



**THE BRITISH  
CHAMBERS OF  
COMMERCE**

## **Response to HM Treasury**

### **Financial Services and Markets Act two year review: Changes to secondary legislation**

#### **INTRODUCTION**

*The British Chambers of Commerce (BCC) welcomes the opportunity to respond to this consultation document. We represent 135,000 businesses and over four million jobs across the UK economy*

#### **RESPONSE FROM THE BCC**

*The BCC's response will focus on chapter 4 of the consultation document: 'The Impact of FSMA on Employers Offering Pension Products'.*

#### **GENERAL COMMENTS**

The BCC fully supports the view that employers should be encouraged to play an active role in providing their workforce with access to pensions information. To this end, we have been working with the Department for Work and Pensions in order to facilitate the production of a pensions information pack, which forms a central element of the Government's 'Informed Choices' initiative.

We recognise, however, that the current regulatory environment may hamper and prevent employers from performing an active role in relation to the provision of pension information. This, in turn, may have a negative impact on the level of pensions take-up amongst employees in the workplace.

Viewed from this perspective, the BCC supports, in principle, the proposal that there should be a financial promotion exemption for employers promoting pensions. However, it is essential that any new framework resulting from the changes put forward in the consultation document must strike the following balance: first, the framework must state clearly what employers are, and are not, permitted to do in relation to the promotion of a pension scheme. In particular, employers should not be allowed to offer specific investment advice to their employees as they are not suitably qualified to do so. It is therefore imperative that any new guidelines must be explicit as to the difference between 'promotion' and 'advice' in relation to pension schemes.

Second, the framework should be simple to comprehend and avoid imposing further complexity on employers in this area. Indeed, further complexity will render the proposed changes useless as employers will simply steer clear of promoting their pension schemes, thus defeating the objective of the proposed changes. If the framework is unable to strike this balance between protection (of employers) and simplicity then it would seem preferable to retain the present system.

In order to facilitate greater private pension provision the BCC believes that the Government must reform the present state pension system and introduce greater incentives that encourage both employers to contribute to pension schemes and individuals to save. Such policies are urgently required and would be likely to have a tangible impact on levels of private pension provision.

## **SPECIFIC COMMENTS**

The BCC wishes to submit answers to the following questions that are contained within the consultation document:

*Q10. Do you agree that there should be an exemption for both real time and non-real time promotions made by employers (option 1 ©)? If not, which of the options 1 (a) and (b) do you prefer?*

We support the view that option 1 © should be adopted as this will provide the clearest structure for employers. Restricting exemption exclusively to either real time or non-real time promotions could cause uncertainty amongst employers and lead to greater rather than less complexity.

*Q11. Do you agree that any exemption should be subject to conditions and not be unrestricted?*

Yes, subject to the caveat that the conditions should be unambiguous and easy for employers to follow. Numerous and lengthy conditions will only serve to increase complexity rather than reduce it.

*Q12. Do you agree with the conditions outlined above (i.e. those listed in the consultation document)?*

We believe that the condition 'enabling employers to make financial promotions only in relation to pension schemes in which the employer itself makes a financial contribution' is unnecessary. For example, an employer may pay a higher salary and leave employees to decide whether or not they wish to join his/her 'non-contributory' Stakeholder plan, yet still wish to promote the scheme. There seems no obvious reason as to why an employer that makes a financial contribution should be treated differently from one that does not. We agree with the three other conditions listed.

*Q13. Do you think that there should be other conditions?*

No. As stated previously, numerous and lengthy conditions will only serve to increase complexity for employers.

*Q14. Do you think that the exemption should contain an additional condition restricting the ability of employers to provide individual advice to employees?*

Yes. Employers are not qualified to provide their employees with independent investment advice. As such, any framework resulting from the proposed changes should make it clear that whilst employers can promote and offer information about workplace pension schemes, they are not permitted to offer investment advice (the guidelines should be explicit as to the difference between the two concepts of 'promotion' and 'advice'). This will help to protect employers against future possible accusations of mis-selling. Furthermore, a blanket condition of this nature (prohibiting investment advice completely) will help to avoid complexity and uncertainty amongst employers in this area. As a consequence, we believe that questions 15, 16 and 17 are redundant.

[It is important to recognise that if employers *were* permitted to provide investment advice relating to pensions they, and the Trustees of their schemes, would require a specific indemnity against any claim (e.g. a claim relating to losses due to 'poor' investment advice) that might be made by a scheme member].

*Q18. Do you agree that there should be no restriction on which employer's representatives can promote the employer's pension schemes?*

Yes, provided that the representative is acting with the authority of the employer.

## **CONCLUSION**

The BCC supports the ethos of providing employees with access to better pensions information through the workplace. Employers, of course, have a vital role to play in this process and should be encouraged, as far as possible, to fulfil it. As a consequence, we support, in principle, the proposal that there should be a financial promotion exemption for employers promoting their pension schemes.

However, our support for this proposal is not unreserved. Any new framework resulting from the changes put forward in the consultation document must strike the following balance: first, the framework must state clearly what employers are, and are not, permitted to do in relation to the promotion of a pension scheme. In particular, employers should not be allowed to offer specific investment advice to their employees as they are not suitably qualified to do so. It is therefore imperative that any new guidelines must be explicit as to the difference between 'promotion' and 'advice' in relation to pension schemes.

Second, the framework should be simple to comprehend and avoid imposing further complexity on employers in this area. Indeed, further complexity will render the proposed changes useless as employers will simply steer clear of promoting their pension schemes, thus defeating the objective of the proposed changes. If the framework is unable to strike this balance between protection (of employers) and simplicity then it would seem preferable to retain the present system.

Moreover, in order to facilitate greater private pension provision the BCC believes that the Government must reform the present state pension system and introduce greater incentives that encourage both employers to contribute to pension schemes and individuals to save. Such policies are urgently required and would be likely to have a tangible impact on levels of private pension provision.

**ENDS.**

<b>Contact:</b> Steven Hill – <a href="mailto:s.hill@britishchambers.org.uk">s.hill@britishchambers.org.uk</a> - 020 7654 5810
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