

EXPLANATORY MEMORANDUM TO
THE PACKAGED RETAIL AND INSURANCE-BASED INVESTMENT PRODUCTS
REGULATIONS 2017

2017 No. 1127

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations implement in part certain Articles 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”).

2.2 The PRIIPs Regulation requires those manufacturing a packaged retail investment product (“a PRIIP”) 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.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 These Regulations implement the PRIIPs Regulation, which introduces a requirement for manufacturers of investment products to make available standardised disclosure documents to retail investors before they invest in their products. These standardised disclosure documents are called Key Information Documents or “KIDs”.

4.2 The PRIIPs Regulation was submitted for scrutiny to the UK Parliament on 7 September 2012. It was cleared by the House of Commons European Scrutiny Committee on 19 December 2012 and the House of Lords European Scrutiny Committee on 16 November 2012.

4.3 The PRIIPs Regulation required the European Supervisory Authorities (“ESAs”) to develop Regulatory Technical Standards (“RTS”) that specify how the information in the KID should be presented and calculated, specifically on methodologies for the calculation and presentation of risks, rewards and costs within the KID on the review, revision and publication of the KID and on the conditions for fulfilling the requirement to provide the KID in good time to the retail investor.

- 4.4 The ESAs consulted publicly on the content of the RTS on three separate occasions (in November 2014, June 2015 and November 2015) prior to submitting the RTS to the European Commission (“the Commission”) in April 2016. In June 2016 the Commission adopted a Delegated Regulation, combining the three sets of RTS into a single legal act (“the Delegated Regulation”). The intention was that the PRIIPs Regulation would apply from 31 December 2016.
- 4.5 However, on 14 September 2016 the European Parliament rejected the Delegated Regulation. Hence the Commission adopted a replacement to reflect the European Parliament’s concerns. Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 (“the replacement Delegated Regulation”) was published in the Official Journal of the EU (OJ) on 12 April 2017. It entered into force on 2 May 2017.
- 4.6 Like the PRIIPs Regulation, the replacement Delegated Regulation will apply from 1 January 2018.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is all of the United Kingdom.
- 5.2 The territorial application of this instrument is all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

“In my view the provisions of the Packaged Retail And Insurance-Based Investment Products Regulations 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The government respected the result and triggered Article 50 of the Treaty on European Union on 29 March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.
- 7.2 The PRIIPs Regulation creates consistent rules on:
- The requirement for a KID;
 - The length, format and content of KIDs; and
 - The provision of KIDs to retail investors.
- 7.3 The measures on disclosure in the PRIIPs Regulation complement investor protection measures found in:
- Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349–496) (more commonly known as MiFID II); and

- Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19–59) (more commonly known as the Insurance Distribution Directive).

7.4 The PRIIPs Regulation applies to:

- PRIIPs manufacturers (e.g. banks, insurance companies, fund managers and investment firms); and
- Those advising on or selling PRIIPs to retail investors.

7.5 PRIIPs manufacturers are those that manufacture PRIIPs or make changes to an existing PRIIP. They are responsible for drawing up KIDs.

7.6 Those advising on or selling PRIIPs are responsible for providing retail investors with KIDs in good time, and before those investors enter into any contract relating to those PRIIPs.

7.7 The PRIIPs Regulation is a directly applicable EU regulation. These Regulations designate the Financial Conduct Authority (“the FCA”) as the competent authority for the purposes of the PRIIPs Regulation. They give the FCA enforcement powers including:

- Making orders prohibiting a person from marketing a PRIIP;
- Making orders requiring a person to suspend the marketing of a PRIIP;
- Issuing a statement about a contravention of the PRIIPs Regulation; and
- Imposing penalties in connection with a contravention of the PRIIPs Regulation.

7.8 They also grant businesses the right to refer certain matters to the Upper Tribunal.

Consolidation

7.9 There are no current plans to consolidate the legislation amended by this instrument.

8. Consultation outcome

8.1 The FCA consulted in July 2016, and published a policy statement in May 2017, which concerned amendments to the FCA handbook on disclosure. The FCA consulted separately during 2017 (CP17/32) on changes to the Enforcement Guide (EG) and Decision Procedure and Penalties manual (DEPP).

8.2 The relevant FCA rules and guidance are known as the Packaged Retail and Insurance-based Investment Products Regulation Instrument 2017 (FCA 2017/28). These come into force on 1 January 2018.

9. Guidance

9.1 It is not considered necessary for HM Treasury to issue specific guidance in connection with these Regulations.

10. Impact

10.1 The standardisation of disclosure documents under the PRIIPs Regulation is expected to increase transparency of costs around investment products across the EU, and may improve competition between firms, leading to lower charges for consumers.

- 10.2 PRIIP manufacturers, whether they are businesses, charities or voluntary bodies, will incur a cost to produce a KID for each PRIIP they manufacture.
- 10.3 The impact on the public sector is limited to the FCA, which will have to undertake the regulatory obligations as designated competent authority for the purposes of the PRIIPs Regulation.
- 10.4 The Commission undertook an Impact Assessment in 2012 analysing the costs and benefits of PRIIPs Regulation when the original proposals were tabled. This was supplemented by a consumer testing study that the Commission undertook in 2015. Better Regulation Framework rules deem it unnecessary for an impact assessment to be produced for this directly applicable EU Regulation.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 While PRIIP manufacturers will incur a cost to produce a KID for each PRIIP they manufacture, this SI imposes no additional costs to small businesses.

12. Monitoring & review

- 12.1 HM Treasury must review the Regulations from time to time and set out the conclusions of each review in a published report. The first report, which must be published by 1 January 2023, will set out the objectives intended to be achieved by the regulatory provisions, assess the extent to which those objectives are achieved, and assess whether those objectives remain appropriate.

13. Contact

- 13.1 Alexandre Christie at HM Treasury. Telephone: 020 7270 4759 or email: Alexandre.Christie@hmtreasury.gsi.gov.uk