
STATUTORY INSTRUMENTS

2011 No. 1613

**The Undertakings for Collective Investment
in Transferable Securities Regulations 2011**

PART 2

Amendments to the Financial Services and Markets Act 2000

Amendment of the Financial Services and Markets Act 2000

- 2.**—(1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 66(2)(1), in paragraph (b)—
- (a) after “regulation” insert “or decision”, and
 - (b) after “financial instruments directive” insert “or the UCITS directive”.
- (3) After section 90(2), insert—

“Liability for key investor information

90ZA.—(1) A person is not to be subject to civil liability solely on the basis of the key investor information produced in relation to a collective investment scheme or a sub-fund of such a scheme in accordance with rules or other provisions implementing Chapter IX of the UCITS directive, or of any translation of that information, unless the key investor information is misleading, inaccurate or inconsistent with the relevant parts of the prospectus published for that collective investment scheme or sub-fund in accordance with rules made by the Authority under section 248 of this Act.

(2) In this section, a reference to a sub-fund of a collective investment scheme is a reference to a part of the property of the collective investment scheme which forms a separate pool where—

- (a) the collective investment scheme provides arrangements for separate pooling of the contributions of the participants and the profits and income out of which payments are made to them; and
 - (b) the participants are entitled to exchange rights in one pool for rights in another.”.
- (4) In section 140(3)(b)(3), for “Article 1a.2” substitute “Article 2.1(b)”.
- (5) In section 145(4), in subsection (3B)(b)—
- (a) at the end of sub-paragraph (i), omit “or”;
 - (b) at the end of sub-paragraph (ii), insert “; or”;
 - (c) after sub-paragraph (ii), insert—

(1) Section 66(2) was amended by [S.I. 2007/126](#).
(2) Section 90 was amended by [S.I. 2005/1433](#).
(3) Section 140(3) was inserted by [S.I. 2003/2066](#).
(4) Section 145(3B) was inserted by [S.I. 2006/2975](#).

- “(iii) Article 77 of the UCITS directive.”.
- (6) In section 184(7)(5) for “Article 1a.2” substitute “Article 2.1(b)”.
- (7) In section 193—
- (a) in subsection (1), in the definition of “incoming firm”, after paragraph (a) insert—
- “(aa) an EEA UCITS which is a recognised scheme under section 264; or”;
- (b) after subsection (1) insert—
- “(1A) In the definition of “incoming firm” references to an EEA UCITS include, in a case where the UCITS is not a body corporate, references to its management company.”;
- (c) in subsection (2), after “an EEA firm” insert “or an EEA UCITS”.
- (8) For section 195A(6), and the heading to that section, substitute—

“Contravention by relevant EEA firm or EEA UCITS of directive requirements: home state regulator primarily responsible for securing compliance

195A.—(1) This section applies if the Authority has clear and demonstrable grounds for believing—

- (a) that a relevant EEA firm has contravened, or is contravening, a requirement falling within subsection (2) (in a case to which Article 62.1 or 62.3 of the markets in financial instruments directive applies);
- (b) that a relevant EEA UCITS has contravened, or is contravening, a requirement falling within subsection (3) (in a case to which Article 108.4 of the UCITS directive applies).
- (2) A requirement falls within this subsection if it is imposed on the firm—
- (a) by or under any provision adopted in the firm’s home state for the purpose of implementing the markets in financial instruments directive; or
- (b) by any directly applicable Community regulation made under that directive.
- (3) A requirement falls within this subsection if it is imposed on the EEA UCITS—
- (a) by or under any provision adopted in the home state of the EEA UCITS for the purpose of implementing the UCITS directive; or
- (b) by any directly applicable Community regulation or decision made under that directive.
- (4) The Authority must notify the home state regulator of the firm or EEA UCITS in writing of the situation mentioned in subsection (1).
- (5) The notice under subsection (4) must—
- (a) request that the home state regulator take all appropriate measures for the purpose of ensuring that the firm or EEA UCITS puts an end to the contravention;
- (b) state that the Authority’s powers of intervention are likely to become exercisable in relation to the firm or EEA UCITS if it continues the contravention; and
- (c) indicate any requirements that the Authority proposes to impose on the firm or EEA UCITS in exercise of its power of intervention in the event of the power becoming exercisable.
- (6) The Authority may exercise its power of intervention in respect of the firm or EEA UCITS if—

(5) Section 184 was substituted by [S.I. 2009/534](#).

(6) Section 195A was inserted by [S.I. 2007/126](#).

- (a) a reasonable time has expired since the giving of the notice under subsection (4); and
- (b) conditions A to C are satisfied.

(7) Condition A is that—

- (a) the home state regulator of the firm or EEA UCITS has failed or refused to take measures for the purpose mentioned in subsection (5)(a); or
- (b) any measures taken by the home state regulator have proved inadequate for that purpose.

(8) Condition B is that the firm or EEA UCITS 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.

(9) Condition C is that the Authority has informed the home state regulator of the firm or EEA UCITS of its intention to exercise its power of intervention in respect of the firm or EEA UCITS.

(10) Subsection (6) applies whether or not the Authority's power of intervention is also exercisable as a result of section 194 or 195.

(11) If the Authority exercises its power of intervention in respect of a relevant EEA firm or EEA UCITS by virtue of subsection (6), it must at the earliest opportunity inform the Commission of—

- (a) the fact that the Authority has exercised that power in respect of that firm or EEA UCITS; and
- (b) any requirements it has imposed on the firm or EEA UCITS in exercise of the power.

(12) In this section—

“home state” means—

- (a) in relation to a relevant EEA firm—
 - (i) in the case of a firm which is a body corporate, the EEA State in which the firm has its registered office or, if it has no registered office, its head office; and
 - (ii) in any other case, the EEA State in which the firm has its head office;
- (b) in relation to a relevant EEA UCITS, the EEA State in which the UCITS is authorised pursuant to Article 5 of the UCITS directive;

“relevant EEA firm” means an EEA firm falling within paragraph 5(a) or (b) of Schedule 3 which is exercising in the United Kingdom a right deriving from the markets in financial instruments directive;

“relevant EEA UCITS” means a UCITS which is authorised pursuant to Article 5 of the UCITS directive in an EEA State other than the United Kingdom, and references to an EEA UCITS include, in a case where the UCITS is not a body corporate, references to its management company.”.

(9) In section 199(7)—

(a) for subsection (2)(a) substitute—

“(a) it is imposed—

- (i) by the Authority under this Act, or
- (ii) under any directly applicable Community regulation or decision made under a single market directive; and”;

- (b) in subsection (3A), after “paragraph 5(da)” insert “or (f)”;
- (c) in subsection (3B), after “paragraph 5(da)” insert “or (f)”;
- (d) after subsection (9), insert—
 - “(10) If an incoming EEA firm is exercising EEA rights under the UCITS directive, then the Authority must inform the Commission of any measures it has taken in the exercise of its power of intervention.”.
- (10) After section 199, insert—

“Management companies: loss of authorisation

199A.—(1) This section applies in relation to an EEA firm falling within paragraph 5(f) of Schedule 3 (“a management company”) which is providing services in the United Kingdom in the exercise of an EEA right deriving from the UCITS directive.

(2) If the Authority has been informed by the home state regulator of the management company that it is withdrawing the management company’s authorisation, the Authority must exercise its powers under this Act in such manner as it thinks fit to safeguard the interests of investors in a collective investment scheme managed by the management company in the United Kingdom.

(3) Measures taken under subsection (2) may include decisions preventing the management company from initiating any further transactions in the United Kingdom.

(4) In this section “collective investment scheme” has the same meaning as in Part 17 of this Act.”.

- (11) In sections 205 and 206(1)(**8**)—
 - (a) after “regulation” insert “or decision”, and
 - (b) after “financial instruments directive” insert “or the UCITS directive”.
- (12) In section 206A(2)(**9**), in the definition of “relevant requirement”—
 - (a) omit the “or” following paragraph (c);
 - (b) at the end of paragraph (d) insert “or”;
 - (c) after paragraph (d), insert—
 - “(e) by any directly applicable Community regulation or decision made under the UCITS directive;”
- (13) In section 213(**10**), for subsection (10), substitute—
 - “(10) But a person who, at that time—
 - (a) qualified for authorisation under Schedule 3, and
 - (b) fell within a prescribed category in relation to any authorised activities,
 is not to be regarded as a relevant person in relation to those activities, unless the person had elected to participate in the scheme in relation to those activities at that time.
 - (11) In subsection (10) “authorised activities”, in relation to a person, means activities for which the person had, at the time mentioned in that subsection, permission as a result of any provision of, or made under, Schedule 3.”.
- (14) In section 237—
 - (a) in subsection (2)—

(8) Sections 205 and 206(1) were amended by [S.I. 2007/126](#).

(9) Section 206A was inserted by the Financial Services Act 2010 (c.28), section 9, and amended by [S.I. 2011/99](#).

(10) Section 213 was amended by the Banking Act 2009 (c.1), s. 170(2).

- (i) after the definition of “depository”, insert—
 - ““management company” has the meaning given in Article 2.1(b) of the UCITS directive;”;
- (ii) for the definition of “the operator”, substitute—
 - ““the operator”—
 - (a) in relation to a unit trust scheme with a separate trustee, means the manager;
 - (b) in relation to an open-ended investment company, means that company; and
 - (c) in relation to an EEA UCITS which is not an open-ended investment company or unit trust scheme, means the management company for that UCITS;”;
- (iii) insert at the end—
 - ““working day” has the meaning given in section 191G(2).”;
- (b) in subsection (3)—
 - (i) after the definition of “an authorised open-ended investment company”, insert—
 - ““EEA UCITS” means a UCITS which is authorised pursuant to Article 5 of the UCITS directive in an EEA State other than the United Kingdom;
 - “feeder UCITS” means a UCITS, or a sub-fund of a UCITS, which has been approved by the Authority or (where relevant) by its home state regulator to invest 85% or more of the total property which is subject to the collective investment scheme constituted by the UCITS in units of another UCITS or UCITS sub-fund (the “master UCITS”);”;
 - (ii) after the definition of “a recognised scheme”, insert —
 - ““UCITS” has the meaning given in Article 1.2 of the UCITS directive;
 - “UK UCITS” means a UCITS which is an authorised unit trust scheme or an authorised open-ended investment company.”;
- (c) after subsection (3), insert—
 - “(4) In this Part, references to a sub-fund of a UCITS are references to a part of the property of the UCITS which forms a separate pool where—
 - (a) the UCITS provides arrangements for separate pooling of the contributions of the participants and the profits and income out of which payments are made to them; and
 - (b) the participants are entitled to exchange rights in one pool for rights in another.”.
- (15) In section 243—
 - (a) for subsection (5), substitute—
 - “(5) The manager and the trustee must each be a body corporate incorporated in the United Kingdom or another EEA State, and the affairs of each must be administered in the country in which it is incorporated.
 - (5A) The trustee must have a place of business in the United Kingdom, and the manager must have a place of business in the United Kingdom or in another EEA State.”;
 - (b) after subsection (7) insert—
 - “(7A) The manager must be a fit and proper person to manage the unit trust scheme to which the application relates.”.

- (16) In section 244—
- (a) in subsection (1), insert at the beginning “Subject to subsection (1A),”;
 - (b) insert after subsection (1)—
 - “(1A) An application under section 242 for authorisation of a unit trust scheme which is a UCITS must be determined by the Authority before the end of two months beginning with the date on which it receives the application.”.
- (17) In section 251, for subsection (1), substitute—
- “(A1) This section applies where the manager of an authorised unit trust scheme proposes—
 - (a) to make an alteration to the scheme, other than an alteration—
 - (i) to which section 252A applies; or
 - (ii) to which Part 4 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011 (mergers) applies; or
 - (b) to replace its trustee.
 (1) The manager must give written notice of the proposal to the Authority.”.
- (18) In section 252—
- (a) in the heading, for “of change of manager or trustee” substitute “of a proposal under section 251”;
 - (b) in subsections (1) and (2), after “approval of a proposal” insert “under section 251”.
- (19) After section 252, insert—

“Proposal to convert to a non-feeder UCITS

- 252A.**—(1) This section applies where the manager of an authorised unit trust scheme which is a feeder UCITS proposes to make an alteration to the scheme which—
- (a) involves a change in the trust deed, and
 - (b) will enable the scheme to convert into a UCITS which is not a feeder UCITS.
- (2) The manager must give written notice of the proposal to the Authority.
- (3) Any notice given in respect of such a proposal must be accompanied by—
- (a) a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the trust scheme rules; and
 - (b) the specified information.
- (4) The Authority must, within 15 working days after the date on which it received the notice under subsection (2), give—
- (a) written notice to the manager of the scheme that the Authority approves the proposed amendments to the trust deed, or
 - (b) separate warning notices to the manager and trustee of the scheme that the Authority proposes to refuse approval of the proposed amendments.
- (5) Effect is not to be given to any proposal of which notice has been given under subsection (2) unless the Authority, by written notice, has given its approval to the proposal.
- (6) If, having given a warning notice to a person, the Authority decides to refuse approval—
- (a) it must give that person a decision notice; and
 - (b) that person may refer the matter to the Tribunal.
- (7) Subsection (8) applies where—

- (a) the notice given under subsection (2) relates to a proposal to amend the trust deed of a feeder UCITS to enable it to convert into a UCITS which is not a feeder UCITS following the winding-up of its master UCITS; and
 - (b) the proceeds of the winding-up are to be paid to the feeder UCITS before the date on which the feeder UCITS proposes to start investing in accordance with the new investment objectives and policy provided for in its amended trust deed and scheme rules.
- (8) Where this subsection applies, the Authority may only approve the proposal subject to the conditions set out in section 283A(5) and (6).
- (9) In this section, “specified” means—
- (a) specified in rules made by the Authority to implement the UCITS directive, or
 - (b) specified in any directly applicable Community regulation or decision made under the UCITS directive.”.
- (20) In section 257(1), for paragraph (b), substitute—
- “(b) the manager or trustee of an authorised unit trust scheme has contravened, or is likely to contravene, a requirement imposed—
- (i) by or under this Act; or
 - (ii) by any directly applicable Community regulation or decision made under the UCITS directive;”.
- (21) After section 258, insert—

“Winding up or merger of master UCITS

258A.—(1) Subsection (2) applies if a master UCITS which has one or more feeder UCITS which are authorised unit trust schemes is wound up, whether as a result of a direction given by the Authority under section 257, an order of the court under section 258, rules made by the Authority or otherwise.

(2) The Authority must direct the manager and trustee of any authorised unit trust scheme which is a feeder UCITS of the master UCITS to wind up the feeder UCITS unless—

- (a) the Authority approves under section 283A the investment by the feeder UCITS of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in units of another UCITS or master UCITS; or
- (b) the Authority approves under section 252A an amendment of the trust deed of the feeder UCITS which would enable it to convert into a UCITS which is not a feeder UCITS.

(3) Subsection (4) applies if a master UCITS which has one or more feeder UCITS which are authorised unit trust schemes—

- (a) merges with another UCITS, or
- (b) is divided into two or more UCITS.

(4) The Authority must direct the manager and trustee of any authorised unit trust scheme which is a feeder UCITS of the master UCITS to wind up the scheme unless—

- (a) the Authority approves under section 283A the investment by the scheme of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in the units of—
 - (i) the master UCITS which results from the merger;
 - (ii) one of the UCITS resulting from the division; or

- (iii) another UCITS or master UCITS;
 - (b) the Authority approves under section 252A an amendment of the trust deed of the scheme which would enable it to convert into a UCITS which is not a feeder UCITS.”.
- (22) In section 259—
- (a) in the heading, after “section 257” insert “or 258A”;
 - (b) in subsection (1), after “direction” insert “under section 257 or 258A”;
 - (c) in subsection (6), for “imposes a requirement under section 257(2)(b)” substitute “is given under section 257(2)(b) or section 258A(2) or (4)”.
- (23) After section 261, insert—

“Information for home state regulator

261A.—(1) Subsection (2) applies if, in accordance with rules made by the Authority to implement Article 66 of the UCITS directive, the Authority is informed by the manager of an authorised unit trust scheme which is a master UCITS that a feeder UCITS which invests in units of the scheme is an EEA UCITS.

(2) The Authority must immediately inform the home state regulator of the feeder UCITS of the investment made by that UCITS in the master UCITS.

Information for feeder UCITS

261B.—(1) The Authority must immediately inform the operator of any authorised unit trust scheme which is a feeder UCITS of an authorised unit trust scheme or an authorised open-ended investment company (the master UCITS) of—

- (a) any failure of which the Authority becomes aware by the master UCITS to comply with a provision made in implementation of Chapter VIII of the UCITS directive;
- (b) any warning notice or decision notice given to the master UCITS in relation to a contravention of any provision made in implementation of Chapter VIII of the UCITS directive by or under any enactment or in rules of the Authority;
- (c) any information reported to the Authority pursuant to rules of the Authority made to implement Article 106(1) of the UCITS directive which relates to the master UCITS, or to one or more of its directors, or its management company, trustee, depository or auditor.

(2) The Authority must immediately inform the operator of any authorised unit trust scheme which is a feeder UCITS of an EEA UCITS of any information received from the home state regulator of the EEA UCITS in relation to—

- (a) any failure by the EEA UCITS to comply with any requirement in Chapter VIII of the UCITS directive;
- (b) any decision or measure imposed on the EEA UCITS under provisions implementing Chapter VIII of the UCITS directive;
- (c) any information reported to the home state regulator pursuant to Article 106(1) of the UCITS directive relating to the EEA UCITS, its operator, depository or auditor.

(3) Where the Authority has the information described in subsection (1)(a), (b) or (c) in relation to an authorised unit trust scheme which is a master UCITS for one or more feeder UCITS which are EEA UCITS, the Authority must immediately give that information to the home state regulator of each feeder UCITS established outside the United Kingdom.”.

- (24) In section 264—
- (a) at the end of subsection (1)(a), omit “and”;
 - (b) for subsection (1)(b), substitute—
 - “(b) the home state regulator of the operator of the scheme has transmitted to the Authority notice of the operator’s intention to invite persons in the United Kingdom to participate in the scheme; and
 - (c) the notice from the home state regulator—
 - (i) complies with the requirements of any directly applicable Community regulation or decision made under the UCITS directive, and
 - (ii) is accompanied by such other information as may be prescribed.”;
 - (c) omit subsections (2), (3) and (4).
- (25) Omit section 265.
- (26) After section 283, insert—

“CHAPTER 5A

MASTER-FEEDER STRUCTURES

Master-feeder structures

283A.—(1) The operator of a UK UCITS may not invest a higher proportion of the property which is subject to the collective investment scheme constituted by that UCITS in units of another UCITS than is permitted by rules made by the Authority implementing Article 55 of the UCITS directive unless the investment is approved by the Authority in accordance with this section.

(2) An application for approval under subsection (1) of an investment must be made by the operator of the UK UCITS in such manner, and accompanied by such information, as is required by rules made by the Authority.

(3) The Authority must grant an application made under subsection (2) if it is satisfied—

- (a) that the UCITS, its operator, trustee or depositary and auditor and the UCITS in which it proposes to invest, and its operator, have complied with—
 - (i) the requirements laid down in Chapter VIII of the UCITS directive, and
 - (ii) any other requirements imposed by the Authority in relation to the application;
- (b) in a case where the application is made by the operator of a feeder UCITS in respect of the investment of the proceeds of the winding-up of its master UCITS, that the proceeds of the winding up are to be paid to the feeder UCITS before the date on which the investment is to be made.

(4) In a case within subsection (3)(b), approval must be subject to the conditions in subsections (5) and (6).

(5) The first condition is that the feeder UCITS is to receive the proceeds of the winding-up—

- (a) in cash; or
- (b) wholly or partly in assets other than cash in a case where the feeder UCITS so elects and each of the following so permits—
 - (i) the decision of the master UCITS that it should be wound up;
 - (ii) the trust deed or instrument of incorporation of the feeder UCITS; and

(iii) either the agreement between the feeder UCITS and its master UCITS, or the internal conduct of business rules operated by the feeder UCITS and the master UCITS in accordance with rules made by the Authority.

(6) The second condition is that cash received by the feeder UCITS in accordance with paragraph (5)(a) may not be reinvested before the date on which the feeder UCITS proposes to invest in the new UCITS, except for the purpose of efficient cash management.

(7) The Authority must, within 15 working days of the date on which the Authority had received all the information required in relation to the application, give written notice to the operator—

- (a) that the Authority approves its application, or
- (b) that the Authority objects to the application.

(8) Following receipt of notice that the Authority objects to the application, the operator may refer the Authority's decision to the Tribunal.

Reports on derivative instruments

283B.—(1) An authorised person who is the management company in relation to a UCITS must report to the Authority at specified intervals of not more than 12 months about any investment in derivative instruments during the specified period to which the report relates.

(2) The report must be in the specified form and contain the specified information.

(3) The Authority must review the regularity and completeness of the information provided by each management company under subsection (1).

(4) In this section, “specified” means specified—

- (a) in rules made by the Authority to implement the UCITS directive, or
- (b) in any directly applicable Community regulation or decision made under the UCITS directive.”.

(27) In section 301E(7)(**11**) for “Article 1a.2” substitute “Article 2.1(b)”.

(28) After section 351, insert—

“Disclosure under the UCITS directive

351A.—(1) This section applies in relation to a disclosure made by a person who falls within subsection (2) for the purpose of compliance with requirements set out in rules made by the Authority to implement Chapter VIII of the UCITS directive.

(2) The following persons fall within this subsection—

- (a) the auditor of an authorised unit trust scheme that is a master UCITS;
- (b) the trustee of an authorised unit trust scheme that is a master UCITS;
- (c) the auditor of an authorised unit trust scheme that is a feeder UCITS;
- (d) the trustee of an authorised unit trust scheme that is a feeder UCITS; or
- (e) a person acting on behalf of a person within paragraph (a), (b), (c) or (d) above.

(3) A disclosure to which this section applies is not to be taken as a contravention of any duty to which the person making the disclosure is subject.

(4) In this section, “authorised unit trust scheme”, “master UCITS” and “feeder UCITS” have the meaning given in section 237.”.

(11) Section 301A was first inserted by [S.I. 2007/126](#), and substituted by [S.I. 2009/534](#).

(29) In subsection (6)(a)(i) of section 380, subsection (9)(a)(i) of section 382, and subsection (7)(a) of section 384(**12**), in the definition of “relevant requirement”—

(a) after “regulation” insert “or decision”, and

(b) after “financial instruments directive” insert “or the UCITS directive”.

(30) In section 409(1), omit paragraph (e).

(31) In section 422A(7)(**13**) for “Article 1a.2” substitute “Article 2.1(b)”.

(32) In Schedule 1, in paragraph 6(1) and (3)(**14**)—

(a) for “Community regulation” substitute “Community regulation or decision”;

(b) after “markets in financial instruments directive” insert “or the UCITS directive”.

(33) In Schedule 3—

(a) for paragraph 4B(**15**) substitute—

“**4B.** “The UCITS directive” means the Directive of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (No [2009/65/EC](#)).”;

(b) in paragraph 5, for sub-paragraph (f)(**16**), substitute—

“(f) a management company (as defined in paragraph 11B) which is authorised (within the meaning of Article 6 of the UCITS directive) by its home state regulator.”;

(c) after paragraph 11A(**17**), insert—

“Management company

11B. “Management company” has the meaning given in Article 2.1(b) of the UCITS directive.

UCITS

11C. “UCITS” has the meaning given in Article 1.2 of the UCITS directive.”

(d) for paragraph 15A(**18**), substitute—

“Application for approval to manage UCITS

15A.—(1) An EEA firm falling within paragraph 5(f) which wishes to manage a UK UCITS must apply to the Authority in the specified form for approval to manage that UCITS.

(2) Where the EEA firm satisfies the conditions in paragraph 13 (establishment conditions) or paragraph 14 (service conditions), the Authority may only refuse the application if it determines that one of the grounds set out in sub-paragraph (3) applies.

(3) The grounds referred to in sub-paragraph (2) are—

(a) that the EEA firm does not comply with the UCITS home state rules;

(12) Sections 390, 382 and 384 were amended by [S.I. 2007/126](#).

(13) Sections 422 and 422A were substituted for section 422 by [S.I. 2009/534](#).

(14) Paragraph 6 of Schedule 1 was amended by [S.I. 2007/126](#).

(15) Paragraph 4B of Schedule 3 was inserted by [S.I. 2003/2066](#).

(16) Sub-paragraph (f) of paragraph 5 of Schedule 3 was inserted by [2003/2066](#).

(17) Paragraph 11A of Schedule 3 was inserted by [S.I. 2007/126](#).

(18) Paragraph 15A of Schedule 3 was inserted by [S.I. 2003/2066](#).

- (b) that the firm is not authorised by its home state regulator to manage the type of collective investment scheme for which authorisation is requested; or
 - (c) that the firm has not provided the documentation required under Article 20(1) of the UCITS directive.
- (4) The Authority must give a notice to the EEA firm, the firm's home state regulator and the Commission of the Authority's determination under sub-paragraph (2).
- (5) Before giving a notice under sub-paragraph (4), the Authority must consult the home state regulator of the firm.
- (6) A notice given by the Authority under sub-paragraph (4) must—
- (a) give the Authority's reasons for considering that one of the grounds set out in sub-paragraph (3) is satisfied; and
 - (b) specify a reasonable period (which may not be less than 28 days) within which any person to whom it is given may make representations to the Authority.
- (7) In this paragraph—
- “specified” means specified—
- (a) in rules made by the Authority to implement the UCITS directive, or
 - (b) in any directly applicable Community regulation or decision made under the UCITS directive;
- “UCITS home state rules” means requirements which are imposed by or under this Act so far as relating to matters falling within Article 19(3) and (4) of the UCITS directive.

Representations and references to the Tribunal

- 15B.**—(1) Within a reasonable time after the end of the period for making representations, the Authority must decide, in the light of any representations made to it during that period by a person to whom notice has been given under paragraph 15A(4), whether to withdraw the notice.
- (2) If the Authority decides not to withdraw its notice, it must—
- (a) give a decision notice to each person to whom the notice under paragraph 15A(4) was given, and
 - (b) inform the firm's home state regulator and the Commission that authorisation has been refused, and of the grounds for the refusal.
- (3) The management company to whom the decision notice is given may refer the matter to the Tribunal.

Information to home state regulator

- 15C.**—(1) Where an EEA firm falling within paragraph 5(f) has applied to manage a UCITS established in the United Kingdom, the Authority must without delay inform the home state regulator of that firm of any problem of which they are aware that may materially affect the ability of the firm—
- (a) to perform its duties properly, or
 - (b) to comply with the home state rules.
- (2) In sub-paragraph (1), “home state rules” means rules—
- (a) made by the EEA State concerned in accordance with the UCITS directive; and

- (b) which are the responsibility of that EEA State (both as to implementation and as to supervision of compliance) in accordance with that directive.”;
- (e) for paragraph 19(4), substitute—
 - “(4) The second is that—
 - (a) the Authority has given notice in specified terms (“a consent notice”) to the host state regulator; and
 - (b) where the firm is a management company which wishes to pursue the activity of collective portfolio management referred to in Annex II to the UCITS directive, the Authority has provided to the host state regulator—
 - (i) confirmation that the firm has been authorised as a management company pursuant to the provisions of the UCITS directive;
 - (ii) a description of the scope of the management company’s authorisation; and
 - (iii) details of any restriction on the types of UCITS that the management company is authorised to manage.”;
- (f) in paragraph 19(6), omit the words “the UCITS directive”;
- (g) after paragraph 19(6), insert—

“(6A) If the firm’s EEA right derives from the UCITS directive and the first condition is satisfied, the Authority must give a consent notice and information about the compensation scheme to the host state regulator unless it has reason to doubt the adequacy of the firm’s resources or its administrative structure, and must do so within two months beginning with the date on which it received the firm’s notice of intention.”;
- (h) after paragraph 19(12), insert—

“(12ZA) If the firm’s EEA right derives from the UCITS directive, the Authority must inform the Commission if it decides to refuse to give a consent notice, giving the reasons for that refusal.”;
- (i) after paragraph 20(3), insert—

“(3ZA) If the firm’s EEA right derives from the UCITS directive, the Authority must provide information about the compensation scheme with the information provided to the host state regulator under sub-paragraph (3).”;
- (j) after paragraph 20(3B)(19), insert—

“(3C) If the firm is a management company which wishes to pursue the activity of collective portfolio management referred to in Annex II to the UCITS directive, the Authority must send with the documentation provided to the host state regulator under sub-paragraph (3)—
 - (a) confirmation that the firm has been authorised as a management company pursuant to the provisions of the UCITS directive;
 - (b) a description of the scope of the management company’s authorisation; and
 - (c) details of any restriction on the types of UCITS that the management company is authorised to manage.”;
- (k) in paragraph 20(4B)(20) after “markets in financial instruments directive” insert “or the UCITS directive”;
- (l) after paragraph 20, insert—

(19) Paragraph 20(3B) was inserted by [S.I. 2003/1473](#).

(20) Paragraph 20(4B) of Schedule 3 was inserted by [S.I. 2001/1376](#) and amended by [S.I. 2007/126](#).

“Information for host state regulator

20ZA.—(1) The Authority must keep a record of the confirmation and other information provided to the host state regulator under paragraph 19(4) or paragraph 20(3C) in relation to a UK firm which is a management company.

(2) The Authority must inform the host state regulator whenever there is a change in the confirmation or other information referred to in sub-paragraph (1).”;

(m) after paragraph 20A(**21**), insert—

“Notice of intention to market

20B.—(1) The operator of a UCITS established in the United Kingdom may not exercise an EEA right to market the units of that UCITS in the territory of another EEA State unless the operator has given the Authority, in the specified way, notice of its intention to market the units (“notice of intention”) which contains, and is accompanied by, such information as may be specified in rules, or in regulations made by the European Commission under the UCITS directive.

(2) The Authority must ensure that the information referred to in sub-paragraph (1) may be transmitted to it electronically.

(3) The Authority must verify whether the information submitted with the notice of intention is complete and, within 10 days of the date on which the Authority received the complete information required, send to the host state regulator—

- (a) a copy of the notice of intention;
- (b) the accompanying information; and
- (c) confirmation that the operator and the UCITS fulfil the conditions imposed by the UCITS directive.

(4) The Authority must ensure that the host state regulator has electronic access to the information and documents referred to in sub-paragraph (3).

(5) The Authority must notify the operator immediately that the information referred to in sub-paragraph (3) has been sent to the competent authorities of the host state regulator.

(6) The operator may market the units of the UCITS in the territory of the host state regulator from the moment it receives the notification referred to in sub-paragraph (5).

(7) In this paragraph—

“operator” has the same meaning as in section 237 of this Act;

“specified” means specified in rules.”;

(n) After paragraph 25(**22**), insert—

“UK management companies: delegation of functions

26. Where a UK firm which is a management company and is providing services in the exercise of an EEA right to an EEA UCITS informs the Authority that it has delegated one or more of its functions to a third party, the Authority must transmit that information to the home state regulator of the EEA UCITS without delay.

(21) Paragraph 20A of Schedule 3 was inserted by [S.I. 2007/126](#).

(22) Paragraph 25 was inserted by [S.I. 2003/1473](#).

UK management companies: withdrawal of authorisation

27. Where a UK firm which is a management company has exercised an EEA right deriving from the UCITS directive to establish a branch or to provide services in another EEA State, the Authority must consult the home state regulator of any UCITS managed by that management company before taking a decision to withdraw the authorisation of the management company under section 33.

Management companies: request for information

28.—(1) Where a UK firm has applied to manage a UCITS which is established in another EEA State, the home state regulator of the UCITS may—

- (a) request further information from the Authority regarding the documents referred to in Article 20.1 of the UCITS directive, and
- (b) ask the Authority whether the type of UCITS for which the UK firm has applied to provide its services falls within the scope of the authorisation of the UK firm.

(2) The Authority must respond to a request under sub-paragraph (1)(a) or (b) within 10 working days of the date on which the request was received.”.