

2019 No. 403

EXITING THE EUROPEAN UNION
FINANCIAL SERVICES

**The Packaged Retail and Insurance-based Investment Products
(Amendment) (EU Exit) Regulations 2019**

Made - - - - *27th February 2019*

Coming into force in accordance with regulation 1(2)

The Treasury, in exercise of the powers conferred by section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018^(a), make the following Regulations.

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument was laid before, and approved by a resolution of, each House of Parliament.

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019.

(2) These Regulations come into force on exit day.

PART 2

**Amendment of the Packaged Retail and Insurance-based Investment Products
Regulations 2017**

**Amendment of the Packaged Retail and Insurance-based Investment Products
Regulations 2017**

2.—(1) The Packaged Retail and Insurance-based Investment Products Regulations 2017^(b) are amended as follows.

(2) Omit regulation 3 (designation of competent authority).

(a) 2018 c. 16.
(b) S.I. 2017/1127.

(3) In regulation 6 (administrative penalties and statements), in paragraph (1)(a), for paragraph (i) substitute—

- “(i) the PRIIPs regulation,
- (ia) any EU regulation, originally made under the PRIIPs regulation, which is retained direct EU legislation,
- (ib) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under the PRIIPs regulation on or after exit day.”.

(4) In Schedule 1 (application and modification of the Financial Services and Markets Act 2000 and secondary legislation), in paragraph 3 (statements of policy), in sub-paragraph (b)(ii), for the inserted paragraph (d) substitute—

- “(d) the gravity and the duration of the infringement;
- (e) the degree of responsibility of the person responsible for the infringement;
- (f) the impact of the infringement on retail investors’ interests;
- (g) the cooperative behaviour of the person responsible for the infringement;
- (h) any previous infringements by the person responsible for the infringement;
- (i) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.”.

PART 3

Amendment of retained direct EU legislation

CHAPTER 1

Regulation (EU) No 1286/2014

Amendment of Regulation (EU) No 1286/2014

3. Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) is amended as follows.

Subject matter and scope

4.—(1) In Article 1—

- (a) omit “uniform”;
- (b) after “PRIIP manufacturers” insert “before PRIIPs are made available to retail investors in the United Kingdom”;
- (c) after “the provision of the key information document to retail investors” insert “in the United Kingdom”;
- (d) for “enable retail investors” substitute “enable them”.

(2) In Article 2—

(a) for paragraph 1 substitute—

“1. This Regulation applies to—

- (a) PRIIP manufacturers in relation to PRIIPs which are, or are to be, made available to retail investors in the United Kingdom; and
- (b) persons advising on, or selling, PRIIPs.”;

(b) in paragraph 2—

- (i) in point (c), for “point (43) of Article 4(1) of Directive 2014/65/EU” substitute “point (23) of Article 2(1) of the markets in financial instruments regulation”;

- (ii) for point (d) substitute—
- “(d) non-equity securities (as defined in point (c) of Article 2(1) of Directive 2003/71/EC) issued by—
 - (i) the United Kingdom, any part of the United Kingdom, or a third country;
 - (ii) a local authority in the United Kingdom or one of the regional or local authorities of a third country;
 - (iii) a public international body of which the United Kingdom or a third country is a member; or
 - (iv) the Bank of England, the European Central Bank or the central bank of a third country;
- (da) shares in the capital of the Bank of England or of a central bank of a third country;
- (db) securities (as defined in point (a) of Article 2(1) of Directive 2003/71/EC) unconditionally and irrevocably guaranteed by—
 - (i) the United Kingdom, any part of the United Kingdom, or a third country; or
 - (ii) a local authority in the United Kingdom or one of the regional or local authorities of a third country;
- (dc) securities (as defined in point (a) of Article 2(1) of Directive 2003/71/EC) issued by associations with legal status or non-profit-making bodies recognised by the United Kingdom, any part of the United Kingdom, or a third country with a view to their obtaining the means necessary to achieve their non-profit-making objectives;
- (dd) non-equity securities (as defined in point (c) of Article 2(1) of Directive 2003/71/EC) issued in a continuous or repeated manner (as defined in point (l) of Article 2(1) of that Directive) by credit institutions (as defined in point (g) of Article 2(1) of that Directive) provided that these securities—
 - (i) are not subordinated, convertible or exchangeable;
 - (ii) do not give a right to subscribe to or acquire other types of securities and are not linked to a derivative instrument;
 - (iii) materialise reception of repayable deposits;
 - (iv) are covered by the compensation scheme within the meaning of section 213(2) of FSMA or by a similar scheme in a third country;
- (de) securities as referred to in points (g), (i) and (j) of Article 1(2) of Directive 2003/71/EC;”;
 - (iii) in point (e), for “national law” substitute “the law of the United Kingdom, any part of the United Kingdom, or a third country”;
 - (iv) in point (f), at the end insert “or as defined in section 1(1) of the Pension Schemes Act 1993(a)”;
 - (v) in point (g), for “national law” substitute “the law of the United Kingdom, any part of the United Kingdom, or a third country”.

(3) For Article 3 substitute—

“Article 3

1. Where PRIIP manufacturers subject to this Regulation are also subject to the provisions of FSMA and any rules or regulations made under FSMA which were relied on immediately before exit day to implement Directive 2003/71/EC, both this Regulation and those provisions apply.
2. Where PRIIP manufacturers subject to this Regulation are also subject to the provisions of FSMA and any rules or regulations made under FSMA which were relied on

(a) 1993 c. 48.

immediately before exit day to implement Directive 2009/138/EC, both this Regulation and those provisions apply.”.

Definitions

5.—(1) Article 4 is amended as follows.

(2) For point (5) substitute—

“(5) ‘selling a PRIIP’ means—

- (a) offering a PRIIP contract to a retail investor in the United Kingdom; or
- (b) concluding a PRIIP contract with a retail investor in the United Kingdom;

(5A) ‘advising on a PRIIP’ means advising a retail investor in the United Kingdom on a PRIIP;”.

(3) In point (6), in the definition of “retail investor”, for points (a) and (b) substitute—

“(a) a client (as defined in point (7) of Article 2(1) of the markets in financial instruments regulation) who is not a professional client;

(b) a customer, where that customer would not qualify as a professional client;”.

(4) After point (6) insert—

“(6A) ‘customer’ means a customer within the meaning of the provisions of FSMA and any rules or regulations made under FSMA which were relied on immediately before exit day to implement Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution(a);

(6B) ‘professional client’ means a professional client as defined in point (8) of Article 2(1) of the markets in financial instruments regulation;”.

(5) For point (8) substitute—

“(8) ‘FCA’ means the Financial Conduct Authority;

(9) ‘third country’ means a country or territory outside the United Kingdom;

(10) ‘FSMA’ means the Financial Services and Markets Act 2000;

(11) ‘the markets in financial instruments regulation’ 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;

(12) In this Regulation, a reference to a provision of rules made under FSMA is a reference to that provision as it has effect on exit day.”.

Drawing up the key information document

6. In Article 5—

(a) in paragraph 1, after “investors” insert “in the United Kingdom”;

(b) omit paragraph 2.

Form and content of key information document

7.—(1) In Article 7—

(a) in paragraph 1, in the first subparagraph, for the words from “shall be written” to the end substitute “must be written in English, or where it has been written in a different language, it must be translated into English”;

(b) omit paragraph 2.

(2) In Article 8—

(a) OJ L26, 2.2.2016, p. 19.

- (a) in paragraph 3(a), omit “information about the competent authority of the PRIIP manufacturer”;
- (b) in paragraph 3(d)(v), for “retail investor’s home Member State” substitute “United Kingdom”;
- (c) in paragraph 4, for the words from “Commission” to “specifying” substitute “Treasury may by Regulations specify”;
- (d) in paragraph 5—
 - (i) in the first subparagraph, for the words from “ESAs” to “standards” substitute “FCA may make technical standards in accordance with Chapter 2A of Part 9A of FSMA(a) (“technical standards”)”;
 - (ii) in the second subparagraph, for the words from “developing” to “shall” substitute “making technical standards, the FCA must”;
 - (iii) omit the third and fourth subparagraphs.
- (3) In Article 10, in paragraph 2—
 - (a) in the first subparagraph, for the words from “ESAs” to “standards” substitute “FCA may make technical standards in accordance with Chapter 2A of Part 9A of FSMA”;
 - (b) omit the second and third subparagraphs.
- (4) In Article 11, in paragraphs 2 and 4, for “national law” substitute “the law of the United Kingdom or any part of the United Kingdom”.

Provision of the key information document

- 8. In Article 13—
 - (a) in paragraph 3, after “subject to” insert “the provisions of FSMA and any rules or regulations made under FSMA which were relied on immediately before exit day to implement”;
 - (b) in paragraph 5—
 - (i) in the first subparagraph, for the words from “ESAs” to “standards” substitute “FCA may make technical standards in accordance with Chapter 2A of Part 9A of FSMA”;
 - (ii) omit the second and third subparagraphs.

Market monitoring and product intervention powers

- 9.—(1) In Article 15—
 - (a) omit paragraph 1;
 - (b) in paragraph 2—
 - (i) for “Competent authorities” substitute “The FCA”;
 - (ii) for “their Member State” substitute “the United Kingdom”.
- (2) Omit Article 16.
- (3) In Article 17—
 - (a) in paragraph 1—
 - (i) for “A competent authority” substitute “The FCA”;
 - (ii) for “its Member State” substitute “the United Kingdom”;
 - (b) in paragraph 2, in the first subparagraph—
 - (i) for “A competent authority” substitute “The FCA”;
 - (ii) in point (a), for “at least one Member State” substitute “the United Kingdom”;

(a) Chapter 2A of Part 9A was inserted by S.I. 2018/1115.

- (iii) in point (b), for “Union law” substitute “the law of the United Kingdom, or any part of the United Kingdom,”;
 - (iv) omit points (d) and (e);
 - (c) in paragraph 2, in the second subparagraph, for “competent authority” substitute “FCA” in both places;
 - (d) for paragraph 3 substitute—
 - “3. The FCA must not impose a prohibition or restriction under this Article unless, at least one month before the measure is intended to take effect, the FCA has published details of its decision to impose the measure on its website in accordance with paragraph 5.”;
 - (e) in paragraph 4—
 - (i) for “competent authority” substitute “FCA” in each place;
 - (ii) omit the words from “with no less” to “EIOPA”;
 - (iii) for “a one-month notification period” substitute “delaying the action for one month”;
 - (f) in paragraphs 5 and 6, for “competent authority” substitute “FCA”;
 - (g) in paragraph 7, in the first subparagraph—
 - (i) for the words from “Commission” to “specifying” substitute “Treasury may by Regulations specify”;
 - (ii) for “competent authorities” substitute “the FCA”;
 - (iii) for “at least one Member State referred to in point (a) of the first subparagraph of paragraph 2” substitute “the United Kingdom”;
 - (h) in paragraph 7, in the second subparagraph, for “shall include” substitute “may include”.
- (4) Omit Article 18.

Complaints, redress, cooperation and supervision

- 10.**—(1) In Article 19(c), omit “in another Member State or”.
- (2) Omit Article 20.
- (3) For Article 21 substitute—

“Article 21

Nothing in this Regulation is to be taken as authorising a disclosure of personal data in contravention of Regulation (EU) No 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data or of the Data Protection Act 2018(a).”.

Administrative penalties and other measures

- 11.**—(1) Omit Articles 22 to 28.
- (2) Article 29 is amended as follows—
 - (a) in paragraph 1—
 - (i) for “referred to in Article 24(1)” substitute “of Articles 5(1), 6, 7, 8(1), (2) or (3), 9, 10(1), 13(1), (3) or (4), 14 or 19”;
 - (ii) for “competent authorities on their” substitute “the FCA on its”;
 - (iii) for “competent authority” substitute “FCA”;
 - (iv) for “competent authorities shall” substitute “FCA must”;

(a) 2018 c. 12.

- (v) for “national law” substitute “the law of the United Kingdom or any part of the United Kingdom”;
- (b) in paragraph 2, omit the first subparagraph;
- (c) in paragraph 3—
 - (i) for “national law” substitute “the law of the United Kingdom or any part of the United Kingdom”;
 - (ii) for “competent authorities” substitute “FCA”;
 - (iii) for “their official” substitute “the FCA’s official”;
- (d) in paragraph 4—
 - (i) for “Competent authorities” substitute “The FCA”;
 - (ii) for “their official” substitute “the FCA’s official”;
 - (iii) for “official website of the competent authority” substitute “FCA’s official website”.

Final provisions

- 12.—(1) For Articles 30 and 31 substitute—

“Article 30

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) 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) In Article 32—

- (a) for paragraph 1 substitute—

“1. The following are exempt from the obligations under this Regulation until 31 December 2019—

- (a) the management company (as defined in section 237(2) of FSMA) of a UK UCITS;
- (b) the management company (as defined in point (b) of Article 2(1) of Directive 2009/65/EC) of an EEA UCITS;
- (c) an authorised open-ended investment company (as defined in section 237(3) of FSMA) which is a UK UCITS;
- (d) an investment company referred to in Article 27 of Directive 2009/65/EC;
- (e) a person advising on, or selling, units of UK UCITS or EEA UCITS in the United Kingdom.”;

- (b) in paragraph 2—

- (i) for “a Member State” substitute “the United Kingdom”;
- (ii) after “as laid down in” insert “the provisions of FSMA and any rules or regulations made under FSMA which were relied on immediately before exit day to implement”;
- (iii) after “investors” insert “in the United Kingdom” in both places;

- (c) at the end insert—

“3. In this Article, “UK UCITS” and “EEA UCITS” have the meanings given in section 237(3) of FSMA.”.

- (3) Omit Article 33.

(4) In the words after Article 34, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

CHAPTER 2

Commission Delegated Regulation (EU) 2016/1904

Amendment of Commission Delegated Regulation (EU) 2016/1904

13.—(1) Commission Delegated Regulation (EU) 2016/1904 of 14 July 2016 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council with regard to product intervention is amended as follows.

(2) Omit Article 1.

(3) In Article 2—

(a) in the heading, for “competent authorities” substitute “the FCA”;

(b) in paragraphs 1 and 2, in each place—

(i) for “competent authorities” substitute “the FCA”;

(ii) for “at least one Member State” substitute “the United Kingdom”;

(c) in paragraph (2)(c), for the first indent substitute—

“—whether the investor is:

(a) a professional client as defined in point (8) of Article 2(1) of 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 (“professional client”),

(b) a client (as defined in point (7) of Article 2(1) of that Regulation) who is not a professional client, or

(c) an eligible counterparty as defined in rule 3.6.1 of the Conduct of Business sourcebook made under the Financial Services and Markets Act 2000(a) by the Financial Conduct Authority, as the sourcebook has effect on exit day, ”;

(d) in paragraph 2(r), for “Member State of the relevant competent authority” substitute “United Kingdom”.

(4) In the words after Article 3, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

*Jeremy Quin
Paul Maynard*

27th 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, and paragraph 21(b) of Schedule 7 to, 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), (d) and (g) of section 8(2) of that Act).

These Regulations make amendments to legislation in the field of financial services. Part 2 amends the Packaged Retail and Insurance-based Investment Products Regulations 2017

(a) 2000 c. 8.

(S.I. 2017/1127). Part 3, Chapter 1 amends Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs). Part 3, Chapter 2 amends Commission Delegated Regulation (EU) 2016/1904 of 14 July 2016 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council with regard to product intervention.

These Regulations refer to the Conduct of Business sourcebook 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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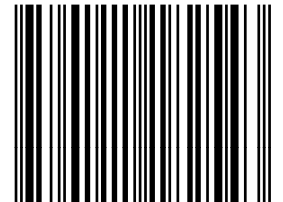
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