STATUTORY INSTRUMENTS

2019 No. 343

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES

The Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2019

Made - - - - 20th February 2019

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(**a**), 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 2019 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.

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**) 2018 c.16.

(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(**a**)";

(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(**b**) to carry on the regulated activity specified by article 51ZC of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**c**) (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—

(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);"

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

(**b**) 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).

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

(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(**a**)";

(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".

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

(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";

(ii) for "competent authority of their home Member State" substitute "FCA";

(iii) omit point (d);

(b) in paragraphs 2, 4 and 6, for "competent authority of the home Member State" substitute "FCA", in each place it occurs;

(c) in paragraph 3—

(i) for "entire territory of the Union" substitute "United Kingdom";

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

(iii) for "throughout the Union" substitute "in the United Kingdom";

(d) omit paragraph 5;

(e) in paragraph 6, in the second sub-paragraph—

(i) in the second sentence, for "competent authority" substitute "FCA";

(ii) for "relevant competent authority" substitute "FCA";

(f) for paragraphs 7 and 8 substitute—

"7. The FCA may make technical standards to specify further the information to be provided to it in the application for registration as set out in paragraph 1 and to specify further the conditions as set out in paragraph 2.

8. The FCA may make technical standards on standard forms, templates and procedures for the provision of information to it in the application for registration set out in paragraph 1 and the conditions set out in paragraph 2.";

(g) omit paragraph 9.

(2) In Article 15a—

(a) in paragraph 1—

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

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

(b) in paragraph 2—

(i) in the opening words, for "competent authority of the qualifying social entrepreneurship fund" substitute "FCA";

(ii) omit point (d);

(c) omit paragraph 3;

(d) in paragraph 4, for "Directive 2011/61/EU" substitute—

"the law of the United Kingdom or any part of the United Kingdom which was relied on immediately before exit day to implement Directive 2011/61/EU and its implementing measures—

(i) as they have effect on exit day, in the case of rules made by the FCA or by the PRA under FSMA, and

(ii) as amended from time to time, in all other cases.";

(e) in paragraph 5—

(i) omit "and having received any clarification and information referred to in paragraph 3";

(ii) for "competent authority of the qualifying social entrepreneurship fund" substitute "FCA";

(f) in paragraph 6, for "competent authority of the qualifying social entrepreneurship fund" substitute "FCA";

(g) in paragraph 7—

(i) for "entire territory of the Union" substitute "United Kingdom";

(ii) for "throughout the Union" substitute "in the United Kingdom";

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

(h) for paragraphs 8 and 9 substitute—

"8. The FCA may make technical standards to specify further the information to be provided to it in accordance with paragraph 2.

9. The FCA may make technical standards on standard forms, templates and procedures for the provision of information to it in accordance with paragraph 2.";

(i) omit paragraph 10.

(3) Omit Articles 15b to 17a.

(4) In Article 18—

(a) in paragraph 1—

(i) for "ESMA" substitute "The FCA";

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

(iii) omit ", as well as the countries in which those funds are marketed";

(b) in paragraph 2, for "ESMA" substitute "the FCA".

(5) In Article 19—

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

(b) omit paragraphs 1a to 3.

(6) Omit Articles 20 and 21.

(7) In Article 22—

(a) in paragraphs 1(c) and (d), 2(b) and 4, for "EuSEF" substitute "SEF" in each place it occurs;

(b) in paragraphs 1 and 2, in the opening words, for "competent authority" substitute "FCA";

(c) omit paragraph 3;

(d) in paragraph 4—

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

(ii) for "competent authority" substitute "FCA";

(e) omit paragraph 5.

(8) In Article 22a, for "competent authorities in accordance with Directive 2011/61/EU" substitute "the FCA in respect of AIFMs (as defined in regulation 4(1) of the AIFM Regulations) under FSMA or the AIFM Regulations".

(9) Omit Article 23.

(10) In Article 24—

(a) in paragraph 1, for "competent authorities or for ESMA" and for "competent authorities or by ESMA" substitute "FCA";

(b) omit paragraph 2;

(c) for paragraph 3, substitute—

"3. Where the FCA receives confidential information under this Regulation, the FCA may use it only in the course of its duties and for the purpose of administrative and judicial proceedings."

(11) Omit Article 25.

Transitional and final provisions

6.—(1) For Article 26 substitute—

"*Article 26*

1. Any power to make regulations conferred on the Treasury by this Regulation is exercisable by statutory instrument.

2. Such regulations may—

(a) contain incidental, supplemental, consequential and transitional provision; and

(b) may make different provision for different purposes.

3. A statutory instrument containing regulations made under this Regulation is subject to annulment in pursuance of a resolution of either House of Parliament.".

(2) Omit Articles 27 and 28.

(3) Omit the words from "This Regulation" to "Member States" immediately following Article 29.

PART 3

Transitional provision for managers and funds registered with the FCA before exit day

Application of regulation 8

7. Regulation 8 applies to a manager of a qualifying social entrepreneurship fund who, before exit day—

(a) is informed by the FCA that the manager has been registered as a manager of a qualifying social entrepreneurship fund, in accordance with Article 15(4) of Regulation (EU) No 346/2013 as it had effect before exit day; and

(b) has not otherwise ceased to meet the conditions in Regulation (EU) No 346/2013 for registration as a manager of a qualifying social entrepreneurship fund as those conditions had effect before exit day.

Managers treated as registered for the purposes of Article 15 of the EuSEF Regulation

8.—(1) A manager of a qualifying social entrepreneurship fund to whom this regulation applies is to be treated as registered in accordance with Article 15 of the EuSEF Regulation.

(2) Paragraphs 1, 2 and 4 of Article 15 of the EuSEF Regulation do not apply to a manager to whom this regulation applies.

(3) References in primary or secondary legislation to a manager of a qualifying social entrepreneurship fund that is registered in accordance with Article 15 of the EuSEF Regulation are to be read, unless the contrary intention appears, as including a manager to whom this regulation applies.

Funds treated as registered for the purposes of Article 15a of the EuSEF Regulation

9.—(1) A collective investment undertaking which, immediately before exit day, is a qualifying social entrepreneurship fund (as defined in Article 3(1)(b) of the EuSEF Regulation as it had effect immediately before exit day) is to be treated as registered in accordance with Article 15a of the EuSEF Regulation where, before exit day, the FCA informs the manager of that fund that the fund has been registered as a qualifying social entrepreneurship fund, in accordance with Article 15a(6) of Regulation (EU) No 346/2013 as it had effect before exit day.

(2) Paragraphs 1, 2, 4, 5 and 6 of Article 15a of the EuSEF Regulation do not apply to a manager in relation to any qualifying social entrepreneurship fund to which this regulation applies.

Interpretation

10. In this Part—

"FCA" means the Financial Conduct Authority;

"manager of a qualifying social entrepreneurship fund" has the meaning given by Article 3(1)(c) of the EuSEF Regulation.

Modification of the Alternative Investment Fund Managers Regulations 2013

11.—(1) The Alternative Investment Fund Managers Regulations 2013 are modified as follows.

(2) In respect of a manager to whom regulation 8 applies—

(a) regulation 10(4) (small registered UK AIFMs) has effect as if for sub-paragraph (c) there were substituted—

"(c) is treated as registered as a manager of a qualifying social entrepreneurship fund under Article 15 of the EuSEF Regulation, in accordance with regulation 8 of the European Social Entrepreneurship Funds (Amendment) (EU Exit) Regulations 2018.";

(b) Part 3 (small AIFMs) has effect as if regulations 11 to 13 were omitted.

(3) In respect of a fund to which regulation 9 applies, Part 3B (qualifying social entrepreneurship funds and qualifying venture capital funds) has effect as if regulations 23D and 23E were omitted.

Craig Whittaker
Paul Maynard

20th February 2019 — Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union (and in particular the deficiencies referred to in paragraphs (a), (b), (c) and (g) of section 8(2)). They amend Regulation (EU) No. 346/2013 of the European Parliament and of the Council on European social entrepreneurship funds.

These Regulations refer to sourcebooks made by the Financial Conduct Authority under the Financial Services and Markets Act 2000 (c.8). Sourcebooks made by the Financial Conduct Authority are available on https://www.handbook.fca.org.uk/handbook and copies of the rules referred to can be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN, where they are also available for inspection.

An impact assessment of the effect that this instrument, and other instruments made by HM Treasury under the European Union (Withdrawal) Act 2018 at or about the same time, will have on the costs of business, the voluntary sector and the public sector is available from HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is published alongside this instrument at www.legislation.gov.uk.

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