

2018 No. 698

FINANCIAL SERVICES AND MARKETS

The Money Market Funds Regulations 2018

Made - - - - *7th June 2018*

Laid before Parliament *11th June 2018*

Coming into force in accordance with regulation 1(2)

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to financial services.

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 make the following Regulations:

Citation and commencement

- 1.—(1) These Regulations may be cited as the Money Market Funds Regulations 2018.
- (2) These Regulations come into force—
- (a) 21 days after the day on which they are made, for the purposes of the exercise by the Financial Conduct Authority of any power to make rules, give directions or give guidance under sections 137A(1)(a)(c) and 139A(1)(d) and of paragraph 23(1)(b) of Schedule 1ZA to the Financial Services and Markets Act 2000(e), and
 - (b) on 21st July 2018, for remaining purposes.

Amendments to the Financial Services and Markets Act 2000

- 2.—(1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 55J (variation or cancellation on initiative of regulator)(f)—
- (a) in subsection (6A)(g), in paragraph (e)—
 - (i) omit the “or” at the end of sub-paragraph (iii);
 - (ii) at the end of sub-paragraph (iv) insert “; or”;

(a) S.I. 2012/1759.

(b) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 c.7. By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1993 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).

(c) Substituted by section 24(1) of the Financial Services Act 2012 (c.21).

(d) Substituted by section 24(1) of the Financial Services Act 2012.

(e) 2000 (c.8).

(f) Substituted by section 11(2) of the Financial Services Act 2012.

(g) Inserted by S.I. 2003/1773 and amended by S.I. 2015/1882.

- (iii) after that sub-paragraph insert—
 - “(v) a provision of the MMF Regulation or any directly applicable regulation or decision made under that Regulation.”;
- (b) in subsection (7ZA)(a)—
 - (i) omit the “or” at the end of paragraph (a);
 - (ii) at the end of paragraph (b) insert “or”;
 - (iii) after that paragraph insert—
 - “(c) by the MMF Regulation or any directly applicable regulation or decision made under that Regulation,”.
- (3) In section 194 (general grounds on which power of intervention is exercisable)(b)—
 - (a) in subsection (5)—
 - (i) omit the “or” at the end of paragraph (b);
 - (ii) at the end of paragraph (c) insert “; or”;
 - (iii) after that paragraph insert—
 - “(d) the MMF Regulation or any directly applicable regulation or decision made under that Regulation.”;
 - (b) after that subsection insert—
 - “(6) The FCA may exercise its powers of intervention in respect of an EEA UCITS if it appears to the FCA that the EEA UCITS has contravened, or is likely to contravene, a requirement imposed by the MMF Regulation or any directly applicable regulation or decision made under that Regulation.
 - (7) A reference in subsection (6) to an EEA UCITS includes, in a case where the UCITS is not a body corporate, a reference to its management company.”.
- (4) In section 237 (collective investment schemes: other definitions), in subsection (3)(c) omit the definitions of “EEA UCITS” and “UCITS”.
- (5) In section 242 (applications for authorisation of unit trust schemes)—
 - (a) for subsection (1) substitute—
 - “(1) The manager and trustee, or proposed manager and trustee, of a unit trust scheme may apply to the FCA for—
 - (a) an order declaring the scheme to be an authorised unit trust scheme;
 - (b) an order declaring the scheme to be an authorised money market fund.”;
 - (b) in subsection (3), for “The application” substitute “An application”.
- (6) In section 243 (authorisation orders)(d)—
 - (a) in the heading, at the end insert “: authorised unit trust schemes”;
 - (b) in subsection (1), for “242” substitute “242(1)(a)”;
 - (c) omit subsection (3).
- (7) After that section insert—

“243A Authorisation orders: authorised money market funds

(1) If, on an application under section 242(1)(b) in respect of a unit trust scheme, conditions A and B are met the FCA may make an order declaring the scheme to be an authorised money market fund.

(a) Inserted by S.I. 2016/225.
 (b) Amended by the section 12 of the Financial Services Act 2012, S.I. 2013/1773 and S.I. 2015/1882.
 (c) Amended by S.I. 2011/1613 and S.I. 2013/1388.
 (d) Amended by S.I. 2011/1613.

(2) Condition A is that the FCA is satisfied that the scheme will be able to comply with the requirements imposed on a money market fund under the MMF Regulation.

(3) Condition B is that—

- (a) the scheme is an authorised unit trust scheme, or
- (b) the scheme—
 - (i) is the subject of an application under section 242(1)(a), and
 - (ii) the conditions in section 243(1)(a) to (c) are met in relation to that application.

(4) If the FCA makes an order under subsection (1), it must give written notice of the order to the applicant.

(5) In this Chapter “authorisation order” means—

- (a) an order under section 243(1), or
- (b) an order under subsection (1) of this section.”.

(8) In section 244 (determination of applications)(a)—

- (a) in subsection (1), for “242” substitute “242(1)(a)”;
- (b) in subsection (1A), for the words from “section 242” to “UCITS” substitute “section 242(1)(a) in respect of a unit trust scheme which is a UCITS, or an application under section 242(1)(b).”.

(9) In section 257 (directions), in subsection (1)(b)(b)—

- (a) omit the “or” at the end of sub-paragraph (i);
- (b) at the end of sub-paragraph (ii) insert “or”;
- (c) after sub-paragraph (ii) insert—
 - “(iii) by the MMF Regulation or any directly applicable regulation or decision made under that Regulation;”.

(10) In section 261C (applications for authorisation of contractual schemes)(c)—

- (a) for subsection (1) substitute—
 - “(1) The operator and depositary, or proposed operator and depositary, of a contractual scheme may apply to the FCA for—
 - (a) an order declaring the scheme to be an authorised contractual scheme;
 - (b) an order declaring the scheme to be an authorised money market fund.”;
- (b) in subsection (2) for “The application” substitute “An application under subsection (1)(a)”;
- (c) after that subsection insert—
 - “(2A) An application under subsection (1)(b) must—
 - (a) be made in such a manner as the FCA may direct, and
 - (b) contain or be accompanied by such information as the FCA may reasonably require for the purpose of determining the application.”.

(11) In section 261D (authorisation orders)(d)—

- (a) in the heading, at the end insert “: authorised contractual schemes”;
- (b) in subsection (1), for “261C” substitute “261C(1)(a)”;
- (c) omit subsection (3).

(a) Amended by S.I. 2011/1613.

(b) Substituted by S.I. 2011/1613.

(c) Inserted by S.I. 2013/1388.

(d) Inserted by S.I. 2013/1388 and amended by S.I. 2013/1773.

(12) In section 261E (authorisation orders: holding of units)(a), in the heading, for “Authorisation orders” substitute “Authorised contractual schemes”.

(13) After that section insert—

“261EA Authorisation orders: authorised money market funds

(1) If, on an application under section 261C(1)(b) in respect of a contractual scheme, conditions A and B are met the FCA may make an order declaring the scheme to be an authorised money market fund.

(2) Condition A is that the FCA is satisfied that the scheme will be able to comply with the requirements imposed on a money market fund under the MMF Regulation.

(3) Condition B is that—

- (a) the scheme is an authorised contractual scheme, or
- (b) the scheme—
 - (i) is the subject of an application under section 261C(1)(a), and
 - (ii) the conditions in section 261D(1)(a) to (c) are met in relation to that application.

(4) If the FCA makes an order under subsection (1), it must give written notice of the order to the applicant.

(5) In this Chapter “authorisation order” means—

- (a) an order under section 261D(1), or
- (b) an order under subsection (1) of this section.”.

(14) In section 261F (determination of applications)(b)—

- (a) in subsection (1), for “261C” substitute “261C(1)(a)”;
- (b) in subsection (2), for the words from “261C” to “UCITS” substitute “261C(1)(a) in respect of a contractual scheme which is a UCITS, or an application under section 261C(1)(b),”.

(15) In section 261X (directions), in subsection (1)(b)(c)—

- (a) omit the “or” at the end of sub-paragraph (i);
- (b) at the end of sub-paragraph (ii) insert “or”;
- (c) after sub-paragraph (ii) insert—
 - “(iii) by the MMF Regulation or any directly applicable regulation or decision made under that Regulation;”.

(16) In section 398 (misleading the FCA or PRA), in subsection (1A)(d)—

- (a) omit the “or” at the end of paragraph (g);
- (b) at the end of paragraph (h), insert “; or”;
- (c) after that paragraph insert—
 - “(i) the MMF Regulation.”.

(17) In section 417 (definitions), in subsection (1)(e), at the appropriate places insert the following definitions—

““MMF Regulation” means Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds;”;

(a) Inserted by S.I. 2013/1388.

(b) Inserted by S.I. 2013/1388.

(c) Inserted by S.I. 2013/1388.

(d) Inserted by S.I. 2013/1773 and amended by S.I. 2015/1882, S.I. 2016/680, S.I. 2017/701 and S.I. 2018/135.

(e) Amended by section 49(1) of the Financial Services Act 2012, S.I. 2013/1773 and S.I. 2013/2115. There are other amendments but none is relevant.

““UCITS” has the meaning given in Article 1.2 of the UCITS directive;”.

(18) In section 425 (expressions relating to authorisation elsewhere in the single market)(a), in subsection (1)—

- (a) omit the “and” at the end of paragraph (a);
- (b) after that paragraph insert—

“(aa) “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”.

(19) In Schedule 3 (EEA Passport Rights), omit paragraph 11C(b).

Amendments to the Open-Ended Investment Companies Regulations 2001

3.—(1) The Open-Ended Investment Companies Regulations 2001(c) are amended as follows.

(2) In regulation 2(1)(d) (interpretation)—

- (a) in the appropriate place insert ““MMF Regulation” means Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds;”;
- (b) in the definition of “authorisation order” for “regulation 14” substitute “regulation 14(1) or regulation 14(1A)”.

(3) In regulation 12 (applications for authorisation)—

- (a) before paragraph (1) insert—

“(A1) An application for an authorisation order in respect of a body may be made to the Authority for—

- (a) an order declaring the body to be an open-ended investment company;
- (b) an order declaring the body to be a money market fund.”.

- (b) in paragraph (1) omit “in respect of a proposed open-ended investment company”.

(4) In regulation 14 (authorisation) after paragraph (1) insert—

“(1A) Where an application is made under regulation 12(A1)(b) the Authority may make an authorisation order in respect of a body as a money market fund if conditions A and B are met.

- (a) Condition A is that the Authority is satisfied that the body will be able to comply with the requirements imposed on a money market fund under the MMF Regulation.
- (b) Condition B is that—
 - (i) the body is an open-ended investment company; or
 - (ii) the body is the subject of an application under regulation 12(A1)(a) and the requirements in regulation 15 are met in relation to that application.”.

(5) In regulation 15 (requirements for authorisation) in paragraph (1) after “regulation 14(1)(a)” insert “and 14(1A)(b)”.

(6) In regulation 25 (directions) after paragraph (1)(b)(ii) insert—

“(iii) has contravened a provision of the MMF Regulation; or”.

(a) Amended by S.I. 2003/2066 and S.I. 2013/1773. There are other amendments but none is relevant.

(b) Inserted by S.I. 2011/1613.

(c) S.I. 2001/1228.

(d) Regulation 2(1) was amended by S.I. 2001/3755, S.I. 2003/2066, S.I. 2008/948, S.I. 2009/533 and S.I. 2011/3049.

Amendments to the Alternative Investment Fund Managers Regulations 2013

4.—(1) The Alternative Investment Fund Managers Regulations 2013(a) are amended as follows.

(2) In regulation 2(1)(b) (interpretation) insert the following definitions in the appropriate places—

““MMF Regulation” means Regulation 2017/1131 of the European Parliament and of the Council of 14th June 2017 on Money Market Funds;

“MMF” for the purposes of these Regulations means an AIF that is authorised as a money market fund under Article 5 of the MMF Regulation;”.

(3) After Part 3B (qualifying social entrepreneurship funds and qualifying venture capital funds)(c) insert—

“PART 3C

MMFs

Manner of application for MMF authorisation

23G.—(1) An application for an AIF to be authorised as an MMF under Article 5 of the MMF Regulation must—

- (a) be made in such a manner as the FCA may direct; and
- (b) contain or be accompanied by such information as the FCA may reasonably require for the purpose of determining the application.

(2) At any time after receiving an application and before determining it, the FCA may require the applicant to provide it with such further information as it considers necessary to enable it to determine the application.

(3) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(4) The FCA may require an applicant to provide information which it is required to give under paragraph (1)(b) or paragraph (2) in such form, or to verify it in such manner, as the FCA may specify.

Procedure in relation to the refusal of an application for MMF authorisation

23H.—(1) If the FCA proposes to refuse an application made in respect of an AIF for authorisation as an MMF under Article 5 of the MMF Regulation, it must give the applicant a warning notice.

- (2) If the FCA decides to refuse an application—
 - (a) it must give the applicant a decision notice; and
 - (b) the applicant may refer the matter to the Tribunal.

Procedure in relation to the revocation of MMF authorisation otherwise than by consent

23I.—(1) If the FCA proposes to revoke the authorisation of an MMF otherwise than by consent, the FCA must give separate warning notices to the AIFM and the depositary of the MMF.

(a) S.I. 2013/1773.

(b) Regulation 2(1) was amended by S.I. 2013/1797, S.I. 2014/1292 and S.I. 2015/1882.

(c) Part 3B was inserted by S.I. 2018/134.

(2) If the FCA decides to revoke the authorisation of an MMF otherwise than by consent—

- (a) the FCA must give each of the AIFM and the depositary a decision notice; and
- (b) either of them may refer the matter to the Tribunal.”.

Amendments to the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013

5.—(1) The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013(a) is amended as follows.

(2) In article 1(2)(b) (citation, commencement and interpretation) in the appropriate place, insert—

““MMF Regulation” means Regulation (EU) No 2017/1131 of the European Parliament and of the Council of 14th June 2017 on Money Market Funds;”.

(3) In article 2(c) (qualifying EU provisions: general) in paragraph (2) after sub-paragraph (l), insert—

“(m)the MMF Regulation and any directly applicable regulation or decision made under that Regulation.”.

(4) In article 3(d) (qualifying EU provisions: disciplinary measures)—

(a) in paragraph (2), after sub-paragraph (o), insert—

“(p) the MMF Regulation and any directly applicable regulation or decision made under that Regulation.”.

(b) in paragraph (3), after sub-paragraph (m), insert—

“(n) in relation to a contravention of a requirement imposed by the MMF Regulation or any directly applicable regulation or decision made under that Regulation, the FCA.”.

(5) In article 5(e) (qualifying EU provisions: injunctions and restitution)—

(a) in paragraph (2), after sub-paragraph (o), insert—

“(p) the MMF Regulation and any directly applicable regulation or decision made under it.”;

(b) in paragraph (5), after sub-paragraph (n), insert—

“(o) in relation to a contravention of a requirement imposed by the MMF Regulation or any directly applicable regulation or decision made under that Regulation, the FCA.”.

(6) In article 6(f) (qualifying EU provisions: fees), in paragraph (2), after sub-paragraph (q), insert—

“(r) the MMF Regulation and any directly applicable regulation or decision made under that Regulation.”.

(a) S.I. 2013/419.

(b) Article 1(2) was amended by S.I. 2013/1773, S.I. 2014/3348, S.I. 2015/1882, S.I. 2017/1127, S.I. 2018/134 and S.I. 2018/135.

(c) Article 2(2) was amended by S.I. 2013/1773, S.I. 2014/2879, S.I. 2015/1882, S.I. 2016/680, S.I. 2017/701 and S.I. 2018/546.

(d) Article 3(2) and (3) was amended by S.I. 2013/1773, S.I. 2014/2879, S.I. 2014/2248, S.I. 2015/1882, S.I. 2016/715, S.I. 2016/936, S.I. 2017/701, S.I. 2017/1127, S.I. 2018/135 and S.I. 2018/546.

(e) Article 5(2) and (5) was amended by S.I. 2013/1773, S.I. 2014/2879, S.I. 2014/3348, S.I. 2015/1882, S.I. 2016/680, S.I. 2016/715, S.I. 2016/936, S.I. 2017/701, S.I. 2017/1127 and S.I. 2018/546.

(f) Article 6(2) was amended by S.I. 2013/1773, S.I. 2014/2879, S.I. 2014/3348, S.I. 2015/1882, S.I. 2016/680, S.I. 2016/715, S.I. 2017/701, S.I. 2017/1127 and S.I. 2018/546.

Review

6.—(1) The Treasury must, from time to time—

- (a) carry out a review of the regulatory provision contained in regulations 2 to 5 of these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report under this regulation must be published before 21st July 2023.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015^(a) requires that a report published under this regulation must, so far as is reasonable, have regard to how the obligations under Articles 4 and 5 of Regulation (EU) No 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds are implemented in other member States.

(5) In this regulation, “regulatory provisions” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

*Andrew Stephenson
Craig Whittaker*

7th June 2018

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 relation to Regulation (EU) No 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169 30.6.2017) which will apply in the United Kingdom from 21st July 2018 (“the Regulation”). These Regulations make amendments to ensure that the Financial Conduct Authority is able to authorise money market funds and enforce the provisions of the EU Regulation on the day that it comes into force.

Regulation 2 amends the Financial Services and Markets Act 2000 (c.8) to provide powers of authorisation and intervention for the Financial Conduct Authority in respect of unit trust funds and contractual schemes, both of which may be types of money market fund.

Regulation 3 amends the Open-Ended Investment Companies Regulations 2001 (S.I. 2001/1228) in order to allow funds which are open-ended investment companies to apply to become money market funds, or for funds which apply to be authorised as an open-ended investment company to be authorised as a money market fund at the same time.

Regulation 4 amends the Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773) to make provision for the Financial Conduct Authority to direct the manner in which an application may be made for an alternative investment fund to be authorised as a money market fund, and the process for intervention by the Financial Conduct Authority in respect of such a fund.

Regulation 5 makes minor amendments to the Financial Services and Markets Act 2000 (Qualifying European Union Provisions) Order 2013 (S.I. 2013/419) by inserting the Regulation in order to enable the Financial Conduct Authority to investigate and bring enforcement action against funds directly for breach of the Regulation.

^(a) 2015 c.26. Section 30(3) was amended by the Enterprise Act 2016 (c.12), section 19.

A full regulatory impact assessment has not been produced for this instrument as no impact on the public or voluntary sector is foreseen. There will be an impact on asset management firms which will be required to pay fees to the Financial Conduct Authority for authorisation of money market funds. These fees are set by the Financial Conduct Authority to meet the costs of authorisation and supervision and are expected to be minimal. The Financial Conduct Authority has consulted on its approach to fees.

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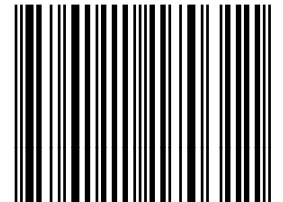
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.00

UK201806071011 06/2018 19585

<http://www.legislation.gov.uk/id/uksi/2018/698>

ISBN 978-0-11-117031-1



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