

EXPLANATORY MEMORANDUM TO
THE PACKAGED RETAIL AND INSURANCE-BASED INVESTMENT PRODUCTS
(AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 This instrument is being made using powers in the European Union (Withdrawal) Act 2018 (c. 16) ("the EUWA") in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom (UK) from the European Union (EU). This instrument is being made to address deficiencies in retained EU law in relation to requirements concerning packaged retail and insurance-based investment products ("PRIIPs") arising from the withdrawal of the UK from the EU. This instrument will therefore ensure that the UK's regulatory regime concerning these products continues to operate effectively once the UK has left the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The relevant law is found in 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, 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 and the Packaged Retail and Insurance-based Investment Products Regulations 2017 (S.I. 2017/1127). These are collectively referred to as the "EU PRIIPs Regulation" in this Explanatory Memorandum. The retained EU law which this instrument amends is referred to as the "retained PRIIPs Regulation".
- 2.3 The EU PRIIPs Regulation introduced a standardised disclosure document (called a Key Information Document or "KID") to be provided when packaged investment or PRIIPs are sold to retail investors in the EU.
- 2.4 PRIIPs are investment products which may be offered to retail customers and may be considered as an alternative to, for example, depositing cash in a savings account. They include, but are not limited to, financial products like investment funds, life insurance policies that have an investment element, derivatives and structured investment products.
- 2.5 The objective of the KID is to make it easier for retail investors to understand and compare similar financial products by requiring risks, performance scenarios, costs and other information about the product to be disclosed in a standardised way.
- 2.6 Regulation (EU) No 1286/2014 came into application across the EU on 1 January 2018. It creates consistent rules on: the requirement for a KID; the length, format and

content of KIDs; the provision of KIDs to retail investors; and the powers of regulators with regards to upholding these rules and the administrative penalties Member States may apply if these rules are infringed.

Why is it being changed?

- 2.7 This statutory instrument makes amendments to the retained PRIIPs Regulation to ensure that it operates effectively once the UK has left the EU. Without these amendments, it would be unclear to firms what disclosure obligations they had in relation to PRIIPs, and UK investors would not receive the same information about their investments as they would have pre-exit.
- 2.8 This is part of the wider work the government is undertaking to prepare for the UK's withdrawal from the EU. The changes made in this statutory instrument would not take effect on 29 March 2019 if, as expected, we enter an implementation period.

What will it now do?

- 2.9 This instrument makes amendments to the retained PRIIPs Regulation to ensure that it operates effectively in a no deal scenario at the point at which the UK leaves the EU. These changes include:
- transferring the functions and powers of the European Commission and the European Supervisory Authorities (ESAs) to relevant UK authorities;
 - amending the territorial scope of the retained PRIIPs Regulation so it applies to PRIIPs sold to investors in the UK only;
 - amending the scope of the retained PRIIPs Regulation to uphold an existing exemption for certain securities issued or guaranteed by sovereigns and certain public-sector entities, and maintaining an exemption for certain retail investment funds. More details of the specific changes being made by this instrument are set out in section 7.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom (see the EUWA) and the territorial application of this instrument is not limited either by the EUWA or by this instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is to the whole of the United Kingdom.
- 4.2 The territorial application of this instrument is to the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Economic Secretary to the Treasury (John Glen) has made the following statement regarding Human Rights:

“In my view the provisions of the Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument addresses failures and deficiencies arising from the withdrawal of the UK from the EU in relation to PRIIPs. Part 2 amends the Packaged Retail and Insurance-based Investment Product Regulations 2017 (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, and 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.

7. Policy background

What is being done and why?

- 7.1 The UK will leave the EU on 29 March 2019. The UK and the EU have agreed the terms of an implementation period that will start on 29 March 2019 and last until 31 December 2020. This will provide time to introduce the new arrangements that will underpin the UK-EU future relationship, and provide valuable certainty for businesses and individuals. During the implementation period, common rules will continue to apply. The UK will continue to implement new EU law that comes into effect and the UK will continue to be treated as part of the EU’s single market in financial services. This will mean that access to each other’s markets will continue on current terms and businesses, including financial services firms, will be able to trade on the same terms as now until 31 December 2020. UK firms will need to comply with any new EU legislation that becomes applicable during the implementation period.
- 7.2 The government is seeking a deep and special future partnership with the EU, which should be greater in scope and ambition than any such agreement before and encompass financial services. Given the highly regulated nature of financial services, the volume of trade between UK and EU markets, and a shared desire to manage financial stability risks, the UK proposes a new economic and regulatory arrangement that will preserve mutually beneficial cross-border business models and economic integration for the benefit of businesses and consumers. Decisions on market access would be autonomous in our proposed model, but would be underpinned by stable institutional processes in a bilateral agreement and continued close regulatory and supervisory cooperation.
- 7.3 While the government has every confidence that there will be a deal and an implementation period in place, it has a duty to plan for all eventualities, including a ‘no deal’ scenario. HM Treasury intends to use powers in the European Union (Withdrawal) Act 2018 (c.16) (EUWA) to ensure that the UK continues to have a functioning financial services regulatory regime in all scenarios.

- 7.4 The EUWA repeals the European Communities Act 1972 (c.68) and converts into UK domestic law the existing body of directly applicable EU law (including EU Regulations). It also preserves UK laws relating to EU membership – e.g. legislation implementing EU Directives. This body of law is referred to as “retained EU law”. The EUWA also gives ministers a power to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, through SIs. These contingency preparations for financial services legislation are sometimes referred to as ‘onshoring’. These SIs are not intended to make policy changes, other than to reflect the UK’s new position outside the EU, and to smooth the transition to this situation. The scope of the power is drafted to reflect this purpose and is subject to further restrictions, such as the inability to use the power to impose or increase taxation, or establish a public authority. The power is also time-limited and falls away two years after exit day.
- 7.5 Wherever practicable, the proposed approach is that the same laws and rules that are currently in place in the UK would continue to apply at the point of exit, providing continuity and certainty as we leave the EU. However, if the UK does not enter an implementation period, some changes would be required to reflect the UK’s new position outside the EU from 29 March 2019.
- 7.6 If the UK were to leave the EU without a deal, the UK would be outside the EU’s framework for financial services. The UK’s position in relation to the EU would be determined by the default Member State and EU rules that apply to third countries at the relevant time. The European Commission has confirmed that this would be the case.
- 7.7 In light of this, the approach in this scenario cannot and does not rely on any new, specific arrangements being in place between the UK and the EU. As a general principle, the UK would also need to default to treating EU Member States largely as it does other third countries, although there are cases where a different approach would be needed including to provide for a smooth transition to the new circumstances.
- 7.8 HM Treasury published a document on 27 June 2018, which sets out in more detail HM Treasury’s approach to financial services legislation under the EUWA. (<https://www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act>)
- 7.9 To ensure the retained PRIIPs Regulation operates effectively once the UK has left the EU, certain deficiency fixes will be necessary. These deficiency fixes are explained below.
- Territorial Scope***
- 7.10 Firstly, Regulation 4 of this instrument amends the territorial scope of the retained PRIIPs Regulation by specifying that it will only apply to those firms (UK and third country) that manufacture, sell or advise on PRIIPs to retail investors in the UK. EU rules will continue to apply to any firms (UK and third country) that manufacture, sell or advise on PRIIPs to retail investors in the EU.
- 7.11 Regulation 4 of this instrument also amends the scope of the retained PRIIPs Regulation to uphold an existing exemption for certain securities issued or guaranteed by sovereigns and certain public-sector entities. Under the EU PRIIPs Regulation, such securities issued or guaranteed by EEA sovereigns and public-sector bodies fall under this exemption. This instrument extends this exemption so that all such

securities issued or guaranteed by public-sector bodies in any country will be exempt from the scope of these rules in the UK. This approach will avoid market disruption by ensuring that no new products fall in scope of the retained PRIIPs Regulation on exit day, and ensure that after exit, the UK treats EEA states in the same way as other third countries.

UCITS exemption

- 7.12 The EU PRIIPs Regulation contains an exemption from its requirements in respect of Undertakings for Collective Investment in Transferable Securities (UCITS) funds until 31 December 2019. UCITS are a common type of EU retail investment fund. Under EU rules, UCITS funds have to be legally domiciled in an EEA State. Both UK and EEA domiciled UCITS are sold widely in the UK and are subject to a specific disclosure framework set out in the UCITS Directive, separate to the PRIIPs disclosure framework. Regulation 12 of this instrument maintains this exemption for all UCITS, including EEA UCITS. This is to ensure both UK and EEA funds are able to continue to adhere to the existing disclosure framework for UCITS until this exemption ends, and that investors in UK and EEA UCITS can continue to receive the same disclosures for similar investment products.

Transfer of functions and powers of EEA authorities

- 7.13 Functions under Regulation (EU) No 1286/2014 that are carried out by EU authorities, principally the European Commission, the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), would no longer apply in the UK after EU withdrawal. This instrument corrects this deficiency by generally transferring the functions of ESMA and EIOPA to the Financial Conduct Authority (FCA) and the functions of the Commission to HM Treasury.
- 7.14 Under the EU system of financial regulation, drafts of Binding Technical Standards (BTS) are developed by European Supervisory Authorities. This instrument transfers responsibility for making BTS under Regulation (EU) No 1286/2014 to the FCA, including responsibility for correcting deficiencies in the PRIIPs BTS, so that they operate effectively immediately on exit day and that they remain fit for purpose thereafter. This is in line with the approach taken across financial services regulation, where the Treasury is transferring responsibility for making BTS to UK regulators, as set out in the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115).
- 7.15 Finally, this instrument deletes provisions in the retained PRIIPs Regulation that will become redundant when the UK leaves the EU, such as requirements regarding powers of European regulators and other references to EU bodies and EU Member States, or administrative sanctions powers for national regulators which have already been brought into UK law and granted to the FCA through the UK implementing legislation (S.I. 2017/1127). Regulation (EU) No 1286/2014 also contains obligations for UK authorities to cooperate and share information with EEA authorities. This instrument removes these obligations. Instead, UK authorities will be able to continue to cooperate and share information with EEA authorities, in the same way as they can with authorities outside the EEA, based on the existing domestic framework provisions for cooperation and information sharing under the Financial Services and Markets Act 2000 (c. 8), which allow for this on a discretionary basis.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the EUWA in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 There are currently no plans to consolidate the relevant legislation.

10. Consultation outcome

- 10.1 HM Treasury has not undertaken a consultation on the instrument, but has engaged with relevant stakeholders on its approach to Financial Services legislation under the EUWA, including on this instrument, in order to familiarise them with the legislation ahead of laying.
- 10.2 The instrument was also published in draft, along with an explanatory policy note, on 22 November 2018, in order to maximise transparency ahead of laying.
(<https://www.gov.uk/government/publications/draft-packaged-retail-and-insurance-based-investment-products-amendment-eu-exit-regulations-2019>)
- 10.3 On 23 November 2018, the FCA published a second consultation paper (CP18/36) on their proposed changes to the FCA Handbook and to BTS to take account of Brexit. This paper covers the FCA's proposed changes to the PRIIPs-related BTS.
(<https://www.fca.org.uk/publication/consultation/cp18-36.pdf>)

11. Guidance

- 11.1 No further guidance is being published alongside this instrument.

12. Impact

- 12.1 This instrument affects firms that manufacture, sell or advise on retail investment products that fall within the scope of the retained PRIIPs Regulation. This includes, but is not limited to, firms such as asset managers, insurers, credit institutions and investment advisors.
- 12.2 Any UK, EU or third-country firms selling or advising on PRIIPs to UK investors will be subject to the retained PRIIPs Regulation in the UK, with oversight from the FCA. Any UK firms selling, or advising on, PRIIPs to EU investors will continue to fall under the existing EU rules, and under the supervision of the National Competent Authority of the Member State in which the investor is based, as well as the European Supervisory Authorities. Therefore, firms who operate in both the UK and EU may find that they have to comply with two sets of regulation – the retained PRIIPs Regulation in the UK and Regulation (EU) No 1286/2014 in the EU.
- 12.3 However, in the immediate period after EU withdrawal, the two sets of regulations will be operationally equivalent and so the impact on business is expected to be minimal. This is because the changes introduced by this instrument do not change the effect of the rules around the content and format of the KID. In the immediate period after withdrawal, for the same product, a KID produced under EU rules will also comply with UK rules.

- 12.4 There may be a one-off cost associated with firms requiring legal experts to help examine the new legislation. There is no impact on charities and voluntary bodies.
- 12.5 The impact on the public sector is that, after the UK leaves the EU, the FCA will be responsible for carrying out the functions that are currently carried out by ESMA and EIOPA, while HM Treasury will be responsible for carrying out the relevant functions of the European Commission.
- 12.6 A full Impact Assessment will be published alongside the Explanatory Memorandum on the legislation.gov.uk website, when an opinion from the Regulatory Policy Committee has been received.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise the effects of this instrument in relation to small businesses. The instrument implements amendments to the retained PRIIPs Regulation that would otherwise not operate effectively once the UK has left the EU, and in order to help smooth the transition for all businesses subject to these requirements, irrespective of their size.

14. Monitoring & review

- 14.1 As this instrument is made under the EUWA, no review clause is required.

15. Contact

- 15.1 Noor Naeem at HM Treasury (Telephone: 0207 270 1782 or email: Noor.Naeem@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Clare Bolingford, Deputy Director for the Securities, Markets & Banking team, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Economic Secretary to the Treasury, John Glen MP, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness Statement

- 1.1 The Economic Secretary to the Treasury (John Glen MP) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because: the instrument goes no further than doing what is appropriate to mitigate a disruption in financial services for UK consumers, firms and the UK financial services sector as a whole, from the UK exiting the EU. This instrument ensures that the disclosure regime for PRIIPs sold to UK retail investors continues to operate effectively post EU withdrawal.

2. Good reasons

- 2.1 The Economic Secretary to the Treasury (John Glen MP) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 Without the provisions in this instrument, the proper functioning of the disclosure regime for PRIIPs sold to retail investors in the UK would be jeopardised. It would be unclear to firms what disclosure obligations they had regarding such products, and UK investors would not receive the same information about their investments as they would have before exit.

3. Equalities

- 3.1 The Economic Secretary to the Treasury (John Glen MP) has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 3.2 The Economic Secretary to the Treasury (John Glen MP) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Economic Secretary to the Treasury (John Glen MP) have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.

5. Legislative sub-delegation

5.1 The Economic Secretary to the Treasury (John Glen MP) has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view it is appropriate to create a relevant sub-delegated power in the Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019.”

5.2 The instrument transfers powers to the FCA to make binding technical standards. This is appropriate as the regulators will have the requisite technical knowledge to make assessment of matters, such as how the information to be displayed on the KID should be calculated. This is in line with the approach that the government has set out in the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), in which legislative responsibility for Level 2 technical legislation in financial services will be transferred to the financial regulators.