

EXPLANATORY MEMORANDUM TO
THE BEARER CERTIFICATES (COLLECTIVE INVESTMENT SCHEMES)
REGULATIONS 2020

2020 No. 1346

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 Abolishing bearer certificates, also known as share warrants to bearer, or otherwise implementing measures to prevent their misuse, is required under international standards on anti-money laundering and tax transparency. This instrument closes a technical loophole which still allowed certain collective investment schemes to issue bearer certificates. By prohibiting bearer certificates and making provision for the cancellation and conversion of outstanding bearer certificates, this instrument will increase transparency around who owns and controls UK investment entities and will help deter and identify those who hide their interest in UK entities to facilitate illegal activities.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 This instrument applies to the whole of the United Kingdom.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom.
4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding Human Rights:

“In my view the provisions of the Bearers Certificates (Collective Investment Schemes) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Bearer certificates are unregistered shares owned by whoever physically holds the certificate. The bearer certificate certifies that the bearer of it is entitled to the shares represented by it and the legal title to the shares may be transferred by delivery of the certificate from one person to another with the intention of passing the title. No entry need be made in any register of members when such a transfer is made.

- 6.2 Following commitments made at the G8 summit in 2013, the UK Government began to legislate to abolish the issuance of bearer certificates. The Small Business, Enterprise and Employment Act 2015 (“SBEE 2015”) amended the Companies Act 2006 to prohibit the issuance of new bearer certificates by companies and provided for a transitional conversion of existing bearer certificates into ordinary registered shares within a certain time period.
- 6.3 Although these changes made significant progress in addressing a recommendation from the Organisation for Economic Cooperation and Development (“OECD”) as part of a review into tax transparency in the UK, a later review found that the SBEE 2015 provisions were not comprehensive, since two types of collective investment scheme registered in the UK maintain the power to issue bearer certificates: open-ended investment companies incorporated before 26 June 2017 and unauthorised unit trusts. The most recent OECD report is available [here](#).
- 6.4 An open-ended investment company (“OEIC”) is not a company formed under the Companies Acts, but is instead an investment fund in a corporate form. An OEIC is defined at s236 of the Financial Services and Markets Act 2000 (“FSMA 2000”) as provided for in the Open-Ended Investment Company Regulations 2001. An OEIC incorporated in the UK is regulated by the Financial Conduct Authority (“FCA”) which has issued regulations covering the constitution and management of OEICs.
- 6.5 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 prohibited OEICs authorised on or after 26 June 2017 from issuing bearer certificates.
- 6.6 A unit trust (“UT”) is a collective investment scheme where the property of the scheme is held on trust for the investors. The UT has a trustee and a trust deed and is an investment fund with investors and not a settlement or trust with beneficiaries.
- 6.7 A collective investment scheme making use of a UT structure is defined at s237 FSMA 2000. The rules for whether a UT can be authorised by the FCA to trade under favourable conditions is at s243 FSMA 2000. A UT is authorised when the FCA makes an order under s243. An authorised UT must conform to the FCA regulations for authorised investment funds as set out in the FCA’s handbook on Collective Investment Schemes. Authorised UTs are not permitted to issue bearer certificates. A UT that is not authorised by the FCA is an unauthorised unit trust (“UUT”).
- 6.8 After the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 came into force, bearer certificates could still lawfully be issued by OEICs formed before 26 June 2017 and by all UUTs, both of which are outside the scope of the Companies Act 2006.

7. Policy background

What is being done and why?

- 7.1 Bearer certificates have in the past been issued to ensure ease of transfer. This was of particular benefit upon the conception of bearer securities and before the advent of electronic trading of shares. At that time, it was considerably less onerous for the shareholder to transfer ownership by hand rather than to register the share through a number of intermediaries.
- 7.2 They are, by their nature, anonymous, infinitely transferable and an easy means of facilitating illicit activity such as tax evasion or money laundering. Fully abolishing

bearer certificates for these investment schemes will complete the work which started with SBEE 2015.

- 7.3 This instrument seeks to close a technical loophole that still allows two types of investment vehicle to issue bearer certificates: UK OEICs incorporated before 26 June 2017 and all UUTS will be prohibited from issuing bearer certificates. This will have minimal impact on businesses, as there is no evidence that bearer certificates have in fact been issued.
- 7.4 It is thought that these two types of investment scheme able to issue bearer certificates account for just 0.01% of legal entities in the UK (400 OEICs and 24 UUTs).
- 7.5 This instrument will prohibit all collective investment schemes (i.e. every type of entity covered by Part XVII of FSMA 2000) from issuing bearer certificates. This includes OEICs and UUTs. By including all collective investment schemes, this should future-proof the measure and dispense with the need for more complex definitions.
- 7.6 The effect of this will be that all shares or units issued must be in registered form, whether certificated or uncertificated, and their ownership registered. Since there is no evidence to suggest that such shares have in fact been issued, the main impact of this will be to ensure that the UK is meeting its international obligations, following a recommendation from the Global Forum on Transparency and Exchange of Information for Tax Purposes (part of the OECD).
- 7.7 The transitional provisions state that the OEIC or operator of a UUT must cancel any outstanding bearer certificates still held on 1 January 2022 with effect from that day and pay the value into a bank account.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There is no intention to consolidate any legislation.

10. Consultation outcome

- 10.1 All relevant entities were contacted, the policy intention explained and questions asked about bearer certificate use. None of the entities expressed concerns about the policy and none admitted to making use of bearer certificates.
- 10.2 For the SBEE 2015, fund industry representative bodies stated that they had no knowledge of bearer certificate use by collective investment schemes and that they were content for them to be abolished.

11. Guidance

- 11.1 There are no plans to issue specific statutory guidance for this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the impact on business will be extremely limited or nil.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 Since there is no evidence that bearer certificates have in fact been issued, no action is required to minimise the impact of the requirements on small businesses (employing up to 50 people).

14. Monitoring & review

- 14.1 A review provision is not appropriate for this legislation.
- 14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Economic Secretary to the Treasury has made the following statement:
“The expected net annualised impact on business is zero, which means that the expense associated with conducting a review would be disproportionate. The best available evidence suggests that there are very few or no bearer certificates in issuance, which would make it challenging to identify the very few investment schemes materially impacted by these regulations and carry out a review of their impact”.

15. Contact

- 15.1 Thomas Ralston at Her Majesty’s Treasury. Telephone: 02072706457 or email: Thomas.Ralston@HMTreasury.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Emily Bayley, Deputy Director for International Tax Strategy and Coordination, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Economic Secretary to the Treasury (John Glen) can confirm that this Explanatory Memorandum meets the required standard.