

SCHEDULE 1 **U.K.**

Regulation 80

AMENDMENTS TO PRIMARY LEGISLATION

PART 1 **U.K.**

Amendments to the Financial Services and Markets Act 2000

1. The Act is amended as follows.
2. In section 1A(6) (the Financial Conduct Authority) ^{M1}, after paragraph (c) omit “or” and insert—
 - “(ca) the Alternative Investment Fund Managers Regulations 2013, or”.

Marginal Citations

M1 Sections 1A and 1L were substituted by section 6 of the Financial Services Act 2012.

3. In section 1L(2) (supervision, monitoring and enforcement), after paragraph (a) omit “or” and insert—
 - “(aa) with requirements imposed on them by the Alternative Investment Fund Managers Regulations 2013, or”.
4. In section 55H (refusal by FCA to vary permission at request of authorised person), after subsection (4) insert—

“(4A) The FCA may also refuse an application under this section if it appears to the FCA that the authorised person would not comply with requirements in Part 5 of the Alternative Investment Fund Managers Regulations 2013 (AIFs which acquire control of non-listed companies and issuers) that would apply to the authorised person.”.
5. In section 55J (variation or cancellation on initiative of regulator)—
 - (a) in subsection (1)—
 - (i) at the end of paragraph (b), omit “or”, and
 - (ii) at the end of paragraph (c) insert—

“, or

 - (d) in the case of the FCA, A has failed to comply with a requirement in Part 5 of the Alternative Investment Fund Managers Regulations 2013 (AIFs which acquire control of non-listed companies and issuers), or it is for some other reason desirable to exercise the power for the purposes of ensuring compliance with such a requirement.”;
 - (b) after subsection (6) insert—

“(6A) Without prejudice to the generality of subsections (1) to (3), the FCA may, in relation to an authorised person who is a full-scope UK AIFM, exercise its power under this section to cancel the Part 4A permission if it appears to it that any of the following conditions is met—

 - (a) the person has failed, during a period of at least six months, to carry on the regulated activity of managing an AIF;
 - (b) the person obtained the Part 4A permission to carry on the regulated activity of managing an AIF by making a false statement or by any other irregular means;

Status: Point in time view as at 22/07/2013.

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- (c) in a case where the Part 4A permission includes permission to provide the discretionary portfolio management service referred to in Article 6.4(a) of the alternative investment fund managers directive, the person no longer complies with Directive [2006/49/EC](#) of the European Parliament and of the Council on the capital adequacy of investment firms and credit institutions ^{M2};
- (d) the person no longer meets the conditions that a person must meet in order to obtain a Part 4A permission to carry on the regulated activity of managing an AIF;
- (e) the person has seriously or systematically infringed—
 - (i) any provision of the Alternative Investment Fund Managers Regulations 2013;
 - (ii) a provision of any directly applicable EU regulation made under the alternative investment fund managers directive; or
 - (iii) any provision made by or under this Act which implements that directive.”.

Marginal Citations

M2 OJ L 177, 30.6.2006, p.201.

6. In section 55V (determination of applications) after subsection (7) insert—
- “(8) In the case of an application for permission under this Part which—
- (a) relates to the regulated activity of managing an AIF, and
 - (b) would if granted result in the applicant becoming a full-scope UK AIFM,
- this section has effect subject to regulation 5 of the Alternative Investment Fund Managers Regulations 2013 and, accordingly, subsections (1) to (3) do not apply.”.
7. In section 59 (approval for particular arrangements) ^{M3} after subsection (7B) insert—
- “(7C) A regulator may not exercise the power in subsection (3) so as to provide for a function to be a controlled function in relation to the carrying on of the regulated activity of managing an AIF by an AIFM which—
- (a) is also an AIF;
 - (b) does not manage any AIF other than itself;
 - (c) is a body corporate; and
 - (d) is not a collective investment scheme.”.

Marginal Citations

M3 Section 59 was amended by section 14 of, and paragraph 3 of Schedule 5 to, the Financial Services Act 2012, and by [S.I. 1012/1906](#).

8. In section 66(2)(b) (disciplinary powers) ^{M4} after sub-paragraph (i) omit “or” and insert—
- “(ia) by the Alternative Investment Fund Managers Regulations 2013, or”.

Marginal Citations

M4 Section 66(2) was substituted by paragraph 14 of Schedule 5 to the Financial Services Act 2012.

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9. In section 165 (regulators' power to require information: authorised persons etc.), in subsection (7)(b) omit “270 or”.

10. In section 168(4) (appointment of persons to carry out investigations in particular cases) ^{M5}, omit “or” at the end of paragraph (j), and after paragraph (j) insert—

- “(ja) a person may have contravened—
- (i) any provision made by or under this Act for the purpose of implementing the alternative investment fund managers directive; or
 - (ii) any provision made by the Alternative Investment Fund Managers Regulations 2013; or”.

Marginal Citations

M5 Section 168(4) was amended by paragraph 33 of Schedule 7 to the Counter-Terrorism Act 2008 (c. 28), paragraph 16 of Schedule 2 to the Financial Services Act 2010 and paragraph 8 of Schedule 12 to the Financial Services Act 2012, and by S.I. 2007/126 and S.I. 2012/2554.

11. In section 193(1) (interpretation of Part 13) ^{M6}, in the definition of “incoming firm”, omit “or” at the end of paragraph (aa) and after paragraph (aa) insert—

- “(ab) an EEA AIFM which is exercising, or has exercised, its right to market an AIF in the United Kingdom in accordance with Schedule 3; or”.

Marginal Citations

M6 Section 193(1) was amended by paragraph 31 of Schedule 4 to the Financial Services Act 2012 and by S.I. 2011/1613.

12. In section 194 (general grounds on which power of intervention is exercisable), after subsection (4) insert—

“(5) The FCA may exercise its power of intervention in respect of an EEA AIFM if it appears to the FCA that the EEA AIFM has contravened, or is likely to contravene, a requirement imposed by—

- (a) the Alternative Investment Fund Managers Regulations 2013; or
- (b) any directly applicable EU regulation made under the alternative investment fund managers directive.”.

13. In section 195A (contravention by relevant EEA firm or EEA UCITS of directive requirements: home state regulator primarily responsible for securing compliance) ^{M7}—

- (a) in the heading, for “or EEA UCITS”, substitute “, EEA UCITS or EEA AIFM ”;
- (b) after subsection (1)(b) insert—

“; or

- (c) that an EEA AIFM has contravened, or is contravening, a requirement falling within subsection (3A) (in a case to which Article 45.7 or 45.8 of the alternative investment fund managers directive applies).”;

- (c) after subsection (3) insert—

“(3A) A requirement falls within this subsection if it is imposed on the EEA AIFM—

- (a) by or under any provision adopted in the AIFM's home state for the purpose of implementing the alternative investment fund managers directive; or

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- (b) by any directly applicable EU regulation made under that directive.”;
- (d) for subsection (8) substitute—
 - “(8) Condition B is—
 - (a) in the case of a relevant EEA firm, that the firm is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom or the orderly functioning of the markets;
 - (b) in the case of an EEA UCITS, that the EEA UCITS is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom; or
 - (c) in the case of an EEA AIFM, that the AIFM is acting in a manner which is clearly prejudicial to the interests of investors in the United Kingdom or the financial stability or integrity of the markets in the United Kingdom.”;
- (e) in subsection (11B), for “or (3)”, substitute “, (3) or (3A) ”;
- (f) in subsection (12)—
 - (i) in the definition of “the appropriate regulator” for “where the relevant EEA firm is” substitute “ in the case of a relevant EEA firm which is ”; and
 - (ii) in the definition of “home state” after paragraph (b) insert—
 - “(c) in relation to an EEA AIFM, the EEA State in which the AIFM has its registered office;”.

Marginal Citations

M7 Section 195A was inserted by [S.I. 2007/126](#), substituted by [S.I. 2011/1613](#), and amended by paragraph 35 of Schedule 4 to the Financial Services Act 2012 and [S.I. 2012/916](#).

14. In section 199 (additional procedure for EEA firms in certain cases) ^{M8}—

- (a) in subsection (3A), for “or (f)”, substitute “, (f) or (h) ”;
- (b) in subsection (3B) for “to (8)” substitute “ and (5) ”;
- (c) after subsection (5), insert—
 - “(5A) Subsections (6) to (8) apply to an incoming EEA firm other than a firm falling within paragraph 5(da) or (h) of Schedule 3.”.

Marginal Citations

M8 Section 199 was amended by paragraph 39 of Schedule 4 to the Financial Services Act 2012 and by [S.I. 2007/126](#), [S.I. 2007/3253](#), [S.I. 2011/1613](#), [S.I. 2012/916](#) and [S.I. 2012/2015](#).

15. In section 204A(2) (meaning of “relevant requirement”) ^{M9}—

- (a) omit “or” after paragraph (a);
- (b) after paragraph (b) insert—
 - “, or
- (c) by the Alternative Investment Fund Managers Regulations 2013.”.

Marginal Citations

M9 Section 204A was inserted by paragraph 10 of Schedule 9 to the Financial Services Act 2012.

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16. In section 237(3) (other definitions) ^{M10} in the definition of “a recognised scheme” omit “, 270”.

Marginal Citations

M10 Section 237 was amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012 and by S.I. 2011/1613.

17. In section 261D(8) (authorisation orders for contractual schemes) ^{M11} for “permission to act as operator” substitute “ such permission as may be necessary to act as operator ”.

Marginal Citations

M11 Section 261D was inserted by S.I. 2013/1388.

18. Omit sections 270 and 271 and the preceding cross-heading (schemes authorised in designated countries or territories) ^{M12}.

Marginal Citations

M12 Sections 270 and 271 were amended by paragraphs 9 and 16 of Schedule 18 to the Financial Services Act 2012.

19. In section 272 (individually recognised overseas schemes) ^{M13}, in subsection (1)—
(a) after paragraph (b) insert “ and ”; and
(b) omit paragraph (c) (including the “and” following it).

Marginal Citations

M13 Sections 272 and 277 to 281 were amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012.

20. In section 277 (alteration of schemes and changes of operator, trustee or depositary), after subsection (3) insert—

“(4) If a change is made, or is to be made, to the law which applies to such a scheme in the country or territory in which it is managed and the change affects or will affect any of the matters mentioned at section 272(2) to (4), the operator of the scheme must give written notice of the change to the FCA—

- (a) at least one month before the change takes effect; or
 - (b) if that is not reasonably practicable, as soon as it is reasonably practicable to do so.
- (5) A notice under this section—
- (a) must be given in such manner as the FCA may direct; and
 - (b) where the notice is given under subsection (1) or (3), must include such information as the FCA may direct for the purpose of determining whether the requirements for the making of an order under section 272 in respect of the scheme would continue to be satisfied following the alteration or replacement that is the subject of the notice.”.

21. After section 277 insert—

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“277A Regular provision of information relating to compliance with requirements for recognition

(1) The operator of a scheme recognised by virtue of section 272 must provide to the FCA such information as the FCA may direct, at such times as the FCA may direct, for the purpose of determining whether the requirements for the making of an order under section 272 in respect of the scheme continue to be satisfied.

(2) A direction under subsection (1) may not require information to be provided within the period of 12 months beginning with the date on which information was last required to be provided to the FCA in respect of the scheme pursuant to a requirement under section 274(2)(c) or a direction under subsection (1) or section 277(5)(b).

(3) The information must be provided in such manner as the FCA may direct.”.

22. Omit the cross-heading “Schemes recognised under sections 270 and 272” before section 278.

23. In section 278 (rules as to scheme particulars) omit “270 or”.

24. In section 279 (revocation of recognition)—

(a) in the opening words, omit “direct that a scheme is to cease to be recognised by virtue of section 270 or”;

(b) in paragraph (c) omit “in the case of an order under section 272,”.

25. In section 280 (procedure)—

(a) in subsection (1) for “give a direction under section 279 or to make an order under that section” substitute “ make an order under section 279 ”; and

(b) in subsection (2) omit “give a direction or”.

26. In section 281 (directions)—

(a) in subsection (1) omit “270 or”; and

(b) in subsection (2)(c) for “a scheme under section 272” substitute “ such a scheme ”.

27. In section 380(6)(a) (injunctions) ^{M14}—

(a) omit “or” after sub-paragraph (i);

(b) after sub-paragraph (ii) insert—

“; or

(iii) which is imposed by the Alternative Investment Fund Managers Regulations 2013;”.

Marginal Citations

M14 Section 380 was amended by paragraph 19 of Schedule 9 to the Financial Services Act 2012.

28. In section 382(9)(a) (restitution orders) ^{M15}—

(a) omit “or” after sub-paragraph (i);

(b) after sub-paragraph (ii) insert—

“; or

(iii) which is imposed by the Alternative Investment Fund Managers Regulations 2013;”.

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M15 Section 382 was amended by paragraph 21 of Schedule 9 to the Financial Services Act 2012.

- 29.** In section 384(7) (power of FCA or PRA to require restitution) ^{M16}—
- (a) omit “and” after paragraph (a);
 - (b) after paragraph (b) insert—
 - “; and
 - (c) a requirement imposed by the Alternative Investment Fund Managers Regulations 2013.”.

Marginal Citations

M16 Section 384 was amended by paragraph 23 of Schedule 9 to the Financial Services Act 2012 and S.I. 2007/126.

- 30.** In section 398 (misleading the FCA or PRA: residual cases) ^{M17}—
- (a) in subsection (1) for “imposed by or under this Act, or by the short selling regulation,” substitute “ falling within subsection (1A) ”;
 - (b) after subsection (1) insert—
 - “(1A) A requirement falls within this subsection if it is imposed by or under—
 - (a) this Act;
 - (b) the Alternative Investment Fund Managers Regulations 2013;
 - (c) the short selling regulation;
 - (d) Regulation (EU) No 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds ^{M18}; or
 - (e) Regulation (EU) No 346/2013 of the European Parliament and the Council of 17 April 2013 on European social entrepreneurship funds ^{M19}.”.

Marginal Citations

M17 Section 398 was amended by paragraph 36 of Schedule 9 to the Financial Services Act 2012.

M18 OJ L 115, 25.4.2013, p.1.

M19 OJ L 115, 25.4.2013, p.18.

- 31.** In section 417(1) (definitions) ^{M20} in the appropriate places insert—
- ““AIF” has the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013;”
 - ““full-scope UK AIFM” has the meaning given in regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013;”.

Marginal Citations

M20 Section 417(1) was amended by paragraph 16 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16), section 964 of the Companies Act 2006 (c. 46), section 174 of the Banking Act 2009 (c. 1), paragraph 31 of Schedule 2 to the Financial Services Act 2010 and section 49 of the Financial

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Services Act 2012, and by [S.I. 2002/1775](#), [S.I. 2007/126](#), [S.I. 2009/1941](#), [S.I. 2010/22](#), [S.I. 2012/916](#), [S.I. 2012/1809](#), [S.I. 2012/1906](#), [S.I. 2012/2554](#) and [S.I. 2013/504](#).

32. In section 425 (expressions relating to authorisation elsewhere in the single market) ^{M21}, in subsection (1)(a)—

- (a) at the beginning insert “ “alternative investment fund managers directive”, ”, and
- (b) after “ “life assurance consolidation directive”, ”, insert “ “EEA AIFM”, ”.

Marginal Citations

M21 [Section 425](#) was amended by [S.I. 2003/2066](#), [S.I. 2004/3379](#), [S.I. 2006/2975](#), [S.I. 2007/126](#), [S.I. 2007/3253](#) and [S.I. 2012/1906](#).

33. In Schedule 1ZA (the Financial Conduct Authority), in paragraph 23(2)(a) (fees) ^{M22} for “other Acts mentioned in section 1A(6)” substitute “ other enactments mentioned in section 1A(6) (a) to (ca) ”.

Marginal Citations

M22 [Schedule 1ZA](#) was substituted for Schedule 1 by section 6 of, and Schedule 3 to, the Financial Services Act 2012.

34.—(1) Schedule 3 (EEA passport rights) is amended as follows.

(2) In paragraph 1 (the single market directives) ^{M23} omit “and” at the end of paragraph (e), and after paragraph (f) insert—

“; and

(g) the alternative investment fund managers directive.”.

(3) After paragraph 4D (the emission allowance auctioning directive) ^{M24}, insert—

“The alternative investment fund managers directive

4E. “The alternative investment fund managers directive” means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers.”.

(4) In paragraph 5 (EEA firm) ^{M25}, omit “or” at the end of paragraph (f), and after paragraph (g) insert—

“; or

(h) an AIFM (as defined in Article 4.1(b) of the alternative investment fund managers directive) which is authorised (in accordance with Article 6.1 of that directive) by its home state regulator.”.

(5) In paragraph 5A (definition of “relevant office” for EEA firm) ^{M26}, after paragraph (a) insert—

“(aa) in relation to a firm falling within sub-paragraph (h) of that paragraph, its registered office;”.

(6) In paragraph 7A (definition of “relevant office” for EEA right), after paragraph (a) insert—

“(aa) in relation to a person whose entitlement is subject to the conditions of the alternative investment fund managers directive, its registered office;”.

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- (7) In paragraph 10A (definition of “relevant office” for UK firm), after paragraph (a) insert—
“(aa) in relation to a firm whose EEA right derives from the alternative investment fund managers directive, its registered office;”.
- (8) After paragraph 11C (UCITS) ^{M27}, insert—

“EEA AIFM

11D. “EEA AIFM” means an EEA firm falling within paragraph 5(h) which is exercising in the United Kingdom a right deriving from the alternative investment fund managers directive.”.

- (9) In paragraph 13 (establishment) ^{M28}—
- (a) in sub-paragraph (1), for “or (f)”, in the first place, substitute “, (f) or (h) ”;
 - (b) at the end of sub-paragraph (1)(ba), omit “and”;
 - (c) after sub-paragraph (1)(c), insert—
“; and
 - (d) in the case of a firm falling within paragraph 5(h), its home state regulator has informed it that the consent notice has been sent to the appropriate UK regulator.”;
 - (d) in sub-paragraph (2)(b), after “5(a)”, insert “ or (h) ”.
- (10) In paragraph 14 (services) ^{M29}—
- (a) in sub-paragraph (1)(b), for “or (f)” substitute “, (f) or (h) ”;
 - (b) in sub-paragraph (1)(c), for “or (e)”, substitute “, (e) or (h) ”;
 - (c) in sub-paragraph (2), for “or (e)”, substitute “, (e) or (h) ”;
 - (d) after sub-paragraph (3), insert—
“(3A) In cases where the firm is an EEA AIFM that seeks to market an AIF in exercise of its rights under Article 32 of the alternative investment fund managers directive, the appropriate UK regulator must ensure that the regulator's notice may be transmitted to it electronically.”.
- (11) In paragraph 19 (establishment) ^{M30}—
- (a) in sub-paragraph (1) for “and (5A)” substitute “, (5A) and (7BC) ”;
 - (b) after sub-paragraph (7B), insert—
“(7BA) Sub-paragraph (7BB) applies where—
 - (a) the firm's EEA right derives from the alternative investment fund managers directive,
 - (b) the first condition is satisfied, and
 - (c) the appropriate UK regulator is satisfied that the firm complies, and will continue to comply, with—
 - (i) the provisions implementing the alternative investment fund managers directive, and
 - (ii) any directly applicable EU regulation made under that directive.
 - (7BB) The appropriate UK regulator must—
 - (a) within two months of receiving the firm's notice of intention, give a consent notice to the host state regulator,

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- (b) send with that notice confirmation that the firm has been authorised by it pursuant to Article 6.1 of the alternative investment fund managers directive, and
 - (c) immediately notify the firm that it has given the consent notice to the host state regulator.
- (7BC) If the firm's EEA right derives from the alternative investment fund managers directive, the third condition does not apply.”;
- (c) in sub-paragraph (12A)(a), after “UCITS directive”, insert “ or the alternative investment fund managers directive ”.
- (12) In paragraph 20 (services) ^{M31}—
- (a) in sub-paragraph (1), for “sub-paragraphs (4D) and (4E)”, substitute “ sub-paragraphs (4D) to (4F) ”;
 - (b) after sub-paragraph (3C), insert—
 - “(3D) If the firm's EEA right derives from the alternative investment fund managers directive, the appropriate UK regulator must—
 - (a) if the condition in sub-paragraph (3E) is satisfied—
 - (i) within one month of receiving the firm's notice of intention, send a copy of the firm's notice of intention to the host state regulator;
 - (ii) send with that notice confirmation that the firm has been authorised by it pursuant to Article 6.1 of that directive, with such other information as may be specified; and
 - (iii) immediately notify the firm that it has given the notice and confirmation to the host state regulator; or
 - (b) give the firm written notice of its refusal to send a copy of the notice of intention to the host state regulator and its reasons for that refusal.
 - (3E) The condition is that the appropriate UK regulator is satisfied that the firm complies, and will continue to comply, with—
 - (a) the provisions implementing the alternative investment fund managers directive, and
 - (b) any directly applicable EU regulation made under that directive.”;
 - (c) in sub-paragraph (4A) after “sub-paragraph (3A)(b)” insert “ or (3D)(b) ”;
 - (d) in sub-paragraph (4B), after “any of the insurance directives or from”, insert “ the alternative investment fund managers directive, ”; and
 - (e) after sub-paragraph (4E), insert—
 - “(4F) This paragraph does not apply to—
 - (a) the operator of a UCITS established in the United Kingdom seeking to exercise an EEA right to market the units of that UCITS in the territory of another EEA State; or
 - (b) a UK firm seeking to exercise an EEA right under the alternative investment fund managers directive to market an AIF.”.
- (13) In the heading before paragraph 20B (notice of intention to market) ^{M32}, after “market” insert “ a UCITS ”.
- (14) After paragraph 20B, insert—

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“Notice of intention to market an AIF

20C.—(1) A full-scope UK AIFM may not exercise in the territory of another EEA State an EEA right under the alternative investment fund managers directive to market a UK AIF or EEA AIF managed by it unless two conditions are satisfied.

(2) The first condition is that the full-scope UK AIFM has given the appropriate UK regulator, in the specified way, notice of its intention to market the AIF (“notice of intention”) which contains, and is accompanied by, such information as may be specified.

(3) The appropriate UK regulator must ensure that the notice of intention and any accompanying information may be transmitted to it electronically.

(4) The second condition is that the appropriate UK regulator has sent a copy of the notice of intention to the host state regulator, and has given written notice to the full-scope UK AIFM that it has done so.

(5) Sub-paragraph (6) applies where—

(a) the appropriate UK regulator is satisfied that the full-scope UK AIFM complies, and will continue to comply, with—

(i) the provisions implementing the alternative investment fund managers directive, and

(ii) any directly applicable EU regulation made under that directive, and

(b) if the UK AIF or EEA AIF is a feeder AIF, its master AIF is a UK AIF or EEA AIF that is managed by—

(i) a full-scope UK AIFM, or

(ii) an AIFM authorised in another EEA State in accordance with Article 6.1 of the alternative investment fund managers directive.

(6) The appropriate UK regulator must send a copy of the notice of intention to the host state regulator within 20 working days of receiving it.

(7) When sending a copy of the notice of intention to the host state regulator, the appropriate UK regulator must send with the notice confirmation that the full-scope UK AIFM concerned is authorised to manage AIFs with a particular investment strategy, and a statement of that strategy.

(8) If the notice of intention relates to an EEA AIF, the appropriate UK regulator must, when it sends a copy of the notice to the host state regulator, also inform the competent authority of the EEA AIF that the full-scope UK AIFM may start marketing the AIF in the EEA States covered by the notice.

(9) The appropriate UK regulator must notify the full-scope UK AIFM immediately that the copy of the notice of intention has been sent to the host state regulator.

(10) The full-scope UK AIFM may market the AIF in the territory of the host state regulator from the date it receives the notification referred to in sub-paragraph (9).

(11) If the appropriate UK regulator refuses to send a copy of the notice of intention to the host state regulator—

(a) the appropriate UK regulator must give the AIFM written notice of its refusal and its reasons for that refusal; and

(b) the AIFM may refer the matter to the Tribunal.

(12) In this paragraph—

“competent authority” has the meaning given in regulation 2 of the Alternative Investment Fund Managers Regulations 2013;

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“EEA AIF” has the meaning given in regulation 2 of the Alternative Investment Fund Managers Regulations 2013;

“feeder AIF” has the meaning given in Article 4.1(m) of the alternative investment fund managers directive;

“master AIF” has the meaning given in Article 4.1(y) of that directive;

“specified” means specified in rules;

“UK AIF” has the meaning given in regulation 2 of the Alternative Investment Fund Managers Regulations 2013.”.

(15) After paragraph 28 (management companies: request for information) ^{M33} insert—

“Full-scope UK AIFMs: notification of breach by host state regulator

29. If a host state regulator informs the FCA in accordance with paragraph 5 of Article 45 of the alternative investment fund managers directive that a full-scope UK AIFM has refused to provide the information or to take the steps referred to in that paragraph, the appropriate UK regulator must—

- (a) take steps to ensure that the AIFM provides the information or complies with the rules of which it is in breach;
- (b) request any necessary information from a supervisory authority in a country that is not an EEA State; and
- (c) notify the host state regulator of the steps taken under paragraph (a).”.

Marginal Citations

M23 Paragraph 1 was amended by S.I. 2000/2952, S.I. 2003/1473, S.I. 2003/2066, S.I. 2007/126 and S.I. 2007/3253.

M24 Paragraph 4D was inserted by S.I. 2012/1906.

M25 Paragraph 5 was amended by S.I. 2003/1473, S.I. 2003/2066, S.I. 2004/3379, S.I. 2006/3221, S.I. 2007/126, S.I. 2007/3253, S.I. 2011/1613 and S.I. 2012/1906.

M26 Paragraphs 5A, 7A and 10A were inserted by S.I. 2003/1473.

M27 Paragraph 11C was inserted by S.I. 2011/1613.

M28 Paragraph 13 was amended by paragraph 2 of Schedule 4 to the Financial Services Act 2012 and by S.I. 2003/1473, S.I. 2003/2066, S.I. 2007/126 and S.I. 2012/1906.

M29 Paragraph 14 was amended by paragraph 3 of Schedule 4 to the Financial Services Act 2012 and by S.I. 2003/1473, S.I. 2003/2066, S.I. 2007/126 and S.I. 2012/1906.

M30 Paragraph 19 was amended by paragraph 10 of Schedule 4 to the Financial Services Act 2012 and by S.I. 2003/1473, S.I. 2003/2066, S.I. 2007/3253, S.I. 2011/1613, S.I. 2012/916 and S.I. 2012/1906.

M31 Paragraph 20 was amended by paragraph 11 of Schedule 4 to the Financial Services Act 2012 and by S.I. 2001/1376, S.I. 2003/1473, S.I. 2003/2066, S.I. 2007/126, S.I. 2007/3253, S.I. 2011/1613 and S.I. 2012/1906.

M32 Paragraph 20B was inserted by S.I. 2011/1613 and amended by paragraph 13 of Schedule 4 to the Financial Services Act 2012.

M33 Paragraph 28 was amended by paragraph 21 of Schedule 4 to the Financial Services Act 2000.

35. In paragraph 2(2) of Schedule 5 (permission for open-ended investment companies to operate collective investment schemes) ^{M34}, after “regulated activity” insert “ other than the activity of managing an AIF ”.

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Marginal Citations

M34 Schedule 5 was amended by S.I. 2003/2066.

36. In paragraph 2B of Schedule 6 (threshold conditions) ^{M35}—

- (a) in sub-paragraph (1), for “or (4)(a)”, substitute “, (4)(a) or (7) ”;
- (b) after sub-paragraph (6), insert—

“(7) If A is seeking to carry on, or is carrying on, the regulated activity of managing an AIF and is, or upon being granted Part 4A permission to carry on that regulated activity would be, a full-scope UK AIFM, A's head office and registered office must be in the United Kingdom.”.

Marginal Citations

M35 Parts 1A to 1G of Schedule 6 were substituted by S.I. 2013/555.

PART 2 U.K.

Amendments to other primary legislation

Charities Act (Northern Ireland) 1964 U.K.

37. Until its repeal by the Charities Act (Northern Ireland) 2008 comes into force ^{M36}, section 25 of the Charities Act (Northern Ireland) 1964 ^{M37} (common investment schemes), has effect with the insertion after subsection (3) of the following—

“(3A) A common investment scheme may provide for appropriate bodies to be admitted to participate in the scheme (in addition to the participating charities) to such extent as the trustees appointed to manage the fund may determine.

(3B) In this section “appropriate body” means—

- (a) a Scottish recognised body,
- (b) an England and Wales charity, or
- (c) any body of persons or trust that—
 - (i) is established in an EEA state other than the United Kingdom, and
 - (ii) is a charity as defined by paragraph 1 of Schedule 6 to the Finance Act 2010

^{M38},

and, in the application of the relevant provisions in relation to a scheme which contains provisions authorised by subsection (3A), “charity” includes an appropriate body. “The relevant provisions” are subsections (1), (4) to (7), (11) and (in relation only to a charity within paragraph (b)) subsection (12).

(3C) In subsection (3B) “Scottish recognised body” means a body—

- (a) established under the law of Scotland, or
- (b) managed or controlled wholly or mainly in or from Scotland,

to which the Commissioners for Her Majesty's Revenue and Customs have given intimation, which has not subsequently been withdrawn, that relief is due under Part 10 of the Income

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Tax Act 2007, or that qualifying relief is due under Part 11 of the Corporation Tax Act 2010, in respect of income of the body which is applicable and applied to charitable purposes only.

(3D) In that subsection “England and Wales charity” means an institution—

- (a) which is a charity under the law of England and Wales, and
- (b) to which the Commissioners for Her Majesty's Revenue and Customs have given intimation, which has not subsequently been withdrawn, that relief is due under Part 10 of the Income Tax Act 2007, or that qualifying relief is due under Part 11 of the Corporation Tax Act 2010, in respect of income of the institution which is applicable and applied to charitable purposes only.

(3E) For purposes of this section relief under any provision of Part 11 of the Corporation Tax Act 2010 other than—

- (a) section 480 (exemption for profits of small-scale trades), and
- (b) section 481 (exemption from charges under provisions to which section 1173 applies),

is qualifying relief under that Part.”.

Marginal Citations

M36 2008 c. 12 (N.I.); see [section 185](#) and paragraph 1 of Schedule 9.

M37 1964 c. 33 (N.I.).

M38 2010 c. 13.

Fair Trading Act 1973 **U.K.**

38. In section 118(6A) of the Fair Trading Act 1973 ^{M39} (trading schemes to which Part 11 applies) after paragraph (e) insert—

- “(ea) managing a UCITS;
- (eb) acting as trustee or depositary of a UCITS;
- (ec) managing an AIF;
- (ed) acting as trustee or depositary of an AIF;”.

Marginal Citations

M39 1973 c. 41. Section 118(6A) was inserted by [S.I. 2001/3649](#) and amended by [S.I. 2006/3384](#).

Companies Act 1989 **U.K.**

39. In section 176(8) of the Companies Act 1989 ^{M40} (power to make provision about certain other charges) after paragraph (e) omit “or” and insert—

- “(ea) managing a UCITS;
- (eb) acting as trustee or depositary of a UCITS;
- (ec) managing an AIF;
- (ed) acting as trustee or depositary of an AIF; or”.

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Marginal Citations

M40 1989 c. 40. Section 176(8) was inserted by [S.I. 2001/3649](#) and amended by [S.I. 2006/3384](#).

Value Added Tax Act 1994 **U.K.**

40. In Part 2 of Schedule 9 (exemptions) to the Value Added Tax Act 1994 ^{M41}, in Group 5 (finance)—

- (a) omit paragraphs (g) and (h) of item 9; and
- (b) in note (6) omit the definition of “recognised collective investment scheme authorised in a designated country or territory”.

Marginal Citations

M41 1994 c. 23. Item 9 and note (6) of Group 5 were substituted by [S.I. 2008/2547](#).

Terrorism Act 2000 **U.K.**

41. In paragraph 6(1A) of Schedule 6 to the Terrorism Act 2000 ^{M42} (financial information) after paragraph (e) insert—

- “(ea) managing a UCITS,
- (eb) acting as trustee or depositary of a UCITS,
- (ec) managing an AIF,
- (ed) acting as trustee or depositary of an AIF.”.

Marginal Citations

M42 2000 c. 11. Paragraph 6(1A) was inserted by [S.I. 2001/3649](#) and amended by [S.I. 2006/3384](#).

Companies Act 2006 **U.K.**

42. In section 1278(1) of the Companies Act 2006 ^{M43} omit paragraph (f).

Marginal Citations

M43 2006 c. 46.

Charities Act (Northern Ireland) 2008 **U.K.**

43. In sections 43(5) (schemes to establish common investment funds) and 44(5) (schemes to establish common deposit funds) of the Charities Act (Northern Ireland) 2008—

- (a) in paragraph (a), omit “or”;
- (b) after paragraph (b), insert—
 - “; or
- (c) any body of persons or trust that—
 - (i) is established in an EEA state other than the United Kingdom, and

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(ii) is a charity as defined by paragraph 1 of Schedule 6 to the Finance Act 2010.”.

Charities Act 2011 **U.K.**

44. In sections 97(3) (bodies which may participate in common investment schemes) and 101(3) (bodies which may participate in common deposit schemes) of the Charities Act 2011 ^{M44}—

(a) in paragraph (a), omit “or”;

(b) after paragraph (b), insert—

“; or

(c) any body of persons or trust that—

(i) is established in an EEA state other than the United Kingdom, and

(ii) is a charity as defined by paragraph 1 of Schedule 6 to the Finance Act 2010.”.

Marginal Citations

M44 2011 c. 25.

PART 3 **U.K.**

Transitional provisions in respect of recognised overseas schemes

45.—(1) A collective investment scheme which immediately before 22nd July 2013 was recognised by virtue of section 270 of the Act (schemes authorised in designated countries or territories) is to be treated on and after that date as if it were recognised pursuant to an order under section 272 of the Act (individually recognised overseas schemes), and may be revoked in accordance with the provisions applying to such an order.

(2) Sub-paragraphs (3) to (5) apply in relation to a collective investment scheme which immediately before 22nd July 2013 was recognised by virtue of section 270 of the Act or pursuant to an order under section 272 of the Act.

(3) The operator of the scheme is to be treated for the purposes of section 277A(2) ^{M45} of the Act (regular provision of information relating to compliance with requirements for recognition) as if it had provided information to the FCA pursuant to a direction under section 277A(1) of the Act on 21st July 2013.

(4) If the FCA gives a direction under section 277(5) (alteration of schemes and changes of operator, trustee or depositary) or 277A(1) of the Act pursuant to which requires the operator is required to provide information to the FCA before 22nd July 2014, and the operator has not provided such information before 5th August 2014, the scheme will cease to be recognised on 5th August 2014.

(5) If the operator of the scheme gives written notice of a proposed alteration to the FCA under section 277(1) of the Act after 21st July 2013 but before 22nd July 2014, section 277(2) of the Act applies to that proposal as if the reference in section 277(2)(b) to a period of one month referred to a period of three months.

(6) In this paragraph “the operator” has the meaning given in section 237(2) of the Act (other definitions).

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Marginal Citations

M45 [Section 277A](#) is inserted by paragraph 21 of this Schedule.

Status:

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Changes to legislation:

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