



HM Treasury

UK Retail Disclosure Framework

Policy Note

November 2023

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Chapter 1

Context

1.1 This statutory instrument (SI) is part of HM Treasury's programme to build a smarter regulatory framework (SRF) for financial services which is tailored to the UK.

1.2 The Financial Services and Markets Act 2023 (FSMA 2023) repeals retained EU law relating to financial services. This enables the government to deliver a Smarter Regulatory Framework for financial services. Retained EU law will be repealed and replaced with rules set by our independent and expert regulators, operating within a framework set by government and Parliament.

1.3 The government is publishing a near-final version of this SI, alongside this accompanying explanatory policy note. The government welcomes any technical comments on the draft SI by **10 January 2024**.

Chapter 2

Purpose

2.1 This note sets out the policy background for the UK's new retail disclosure framework for Consumer Composite Investments (CCIs), a summary of the policy intent and how the statutory instrument will achieve this, stakeholders likely to be impacted and how to comment on the SI.

2.2 This publication is the near-final version of this SI. It is being published for technical checks, such as any significant errors or oversights in the legal drafting that would mean that the SI would not achieve the desired outcomes explained in this note, or that would lead to significant unintended consequences.

2.3 This instrument is still in development. This means that whilst the policy approach in this area is settled, the drafting approach, and other technical aspects of the proposal, may change before the final instrument is laid before Parliament.

2.4 The new UK retail disclosure framework for Consumer Composite Investments will be delivered using the Designated Activities Regime (DAR), as introduced by FSMA 2023. As set out in the government's *Building a Smarter Financial Services Regulatory Framework: Delivery Plan*¹, the government will create an SI regulating certain common aspects of designated activities (the 'DAR SI'), to consolidate legislation and reduce complexity for firms carrying out more than one designated activity. The government expects to publish the DAR SI for technical checks early next year and expects it to contain a set of cross-cutting supervision and enforcement provisions that will apply to all designated activities. For this reason, this draft SI does not contain a number of supervision and enforcement provisions.

2.5 This draft SI, therefore, is focused on setting out the scope, key definitions, rule-making powers provided to the FCA by HM Treasury and specific supervision and enforcement provisions (which will not be included in the DAR SI) necessary for the new UK framework for CCIs that are offered to UK retail investors.

2.6 Stakeholders will have an opportunity to provide technical feedback on the DAR SI when it is published, and so stakeholders should focus feedback on technical checks related to the provisions contained in this draft SI.

¹ <https://www.gov.uk/government/publications/building-a-smarter-financial-services-regulatory-framework-delivery-plan>

Chapter 3

Policy Background

What did any law do before the changes to be made by this instrument?

3.1 The EU's Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation was introduced with the aim of standardising disclosure and providing greater transparency to retail investors for certain products. PRIIPs are defined as products where the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or the performance of one or more assets that are not directly purchased by the investor.

3.2 The PRIIPs Regulation first came into force on 1 January 2018 and following the UK's decision to leave the EU was transposed onto the UK statute book.

3.3 The Regulation sets out disclosure requirements for all PRIIPs which are sold to retail investors. It applies to all persons involved in the manufacturing, advising, or selling of a PRIIP to a UK retail investor. In particular, the EU-retained PRIIPs Regulation, which is supplemented by FCA technical standards:

- Defines key terms to support the interpretation of the scope of the Regulation, including the definition of a PRIIP and products which are excluded from the regime.
- Sets out prescriptive formatting and contents requirements for the Key Information Document (KID), which must be provided with the sale of a PRIIP to a retail investor in the UK.
- Establishes the responsibilities of firms to provide accurate disclosure and processes for redress, including firms' liability.
- Provides the FCA with specific supervision and enforcement powers regarding product intervention to ensure consumer protection.

3.4 Stakeholders have long called for reform to the PRIIPs Regulation, highlighting in particular:

- highly prescriptive and overly burdensome formatting requirements
- misleading information being presented to retail investors, as the KID prioritised comparability of, often very different, products rather than clear and useful information and

- reduced consumer choice due to associated compliance costs.

3.5 The government already acted through the Financial Services Act 2021 to address some of the most urgent issues with the PRIIPs Regulation, including performance scenarios.

3.6 However, recognising the significant problems with the disclosure regime, the government announced its intention to repeal the PRIIPs Regulation as a matter of priority as it delivers the SRF. This SI, therefore, builds on those reforms in the FS Act 2021 to deliver a more fundamental overhaul of the UK's retail disclosure framework.

Chapter 4

Summary of the Statutory Instrument

4.1 This SI replaces the retained EU law PRIIPs Regulation and sets out provisions to facilitate the creation of a new UK retail disclosure framework for Consumer Composite Investments.

4.2 As part of the Edinburgh Reforms, the government consulted² on the deletion of the PRIIPs Regulation and on an alternative UK framework to replace PRIIPs. The government published a response³ at Mansion House 2023, confirming its intention to proceed with the reforms largely as consulted.

4.3 The government will replace the PRIIPs Regulation with an overarching legislative framework, with firm-facing retail disclosure requirements being replaced with rules set by the FCA.

4.4 The new UK retail disclosure framework for CCIs will be proportionate and tailored to UK markets, balancing support for UK businesses with ensuring retail investors receive appropriate disclosure to make informed investment decisions.

4.5 The government has also committed to bring Undertakings for the Collective Investment in Transferable Securities (UCITS) – which are currently exempted from producing the PRIIPs KID – into scope of the new UK regime. This will ensure disclosure is aligned across similar products, enabling retail investors to make well-informed decisions.

4.6 In HM Treasury’s consultation response, the government noted that the FCA would require some additional tailored powers to successfully implement the new retail disclosure framework. As it currently stands, the PRIIPs Regulation sits outside the core FSMA 2000 authorisation regime, so the FCA does not have any rule-making powers related to retail disclosure for unauthorised firms.

4.7 Consequently, to maintain the current scope of regulation, this SI will provide the FCA with rule-making powers in relation to all persons engaged in providing Consumer Composite Investments to UK retail investors. These additional powers will extend to both domestic and overseas unauthorised firms.

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1128533/Consultation_PRIIPs.pdf

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1168713/UK_Retail_Disclosure_Consultation_Response.pdf

4.8 Additionally, to enable consumers to make informed investment decisions and ensure fair competition, **new UK disclosure requirements will apply to all funds marketing to UK retail investors, including UK authorised funds and recognised overseas funds.**

4.9 This approach will ensure the new regime is tailored and proportionate to the UK market whilst enabling UK firms and funds to compete effectively on the global stage.

What does the policy instrument do?

4.10 Specifically, the instrument:

- **Defines the key terms used in legislation.** The instrument sets out the key definitions for the new framework, restating EU definitions where appropriate. Certain definitions have been simplified to align with UK domestic law and/or to provide greater clarity for firms. Notably, the instrument updates the concept of a PRIIP, moving away from EU language to define products in scope of the new UK framework as Consumer Composite Investments (CCIs).
- **Establishes the scope of the new framework by defining the designated activities which will require firms to provide disclosure to UK retail investors.** The instrument defines manufacturing, advising and offering a Consumer Composite Investment to a UK retail investor as designated activities under the Designated Activities Regime (DAR) established in FSMA 2023. Firms engaged in any of these activities, regardless of their authorisation status, will be in scope of FCA rules in respect of retail disclosure.
- **Provides the FCA powers to make and enforce rules in respect of certain designated activities.** Under sections 71N and 71Q of FSMA 2000, the FCA will be provided with rulemaking as well as certain supervisory and enforcement powers in relation to the designated activities (manufacturing, advising, or offering a CCI to a UK retail investor). This will enable the FCA to maintain the application and enforcement of the current regulatory perimeter and create tailored UK rules for retail disclosure without requiring all firms in scope of the activity to seek full FCA authorisation under the Regulated Activities Order.
- **Sets out firms' civil liability regarding disclosure provided to retail investors.** Firms engaged in the designated activities set out above which provide misleading or inaccurate disclosure or fail to meet requirements set out in FCA rules, may be held liable in the event of a retail investor being able to demonstrate loss.
- **Restates the FCA's existing supervision and enforcement powers which will be maintained under the new framework and modified to reflect the UK-specific context of the new framework.** The instrument restates specific supervisory and

enforcement powers (which are not included in the DAR SI) regarding product intervention and suspension which will be maintained under the new UK framework to ensure appropriate consumer protection.

- **Maintains the transition period for funds currently providing the UCITS KIID.** To ensure a smooth transition and provide certainty for businesses, funds which provide the UCITS Key Investor Information Document (KIID) at the point this SI is laid, will be able to continue to do so until 31 December 2026, as currently legislated for in the PRIIPs Regulation. Funds may also choose to transition to the new disclosure requirements from the date that the FCA's new rules come into effect. From 1 January 2027, at the latest, all funds (including those in scope of the Overseas Funds Regime) will be required to follow FCA rules under the new UK retail disclosure framework for CCIs.

What will change in comparison to the previous REUL provisions?

4.11 In line with the government's approach to building a Smarter Regulatory Framework for financial services, this instrument looks to replace PRIIPs with a model where the FCA generally sets the detailed rule-making powers that firms must adhere to, within a framework set by government and Parliament. Therefore, provisions will not be replaced if they are firm-facing requirements or no longer relevant in a UK-only context, including:

- provisions related to the formatting and contents of the Key Information Document, and
- provisions which set out the detailed methodologies for calculating cost, risk and performance.

4.12 To enable the FCA to replace these firm-facing requirements, the instrument introduces new provisions to provide the FCA powers to make rules related to retail disclosure via the DAR. This includes new provisions to support interpretation of definitions and to set out the scope and application of the new framework.

4.13 Additionally, several provisions from the PRIIPs Regulation have been restated with amendments to reflect policy change. This includes:

- Definitions relevant to the new framework for CCIs e.g. retail investor, which have been updated to reflect UK domestic law.
- Civil liability, which will now apply to any firm undertaking a designated activity, rather than solely manufacturers.
- Certain products which will not be required to comply with the new FCA rules.

4.14 In line with previous announcements, UCITS funds will be brought into scope of the new UK retail disclosure framework for CCIs. This instrument maintains the temporary exemption which allows UCITS and overseas recognised funds to continue to provide the UCITS KIID until 31 December 2026, while giving them the flexibility to provide disclosure in line with the FCA's new rules once they come into force. This will ensure greater certainty for industry and enable UCITS and recognised overseas funds to smoothly transition to meeting new UK retail disclosure requirements.

What will not change in comparison to the previous REUL provisions?

4.15 The scope of the new UK retail disclosure framework will be maintained, with rules continuing to apply to all firms involved in manufacturing, advising or offering CCIs to a UK retail investor. As set out above, this will be achieved by providing the FCA with the necessary powers to make and enforce rules in respect of certain designated activities defined in this SI.

4.16 The instrument will also restate provisions that give the FCA specific powers which are not covered by the powers over designated activities introduced by the DAR SI, for example product intervention powers.

What are the firm-facing impacts going to be?

4.17 The repeal of retained EU law and its replacement with a new framework that is tailored to UK markets will benefit firms in several ways. In particular, firms will benefit from the replacement of detailed EU provisions which were designed to apply across the EU with rules set by the UK's expert and independent regulators (in this case the FCA) tailored to the UK. Beyond this, replacing retained EU law will enable firms to benefit from a streamlined and accessible legislative framework for financial services, where rules adapt over time in response to changing practices in an agile manner.

4.18 Notably, the FCA's new rules for retail disclosure will be more flexible and proportionate for firms, addressing stakeholders' key concerns with the EU-inherited PRIIPs Regulation. This builds on earlier reforms in the Financial Services Act 2021 by providing the FCA with the relevant powers to deliver a more fundamental overhaul of the UK's retail disclosure framework for Consumer Composite Investments.

4.19 The government has also noted some stakeholders' concerns with current cost disclosure requirements, and in particular their potential impact on the investment company sector. The UK has a world leading investment company sector, which is highly aligned with the government's priority to promote long term, productive investment. Representing over £260 billion of assets, investment

companies provide a key source of capital and liquidity to support economic growth.

4.20 This instrument provides the FCA with the appropriate rule-making powers to reform cost disclosure requirements currently set out in the PRIIPs Regulation, enabling the delivery of a solution to these concerns. However, certain legislative requirements relevant to this issue are also set out in MiFID (notably Articles 50 and 51 of the MiFID Org Regulation). The government therefore also intends to repeal relevant provisions in MiFID alongside its replacement of the PRIIPs Regulation. This will be delivered through a separate SI to revoke the relevant retained EU legislation.

4.21 These reforms will enable the FCA to reform cost disclosure in a holistic way; ensuring it is accurate, does not impact the competitiveness of firms and is not misleading to retail investors.

4.22 The FCA will set out further detail on their proposed rules for the new retail disclosure framework, including cost disclosure, in due course. Additionally, the FCA is also considering interim solutions to mitigate the impacts on the investment company sector in the short term, as the government acts to implement a long-term legislative solution to the issue.

4.23 Firms may also face additional costs as they familiarise themselves with the new regime. For example, costs may arise from engaging lawyers and consultants to understand new obligations and guidance.

4.24 The FCA will publish a consultation on their draft rules to replace the PRIIPs Regulation, and certain MiFID provisions related to cost disclosure, in due course.

Chapter 5

Stakeholders and contact

5.1 The policy set out in this note is now settled and HM Treasury intends to legislate in 2024, subject to Parliamentary time allowing.

Comment on this SI

5.2 This SI should be considered near-final. However, square brackets are used in the SI to identify areas where the wording and effect of certain items may change to ensure the legislation meets the stated policy intent.

5.3 It is also important to note that details of general transitional provisions and the full scope of the consequential amendments across other legislation have intentionally not been included in this SI. As stated above, several provisions relating to supervision and enforcement powers will be set out in the DAR SI that the government plans to publish next year.

5.4 HM Treasury will consider technical comments on this draft statutory instrument, focused on any changes that need to be made to this draft instrument to achieve the stated policy intent as set out in section four of this policy note. In particular, the government would welcome views on:

- The new definition (and name) of a Consumer Composite Investment, including legislative exclusions to the regime, noting that the FCA's rules will provide further detail on excluded products in due course.
- If the SI should provide greater clarification on when a product is considered to be 'made available' to UK retail investors, or if this should be set out in the FCA's detailed rules.
- The drafting of the designated activities, and whether this sufficiently captures all persons who should be in scope of the FCA's replacement rules.

5.5 Any comments should be provided to retail.disclosure@hmtreasury.gov.uk by **10 January 2024**.

Chapter 6

Next Steps

6.1 HM Treasury intends to legislate in 2024, subject to Parliamentary time allowing.

6.2 This legislation will commence at the same time as the FCA makes new rules, alongside the repeal of the PRIIPs Regulation and other related legislation.

Chapter 7

Further Information

7.1 Read HM Treasury's [Consultation on PRIIPs and UK Retail Disclosure](#) published in December 2022, and the [Consultation Response](#) published in July 2023.

7.2 Read HM Treasury's [Policy statement – Building a smarter financial services framework for the UK](#)

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This document can be downloaded from www.gov.uk

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