
STATUTORY INSTRUMENTS

2016 No. 225

**The Undertakings for Collective Investment
in Transferable Securities Regulations 2016**

Amendments to the Financial Services and Markets Act 2000

2.—(1) The Financial Services and Markets Act 2000(1) is amended as follows.

(2) In section 55J(2) (variation or cancellation on initiative of regulator), after subsection (7) insert—

“(7ZA) Without prejudice to the generality of subsections (1) and (2), if it appears to the FCA that there has been a serious failure, by a person with permission to carry on the regulated activity specified in article 51ZA of the Financial Services and Markets Act (Regulated Activities) Order 2001 (managing a UCITS), to comply with the requirements imposed—

- (a) by or under this Act in pursuance of the UCITS Directive(3), or
- (b) by the Undertakings for Collective Investment in Transferable Securities Regulations 2011(4),

the FCA may exercise its powers under this section to vary the Part 4A permission of the person concerned by removing that activity from those to which the permission relates, or to cancel the person’s Part 4A permission.”.

(3) In section 66A(4)(5) (misconduct: action by the FCA)—

- (a) omit the “or” at the end of paragraph (aa);
- (b) after paragraph (aa), insert—

“(ab) imposed by the Undertakings for Collective Investment in Transferable Securities Regulations 2011, or”.

(4) In section 168(4)(ja)(6) (appointment of persons to carry out investigations in particular cases)

- (a) omit the “or” at the end of sub-paragraph (i), and at the end of sub-paragraph (ii);
- (b) after sub-paragraph (ii), insert—

“(iii) any provision made by or under this Act for the purpose of implementing the UCITS Directive; or

(1) 2000 c.8.

(2) Section 55J was substituted by section 11(2) of the Financial Services Act 2012 (c. 21) and was subsequently amended by S.I. 2013/1773, S.I. 2013/3115, S.I. 2015/575, S.I. 2015/910 and S.I. 2015/1882.

(3) OJ L 302, 17.11.2009, p. 32. The term “UCITS Directive” is defined in paragraph 4B of Part I of Schedule 3 to the Financial Services and Markets Act 2000 (c.8).

(4) S.I. 2011/1613, amended by S.I. 2012/2015, S.I. 2013/472 and S.I. 2013/1388.

(5) Section 66A was inserted by section 32(2) of the Financial Services (Banking Reform) Act 2013 (c.33) and was amended by S.I. 2015/1864.

(6) Section 168(4) was amended by section 41 of, and paragraphs 8(1) and 8(4)(a) to (g) of Part 1 of Schedule 12 to, the Financial Services Act 2012 (c.21), by section 62 of, and paragraph 33(3) of Part 7 of Schedule 7 to, the Counter-Terrorism Act 2008 (c.28), by section 24(1) and (2) of, and paragraph 1 and 16 of Part 1 of Schedule 2 to, the Financial Services Act 2010 (c.28), and by S.I. 2007/126, S.I. 2012/2554 and S.I. 2013/1773.

- (iv) any provision made by the Undertakings for Collective Investment in Transferable Securities Regulations 2011; or.”
- (5) In section 204A (meaning of “relevant requirement” and “appropriate regulator”)—
- (a) in subsection (2)(7)—
- (i) omit the “or” at the end of paragraph (b);
- (ii) at the end of paragraph (c), insert—
- “, or
- (d) by the Undertakings for Collective Investment in Transferable Securities Regulations 2011.”.
- (b) for subsection (6), substitute—
- “(6) The FCA is “the appropriate regulator” in the case of a contravention of any other requirement imposed—
- (a) by or under this Act;
- (b) by the Alternative Investment Fund Managers Regulations 2013; or
- (c) by the Undertakings for Collective Investment in Transferable Securities Regulations 2011.”.
- (6) In section 380(6)(a)(8) (injunctions)—
- (a) omit the “or” at the end of sub-paragraph (ii);
- (b) omit the “or” at the end of the second sub-paragraph (iii);
- (c) renumber the second sub-paragraph (iii) as (iv);
- (d) at the end of sub-paragraph (v), insert—
- “, or
- (vi) which is imposed by the Undertakings for Collective Investment in Transferable Securities Regulations 2011.”.
- (7) In section 391(4A)(9), for “and 391B” substitute “, 391B and 391C”.
- (8) After section 391B(10) (publication: special provisions relating to the transparency obligations directive), insert—

“Publication: special provisions relating to the UCITS directive

391C.—(1) This section applies where a supervisory notice, decision notice or final notice relates to the imposition of a sanction or measure to which Article 99 of the UCITS directive applies.

(2) Where the FCA publishes information under section 391(4) or (5) about a matter to which a decision notice or supervisory notice relates and the person to whom the notice is given refers the matter to the Tribunal, the FCA must, without undue delay, publish on its official website information about the status of the appeal and its outcome.

(7) Section 204A was inserted by section 37(1) of, and paragraph 1 of Part 1, and paragraph 10 of Part 4 of Schedule 9 to, the Financial Services Act 2012. Subsection (2) was amended by [S.I. 2013/1773](#).

(8) Section 380(6) was amended by section 141 of, and paragraph 3(1) and (2) of Schedule 10 to, the Financial Services (Banking Reform) Act 2013, by section 37(1) of, and paragraph 1 of Part 1 of Schedule 9, and paragraphs 19(1) and (3) of Part 5 of Schedule 9 to, the Financial Services Act 2012, and by [S.I. 2013/1773](#) and [S.I. 2015/1755](#).

(9) Section 391(4A) was inserted by [S.I. 2013/3115](#) and amended by [S.I. 2015/1755](#).

(10) Section 391B was inserted by [S.I. 2015/1755](#).

(3) Subject to subsection (4), where the FCA gives a final notice, it must, without undue delay, publish on its official website information on the type and nature of the breach and the identity of the person on whom the sanction or measure is imposed.

(4) Subject to subsection (6), information about a matter to which a final notice relates must be published anonymously where—

- (a) the sanction or measure is imposed on an individual and, following an obligatory prior assessment, publication of personal data is found to be disproportionate;
- (b) failing to publish anonymously would jeopardise the stability of financial markets or an ongoing investigation; or
- (c) failing to publish anonymously would cause, insofar as it can be determined, disproportionate damage to the persons involved.

(5) Where subsection (4) applies, the FCA may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction or measure is imposed.

(6) Information about a matter to which a final notice relates must not be published where anonymous publication under subsection (4) is considered by the FCA to be insufficient to ensure—

- (a) that the stability of the financial markets would not be put in jeopardy; or
- (b) that the publication would be proportionate with regard to sanctions or measures which are considered by the FCA to be of a minor nature.

(7) Where the FCA publishes information in accordance with subsections (2) to (5), the FCA must—

- (a) ensure the information remains on its official website for at least five years, unless the information is personal data and the Data Protection Act 1998 requires the information to be retained for a different period; and
- (b) promptly report the information to ESMA.”.

(9) In Part 1 of Schedule 3 (EEA passport rights), at the end of paragraph 4B, insert “, as amended by [Directive 2014/91/EU](#) of the European Parliament and of the Council of 23rd July 2014(11).”.