

2017 No. 1127

FINANCIAL SERVICES AND MARKETS

**The Packaged Retail and Insurance-based Investment Products
Regulations 2017**

<i>Made</i>	- - - -	<i>4th December 2017</i>
<i>Laid before Parliament</i>		<i>5th December 2017</i>
<i>Coming into force</i>	- -	<i>1st January 2018</i>

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

The Treasury, in exercise of the powers conferred by section 2(2) of that Act, make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Packaged Retail and Insurance-based Investment Products Regulations 2017 and come into force on 1st January 2018.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Financial Services and Markets Act 2000^(c);

“advising”, “manufacturing”, “marketing” and “selling”, in relation to a PRIIP, have the same meaning as in the PRIIPs regulation;

“FCA” means the Financial Conduct Authority;

“key information document” means a key information document required by Article 5 of the PRIIPs regulation^(d);

“person selling a PRIIP” has the meaning given by Article 4(5) of the PRIIPs regulation;

“PRIIP” has the meaning given by Article 4(3) of the PRIIPs regulation;

“PRIIP manufacturer” has the meaning given by Article 4(4) of the PRIIPs regulation;

(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). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).

(c) 2000 c.8.

(d) OJ No L 352, 9.12.2014, p.1.

“PRIIPs regulation” means 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;

“retail investor” has the meaning given by Article 4(6) of the PRIIPs regulation;

“Tribunal” means the Upper Tribunal;

“unauthorised person” means a PRIIP manufacturer or a person advising on, selling or marketing a PRIIP who is not an authorised person within the meaning of section 31(2) of the Act.

(2) In these Regulations, the “PRIIPs requirements” means any of the following provisions of the PRIIPs regulation—

- (a) Article 5(1) (drawing up and publishing the key information document);
- (b) Article 6 (form and content of the key information document);
- (c) Article 7 (language requirements for the key information document);
- (d) Article 8(1) to (3) (further provision about the content of the key information document);
- (e) Article 9 (marketing communications);
- (f) Article 10(1) (review and revision of the key information document);
- (g) Articles 13(1), (3) and (4) and 14 (provision of the key information document);
- (h) Article 19 (complaints procedures).

Designation of competent authority

3. The FCA is the competent authority for the purposes of the PRIIPs regulation.

Prohibitions and suspensions

4.—(1) This regulation applies where a person has infringed the PRIIPs requirements.

(2) The FCA may make an order prohibiting a person from marketing a PRIIP.

(3) The FCA may make an order requiring a person to suspend the marketing of a PRIIP.

(4) An order under paragraph (3) must state the period for which the suspension is to have effect.

(5) The FCA may make an order—

- (a) prohibiting a person from providing a key information document which does not comply with a requirement of Article 6, 7, 8 or 10 of the PRIIPs regulation, and
- (b) requiring a person to publish a new version of a key information document.

Revocation or variation of order under regulation 4

5.—(1) The FCA may at any time revoke an order under regulation 4.

(2) The FCA may vary the period of a suspension in an order under regulation 4(3) before the suspension ends.

(3) If the FCA revokes an order under regulation 4 or reduces the period of a suspension in an order under regulation 4(3), it must notify all the persons to whom the order was given.

Administrative penalties and statements

6.—(1) If the FCA considers that—

- (a) an unauthorised person has contravened—
 - (i) the PRIIPs regulation or any directly applicable EU regulation made under that regulation,
 - (ii) an order under regulation 4,

- (iii) a requirement imposed on the person under regulation 7(2)(b), or
- (iv) a requirement imposed on the person under Part 11 of the Act as applied by Schedule 1, or
- (b) an authorised person has contravened—
 - (i) an order under regulation 4, or
 - (ii) a requirement imposed on the person under regulation 7(2)(b),

the FCA may publish a statement to that effect or impose on the person a penalty, in respect of the contravention, of such amount as it considers appropriate.

(2) A penalty under paragraph (1) is payable to the FCA.

(3) The FCA must in respect of each of its financial years pay to the Treasury any amounts received by it during the year by way of penalties imposed under this regulation.

(4) The Treasury may give directions to the FCA as to how the FCA is to comply with its duty under paragraph (3).

(5) The directions may in particular—

- (a) specify the time when any payment is required to be made to the Treasury, or
- (b) require the FCA to provide the Treasury at specified times with information relating to penalties that the FCA has imposed under this regulation.

(6) The Treasury must pay into the Consolidated Fund any sums received by them under this regulation.

Requirement to notify retail investor

7.—(1) Paragraph (2) applies where the FCA—

- (a) has made an order under regulation 4(2), (3) or (5),
- (b) has imposed a penalty or published a statement under regulation 6, or
- (c) has imposed a penalty or published a statement under Part 14 of the Act as applied by paragraph 7 of Schedule 2.

(2) The FCA may—

- (a) issue a direct communication to the retail investor concerned, giving the investor information about the sanction, and informing the investor where to lodge complaints or submit claims for redress; or
- (b) require the PRIIP manufacturer or person advising on, or selling, the PRIIP to issue such a communication to any retail investors concerned specified by the FCA or to retail investors of a description specified by the FCA.

Right to refer a matter to the Tribunal

8. If the FCA decides to—

- (a) make an order under regulation 4,
- (b) increase the period of a suspension under regulation 5(2), or
- (c) publish a statement or impose a penalty under regulation 6,

the person concerned may refer the matter to the Tribunal.

Sanctions under regulation 4: procedure

9.—(1) An order under regulation 4 or a variation of an order under regulation 5(2) takes effect—

- (a) immediately, if the notice given under paragraph (3) or regulation 5(3) states that that is the case, or
- (b) on such date as may be specified in the notice.

(2) An order under regulation 4 may be expressed to take effect immediately only if the FCA, having regard to the ground on which it is exercising its power under regulation 4, reasonably considers that it is necessary for the order to take effect immediately.

(3) If the FCA—

- (a) proposes to make an order under regulation 4,
- (b) proposes to increase the period of a suspension under regulation 5(2),
- (c) makes an order under regulation 4 with immediate effect, or
- (d) increases the period of a suspension under regulation 5(2) with immediate effect,

it must give the person concerned (“A”) written notice.

(4) The notice must—

- (a) give details of the order or variation,
- (b) state the FCA’s reasons for making the order or its variation,
- (c) inform A that A may make representations to the FCA within such period as may be specified in the notice (whether or not A has referred the matter to the Tribunal),
- (d) inform A of when the order or variation takes effect,
- (e) inform A of A’s right to refer the matter to the Tribunal, and
- (f) give an indication of the procedure on such a reference.

(5) The FCA may extend the period allowed under the notice for making representations.

(6) If, having considered any representations made by A, the FCA decides—

- (a) to make or vary the order in the way proposed, or
- (b) if the order has been made or varied, not to revoke the order or rescind the variation,

it must give A written notice.

(7) If, having considered any representations made by A, the FCA decides—

- (a) not to make or vary the order in the way proposed,
- (b) to make an order in different terms or to vary the order in a different way, or
- (c) to revoke an order or rescind a variation which has taken effect,

it must give A written notice.

(8) A notice under paragraph (6) must inform A of A’s right to refer the matter to the Tribunal.

(9) A notice under paragraph (7)(b) must comply with paragraph (4).

Sanctions under regulation 6: procedure

10.—(1) If the FCA proposes to take action against a person under regulation 6, it must give the person concerned a warning notice.

(2) A warning notice about a proposal to impose a penalty must state the amount of the penalty.

(3) A warning notice about a proposal to publish a statement must set out the terms of the proposed statement.

(4) If, having considered any representations made in response to the warning notice, the FCA decides to take action against a person under regulation 6, it must without delay give the person concerned a decision notice.

(5) A decision notice about the imposition of a penalty must state the amount of the penalty.

(6) A decision notice about the publication of a statement must set out the terms of the statement.

(7) After a statement under regulation 6 is published, the FCA must send a copy of it to the person concerned and to any person to whom a copy of the decision notice was given under section 393(4) of the Act(a) (as applied by Schedule 1).

Application of the Financial Services and Markets Act 2000 and secondary legislation

11. Schedule 1 applies the Act and secondary legislation made under it with modifications.

Minor and consequential amendments

12. Schedule 2 makes minor and consequential amendments to primary and secondary legislation.

Review

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

- (a) carry out a review of regulations 2 to 12,
- (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 the PRIIPs regulation (which is implemented in part by means of regulations 2 to 12) is implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by regulations 2 to 12;
- (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 1st January 2023.

*Andrew Griffiths
Heather Wheeler*

4th December 2017

Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1

Regulation 11

Application and modification of the Financial Services and Markets Act 2000 and secondary legislation

The Tribunal

1.—(1) Part 9 of the Act(b) (hearings and appeals), and secondary legislation made under that Part, applies in respect of references made to the Tribunal under these Regulations as it applies in

(a) Section 393 was amended by paragraph 32 of Schedule 9 to the Financial Services Act 2012 (c.21).

(b) Part 9 was amended by section 23 of the Financial Services Act 2012, section 4 of the Financial Services (Banking Reform) Act 2013, paragraph 83 of Schedule 9 to the Crime and Courts Act 2013 (c.22), S.I. 2010/22, 2013/1388, 2014/3329 and 2016/680.

respect of references and appeals made to the Tribunal under the Act in respect of a decision of the FCA, with the modifications set out in this paragraph.

(2) Section 133 (proceedings before Tribunal: general provision) applies as if—

- (a) in subsection (1)—
 - (i) “(whether made under this or any other Act)” were omitted;
 - (ii) in paragraph (a) “or the PRA” were omitted;
 - (iii) paragraphs (b) and (c) were omitted;
- (b) in subsection (2) “, (b) or (c)” were omitted;
- (c) in subsection (5) the reference to section 393(11) were a reference to section 393(11) as applied by these Regulations;
- (d) for subsection (7A) there were substituted—

“(7A) A reference is a “disciplinary reference” for the purposes of this section if it is in respect of a decision to publish a statement or impose a penalty under regulation 6 of the Packaged Retail and Insurance-based Investment Products Regulations 2017.”.

(3) Section 133A (proceedings before Tribunal: decision and supervisory notices, etc.) applies as if—

- (a) for subsection (1) there were substituted—

“(1) In determining in accordance with section 133(5) (as applied by the Packaged Retail and Insurance-based Investment Products Regulations 2017) a reference made as a result of a decision notice given by the FCA, the Tribunal may not direct the FCA to take action which it would not, under the Packaged Retail and Insurance-based Investment Products Regulations 2017, have had power to take when giving the notice.”;
- (b) in subsection (5) “or the PRA” were omitted.

(4) Section 133B(1) (offences) applies as if—

- (a) in paragraph (a) “or the PRA” were omitted;
- (b) paragraphs (b) and (c) were omitted.

Information gathering and investigations

2.—(1) Part 11 of the Act (a) (information gathering and investigations) applies in respect of the FCA’s functions under the PRIIPs regulation in relation to an unauthorised person as it applies in respect of its functions under the Act in relation to an authorised person, with the modifications set out in this paragraph.

(2) Part 11 applies as if—

- (a) each reference to the Act included a reference to these Regulations;
- (b) each reference to a section or Part of, or Schedule to, the Act were a reference to that section, Part or Schedule as applied by these Regulations;
- (c) each reference to an authorised person were a reference to an unauthorised person;
- (d) each reference to the PRA were omitted;
- (e) each reference to a regulator were a reference to the FCA, and each reference to either regulator were a reference to the FCA only.

(3) Section 165 (regulators’ power to require information: authorised persons etc.) applies as if subsections (4)(b), (7)(b) to (d) and (8A) were omitted.

(a) Part 11 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c.44), paragraph 33 of Schedule 7 to the Counter Terrorism Act 2008 (c.28), section 18 of and Schedule 2 to the Financial Services Act 2010 (c.28), Schedule 12 to and paragraph 8 of Schedule 18 to the Financial Services Act 2012, paragraph 11 of Schedule 3 to the Pension Schemes Act 2015 (c.8), paragraphs 36 and 37 of Schedule 2 to the Bank of England and Financial Services Act 2016 (c.14), paragraph 9 of Schedule 2 to the Investigatory Powers Act 2016 (c.25), S.I. 2001/1090, 2005/1433, 2007/126, 2011/1043, 2012/2554, 2013/1773, 2015/575, 2016/225 and 2016/680. There are other amendments but none is relevant.

(4) Sections 165A (PRA’s power to require information: financial stability), 165B (safeguards etc. in relation to exercise of power under section 165A) and 165C (orders under section 165A(2)(d)) do not apply.

(5) Section 166 (reports by skilled persons) applies as if subsections (10) and (11) were omitted.

(6) Section 166A (appointment of skilled person to collect and update information) does not apply.

(7) Section 167 (appointment of persons to carry out general investigations) applies as if—

(a) for subsection (1) there were substituted—

“(1) If it appears to the FCA that there is good reason for doing so, the FCA may appoint one or more competent persons to conduct an investigation on its behalf into—

(a) the nature, conduct or state of the business of an unauthorised person;

(b) a particular aspect of that business; or

(c) the ownership or control of an unauthorised person.”;

(b) in subsection (5) for “regulated activities” there were substituted “the activities of manufacturing, advising on, selling or marketing of a PRIIP”;

(c) subsections (5A) and (6) were omitted.

(8) Section 168 (appointment of persons to carry out investigations in particular cases) applies as if—

(a) in subsection (1) for paragraph (b) there were substituted—

“(b) a person may be guilty of an offence under this Act as applied by the Packaged Retail and Insurance-based Investment Products Regulations 2017.”;

(b) subsection (2) were omitted;

(c) in subsection (4) after paragraph (k) there were inserted—

“(l) a person may have contravened the PRIIPs regulation.”;

(d) for subsection (6) there were substituted—

“(6) “Investigating authority” means the FCA.”.

(9) Section 169 (investigations etc. in support of overseas regulator) applies as if—

(a) subsection (2A) were omitted;

(b) for subsection (13) there were substituted—

“(13) “Overseas regulator” means an authority in a country or territory outside the United Kingdom which has functions corresponding to those of the FCA under the PRIIPs regulation and the Packaged Retail and Insurance-based Investment Products Regulations 2017.”.

(10) Section 169A (support of overseas regulator with respect to financial stability) does not apply.

(11) Section 170 (investigations: general) applies as if—

(a) each reference to the investigating authority were a reference to the FCA;

(b) subsection (3)(b) were omitted;

(c) subsection (10) were omitted.

(12) Section 171 (powers of persons appointed under section 167) applies as if subsections (3A) and (7) were omitted.

(13) Section 173 (powers of persons appointed as a result of section 168(2)) does not apply.

(14) Section 174 (admissibility of statements made to investigators) applies as if—

(a) in subsection (2) “or in proceedings in relation to action to be taken against that person under section 123” were omitted;

(b) subsection (3A) were omitted;

- (c) in subsection (4) the words from “, or a person” to the end were omitted;
- (d) in subsection (5) “, 173” were omitted.

(15) Section 175 (information and documents: supplemental provisions) applies as if in subsection (8) “(3) or” were omitted.

(16) Section 176 (entry of premises under a warrant) applies as if—

- (a) in subsection (1) “the Secretary of State,” were omitted;
- (b) in subsection (3)(a) “or an appointed representative” were omitted;
- (c) in subsection (11)—
 - (i) in paragraph (a) for “87C, 87J, 165, 165A, 169A” there were substituted “165”;
 - (ii) in paragraph (b) “, 173” were omitted.

Statements of policy

3. Sections 210 (statements of policy) and 211 (statements of policy: procedure) of the Act(a) apply in respect of the imposition of penalties under regulation 6 and the amount of such penalties as they apply in respect of the imposition of penalties under Part 14 of the Act (disciplinary measures) and the amount of penalties under that Part, as if—

- (a) references to a regulator were references to the FCA;
- (b) in section 210—
 - (i) subsection (1A) were omitted;
 - (ii) in subsection (2), the “and” at the end of paragraph (b) were omitted and after paragraph (c) there were inserted—
 - “(d) any other matters referred to in Article 25 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.”;
 - (iii) in subsection (7) the reference to the power under section 206 or 206A were a reference to the power under regulation 6.

Restrictions on disclosure of information

4.—(1) Sections 348 (restrictions on disclosure of confidential information by FCA, PRA etc.), 349 (exceptions from section 348) and 352 (offences) of the Act(b) apply in respect of information received in connection with the FCA’s functions under these Regulations as they apply in respect of information received in connection with the FCA’s functions under the Act, as if—

- (a) each reference to the Act included a reference to these Regulations;
- (b) each reference to a section or Part of the Act were a reference to that section or Part as applied by these Regulations;
- (c) in section 348(2), for “In this Part” there were substituted “In sections 348, 349 and 352 as applied by the Packaged Retail and Insurance-based Investment Products Regulations 2017”;
- (d) in section 352—
 - (i) in subsection (1) “or 350(5)” were omitted;

(a) Section 210 was amended by paragraph 20 of Schedule 2 to the Financial Services Act 2010 and paragraph 17 of Schedule 9 to the Financial Services Act 2012. Section 211 was amended by paragraph 18 of Schedule 9 to the Financial Services Act 2012.

(b) Section 348 was amended by paragraph 26 of Schedule 2 to the Financial Services Act 2010 (c.28), paragraph 18 of Schedule 12 to the Financial Services Act 2012, paragraph 5 of Schedule 8 to the Financial Services (Banking Reform) Act 2013, paragraph 45 of Schedule 2 to the Bank of England and Financial Services Act 2016 and S.I. 2016/1239. Section 349 was amended by section 964 of the Companies Act 2006 (c.46), paragraph 19 of Schedule 12 to the Financial Services Act 2012, S.I. 2006/1183, 2007/1093 and 2011/1043. Section 352 was amended by paragraph 54 of Schedule 26 to the Criminal Justice Act 2003 (c.44).

- (ii) subsection (4) were omitted;
- (iii) in subsection (5) “or (4)” were omitted;
- (iv) in subsection (6)(a) “or that it had been disclosed in accordance with section 350” were omitted.

Injunctions and restitution

5.—(1) Part 25 of the Act(a) (injunctions and restitution) applies in respect of a requirement imposed under these Regulations as it applies in respect of a relevant requirement, with the modifications set out in this paragraph.

(2) Part 25 applies as if—

- (a) each reference to the Act included a reference to these Regulations;
- (b) each reference to a section of the Act were a reference to that section as applied by these Regulations;
- (c) each reference to a regulator, the regulator concerned or the appropriate regulator were a reference to the FCA;
- (d) references to the Secretary of State were omitted;
- (e) each reference to a relevant requirement were a reference to a requirement which is imposed by or under these Regulations, or the Act as applied by these Regulations;
- (f) each reference to an authorised person included a reference to an unauthorised person.

(3) Section 380 (injunctions) applies as if subsections (6) to (12) were omitted.

(4) Section 381 (injunctions in cases of market abuse) does not apply.

(5) Section 382 (restitution orders) applies as if subsections (9) to (15) were omitted.

(6) Section 383 (restitution orders in cases of market abuse) does not apply.

(7) Section 384 (power of FCA or PRA to require restitution) applies as if—

- (a) subsections (2) and (3) and references to those subsections were omitted;
- (b) subsections (7) to (13) were omitted.

Notices

6.—(1) Part 26 of the Act(b) (notices) applies in respect of notices given by the FCA under these Regulations and under the Act as applied by these Regulations as it applies in respect of notices given by the FCA under the Act, with the modifications set out in this paragraph.

(2) In paragraph (1), “notices given by the FCA under these Regulations” does not include notices given under regulation 9(7)(a) or (c).

(3) Part 26 applies as if—

- (a) each reference to the Act included a reference to these Regulations;
- (b) each reference to a section of the Act were a reference to that section as applied by these Regulations;
- (c) each reference to a regulator or to the regulator concerned were a reference to the FCA;

(a) Part 25 was amended by paragraphs 19 to 25 of Schedule 9 to the Financial Services Act 2012, paragraph 3 of Schedule 10 to the Financial Services (Banking Reform) Act 2013 and S.I. 2007/126, 2013/1773, 2015/1755, 2016/225 and 680. There are other amendments but none is relevant.

(b) Part 26 was amended by paragraph 11 of Schedule 4 to the Regulation of Investigatory Powers Act 2000 (c.23), sections 13 and 24 of, and paragraphs 28 and 29 of Schedule 2 to, the Financial Services Act 2010, sections 17, 18, 19 and 24 of, and paragraph 37 of Schedule 8, Schedule 9 and paragraph 8 of Schedule 13 to, the Financial Services Act 2012, section 4 of, and Schedule 3 to, the Financial Services (Banking Reform) Act 2013, paragraph 43 of Schedule 10 to the Investigatory Powers Act 2016, S.I. 2005/381, 2005/1433, 2007/126, 2007/1973, 2009/534, 2010/22, 2010/747, 2012/916, 2013/1388, 2013/3115, 2014/2879, 2015/1755, 2016/225, 2016/680, 2016/715, 2016/1239 and 2017/701. There are other amendments but none is relevant.

- (d) references to the PRA were omitted.
- (4) Section 387 (warning notices) applies as if subsections (1A) and (3A) were omitted.
- (5) Section 388 (decision notices) applies as if subsections (1A) and (2) were omitted.
- (6) Section 391 (publication) (as amended by these Regulations) applies as if—
 - (a) references to a consumer were references to a retail investor;
 - (b) references to a supervisory notice were references to a notice under regulation 9(3), (6) or (7)(b);
 - (c) for subsection (1ZB) there were substituted—
 - “(1ZB) A warning notice falls within this section if it is given under regulation 10 of the Packaged Retail and Insurance-based Investment Products Regulations 2017.”;
 - (d) subsections (4A), (5A), (6A), (8A), (8B) and (8C), (10) and (11) were omitted;
- (7) Sections 391A (publication: special provisions relating to the capital requirements directive), 391B (publication: special provisions relating to the transparency obligations directive), 391C (publication: special provisions relating to the UCITS directive) and 391D (publication: special provisions relating to the markets in financial instruments directive) do not apply.
- (8) For section 392 (application of sections 393 and 394) there were substituted—

“Application of sections 393 and 394

392. Sections 393 and 394 apply to warning notices and decision notices given in accordance with regulation 10 of the Packaged Retail and Insurance-based Investment Products Regulations 2017 and sections 385 and 386 of the Act as applied by those Regulations.”.

- (9) Section 395 (the FCA’s and the PRA’s procedures) applies as if references to a supervisory notice were references to a notice under regulation 9(3), (6) or (7)(b).

Offences

7.—(1) Section 398 of the Act(a) (misleading FCA or PRA: residual cases) applies in respect of requirements imposed by or under these Regulations as it applies in respect of requirements imposed by or under the Act as if the reference in subsection (1) to a regulator were a reference to the FCA.

(2) Sections 400 (offences by bodies corporate etc.) and 403 (jurisdiction and procedure in respect of offences) of the Act(b) apply in respect of offences under the Act as applied by these Regulations as they apply in respect of offences under the Act.

(3) Section 401 of the Act(c) (proceedings for offences) applies in respect of offences under the Act as applied by these Regulations as it applies in respect of offences under the Act, as if—

- (a) references to the appropriate regulator were references to the FCA;
- (b) references to the Secretary of State were omitted;
- (c) subsections (3A), (3AB) and (3B) were omitted.

Limitation on powers to require documents

8. Section 413 of the Act (protected items) applies for the purposes of these Regulations as it applies for the purposes of the Act.

(a) Section 398 was amended by paragraph 36 of Schedule 9 to the Financial Services Act 2012 and S.I. 2013/1773, 2015/1882, 2016/680 and 2017/701.

(b) Section 400 was amended by paragraph 37 of Schedule 9 to the Financial Services Act 2012. Section 403 was amended by paragraph 40 of that Schedule.

(c) Section 401 was amended by paragraph 38 of Schedule 9 to the Financial Services Act 2012 and S.I. 2013/1881 and 2016/1239.

Penalties and fees

9.—(1) Paragraphs 19 to 23 of Schedule 1ZA to the Act^(a) (penalties and fees) apply with respect to the discharge by the FCA of its functions under these Regulations as they apply with respect to the discharge by it of its functions under the Act, with the following modifications.

(2) Those paragraphs apply as if—

- (a) each reference to penalties imposed under the Act included a reference to penalties imposed under these Regulations;
- (b) each reference to a section or Part of the Act included a reference to that section or Part as applied by these Regulations;
- (c) each reference to the functions of the FCA included a reference to its functions under these Regulations.

(3) Paragraph 20 applies as if references to the FCA’s enforcement powers included—

- (a) its powers under these Regulations and under Part 25 of the Act as applied by these Regulations;
- (b) its powers in relation to the investigation of offences under the Act as applied by these Regulations;
- (c) its powers in England and Wales or Northern Ireland in relation to the prosecution of offences under the Act as applied by these Regulations.

(4) Paragraph 21 applies as if regulated persons included unauthorised persons.

(5) Paragraph 23 applies as if references to qualifying functions included references to the functions of the FCA under these Regulations and under the Act as applied by these Regulations.

Exemption from liability in damages

10. The functions of the FCA under these Regulations are to be treated for the purposes of paragraph 25 of Schedule 1ZA to the Act^(b) (exemption from liability in damages) as functions conferred on the FCA under the Act.

The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001

11.—(1) The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001^(c) (“Notice Regulations”) apply in respect of a notice or document given by the FCA under these Regulations or the Act as applied by these Regulations as they apply in respect of a notice or document given by the FCA under the Act, as if—

- (a) that notice or document were “a relevant document” under the Notice Regulations;
- (b) each reference to the Act included a reference to these Regulations and to the Act as applied by these Regulations;
- (c) each reference to a section of the Act were a reference to that section as applied by these Regulations.
- (d) each reference to an investigating authority were a reference to the FCA.

The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

12. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (as amended by these Regulations) apply in respect of information received in

(a) Schedule 1ZA was inserted by Schedule 3 to the Financial Services Act 2012 and is amended by section 109 of, paragraph 7 of Schedule 8 to and paragraph 4 of Schedule 10 to the Financial Services (Banking Reform) Act 2013, section 29 of the Bank of England and Financial Services Act 2016 and S.I. 2013/1773. There are other amendments but none is relevant.

(b) Paragraph 25 of Schedule 1ZA was amended by section 109 of the Financial Services (Banking Reform) Act 2013.

(c) S.I. 2001/1420.

connection with the FCA’s functions under these Regulations as they apply in respect of information received in connection with the FCA’s functions under the Act.

SCHEDULE 2

Regulation 12

Minor and consequential amendments to primary and secondary legislation

The Financial Services and Markets Act 2000

1. In section 391(a) of the Act (publication of notices), after subsection (8C) insert—

“(8D) Where a decision notice, final notice or supervisory notice relates to any decision or action under a provision of this Act in relation to the contravention of a requirement imposed by—

- (a) 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 (the “PRIIPs regulation”), or
- (b) any directly applicable regulation made under the PRIIPs regulation,

this section has effect subject to Article 29 of the PRIIPs regulation (publication of decisions).”.

The Public Interest Disclosure (Prescribed Persons) Order (Northern Ireland) 1999

2. In the Schedule to the Public Interest Disclosure (Prescribed Persons) Order (Northern Ireland) 1999(b) (prescribed persons), in the second column of the entry in the table relating to the Financial Conduct Authority, at the end insert “; the conduct of PRIIP manufacturers and persons advising on or selling a PRIIP referred to in regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26th November 2014 on key information documents for packaged retail and insurance-based investment products, for the purposes of that regulation”.

The Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemption) Order 2001

3. After article 30 of the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemption) Order 2001(c) (EEA management companies), insert—

“Communications required by the PRIIPs regulation: key information document

31. The scheme promotion restriction does not apply to any communication required by Article 13 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.”.

(a) Section 391 was amended by sections 13 and 24 of, and paragraph 28 of Schedule 2 to, the Financial Services Act 2010 (c.28), section 24 of and paragraph 30 of Schedule 9 to the Financial Services Act 2012, section 4 of the Financial Services (Banking Reform) Act 2013 (c.33) and S.I. 2012/916, 2013/1388, 2013/3115, 2014/2879, 2015/1755, 2016/225, 2016/680, 2016/715 and 2017/701.

(b) S.R. (N.I.) 1999/401 amended by S.R. (N.I.) 2014/48; there are other amending instruments but none is relevant.

(c) S.I. 2001/1060. Article 30 was inserted by S.I. 2003/2067; there are other amending instruments but none is relevant.

The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

4. In regulation 2 of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001(a) (interpretation), in the definition of “EEA competent authority”, for “or the SFT regulation” substitute “, the SFT regulation or the PRIIPs regulation”.

The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005

5. After article 20B of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(b) (incoming electronic commerce communications), insert—

“Communications required by the PRIIPs regulation: key information document

20C. The financial promotion restriction does not apply to any communication required by Article 13 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.”.

The Payment to Treasury of Penalties (Enforcement Costs) Order 2013

6. In article 2(1) of the Payment to Treasury of Penalties (Enforcement Costs) Order 2013(c) (enforcement powers), after sub-paragraph (m) insert—

“(n) regulation 6 of the Packaged Retail and Insurance-based Investment Products Regulations 2017.”.

The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013

7.—(1) The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013(d) is amended as follows.

(2) In article 1(2) (interpretation), after the definition of “EuVECA Regulation” insert—

““PRIIPs regulation” means 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;”.

(3) In article 2(2) (qualifying EU provisions: general), after sub-paragraph (j) insert—

“(k) the PRIIPs regulation and any directly applicable regulation made under that Regulation.”.

(4) In article 3 (qualifying EU provisions: disciplinary measures)—

(a) after paragraph (2)(l) insert—

“(m)the PRIIPs regulation and any directly applicable regulation made under that Regulation.”;

(b) after paragraph (3)(j) insert—

“(k) in relation to a contravention of a requirement imposed by the PRIIPs regulation or any directly applicable regulation made under that Regulation, the FCA.”.

(5) In article 5 (qualifying EU provisions: injunctions and restitution)—

(a) after paragraph (2)(l) insert—

(a) S.I. 2001/2188; the definition of “EEA competent authority” in regulation 2 was amended by S.I. 2003/2066, 2006/3413, 2013/504, 2016/680 and 715 and 2017/701.

(b) S.I. 2005/1529. Article 20B was inserted by S.I. 2011/1613; there are other amending instruments but none is relevant.

(c) S.I. 2013/418. Article 2(1)(m) was inserted by S.I. 2016/715.

(d) S.I. 2013/419, amended by S.I. 2013/1773, 2014/2879 and 3348, 2015/1882 and 2016/680, 715 and 936.

“(m)the PRIIPs regulation and any directly applicable regulation made under that Regulation.”;

(b) after paragraph 5(k) insert—

“(l) in relation to a contravention of a requirement imposed by the PRIIPs regulation or any directly applicable regulation made under that Regulation, the FCA.”.

(6) In article 6(2) (qualifying EU provisions: fees), after sub-paragraph (n) insert—

“(o) the PRIIPs regulation and any directly applicable regulation made under that Regulation.”.

The Financial Services Act 2012 (Relevant Functions in relation to Complaints Scheme) Order 2014

8. In article 2 of the Financial Services Act 2012 (Relevant Functions in relation to Complaints Scheme) Order 2014(a) (relevant functions of the FCA), after paragraph (f) insert—

“(g) its functions under the Packaged Retail and Insurance-based Investment Products Regulations 2017.”.

The Public Interest Disclosure (Prescribed Persons) Order 2014

9. In the Schedule to the Public Interest Disclosure (Prescribed Persons) Order 2014(b) (prescribed persons), in the entry relating to the Financial Conduct Authority, in the second column, after paragraph (m) insert—

“and

(n) the conduct of PRIIP manufacturers and persons advising on or selling a PRIIP referred to in regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26th November 2014 on key information documents for packaged retail and insurance-based investment products, for the purposes of that regulation.”.

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”)

(a) S.I. 2014/1195, amended by S.I. 2017/701.

(b) S.I. 2014/2418 amended by S.I. 2017/701; there are other amendments but none is relevant.

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.

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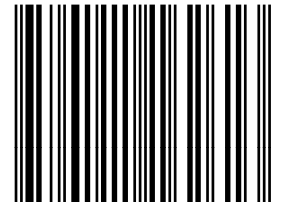
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

£6.00

UK201712041004 12/2017 19585

<http://www.legislation.gov.uk/id/uksi/2017/1127>

ISBN 978-0-11-116261-3



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