

STATES OF JERSEY



DRAFT EUROPEAN UNION (UNITED KINGDOM EXIT – ALTERNATIVE INVESTMENT FUNDS) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 11th February 2019
by the Minister for External Relations**

STATES GREFFE



Jersey

DRAFT EUROPEAN UNION (UNITED KINGDOM EXIT – ALTERNATIVE INVESTMENT FUNDS) (JERSEY) REGULATIONS 201-

REPORT

Background

On 29th March 2019, the United Kingdom will leave the European Union. Jersey operates financial services legislation independent to the UK and EU systems, but nevertheless certain amendments are needed to ensure the continued functioning of Jersey legislation. A series of miscellaneous amendments were brought forward in the Draft European Union (Financial Services – Miscellaneous Amendments) (Jersey) Regulations 201-, lodged as [P.11/2019](#).

Draft Regulations

The Draft European Union (United Kingdom Exit – Alternative Investment Funds) (Jersey) Regulations 201- (“draft Regulations”) make amendments to certain financial services Laws having regard to the United Kingdom’s exit from the European Union (Brexit). They ensure the continued functioning of Jersey’s alternative investment funds legislation, in particular of the following instruments –

- the [Financial Services \(Jersey\) Law 1998](#);
- the [Alternative Investment Funds \(Jersey\) Regulations 2012](#); and
- the [Alternative Investment Funds \(Jersey\) Order 2013](#).

Purpose of the draft Regulations

The purpose of the draft Regulations is to ensure that Jersey’s alternative investment funds legislation properly accounts for the UK’s ‘onshoring’ of the EU’s Directive 2011/61/EU, known as the Alternative Investment Funds Managers’ Directive (“AIFMD”). Jersey’s legislation in this area was designed bearing in mind that the UK is a member state of the EU. When the UK leaves the EU, it will onshore the AIFMD, and Jersey’s legislation needs to properly reference this. These amendments will ensure that Jersey’s Alternative Investment Funds legislation is ‘No Deal’ ready.

Financial and manpower implications

There are no financial or manpower implications as a result of the States adopting the draft Regulations.

Explanatory Note

These Regulations would make amendments in relation to alternative investment funds (“AIFs”), to reflect the departure of the United Kingdom (“UK”) from the European Union (“EU”).

Regulation 1 amends the Financial Services (Jersey) Law 1998, to update references to AIFs. The definition of an AIF is expanded to include schemes or arrangements that are AIFs for the purposes of the UK legislation (defined as the “UK AIFM Regulations”) that implements the EU Directive that governs managers of AIFs (the “EU AIFM Directive”). The reference to the UK legislation is ambulatory, so the definition will still apply despite whatever changes the UK may make in future to its legislation, after its departure from the EU. The amendments also make the definition of the EU AIFM Directive ambulatory (it currently includes amendments only up to 1st January 2013), so that the definition will still apply despite whatever changes the EU may make in future to its legislation. Subsequent references in the Financial Services (Jersey) Law 1998 to the EU AIFM Directive are then amended to include references to the UK AIFM Regulations.

Regulation 2 amends the Alternative Investment Funds (Jersey) Regulations 2012. Again a new definition is added for the “UK AIFM Regulations”, with an ambulatory reference, and the definition of an AIF is amended to include AIFs under the UK AIFM Regulations as well as the EU AIFM Directive. Again the definition of the EU AIFM Directive is made ambulatory. Other references to the EU AIFM Directive are similarly amended to include reference to the UK AIFM Regulations.

Regulation 3 amends the Alternative Investment Funds (Jersey) Order 2013. Under Article 10 of the Interpretation (Jersey) Law 1954, the new definition “UK AIFM Regulations”, and the amended definition of an AIF, in the Alternative Investment Funds (Jersey) Regulations 2012 will also apply to this Order. This Regulation therefore makes similar amendments to other references in this Order to the EU AIFM Directive, to include reference to the UK AIFM Regulations.

Regulation 4 provides the title by which these Regulations may be cited, and provides for the Minister for External Relations to bring the Regulations into force by Order on a day or days, and time or times, appointed by that Minister.



Jersey

**DRAFT EUROPEAN UNION (UNITED KINGDOM
EXIT – ALTERNATIVE INVESTMENT FUNDS)
(JERSEY) REGULATIONS 201-**

Arrangement

Regulation

1	Amendment of Financial Services (Jersey) Law 1998.....	7
2	Amendment of Alternative Investment Funds (Jersey) Regulations 2012.....	8
3	Amendment of Alternative Investment Funds (Jersey) Order 2013	8
4	Citation and commencement.....	9



Jersey

DRAFT EUROPEAN UNION (UNITED KINGDOM EXIT – ALTERNATIVE INVESTMENT FUNDS) (JERSEY) REGULATIONS 201-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 2 and 5A of the European Union Legislation (Implementation) (Jersey) Law 2014¹, have made the following Regulations –

1 Amendment of Financial Services (Jersey) Law 1998

In the Financial Services (Jersey) Law 1998² –

- (a) for the definition “AIF” in Article 1 there is substituted –
 - “ “AIF” means a scheme or arrangement that –
 - (a) is an AIF within the meaning of Directive 2011/61/EU, in relation to which an AIFM (as defined in that Directive) is an AIFM to which the provisions of that Directive apply; or
 - (b) is an AIF within the meaning of the UK AIFM Regulations, in relation to which an AIFM (as defined in those Regulations) is an AIFM to which the provisions of those Regulations apply;”;
- (b) in the definition “Directive 2011/61/EU” in Article 1, for “as in force on 1st January 2013” there is substituted “as amended from time to time”;
- (c) after the definition “trust property” in Article 1 there is inserted –
 - “ “UK AIFM Regulations” means the Alternative Investment Fund Managers Regulations 2013 of the United Kingdom (S.I. 2013/1773) as amended from time to time;”;
- (d) in Article 2(11) for “(where managing AIFs has the same meaning as in Directive 2011/61/EU)” there is substituted “(where “managing”, in relation to an AIF, has the same meaning as in Directive 2011/61/EU or in the UK AIFM Regulations, as the case may be)”;
- (e) after paragraph 23(1)(c) of Schedule 2, there is inserted –
 - “(ca) is a small third country AIFM within the meaning of the UK AIFM Regulations; or”;

- (f) in paragraph 23(2) of Schedule 2, for “that markets an AIF in a member State of the European Union or other EEA State to which Directive 2011/61/EU applies unless” there is substituted “that markets an AIF in the United Kingdom, in a member State of the European Union, or in any other EEA State to which Directive 2011/61/EU applies, unless”;
- (g) in paragraph 23(3)(a) of Schedule 2, for “in an EEA State” there is substituted “in the United Kingdom or in an EEA State”;
- (h) for paragraph 23(3)(b) of Schedule 2 there is substituted –
 - “(b) the laws of that country do not require compliance by that business with the UK AIFM Regulations or with Directive 2011/61/EU,”;
- (i) for paragraph 23(4)(b) of Schedule 2 there is substituted –
 - “(b) “marketing” has the meaning given in the UK AIFM Regulations or in Directive 2011/61/EU, as the case may be.”.

2 Amendment of Alternative Investment Funds (Jersey) Regulations 2012

In the Alternative Investment Funds (Jersey) Regulations 2012³ –

- (a) in the definition “AIFM” in Article 2, for “has the same meaning as in Directive 2011/61/EU” there is substituted “means an AIFM within the meaning of the UK AIFM Regulations or an AIFM within the meaning of Directive 2011/61/EU”;
- (b) in the definition “Directive 2011/61/EU” in Article 1, for “as in force on 1st January 2013” there is substituted “as amended from time to time”;
- (c) in the definition “marketing” in Article 2, for “in Directive 2011/61/EU” there is substituted “in the UK AIFM Regulations or in Directive 2011/61/EU, as the case may be”;
- (d) after the definition “subsidiary” in Article 2, there is inserted –
 - ““UK AIFM Regulations” means the Alternative Investment Fund Managers Regulations 2013 of the United Kingdom (S.I. 2013/1773) as amended from time to time;”;
- (e) for Article 3(1)(a) and (b), there is substituted –
 - “(a) it is an AIF within the meaning given in the UK AIFM Regulations, or an AIF within the meaning given in Directive 2011/61/EU;
 - (b) it is marketed in the United Kingdom, in a member State of the European Union, or in any other EEA State to which Directive 2011/61/EU applies;”.

3 Amendment of Alternative Investment Funds (Jersey) Order 2013

In the Alternative Investment Funds (Jersey) Order 2013⁴ –

- (a) in Article 2(1), for “to be marketed in a member State of the European Union or other EEA State to which Directive 2011/61/EU applies” there is substituted “to be marketed in the United Kingdom, in a member State of the European Union, or in any other EEA State to which Directive 2011/61/EU applies”;
- (b) in Article 2(3), for “for so long as the national laws of the EEA State in which the AIF is being marketed or managed do not require compliance by the AIF with Directive 2011/61/EU” there is substituted “for so long as the laws of the country in which the AIF is being marketed or managed do not require compliance by the AIF with the UK AIFM Regulations or with Directive 2011/61/EU”;
- (c) for Article 3(a) there is substituted –
 - “(a) the services of a depository that is not carrying on fund services business, within the meaning of Article 2(10) of the Financial Services (Jersey) Law 1998⁵, and is appointed under –
 - (i) the UK AIFM Regulations, or
 - (ii) Article 21 of Directive 2011/16/EU (whether or not the AIFM is an AIFM to which Article 36 of Directive 2011/61/EU applies);”;
- (d) for Article 3(b) there is substituted –
 - “(b) the services of an AIFM that –
 - (i) is –
 - (A) a small third country AIFM for the purposes of the UK AIFM Regulations, or
 - (B) an AIFM in respect of which Article 3(2) of Directive 2011/61/EU applies, and
 - (ii) is not treated as an AIF services business under Article 3 of, and Part 5 of Schedule 2 to, the Financial Services (Jersey) Law 1998.”;
- (e) in Article 4(5), for “the national laws of the EEA State in which the AIFM is marketing or managing that AIF do not require compliance by the AIFM with Directive 2011/61/EU” there is substituted “the laws of the country in which the AIFM is marketing or managing that AIF do not require compliance by the AIFM with the UK AIFM Regulations or with Directive 2011/61/EU”.

4 Citation and commencement

These Regulations may be cited as the European Union (United Kingdom Exit – Alternative Investment Funds) (Jersey) Regulations 201- and come into force on such day or days, and time or times, as the Minister for External Relations may by Order appoint.

-
- 1 *chapter 17.245*
 - 2 *chapter 13.225*
 - 3 *chapter 17.245.51*
 - 4 *chapter 17.245.52*
 - 5 *chapter 13.225*