Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Packaged Retail and Insurance-based Investment Products Regulations 2017. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2017 No. 1127

FINANCIAL SERVICES AND MARKETS

The Packaged Retail and Insurance-based Investment Products Regulations 2017

Made - - - -	*4th December 2017*
Laid before Parliament	*5th December 2017*
Coming into force - -	*1st January 2018*

The Treasury are a government department designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to financial services.

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

F1 S.I. 2012/1759.

F2 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).

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 [F3];

"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 [F4];

"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;

"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).

F3 2000 c.8.
F4 OJ No L 352, 9.12.2014, p.1.

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 [F5] (as applied by Schedule 1).

F5 Section 393 was amended by paragraph 32 of Schedule 9 to the Financial Services Act 2012 (c.21).

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.