
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Uncertificated Securities Regulations 2001 (S.I.2001/3755) (“the principal regulations”) to allow for the evidencing and transfer of title to “eligible debt securities” by means of a “relevant system” as defined in the principal regulations. “Eligible debt securities” principally comprise the non-material equivalents of the certificated securities known as money market instruments.

A new definition of “eligible debt security” is inserted into the principal regulations by regulation 3(h) of these Regulations. The definition includes a general category of securities that satisfy certain conditions as to their constitution and terms of issue. In addition, “eligible Northern Ireland Treasury Bill” and “eligible Treasury bill” are defined as special cases of eligible debt securities by new definitions inserted into the principal regulations by regulation 3(h) of these Regulations. Various enactments that define and govern the material equivalents of these special cases are applied, with modifications, to the relevant categories of eligible debt securities by regulation 14 of, and Schedule 1 to, these Regulations.

Regulation 4(2) of these Regulations inserts interpretation provisions into the principal regulations, in relation to the persons who are “issuers” or “participating issuers” of eligible debt securities, and in relation to the question of when a sum of money is to be regarded as payable at a determinable future time for the purposes of the definition of “eligible debt securities”. As regards the former, an “issuer” or a “participating issuer” of an eligible debt security for the purposes of the principal regulations is to be taken to be a reference to a person (“P”) who undertakes as principal to perform the payment obligation constituted by the security in accordance with its current terms of issue; and includes any other person who undertakes as principal to perform that obligation in accordance with those terms in the event that P fails to do so. However, for these purposes, a person who undertakes to perform an obligation under a contract of guarantee or other contract of suretyship is not to be regarded as undertaking to perform it as principal. In relation to sums of money payable at a determinable future time, new regulation 3(6) of the principal regulations provides that a sum of money is to be regarded as payable at a determinable future time if it is payable at a future time fixed by or in accordance with the current terms of issue of the security, or is payable at the expiry of a fixed period after the occurrence of a specified event which is certain to happen, even though the time of happening may be uncertain. For this purpose, a sum is not to be regarded as so payable if it is payable on the happening of a contingency. These interpretation provisions relate principally to the non-material equivalents of the category of money market instruments known as bankers' acceptances.

Regulation 3(a) to (f) and (i) to (q), and regulations 4(1) and 5 to 13 of these Regulations make additional amendments to the principal regulations in order to adapt the procedures set out in those Regulations to the evidencing and transfer of title to eligible debt securities.

In order to ensure that the various categories of securities referred to in the principal regulations as amended by these Regulations do not overlap, and that entries relating to eligible debt securities are recorded solely on an Operator register of eligible debt securities (see below), new definitions of “general local authority security”, “general public sector security” and “general UK Government security” are inserted into the principal regulations by regulation 3(h) of these Regulations. These new definitions cover the same categories as the previous definitions of “local authority security”, “public sector security” and “UK Government security” respectively, but with eligible debt securities excluded in each case. Regulations 4(1)(a), 6, 7 and 8(1)(a) and (4)(a) of these Regulations amend certain references in the principal regulations to confine them by reference to the new definitions,

in order to ensure that eligible debt securities are excluded from the operation of those provisions of the principal regulations.

Regulation 5 of these Regulations amends regulation 19(2) of the principal regulations to allow for the possibility that some eligible debt securities (i.e., the non-material equivalents of bankers' acceptances) may have more than one "issuer" (as explained above in relation to regulation 4(2)).

Regulation 8(1)(b), (2), (3) and (4)(b) and (c) of these Regulations amend regulation 21 of, and Schedule 4 to, the principal regulations to include references to registrars in relation to dematerialised loan instruments.

By virtue of provisions inserted into the principal regulations by regulation 9 of these Regulations, an Operator of a relevant system must maintain an "Operator register of eligible debt securities" in relation to each such security which is a participating security. Such a register must contain entries indicating the names and addresses of persons holding units of the security, and how many such units each person holds. Such entries are prima facie evidence, and in Scotland sufficient evidence (unless the contrary is shown) of the matters to which they relate (regulation 10, which inserts a new paragraph (8) into regulation 24 of the principal regulations).

Regulation 11 of these Regulations disapplies regulation 27(7) of the principal regulations in the case of eligible debt securities, in view of the nature of those securities.

Regulation 12 of these Regulations amends paragraphs 12 and 25(e)(ii) of Schedule 1 to the principal regulations with the effect that an Operator of a relevant system is not required to permit issuers of eligible debt securities to inspect an Operator register of eligible debt securities. This is in keeping with the nature of "eligible debt securities" as uncertificated counterparts to bearer securities, in relation to which the identity of the bearer need not be known to the issuer of the security.

Regulation 13 of these Regulations excludes eligible debt securities from the scope of paragraph 16(2) of Schedule 4 to the principal regulations. That subparagraph makes provision as to the location of registers which relate to securities issued by companies and which are required to be maintained by an Operator under the principal regulations.

Regulation 14 of, and Schedule 1 to, these Regulations apply and modify various enactments relating to the issue of specific kinds of securities by public authorities. The modifications of the Treasury Bills Act 1877 (c. 2) and the Treasury Bills Regulations 1968 (S.I. 1968/414) referred to in the definition of "eligible Treasury bill" (inserted into the principal regulations by regulation 3(h) of these Regulations) are set out in Part 1 of Schedule 1. A security constituted by a Treasury bill issued in accordance with these provisions as so modified amounts to an "eligible Treasury bill" for the purposes of the definition in the principal regulations. Similar modifications are carried out by Part 2 of Schedule 1 in relation to eligible Northern Ireland Treasury Bills, and Part 3 of Schedule 1 in relation to dematerialised loan instruments.

Various enactments are applied, with modifications, to eligible debt securities, by regulation 15 of, and Schedule 2 to, these Regulations. Regulation 15(2) and (3) contain interpretation provisions for the purposes of Schedule 2.