

Subsidiary Legislation made under s.53.

**FINANCIAL SERVICES (PACKAGED RETAIL AND  
INSURANCE BASED INVESTMENT PRODUCTS)  
REGULATIONS 2017**

**(LN. 2017/244)**

*Commencement*      **31.12.2017**

**Implementing:**

Regulation (EU) No 1286/2014

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**Financial Services (Investment and Fiduciary Services)**

**FINANCIAL SERVICES (PACKAGED RETAIL AND INSURANCE  
BASED INVESTMENT PRODUCTS) REGULATIONS 2017**

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**Subsidiary  
2017/244**

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*In exercise of the powers conferred upon the Minister by section 53 of the Financial Services (Investment and Fiduciary Services) Act, as read with section 23(g)(i) of the Interpretation and General Clauses Act and upon the Government by section 23(g)(ii) of that Act, and in order to implement 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 (PRIIPs), the Minister and the Government have made the following Regulations.*

**PART 1  
PRELIMINARY**

**Title and commencement.**

1.(1) These Regulations may be cited as the Financial Services (Packaged Retail and Insurance Based Investment Products) Regulations 2017.

(2) These Regulations come into operation on 31st December 2017.

**Interpretation.**

2.(1) In these Regulations—

“the EU PRIIP 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 (PRIIPs), as amended from time to time;

“the FSC” means the Financial Services Commission established under section 3 of the Financial Services Commission Act 2007; and

“relevant infringement” has the meaning given in regulation 8(3).

(2) Expressions used in these Regulations that are also used in the EU PRIIP Regulation have the same meaning in these Regulations as they have in that Regulation.

**Application of EU Regulation.**

3. The EU PRIIP Regulation has effect in Gibraltar subject to these Regulations.

**Designation of competent authority.**

4. The FSC is designated as the competent authority for the purposes of the EU PRIIP Regulation.

**PART 2  
EU PRIIP REGULATION****Infringement reporting procedures.**

5. A PRIIP manufacturer or person advising on, or selling a PRIIP must establish and maintain appropriate internal procedures which enable its employees to report, through a specific, independent and autonomous channel, actual or potential infringements of the EU PRIIP Regulation.

**Transitional period.**

6.(1) A person to whom this regulation applies is exempt from complying with the obligations imposed under the EU PRIIP Regulation until 31st December 2019.

(2) This regulation applies to a management company, open-ended investment company or person advising on, or selling–

- (a) units of UCITS within the meaning of the Financial Services (Collective Investment Schemes) Act 2011; or
- (b) units of a non-UCITS fund offered to retail investors and in respect of which key investor information has been provided in accordance with regulations 93 to 96 of the Financial Services (Collective Investment Schemes) Regulations 2011.

**PART 3  
SUPERVISION, ENFORCEMENT AND SANCTIONS****FSC's powers.**

7.(1) The FSC, for the purposes of supervising and investigating compliance with and enforcing the EU PRIIP Regulation and these Regulations, may exercise the powers in Part V of the Financial Services (Investment and Fiduciary Services) Act as if a PRIIP manufacturer or person advising on, or selling a PRIIP was a relevant person for the purposes of section 32 of that Act.

(2) In exercising its powers under the EU PRIIP Regulation or these Regulations, the FSC may–

- (a) act directly or in collaboration with other statutory or competent authorities;
- (b) delegate tasks under its responsibility; or

- (c) institute legal proceedings.

**Sanctions for infringements.**

8.(1) The FSC, where it is satisfied that an infringement of the EU PRIIP Regulation has occurred, may—

- (a) in the case of a relevant infringement, take any of the actions specified in regulations 9 to 12(1) to (3); or
- (b) in the case of any other infringement, take any of the actions specified in regulations 9, 10 or 12(4).

(2) In taking any action in respect of an infringement, the FSC must take account of all relevant circumstances including, where appropriate, the matters specified in Article 25 of the EU PRIIP Regulation.

(3) In these Regulations a “relevant infringement” means an infringement of Article 5(1), 6, 7, 8(1), 8(2), 8(3), 9, 10(1), 13(1), 13(3), 13(4), 14 or 19 of the EU PRIIP Regulation.

**Public statement.**

9.(1) The FSC may publish a statement specifying—

- (a) the nature of the infringement; and
- (b) the identity of the person responsible for it.

(2) Publication under this regulation may take any form, or combination of forms, that the FSC thinks appropriate.

**Cease and desist order.**

10. The FSC may order a person—

- (a) to cease any conduct which constitutes an infringement; and
- (b) to desist from any repetition of that conduct.

**Suspension and prohibition orders.**

11.(1) The FSC may by order—

- (a) suspend the marketing of a PRIIP;
- (b) prohibit the marketing of a PRIIP; or

- (c) prohibit the provision of a key information document which does not comply with Article 6, 7, 8 or 10 of the EU PRIIP Regulation and require a new version of the document to be published.

(2) An order under this regulation–

- (a) must specify a period during which it has effect; and
- (b) in the case of a prohibition order, may specify an indefinite period.

#### **Civil penalties.**

12.(1) The FSC may by order impose a penalty for a relevant infringement of an amount not exceeding whichever is the higher of the following–

- (a) where the profits gained or losses avoided by the infringement can be determined, twice the amount of those profits or avoided losses;
- (b) in the case of a legal person, EUR 5,000,000 or 3% of the total annual turnover according to the last available annual accounts approved by its management body; or
- (c) in the case of an individual, EUR 700,000.

(2) A penalty under sub-regulation (1) may be imposed as an equivalent amount expressed in Sterling, based upon the exchange rate as at 30 December 2014.

(3) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU, the relevant total turnover for the purpose of sub-regulation (1)(b) is the total annual turnover, or the corresponding type of income in accordance with the relevant European Union law in the area of accounting according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

(4) The FSC may by order impose a penalty for an infringement which is not a relevant infringement of an amount not exceeding £10,000.

(5) A penalty imposed under this regulation may be enforced as if it was a civil debt owed to the FSC.

(6) Where the FSC has imposed one or more sanctions under this Part on a PRIIP manufacturer or person advising on or selling a PRIIP, the FSC may–

- (a) require the PRIIP manufacturer or person to provide the retail investor concerned with information about the sanction and where to submit any complaint or claim for redress; or
- (b) provide that information to that retail investor.

**Warning notices.**

13.(1) Before taking action under these Regulations in respect of an infringement the FSC must give the person concerned a warning notice, stating the action proposed and the reasons for it.

(2) Sub-regulation (1) does not apply if the FSC is satisfied that a warning notice–

- (a) cannot be given because of urgency;
- (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the action to be taken; or
- (c) is superfluous having regard to the need to give notice of legal proceedings or for some other reason.

(3) A warning notice–

- (a) must give the recipient not less than 14 days to make representations; and
- (b) must specify a period within which the recipient may decide whether to make oral representations.

(4) The period for making representations may be extended by the FSC.

**Decision notices.**

14.(1) This regulation applies where the FSC has–

- (a) issued a warning notice, or
- (b) dispensed with the requirement to give a warning notice in accordance with regulation 13(2).

(2) After considering any representations made in accordance with regulation 13 the FSC must issue–

- (a) a decision notice stating that the FSC will take the action specified in the warning notice;
- (b) a discontinuance notice stating that the FSC does not propose to take that action; or
- (c) a combined notice consisting of a decision notice stating that the FSC will take certain action specified in the warning notice and a discontinuance notice in respect of the remaining action.

(3) A decision notice takes effect, and the specified action may be taken–

- (a) at the end of the period for bringing an appeal if no appeal is brought, or
- (b) when any appeal is finally determined or withdrawn.

**Appeals.**

15.(1) The person on whom a decision notice is served may appeal to the Supreme Court.

(2) An appeal must be brought within 28 days of the date of the decision notice.

**Interim orders.**

16. The FSC may apply to the Supreme Court for permission to take action under these Regulations where a decision notice has been given and has not yet taken effect (whether or not a warning notice has been given).

**Publication of sanctions.**

17.(1) Subject to sub-regulation (3), the FSC must publish on its website details of any sanction imposed under this Part in respect of a relevant infringement, without undue delay after the person concerned is informed of the decision.

(2) The information published under sub-regulation (1) must include at least–

- (a) the type and nature of the relevant infringement; and
- (b) the identity of the person responsible for it.



- (3) The FSC must take one of the steps in sub-regulation (4) where–
- (a) following an obligatory prior assessment, it considers that it would be disproportionate to publish in accordance with sub-regulation (1)–
    - (i) the identity of the legal person involved; or
    - (ii) the personal data of the individual involved; or
  - (b) it considers that publication in accordance with that sub-regulation would jeopardise the stability of financial markets or an ongoing investigation.
- (4) Those steps are–
- (a) to defer publication until the reasons for non-publication cease to exist;
  - (b) to publish the decision on an anonymous basis if doing so ensures effective protection of the personal data concerned; or
  - (c) not to publish the decision if the steps in paragraphs (a) and (b) are considered to be insufficient to ensure–
    - (i) that the stability of the financial markets would not be put in jeopardy; or
    - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.
- (5) In the case of a decision to publish on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication will cease to exist.
- (6) Sub-regulation (1) does not apply while an appeal could be brought or is pending.
- (7) Despite sub-regulation (6), the FSC may apply to the Supreme Court for permission to publish a decision which is or may be subject to an appeal and, if permission is granted, the FSC must without undue delay–
- (a) publish the decision together with a statement which–

- (i) states that the decision may be the subject of an appeal and the time in which any appeal must be made; and
  - (ii) confirms whether it is the subject of an appeal;
- (b) amend the information published under paragraph (a)–
- (i) if an appeal is submitted after its initial publication; or
  - (ii) to reflect the outcome of any appeal.

(8) Any decision published under this regulation must remain on the FSC's website for at least five years but any personal data within a decision must only remain on the website for so long as the FSC considers necessary, having regard to the Data Protection Act 2004.

(9) The FSC must–

- (a) when it discloses any sanction or penalty to the public, at the same time report that sanction or penalty to the competent European Supervisory Authority (ESA);
- (b) inform the competent ESA of any decision to impose a sanction or measure which, in accordance with sub-regulation (4)(c), has not been published (including any appeal in respect of such a sanction or measure and the outcome of that appeal); and
- (c) provide the competent ESA annually with aggregated information regarding any sanctions or penalties imposed in respect of relevant infringements under these Regulations.

**Data protection.**

18. The Data Protection Act 2004 applies to the processing of personal data for the purposes of the EU PRIIP Regulation.