



Financial Services Act 1986 (Repealed)

1986 CHAPTER 60

PART I

REGULATION OF INVESTMENT BUSINESS

CHAPTER VIII

COLLECTIVE INVESTMENT SCHEMES

Modifications etc. (not altering text)

- C1** Chapters III–XI (ss. 7–111): certain functions transferred by [S.I. 1990/354, art. 5](#)
C2 [Ch. VIII](#) (ss. 75–95): certain functions transferred by [S.I. 1988/738, art. 3\(1\)\(2\)\(3\)](#)

Preliminary

75 Interpretation.

- (1) In this Act “a collective investment scheme” means, subject to the provisions of this section, any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.
- (2) The arrangements must be such that the persons who are to participate as mentioned in subsection (1) above (in this Act referred to as “participants”) do not have day to day control over the management of the property in question, whether or not they have the right to be consulted or to give directions; and the arrangements must also have either or both of the characteristics mentioned in subsection (3) below.

Status: Point in time view as at 01/02/1991.

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- (3) Those characteristics are—
- (a) that the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
 - (b) that the property in question is managed as a whole by or on behalf of the operator of the scheme.
- (4) Where any arrangements provide for such pooling as is mentioned in paragraph (a) of subsection (3) above in relation to separate parts of the property in question, the arrangements shall not be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.
- (5) Arrangements are not a collective investment scheme if—
- (a) the property to which the arrangements relate (other than cash awaiting investment) consists of investments falling within any of paragraphs 1 to 5, 6 (so far as relating to units in authorised unit trust schemes and recognised schemes) and 10 of Schedule 1 to this Act;
 - (b) each participant is the owner of a part of that property and entitled to withdraw it at any time; and
 - (c) the arrangements do not have the characteristics mentioned in paragraph (a) of subsection (3) above and have those mentioned in paragraph (b) of that subsection only because the parts of the property belonging to different participants are not bought and sold separately except where a person becomes or ceases to be a participant.
- (6) The following are not collective investment schemes—
- (a) arrangements operated by a person otherwise than by way of business;
 - (b) arrangements where each of the participants carries on a business other than investment business and enters into the arrangements for commercial purposes related to that business;
 - (c) arrangements where each of the participants is a body corporate in the same group as the operator;
 - (d) arrangements where—
 - (i) each of the participants is a bona fide employee or former employee (or the wife, husband, widow, widower, child or step-child under the age of eighteen of such an employee or former employee) of a body corporate in the same group as the operator; and
 - (ii) the property to which the arrangements relate consists of shares or debentures (as defined in paragraph 20(4) of Schedule 1 to this Act) in or of a member of that group;
 - (e) arrangements where the receipt of the participants' contributions constitutes the acceptance of deposits in the course of a business which is a deposit-taking business for the purposes of the ^{M1}Banking Act 1979 and does not constitute a transaction prescribed for the purposes of section 2 of that Act by regulations made by the Treasury;
 - (f) franchise arrangements, that is to say, arrangements under which a person earns profits or income by exploiting a right conferred by the arrangements to use a trade name or design or other intellectual property or the good-will attached to it;

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- (g) arrangements the predominant purpose of which is to enable persons participating in them to share in the use or enjoyment of a particular property or to make its use or enjoyment available gratuitously to other persons;
 - (h) arrangements under which the rights or interests of the participants are investments falling within paragraph 5 of Schedule 1 to this Act;
 - (i) arrangements the purpose of which is the provision of clearing services and which are operated by an authorised person, a recognised clearing house or a recognised investment exchange;
 - (j) contracts of insurance;
 - (k) occupational pension schemes.
- [^{F1}(l) arrangements which by virtue of paragraph 34 or 35 of Schedule 1 to this Act are not collective investment schemes for the purposes of that Schedule.]
- (7) No body incorporated under the law of, or of any part of, the United Kingdom relating to building societies or industrial and provident societies or registered under any such law relating to friendly societies, and no other body corporate other than an open-ended investment company, shall be regarded as constituting a collective investment scheme.
- (8) In this Act—
- “a unit trust scheme” means a collective investment scheme under which the property in question is held on trust for the participants;
 - “an open-ended investment company” means a collective investment scheme under which—
 - (a) the property in question belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that body; and
 - (b) the rights of the participants are represented by shares in or securities of that body which—
 - (i) the participants are entitled to have redeemed or repurchased, or which (otherwise than under Chapter VII of Part V of the ^{M2}Companies Act 1985 or the corresponding Northern Ireland provision) are redeemed or repurchased from them by, or out of funds provided by, that body; or
 - (ii) the body ensures can be sold by the participants on an investment exchange at a price related to the value of the property to which they relate;
- “trustee”, in relation to a unit trust scheme, means the person holding the property in question on trust for the participants and, in relation to a collective investment scheme constituted under the law of a country or territory outside the United Kingdom, means any person who (whether or not under a trust) is entrusted with the custody of the property in question;
- “units” means the rights or interests (however described) of the participants in a collective investment scheme;
- “the operator”, in relation to a unit trust scheme with a separate trustee, means the manager and, in relation to an open-ended investment company, means that company.

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- (9) If an order under section 2 above amends the references to a collective investment scheme in Schedule 1 to this Act it may also amend the provisions of this section.

Textual Amendments

- F1** S. 75(6)(l) substituted for paragraphs (l) to (n) as provided by S.I. 1990/349, **art. 6(b)** (paragraphs (l) to (n) added as provided by S.I. 1988/803, **art. 5** (which was revoked by S.I. 1990/349, **art. 8(c)**))

Marginal Citations

- M1** 1979 c. 37.
M2 1985 c. 6.

Promotion of schemes

76 Restrictions on promotion.

- (1) Subject to subsections (2), (3) and (4) below, an authorised person shall not—
- (a) issue or cause to be issued in the United Kingdom any advertisement inviting persons to become or offer to become participants in a collective investment scheme or containing information calculated to lead directly or indirectly to persons becoming or offering to become participants in such a scheme; or
 - (b) advise or procure any person in the United Kingdom to become or offer to become a participant in such a scheme,
- unless the scheme is an authorised unit trust scheme or a recognised scheme under the following provisions of this Chapter.
- (2) Subsection (1) above shall not apply if the advertisement is issued to or the person mentioned in paragraph (b) of that subsection is—
- (a) an authorised person; or
 - (b) a person whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, to which the scheme relates.
- (3) Subsection (1) above shall not apply to anything done in accordance with regulations made by the Secretary of State for the purpose of exempting from that subsection the promotion otherwise than to the general public of schemes of such descriptions as are specified in the regulations.
- (4) The Secretary of State may by regulations make provision for exempting single property schemes from subsection (1) above.
- (5) For the purposes of subsection (4) above a single property scheme is a scheme which has the characteristics mentioned in subsection (6) below and satisfies such other requirements as are specified in the regulations conferring the exemption.
- (6) The characteristics referred to above are—
- (a) that the property subject to the scheme (apart from cash or other assets held for management purposes) consists of—
 - (i) a single building (or a single building with ancillary buildings) managed by or on behalf of the operator of the scheme; or

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- (ii) a group of adjacent or contiguous buildings managed by him or on his behalf as a single enterprise,
with or without ancillary land and with or without furniture, fittings or other contents of the building or buildings in question; and
- (b) that the units of the participants in the scheme are either dealt in on a recognised investment exchange or offered on terms such that any agreement for their acquisition is conditional on their admission to dealings on such an exchange.
- (7) Regulations under subsection (4) above may contain such supplementary and transitional provisions as the Secretary of State thinks necessary and may also contain provisions imposing obligations or liabilities on the operator and trustee (if any) of an exempted scheme, including, to such extent as he thinks appropriate, provisions for purposes corresponding to those for which provision can be made under section 85 below in relation to authorised unit trust schemes.

Modifications etc. (not altering text)

- C3 S. 76 amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.25**.
s. 76 extended (1.1.1996) by S.I. 1995/3275, reg. 37, **Sch. 7 para. 23**

Authorised unit trust schemes

77 Applications for authorisation.

- (1) Any application for an order declaring a unit trust scheme to be an authorised unit trust scheme shall be made by the manager and trustee, or proposed manager and trustee, of the scheme and the manager and trustee shall be different persons.
- (2) Any such application—
- (a) shall be made in such manner as the Secretary of State may direct; and
- (b) shall contain or be accompanied by such information as he may reasonably require for the purpose of determining the application.
- (3) At any time after receiving an application and before determining it the Secretary of State may require the applicant to furnish additional information.
- (4) The directions and requirements given or imposed under subsections (2) and (3) above may differ as between different applications.
- (5) Any information to be furnished to the Secretary of State under this section shall, if he so requires, be in such form or verified in such manner as he may specify.

Modifications etc. (not altering text)

- C4 S. 77(2) extended (1.12.2001) by S.I. 2001/2957, **art. 8(3)**; S.I. 2001/3538, **art. 2(1)**

78 Authorisation orders.

- (1) The Secretary of State may, on an application duly made in accordance with section 77 above and after being furnished with all such information as he may require under

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that section, make an order declaring a unit trust scheme to be an authorised unit trust scheme for the purposes of this Act if—

- (a) it appears to him that the scheme complies with the requirements of the regulations made under section 81 below and that the following provisions of this section are satisfied; and
 - (b) he has been furnished with a copy of the trust deed and a certificate signed by a solicitor to the effect that it complies with such of those requirements as relate to its contents.
- (2) The manager and the trustee must be persons who are independent of each other.
 - (3) The manager and the trustee must each be a body corporate incorporated in the United Kingdom or another member State, the affairs of each must be administered in the country in which it is incorporated, each must have a place of business in the United Kingdom and, if the manager is incorporated in another member State, the scheme must not be one which satisfies the requirements prescribed for the purposes of section 86 below.
 - (4) The manager and the trustee must each be an authorised person and neither must be prohibited from acting as manager or trustee, as the case may be, by or under rules under section 48 above, by or under the rules of any recognised self-regulating organisation of which the manager or trustee is a member or by a prohibition imposed under section 65 above.
 - (5) The name of the scheme must not be undesirable or misleading; and the purposes of the scheme must be reasonably capable of being successfully carried into effect.
 - (6) 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; but a scheme shall be treated as complying with this subsection if it requires the manager 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 this subsection.
 - (7) The Secretary of State shall inform the applicants of his decision on the application not later than six months after the date on which the application was received.
 - (8) On making an order under this section the Secretary of State may issue a certificate to the effect that the scheme complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument.

79 Revocation of authorisation.

- (1) The Secretary of State may revoke an order declaring a unit trust scheme to be an authorised unit trust scheme if it appears to him—
 - (a) that any of the requirements for the making of the order are no longer satisfied;
 - (b) that it is undesirable in the interests of the participants or potential participants that the scheme should continue to be authorised; or
 - (c) without prejudice to paragraph (b) above, that the manager or trustee of the scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act.

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- (2) For the purposes of subsection (1)(b) above the Secretary of State may take into account any matter relating to the scheme, the manager or trustee, a director or controller of the manager or trustee or any person employed by or associated with the manager or trustee in connection with the scheme.
- (3) In the case of a manager or trustee who is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in subsection (1) (c) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules.
- (4) The Secretary of State may revoke an order declaring a unit trust scheme to be an authorised unit trust scheme at the request of the manager or trustee of the scheme; but he may refuse to do so if he considers that any matter concerning the scheme should be investigated as a preliminary to a decision on the question whether the order should be revoked or that revocation would not be in the interests of the participants or would be incompatible with a Community obligation.

80 Representations against refusal or revocation.

- (1) Where the Secretary of State proposes—
 - (a) to refuse an application for an order under section 78 above; or
 - (b) to revoke such an order otherwise than at the request of the manager or trustee of the scheme,he shall give the applicants or, as the case may be, the manager and trustee of the scheme written notice of his intention to do so, stating the reasons for which he proposes to act and giving particulars of the rights conferred by subsection (2) below.
- (2) A person on whom a notice is served under subsection (1) above may, within twenty-one days of the date of service, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State.
- (3) The Secretary of State shall have regard to any representations made in accordance with subsection (2) above in determining whether to refuse the application or revoke the order, as the case may be.

81 Constitution and management.

- (1) The Secretary of State may make regulations as to the constitution and management of authorised unit trust schemes, the powers and duties of the manager and trustee of any such scheme and the rights and obligations of the participants in any such scheme.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may make provision—
 - (a) as to the issue and redemption of the units under the scheme;
 - (b) as to the expenses of the scheme and the means of meeting them;
 - (c) for the appointment, removal, powers and duties of an auditor for the scheme;
 - (d) for restricting or regulating the investment and borrowing powers exercisable in relation to the scheme;
 - (e) requiring the keeping of records with respect to the transactions and financial position of the scheme and for the inspection of those records;

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- (f) requiring the preparation of periodical reports with respect to the scheme and the furnishing of those reports to the participants and to the Secretary of State; and
 - (g) with respect to the amendment of the scheme.
- (3) Regulations under this section may make provision as to the contents of the trust deed, including provision requiring any of the matters mentioned in subsection (2) above to be dealt with in the deed; but regulations under this section shall be binding on the manager, trustee and participants independently of the contents of the deed and, in the case of the participants, shall have effect as if contained in it.
- (4) Regulations under this section shall not impose limits on the remuneration payable to the manager of a scheme.
- (5) Regulations under this section may contain such incidental and transitional provisions as the Secretary of State thinks necessary or expedient.

Modifications etc. (not altering text)

C5 S. 81 amended (6.1.1997) by S.I. 1996/2827, reg. 6(1)

82 Alteration of schemes and changes of manager or trustee.

- (1) The manager of an authorised unit trust scheme shall give written notice to the Secretary of State of—
- (a) any proposed alteration to the scheme; and
 - (b) any proposal to replace the trustee of the scheme;
- and any notice given in respect of a proposed alteration involving a change in the trust deed shall be accompanied by a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the regulations made under section 81 above.
- (2) The trustee of an authorised unit trust scheme shall give written notice to the Secretary of State of any proposal to replace the manager of the scheme.
- (3) Effect shall not be given to any such proposal unless—
- (a) the Secretary of State has given his approval to the proposal; or
 - (b) one month has elapsed since the date on which the notice was given under subsection (1) or (2) above without the Secretary of State having notified the manager or trustee that the proposal is not approved.
- (4) Neither the manager nor the trustee of an authorised unit trust scheme shall be replaced except by persons who satisfy the requirements of section 78(2) to (4) above.

Modifications etc. (not altering text)

C6 S. 82(1) extended (1.12.2001) by S.I. 2001/2957 art. 5(1)(b)(3); S.I. 2001/3538, art. 2(1)

83 Restrictions on activities of manager.

- (1) The manager of an authorised unit trust scheme shall not engage in any activities other than those mentioned in subsection (2) below.

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- (2) Those activities are—
 - (a) acting as manager of—
 - (i) a unit trust scheme;
 - (ii) an open-ended investment company or any other body corporate whose business consists of investing its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of its funds by or on behalf of that body; or
 - (iii) any other collective investment scheme under which the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
 - (b) activities for the purposes of or in connection with those mentioned in paragraph (a) above.
- (3) A prohibition under section 65 above may prohibit the manager of an authorised unit trust scheme from inviting persons in any specified country or territory outside the United Kingdom to become participants in the scheme.

84 Avoidance of exclusion clauses.

Any provision of the trust deed of an authorised unit trust scheme shall be void in so far as it would have the effect of exempting the manager or trustee from liability for any failure to exercise due care and diligence in the discharge of his functions in respect of the scheme.

85 Publication of scheme particulars.

- (1) The Secretary of State may make regulations requiring the manager of an authorised unit trust scheme to submit to him and publish or make available to the public on request a document (“scheme particulars”) containing information about the scheme and complying with such requirements as are specified in the regulations.
- (2) Regulations under this section may require the manager of an authorised unit trust scheme to submit and publish or make available revised or further scheme particulars if—
 - (a) there is a significant change affecting any matter contained in such particulars previously published or made available whose inclusion was required by the regulations; or
 - (b) a significant new matter arises the inclusion of information in respect of which would have been required in previous particulars if it had arisen when those particulars were prepared.
- (3) Regulations under this section may provide for the payment, by the person or persons who in accordance with the regulations are treated as responsible for any scheme particulars, of compensation to any person who has become or agreed to become a participant in the scheme and suffered loss as a result of any untrue or misleading statement in the particulars or the omission from them of any matter required by the regulations to be included.
- (4) Regulations under this section shall not affect any liability which any person may incur apart from the regulations.

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Modifications etc. (not altering text)

C7 S. 85 amended (6.1.1997) by S.I. 1996/2827, reg. 6(1)

Recognition of overseas schemes

86 Schemes constituted in other member States.

- (1) Subject to subsection (2) below, a collective investment scheme constituted in a member State other than the United Kingdom is a recognised scheme if it satisfies such requirements as are prescribed for the purposes of this section.
- (2) Not less than two months before inviting persons in the United Kingdom to become participants in the scheme the operator of the scheme shall give written notice to the Secretary of State of his intention to do so, specifying the manner in which the invitation is to be made; and the scheme shall not be a recognised scheme by virtue of this section if within two months of receiving the notice the Secretary of State 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 manner 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 Secretary of State under subsection (2) above—
 - (a) shall be accompanied by a certificate from the authorities mentioned in subsection (2)(b) above to the effect that the scheme complies with the conditions necessary for it to enjoy the rights conferred by any relevant Community instrument;
 - (b) shall 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) shall contain or be accompanied by such other information and documents as may be prescribed.
- (4) A notice given by the Secretary of State under subsection (2) above shall give the reasons for which he considers that the law in force in the United Kingdom will not be complied with and give particulars of the rights conferred by subsection (5) below.
- (5) A person on whom a notice is served by the Secretary of State under subsection (2) above may, within twenty-one days of the date of service, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State.
- (6) The Secretary of State may in the light of any representations made in accordance with subsection (5) above withdraw his notice and in that event the scheme shall be a recognised scheme from the date on which the notice is withdrawn.
- (7) Rules under section 48 above shall not apply to investment business in respect of which the operator or trustee of a scheme recognised under this section is an authorised person by virtue of section 24 above except so far as they make provision as respects—

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- (a) procuring persons to become participants in the scheme and advising persons on the scheme and the exercise of the rights conferred by it;
- (b) matters incidental to those mentioned in paragraph (a) above.

[^{F2}This subsection also applies to statements of principle under section 47A and codes of practice under section 63A so far as they relate to matters falling within the rule-making power in section 48.]

- (8) For the purposes of this section a collective investment scheme is constituted in a member 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.
- (9) If the operator of a scheme recognised under this section gives written notice to the Secretary of State stating that he desires the scheme no longer to be recognised under this section it shall cease to be so recognised when the notice is given.

Textual Amendments

F2 Words added by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 206(1), [Sch. 23 Pt. I para. 8](#)

Modifications etc. (not altering text)

C8 [S. 86](#): certain functions transferred by [S.I. 1990/354](#), [art. 4\(5\)](#)

87 Schemes authorised in designated countries or territories.

- (1) Subject to subsection (3) below, a collective investment scheme which is not a recognised scheme by virtue of section 86 above 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 Secretary of State; and
 - (b) the scheme is of a class specified by the order.
- (2) The Secretary of State shall not make an order designating any country or territory for the purposes of this section unless he is satisfied that the law under which collective investment schemes of the class to be specified by the order 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 this Chapter in the case of an authorised unit trust scheme.
- (3) A scheme shall not be recognised by virtue of this section unless the operator of the scheme gives written notice to the Secretary of State that he wishes it to be recognised; and the scheme shall not be recognised if within such period from receiving the notice as may be prescribed the Secretary of State notifies the operator that the scheme is not to be recognised.
- (4) The notice given by the operator under subsection (3) above—
- (a) shall 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

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- (b) shall contain or be accompanied by such information and documents as may be prescribed.
- (5) Section 85 above shall have effect in relation to a scheme recognised under this section as it has effect in relation to an authorised unit trust scheme, taking references to the manager as references to the operator and, in the case of an operator who is not an authorised person, references to publishing particulars as references to causing them to be published; and regulations made by virtue of this subsection may make provision whereby compliance with any requirements imposed by or under the law of a country or territory designated under this section is treated as compliance with any requirement of the regulations.
- (6) An order under subsection (1) above may contain such transitional provisions as the Secretary of State thinks necessary or expedient and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

88 Other overseas schemes.

- (1) The Secretary of State may, on the application of the operator of a scheme which—
 - (a) is managed in a country or territory outside the United Kingdom; but
 - (b) does not satisfy the requirements mentioned in section 86(1) above and in relation to which there is no relevant order under section 87(1) above,
 make an order declaring the scheme to be a recognised scheme if it appears to him that it affords adequate protection to the participants, makes adequate provision for the matters dealt with by regulations under section 81 above and satisfies the following provisions of this section.
- (2) The operator must be a body corporate or the scheme must take the form of an open-ended investment company.
- (3) Subject to subsection (4) below, the operator and the trustee, if any, must be fit and proper persons to act as operator or, as the case may be, as trustee; and for that purpose the Secretary of State may take into account any matter relating to—
 - (a) any person who is or will be employed by or associated with the operator or trustee for the purposes of the scheme;
 - (b) any director or controller of the operator or trustee;
 - (c) any other body corporate in the same group as the operator or trustee and any director or controller of any such other body.
- (4) Subsection (3) above does not apply to an operator or trustee who is an authorised person and not prohibited from acting as operator or trustee, as the case may be, by or under rules under section 48 above, by or under the rules of any recognised self-regulating organisation of which he is a member or by any prohibition imposed under section 65 above.
- (5) If the operator is not an authorised person he must have a representative in the United Kingdom who is an authorised person and has power to act generally for the operator and to accept service of notices and other documents on his behalf.
- (6) The name of the scheme must not be undesirable or misleading; and the purposes of the scheme must be reasonably capable of being successfully carried into effect.
- (7) 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

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determined in accordance with the scheme; but a scheme shall be treated as complying with this subsection 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 this subsection.

- (8) Subsections (2) to (5) of section 77 above shall apply also to an application under this section.
- (9) So much of section 82 above as applies to an alteration of the scheme shall apply also to a scheme recognised under this section, taking references to the manager as references to the operator and with the omission of the requirement relating to the solicitor's certificate; and if the operator or trustee of any such scheme is to be replaced the operator or, as the case may be, the trustee, or in either case the person who is to replace him, shall give at least one month's notice to the Secretary of State.
- (10) Section 85 above shall have effect in relation to a scheme recognised under this section as it has effect in relation to an authorised unit trust scheme, taking references to the manager as references to the operator and, in the case of an operator who is not an authorised person, references to publishing particulars as references to causing them to be published.

89 Refusal and revocation of recognition.

- (1) The Secretary of State may at any time direct that a scheme shall cease to be recognised by virtue of section 87 above or revoke an order under section 88 above if it appears to him—
 - (a) that it is undesirable in the interests of the participants or potential participants in the United Kingdom that the scheme should continue to be recognised;
 - (b) without prejudice to paragraph (a) above, that the operator or trustee of the scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act; or
 - (c) in the case of an order under section 88 that any of the requirements for the making of the order are no longer satisfied.
- (2) For the purposes of subsection (1)(a) above the Secretary of State may take into account any matter relating to the scheme the operator or trustee, a director or controller of the operator or trustee or any person employed by or associated with the operator or trustee in connection with the scheme.
- (3) In the case of an operator or trustee who is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in subsection (1) (b) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules.
- (4) The Secretary of State may give such a direction or revoke such an order as is mentioned in subsection (1) above at the request of the operator or trustee of the scheme; but he may refuse to do so if he considers that any matter concerning the scheme should be investigated as a preliminary to a decision on the question whether the direction should be given or the order revoked or that the direction or revocation would not be in the interests of the participants.

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- (5) Where the Secretary of State proposes—
- (a) to notify the operator of a scheme under section 87(3) above; or
 - (b) to give such a direction or to refuse to make or to revoke such an order as is mentioned in subsection (1) above,
- he shall give the operator written notice of his intention to do so, stating the reasons for which he proposes to act and giving particulars of the rights conferred by subsection (6) below.
- (6) A person on whom a notice is served under subsection (5) above may, within twenty-one days of the date of service, make written representations to the Secretary of State and, if desired, oral representations to a person appointed for that purpose by the Secretary of State.
- (7) The Secretary of State shall have regard to any representations made in accordance with subsection (6) above in determining whether to notify the operator, give the direction or refuse to make or revoke the order, as the case may be.

90 Facilities and information in the United Kingdom.

- (1) The Secretary of State may make regulations requiring operators of recognised schemes to maintain in the United Kingdom, or in such part or parts of it as may be specified in the regulations, such facilities as he thinks desirable in the interests of participants and as are specified in the regulations.
- (2) The Secretary of State 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 investment advertisement issued or caused to be issued by him in the United Kingdom in which the scheme is named.

Powers of intervention

91 Directions.

- (1) If it appears to the Secretary of State—
 - (a) that any of the requirements for the making of an order declaring a scheme to be an authorised unit trust scheme are no longer satisfied;
 - (b) that the exercise of the power conferred by this subsection is desirable in the interests of participants or potential participants in the scheme; or
 - (c) without prejudice to paragraph (b) above, that the manager or trustee of such a scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act,

he may give a direction under subsection (2) below.
- (2) A direction under this subsection may—
 - (a) require the manager of the scheme to cease the issue or redemption, or both the issue and redemption, of units under the scheme on a date specified in the direction until such further date as is specified in that or another direction;

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- (b) require the manager and trustee of the scheme to wind it up by such date as is specified in the direction or, if no date is specified, as soon as practicable.
- (3) The revocation of the order declaring an authorised unit trust scheme to be such a scheme shall not affect the operation of any direction under subsection (2) above which is then in force; and a direction may be given under that subsection in relation to a scheme in the case of which the order declaring it to be an authorised unit trust scheme has been revoked if a direction under that subsection was already in force at the time of revocation.
- (4) Sections 60, 61 and 62 above shall have effect in relation to a contravention of a direction under subsection (2) above as they have effect in relation to any such contravention as is mentioned in those sections.
- (5) If it appears to the Secretary of State—
- (a) that the exercise of the power conferred by this subsection is desirable in the interests of participants or potential participants in a scheme recognised under section 87 or 88 above who are in the United Kingdom;
 - (b) without prejudice to paragraph (a) above, that the operator of such a scheme has contravened any provision of this Act or any rules or regulations made under it or, in purported compliance with any such provision, has furnished the Secretary of State with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under this Act; or
 - (c) that any of the requirements for the recognition of a scheme under section 88 above are no longer satisfied,
- he may direct that the scheme shall not be a recognised scheme for a specified period or until the occurrence of a specified event or until specified conditions are complied with.
- (6) For the purposes of subsections (1)(b) and (5)(a) above the Secretary of State may take into account any matter relating to the scheme, the manager, operator or trustee, a director or controller of the manager, operator or trustee or any person employed by or associated with the manager, operator or trustee in connection with the scheme.
- (7) In the case of a manager, operator or trustee who is a member of a recognised self-regulating organisation the rules, prohibitions and requirements referred to in subsections (1)(c) and (5)(b) above include the rules of that organisation and any prohibition or requirement imposed by virtue of those rules.
- (8) The Secretary of State may, either of his own motion or on the application of the manager, trustee or operator of the scheme concerned, withdraw or vary a direction given under this section if it appears to the Secretary of State that it is no longer necessary for the direction to take effect or continue in force or, as the case may be, that it should take effect or continue in force in a different form.

Modifications etc. (not altering text)

C9 S. 91 restricted (1.11.1992) by S.R. 1980/346, Order 93, rule 7 (as inserted by S.R. 1992/399, rule15).

92 Notice of directions.

- (1) The power to give a direction under section 91 above in relation to a scheme shall be exercisable by written notice served by the Secretary of State on the manager and

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trustee or, as the case may be, on the operator of the scheme and any such notice shall take effect on such date as is specified in the notice.

- (2) If the Secretary of State refuses to withdraw or vary a direction on the application of the manager, trustee or operator of the scheme concerned he shall serve that person with a written notice of refusal.
- (3) A notice giving a direction, or varying it otherwise than on the application of the manager, trustee or operator concerned, or refusing to withdraw or vary a direction on the application of such a person shall state the reason for which the direction was given or varied or, as the case may be, why the application was refused.
- (4) The Secretary of State may give public notice of a direction given by him under section 91 above and of any withdrawal or variation of such a direction; and any such notice may, if the Secretary of State thinks fit, include a statement of the reasons for which the direction was given, withdrawn or varied.

93 Applications to the court.

- (1) In any case in which the Secretary of State has power to give a direction under section 91(2) above in relation to an authorised unit trust scheme or, by virtue of subsection (3) of that section, in relation to a scheme which has been such a scheme, he may apply to the court—
 - (a) for an order removing the manager or trustee, or both the manager and trustee, of the scheme and replacing either or both of them with a person or persons nominated by him and appearing to him to satisfy the requirements of section 78 above; or
 - (b) if it appears to the Secretary of State that no, or no suitable, person satisfying those requirements is available, for an order removing the manager or trustee, or both the manager and trustee, and appointing an authorised person to wind the scheme up.
- (2) On an application under this section the court may make such order as it thinks fit; and the court may, on the application of the Secretary of State, rescind any such order as is mentioned in paragraph (b) of subsection (1) above and substitute such an order as is mentioned in paragraph (a) of that subsection.
- (3) The Secretary of State shall give written notice of the making of an application under this section to the manager and trustee of the scheme concerned and take such steps as he considers appropriate for bringing the making of the application to the attention of the participants.
- (4) The jurisdiction conferred by this section shall be exercisable by the High Court and the Court of Session.
- (5) Section 83 above shall not apply to a manager appointed by an order made on an application under subsection (1)(b) above.

Modifications etc. (not altering text)

- C10** S. 93(1) amended (1.1.1993) by S.I. 1992/3218, reg. 55, **Sch. 9 para.26**.
 s. 93(1) extended (1.1.1996) by S.I. 1995/3275, reg. 37, **Sch. 7 para. 24**

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Supplemental

94 Investigations.

- (1) The Secretary of State may appoint one or more competent inspectors to investigate and report on—
 - (a) the affairs of, or of the manager or trustee of, any authorised unit trust scheme;
 - (b) the affairs of, or of the operator or trustee of, any recognised scheme so far as relating to activities carried on in the United Kingdom; or
 - (c) the affairs of, or of the operator or trustee of, any other collective investment scheme,if it appears to the Secretary of State that it is in the interests of the participants to do so or that the matter is of public concern.
- (2) An inspector appointed under subsection (1) above to investigate the affairs of, or of the manager, trustee or operator of, any scheme may also, if he thinks it necessary for the purposes of that investigation, investigate the affairs of, or of the manager, trustee or operator of, any other such scheme as is mentioned in that subsection whose manager, trustee or operator is the same person as the manager, trustee or operator of the first-mentioned scheme.
- (3) Sections 434 to 436 of the ^{M3}Companies Act 1985 (production of documents and evidence to inspectors), . . . ^{F3}, shall apply in relation to an inspector appointed under this section as they apply to an inspector appointed under section 431 of that Act but with the modifications specified in subsection (4) below.
- (4) In the provisions applied by subsection (3) above for any reference to a company . . . ^{F4} there shall be substituted a reference to the scheme under investigation by virtue of this section . . . ^{F4} and any reference to an officer . . . ^{F4} of the company shall include a reference to any director of the manager, trustee or operator of the scheme.
- (5) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session except that a lawyer may be required to furnish the name and address of his client.
- (6) Where a person claims a lien on a document its production under this section shall be without prejudice to the lien.
- ^{F5}(7) Nothing in this section requires a person (except as mentioned in subsection (7A) below) to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—
 - (a) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
 - (b) the making of the requirement was authorised by the Secretary of State.
- (7A) Subsection (7) does not apply where the person owing the obligation of confidence or the person to whom it is owed is—
 - (a) the manager, operator or trustee of the scheme under investigation, or
 - (b) a manager, operator or trustee whose own affairs are under investigation.]

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- (8) An inspector appointed under this section may, and if so directed by the Secretary of State shall, make interim reports to the Secretary of State and on the conclusion of his investigation shall make a final report to him.
- [^{F6}(8A) If it appears to the Secretary of State that matters have come to light in the course of the inspectors' investigation which suggest that a criminal offence has been committed, and those matters have been referred to the appropriate prosecuting authority, he may direct the inspectors to take no further steps in the investigation or to take only such further steps as are specified in the direction.
- (8B) Where an investigation is the subject of a direction under subsection (8A), the inspectors shall make a final report to the Secretary of State only where the Secretary of State directs them to do so.]
- (9) Any such report shall be written or printed as the Secretary of State may direct and the Secretary of State may, if he thinks fit—
- (a) furnish a copy, on request and on payment of the prescribed fee, to the manager, trustee or operator or any participant in a scheme under investigation or any other person whose conduct is referred to in the report; and
 - (b) cause the report to be published.
- [^{F7}(10) A person who is convicted on a prosecution instituted as a result of an investigation under this section may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Secretary of State may determine in respect of general staff costs and overheads.]

Textual Amendments

- F3** Words repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 212, [Sch. 24](#)
- F4** Words repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 212, [Sch. 24](#)
- F5** [S. 94\(7\)\(7A\)](#) substituted for subsection (7) by [Companies Act 1989 \(c. 40, SIF 27\)](#), [s. 72\(2\)](#)
- F6** [S. 94\(8A\)\(8B\)](#) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), [s. 72\(3\)](#)
- F7** [S. 94\(10\)](#) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), [s. 72\(4\)](#)

Modifications etc. (not altering text)

- C11** [S. 94](#): certain functions transferred by [S.I. 1988/738](#), [art. 3\(4\)](#)

Marginal Citations

- M3** [1985 c. 6](#).

95 Contraventions.

- (1) A person who contravenes any provision of this Chapter, a manager or trustee of an authorised unit trust scheme who contravenes any regulations made under section 81 above and a person who contravenes any other regulations made under this Chapter shall be treated as having contravened rules made under Chapter V of this Part of this Act or, in the case of a person who is an authorised person by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body, the rules of that organisation or body.

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(2) Subsection (1) above applies also to any contravention by the operator of a recognised scheme of a requirement imposed under section 90(2) above.

[^{F8}(3) The disciplinary action which may be taken by virtue of section 47A(3) (failure to comply with statement of principle) includes—

- (a) the giving of a direction under section 91(2), and
- (b) the application by the Secretary of State for an order under section 93;

and subsection (6) of section 47A (duty of the Secretary of State as to exercise of powers) has effect accordingly.]

Textual Amendments

F8 S. 95(3) inserted by Companies Act 1989 (c. 40, SIF 27), s. 206(1), Sch. 23 para. 9

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