

**TECHNICAL STANDARDS (PACKAGED RETAIL AND INSURANCE-BASED INVESTMENT PRODUCTS REGULATION) (EU EXIT) INSTRUMENT 2019**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

**Pre-conditions to making**

- B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
- D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

**Interpretation**

- E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Modifications**

- F. The FCA thereafter amends the following EU Regulation in accordance with the Annex to this instrument.

<p>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</p>
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**Commencement**

- G. This instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018.

**Citation**

- H. This instrument may be cited as the Technical Standards (Packaged Retail and Insurance-Based Investment Products Regulation) (EU Exit) Instrument 2019.

By order of the Board  
28 March 2019

In this instrument, underlining indicates new text and striking through indicates deleted text.

## Annex

**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**

~~(Text with EEA relevance)~~

...

### CHAPTER I

#### CONTENT AND PRESENTATION OF THE KEY INFORMATION DOCUMENT

##### Article -2

##### **Interpretation**

1. In this Regulation, unless the contrary intention appears:
  - (a) words and expressions used have the same meaning as in Regulation 1286/2014/EU, as amended by the [Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019];
  - (b) a reference to a provision of FSMA is a reference to that provision as amended from time to time;
  - (c) a reference to a provision of rules made under FSMA is a reference to that provision as it has effect on Exit Day;
  - (d) any reference to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the FCA containing rules made by the FCA under FSMA;
  - (e) references to 'UCITS' include both UK UCITS and EEA UCITS;
  - (f) 'Exit Day' has the meaning given in the European Union (Withdrawal) Act 2018.

##### Article -1

##### **Definitions**

1. For the purposes of this Regulation, the following definitions apply:
- (a) 'AIF' has the meaning given in regulation 3 of the Alternative Investment Fund Managers Regulations 2013;
  - (b) 'EEA UCITS' means a collective investment scheme (as defined in section 235 of FSMA) established in accordance with Directive 2009/65/EC in an EEA State;
  - (c) 'regulated market' means a regulated market which is a UK regulated market or an EU regulated market, as those terms are defined in Regulation (EU) No 600/2014 on markets in financial instruments (as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018);
  - (d) 'UK UCITS' has the meaning given in section 237(3) of FSMA.

## Article 1

### General information section

...

- (d) ~~the name of the competent authority responsible for the supervision of the PRIIP manufacturer in relation to the key information document;~~

...

Information in the section referred to in the first subparagraph shall also include the comprehension alert referred to in Article 8(3)(b) of Regulation (EU) No 1286/2014 where the PRIIP meets one of the following conditions:

- (a) it is an insurance-based investment product which does not meet the requirements laid down in ~~Article 30(3)(a) of Directive (EU) 2016/97 of the European Parliament and of the Council~~ rule 10A.4.1(2A) of the Conduct of Business sourcebook;
- (b) it is a PRIIP which does not meet the requirements laid down in ~~points (i)–(vi) of Article 25(4)(a) of Directive 2014/65/EU of the European Parliament and of the Council~~ rule 10A.4.1(2) of the Conduct of Business sourcebook.

...

## Article 3

**‘What are the risks and what could I get in return?’ section**

...

2. ...

- (c) a narrative below the summary risk indicator explaining that if a PRIIP is denominated in a currency other than ~~the official currency of the Member State where the PRIIP is being marketed~~ pounds sterling, the return, when expressed in ~~the official currency of the Member State where the PRIIP is being marketed~~ pounds sterling, may change depending on currency fluctuations;

...

**‘What are the risks and what could I get in return?’ section in the generic key information document**

...

2. Where PRIIP manufacturers use the key investor information document in accordance with Article 14(2), for the purposes of specifying the risk classes referred to in point (a) of paragraph 1, they shall use the synthetic risk and reward indicator pursuant to Article 8 of Regulation (EU) No 583/2010 (or that Regulation as it has effect in the European Union) in relation to UCITS or non-UCITS funds as underlying investment options.

## Article 13

**‘What are the costs?’ section in the generic key information document**

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3. Where PRIIP manufacturers use the key investor information document in accordance with Article 14(2) with UCITS or non-UCITS funds as the only underlying investment options, by way of derogation from Article 5, they may specify the range of charges for the PRIIP in accordance with Article 10 of Regulation (EU) No 583/2010 (or that Regulation as it has effect in the European Union).

## Article 14

**Specific information on each underlying investment option**

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2. By way of derogation from paragraph 1, PRIIP manufacturers may use the key investor information document drawn up in accordance with:

(a) for EEA UCITS, Articles 78 to 81 of Directive 2009/65/EC, as amended from time to time; or

(b) the rules made under FSMA which implemented those Articles,

to provide specific information for the purposes of Articles 11 to 13 of this Delegated Regulation where at least one of the underlying investment option referred to in paragraph 1 is a UCITS or non-UCITS fund referred to in Article 32 of Regulation (EU) No 1286/2014.

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## Article 18

### **Final Provision**

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~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

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**ANNEX I**  
**TEMPLATE FOR THE KEY INFORMATION DOCUMENT**

PRIIP manufacturers shall comply with the section order and titles set out in the template, which however does not fix parameters regarding the length of individual sections and the placing of page breaks, and is subject to an overall maximum of three sides of A4-sized paper when printed.

<b>Key Information Document</b>	
<b>Purpose</b> This document provides you with key information about this investment product. It is not marketing material. The information is required by law to help you understand the nature, risks, costs, potential gains and losses of this product and to help you compare it with other products.	
<b>Product</b> [Name Of Product] [Name Of PRIIP manufacturer] [where applicable ISIN or UPI] [website for PRIIP manufacturer] Call [telephone number] for more information [Competent Authority of the PRIIP Manufacturer in relation the KID] [date of production of the KID]	
[Alert (where applicable) <b>You are about to purchase a product that is not simple and may be difficult to understand</b> ]	
<b>What is this product?</b>	
<b>Type</b>	
<b>Objectives</b>	
<b>Intended retail investor</b>	
<b>[Insurance benefits and costs]</b>	
<b>What are the risks and what could I get in return?</b>	
<b>Risk Indicator</b>	Description of the risk-reward profile Summary Risk Indicator SRI template and narratives as set out in Annex III, including on possible maximum loss: can I lose all invested capital? Do I bear the risk of incurring additional financial commitments or obligations? Is there capital protection against market risk?

<b>Performance Scenarios</b>	Performance Scenario templates and narratives as set out in Annex V including where applicable information on conditions for returns to retail investors or built-in performance caps, and statement that the tax legislation of the <del>retail investor's home Member State</del> <u>United Kingdom</u> may have an impact on actual payout
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**ANNEX II**  
**METHODOLOGY FOR THE PRESENTATION OF RISK**  
**PART 1**  
**Market risk assessment**

**Determination of the market risk measure (MRM)**

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4. Category 1 covers the following:

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- (b) PRIIPs that fall within one of the categories referred to in ~~items 4 to 10 of Section C of Annex I to Directive 2014/65/EU of the European Parliament and of the Council~~ paragraphs 4 to 10 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

...

...

**PART 2**  
**Methodology for assessing credit risk**

...

**II. CREDIT RISK ASSESSMENT**

**Credit assessment of obligors**

37. Where available, a PRIIP manufacturer shall define *ex-ante* one or more external credit assessment institutions (ECAI) certified or registered with:
- (a) the European Securities and Markets Authority (ESMA) immediately after Exit Day in accordance with Regulation (EC) No 1060/2009 of the European Parliament and the Council, as it has effect in the European Union; or
  - (b) the Financial Conduct Authority in accordance with Regulation (EC) No 1060/2009,

whose credit assessments will consistently be referred to for the purpose of the credit risk assessment. Where multiple credit assessments are available according to that policy, the median rating shall be used, defaulting to the lower of the two middle values in case of an even number of assessments.

- 37A. The ability of a PRIIP manufacturer to define an ECAI certified or registered with ESMA for the purpose of the credit risk assessment shall not otherwise affect the application of Article 4(1) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 to a PRIIP manufacturer to which that Regulation also applies.

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### Allocation of credit assessments to credit quality steps

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43. If the obligor has no external credit assessments, the default credit assessment as referred to in point 38 of this Annex shall be:
- (a) credit quality step 3, if the rating of the state 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: the applicable Union law or the legal framework deemed equivalent under Union law and if the rating of the Member State where the obligor is domiciled would be credit quality step 3;
    - (i) the law of the United Kingdom;
    - (ii) the law of a Member State for the purposes of Union law; or
    - (iii) the legal framework deemed equivalent under United Kingdom or Union law;
  - (b) credit quality step 5, for any other obligor.

### III. CREDIT RISK MEASURE

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46. The CRM may be assigned as 1 where the assets of a PRIIP or appropriate collateral, or assets backing the payment obligation of the PRIIP, are:

...

- (b) held with a third party on a segregated account under equivalent terms and conditions as those laid down in Directive 2011/61/EU of the European Parliament and of the Council or Directive 2014/91/EU, as those Directives had effect immediately after Exit Day, or in those enactments which were relied on immediately before Exit Day to implement those directives; and

...

47. The CRM may be assigned as 2 where the assets of a PRIIP or appropriate collateral, or assets backing the payment obligation of the PRIIP, are:

...

- (b) identified and held on accounts or registers, based on applicable law, including Articles 275 and 276 of Directive 2009/138/EC of the European Parliament and of the Council, as those Articles had effect immediately after Exit Day, or those enactments which were relied on immediately before Exit Day to implement those Articles; and

...

...

49. Where a PRIIP is not able to satisfy the criteria under point 47 of this Annex, the CRM pursuant to point 45 of this Annex may be reduced by one class where the claims of retail investors have priority over the claims of ordinary creditors, as set out in Article 108 of Directive 2014/59/EU, as that Article had effect immediately after Exit Day, or those enactments which were relied on immediately before Exit Day to implement that Article, of the PRIIP manufacturer or party bound to make, directly or indirectly, relevant payments to the investor, in so far as the obligor is subject to relevant prudential requirements in respect of ensuring an appropriate matching of assets and liabilities.

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51. The CRM pursuant to point 45 of this Annex shall be increased by three classes where a PRIIP is part of the own funds of the PRIIP obligor, as defined in Article 4(1)(118) of Regulation (EU) No 575/2013 of the European Parliament and of the Council, or in that Article as it has effect in the European Union, or in Article 93 of Directive 2009/138/EU or those enactments which were relied on immediately before Exit Day to implement that Article.

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**ANNEX IV**  
**PERFORMANCE SCENARIOS**

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**General requirements**

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34. For an insurance based investment product, the following shall apply in addition to the methods referred above including under point 15 when calculating the performance scenarios in respect of the investment:

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- (c) assumptions on how future profits are shared between the PRIIP manufacturer and the retail investor and other assumptions on future profit sharing shall be realistic and in line with the current business practice and business strategy of the PRIIP manufacturer. Where there is sufficient evidence that the undertaking will change its practices or strategy, the assumptions on future profit sharing shall be consistent with the changed practices or strategy. For life insurers within the scope of Directive 2009/138/EC, or those enactments which were relied on immediately before Exit Day to implement that directive, these assumptions shall be consistent with the assumptions on future management actions used for the valuation of technical provisions in the Solvency II-balance-sheet;

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## ANNEX VI

## METHODOLOGY FOR THE CALCULATION OF COSTS

## Calculation of specific types of costs of investments funds

## Transaction costs

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9. When calculating the transaction costs incurred by the PRIIP over the previous three years, actual transaction costs must be calculated using the methodology described in points 12 to 18 of this Annex for investments in the following instruments:
- (a) transferable securities as defined by ~~Article 2 of Commission Directive 2007/16/EC~~ by rule 5.2.7A of the Collective Investment Schemes sourcebook;

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...

## Actual transaction costs

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16. Costs associated with transactions undertaken by PRIIPs and concerning financial instruments that fall within one of the categories referred to in ~~items 4 to 10 of Section C of Annex I to Directive 2014/65/EU~~ paragraphs 4 to 10 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 shall be calculated in the following way:

...

...

**Cost disclosure of the biometric risk premium of insurance based investment products****Costs part of biometric risk premiums**

...

58. For manufacturers within the scope of Directive 2009/138/EC, or those enactments which were relied on immediately before Exit Day to implement that directive, these best estimate assumptions shall be consistent with the respective assumptions used for the calculation of the technical provisions in the Solvency II balance sheet.

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**Calculation methodology for new PRIIPs**

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89. The PRIIP manufacturer shall ensure that the accuracy of the estimated figure is kept under review. The PRIIP manufacturer shall determine when it is appropriate to begin using *ex-post* figures rather than an estimate; but in any case it shall, no later than 12 months after the date on which the PRIIP was first offered for sale in ~~any Member State~~ the United Kingdom, review the accuracy of the estimate by calculating a figure on an *ex-post* basis.

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