

Consultation draft November 2015.

Draft Order laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and sections 784(3) and 1290 of the Companies Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2016 No.

FINANCIAL SERVICES AND MARKETS

The Uncertificated Securities (Amendment) Regulations 2016

Made - - - - ***

Coming into force - - ***

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

In accordance with section 789 of the Companies Act 2006(c), the Treasury have carried out such consultation as appeared to them to be appropriate.

In accordance with sections 784(3) and 1290 of the Companies Act 2006 and paragraph 2(2) of Schedule 2 to the European Communities Act 1972(d), a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament.

The Treasury, in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972 and sections 784, 785, 788 and 1292 of the Companies Act 2006(e), make the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Uncertificated Securities (Amendment) Regulations 2016 and come into force on [] 2016.

Amendments to the Uncertificated Securities Regulations 2001

2.—(1) The Uncertificated Securities Regulations 2001(f) are amended as follows.

(2) After regulation 2 (purpose and basic definition) insert— [*Article 49(1) of CSDR*]

(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).

(c) 2006 c.46.

(d) Paragraph 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006.

(e) Section 785 was amended by section 112 of the Financial Services Act 2012 (c.21).

(f) S.I. 2001/3755.

“Application of Regulations [Art 49(1) of CSDR]

2A.—(1) Except as provided in paragraphs (2) and (3), these Regulations only apply in relation to securities—

- (a) title to which is evidenced or to be evidenced in a relevant system operated by any Operator, and
- (b) which are governed by the law of any part of the United Kingdom.

(2) Title to EEA shares may be evidenced in, and transferred by means of, a relevant system, where an Operator approves the EEA company’s application in respect of that class of shares under Article 49(1) of the CSD regulation(a).

(3) Title to EEA securities may be evidenced in, and transferred by means of, a relevant system, where an Operator approves the issuer’s application in respect of those securities under Article 49(1) of the CSD regulation.

(4) Where paragraph (2) or (3) applies, the EEA shares or EEA securities continue to be governed by the corporate or similar law of the EEA State concerned (and regulations 4 to 48 do not apply).

(5) In this regulation—

“EEA company” means a company governed by the law of an EEA state other than the United Kingdom;

“EEA securities” means securities to which Article 49(1) of the CSD regulation applies, other than EEA shares, which are governed by the law of an EEA state other than the United Kingdom;

“EEA shares” means securities specified in point (44)(a) of Article 4(1) of Directive 2014/65/EU of the European Council and of the Parliament of 15 May 2014 on markets in financial instruments(b) to which Article 49(1) of the CSD regulation applies, which are governed by the law of an EEA state other than the United Kingdom.”.

(3) In regulation 3(1) (interpretation)—

(a) in the appropriate place insert—

““CSD regulation” means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories;”;

(b) in the definition of “officer”, in sub-paragraph (c)(c) after “governing body;” for “or” substitute “and in the case of an Operator falling within paragraph (a) of the definition of “Operator”,”;

(c) for the definition of “Operator”(d) substitute— [*Arts 23, 25 and 49 of CSDR*]

““Operator” means a person operating or proposing to operate a relevant system who is—

(a) a recognised CSD within the meaning of section 285(1)(e) of the 2000 Act(e),

(b) an EEA CSD within the meaning of section 285(1)(f) of the 2000 Act, or

(c) a third country CSD within the meaning of section 285(1)(g) of the 2000 Act;”;

(d) in the definition of “securities” at the end insert “, but does not include EEA securities within the meaning of regulation 2A”;

(e) in the definition of “settlement”, omit “except in paragraph 28 of Schedule 1,”. [*consequential to Schedule 1 amendments*]

(4) Omit regulation 4(a) (applications for approval). [*Art 17 of CSDR*]

(a) OJ No L257, 28.8.2014, p1.

(b) OJ No L173, 12.6.2014, p.349.

(c) The definition of “officer” was amended by S.I. 2009/1889.

(d) The definition of “Operator” was amended by S.I. 2013/632.

(e) 2000 c.8; section 285(1)(e) to (g) was inserted by S.I.[*The Central Securities Depositories Regulations 2016*].

(5) For regulation 5(b) (grant and refusal of approval) substitute— [*Art 17 of CSDR*]

“Operating conditions for relevant system

5. Schedule 1(c) contains the requirements which must be satisfied with respect to the Operator, the Operator’s rules and practices and the relevant system.”.

(6) In regulation 6(d) (fees charged by the Bank of England), omit paragraph (1) and subparagraph (a) of paragraph (3). [*consequential*]

(7) Omit regulation 7(e) (withdrawal of approval). [*Art 20 of CSDR*]

(8) Omit regulation 12(f) (international obligations). [*consequential on Part 18 of FSMA*]

(9) Omit regulation 13(g) (prevention of excessive regulatory provision) and Schedule 2 (prevention of excessive regulatory provision). [*CSDR generally*]

(10) In regulation 14 (participation in respect of shares)— [*Art 49 of CSDR*]

(a) the existing text becomes paragraph (3);

(b) before paragraph (3) insert—

“(1) Paragraph (2) applies in respect of shares to which Article 49(1) of the CSD regulation applies, and paragraph (3) applies in respect of shares to which paragraph (2) does not apply.

(2) Title to shares in a company—

(a) which are recorded on an Operator register of members,

(b) which are of a class in relation to which regulation 15 applies or in relation to which a directors’ resolution passed in accordance with regulation 16 is effective, and

(c) which are of a class which the company permits to be held in uncertificated form and permits to be transferred by means of a relevant system,

may be transferred by means of a relevant system where the Operator approves the company’s application in respect of that class of shares under Article 49(1) of the CSD regulation.”.

(11) In regulation 19(h) (participation in respect of securities other than shares), before paragraph (1) insert— [*Art 49 of CSDR*]

“(A1) Paragraph (A2) applies in respect of securities to which Article 49(1) of the CSD regulation applies, and paragraphs (1) to (4) apply in respect of securities to which paragraph (A2) does not apply.

(A2) Title to securities which are not shares and—

(a) which are recorded on an Operator register of securities, and

(b) which the issuer permits to be held in uncertificated form and permits to be transferred by means of a relevant system,

may be transferred by means of a relevant system where the Operator approves the issuer’s application in respect of those securities under Article 49(1) of the CSD regulation.”.

(12) In Schedule 1 (requirements for approval of a person as Operator)— [*Art 17 of CSDR and CSDR generally; level 2*]

(a) for the heading substitute “Requirements for operation of a relevant system”;

(a) Regulation 4 was amended by S.I. 2013/632.

(b) Regulation 5 was amended by S.I. 2013/632.

(c) Schedule 1 was amended by S.I. 2003/1633, 2007/124, 2013/472, 2013/504, 2013/632 and 2013/3115.

(d) Regulation 6 was amended by S.I. 2013/632.

(e) Regulation 7 was amended by S.I. 2013/632.

(f) Regulation 12 was amended by S.I. 2011/1043 and 2013/632.

(g) Regulation 13 was amended, and Schedule 2 was substituted, by S.I. 2013/632.

(h) Regulation 19 was amended by S.I. 2003/1633.

- (b) omit paragraphs 1 to 4;
- (c) in paragraph 5—
 - (i) for sub-paragraph (1) substitute—
 - “(1) A relevant system must satisfy the requirements of sub-paragraphs (3) to (6).”;
 - (ii) omit sub-paragraph (2);
 - (iii) in sub-paragraph (3)—
 - (aa) for paragraph (a) substitute—
 - “(a) in accordance with the specifications of the Operator, and those specifications shall provide that each dematerialised instruction is identifiable as being from the computers of the Operator or of a particular system-participant; or”;
 - (bb) in paragraph (b) omit “and” at the end of sub-paragraph (i) and sub-paragraph (ii);
 - (iv) in sub-paragraph (6), in the definition of “depository” after ““depository” means” insert “a CSD within the meaning of the CSD regulation or”; [*note: it is for consideration whether other provisions in paragraph 5 are incompatible with CSDR and should be removed.*]
- (d) omit paragraphs 6 to 8; [*note: it is for consideration whether some of this material might be re-framed so as to avoid inconsistency or overlap with CSDR rather than simply being omitted.*]
- (e) omit paragraphs 10 and 11;
- (f) omit paragraphs 23 and 24;
- (g) omit paragraph 25(a) and (d);
- (h) omit paragraphs 27 and 28.

(13) In Schedule 3(a) (procedure for refusal or withdrawal of approval as Operator, or for giving directions etc.)— [*Arts 17 and 20 of CSDR*]

- (a) for the heading substitute “Procedure for giving directions”;
- (b) in paragraph 1 omit sub-paragraphs (a) and (b);
- (c) in paragraph 2(a) omit “refuse the application, withdraw the approval or”;
- (d) in paragraph 5 omit “refuse the application, withdraw the approval, or”;
- (e) in paragraph 6(1)—
 - (i) omit sub-paragraphs (a) and (b);
 - (ii) after “decision” insert “and the reasons for its decision”;
- (f) omit paragraphs 7 and 8;
- (g) after paragraph 6 insert—

“9. If the Bank of England decides to give the direction, the Operator may refer the matter to the Upper Tribunal.

10. Part 9 of the 2000 Act (hearings and appeals) applies to a reference to the Upper Tribunal under paragraph 9 as it applies to a reference to the Upper Tribunal under the 2000 Act, with the following modifications—

- (a) a reference is a “disciplinary reference” for the purposes of section 133 of the 2000 Act(b) if it is in respect of a decision to give a direction under this Schedule;
- (b) section 133(1)(a) and (c) of the 2000 Act does not apply.”.

(a) Schedule 3 was amended by S.I. 2013/632.

(b) Section 133 was substituted by S.I. 2010/22 and amended by section 23 of the Financial Services Act 2012, paragraph 83 in Part 3 of Schedule 9 to the Crime and Courts Act 2013, section 4 of the Financial Services (Banking Reform) Act 2013 and S.I. 2013/1388 and 2014/3329.

Consequential amendments to the Companies Act 2006

3.—(1) The Companies Act 2006 is amended as follows.

(2) In paragraph 41 of Part 2 of Schedule 2(a) (specified persons, descriptions of disclosures etc. for the purposes of section 948 of the Companies Act 2006), for “approved under the Uncertificated Securities Regulations 2001 (SI 2001/3755) as an operator of a relevant system (within the meaning of those Regulations)” substitute “who is an operator of a relevant system for the purposes of the Uncertificated Securities Regulations 2001 (SI 2001/3755)”.

(3) In paragraph 56 of Part 2 of Schedule 11A(b) (specified persons, descriptions, disclosures etc. for the purposes of section 1224A of the Companies Act 2006), for “approved under the Uncertificated Securities Regulations 2001 (SI 2001/3755) as an operator of a relevant system (within the meaning of those regulations)” substitute “who is an operator of a relevant system for the purposes of the Uncertificated Securities Regulations 2001 (SI 2001/3755)”.

Consequential amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

4. In article 45 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(c) (sending dematerialised instructions)—

- (a) in paragraph (1), for “in respect of which an Operator is approved under the 2001 Regulations” substitute “within the meaning of the 2001 Regulations”;
- (b) in paragraph (3)(b) omit ““Operator”,”.

Consequential amendment to the Financial Services and Markets Act 2000 (Exemption) Order 2001

5. In Part 3 of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001 (persons exempt in respect of any regulated activity mentioned in article 5(1)), omit paragraph 37(d).

Consequential amendment to the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014

6. In article 13(11)(a) of the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014(e) (prohibitions: inter-bank payment systems), for paragraph (ii) of the definition of “inter-bank payment system” substitute—

“(ii) the operator of a relevant system for the purposes of the Uncertificated Securities Regulations 2001;”.

Transitional provisions: interpretation

7. In this regulation and in regulations 8 and 9—

“the Act” means the Financial Services and Markets Act 2000;

“CSD Operator” means a person established in the United Kingdom who immediately before [date on which the level 2 measures in Art 69(3) of CSDR enter into force] was an Operator approved under the Uncertificated Securities Regulations 2001 who—

- (a) operated a securities settlement system referred to in point (3) of Section A of the Annex to the CSD regulation in the United Kingdom, and

(a) Schedule 2 was substituted by S.I. 2009/1208.
(b) Schedule 11A was inserted by S.I. 2007/3494.
(c) S.I. 2001/544, amended by S.I. 2001/3544 and 2002/682.
(d) Paragraph 37 was amended by S.I. 2013/504.
(e) S.I. 2014/2080.

(b) provided at least one other core service listed in Section A of that Annex in the United Kingdom;

“commencement” means the coming into force of these Regulations;

“CSD regulation” means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories;

“recognised CSD”(a) has the meaning given in section 285 of the Act.

Transitional and saving provisions for Operators

8.—(1) The transition period for a CSD Operator begins with commencement.

(2) The transition period for a CSD Operator ends immediately after—

(a) the Bank determines its application under section 288A of the Act(b) in accordance with Article 17 of the CSD regulation and any directly applicable EU regulation made under that Article, or

(b) the end of the six month period specified in Article 69(2) of the CSD regulation, if the CSD Operator has not made an application under section 288A of the Act before the end of that period.

(3) Regulations 2 to 6 do not apply to a CSD Operator during its transition period.

(4) Nothing in these Regulations affects the validity of a CSD Operator’s approval as an Operator under the Uncertificated Securities Regulations 2001 during its transition period, and accordingly during that period the CSD Operator remains an Operator except where the approval is withdrawn during that period.

(5) Where—

(a) a CSD Operator has made an application under section 288A of the Act, and

(b) the Bank of England has determined that application in accordance with Article 17 of the CSD regulation and any directly applicable EU regulation made under that Article,

any previous approval as an Operator under the Uncertificated Securities Regulations 2001 shall cease to be valid.

Transitional and savings provisions for issuers

9.—(1) Paragraphs (2) and (3) apply where—

(a) title to units of a security to which Article 49(1) of the CSD regulation applies is recorded on the Operator register of securities of a CSD Operator immediately before the transition period for that CSD Operator ends (in accordance with regulation 8(2)), and

(b) the CSD Operator is recognised as a recognised CSD.

(2) The issuer of the security is not required to make a request under Article 49(2) of the CSD regulation for recording its securities in the CSD Operator.

(3) The fact that the issuer of the security has not made a request of the sort referred to in paragraph (2) does not prevent—

(a) title to units of that security continuing to be evidenced otherwise than by a certificate by virtue of the Uncertificated Securities Regulations 2001, and

(b) transfer of title to units of that security continuing to be subject to those Regulations.

(a) Definition to be inserted by the Central Securities Depositories Regulations 2016. Those Regulations will be made before the Uncertificated Securities (Amendment) Regulations 2016.

(b) To be inserted by the Central Securities Depositories Regulations 2016. Those Regulations will be made before the Uncertificated Securities (Amendment) Regulations 2016.

Review

10.—(1) The Treasury must from time to time—

- (a) carry out a review of regulations 2 to 9,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories (which is implemented in part by means of regulations 2 to 9) is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision made by regulations 2 to 9,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Name
Name

Date

Two of the Lords Commissioners of Her Majesty's Treasury