Draft Regulations laid before Parliament under paragraph 2 of Schedule 2 to the European Communities Act 1972 and section 429(2) of the Financial Services and Markets Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2011 No.

FINANCIAL SERVICES AND MARKETS

The Undertakings for Collective Investment in Transferable Securities Regulations 2011

Made - - - -	***
Coming into force - -	***

The Treasury are a government department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to collective investment in transferable securities and other liquid assets, and to measures relating to investment firms and the provision of investment services.

A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament in accordance with paragraph 2 of Schedule 2 to the European Communities Act 1972, and section 429(2) of the Financial Services and Markets Act 2000(**3**).

The Treasury, in exercise of the powers conferred on them under section 2(2) of the European Communities Act 1972 and by sections 262, and 428 of the Financial Services and Markets Act 2000, make these Regulations.

PART 1

Citation and Commencement

1. These Regulations may be cited as the Undertakings for Collective Investment in Transferable Securities Regulations 2011, and come into force on 1st July 2011.

(**1**) S.I. 1993/2661; S.I. 2002/2840.
(**2**) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by the European Union (Amendment) Act 2008, Schedule, Part 1.
(**3**) 2000 c. 8.

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)(**4**), in paragraph (b)—

(a) after "regulation" insert "or decision", and

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

(3) After section 90(**5**), 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)(**6**), for "Article 1a.2" substitute "Article 2.1(b)".

(5) In section 145(**7**), 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—

"(iii) Article 77 of the UCITS directive,".

(6) In section 184(7)(**8**) 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.";

(**4**) Section 66(2) was amended by S.I. 2007/126.
(**5**) Section 90 was amended by S.I. 2005/1433.
(**6**) Section 140(3) was inserted by S.I. 2003/2066.
(**7**) Section 145(3B) was inserted by S.I. 2006/2975.
(**8**) Section 184 was substituted by S.I. 2009/534.

(c) in subsection (2), after "an EEA firm" insert "or an EEA UCITS".

(8) For section 195A(**9**), 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—

(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.

(**9**) Section 195A was inserted by S.I. 2007/126.

(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(**10**)—

(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—

(**10**) Section 199 was amended by S.I. 2007/126 and 2007/3253.

"**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)(**11**)—

(a) after "regulation" insert "or decision", and

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

(12) In section 206A(2)(**12**), 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(**13**), 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)—

(i) after the definition of "depositary", 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;

(**11**) Sections 205 and 206(1) were amended by S.I. 2007/126.
(**12**) Section 206A was inserted by the Financial Services Act 2010 (c.28), section 9, and amended by S.I. 2011/99.
(**13**) Section 213 was amended by the Banking Act 2009 (c.1), s. 170(2).