EXPLANATORY MEMORANDUM TO

THE PACKAGED RETAIL AND INSURANCE-BASED INVESTMENT PRODUCTS (UCITS EXEMPTION) (AMENDMENT) REGULATIONS 2021

2021 No. 1149

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 The purpose of this statutory instrument ("S.I") is to extend an existing legal exemption for management and investment companies and persons advising on, or selling, Undertakings for Collective Investment in Transferable Securities ("UCITS") funds (herein referred to as "UCITS funds providers") from the requirements of the Packaged Retail and Insurance-based Investment Products ("PRIIPs") Regulation. As a consequence of this SI, the current exemption will be extended by five years, to 31 December 2026.

2.2 HM Treasury has announced that it will undertake a review of the regulatory regime that underpins current retail disclosure rules. This five-year extension will prevent additional and unnecessary compliance costs and associated burdens for UCITS funds providers and will provide prolonged certainty to investors and providers regarding the disclosure documentation that must be produced in relation to a UCITS fund, whilst this review takes place.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument is the whole of the United Kingdom.

4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument is made under powers granted to HM Treasury under the Financial Services Act 2021. That Act also gave the Financial Conduct Authority ("FCA") the power to make changes to elements of the PRIIPs Regulation disclosure documentation, to make this more appropriate to the needs of both retail investors and firms selling these products, while the broader review takes place.

6.2 This instrument has been introduced to extend the current exemption for UCITS funds from the PRIIPs Regulation for five years. HM Treasury expects to introduce more changes to the rules for retail disclosure before that five-year period expires.

7. Policy background

What is being done and why?

7.1 UCITS funds are specially constituted collective investment portfolios exclusively dedicated to the investment of assets raised from retail investors. UCITS funds comply with the requirements introduced under the EU's UCITS Directive, including via regulatory measures implementing the UCITS Directive in the UK, and in the requirements of onshored EU law. UCITS funds are currently exempt from the requirements of the PRIIPs Regulation. The current exemption is due to expire on 31 December 2021.

7.2 The PRIIPs Regulation is a piece of legislation that captures most packaged investment products offered to retail investors. The PRIIPs Regulation sets out several requirements regarding what information must be disclosed to investors in order to guide investment choices.

7.3 The current exemption means that, instead of producing a PRIIPs Key Information Document ("KID"), UCITS funds providers must produce a UCITS specific Key Investor Information Document ("KIID"). Both the UCITS KIID and the PRIIPs KID are documents intended to help retail investors make informed investment decisions.

7.4 This SI extends the current exemption for UCITS funds from the requirements of the PRIIPs Regulation for a further five years. As a result of this, UCITS providers will continue to need to produce a UCITS KIID, rather than move to producing a PRIIPS KID from the end of the year.

7.5 Within these five years, HM Treasury intends to undertake a previously announced review of the retail disclosure regime. Extending the current exemption by five years will avoid a situation in which UCITS funds providers have to incur the costs of transitioning to the PRIIPs Regulation by the end of 2021, only to have to then comply with whatever amended regime or successor regulation is introduced shortly thereafter for PRIIPs.

7.6 A five-year extension to the exemption is the maximum possible under the powers created in the Financial Services Act 2021. HM Treasury chose to use the full five year extension to provide as much certainty as possible for UCITS providers while a review of the regulatory regime for retail disclosures takes place.

7.7 The extension of the current exemption will provide certainty for industry and investors regarding the disclosures UCITS funds providers will have to make to retail investors beyond the end of 2021.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it modifies the applicability of obligations provided in onshored EU law, namely the PRIIPs Regulation. The extension of the current exemption for a further 5 years via this instrument differs from the 6-month extension to the same exemption in EU law which the European Commission proposed and began consulting on in July 2021.

9. Consolidation

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

10. Consultation outcome

10.1 There has been no formal consultation carried out in relation to this instrument. However, HM Treasury has engaged with industry to understand views on the PRIIPs Regulation and UCITS Directive. Furthermore, the Financial Services Act 2021, under which this instrument is being made, was widely scrutinised and debated during its passage through Parliament.

11. Guidance

11.1 No guidance has been published with this instrument.

12. Impact

12.1 The impact on business, charities or voluntary bodies is focussed solely on persons or firms manufacturing, advising on, or selling UCITS funds to retail clients. For those UCITS funds providers, the impact of this SI is beneficial as it spares resources that would otherwise be directed toward additional and unnecessary regulatory compliance.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because this S.I relates to the maintenance of existing regulatory standards. There are no new costs incurred to businesses as a result of this S.I, but there are indirect monetary savings as this S.I allows UCITS funds providers to avoid additional and unnecessary compliance costs. A de minimis impact assessment is published with this Explanatory Memorandum alongside this instrument at www.legislation.gov.uk.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific approach is taken to minimise the impact of the requirements on small businesses (employing up to 50 people) as the S.I is intended to maintain the status quo, regardless of size.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is based on ongoing consultation with industry. HM Treasury continues to monitor developments with regard to the market for PRIIPs and UCITS funds and will continue to engage as part of HM Treasury's forthcoming review of retail disclosure more broadly.

14.2 The instrument does not include a statutory review clause, and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Economic Secretary to the Treasury (John Glen MP) has made the following statement:

"The Economic Secretary to the Treasury considers that inserting a review provision is not appropriate, because the expected net annualised impact on business is positive or neutral, which means that the instrument will reduce, or keep unchanged, costs to businesses, and that the expense associated with conducting a review would be disproportionate."

15. Contact

15.1 Charles Grainger at HM Treasury (email: Charles.Grainger@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Tom Duggan, Deputy Director for Securities and Markets, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Glen MP, Economic Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.