

Second consultation on FSMA 2000 (Financial Promotion) (Amendment) Order 2008

September 2008



HM TREASURY



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**Second consultation on FSMA 2000
(Financial Promotion) (Amendment)
Order 2008**

September 2008

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INTRODUCTION

1.1 The Financial Services and Markets Act 2000 (FSMA) contains a prohibition on all persons, in the course of business, communicating an invitation or inducement to engage in investment activity unless they are authorised, or the content of the communication is approved by an authorised person, or they are exempt by way of order made by the Treasury.

FINANCIAL PROMOTION OF WORKPLACE PENSIONS

1.2 Under the FSMA regime, whenever a pension is taken up by an employee there should always be an FSA-authorised person involved somewhere in the process. This authorised person would be subject to FSA conduct of business rules and, as a result of their involvement, the employee may also have access to the Financial Ombudsman Service and to the Financial Services Compensation Scheme.

1.3 As part of the Treasury's Two-Year Review of FSMA 2000, employers were provided with a new exemption from the financial promotion regime, enabling them to issue written material and make oral promotions about their pensions to their employees without themselves needing to be authorised by the FSA, and without needing these communications to be issued or approved by persons who have been authorised by the FSA. These changes came into effect on 1 July 2005, when the new FSMA 2000 (Financial Promotion) Order 2005 came into force.

1.4 The exemption for employers applies to group personal pension schemes and to stakeholder pension schemes which are offered by employers to their employees.

1.5 As a matter of guidance, exemption should only be available if employers have taken reasonable steps to ensure that the persons making promotions to employees are knowledgeable and competent to do so. Treasury guidance also clarifies that those communicating within the scope of an exemption should not stray into providing specific financial advice tailored to the individual circumstances of particular employees.

1.6 Additionally, the financial promotion restriction does not apply, and no exemption is required, where the design or purpose of a communication is to provide general information, and it does not amount to an invitation or inducement to engage in investment activity (for example the FSA produced material used for the FSA - Workplace Financial Capability initiative).

CONSULTATION ON FURTHER CHANGES TO THE FINANCIAL PROMOTION REGIME

1.7 Respondents to the consultation suggested a number of further changes to the financial promotion regime:

- The exemption should be extended to cover promotions made by third party pensions administrators because the administration of a number of company pension schemes is outsourced;
- Any exemption for the promotion of employer pensions in the workplace should also cover work-related insurance products; and

- Any new exemption relating to the promotion of employer pensions in the workplace should also cover share saver scheme and share incentive plans.

A consultation on these issues has taken place and a summary of responses is available on the Treasury website.

CONCLUSION AND NEXT STEPS

Extending The Exemption For Workplace Pensions Promotions To Third Parties

1.8 The current exemption applies only to employers. However, many companies outsource the administration of their pension schemes and are likely to turn to staff from the outsourced company to provide information about the pension.

1.9 The current exemption aims to tap into the trust which exists between employer and employee, which in turn relates to employers' general duties towards their employees. Our aim is to ensure that the any extension of the current exemption to third parties is consistent with the intention behind the existing provisions.

1.10 Our conclusions are that it is sensible to extend to the current exemption to cover communications made by or on behalf of a contracted third-party to an employee in relation to a group personal pension scheme or a stakeholder pension scheme, subject to the following conditions:

- The communication relates to a group personal pension scheme or stakeholder pension scheme offered to the employee by the employer or the contracted third party;
- The employer will make a contribution to the group personal pension scheme or stakeholder pension scheme in the event of the employee becoming a member of the scheme and the communication contains a statement informing the employee of this;
- The employer does not receive any direct financial benefit from the scheme;
- The employer notifies the employee, before the employee becomes a member of the scheme, of the amount of contribution the employer will make in respect of that employee;
- The contracted third party notifies the employee in writing, before the employee becomes a member of the scheme, of any remuneration the contracted third party will receive as a result of either the employee joining the scheme or the employee making an increase to the amount of his contribution to the scheme;
- In the case of a non-real time communication, the communication includes a statement informing the employee of his right to seek advice from an authorised person or an appointed representative; and
- In the case of a communication made on behalf of a contracted third party, the contracted third party and the person making the communication have entered into a contract specifying the terms on which the communication may be made.

The following requirements should be covered by guidance on the grounds that it was more flexible than legislation, or by the existing regulatory framework:

- The employer should be required to take reasonable steps to satisfy himself that the third party administrators are knowledgeable and competent to make the promotion;
- Safeguards, such as the prohibition limiting advice to generic advice, should continue;
- Employees should be informed that taking out a particular cover is purely voluntary; and
- Any sale should be via an FSA-authorized individual where appropriate. These safeguards will offer strong protection to consumer interests.

PROMOTING INSURANCE PRODUCTS

1.11 Our conclusions are that employers should be provided with a specific new exemption from the financial promotion regime in relation to any communication which they make to their employees in relation to insurance products, subject to the following conditions:

- Employers should be prohibited from receiving commission from a provider of insurance in the event that an employee, as an individual, enters into a contract of insurance as a result of a promotion by an employer;
- The exemption should be limited to: permanent health insurance; life assurance and critical illness cover; and
- Employers should be required, when writing to employees, to remind them of their right to seek advice from statement informing the employee of his right to seek advice from an authorised person or an appointed representative.

EMPLOYEE SHARE SCHEMES AND PLANS

1.12 Finally, we do not propose to make any changes the existing exemptions from the financial promotion regime for share saver schemes and share incentive plans as set out in article 60 of the Financial Promotion Order.

PROPOSED ADDITIONAL CHANGES

1.13 Respondents to this consultation also suggested three additional changes which are being consulted upon here:

- The financial promotion restriction should not apply to communications made by employers or third party administrators in relation to staff mortgages;
- For employee pensions it does not matter whether the employer or the third party administrator notifies the employee of the amount of the employer's contribution; and
- The exemption should be extended to cover communications made by third party administrators in relation to work-related insurance products.

2

RESPONDING TO THE CONSULTATION

HOW TO RESPOND

2.1 The Government welcomes the views of all stakeholders on the issues raised in this document. The consultation period begins with the publication of this document, and will run for 12 weeks. Please ensure that your responses reach us by 12 December 2008.

Responses to the consultation should be sent to:

Helena Forrest
Financial Services Strategy Team
Room 3/W2
HM Treasury
1 Horse Guards Road
London, SW1A 2HQ
Tel: (+44) (0) 20 7270 5694
Fax: (+44) (0) 20 7270 4322
Email: Helena.Forrest@hm-treasury.gsi.gov.uk

This document can also be found on the HM Treasury website: <http://www.hm-treasury.gov.uk>.

2.2 When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the view of members were assembled.

2.3 All responses to this consultation will be shared with the FSA.

REVISED IMPACT ASSESSMENT

2.4 A revised Impact Assessment is published with this document and should be read in conjunction with it. The revised Impact Assessment lays out implementation options and considers qualitative, and where possible, quantitative costs and benefits for each option.

CONFIDENTIALITY DISCLOSURES

2.5 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily) the Freedom of Information Act 2000 (FOIA), the Data Protection Act (DPA) and the Environmental Information Regulations 2004). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of

the information we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances.

2.6 An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. The Department will process your personal data in accordance with the DPA, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

FREEDOM OF INFORMATION CONTACT

2.7 Any Freedom of Information Act queries should be directed to:

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Freedom of Information Section
HM Treasury
1 Horse Guards Road
London, SW1A 2HQ
Telephone: +44 (0)20 7270 4558
Fax: +44 (0) 207 270 4681
Email: public.enquiries@hm-treasury.x.gsi.gov.uk

CABINET OFFICE CODE OF PRACTICE ON WRITTEN CONSULTATIONS

2.8 The Cabinet Office has published a Code of Practice for Written Consultations to guide Department's activities in this area which sets down the following criteria:

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy;
- Be clear about what the proposals are, who may be affected, what questions are being asked, and the timescale for responses;
- Ensure the consultation is clear, concise and widely accessible;
- Give feedback regarding the responses received and how the consultation process influenced the policy;
- Monitor the department's effectiveness at consultation, including through the use of a designated consultation coordinator; and
- Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

If you feel that this consultation does not fulfil these criteria, please contact:

Luke McInerney
Enterprise Team
HM Treasury
1 Horse Guards Road
London, SW1A 2HQ
Telephone: 020 7270 4517

3

PROPOSED CHANGES

RESPONSIBILITY FOR NOTIFYING THE EMPLOYEE OF THE AMOUNT OF THE EMPLOYER'S CONTRIBUTION

3.1 Under the previous consultation draft Order, the employer would be responsible for notifying the employee of the amount of the employer's contribution. It is proposed that, so long as the employee receives the relevant information concerning the employer's contribution, it does not matter whether it is the employer or the third party administrator that provides it.

Question 1: Do you agree that either the employer or the third party administrator should be able to notify the employee of the amount of the employer's contribution?

STAFF MORTGAGES

3.2 Where available, work-related qualifying credit (staff mortgages) tends to be offered at favourable rates and form a valuable part of an employer's benefits package.

3.3 It is proposed that the financial promotion restriction should not apply to communications made by employers or third party administrators in relation to these products. This is on the grounds that it would be anomalous for the financial promotion regime to require regulation of communications which relate to staff mortgages, but not where communications relate to work-related pension or insurance products.

3.4 We consider that the following safeguards should apply to communications by an employer or by a contracted third-party in relation to a staff mortgage.

Communications by an employer in relation to a staff mortgage

3.5 It is proposed that the financial promotion restriction should not apply to a communication made by an employer to an employee in relation to a staff mortgage subject to the following conditions:

- The employer does not receive any direct financial benefit as a result of making the communication; and
- In the case of a non-real time communication, the communication includes a statement informing the employee of his right to seek advice from an authorised person or an appointed representative.

Communications by a third-party in relation to a staff mortgage

3.6 It is proposed that the financial promotion restriction should not apply to a communication made by a third-party to an employee in relation to a staff mortgage subject to the following conditions.

- The communication relates to a staff mortgage offered to the employee by the employer or the contracted third party;
- The employer does not receive any direct financial benefit as a result of making the communication;
- The contracted third party notifies the employee in writing, before the employee enters into the staff mortgage of any remuneration the contracted third party has received or will receive as a result of the employee taking out a staff mortgage as a result of the communication; and
- In the case of a non-real time communication, the communication contains, or is accompanied by, a statement informing the employee of his right to seek advice from an authorised person or an appointed representative.

Question 2: Do you agree that the financial promotion restriction should not apply to communications made by employers or third party administrators in relation to work-related qualifying credit (staff mortgages)?

Question 3: What safeguards do you consider should apply to this exemption?

PROMOTION OF PERMANENT HEALTH INSURANCE; LIFE ASSURANCE AND CRITICAL ILLNESS COVER TO EMPLOYEES BY THIRD PARTIES

3.7 It is proposed that the exemption is extended to cover communications made by third party administrators in relation to permanent health insurance; life assurance and critical illness cover. This would bring the communication of insurance products into line with our proposed approach for pensions.

3.8 The proposal is that financial promotion restriction would not apply to a communications made by third party administrators in relation to permanent health insurance; life assurance and critical illness cover subject to the following conditions:

- The communication relates to insurance offered to the employee by the employer or the contracted third party;
- The employer does not receive any direct financial benefit as a result of the communication being made;
- The contracted third party notifies the employee in writing, prior to the employee becoming a member of the scheme of any remuneration the contracted third party has received or will receive as a result of the employee entering into a contract of insurance as a result of the communication; and
- In the case of a non-real time communication, the communication contains, or is accompanied by, a statement informing the employee of his right to seek advice from an authorised person or an appointed representative.

Question 4: Do you agree that the exemption should be extended to exempt communications made by third party administrators in relation to permanent health insurance; life assurance and critical illness cover?

Question 5: Do you agree that these conditions are appropriate?

2008 No.

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Financial Promotion)(Amendment) Order 2008

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

The Treasury, in exercise of the powers conferred on them by sections 21(5) and (6) and 428(3) of the Financial Services and Markets Act 2000⁽¹⁾, make the following Order:

Citation, commencement and interpretation

1. This Order may be cited as the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2008 and comes into force on [1 December 2008].

2. In this Order, the “principal Order” means the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005⁽²⁾.

Amendment of the principal Order

3. After article 72 of the principal Order insert—

“Pension products offered to employees by third parties

72A.—(1) If the requirements of paragraph (2) are met, the financial promotion restriction does not apply to a communication made by or on behalf of a contracted third-party to an employee in relation to a group personal pension scheme or a stakeholder pension scheme.

(2) The requirements of this paragraph are that—

- (a) the communication relates to a pension scheme offered to the employee by—
 - (i) his or her employer; or
 - (ii) the contracted third party;
- (b) the employer will make a contribution to the pension scheme to which the communication relates in the event of the employee becoming a member of the pension scheme and the communication contains a statement informing the employee of this;

⁽¹⁾ 2000 c. 8.

⁽²⁾ S.I. 2005/1529 to which there are amendments not relevant to this Order.

- (c) the employer has not received, and will not receive, any direct financial benefit from the pension scheme; and
 - (d) the employer or the contracted third party notifies the employee in writing, before the employee becomes a member of the pension scheme, of the amount of the contribution that the employer will make to the pension scheme in respect of that employee;
 - (e) the contracted third party notifies the employee in writing, before the employee becomes a member of the pension scheme, of any remuneration the contracted third party has received or will receive as a result of either—
 - (i) the employee becoming a member of the pension scheme, or
 - (ii) the employee making an increase to the amount of his contribution to the pension scheme;
 - (f) in the case of a non-real time communication, the communication contains, or is accompanied by, a statement informing the employee of his right to seek advice from an authorised person or an appointed representative;
 - (g) in the case of a communication made on behalf of a contracted third party, the contracted third party and the person making the communication have entered into a contract specifying the terms on which the communication may be made.
- (3) In this article, a “contracted third party”—
- (a) means a person engaged under a written contract, with an employer or its pension scheme trustees, to provide services to the employer or the trustees and in particular to provide communications to employees in relation to a group personal pension scheme or stakeholder pension scheme, specifying the terms on which that person may make communications to the employee; but
 - (b) but does not include a person who has permission to carry out the activity—
 - (i) of establishing, operating or winding-up a personal pension scheme or a stakeholder pension scheme; or
 - (ii) of a kind specified in any of the following Articles of the Financial Services and Markets Act (2000) Regulated Activities Order 2001⁽³⁾, in relation to rights under a personal pension scheme or in relation to rights under a stakeholder pension scheme—
 - Article 14 (dealing in investments as principal),
 - Article 21 (dealing in investments as agent),
 - Article 25 (arranging deals in investments),
 - Article 37 (managing investments),
 - Article 40 (safeguarding and administering assets),
 - Article 45 (sending de-materialised instructions),
 - Article 53 (advising on investments), orso far as relevant to any such activity, Article 64 (agreeing to carry on specified kinds of activity).
- (4) For the purposes of paragraph (2)(c), “direct financial benefit” includes any commission, remuneration or other financial benefit received by the employer from the contracted third party as a consequence of either—
- (a) the employee joining the scheme, or
 - (b) the employee making an increase to the amount of his contribution to the scheme.
- (5) In this article “group personal pension scheme” and “stakeholder pension scheme” have the meaning given by article 72(4).
- (6) This article does not apply to a communication to which article 72 applies.

⁽³⁾ S.I. 2001/544, as amended by S.I. 2001/3554; S.I. 2002/682; S.I. 2003/1476; and S.I. 2006/3384.

Insurance products offered by employers

72B.—(1) If the requirements of paragraph (2) are met, the financial promotion restriction does not apply to a communication made by an employer to an employee in relation to—

- (a) permanent health insurance;
 - (b) life-assurance;
 - (c) critical illness insurance.
- (2) The requirements of this paragraph are that—
- (a) the employer has not received, and will not receive, any direct financial benefit as a result of making the communication;
 - (b) in the case of a non-real time communication, the communication contains, or is accompanied by, a statement informing the employee of his right to seek advice from an authorised person or an appointed representative.
- (3) For the purposes of paragraph (2)(a), “direct financial benefit” includes—
- (a) any commission, remuneration or other financial benefit received by the employer from the provider of the insurance—
 - (i) for making the communication; or
 - (ii) as a consequence of the employee entering into a contract of insurance as a result of the communication.

Insurance products offered to employees by third parties

72C.—(1) If the requirements of paragraph (2) are met, the financial promotion restriction does not apply to a communication made by a contracted third-party to an employee in relation to—

- (a) permanent health insurance;
 - (b) life-assurance;
 - (c) critical illness insurance.
- (2) The requirements of this paragraph are that—
- (a) the communication relates to insurance offered to the employee by—
 - (i) his or her employer; or
 - (ii) the contracted third party;
 - (b) the employer has not received, and will not receive, any direct financial benefit as a result of the communication being made; and
 - (c) the contracted third party notifies the employee in writing, before the employee enters into the contract of insurance, of any remuneration the contracted third party has received or will receive as a result of the employee entering into a contract of insurance as a result of the communication;
 - (d) in the case of a non-real time communication, the communication contains, or is accompanied by, a statement informing the employee of his right to seek advice from an authorised person or an appointed representative.

(3) In this article, a “contracted third party” means a person engaged under a written contract with an employer to provide services to the employer and in particular to provide communications to employees in relation to insurance specifying the terms on which that person may make communications to employees.

(4) For the purposes of paragraph (2)(b), “direct financial benefit” includes any commission, remuneration or other financial benefit received by the employer from the contracted third party as a consequence of the employee entering into a contract of insurance as a result of the communication.

(5) This article does not apply to a communication to which article 72B applies.

Staff mortgages offered by employers

72D.—(1) If the requirements of paragraph (2) are met, the financial promotion restriction does not apply to a communication made by an employer to an employee in relation to a staff mortgage.

(2) The requirements of this paragraph are that—

- (a) the employer has not received, and will not receive, any direct financial benefit as a result of making the communication;
- (b) in the case of a non-real time communication, the communication contains, or is accompanied by, a statement informing the employee of his right to seek advice from an authorised person or an appointed representative.

(3) For the purposes of paragraph (2)(a), “direct financial benefit” includes—

- (a) any commission, remuneration or other financial benefit received by the employer from the provider of the staff mortgage—
 - (i) for making the communication; or
 - (ii) as a consequence of the employee entering into a staff mortgage as a result of the communication.

(4) In this article, “staff mortgage” means a regulated mortgage contract between the employer as lender and the employee (or the employee and other persons) as borrower to defray money applied for any of the following purposes—

- (a) acquiring any residential land which was intended, at the time of the acquisition, for occupation by the borrower as his home;
- (b) carrying out repairs or improvements to any residential land which was intended, at the time of taking out the loan, for occupation by the employee as his home; or
- (c) paying off another loan.

(5) In this article, “borrower”, “lender” and “regulated mortgage contract” have the meaning given by article 61(3) of the Regulated Activities Order.

Staff mortgages offered to employees by third parties

72E.—(1) If the requirements of paragraph (2) are met, the financial promotion restriction does not apply to a communication made by a contracted third-party to an employee in relation to a staff mortgage.

(2) The requirements of this paragraph are that—

- (a) the communication relates to a staff mortgage offered to the employee by—
 - (i) his or her employer; or
 - (ii) the contracted third party;
- (b) the employer has not received, and will not receive, any direct financial benefit as a result of the communication being made; and
- (c) the contracted third party or the employer notifies the employee in writing, before to the employee enters into the staff mortgage, of any remuneration the contracted third party has received or will receive as a result of the employee entering into a staff mortgage as a result of the communication;
- (d) in the case of a non-real time communication, the communication contains, or is accompanied by, a statement informing the employee of his right to seek advice from an authorised person or an appointed representative.

(3) In this article, a “contracted third party” means a person engaged under a written contract with the employee’s employer to provide services to the employer and in particular to provide communications to employees in relation to staff mortgages specifying the terms on which that person may make communications to the employee.

(4) For the purposes of paragraph (2)(b), “direct financial benefit” includes any commission, remuneration or other financial benefit received by the employer from the contracted third party as a consequence of the employee entering into a staff mortgage as a result of the communication.

(5) In this article “staff mortgage” has the same meaning as in article 72C(4).

(6) This article does not apply to a communication to which article 72C applies.”

Address
2008

Names
Two of the Lords Commissioners of
Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

The Financial Services and Markets Act 2000, under which this Order is made, contains a prohibition on all persons, in the course of business, communicating an invitation or inducement to engage in investment activity unless they are authorised, or the content of the communication is approved by an authorised person, or they are exempt by way of an order made by the Treasury (“the financial promotion restriction”).

This Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 contains exemptions. Article 2 of this Order amends the 2005 Order by inserting five new articles to provide further exemptions, as Articles 72A to E of the 2005 Order.

Article 72A dis-applies the financial promotion restriction to communications made by a person contracted by an employer to employees in relation to group personal pension schemes and stakeholder pension schemes.

Article 72B dis-applies the financial promotion restriction to communications made by an employer to an employee in relation to permanent health insurance, life assurance or critical illness insurance.

Article 72C dis-applies the financial promotion restriction to communications made by a contracted third-party to an employer's employees in relation to permanent health insurance, life assurance or critical illness insurance.

Article 72D dis-applies the financial promotion restriction to communications made by employers to employees in relation to staff mortgages.

Article 72E dis-applies the financial promotion restriction to communications made by a contracted third-party to an employer's employees in relation to staff mortgages.

Each Article contains certain requirements for the employees' protection.

A regulatory impact assessment of the effect of this instrument on the costs of business may be obtained from the Financial Services Strategy Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is available on the Treasury's website (www.hm-treasury.gov.uk).

Summary: Intervention & Options		
Department /Agency: HM TREASURY	Title: Impact Assessment of Proposals for Facilitating Financial Promotions in the Workplace	
Stage: Consultation	Version: 1	Date: 18 th July 2008
Related Publications:		

Available to view or download at:

http://www.hm-treasury.gov.uk/consultations_and_legislation/consult_li

Contact for enquiries: John Sparrow

Telephone: 0207 270 5312

What is the problem under consideration? Why is government intervention necessary?

Obtaining approval from an FSA-authorized person for a financial promotion can be expensive, however unauthorised persons making unapproved financial promotions risk civil or criminal sanctions.

Confusion about what constitutes a financial promotion has resulted in employers being cautious about making communications about company pensions, work related insurance & staff mortgages. Government intervention is necessary to clarify the situation facilitating improved communication with employees on these matters.

What are the policy objectives and the intended effects?

To facilitate improved communication between employers/contracted third parties and employees about group personal pension schemes or a stakeholder pension schemes, work-related group insurance cover, work related insurance and staff mortgages

Employees should be able to make better informed decisions about their pensions etc. Employers and pensions administrators should benefit from greater clarity on what what communications constitute a financial promotion

What policy options have been considered? Please justify any preferred option.

1. Not to legislate in which case employees would remain in a weaker position to make optimal decisions about their pensions, mortgage and insurance cover.
2. Non-legislative options: FSA guidance can help interpret the boundary of financial services regulation but it cannot mitigate the effects of legislation which specifies the boundary of regulation in a confusing or uncertain way.
3. Legislation - the preferred option - would clarify what constitutes a financial promotion, encouraging employers to increase awareness & information access for employees.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The policy will be reviewed 3 years from the date of implementation of the Statutory Instrument.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



.....Date: 18/07/08

Summary: Analysis & Evidence

Policy Option:	Description:
-----------------------	---------------------

COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' These changes are deregulatory and do not generate new or additional regulatory costs, because their purpose is to clarify and simplify the boundary of financial services regulation, thereby reducing the perceived need for certain financial promotions to be approved or issued by an authorised person.				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; padding: 2px;">One-off (Transition)</td> <td style="width: 5%; text-align: center; padding: 2px;">Yrs</td> </tr> <tr> <td style="background-color: #ffffcc; padding: 2px;">£ De-minimis</td> <td></td> </tr> </table>		One-off (Transition)	Yrs	£ De-minimis	
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Average Annual Cost (excluding one-off)						
£ De-minimis						
Total Cost (PV)						
£ De-minimis						
Other key non-monetised costs by 'main affected groups'						

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Much of this benefit is unquantifiable and relates to increased awareness and information access. Employees should be able to make better informed decisions about their pensions etc. Employers and pensions administrators should benefit from greater clarity on what what communications constitute a financial promotion.				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; padding: 2px;">One-off</td> <td style="width: 5%; text-align: center; padding: 2px;">Yrs</td> </tr> <tr> <td style="background-color: #ffffcc; padding: 2px;">£ De-minimis</td> <td></td> </tr> </table>		One-off	Yrs	£ De-minimis	
	One-off		Yrs			
	£ De-minimis					
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; padding: 2px;">Average Annual Benefit (excluding one-off)</td> </tr> <tr> <td style="background-color: #ffffcc; padding: 2px;">£ De-minimis</td> </tr> </table>		Average Annual Benefit (excluding one-off)	£ De-minimis		
Average Annual Benefit (excluding one-off)						
£ De-minimis						
Total Benefit (PV)						
£						
Other key non-monetised benefits by 'main affected groups'						

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK				
On what date will the policy be implemented?	Enactment of FPO				
Which organisation(s) will enforce the policy?	FSA				
What is the total annual cost of enforcement for these organisations?	£ De-minimis				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	No				
What is the value of the proposed offsetting measure per year?	£ None				
What is the value of changes in greenhouse gas emissions?	£ None				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%; text-align: center;">Micro</td> <td style="width: 15%; text-align: center;">Small</td> <td style="width: 15%; text-align: center;">Medium</td> <td style="width: 15%; text-align: center;">Large</td> </tr> </table>	Micro	Small	Medium	Large
Micro	Small	Medium	Large		
Are any of these organisations exempt?	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease of £	Net Impact £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

BACKGROUND

1. The Financial Services and Markets Act 2000 (FSMA) contains a prohibition on all persons, in the course of business, communicating an invitation or inducement to engage in investment activity unless they are authorised, or the content of the communication is approved by an authorised person, or they are exempt by way of an order made by the Treasury.
2. Under the FSMA regime, whenever a pension is taken up by an employee there should always be an FSA-authorized person involved somewhere in the process. This authorised person would be subject to FSA conduct of business rules and, as a result of their involvement, the employee may also have access to the Financial Ombudsman Service and to the Financial Services Compensation Scheme.
3. Obtaining approval from an FSA-authorized person for a financial promotion can be expensive, however unauthorised persons making unapproved financial promotions risk civil or criminal sanctions. Confusion about what constitutes a financial promotion has resulted in many employers taking a cautious approach towards making communications about company pensions, work related insurance and staff mortgages which might appear to be financial promotions.

CONSULTATION

4. The February 2004 consultation document 'Financial Services and Markets Act: Two Year Review: Changes to Secondary Legislation' invited views on the desirability of providing employers with an exemption from the financial promotion regime in respect of communications made by them to their employees about group personal pension schemes and stakeholder pension schemes. A number of respondents to this consultation who approved these proposals suggested that they should be extended to work-related insurance products. One respondent subsequently proposed that they should also apply to pensions administrators.
5. The March 2006 Consultation covered the following two proposals:
 - to provide a new exemption in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 for communications made to employees about company pension schemes by the employer's pensions administrators; and
 - to provide a new exemption in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 for communications made by employers to employees about work-related insurance products.
6. A summary of responses is available on the Treasury website. Respondents to the 2006 consultation suggested the following additional changes. The latest consultation covers these issues.
 - The financial promotion restriction should not apply to communications made by employers or third party administrators in relation to staff mortgages;
 - For employee pensions it does not matter whether the employer or the third party administrator notifies the employee of the amount of the employer's contribution;
 - The exemption should be extended to exempt communications made by third party administrators in relation to work-related insurance products.

OPTIONS

Not to legislate

7. In which case the current uncertainties would remain as they are, and employees would remain in a weaker position to make optimal decisions about their pensions, work-related insurance cover and staff mortgages.

Non-legislative options

8. Although FSA guidance can help interpret the boundary of financial services regulation it cannot define the law. Guidance cannot mitigate the effects of legislation which specifies the boundary of regulation in a confusing or uncertain way.

Legislation

9. This is the preferred option. The objective of the changes is to:

- to facilitate the promotion by employers of improved pensions uptake by employees, and;
- to facilitate improved communication between employers and employees about the types and levels of work-related group insurance cover which employers may wish to take out on behalf of their employees, and to facilitate improved communication between employers and employees about other work-related insurance cover which is not group-based and which employees may wish to take-up directly with FSA-authorised persons.

10. This objective will be achieved by extending the exemption from the financial promotion restriction provided by Article 72 of The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 - the so-called 'Financial Promotion Order' - to apply to third parties as well as to employers themselves. This exemption allows employers to make real time and non-real time promotions to their employees in relation to group personal pensions schemes and stakeholder pension schemes, without employers needing to be authorised by the Financial Services Authority (FSA) and without these promotions needing to be approved or issued by an FSA-authorised person.

- A number of safeguards apply to this exemption in order to protect employees, including that the person making the promotion should be knowledgeable and competent. Many employers outsource their pensions administration, however, and in these cases the third party pensions administrator rather than the employer may be the most knowledgeable and competent to provide employees with information about the company pensions in question. These proposals seek to extend the current exemption for employers to their (third party) pensions administrators.
- providing employers with a new exemption from the financial promotion restriction which enables them to make promotions to their employees in respect of work-related insurance products. Articles 24 and 26 of the Financial Promotion Order respectively already provide exemptions for non-real time and real time communications which relate to 'relevant insurance activities'. There may be uncertainty amongst employers as to whether these exemptions apply to all types of work-related insurance products.

Costs

- These changes are deregulatory and do not generate new or additional regulatory costs, because their purpose is to clarify and simplify the boundary of financial services regulation, thereby reducing uncertainties and reducing the perceived need for certain financial promotions to be approved or issued by persons authorised by the FSA.
- If the new exemptions are used by employers and by their pensions administrators there may be resource implications in terms of the staff time and resources taken to provide employees with information about company pension schemes, work-related insurance products and staff mortgages. Employees may also have to devote time to considering the additional information they receive.

- It is difficult to quantify these costs upfront, however, as they would depend upon the extent to which the new exemptions are used. These costs would not be imposed as they would arise from employers and pensions administrators making use of new regulatory freedoms, and they are only likely to do so when the benefits of doing so outweighs the costs.

Benefits

11. Employees should receive more information about company pension schemes, work-related insurance cover and staff mortgages which should enable them to make better informed decisions about how much to invest in their pensions, what types and levels of work-related cover they should benefit from and take out.
12. Employers and pensions administrators should benefit from being able to provide information to their employees without needing to take legal advice on whether particular communications constitute financial promotions, and without needing to secure the approval from FSA-authorized persons for communications which are considered to be financial promotions, or seeking FSA-authorized persons to issue these promotions on their behalves.

IMPACT ON SMALL FIRMS

13. These changes apply to all employers and to all (unauthorized) pensions administrators. Clarifying the boundary of regulation and reducing uncertainties in this way may benefit smaller firms relatively more, as they are less likely to have compliance specialists.

COMPETITION ASSESSMENT

14. No impact is foreseen on the position of individual firms, in the sense that the changes apply to all those doing particular activities and are not specific to particular individual firms.
15. By placing employers who have contracted out their pensions administration to third parties in the same position as those who have not, these changes should place all employers in more of a similar position than is currently the case.
16. In practice it is expected that employers and pensions administrators will provide generic advice to employees, and will refer employees to FSA-authorized persons when they are seeking specific advice relating to individual circumstances. As such these exemptions should lead to workplace financial promotions complementing the activities of FSA-authorized advisers, rather than employers or pensions administrators somehow competing unfairly against them.

RACE, DISABILITY, GENDER AND HUMAN RIGHTS

17. This proposal will have no impact on race, disability, gender or human rights.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes/No	No
Small Firms Impact Test	Yes/No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

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