

Chapter 19

Non-FSMA powers



19.36 The Packaged Retail and Insurance-based Investment Products Regulations 2017

- 19.36.1** The Packaged Retail and Insurance-based Investment Products Regulations implemented the *PRIIPs Regulation* (before it was brought into UK law). The FCA has investigative and enforcement powers in relation to both criminal and civil breaches of the Packaged Retail and Insurance-based Investment Products Regulations, *PRIIPs Regulation* and any *onshored regulation* which was an *EU regulation* made under the *PRIIPs Regulation*. The *PRIIPs Regulation* imposes requirements on both authorised and unauthorised persons who manufacture, advise on, market or sell a *PRIIP*.
- 19.36.2** The FCA's approach to enforcing the Packaged Retail and Insurance-based Investment Products Regulations, whether the person is authorised or not, will mirror our general approach to enforcing the Act, as set out in ■ EG 2. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue, and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the person who is the subject of our action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the non-compliance.
- 19.36.3** The regulatory powers which the Packaged Retail and Insurance-based Investment Products Regulations provide to the FCA include:
- the power to appoint investigators and require information;
 - powers of entry and inspection;
 - the power of *public censure*;
 - the power to impose financial penalties;
 - the power to impose a limitation, restriction or requirement;
 - the power to apply for an *injunction* or restitution order;
 - the power to require restitution; and
 - the power of prohibition and suspension.

19.36.4 In addition, the *PRIPs Regulation* imposes requirements directly on *appointed representatives* for, amongst other things, regulated activity which their *principal* may have accepted responsibility. We would expect to usually take enforcement action against the *principal*, rather than the *appointed representative*, in these circumstances.

19.36.5 The Packaged Retail and Insurance-based Investment Products Regulations, for the most part, mirror the *FCA's* investigative, sanctioning and regulatory powers under the *Act*. The *FCA* has decided to adopt procedures and policies in relation to the use of those powers akin to those it has under the *Act*. Key features of the *FCA's* approach are described below.

Conduct of investigations under the Packaged Retail and Insurance-based Investment Products Regulations

19.36.6 The Packaged Retail and Insurance-based Investment Products Regulations apply to much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the Packaged Retail and Insurance-based Investment Products Regulations.

19.36.7 For example, the *FCA* will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the Packaged Retail and Insurance-based Investment Products Regulations and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The *FCA* expects to carry out a scoping visit early on in the enforcement process in most cases. The *FCA's* policy in civil investigations under the Packaged Retail and Insurance-based Investment Products Regulations is to use powers to compel information in the same way as it would in the course of an investigation under the *Act*.

Decision-making under the Packaged Retail and Insurance-based Investment Products Regulations

19.36.8 The decision making procedure for those decisions under the Packaged Retail and Insurance-based Investment Products Regulations requiring the giving of a *warning notice*, *decision notice* or a *supervisory notice* are dealt with in *DEPP*.

19.36.9 The Packaged Retail and Insurance-based Investment Products Regulations do not require the *FCA* to have published procedures for commencing criminal prosecutions. However, in these situations the *FCA* expects that it will normally follow its decision-making procedures for the equivalent decisions under the *Act*, as set out in ■ EG 12.

19.36.10 The Packaged Retail and Insurance-based Investment Products Regulations do not require the *FCA* to have published procedures to apply to the court for an *injunction* or restitution order. However, the *FCA* will normally follow its decision-making procedure for the equivalent decisions under the *Act*, as set out in ■ EG 10 and ■ EG 11.

19.36.11 The Packaged Retail and Insurance-based Investment Products Regulations require the *FCA* to give third party rights as set out in section 393 of the *Act* and to give access to certain material as set out in section 394 of the *Act*.

19.36.12 Certain *FCA* decisions (for example making an order prohibiting a *person* from marketing a *PRIIIP*; making an order requiring a *person* to suspend the marketing of a *PRIIIP*) may be referred to the *Tribunal* by an aggrieved party.

Imposition of penalties under the Packaged Retail and Insurance-based Investment Products Regulations

19.36.13 When determining whether to take action to impose a penalty or to issue a public censure under the Packaged Retail and Insurance-based Investment Products Regulations the *FCA* will have regard to the relevant factors in ■ DEPP 6.2 and ■ DEPP 6.4. The *FCA*'s policy in relation to determining the level of financial penalty includes having regard, where relevant, to ■ DEPP 6.5 to ■ DEPP 6.5D.

19.36.14 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving civil breaches of the Packaged Retail and Insurance-based Investment Products Regulations to assist it exercise its functions under the Packaged Retail and Insurance-based Investment Products Regulations in the most efficient and economic way.

[Note: See ■ DEPP 5, ■ DEPP 6.7 and ■ EG 5 for further information on the settlement process and the *settlement discount scheme*.]

19.36.15 The *FCA* will apply the approach to publicity that is outlined in ■ EG 6.

Statement of policy in section 169(9) (as implemented by the Packaged Retail and Insurance-based Investment Products Regulations)

19.36.16 The Packaged Retail and Insurance-based Investment Products Regulations apply section 169 of the *Act* which requires the *FCA* to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the Packaged Retail and Insurance-based Investment Products Regulations the *FCA* will follow the procedures described in ■ DEPP 7.