EXPLANATORY MEMORANDUM TO

THE PACKAGED RETAIL AND INSURANCE-BASED INVESTMENT PRODUCTS (RETAIL DISCLOSURE) (AMENDMENT) REGULATIONS 2024

2024 No. 1204

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Tulip Siddiq, Economic Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Tom Duggan, Deputy Director for Securities and Markets, at the HM Treasury confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Brandon Thompson at HM Treasury, email: retail.disclosure@hmtreasury.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Financial Services and Markets Act 2023 (FSMA 2023) repeals assimilated law relating to financial services, subject to commencement, and establishes powers to replace that assimilated law.

4.2 This includes a power to make transitional amendments, enabling HM Treasury to make targeted modifications to assimilated law during the "transitional period" (the period lasting until the repeal of the relevant assimilated law is commenced by HM Treasury). These powers may be exercised where considered necessary or desirable for, or in connection with, a defined list of purposes including: in order to provide for efficient and effective regulatory, enforcement, investigatory and supervisory arrangements in relation to the provision of financial services or the operation of financial markets.

4.3 This instrument makes transitional amendments to assimilated law, namely Regulation (EU) 2014/1286 of 26 November 2014 (The Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation) and certain provisions of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 (Markets in Financial Instruments Directive (MiFID) Org Regulation), relating to cost disclosure requirements for listed closed-ended funds, more commonly referred to as 'investment trusts'.

4.4 This instrument adds investment trusts to the list of excluded products in the PRIIPs Regulation and excludes costs of manufacturing and managing shares in an investment trust from cost disclosure requirements in the MiFID Org Regulation.

4.5 Investment trusts, along with persons advising on or selling shares of investment trusts, will not be required to produce the Key Information Document (a standardised information document prepared for products in scope of the PRIIPs Regulation). Additionally, investment trusts, and firms investing in them, will not be required to disclose costs and charges relating to investment trusts to clients, pursuant to the MiFID Org Regulation.

Where does the legislation extend to, and apply?

4.6 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.7 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 The PRIIPs Regulation is part of assimilated law which was transferred into UK law in 2018. The Regulation was introduced to standardise disclosure across a wide range of financial instruments marketed to retail investors across the EU. It sets out detailed and prescriptive requirements for disclosing costs, risks and performance which have been criticised by industry for being misleading and burdensome. Consequently, the government has committed to repeal and replace the PRIIPs Regulation.

5.2 Investment trusts are collective closed-ended investment funds which are traded on public stock markets with independent governance. Investment trusts are currently subject to disclosure requirements under the PRIIPs Regulation and other assimilated law such as the MiFID Org Regulation – this includes a requirement to disclose aggregated costs to clients. It is broadly accepted by industry and the government that the single aggregated figure that is being produced under current EU-inherited rules is not an accurate representation of the actual cost of investment in shares in an investment trust.

5.3 Therefore, this instrument seeks to address this issue in the immediate term by using section 3 of FSMA 2023 to make transitional amendments to the PRIIPs Regulation and MiFID Org Regulation. These changes will resolve an ongoing issue for a sector which is being impacted by ineffective regulatory arrangements under the current EU-inherited regime.

What was the previous policy, how is this different?

5.4 The Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation came into force on 1 January 2018 and, following the UK's departure from the EU, was subsequently transferred into UK law by the European Union (Withdrawal Act) 2018.

5.5 Investment trusts were subject to disclosure rules under PRIIPs and other assimilated EU law such as the MiFID Org Regulation – this included a requirement to disclose an aggregated cost to clients.

5.6 This instrument amends the PRIIPs Regulation and certain provisions of the MiFID Org Regulations to exclude investment trusts from those requirements immediately,

without replacing them with additional regulation. This means that investment trusts, and persons advising on or selling shares of investment trusts, will no longer be required to provide a standardised Key Information Document to retail investors, and will not have to provide a single aggregate figure of costs to clients.

6. Legislative and Legal Context

How has the law changed?

6.1 When the UK left the EU, the body of EU legislation that applied directly in the UK at the point of exit was transferred onto the UK statute book by the European Union Withdrawal) Act 2018. This is known as "assimilated law" as a result of the Retained EU Law (Revocation and Reform) Act 2023.

6.2 The assimilated law that concerns cost disclosure for investment trusts, and is therefore being amended by this instrument, is:

- 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)
- Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

6.3 Section 1 of FSMA 2023 repeals assimilated law relating to financial services, covered by Schedule 1 to that Act, subject to commencement by HM Treasury. FSMA 2023 also establishes a number of new legislative powers for the government to replace and amend this assimilated law, where necessary.

6.4 This instrument exercises powers in section 3 of FSMA 23, which empowers HM Treasury to modify legislation referred to in Schedule 1 of that Act during the "transitional period" (the period between the Act becoming law and the commencement of the repeal of the relevant assimilated law). Section 3(2) of FSMA 2023 establishes the purposes for any transitional amendments.

6.5 Section 3(2)(g) permits transitional amendments which are necessary, desirable or in connection with providing for efficient and effective regulatory, enforcement, investigatory and supervisory arrangements in relation to the provision of financial services or the operation of financial markets.

6.6 This instrument adds closed-ended investment companies that are UK-listed to the list of 'excluded products' in Article 2 of the PRIIPs Regulation and establishes relevant definitions for these purposes. A closed-ended investment company is a UK-listed public limited company that invests pooled funds in assets seeking to spread investment risk and generate profits for its shareholders. Closed-ended investment companies may be listed on the Main Market or Growth Markets and includes real estate investment trusts, a type of closed-ended investment company that owns, operates or finances income-producing real estate. Closed ended investment companies that are UK-listed, and persons advising on, offering or selling shares in them, will no longer be required to provide a standardised Key Information Document (KID) to retail investors.

6.7 This instrument makes targeted amendments to the MiFID Org Regulation to exclude any costs of manufacturing and managing shares in a UK-listed investment trust from the requirements in Articles 50 and 51 to aggregate all costs and charges for ex-ante and ex-post disclosure of information on costs and charges to clients and to inform

clients about any other costs and charges respectively. Investment firms will no longer be required to disclose costs and charges relating to manufacturing and managing shares in closed-ended investment companies that are UK-listed when disclosing costs and charges information to clients pursuant to the MiFID Org Regulation.

Why was this approach taken to change the law?

6.8 This is the only possible approach to make the necessary changes as current regulation is in statute which is repealed (subject to commencement) by FSMA 2023.

7. Consultation

Summary of consultation outcome and methodology

7.1 The government consulted on its proposal to repeal and replace the PRIIPs Regulation with a new UK retail disclosure framework in December 2022.[1] The consultation received broad support from industry, with the majority of respondents agreeing with the issues outlined regarding the PRIIPs Regulation and supporting the government's proposals for a new regime which addresses these issues. The government's response was published in July 2023 confirming its intentions to move forward with proposals largely as consulted.[2]

7.2 The government subsequently published a draft Statutory Instrument and accompanying policy note on 22 November 2023 for technical comments.[3]

7.3 During technical checks for the CCI SI, the impact of current cost disclosure rules on investment trusts was raised by a significant number of respondents, including key representative bodies for the sector. This instrument therefore represents an immediate change in policy to address these concerns, delivered through an additional and separate instrument. Investment trusts will continue to be in scope of the replacement CCI regime once it comes into force.

8. Applicable Guidance

8.1 No guidance accompanies this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A de minimis Impact Assessment is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the main impact of this instrument is related to familiarisation costs.

9.3 The legislation has minimal impact on small or micro businesses. The instrument removes or reduces existing regulatory burdens.

9.4 There is no, or no significant, impact on the public sector.

[1] https://www.gov.uk/government/consultations/priips-and-uk-retail-disclosure
[2] https://www.gov.uk/government/consultations/priips-and-uk-retail-disclosure
[3] https://www.gov.uk/government/publications/uk-retail-disclosure-framework-draft-si-and-policy-note

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The legislation amended by this instrument is intended to be replaced by a new UK retail disclosure regime for Consumer Composite Investments. The impact on this instrument, and the replacement CCI regime will be monitored by the FCA, in line with its existing duties.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Tulip Siddiq, the Economic Secretary to HM Treasury, has made the following statement:

"It is not proportionate to include a review clause in this instrument because the estimated annual net direct cost to business is less than £10 million."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument is related to, but not dependent on, *The Consumer Composite Investments (Designated Activities) Regulations 2024* a draft affirmative that will be laid shortly. That SI specifies activities relating to CCIs as designated activities for the purposes of the Financial Services and Markets Act 2000 and provides the Financial Conduct Authority (FCA) rule-making and certain supervision and enforcement powers to enable the FCA to set the regulatory provisions that apply to persons carrying on designated activities relating to CCIs, including investment trusts.

12. European Convention on Human Rights

12.1 Tulip Siddiq, Economic Secretary to HM Treasury, has made the following statement regarding Human Rights:

"In our view the provisions of the The Packaged Retail And Insurance-Based Investment Products (Retail Disclosure) (Amendment) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts"). It does however relate to the withdrawal of the United Kingdom from the European Union because it relates to the repeal, replacement, or amendment of assimilated law under FSMA 2023.