
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in part certain provisions of 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 (OJ No L 352, 9.12.2014, p.1.) (the “PRIIPs regulation”). The PRIIPs regulation requires those manufacturing a packaged retail investment product (“a PRIIP”, defined in Article 4(1)) to draw up a key information document containing standard information, and requires persons advising on or selling PRIIPs to provide the key information document to retail investors.

Regulation 3 designates the Financial Conduct Authority (“FCA”) as the competent authority for the purposes of the PRIIPs regulation.

Regulations 4 and 5 implement Article 24(2)(a), (b) and (d) of the PRIIPs regulation by providing the FCA with power to prohibit or suspend the marketing of a PRIIP, to prohibit the provision of a key information document or to require the publication of a new version of a key information document where certain requirements of the PRIIPs regulation have been infringed. Regulation 9 makes provision for the procedure to be followed.

Regulation 6 gives the FCA the power to impose penalties and make a statement in relation to a contravention of the PRIIPs regulation. In doing so, regulation 6 implements requirements in Article 24(2)(c) and (e) of the PRIIPs regulation in relation to persons (“unauthorised persons”) upon whom the PRIIPs regulation imposes requirements and who are not authorised for the purposes of the Financial Services and Markets Act 2000 (c.8) (“FSMA”). The regulation 6 powers are also available to the FCA for contraventions of the Regulations. Regulation 10 makes provision for the procedure to be followed.

Regulation 7 implements Article 24(4) of the PRIIPs regulation regarding the notification of the retail investors concerned where an Article 24(2) penalty or measure has been imposed.

Regulation 8 implements Article 26 of the PRIIPs regulation by providing a right to refer FCA decisions under the Regulations to the Upper Tribunal.

Schedule 2 makes consequential amendments to primary and secondary legislation. In particular, paragraph 7 of Schedule 2 amends the Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2012 (S.I. 2013/419) to apply provisions of FSMA conferring functions on the FCA for purposes connected with the PRIIPs regulation. The provisions applied include section 1A of FSMA (the functions of the FCA); section 168 of FSMA (power of the FCA to appoint an investigator); disciplinary measures under Part 14 of FSMA (implementing Article 24(2)(c) and (e) of the PRIIPs regulation for persons authorised under FSMA); powers to obtain injunctions or provide for restitution under Part 25 of FSMA, and fee-raising powers of the FCA. A number of the FSMA powers applied by paragraph 7 do not apply to unauthorised persons, so those powers are extended to unauthorised persons by Schedule 1. Schedule 1 also applies provisions of FSMA supplementing regulations 4 to 10, including provision relating to the Upper Tribunal, restrictions on disclosure of information, notices and offences.

Regulation 13 requires the Treasury to review the operation and effect of these Regulations and publish a report by 1st January 2023 and within every five years after that. Following a review it will fall to the Treasury to consider whether the Regulations should remain as they are, or be revoked or amended. A further instrument would be needed to revoke or amend the Regulations. An impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.

Changes to legislation:

There are currently no known outstanding effects for the The Packaged Retail and Insurance-based Investment Products Regulations 2017.