

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5042 GIBRALTAR Thursday 30th March 2023

LEGAL NOTICE NO. 73 OF 2023

EUROPEAN UNION (WITHDRAWAL) ACT 2019

FINANCIAL SERVICES ACT 2019

**PACKAGED RETAIL AND INSURANCE-BASED INVESTMENT PRODUCTS
(AMENDMENT) (EU EXIT) REGULATIONS 2023**

In exercise of the powers conferred on the Minister by section 11 of the European Union (Withdrawal) Act 2019 and sections 150, 620, 621, 626 and 627 of the Financial Services Act 2019, the Minister has made these Regulations-

PART 1 PRELIMINARY

Title.

1. These Regulations may be cited as the Packaged Retail and Insurance-Based Investment Products (Amendment) (EU Exit) Regulations 2023.

Commencement.

2. These Regulations come into operation on the day of publication.

PART 2 AMENDMENT OF RETAINED EU LAW

CHAPTER 1 REGULATION (EU) NO 1286/2014

Amendment of the PRIIP Regulation.

3.(1) The PRIIP Regulation is amended in accordance with this Chapter.

(2) In these Regulations, the “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 it forms part of the law of Gibraltar.

Subject matter and scope.

4.(1) In Article 1–

- (a) omit “uniform”;
- (b) for “enable retail investors” substitute “enable them”.

(2) In Article 2–

- (a) in paragraph 1, after “manufacturers” insert “in relation to PRIIPs which are, or are to be, made available to retail investors,”;

- (b) in paragraph 2–

- (i) in point (a), for “Annex I to Directive 2009/138/EC” substitute “paragraph 22 of Schedule 2 to the Financial Services Act 2019”;
- (ii) in point (c), for “point (43) of Article 4(1) of Directive 2014/65/EU” substitute “paragraph 77(2) of Schedule 2 to the Financial Services Act 2019”;
- (iii) for point (d) substitute–
 - “(d) securities in Article 1(2)(b) to (f), 1(4)(j) and 1(5)(i) of Regulation (EU) 2017/1129 as it forms part of the law of Gibraltar;”;
- (iv) in point (e), for “national law” substitute “the law of Gibraltar or a third country”;
- (v) in point (f), for “Directive 2003/41/EC of the European Parliament and of the Council or Directive 2009/138/EC” substitute “the Financial Services (Occupational Pensions Institutions) Regulations 2020 or the Financial Services (Insurance Companies) Regulations 2020 or as defined in regulation 4 of the Employment (Occupational Pensions) Regulations 2018”;
- (vi) in point (g), for “national law” substitute “the law of Gibraltar or a third country”.

(3) For Article 3, substitute–

“1. Where PRIIP manufacturers subject to this Regulation are also subject to the prospectus provisions, both this Regulation and those provisions apply.

2. Where PRIIP manufacturers subject to this Regulation are also subject to the Financial Services (Insurance Companies) Regulations 2020, both this Regulation and those Regulations apply.

3. In this Article, the “prospectus provisions” means Chapter 3 of Part 19 of the Financial Services Act 2019, any Prospectus Rules made under that Chapter and Regulation (EU) 2017/1129 as it forms part of the law of Gibraltar.”.

Definitions.

5.(1) Article 4 is amended as follows.

(2) In point (1)

- (a) for “point (26) of Article 13 of Directive 2009/138/EC” substitute “regulation 3(1) of the Financial Services (Insurance Companies) Regulations 2020”;
- (b) for “point (an) of Article 4(1) of the Directive 2011/61/EU of the European Parliament and of the Council” substitute “Article 2(2) of Regulation (EU) 2017/2402 as it forms part of the law of Gibraltar”;

(3) For point (5) substitute–

“(5) ‘selling a PRIIP’ means–

- (a) offering a PRIIP contract to a retail investor; or
- (b) concluding a PRIIP contract with a retail investor;

(5A) ‘advising on a PRIIP’ means advising a retail investor on a PRIIP;”.

(4) In point (6)–

- (a) in point (a), for “point (11) of Article 4 (1) of Directive 2014/65/EU” substitute “regulation 2(1) of the Financial Services (Investment Services) Regulations 2020”;
- (b) in point (b),
 - (i) for “Directive 2002/92/EC” substitute “the Financial Services (Insurance Distribution) Regulations 2020”;
 - (ii) for “point (10) of Article 4(1) of Directive 2014/65/EU” substitute “regulation 2(1) of the Financial Services (Investment Services) Regulations 2020”;

(5) For point (7) substitute–

“(7) ‘durable medium’ means an instrument which enables an investor to store information addressed personally to that investor in a way that is accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;”;

(6) For point (8) substitute—

“(8) ‘GFSC’ means the Gibraltar Financial Services Commission, within the meaning of section 21(1) of the Financial Services Act 2019;

(9) ‘the Minister’ means the Minister with responsibility for financial services;

(10) ‘technical standards’ has the meaning given in section 626A of the Financial Services Act 2019;

(11) ‘third country’ means a country or territory outside Gibraltar.”.

Drawing up the key information document.

6. In Article 5, omit paragraph 2.

Form and content of key information document.

7.(1) For Article 7, substitute—

“The key information document must be written in English, or where it has been written in a different language, must be translated into English and the translation must faithfully and accurately reflect the content of the original key information document.”.

(2) In Article 8—

(a) in paragraph 3—

(i) in point (a), omit “, information about the competent authority of the PRIIP manufacturer”;

(ii) in point (d)(v), for “of the retail investor's home Member State” substitute “which applies to the retail investor”;

(b) in paragraph 4, for “The Commission shall be empowered to adopt delegated acts in accordance with Article 30 specifying” substitute “The Minister may by Regulations specify”;

(c) in paragraph 5—

(i) in the first sub-paragraph, for “ESAs shall, through the Joint Committee of the European Supervisory Authorities (‘Joint Committee’), develop draft regulatory” substitute “Minister may make”;

- (ii) in the second sub-paragraph, for “When developing the draft regulatory technical standards the ESAs shall” substitute “In developing any technical standards the Minister may”;
- (iii) omit the third and fourth sub-paragraphs.

(3) In Article 10, in paragraph 2–

- (a) in the first sub-paragraph, for “ESAs shall, through the Joint Committee, develop draft regulatory” substitute “Minister may make”;
- (b) omit the second and third sub-paragraphs.

(4) In Article 11–

- (a) in paragraph 2, for “national” substitute “domestic”;
- (b) in paragraph 3, for “national” substitute “domestic”;
- (c) in paragraph 4, for “national” substitute “domestic”.

Provision of the key information document.

8. In Article 13–

- (a) in paragraph 3, for “Article 3(1), point (a) of Article 3(3) and Article 6 of Directive 2002/65/EC” substitute “sections 7(1) and 9 of, and Schedule 1 to, the Financial Services (Distance Marketing) Act 2006”;
- (b) in paragraph 5–
 - (i) in the first sub-paragraph, for “ESAs shall, through the Joint Committee, develop draft regulatory” substitute “the Minister may make”;
 - (ii) omit the second and third sub-paragraphs.

Market monitoring and product intervention powers.

9.(1) In Article 15–

- (a) omit paragraph 1;
- (b) in paragraph 2–
 - (i) for “Competent authorities” substitute “The GFSC”;
 - (ii) for “their Member State” substitute “Gibraltar”.

(2) Omit Article 16.

(3) In Article 17–

(a) in paragraph 1–

(i) for “A competent authority” substitute “The GFSC”;

(ii) for “its Member State” substitute “Gibraltar”;

(b) in paragraph 2, in the first sub-paragraph–

(i) for “A competent authority” substitute “The GFSC”;

(ii) in point (a), for “at least one Member State” substitute “Gibraltar”

(iii) in point (b), for “Union law” substitute “the law of Gibraltar”;

(iv) omit points (d) and (e);

(c) in paragraph 2, in the second sub-paragraph, in both places it appears, for “competent authority” substitute “GFSC”;

(d) for paragraph 3 substitute–

“3. The GFSC must not impose a prohibition or restriction under this Article unless, at least one month before the measure is intended to take effect, the GFSC has published details of its decision to impose the measure on its website in accordance with paragraph 5.”;

(e) for paragraph 4, substitute–

“4. In exceptional cases where the GFSC considers it is necessary to take urgent action under this Article in order to prevent detriment arising from the insurance-based investment products, activities or practices referred to in paragraph 1, the GFSC may take action on a provisional basis if–

(a) all the criteria in this Article are met; and

(b) it is clearly established that delaying the action for one month would not adequately address the specific concern or threat.

The GFSC must not take any action on a provisional basis for a period exceeding three months.”;

(f) in paragraph 5, for “competent authority” substitute “GFSC”;

(g) in paragraph 6, for “competent authority” substitute “GFSC”;

- (h) in paragraph 7–
 - (i) in the first sub-paragraph–
 - (aa) for “Commission shall adopt delegated acts in accordance with Article 30 specifying criteria and factors to be taken into account by competent authorities” substitute “the Minister may by Regulations specify criteria and factors to be taken into account by the GFSC”;
 - (bb) for “at least one Member State referred to in point (a) of the first subparagraph of paragraph 2” substitute “Gibraltar”;
 - (ii) in the second sub-paragraph, for “shall include” substitute “may include”.
- (4) Omit Article 18.

Complaints, redress, cooperation and supervision.

10.(1) In Article 19(c), omit “in another Member State or”.

(2) Omit Article 20.

(3) For Article 21, substitute–

“Article 21

The data protection legislation within the meaning of the Data Protection Act 2004 applies to the processing of personal data for the purposes of this Regulation.”.

Administrative penalties and other measures.

11.(1) In the heading to Chapter V, for “ADMINISTRATIVE PENALTIES AND OTHER MEASURES” substitute “REPORTING OF INFRINGEMENTS”.

(2) Omit Articles 22 to 27.

(3) For Article 28, substitute–

“Article 28

1. The GFSC must establish appropriate arrangements which enable any person to report an infringement or potential infringement of this Regulation to the GFSC.

2. Those arrangements must include–

- (a) specific procedures for the receipt and investigation of reported infringements; and

- (b) arrangements which treat as confidential information about the identity of both the person who reports an infringement and any individual who is allegedly responsible for an infringement, except where its disclosure is necessary for the purpose of any further investigations or subsequent judicial proceedings.

3. An employee of a person to which this Regulation applies who reports an infringement in accordance with this Article—

- (a) is not to be considered to be in breach of any restriction on disclosure of information imposed by contract or by any law and any provision in an agreement is void in so far as it purports to preclude an employee from reporting an infringement; and
- (b) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that the employee has reported an infringement.

4. An employee who has been subjected to a detriment contrary to paragraph 3 may present a complaint to the Employment Tribunal as if the reporting of an infringement was a protected disclosure within the meaning of Part IVA of the Employment Act.”.

(4) Omit Article 29.

Final provisions.

12.(1) For Articles 30 and 31 substitute—

“Article 30
Regulations

Any power to make regulations conferred on the Minister by this Regulation includes the power to—

- (a) make any supplementary, incidental, consequential, transitional or saving provision which the Minister considers necessary or expedient; and
- (b) make different provision for different purposes.”.

(2) In Article 32—

(a) for paragraph 1 substitute—

- “1. The following are exempt from the obligations under this Regulation until 31st December 2026—

- (a) the management company (as defined in regulation 3(1) of the Financial Services (UCITS) Regulations) of a UCITS;
 - (b) an authorised open-ended investment company (as defined in that regulation); and
 - (c) a person advising on, or selling, units of a UCITS.”;
- (b) in paragraph 2–
- (i) for “a Member State” substitute “Gibraltar”;
 - (ii) for “Articles 78 to 81 of Directive 2009/65/EC” substitute “Chapter 5 of Part 3 of the Financial Services (UCITS) Regulations 2020”;
- (3) Omit Article 33.
- (4) After Article 34, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

CHAPTER 2

COMMISSION DELEGATED REGULATION (EU) 2016/1904

Amendment of Commission Delegated Regulation (EU) 2016/1904.

13.(1) 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, as it forms part of the law of Gibraltar, is amended as follows.

- (2) Omit Article 1.
- (3) In Article 2–
- (a) in the heading, for “competent authorities” substitute “the GFSC”;
 - (b) in paragraph 1–
 - (i) in both places it appears, for “competent authorities” substitute “the GFSC”;
 - (ii) in both places it appears, for “at least one Member State” substitute “Gibraltar”;
 - (c) in paragraph 2–
 - (i) in the opening words–
 - (aa) for “competent authorities” substitute “the GFSC”;

- (bb) for “at least one Member State” substitute “Gibraltar”;
- (ii) in paragraph (2)(c), for “as defined in Directive 2014/65/EU” substitute “within the meaning of the Financial Services (Investment Services) Regulations 2020”;
- (iii) in paragraph 2(r), for “the Member State of the relevant competent authority” substitute “Gibraltar”.

(4) After Article 3, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

CHAPTER 3 COMMISSION DELEGATED REGULATION (EU) 2017/653

Amendment of Commission Delegated Regulation (EU) 2017/653.

14.(1) Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents, as it forms part of the law of Gibraltar, is amended as follows.

(2) In the recitals—

(a) for recital (9), substitute—

“(9) While estimates on returns from a PRIIP are difficult to produce and understand, information on performance is of primary interest for retail investors and should be included in the key information document. Retail investors should be provided with clear information on the main factors likely to determine or influence investment performance and any fluctuations in the value of the PRIIP, including relevant correlations and benchmarks, in a manner consistent with realistic assumptions about possible outcomes and with the estimates of the PRIIP’s level of market risk, presented in such a way so as to enable the investor to form a reasonable understanding of how the PRIIP is likely to perform across an appropriately diverse and relevant range of market conditions.”;

(b) in recital (18), in the second sentence, after “risks,” insert “factors determining or influencing”;

(c) in recital (20), in the first sentence, for “performance scenarios” substitute “information on performance”.

(3) Before Article 1, insert–

“Article A1
Interpretation

In this Regulation, unless the contrary intention appears:

- (a) ‘AIF’ has the meaning given in regulation 4(1) of the Financial Services (Alternative Investment Fund Managers) Regulations 2020;
- (b) ‘derivative-based PRIIP’ means a Category 1 PRIIP that is a future, call option, or put option traded on a regulated market or on a third-country market considered to be equivalent to a regulated market in accordance with Article 28 of Regulation (EU) 600/2014 as it forms part of the law of Gibraltar, the United Kingdom or the European Union (as the case may be);
- (c) ‘regulated market’ means a regulated market which is a Gibraltar regulated market, UK regulated market or EU regulated market, as those terms are defined in Article 2(13) of Regulation (EU) No 600/2014, as it forms part of the law of Gibraltar;
- (d) ‘UCITS’ has the meaning given in section 292(1) of the Financial Services Act 2019.”.

(4) In Article 1–

- (a) in the first paragraph, omit point (d);
- (b) in the second paragraph–
 - (i) in point (a), for “laid down in Article 30(3)(a) of Directive (EU) 2016/97 of the European Parliament and of the Council” substitute “in regulation 21(6)(b) of the Financial Services (Insurance Distribution) Regulations 2020”;
 - (ii) in point (b), for “laid down in points (i)-(vi) of Article 25(4)(a) of Directive 2014/65/EU of the European Parliament and of the Council” substitute “in regulation 40(8)(a)(i) to (vi) of the Financial Services (Investment Services) Regulations 2020”;

(5) In Article 3–

- (a) in paragraph 1, for “methodology for the presentation of performance scenarios, as set out in Annexes IV and V” substitute “criteria for the presentation of performance information, as set out in Annex 4A”;
- (b) after paragraph 1, insert–

- “1A. By way of derogation from paragraph 1:
- (a) subject to sub-paragraph (b), a PRIIP manufacturer must ensure the summary risk indicator produced via application of the methodology set out in Annex II is appropriate and unlikely to mislead investors in the PRIIP, if necessary by increasing the summary risk indicator that would otherwise be assigned to the PRIIP under that methodology; and
 - (b) in respect of a PRIIP which is issued by a venture capital trust, a PRIIP manufacturer must assign a summary risk indicator no lower than 6 or 7.”;
 - (c) in paragraph 2, in point (c), in both places it appears, for “the official currency of the Member State where the PRIIP is being marketed” substitute “sterling”;
 - (d) for paragraph 3, substitute–
 - “3. PRIIP manufacturers shall include appropriate information on investment performance, as set out in Annex 4A in the section entitled ‘What are the risks and what could I get in return?’ of the key information document.”;
 - (e) omit paragraphs 4 and 5.
- (6) In Article 12.2, after “Regulation (EU) No 583/2010” insert “(as it has effect in Gibraltar, the United Kingdom or the European Union, as the case may be)”;
- (7) In Article 13.3, after “Regulation (EU) No 583/2010” insert “(as it has effect in Gibraltar, the United Kingdom or the European Union, as the case may be)”;
- (8) In Article 14–
- (a) in paragraph 1(c), for “scenarios” substitute “information”;
 - (b) in paragraph 2, for “Articles 78 to 81 of Directive 2009/65/EC” substitute “Chapter 5 of Part 3 of the Financial Services (UCITS) Regulations 2020”;
- (9) In Article 15.2, for point (c), substitute–
- “(c) whether the performance information narrative continues to provide investors with a fair impression of how the PRIIP is likely to perform under an appropriately diverse and relevant range of market conditions.”.
- (10) In Article 18, for “31 December 2021” substitute “31 December 2026”.
- (11) After Article 18, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

(12) In Annex I–

- (a) under the heading “Product”, omit “[Competent Authority of the PRIIP Manufacturer in relation to the KID]”;
- (b) under the heading “What are the risks and what could I get in return?”, for the entry entitled “Performance Scenarios” and the text opposite that entry, substitute–

“Investment performance information Appropriate narrative information on the drivers of investment performance as set out in Annex 4A”.

(13) In Annex II–

- (a) in point 4(b), for “items 4 to 10 of Section C of Annex I to Directive 2014/65/EU of the European Parliament and of the Council” substitute “paragraphs 46(4) to (10) of Schedule 2 to the Financial Services Act 2019”

- (b) for the unnumbered paragraph after paragraph 7, substitute–

“(7A) Where appropriate benchmarks or proxies are used by a PRIIP manufacturer, those benchmarks or proxies shall be representative of the assets or exposures that determine the performance of the PRIIP. The PRIIP manufacturer shall document the use of such benchmarks or proxies and disclose them in the narrative performance information section of the key information document, as set out in Annex 4A.”;

- (c) in point 37–

- (i) omit “with the European Securities and Markets Authority (ESMA)”;
- (ii) after “Council” insert “(as it has effect in Gibraltar, the United Kingdom or the European Union, as the case may be)”;

- (d) after point 37, insert–

“37A. The ability of a PRIIP manufacturer to define an ECAI certified or registered in accordance with Regulation (EC) No 1060/2009 (as it has effect in the European Union) for the purpose of the credit risk assessment shall not otherwise affect the application of Article 4(1) of that Regulation (as it has effect in the European Union) to a PRIIP manufacturer to which it also applies.”;

- (e) for point 43(a) substitute–

- “(a) credit quality step 3, if the rating of the jurisdiction in which the obligor is domiciled would be credit quality step 3 and if the obligor is regulated as a credit institution or an insurance undertaking under:
- (i) the law of Gibraltar;
 - (ii) the law of the United Kingdom;
 - (iii) the law of an EEA State for the purposes of European Union law; or
 - (iv) a legal framework deemed equivalent under the law of Gibraltar, the law of the United Kingdom or European Union law;”;
- (f) in point 46(b), for “laid down in Directive 2011/61/EU of the European Parliament and of the Council or Directive 2014/91/EU” substitute “in the Financial Services (Alternative Investment Fund Managers) Regulations 2020 or the Financial Services (UCITS) Regulations 2020”;
- (g) in point 47(b), for “Articles 275 and 276 of Directive 2009/138/EC of the European Parliament and of the Council” substitute “regulations 250 and 251 of the Financial Services (Insurance Companies) Regulations 2020”;
- (h) in point 49, for “Article 108 of Directive 2014/59/EU” substitute “regulation 99 of the Financial Services (Recovery and Resolution) Regulations 2020”;
- (i) in point 51, for “or in Article 93 of Directive 2009/138/EU” substitute “(as it has effect in Gibraltar or the European Union, as the case may be) or in regulation 85 of the Financial Services (Insurance Companies) Regulations 2020”.
- (14) In Annex III–
- (a) for point 6, substitute–
 - “6. For derivative-based PRIIPs Elements A, B, and, where relevant, H, shall be included.”;
 - (b) in point 7 in the eighth sub-paragraph, for “200” substitute “400”.
- (15) Omit Annex IV.
- (16) Insert the following Annex–

**“ANNEX 4A
PERFORMANCE INFORMATION**

1. The section entitled ‘What are the risks and what could I get in return?’ of the PRIIP’s key information document must include appropriate performance

information summarising, in narrative form, the main drivers of investment performance for the PRIIP.

2. The PRIIP manufacturer must ensure the performance information is:
 - (a) accurate, fair, clear, non-misleading and likely to be understood by the retail investors to whom the PRIIP may be offered;
 - (b) compatible with the information stating the objectives of the PRIIP disclosed in accordance with article 2(2);
 - (c) likely to be useful to retail investors in assessing the prospects for future returns of investment in the PRIIP as well as comparing it with other PRIIPs; and
 - (d) supported by objective data.
3. The information must, as a minimum, include the following elements:
 - (a) a description of the main factors likely to affect future returns for the investor, identifying those most likely to determine the outcome of the investment and other factors which could have a material impact on performance;
 - (b) identification of the most relevant index, benchmark, target, or proxy, as applicable, along with an explanation of how the PRIIP is likely to compare in terms of performance and volatility;
 - (c) under a sub-heading ‘what could affect my return positively?’, a brief explanation of the kinds of conditions that would be conducive to the PRIIP generating higher returns;
 - (d) under a sub-heading ‘what could affect my return negatively?’, a brief explanation of the kinds of conditions whereby the PRIIP is likely to generate lower returns or lead to investment loss; and
 - (e) a brief description of what outcome the investor may expect where the PRIIP matures or is redeemed or encashed under severely adverse market conditions.”.

(17) Omit Annex V.

(18) In Annex VI–

- (a) in point 7–
 - (i) in the first sentence, after “three years” insert “, with the average taken from all transactions”;

- (ii) in the second sentence, for “point 21” substitute “points 21 to 23”;
- (b) in point 8, for “23” substitute “23A”;
- (c) in point 9(a), for “Article 2 of Commission Directive 2007/16/EC” substitute “paragraph 6 of Schedule 23 to the Financial Services Act 2019”;
- (d) in point 10, at the end insert “Transaction costs associated with non-financial assets must be calculated in accordance with point 20A of this Annex.”.
- (e) after point 11(b), insert–
 - “(c) the anti-dilution benefit shall only be taken into account to the extent that the benefit does not take the total transaction costs below explicit transaction costs.
 - (11A) A PRIIP manufacturer must provide information about the total benefit derived from an anti-dilution mechanism as part of or alongside the breakdown of identifiable transaction costs (see Annex I, ‘What are the costs?’).”;
- (f) in point 14, for the third sentence substitute–

“Where a price is not available at the time when the order to transact is transmitted to another person, the arrival price shall be determined as the most recently available price or, where a recent price is not available, a justifiable independent price or, where a justifiable independent price is not available, the opening price on the day of the transaction or, where the opening price is not available, the previous closing price.”;
- (g) in point 15–
 - (i) in the first sentence, for “it is permissible to use as the arrival price” substitute “a justifiable independent price may be used as the arrival price or, where a justifiable independent price is not available,”;
 - (ii) omit the second sentence;
- (h) in point 16, for “items 4 to 10 of Section C of Annex I to Directive 2014/65/EU” substitute “paragraphs 46(4) to (10) of Schedule 2 to the Financial Services Act 2019”;
- (i) in point 18, at the end insert “In calculating the costs associated with orders that are executed at a predetermined time, the arrival price shall be calculated at that pre-determined time, even if the order has been transmitted for execution before that time.”;

(j) after point 18, insert–

“Transactions executed on an over-the-counter basis

18A. By way of derogation from points 12 to 16 of this Annex for transactions executed on an over-the-counter basis, the actual transaction costs shall be calculated in the following way:

- (a) Where a transaction is executed after bid prices and offer prices have been obtained from more than one potential counterparty, the arrival price shall be determined as:
 - (i) the mid-point between the best bid price and best offer price, where the best bid price is below the best offer price;
 - (ii) the best bid price in the case of a sale or the best offer price in the case of a purchase, where the best bid price is higher than the best offer price.
- (b) Where a transaction is executed without both bid prices and offer prices having been obtained, the transaction cost shall be calculated by multiplying the number of units transacted by half the value of the spread between the bid price and the offer price of the instrument. The value of that spread shall be calculated on the following basis:
 - (i) from a composite of live market bid/offer quotes, where available;
 - (ii) where live market quotes are not available they shall be obtained by reference to spreads from either:
 - (aa) previous transactions in assets bearing similar characteristics (duration, maturity, coupon, call-/put-ability) and liquidity, using transactions previously executed by the PRIIP manufacturer; or
 - (bb) data verified by an independent third party or an asset valuation from an independent third party.”;

(k) after point 20, insert–

“20A. When calculating the costs associated with non-financial assets, the transaction costs shall be calculated as the aggregate of the actual costs directly associated with that transaction, including all charges, commissions, taxes and other payments (such as anti-dilution levies), where those costs are made from the assets of the PRIIP. In the case of cost depreciation over a period specified in the PRIIP’s accounting policies, actual costs shall be equal to the cost amounts depreciated over the last three years.”;

- (l) after point 23, insert–

“Low number of transactions and other similar cases

- 23A. By way of derogation from points 12 to 18 of this Annex, transaction costs may be calculated using the methodology described in point 21(b) of this Annex where one or more of the following conditions is met:
- (a) the PRIIP undertook a very low number of transactions over the previous three years;
 - (b) the total value for all transactions undertaken over the previous three years accounts for a very low percentage of the net asset value of the PRIIP;
 - (c) the estimate of total transaction costs is not significant as compared to the estimate of the total costs.

Use of data prior to 31 December 2029

- 23B. Until 31 December 2029, transaction costs may be calculated using the methodology laid down in point 21 of this Annex for PRIIPs that are UCITS or AIFs.
- 23C. Until 31 December 2029, where an insurance-based investment product invests in a UCITS or AIF, the transaction costs for those investments may be calculated using the methodology laid down in point 21 of this Annex.”;
- (m) in the heading before point 34, for “referred to in point 17 of Annex IV” substitute “that are derivative-based PRIIPs”;
- (n) in point 58, for “Directive 2009/138/EC” substitute “the Financial Services (Insurance Companies) Regulations 2020”;
- (o) in point 62, in both places it appears, for “ PRIIPs referred to in point 17 of Annex IV” substitute “derivative-based PRIIPs”;
- (p) in point 64, in both places it appears, for “ PRIIPs referred to in point 17 of Annex IV” substitute “derivative-based PRIIPs”;
- (q) in point 66(a), for “PRIIPs referred to in point 17 of Annex IV” substitute “derivative-based PRIIPs”;
- (r) in point 71–
- (i) in point (a) substitute–

- “(a) except for derivative-based PRIIPs, the annual internal rate of return, i.e. the performance, of the PRIIP shall be assumed to be a return equivalent to a moderate performance based on reasonable and robust assumptions and methodology;”;
- (ii) in point (c), for “PRIIPs referred to in point 17 of Annex IV” substitute “derivative-based PRIIPs”;
- (s) in point 89, for “any Member State” substitute “or from Gibraltar”;
- (t) for point 90, substitute–
 - “90. The table(s) referred to in Article 5 shall contain an indication of the total costs in monetary and percentage terms for the case that the retail investor invests, respectively €10,000 (for all PRIIPs except regular premium insurance-based investment products), or €1,000 yearly (for regular premium insurance-based investment products) during different holding periods, including the recommended holding period. The cost scenarios must be shown using the following holding periods:
 - (a) For PRIIPs with a recommended holding period between one and three years, costs shall be shown at two different holding periods: at the end of the first year and at the end of the recommended holding period;
 - (b) For PRIIPs with a recommended holding period of three years or more, costs shall be shown at three holding periods: at the end of the first year, after half the recommended holding period rounded up to the end of the nearest year, and at the end of the recommended holding period;
 - (c) For PRIIPs with a recommended holding period of one year or less, no costs for intermediate holding periods shall be shown.

Where a product is considered not to have an alternative liquidity facility promoted by the PRIIP manufacturer or a third party, or where there is an absence of liquidity arrangements, or for derivative-based PRIIPs, that indication of costs may be shown only at maturity or at the end of the recommended holding period.”.

PART 3 MINOR AND CONSEQUENTIAL AMENDMENTS

Amendment of the Financial Services (PRIIPs) Regulations 2020.

15.(1) The Financial Services (Packaged Retail and Insurance Based Investment Products) Regulations 2020 are amended as follows.

(2) In regulation 8, for “, the matters specified in Article 25 of the PRIIP Regulation” substitute–

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- (a) the gravity and the duration of the contravention;
 - (b) the degree of responsibility of the person against whom the sanctioning power is being exercised;
 - (c) the impact of the contravention on retail investors' interests;
 - (d) the person's level of cooperation with the GFSC;
 - (e) previous contraventions by the person;
 - (f) measures taken after the contravention by the person to prevent its repetition.”.
- (3) In regulation 10–
- (a) in sub-regulation (1)–
 - (i) after “legal person,” insert “the Sterling equivalent of”;
 - (ii) after “individual,” insert “the Sterling equivalent of”;
 - (b) omit sub-regulation (2);
 - (c) in sub-regulation (3)–
 - (i) for “according to Part 7” substitute “, within the meaning of Part 7”;
 - (ii) for “in accordance with the relevant European Union law in the area of accounting” substitute “(in accordance with the relevant accounting law),”.

Dated: 30th March 2023.

A J ISOLA
Minister with responsibility for Financial Services

EXPLANATORY MEMORANDUM

These Regulations amend legislation relating to packaged retail and insurance-based investment products (PRIIPs), principally to address failures of retained EU law to operate effectively and other deficiencies arising from Gibraltar's withdrawal from the European Union.

Part 1 contains preliminary provisions. Part 2, Chapter 1 amends Regulation (EU) No 1286/2014; Part 2, Chapter 2 amends Commission Delegated Regulation (EU) 2016/1904; and Part 2, Chapter 3 amends Commission Delegated Regulation (EU) 2017/653. Part 3 makes minor and consequential amendments to the Financial Services (Packaged Retail and Insurance Based Investment Products) Regulations 2020.