

# **Extending employers' freedoms:**

## **A consultation on facilitating financial promotions in the workplace**

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March 2006



HM TREASURY





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A consultation on facilitating financial  
promotions in the workplace

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# INTRODUCTION

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**1.1** This consultation sets out the Government's proposals to amend the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, in order to provide new exemptions from financial regulation for financial promotions made to employees by employers and, in some circumstances, by third party pensions administrators. These proposals form part of a ten point action plan of reforms to wholesale and retail financial markets set out in the 2005 Pre-Budget Report, which reflects a number of concerns raised by industry and consumers about financial services regulation.

**1.2** As part of the Treasury's Two-Year Review of the Financial Services and Markets Act 2000 (FSMA), 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 Financial Services Authority (FSA), and without needing these communications to be issued or approved by persons who have been authorised by the FSA.

**1.3** Full details of these reforms were set out in the Treasury's consultation feedback statement 'Financial Services and Markets Act Two Year Review: Changes to Secondary Legislation - Government Response', published on 2 December 2004 and available at [http://www.hm-treasury.gov.uk/media/510/35/fin\\_ser\\_mark\\_act\\_gov\\_resp\\_nov04.pdf](http://www.hm-treasury.gov.uk/media/510/35/fin_ser_mark_act_gov_resp_nov04.pdf). These changes came into effect on 1 July 2005, when the new Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 came into force.

**1.4** This 2004 consultation feedback statement noted that a number of respondents had suggested that this new exemption should apply to other investment and insurance products which are relevant to the workplace, such as employee share saver schemes, share incentive plans, health cover, income protection and life cover. The Treasury's consultation feedback statement agreed that it may be worth widening the exemption to cover these areas in due course. This consultation relates to these industry suggestions.

**1.5** One consultation respondent also suggested that the new exemption should be extended to cover promotions made by third party pensions administrators, as the administration of a number of company pension schemes is outsourced. In these cases the employer often uses staff from the outsourced company, which may not be authorised by the FSA, to provide information about the scheme. This consultation also covers this suggestion.



# 2

## RESPONDING TO THE CONSULTATION

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### How to respond

**2.1** The consultation period will begin on 22 March 2006 and will run for 12 weeks until 14 June 2006. Please ensure that your response reaches us by that date. We cannot guarantee to consider your response if it arrives after that date.

**2.2** Please send responses to this consultation document to the address below. Inquiries or comments about the consultation process should be sent to the same address:

Eve Engledow  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ  
Tel: (+44) (0) 207 270 4381  
Email: eve.engledow@hm-treasury.x.gsi.gov.uk

**2.3** Please explain in your reply if you represent an organisation, and if so, its membership and coverage. **In accordance with the code of practice on open government, comments will be made publicly available unless respondents specifically request otherwise. If you wish part, but not all, of your response to remain confidential please supply two versions – one for publication on the website with the confidential information deleted and another confidential version for the Treasury team managing this consultation exercise.** Any e-mail response sent from a corporate system may carry an automatically generated message stating that the content of the message should be treated as confidential. If you are replying by e-mail, please make it clear in the body of your response whether or not you wish your comments to be treated as confidential.

### Partial regulatory impact assessment

**2.4** As highlighted above, the Partial Regulatory Impact Assessment (Partial RIA) is published with this document and should be read in conjunction with it. The Partial RIA lays out implementation options for the two areas highlighted above and considers qualitative, and where possible, quantitative costs and benefits for each option.

**2.5** A copy of the Partial RIA can be found on HM Treasury's website: [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk) or requested through HM Treasury's correspondence and enquiry unit. Contact details can be found on [www.hm-treasury.gov.uk/contact/contact\\_index.cfm](http://www.hm-treasury.gov.uk/contact/contact_index.cfm)

### The consultation criteria

**2.6** The consultation is being conducted in line with the Code of Practice on Consultation. The six criteria are listed below. A full version can be found at <http://www.cabinet-office.gov.uk/regulation/Consultation/Code.htm>

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.

2. Be clear about who may be affected, what questions are being asked, and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. 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:

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**2.7** Additional copies of this consultation document are available electronically at [www.hm-treasury.gov.uk/consultations\\_and\\_legislation/consult\\_liveindex.cfm](http://www.hm-treasury.gov.uk/consultations_and_legislation/consult_liveindex.cfm)

# 3

## FSMA TWO-YEAR REVIEW EXEMPTION

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**3.1** The new exemption from the financial promotion regime introduced as part of the FSMA Two-Year Review is set out in Article 72 of The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the 'Financial Promotion Order'), as accompanied by guidance issued by the Treasury which may be found at [www.hm-treasury.gov.uk/documents/financial\\_services/pensions/finance\\_promoting\\_pensions.cfm](http://www.hm-treasury.gov.uk/documents/financial_services/pensions/finance_promoting_pensions.cfm) Article 72 is attached in Annex A.

**3.2** 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. The exemption for employers applies to group personal pension schemes and to stakeholder pension schemes which are offered by employers to their employees. The exemption applies to all kinds of promotion, both to 'non-real time' and to 'real time' promotions (broadly written and oral promotions). Promotions may only be made by employers who, in accordance with Treasury guidance, should ensure that those making the promotions are knowledgeable and competent to do so. Treasury guidance also clarifies that employers should aim to avoid straying into providing specific financial advice tailored to the individual circumstances of particular employees, and should instead aim to provide more general information. This might include generic advice which relates to a number of different types of employee rather than to individuals per se.

**3.3** This new exemption was accompanied by a number of safeguards for employees. Employers are required to make a financial contribution to the pensions they are promoting, and the size and nature of that contribution in respect of the employee in question must be disclosed. Employers are not able to receive any direct financial benefit from making promotions, such as a commission. Written promotional material needs to include a statement informing the employee of their right to seek advice from an authorised person or appointed representative.

**3.4** 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.



# 4

## PENSIONS PROMOTIONS TO EMPLOYEES

**4.1** The current exemption in Article 72 of the Financial Promotion Order applies only to employers (although there is no restriction on which employer representatives may make workplace promotions, e.g. senior managers, human resource specialists). This is because the exemption aims to tap into the trust which exists between employer and employee, which in turn relates to employers' general duties of care towards their employees - and it is reasonable to consider that these duties may extend to employers helping their employees make sound decisions about work-related financial matters.

**4.2** Many companies outsource the administration of their pension schemes, however, and would usually turn to staff from the outsourced company to provide information about the pension. Indeed these people, rather than the employers themselves, may in some circumstances be the only people who are knowledgeable and competent to provide detailed information and advice sought by employees.

**4.3** It seems reasonable that where an employer has entrusted the administration of their company pension scheme to a third party, and is content for that third party to act on their behalf for the purpose of issuing workplace promotions, then the exemption under Article 72 of the Financial Promotion Order should also apply to that third party.

**4.4** We suggest, therefore, that the exemption should be extended to persons who have entered into a contract with the employer to provide services in relation to the group personal or stakeholder pension scheme, such as administration services.

**Q1: Do you consider that the exemption for workplace pensions promotions in article 72 of the Financial Promotion Order should be extended to cover third parties?**

**Q2: Do you consider that these third parties should be required to be contracted by the employer to make promotions about the employer's group personal pension scheme or stakeholder pension scheme?**

**Q3: Do you consider that an exemption for all third parties, as long as they have a contract with the employer, is too broad?**

### Safeguards for employees

**4.5** Any extension to third parties would need to be accompanied by appropriate safeguards. Safeguards similar to those which currently relate to promotions made by employers would apply, i.e. the employer would need to make a financial contribution to the pension and disclose its size, the employer could not gain a direct financial benefit from the promotion, and written material would need to inform employees of their right to seek financial advice from a person authorised by the FSA or from an appointed representative. These conditions are set out in Article 72(2) of the Financial Promotion Order.

**4.6** In addition we suggest that; (i) the employer should be satisfied that the third party is knowledgeable and competent to make the promotions, and that; (ii) the third party should explain to each employee the size of any direct financial benefit that the third party will receive as a result of that employee either taking up a pension or increasing the size of their pension investment.

**4.7** We suggest that the first of these requirements is covered by guidance rather than by the legislation itself, consistent with way this requirement currently applies to employers themselves.

**Q4: Do you consider that the employer should be satisfied that third party pensions administrators are knowledgeable and competent to make the promotion? Do you consider that this requirement should be covered by guidance or by legislation?**

**Q5: Do you consider that the legislation should specify that third party pensions administrators should explain to each employee the size of any direct financial benefit that they will receive as a result of that employee either taking up a pension or increasing the size of their pension investment? Alternatively should this be left to guidance, or should this condition not be adopted?**

**Q6: Do you consider that any other conditions should be applied, either in the legislation or in guidance?**

# 5

## PROMOTING INSURANCE PRODUCTS

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**5.1** A number of respondents to the FSMA Two-Year Review consultation proposals suggested that any exemption for the promotion of employer pensions in the workplace should also cover work-related insurance products.

**5.2** A wide range of work-related group insurance schemes currently exist, with varying degrees of take up. These include:

- group life cover, which many employers take up. This includes providing death-in-service cover;
- group income protection cover, which also tends to cover all the workforce. This is taken up less widely than group life cover;
- group critical illness cover, which might relate to only part of the workforce and is a relatively small market;
- group private medical insurance cover;
- group accident, sickness and unemployment cover, which often involves making payments for up to twelve months;
- group health cash plans, where employees receive payments for each day of illness.

**5.3** Exempting the activity of communicating with employees about work-related insurance products would enable employers to provide information and advice to their employees about the types of work-based insurance schemes which exist, without the employers needing to consider taking advice about whether those communications constitute financial promotions, and without the employers needing to use an FSA-authorized person to approve or issue any promotions. Such an exemption may, therefore, improve the flow of information and communication between employers and employees, may help employees to form and voice their preferences about what types and levels of group cover they would like their employer to provide, and may help employees make decisions about what types and levels of individual cover they would like to take out directly by themselves in order to complement any work-related group based cover provided by their employers.

**5.4** Articles 24 and 26 of the Financial Promotion Order already provide exemptions from the financial promotion regime for ‘relevant insurance activities’. Under Article 26 real time promotions are exempt, and this exemption is not subject to any terms or conditions. Article 24 exempts non-real time promotions, subject to six conditions. These conditions essentially relate to disclosing who the insurer is, where they are based, and who regulates them. Articles 24 and 26 are attached at Annex B.

**5.5** A ‘relevant insurance activity’ is defined as effecting or carrying out a contract of insurance as principal, and this would include negotiating or concluding a contract and paying out benefits. This does not apply to contracts which are ‘qualifying contracts of insurance’. The definition of a ‘qualifying contract of insurance’ is somewhat complex, and may capture some elements of work-based insurance schemes. Uncertainty about the extent of the existing exemptions may be deterring some employers from communicating with their employees about work-related insurance products, especially as employers may be subject to civil and criminal sanctions if they make financial promotions which are not approved or issued by persons authorised by the FSA.

**5.6** We propose that employers are provided with a new exemption from the financial promotion regime which is wholly separate from the current exemptions in Articles 24 and 26 of the Financial Promotion Order. In particular, that the new exemption from the financial promotion regime for employers should apply to both real time and non-real time communications, but without including the conditions attached to Article 24 of the Financial Promotion Order.

**5.7** We suggest that the legislation specifies that this exemption should apply to all communications made by employers to their employees relating to any contract of insurance. An alternative would be somehow to specify in the legislation what we mean by work-related insurance products. This might introduce additional complexity, and hence reintroduce the issue we are seeking to address. We suggest that guidance is used instead to clarify that employers should only provide information and advice about work-related insurance products.

## Safeguards

**5.8** We suggest that, as a safeguard, employers are 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. We also propose that employers are required, when writing to employees, to remind them of their right to seek advice from an authorised person or an appointed representative.

**Q7: Do you consider 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?**

**Q8: Do you consider that the legislation should specify that this exemption applies to any insurance contract or should it be limited to work-related insurance products?**

**Q9: Do you consider that the conditions attached to Article 24 of the Financial Promotion Order should not apply, but that; (i) 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, and that; (ii) employers should be required, when writing to employees, to remind them of their right to seek advice from an authorised person or an appointed representative?**

**Q10: Do you consider that any other conditions should apply?**

# 6

## EMPLOYEE SHARE SCHEMES AND PLANS

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**6.1** A number of respondents to the FSMA Two-Year Review consultation proposals suggested that any new exemption relating to the promotion of employer pensions in the workplace should also cover share saver scheme and share incentive plans.

**6.2** Article 60 of the Financial Promotion Order already provides an exemption for promotions relating to employee share schemes. We consider that this exemption should already cover all of the (HM Revenue & Customs approved) mainstream share saver schemes and share incentive plans, but we would welcome views on whether these exemptions are working effectively, and we would be open to consider whether any extensions would be desirable.

**Q11: Do you consider that 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, need to be amended or expanded, and if so how?**



# 7

## PARTIAL REGULATORY IMPACT ASSESSMENT

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### TITLE OF THE PROPOSAL

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**7.1** The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2006

### PURPOSE AND INTENDED EFFECT

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**7.2** The objective of the changes is:

1. to facilitate the promotion by employers of improved pensions uptake by employees, and;
2. 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.

**7.3** This objective will be achieved by:

1. 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.
2. 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.

**7.4** In particular, the changes achieve this by:

1. applying the current exemption in Article 72 of the Financial Promotion Order to persons who are subject to a written contract with the employer, and requiring such persons to disclose to the employee the size of any direct financial benefit they will receive as a result of making a promotion to that employee. The employer must be satisfied that the pensions administrator is knowledgeable and competent to provide advice, although this may appear in guidance, not as a legal requirement. These conditions should provide employees with additional safeguards.
2. providing employers with a new exemption from the financial promotion regime, in particular to enable employers to make real time and non-real time promotions to their employees in respect of work-related insurance products. The conditions attached to this exemption are that the employer should not receive commission if the employee takes out his individual insurance policy, and the employer should inform the employee of their right to seek advice from an authorised person or an appointed representative. Work-related group insurance products are normally taken out by the employer with an FSA-authorized person (e.g. an insurer or broker), for the benefit of employees. This exemption should enable employers to provide information to their employees about the nature and levels of group cover available, thereby helping employers and employees to agree what group cover should be provided. This exemption should also enable employers to provide employees with information about individual cover which they may wish to take out themselves as a complement to the group cover provided.

**7.5** Those affected most by the changes will be:

1. employers who provide group personal pension schemes or stakeholder pension schemes and who have outsourced their pensions administration to third parties, and their employees. These pensions administrators should be able to promote the uptake of pensions to the employees in question, who might seek more pensions-related advice as a result. Persons authorised by the FSA might be affected indirectly if more employees seek individual advice from them as a result of receiving information from their pensions administrator, and if more employees take up a pension or increase the size of their pension investment.
2. employers who provide work-related group insurance cover to their employees, and their employees. Employers are likely to communicate more with their employees about what level and type of group cover should be taken out by the employer on behalf of employees, and about what types of individual cover are available. Persons authorised by the FSA, in particular brokers and insurers, are likely to be affected indirectly if more employers take up a wider range and/or higher levels of group cover, or if employees take up a wider range and/or higher level of individual cover as a result of being made more aware of what group cover is provided and what other cover is available in the market.

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## BACKGROUND

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**7.6** These changes are related to two features of the financial services regulation framework. Firstly, unauthorised persons making unapproved financial promotions risk civil or criminal sanctions. Obtaining approval from an FSA-authorised person for a communication which is considered to be a financial promotion can be expensive, and it may be difficult to find an FSA-authorised person willing to provide this service. Secondly, the definition of which communications might be considered to be financial promotions may appear to be complicated and/or unclear, and hence difficult and/or expensive to determine.

**7.7** These features mean that unauthorised persons may adopt a cautious approach towards making communications which might appear to be financial promotions. In the past for this reason many employers have been reluctant to provide their employees with information about certain company pensions. The changes outlined above should remove these uncertainties for third party pensions administrators and for employers who wish to provide employees with information about work-related insurance products.

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## RATIONALE FOR INTERVENTION

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**7.8** The rationale for intervention and purpose of changing the current regime is to reduce uncertainties regarding the scope of financial services regulation which have the effect of restricting the flow of information to employees about company pension schemes and work-related insurance products. By improving the flow of information to employees, employees will be better-placed to form optimal decisions about how much to invest in their pensions, about how much work-based group insurance cover they would like their employer to provide, and about how much other work-related insurance cover they themselves may wish to take out.

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## CONSULTATION

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**7.9** 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.

**7.10** This Partial Regulatory Impact Assessment (Partial RIA) concerns these two proposals, notably:

1. 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
2. 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.

**7.11** This Partial RIA lays out the implementation options for the two areas highlighted above and considers the costs and benefits for each option. Risks, unintended consequences, any compliance and enforcement issues, competition issues and the impact on small firms have also been considered.

**7.12** When formally responding to the Partial RIA we are seeking comments on the analysis of costs and benefits, likely risks and unintended consequences of the proposed options, as well as supporting evidence wherever possible. If you feel there are alternative options, or indeed alternative combinations of existing options, please suggest these. The feedback to this Partial RIA will provide valuable information which will feed into the Final RIA following this consultation. The consultation document and Partial RIA should be read together.

## **OPTIONS**

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### **Not to legislate**

**7.13** 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 and about work-related insurance cover.

### **Non-legislative options**

**7.14** 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**

**7.15** Paragraph 7.3 explains which legislative changes would be used to address the objectives set out in this regulatory impact assessment.

## **RISK ASSESSMENT**

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**7.16** These changes aim to address the risk that pensions administrators might not be providing employees with sufficient information to enable employees to form optimal decisions about how much to invest in their pensions, and the risk that employers might not be providing employees with sufficient information about work-related insurance cover - both the type and levels of group-based cover which the employer should take out on employees' behalves, and the type and levels of individual cover which employees themselves may wish to take out to complement any group-based cover provided by the employer.

## **COSTS AND BENEFITS**

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### **Costs**

**7.17** 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.

**7.18** 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 and about work-related insurance products. 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. The costs of understanding and adhering to the new exemptions should be minimised as they have been drafted in a clear and simple way, and will be accompanied by guidance.

## Benefits

**7.19** Employees should receive more information about company pension schemes and about work-related insurance cover, and this should enable them to make better-informed decisions about how much to invest in their pensions, and about what types and levels of work-related cover they should benefit from and take out.

**7.20** 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.

## SMALL FIRMS IMPACT TEST

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**7.21** These changes apply to all employers and to all (unauthorised) 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

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**7.22** 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. 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. 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.

## ENFORCEMENT, SANCTIONS AND MONITORING

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**7.23** Compliance with the requirements of financial services regulation, including policing the regulatory perimeter, will continue to be monitored and enforced by the FSA.

## IMPLEMENTATION AND DELIVERY PLAN

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**7.24** These deregulatory changes will be implemented via the adoption of new secondary legislation which amends the Financial Promotion Order. This is expected to come into force on the common commencement date of 1 October 2007. Employers and pensions administrators will also benefit from revised guidance explaining how the new regulatory freedoms apply.

## POST-IMPLEMENTATION REVIEW

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**7.25** The impact of these changes will be kept under close review, including to consider whether these changes are having any unintended consequences, and whether they are having their desired effects.

## SUMMARY AND RECOMMENDATIONS

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**7.26** Last year a new exemption was added to the Financial Promotion Order to enable employers to make financial promotions to their employees in relation to group personal pension schemes and stakeholder pension schemes. The purpose was to provide greater certainty that these sorts of communication do not need to be approved or issued by FSA-authorized persons. A number of companies have outsourced their pensions administration, however, and these pensions administrators hold the knowledge and competence required to furnish employees with the detailed information they seek. These changes expand last year's exemption to cover third party pensions administrators.

**7.27** Last year's exemption applied only to group personal pension schemes and to stakeholder pension schemes. Employers may experience similar uncertainties about their ability to communicate with their employees about other work-related financial products, in particular work-related insurance cover. These changes expand last year's exemption to cover such work-related insurance products.

# A

## CURRENT PENSIONS EXEMPTION

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**A.1** Article 72 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, titled ‘Pension products offered by employers’, states:

(1) If the requirements of paragraph (2) are met, the financial promotion restriction does not apply to any communication which is made by an employer 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 employer will make a contribution to the group personal pension scheme or stakeholder pension scheme to which the communication relates in the event of the employee becoming a member of the scheme and the communication contains a statement informing the employee of this;

(b) the employer has not received, and will not receive, any direct financial benefit from the scheme;

(c) the employer notifies the employee in writing prior to the employee becoming a member of the scheme of the amount of the contribution that the employer will make to the scheme in respect of that employee; and

(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) For the purposes of paragraph (2)(b) “direct financial benefit” includes -

(a) any commission paid to the employer by the provider of the scheme; and

(b) any reduction in the amount of the premium payable by the employer in respect of any insurance policy issued to the employer by the provider of the scheme.

(4) In this article -

“group personal pension scheme” means arrangements administered on a group basis under a personal pension scheme and which are available to employees of the same employer or of employers within a group;

“personal pension scheme” means a personal pension scheme as defined in section 1 of the Pension Schemes Act 1993<sup>(a)</sup> and which has been approved by the Commissioners of Inland Revenue under Chapter XIV of the Income and Corporation Taxes Act 1988 (a);

“stakeholder pension scheme” has the meaning given by section 1 of the Welfare Reform and Pensions Act 1999 (b).

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(a) 1993 c.48 as amended by section 239 of the Pensions Act 2004 (c.35).



## CURRENT INSURANCE EXEMPTIONS

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**B.1** Articles 24 and 26 respectively of the Financial Services and Markets Act 2000 (Financial Promotion) Order state the following:

### **24. Relevant insurance activity: non-real time communications**

(1) If the requirements of paragraph (2) are met, the financial promotion restriction does not apply to any non-real time communication which relates to a relevant insurance activity.

(2) The requirements of this paragraph are that the communication is accompanied by an indication -

- a. of the full name of the person with whom the investment which is the subject of the communication is to be made ("the insurer");
- b. of the country or territory in which the insurer is incorporated (described as such);
- c. if different, of the country or territory in which the insurer's principal place of business is situated (described as such);
- d. whether or not the insurer is regulated in respect of its insurance business;
- e. if the insurer is so regulated, of the name of the regulator of the insurer in its principal place of business or, if there is more than one such regulator, the name of the prudential regulator;
- f. whether any transaction to which the communication relates would, if entered into by the recipient and the insurer, fall within the jurisdiction of any dispute resolution scheme or compensation scheme and if so, identifying each such scheme.

(3) In this article "full name", in relation to a person, means the name under which that person carries on business and, if different, that person's corporate name.

### **26. Relevant insurance activity: real time communication**

The financial promotion restriction does not apply to any real time communication (whether solicited or unsolicited) which relates to a relevant insurance activity.





# PROPOSED NEW LEGISLATION

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## STATUTORY INSTRUMENTS

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2007 No.

### FINANCIAL SERVICES AND MARKETS

#### The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2007

<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<sup>(1)</sup>, 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 2007 and comes into force on [1 October 2007].

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

#### Amendment of the principal Order

3. After article [ ] of the principal Order insert—

##### “Promotion of pensions to employees

[ ]A.—(1) If an employer offers to his employees membership of a group personal pension scheme or stakeholder pension scheme, and if the employer meets the requirements of paragraph (2), the financial promotion restriction does not apply to any communication which is made to an employee in relation to the scheme where the person (“A”) making the communication meets the requirements of paragraph (4).

(2) The requirements of this paragraph are that—

- (a) in the event of the employee becoming a member of the scheme, the employer will make a contribution to the group personal pension scheme or stakeholder pension scheme to which the communication by A relates; and
- (b) the employer has not received, and will not receive, any direct financial benefit from the scheme.

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

- (a) any commission paid to the employer by the provider of the scheme or by A; and

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(1) 2000 c.8.

(2) S.I. 2005/1529.

- (b) any reduction in the amount of the premium payable by the employer in respect of any insurance policy issued to the employer by the provider of the scheme.

(4) The requirements of this paragraph are that—

- (a) A is not 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 article 14 (dealing in investments as principal), 21 (dealing in investments as agent), 25 (arranging deals in investments), 37 (managing investments), 40 (safeguarding and administering assets), 45 (sending de-materialised instructions), 53 (advising on investments), or 64 (agreeing to carry on specified kinds of activity) (so far as relevant to any such activity) of the Financial Services and Markets Act (2000) Regulated Activities Order 2001<sup>(3)</sup>,

in relation to rights under a personal pension scheme or in relation to rights under a stakeholder pension scheme;

- (b) A is engaged under a written contract with the employer to provide services to the employer and in particular to provide communications to employees in relation to a group personal pension scheme or stakeholder pension scheme;
- (c) the communication by A contains a statement informing the employee that the employer will make a contribution to the scheme;
- (d) A notifies the employee in writing, prior to the employee becoming a member of the scheme—
  - (i) of the amount of the contribution that the employer will make to the scheme in respect of that employee;
  - (ii) of any remuneration which A has received or will receive as a result of either—
    - (aa) the employee joining the scheme, or
    - (bb) the employee making an increase to the amount of his contribution to the scheme; and
- (e) in the case of a non-real time communication by A, 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.

(5) In this article “group personal pension scheme” and “stakeholder pension scheme” have the meaning given by article 72(4).

4. After article [ ] of the principal Order insert—

**“Promotion of insurance to employees**

[ ]A.—(1) If the requirements of paragraph (2) are met, the financial promotion restriction does not apply to any communication which is made by an employer to an employee in relation to rights under a contract of insurance.

(2) The requirements of this paragraph are that—

- (a) the employer has not received, and will not receive, any commission from the provider of the insurance as a result of the employee entering into a contract of insurance; and
- (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) This article does not apply to a communication to which article 72 applies.”.

*Name*

*Name*

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

<sup>(3)</sup> S.I. 2001/544.

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

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