 2015 \(S.I. 2015/1882\)](#), regs. 1, **7(5)**

F39 Reg. 4(f) and word inserted (20.4.2015 for specified purposes, 21.12.2015 for specified purposes, 21.3.2016 in so far as not already in force) by [The Mortgage Credit Directive Order 2015 \(S.I. 2015/910\)](#), art. 1(5), **Sch. 1 para. 6(5)(b)** (with Pt. 4)

Clive Betts
Greg Pope
Two of the Lords Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the circumstances in which a person who qualifies for authorisation under Schedule 3 (EEA passport rights) to the Financial Services and Markets Act 2000 (“the Act”) may participate in the compensation scheme established under Part XV of the Act (“the new scheme”). Regulation 2 provides that any credit institution or investment firm (as defined in regulation 1) are prescribed for the purposes of section 213(10) of the Act with the result that they are not “relevant persons” (and so are not participants in the new scheme) unless they elect to participate in the new scheme. Under section 214, the new scheme may provide that prescribed categories of persons may elect to participate in the scheme. Regulation 3 prescribes for this purpose investment firms and credit institutions which have established a branch in the United Kingdom and whose home state compensation scheme affords a level of protection which is exceeded by the new scheme. Under section 224, the scheme manager under the new scheme will not have a right to inspect documents held by the Official Receiver on the insolvency of prescribed persons who qualify for authorisation under Schedule 3. Regulation 4 prescribes credit institutions and investment firms for this purpose.

These Regulations implement in part Council and European Parliament Directive [94/19/EC](#) on deposit-guarantee schemes (OJ L135 31.5.1994 p. 5) and the Council and European Parliament Directive [97/9/EC](#) on investor-compensation schemes (OJ L084 26.3.1997 p. 22).

Changes to legislation:

There are currently no known outstanding effects for the The Financial Services and Markets Act 2000 (Compensation Scheme: Electing Participants) Regulations 2001.