Draft Regulations laid before Parliament under paragraph 1 of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

EXITING THE EUROPEAN UNION
FINANCIAL SERVICES

The Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2018

Made - - - - ***

Coming into force in accordance with regulation 1

The Treasury, in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018(**1**), makes the following Regulations.

A draft of these Regulations has been approved by a resolution of each House of Parliament in accordance with paragraph 1 of Schedule 7 to the European Union (Withdrawal) Act 2018.

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2018 and come into force on exit day.

(2) For the purposes of these Regulations, "the EuSEF Regulation" means Regulation (EU) No 346/2013 of the European Parliament and the Council on European social entrepreneurship funds, as it forms part of domestic law and as modified by domestic law from time to time.

(**1**) 2018 c.16.

PART 2

Amendment of the European Social Entrepreneurship Funds Regulation

European Social Entrepreneurship Funds Regulation

2. The EuSEF Regulation is amended in accordance with this Part.

Subject matter, scope and definitions

3.—(1) In Article 1—

(a) in the first paragraph—

(i) for "EuSEF" substitute "SEF";

(ii) for "Union, thereby contributing to the smooth functioning of the internal market" substitute "United Kingdom";

(b) in the second paragraph—

(i) omit "uniform";

(ii) for "across the Union", in both places it occurs, substitute "in the United Kingdom".

(2) In Article 2—

(a) in paragraph 1—

(i) in point (a), for "point (b) of Article 3(2) of Directive 2011/61/EU" substitute "sub-paragraph (a) of regulation 9(1) of the AIFM Regulations(**2**)";

(ii) in point (b), for "Union" substitute "United Kingdom";

(iii) in point (c), for "competent authorities of their home Member State in accordance with point (a) of Article 3(3) of Directive 2011/61/EU" substitute "FCA in accordance with regulation 10 of the AIFM Regulations";

(b) in paragraph 2—

(i) for "to 20" substitute ", 18 and 19";

(ii) omit ", the second subparagraph of Article 21(3) and Articles";

(iii) for "authorised under Article 6 of Directive 2011/61/EU" substitute "who have permission under Part 4A of FSMA(**3**) to carry on the regulated activity specified by article 51ZC of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**4**) (managing an AIF)";

(iv) for "that manage" substitute "and who manage";

(v) for "EuSEF" substitute "SEF";

(vi) for "Union" substitute "United Kingdom";

(c) in paragraph 3, for the words from "undertakings" to the end substitute "UK UCITS (which has the meaning given in section 237 of FSMA)".

(3) In Article 3—

(a) in paragraph 1—

(**2**) S.I. 2013/1773, to which there are amendments not relevant to these Regulations.

(**3**) Part 4A of the Financial Services and Markets Act 2000 was substituted for Part 4 by section 11(2) of the Financial Services Act 2012 (c.21).

(**4**) S.I. 2001/544. Article 51ZC was substituted, with Articles 51ZA to 51ZG, for Article 51 by S.I. 2013/1773.

(i) in point (a) (definition of "collective investment undertaking") for "point (a) of Article 4(1) of Directive 2011/61/EU" substitute "regulation 3 of the AIFM Regulations";

(ii) in point (b) (definition of "qualifying social entrepreneurship fund")—

(aa) in the opening words, before "means" insert ", unless the contrary intention appears,";

(bb) in point (iii), for "territory of a Member State" substitute "United Kingdom";

(iii) in point (d) (definition of "qualifying portfolio undertaking")—

(aa) in point (i), for the words "regulated market" to the end, substitute "UK regulated market, an EU regulated market, a UK multilateral trading facility or an EU multilateral trading facility (as defined by points (13A), (13B), (14A) and (14B) of Article 2 of the Markets in Financial Instruments Regulation 2014);"

(bb) in point (v), in the opening words, for "a Member State" substitute "the United Kingdom,";

(cc) in point (v), in the second indent, for "home Member State of the manager of a qualifying social entrepreneurship fund and with each other Member State in which the units or shares of the qualifying social entrepreneurship funds are intended to be marketed" substitute "United Kingdom";

(iv) in point (e) (definition of "qualifying investments")—

(aa) in point (iii), for "in qualifying social entrepreneurship funds" substitute—

"in—

(aa) qualifying social entrepreneurship funds;

(bb) European qualifying social entrepreneurship funds (which has the meaning given to 'qualifying social entrepreneurship funds' in Article 3(1)(b) of this Regulation as it applies in the European Union, as amended from time to time);"

(bb) after point (v) insert—

"(vi) an instrument within the meaning of Article 3(1)(e)(ii) of this Regulation as it applies in the European Union, as amended from time to time;";

(v) in point (i) (definition of "marketing") for "Union" substitute "United Kingdom";

(vi) omit points (k), (l), (m) and (n) (definition of "home Member State", "host Member State", "competent authority" and "competent authority of the host Member State");

(vii) after point (j), insert—

"(o) 'the FCA' means the Financial Conduct Authority;

(p) 'FSMA' means the Financial Services and Markets Act 2000;

(q) 'the AIFM Regulations' means the Alternative Investment Fund Managers Regulations 2013;

(r) 'the Markets in Financial Instruments Regulation 2014' means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 as that Regulation forms part of domestic law and has effect from time to time.

Any reference in this Regulation to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the FCA containing rules made and guidance issued by the FCA under FSMA as the sourcebook has effect on exit day.";

(b) in paragraph 2, for "Commission shall be empowered to adopt delegated acts in accordance with Article 26 specifying" substitute "Treasury may by regulations specify".

Conditions for the use of the designation "EuSEF"

4.—(1) In Article 4—

(a) for "EuSEF" substitute "SEF";

(b) for "across the Union" substitute "in the United Kingdom".

(2) In Article 6, in paragraph 1—

(a) for "Section 1 of Annex II to Directive 2004/39/EC" substitute "Part 2 of Schedule 1 to the Markets in Financial Instruments Regulation 2014(**5**)";

(b) for "Section II of Annex II of Directive 2004/39/EC" substitute "Part 3 of Schedule 1 to the Markets in Financial Instruments Regulation 2014".

(3) In Article 9, in paragraph 5, for "Commission shall be empowered to adopt delegated acts in accordance with Article 26 specifying" substitute "Treasury may by regulations specify".

(4) In Article 10, in paragraph 2, for "Commission shall be empowered to adopt delegated acts in accordance with Article 26 specifying" substitute "Treasury may by regulations specify".

(5) In Article 11—

(a) in paragraphs 3 and 5 (in each place it occurs) for "competent authority of the home Member State", substitute "FCA";

(b) in paragraph 5—

(i) for "a Member State" substitute "the United Kingdom";

(ii) for "Union law" substitute "the law of the United Kingdom".

(6) In Article 12, omit paragraph 3.

(7) In Article 13—

(a) in paragraph 1, for "competent authority of the home Member State" substitute "FCA";

(b) in paragraph 4, for the words from "Article 4" to "market" substitute "rule 4.1.3 of the Disclosure Guidance and Transparency Rules sourcebook";

(c) omit paragraph 5.

(8) In Article 14—

(a) in paragraph 3, for the words from "Directive" to "trading" substitute "Part 6 of FSMA";

(b) in paragraph 4, for "Commission shall be empowered to adopt delegated acts in accordance with Article 26 specifying" substitute "Treasury may by regulations specify".

Supervision and administrative cooperation

5.—(1) In Article 15—

(a) in paragraph 1—

(i) for "EuSEF" substitute "SEF";

(**5**) Schedule 1 is inserted into the Markets in Financial Instruments Regulation 2014 by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.