

**Proposed changes to the  
eligibility rules for establishing  
a pension scheme:  
Government response  
to the consultation**

---

March 2006



HM TREASURY





HM TREASURY

---

Proposed changes to the eligibility rules  
for establishing a pension scheme:

Government response  
to the consultation

March 2006

© Crown copyright 2006

Published with the permission of HM Treasury on behalf of the Controller of Her Majesty's Stationery Office.

The text in this document (excluding the Royal Coat of Arms and departmental logos) may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified.

Any enquiries relating to the copyright in this document should be sent to:

HMSO  
Licensing Division  
St Clements House  
2-16 Colegate  
Norwich  
NR3 1BQ

Fax: 01603 723000

E-mail: [hmsolicensing@cabinet-office.x.gsi.gov.uk](mailto:hmsolicensing@cabinet-office.x.gsi.gov.uk)

## **HM Treasury contacts**

This report can be found on the Treasury website at:

**[hm-treasury.gov.uk](http://hm-treasury.gov.uk)**

For general enquiries about HM Treasury and its work, contact:

Correspondence and Enquiry Unit  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

Tel: 020 7270 4558

Fax: 020 7270 4861

E-mail: [public.enquiries@hm-treasury.gov.uk](mailto:public.enquiries@hm-treasury.gov.uk)

ISBN-10: 1-84532-170-7

ISBN-13: 978-1-84532-170-3

Printed by The Stationery Office 03/06 330880

# CONTENTS

---

		Page
Chapter 1	Context	3
Chapter 2	Summary of Responses	5
Chapter 3	Responses to questions in detail	7
Chapter 4	Next steps	17
Chapter 5	List of consultation respondents	19



**1.1** Two Acts of Parliament passed in 2004 are having a far-reaching effect on the operation of UK pension schemes. The Finance Act (2004) introduced a unified and simplified tax regime for pension schemes, which comes into effect from 6 April 2006 (A-Day). The Pensions Act 2004 introduced a new regulatory framework for occupational pension schemes from April 2005.

**1.2** However, the rules under which a ‘registered’ (i.e., tax-privileged) pension scheme can be established remain essentially unchanged. And the operation of personal pension schemes – unless they are stakeholder schemes - remain largely outside the scope of statutory regulation.

**1.3** In order to benefit from the generous tax privileges afforded to pension savings in the UK, a pension scheme must have been established by a person ‘eligible’ under tax law. Categories of eligible persons (which include firms) are currently set out in the Income and Corporation Taxes Act 1988, and are effectively replicated in the Finance Act 2004 for ‘registered’ pension schemes. Concerns have been raised that this list may be unduly restrictive, and there may be competent persons who would like to establish personal pension schemes but who are effectively prevented from doing so. (Note employers are separately eligible to establish occupational schemes.)

**1.4** Government saw potential reform of the eligibility rules as very much an extension of pensions tax simplification and wholly in line with the deregulation agenda. To investigate these issues with industry, the Government published a consultation document on ‘Proposed changes to the eligibility rules for establishing a pension scheme’ on 30th September 2005<sup>1</sup>. This consultation can be found at [http://www.hm-treasury.gov.uk/consultations\\_and\\_legislation/pension\\_scheme/consult\\_pensionscheme\\_index.cfm](http://www.hm-treasury.gov.uk/consultations_and_legislation/pension_scheme/consult_pensionscheme_index.cfm).

**1.5** In reviewing possible changes to the eligibility rules for establishing a registered (i.e., tax-privileged) pension scheme, the Government sought industry views on four options - including ‘do nothing’. Chapter 3 of the consultation document sets out the four options and their associated advantages and disadvantages in more detail. The Government’s preferred option (‘Option 3’) was to base eligibility, from April 2007, on a new FSA regulated activity of ‘establishing, operating or winding up a personal pension scheme’.

**1.6** This document summarises the responses (where given) to each of the questions raised in the consultation document and indicates how the Government has taken into account the views expressed in reaching final decisions. To minimise any industry uncertainty, it also clarifies some timing and process issues regarding the fee and capital adequacy requirements for the new regulated activity that will be set by the FSA. Finally, the timetable for introducing the new activity is reiterated for clarity.

---

<sup>1</sup> A supplementary note to the consultation was published on the HMT website on 5th December 2005. This followed the decision announced at PBR regarding the tax treatment of certain assets (including residential property) in Self Invested Personal Pensions (SIPPs) from April 2006. This update explained that although this decision had some implications for the Consultation it did not change either its original rationale or the preferred option.



# 2

## SUMMARY OF RESPONSES

---

- 2.1** Twenty-five responses were received by 23rd December 2005, the closing date of the consultation. A full list can be found in Section 5.
- 2.2** Respondents included trade bodies (such as the Association of British Insurers and the Association of Member-directed Pension Schemes), other representative bodies from the financial services industry (including the PEP and ISA Managers' Association and the Association of Investment Trust Companies), professional bodies (the Association of Pension Lawyers and Institute of Chartered Accountants), large personal pension providers and existing Self-Invested Personal Pensions (SIPP) providers.
- 2.3** We are grateful to all respondents for their helpful views that were considered in detail. Consultation responses are all publicly available on request. Please contact John McDonagh, 020 7270 5688 or [John.McDonagh@hm-treasury.x.gsi.gov.uk](mailto:John.McDonagh@hm-treasury.x.gsi.gov.uk).
- 2.4** Underlying the support for changes to the existing eligibility rules on establishing registered pension schemes, just three respondents supported Option 1 of 'do nothing'. Consequently Government will be making changes to eligibility rules.
- 2.5** Around three-quarters (19 of the 25) of all respondents supported the option of allowing persons to establish a registered pension scheme only if they have permission to carry on a new FSA regulated activity that is related to personal pension schemes (as set out in Options 3 or 4).
- 2.6** Seventeen of these nineteen respondents favoured the Government's preferred Option 3 of introducing such an activity from April 2007. This included support from large trade and professional bodies. In several cases this support was given with additional comments. Accordingly, Government has decided to make the changes to eligibility rules as set out in Option 3.
- 2.7** Only two respondents unequivocally supported the Option 4 variation that included a temporary amendment to tax law (to refer to permission to carry out an existing regulated activity) for one year, 2006-7, before the introduction of the new regulated activity from 2007. A further three identified it as a second choice subject to several technical / timing concerns.
- 2.8** Only one respondent supported Option 2 of basing eligibility on existing permissions to carry on investment-related regulated activities.
- 2.9** Two respondents did not express a preference for any of the four options proposed.
- 2.10** The Association of Member-Directed Pension Schemes (AMPS) carried out an extensive survey of their own members (who represent almost 100% of SIPP schemes being operated in the market today) seeking views on the four Options. AMPS reported 'overwhelming' support for Option 3 among members (with some caveats), but did note some support for Options 1 and 4.
- 2.11** There were limited comments on the partial Regulatory Impact Assessment (RIA). It was generally recognised that some providers would face additional costs to the extent they would have to become regulated and so pay FSA fees for the first time. However the overwhelming industry rejection of 'no change' suggested the industry consensus aligned with the Government view that costs would be offset by the benefits.

**2.12** The following are a selection of quotes taken from responses to illustrate the broad support for the Government's preferred option of creating a new FSA regulated activity related to personal pensions:

*'Restricting eligibility to only those providers with permission to carry on a regulated activity that is related to personal pension schemes offers customers the greatest protection, while maintaining wide choice'.*

**Association of British Insurers**

*'Option 3 will provide maximum flexibility for future development of the sector over the long term. At the same time, it will maintain the FSA's strong oversight of pension provision'.*

**Association of Investment Trust Companies**

*'Establishing a new regulated activity directly related to personal pension schemes....will ultimately benefit both consumers and the wider financial services industry'.*

**Barclays plc**

*'James Hay welcomes the Treasury's proposals to extend the rules governing those persons who can operate a pension scheme. Regulation will create greater transparency, open up the market to greater competition, customer choice and product innovation'.*

**James Hay, leading provider and administrator of Self-Invested Personal Pensions**

# 3

## RESPONSES TO QUESTIONS IN DETAIL

**Q1. Do you agree that the current eligibility rules may restrict entry to the personal pensions market and, for some providers, add to administrative costs?**

**3.1** The majority of respondents supported the principle that providers who wanted to directly enter the personal pensions market should have the opportunity to do so on an equal footing and avoiding unnecessary administration costs, but that this was not the case under current eligibility rules for all. Accordingly, the majority either favoured or didn't object to a widening of the list of persons eligible to establish 'registered' pension schemes.

**3.2** There was, however, little consensus as to the size of barriers created by current eligibility rules, the number of potential providers deterred from the market or the magnitude of administrative costs they incurred by having to operate through third parties.

**3.3** Respondents identified various categories of persons who should be eligible to establish registered pension schemes. These included firms already eligible to provide ISAs and Child Trust Fund accounts, as well as SIPP providers having to operate through eligible intermediaries. One respondent noted some fund supermarkets and other intermediaries who might be keen to enter. Another highlighted the 'unlevel playing field' created by the existing rules that were a particular disadvantage for investment trust fund managers.

**3.4** Others felt the existing rules could do more to stifle future entry, given increased market opportunities after A-Day and the projected growth in SIPPs. Sounding a word of caution, one respondent noted the importance of the personal pensions market not becoming 'too fragmented' with a plethora of alternative products.

**3.5** A smaller group felt that although current rules restrict entry to some degree this was not 'absolute' and just meant other business models were needed by some providers to access the market. As such the volume of deterred entrants might not be large. One argued that introducing the new regulated activity would have limited impact since 'ineligible' groups were probably eligible under Finance Act 2004. Another felt that operating schemes through intermediaries did more to 'stifle product innovation' than deter actual entry.

**3.6** A very small number of respondents felt there were no barriers and pointed to the recent growth in number of SIPP products in the market. They felt that operating through intermediaries actually helped to reduce costs by offering expertise in specialist services (such as IT).

**3.7** While the latter views applied to some individual providers, they were clearly not applicable across all providers. Moreover, any changes to current eligibility rules would not prevent such providers operating through their existing structures if they so wished.

**Q2. Do you agree that the definition of persons eligible to establish a tax –privileged pension scheme should be changed?**

**3.8** The overwhelming majority of respondents felt the ‘do nothing’ Option 1 was not sustainable. In light of this broad industry consensus, the Government intends to change the current definition of persons eligible to establish registered pension schemes.

**3.9** It was felt that there were several anomalies in the current rules that could not continue – particularly after A-Day. One felt they were ‘illogical’ since they produced a situation whereby some personal pension scheme activities were FSA regulated but others were not. Two broad themes emerged from those arguing for changes to current rules.

**3.10** A number mentioned the need to create a ‘fair and level’ playing field between providers and new market entrants, thus increasing innovation, competition and choice. This built on views given in Question 1. This point perhaps attracted slightly less attention than Government felt it warranted since it was the main rationale for the consultation. This was not surprising since respondents to the question were largely (or represented) existing market players - as opposed to potential new entrants. The result was an emphasis among respondents on the effect of rule changes on existing players and extension of consumer protection.

**3.11** In this context not only were current rules ‘confusing’ but as suggested by several respondents they went against a fundamental principle of pension tax simplification. Respondents spoke about rule changes needed so the market was given ‘the greatest opportunity to develop post A-Day’ and take advantage of the ‘April 2006 liberalisations’.

**3.12** Secondly, many explicitly mentioned rule changes were needed to bring all personal pensions fully within full FSA consumer regulation – and particularly SIPPs given projected future growth. Several explicitly said they agreed with Government that the 2005 PBR announcement on tax treatment of SIPP investments did not alter the case for rule changes. One respondent noted that ‘SIPPs would continue to remain a popular but complicated product’ while another highlighted they ‘could still hold unregulated investments’.

**3.13** Several mentioned ‘transparency’ and that rule changes were needed to extend regulatory cover to all aspects of a pension scheme - particularly the provision of advice. One respondent felt current rules ‘led to confusion over where liability for any maladministration lay’ and where the consumer could look to for protection.

**3.14** Just three of the twenty-five respondents favoured the ‘do nothing’ Option 1, though the AMPS survey reported some further support among members.

**3.15** Two main reasons were cited for the ‘do nothing’ option. Firstly the personal pensions market was already sufficiently competitive as shown by recent growth in SIPPs. Secondly a feeling that the ‘heat had been taken out of the SIPPs issue’ at PBR that reduced the need to bring all schemes under FSA regulations. The point was made that the vast majority of investments in SIPPs were already FSA regulated - the only exception being commercial property where there had been no history of mis-selling.

**3.16** While Government accepts these two latter points have some degree of validity, they do not alter the wider case for changing the eligibility rules set out in the consultation document (and endorsed overwhelmingly by industry).

**Q3. Do you agree with the proposed approach of creating a new regulated activity (Options 3 or 4) or would you prefer that persons with permission to carry on certain existing regulated activities be made eligible under the Finance Act (Option 2)?**

**3.17** Around three-quarters of respondents supported creating a new FSA regulated activity (Options 3 or 4). By contrast only one respondent supported Option 2 of relying on existing permissions.

**3.18** Key trade and professional bodies, large pension providers and SIPP providers were among those who gave their support to creating this new regulated activity (Option 3 or 4).

**3.19** In light of this overwhelming support, the Government will amend the Financial Services and Markets Act (FSMA) Regulated Activities Order (2001) to include a new FSA regulated activity of ‘establishing, operating or winding up a personal pension scheme’.

**3.20** Many agreed that a new regulated activity would ‘maximise the number of potential new entrants and competition’ – this was the main reason for the Government’s support for this option. It was felt that relying on those with existing permissions would effectively limit the number of potential entrants from new areas since there may be other entities wishing to enter - trade unions and representatives of the self-employed were mentioned as illustrations.

**3.21** Several other reasons were given in support of creating a new regulated activity. It would maintain FSA’s ‘strategic oversight’ over personal pensions – particularly in the growth area of SIPPs. A consensus was there should not be a situation where some parts of the personal pensions business were FSA regulated and others were not, and that the creation of a new regulated activity would prevent this.

**3.22** Several also mentioned this would bring ‘regulatory clarity’. It was felt that a new FSA activity would allow regulatory cover to be extended to all aspects of running a personal pension scheme - particularly the provision of advice. A new regulated activity would also fully reflect the need for providers to have proven pension expertise, qualifications and administration experience, as opposed to general investment-related experience.

**3.23** Other arguments cited in favour of Option 3 included the need to ‘reduce the variance in efficiency and standards of administration’, ‘establishing a common point of sales regime sources and complaints handling’, and ‘providing a clearer link to eligibility under tax law’.

**3.24** Respondents supporting the creation of a new regulated activity argued that it would bring benefits not offered by relying on existing permissions as under Option 2. There were several criticisms made of Option 2. Firstly it would limit consumer protection to the extent some pension activities would remain outside FSA pension supervision. It was felt this would lead to ‘inconsistency’ and ‘fundamentally go against the principle of pension tax simplification’ by not opening the market up to the fullest possible extent.

**3.25** Several respondents in their opposition to Option 2 noted that the suggested general investment related activities did not bear full relation to the activities involved in personal pensions – particularly a SIPP.

**3.26** Just one respondent favoured Option 2 of an approach based on more general existing permitted business permissions to minimise regulatory costs on potential new entrants. This respondent questioned whether pensions were sufficiently different to warrant a separate category of permitted business?

**3.27** Respondents who supported Option 3 made various additional comments about that Option. These were largely specific matters of detail that did not fundamentally detract from their endorsement of creating a new regulated activity. Several comments, for example, suggested what the ideal scope and coverage of the new regulated activity should be. These were matters for the FSA consultation to consider.

**Q4. If you agree with the proposed approach of creating a new regulated activity, do you think that the benefits of implementing a temporary amendment to FA 2004 (as described in Option 4) would be sufficient to make it worthwhile?**

**3.28** There was limited appetite for Option 4 with only two respondents unequivocally supporting it. A further three said they would have no objections as a second choice / if technically possible. In light of this very limited support, the Government has decided against introducing a temporary amendment to Finance Act 2004 from April 2006.

**3.29** The over-riding criticisms of Option 4 were the ‘needless complexity’ and ‘confusion’ that two legislative changes in less than one year would cause. Further confusion would be caused by trying to map existing requirements to the new activity. These were particularly important considerations given the industry would be subject to significant change in April 2006. Many respondents who acknowledged some beneficial effects of a temporary amendment also gave these views.

**3.30** Several noted Option 4 could produce a hypothetical situation where some providers were eligible from April 2006 but not from April 2007 – though even such respondents felt the FSA’s ‘Treating Customers Fairly’ initiative should reduce such a risk.

**3.31** Several felt there would be timing problems trying to implement an amendment to the Finance Act 2004 at this late stage. By contrast it was felt Option 3 would give both firms the opportunity to see in A-Day and the FSA time to carry out a thorough consultation in preparation for the new regulated activity. Several explicitly mentioned the dangers of ‘rushing through partial regulation’.

**3.32** Just two respondents favoured Option 4, stressing its main advantage of earlier market opening. One argued that without Option 4 the very firms who should be benefiting from A-Day could miss out because the competitive advantages may well have been reduced and / or disappeared by April 2007. The other respondent favouring Option 4 highlighted groups such as ISA, PEP and CTF providers would not be prevented from entering the market early.

**3.33** Whilst Government acknowledges the potential benefits of an early legislative change under Option 4, we concur with the industry view that these would be offset by the added confusion and complexity.

**Q5. If you would prefer to rely on existing regulated activities, do you agree that managing investments and safeguarding and administering investments are the right activities to choose?**

**3.34** Only one of the twenty-five respondents supported Option 2 of relying on existing regulated activities.

**3.35** The limited appetite for relying on existing regulated activities meant minimal comment on this particular question. The one respondent favouring Option 2 said in terms of existing regulated activities ‘various ancillary powers’ would also need to be added if this option was chosen.

**3.36** Several respondents in their opposition to Option 2 (and in most cases support for Options 3 or 4) noted that the above-mentioned activities did not bear full relation to the activities of administering a personal pension – particularly a SIPP.

**Q6. The Government recognises that firms in the pensions industry have put in place significant programmes of change in preparation for the implementation of pensions tax simplification. Are there specific steps the Government should take to help firms integrate preparation for this change with finalising preparations for simplification?**

**3.37** Respondents tended to use this question to make general points about Government policy in this area – particularly on the issue of effective communication with industry. There were few specific comments in response to this question.

**3.38** A general theme was that the Government (and the FSA) needed to announce full details of changes at the earliest possible opportunity to allow firms sufficient time to ‘review’, ‘plan’ and ‘implement’. Several stressed the need to keep to the FSA consultation timetable. The Government fully agreed with industry on these points and has issued this formal response within the Cabinet Office 3-month best practice target. The timetable for FSA’s comprehensive consultation remains unchanged.

**3.39** Several respondents reiterated that ideally these rule changes should be taking effect from A-Day. Only one, however, used the Consultation to explicitly state that the Government should delay A-Day – which is going ahead as planned.

**3.40** Several mentioned the need to avoid confusing pension tax simplification with proposed pension scheme eligibility rule changes – particularly in the area of SIPPs. Both were explained in detail in the original consultation. Government sees reform of the eligibility rules as an extension of pension tax simplification.

**3.41** Several respondents mentioned that all should be done to minimise burdens on businesses at a time when firms have been engaged in much work preparing for A-Day. In practical terms respondents argued the introduction of the new regulated activity should be co-ordinated with other regulatory changes. In developing a regime for all personal pensions and particularly SIPPs, FSA will take full account of other work such as conduct of business (‘COB’) simplification and product disclosure, and expect to propose a regime for personal pensions that is both appropriate and proportionate.

**3.42** The Government wants to introduce the new regulated activity as smoothly as possible. As such the Government will include transitional provisions to allow firms who already have a permission from the FSA in relation to stakeholder pension schemes to carry on the new activities without needing to vary their permissions. In addition,

Government will be providing 'interim permission' for firms already undertaking any personal pensions activities (before a certain date) but who might not have managed to secure permission before 6 April 2007. (Firms with existing FSA permissions for personal pensions activities but where these do not cover stakeholder would only need to apply for variation of permissions ('VOP') to carry on the new activity.)

**Q7. Operating a scheme classified as an occupational scheme would not fall within the proposed new regulated activity. It is proposed to use the definition of an occupational scheme set out in Pensions Act 2004, but to remove the portion of that definition which excludes schemes with their main place of operation outside the UK. This is to avoid these types of schemes coming within FSA regulation as personal pension schemes. Do you agree with this approach?**

**3.43** This was deemed to be a sensible proposal by a number of respondents to this question.

**3.44** Related to this question, several respondents raised an issue about the position of some occupational pension schemes and the new activity. It was noted that after April 2006 all tax-privileged pension schemes will simply be 'registered' pension schemes, and that changes brought about by the 2004 Finance and Pensions Acts (the latter to comply with an EU Directive) would mean an employer could theoretically establish a pension scheme that could admit non-employees. This led to concerns that there may be a 'gap' in regulatory cover.

**3.45** Government considered and discussed this particular issue with both the Financial Services Authority and the Pensions Regulator (who regulate Occupational schemes). Government can confirm that as intended the new activity will use the definition set out above. The Pensions Regulator and the FSA have a 'memorandum of understanding', which allows for sharing information on a range of issues and they will continue to work closely to ensure effective regulation across the piece.

**Q8. Do you have any other comments on the proposed amendments?**

**3.46** Respondents to the HMT consultation raised and sought clarity on several additional issues. The majority of these were practical matters for the FSA to respond to. The Government nonetheless welcomed the opportunity to hear these views, and is happy to use this response to clarify several process / timing issues relevant to the FSA consultation.

**3.47** The FSA consultation will as planned open in April 2006 and will take in draft perimeter guidance aimed at persons involved in the running of a personal pension scheme, and for those who give advice about or arrange participation in such schemes. It will be intended to help persons understand whether they will be carrying on a regulated activity and hence need 'authorisation' or 'exemption' following the changes that take effect from April 2007.

**3.48** In this section we try and address some key outstanding issues that were raised by respondents.

**Position of trustees** **3.49** Respondents sought clarification of how the new regulated activity would extend to pension scheme trustees and, if so, whether or what exclusions might be

<sup>1</sup> This can be found at <http://www.thepensionsregulator.gov.uk/pdf/mouFsa.pdf>

available. Whilst this is a matter best left to the FSA perimeter guidance (that will take account of comments received following the FSA consultation), the Government can offer some general guidance at this stage.

**3.50** In general terms, the treatment of trustees under the new regulated activity will be identical to the position that currently exists with trust-based stakeholder pension schemes.

**3.51** Whether or not trustees will carry on the new regulated activity depends very much on their role. We understand that some trustees administer personal pension schemes whilst others merely act as bare trustees with other persons responsible for administration. Where a trustee has responsibility for administering the scheme or for managing its assets (or both) that person is likely to be the operator and will need to be authorised. In other cases, it is likely to be the person who has the responsibility for administration and management who will be the operator.

**3.52** The changes to regulatory scope do not affect a personal pension scheme trustee's ability to make use of exclusions available to them in respect of other regulated activities that they may carry on as trustee (such as dealing or safeguarding and administering).

**Precise scope of new activity** **3.53** Several respondents also sought greater clarity on the precise scope of the new regulated activity. Again the FSA perimeter guidance will detail what is involved in each of the activities of 'establishing, operating or winding up a personal pension scheme'. This will take account of comments received during the FSA consultation.

**Outsourced / third party activities** **3.54** Respondents sought greater clarity on regulation of different scheme structures. In particular would third parties carrying on delegated day-to-day functions such as administration or management be carrying on the new regulated activity?

**3.55** FSA guidance will cover all aspects of running a personal pension scheme and providing services to or for its members. Whether or not a particular person will meet the requirement will depend on individual circumstances. The need for authorisation will relate to the nature of the activities carried out. In terms of outsourcing, the fact that a person may carry out a regulated activity under an authorised person's name will not remove the need for authorisation or exemption if the services performed involve regulated activities.

**3.56** The changes to regulatory scope will also mean that persons advising on or arranging deals in rights under a personal pension scheme will be subject to regulation. For many, this will not have any meaningful effect, as they will already be regulated for advising on or arranging deals in regulated personal pension products such as life insurance policies. The FSA guidance will clarify the regulatory position of currently unregulated persons such as:

- Solicitors or licensed conveyancers advising on the merits of, or transferring title to, commercial property to the operator of a personal pension scheme; and
- Surveyors or estate agents advising on the merits of acquiring, or arranging the sale of, commercial property which is intended to be held under a personal pension scheme.

**Capital adequacy** **3.57** Respondents sought clarification on the issue of prudential capital requirements for those carrying on the new regulated activity.

**3.58** The Government recognises this is a key issue for all market participants. Such requirements are needed to ensure where necessary the 'orderly wind down' of a business - that is ensuring that a firm has sufficient capital in the event of insolvency. This ensures that consumers are protected and confidence is maintained in the market.

**3.59** Again, the FSA will address capital adequacy issues in their own consultation. FSA's capital adequacy approach is expected to be fully in line with better regulation principles, and as such should be proportionate and not act as a barrier to entry into the market for smaller providers.

### Fees for the new activity

**3.60** Clarification was also sought on the exact fees that would be charged for the new activity. The FSA will decide on the arrangements for application (or variation of permission) and ongoing periodic fees for the new regulated activity. FSA fee payers are categorised into 'fee-blocks', which group together firms with similar regulated activities. Fee payers will belong to one or more fee-blocks according to the activities within their permission. Given the importance to industry, we set out in detail some timing and process issues relating to fees.

**3.61** The FSA's April 2006 consultation will outline the process by which a firm can become authorised for the new activity relating to personal pensions. It will also include consultation on application (or variation of permission) fees for the new regulated activity. These fee arrangements will be in place by the time FSA starts to receive applications for authorisation to carry on the new activity in October 2006. FSA will then consult on periodic fee arrangements for the new activity so that these will be effective when the new activity becomes regulated.

**3.62** FSA will aim through its periodic fees, to recover its regulatory costs, while application/variation of permission fees are intended to recover only part of the costs of the application/variation of permission process. FSA will be required to demonstrate that its fee raising arrangements overall are compatible with better regulation principles. So fees are expected to be proportionate and not pose a barrier to entry into the market.

**3.63** One respondent was concerned that as a provider carrying out multiple activities they would have to pay fees in this new fee block as well as their existing block. FSA fee payers are liable for at least the minimum periodic fee in each fee-block to which they belong, according to the permission they hold. Depending on the outcome to FSA's consultation, firms conducting the new regulated activity may not require allocation to a new fee-block. The actual fee payable in each fee-block depends on the firm's 'size of business', measured according to the relevant fee metric (for example, fund managers' fees are based on the value of assets under management).

**3.64** While the Regulatory Impact Assessment made a number of assumptions about possible regulatory fees, these could only be illustrative. FSA fees are reviewed annually, together with levies for the Financial Services Compensation Scheme (FSCS) and the Financial Ombudsman Service (FOS). FSA consults each year in January or February on regulatory fees and levies, which are finalised in May for the fee period 1 April to 31 March. Regulatory fees and levies depend on variables such as the population of fee and levy payers; FSA's annual funding requirement; FSCS and the FOS budgets; their allocation between fee-blocks; and size of firms' tariff data. So Industry will have the opportunity to comment on FSA periodic fees and levies for FSCS and FOS in early 2007.

**Q9. Do you have any other comments on the costs and benefits detailed in the partial RIA?**

**3.65** A partial Regulatory Impact Assessment (RIA) was published with the consultation document. This considered the likely costs and benefits arising from the four options, and also the possible impact on small firms and the effect on market competition. An updated RIA will be published when the Regulations are laid.

**3.66** There was limited comment on the RIA. Only seven of the twenty-five respondents to the consultation made specific reference to the RIA.

**3.67** There was a general recognition that some providers would face additional costs from the introduction of a new regulated activity to the extent firms would have to pay FSA fees. The costs were likely to have a particular impact on independent SIPP providers / administrators who were not currently subject to any FSA regulation. Three pointed out that these costs would be in addition to those already incurred in implementing pension tax simplification.

**3.68** Most who commented on costs took the view that these did not undermine the case for reform. The overwhelming industry rejection of 'no change' implies the industry as a whole felt costs would be offset by the benefits.

**3.69** Those who responded felt costs were likely to have an impact on independent administrators (SIPP providers) outside current regulations. Five specifically mentioned there would be significant costs for such firms in developing and maintaining appropriate compliance functions, though four of these nevertheless supported Option 3. Only one of these thought that the associated costs would 'significantly outweigh' the current costs of operating through a scheme provider who is already approved and regulated by the FSA. In only one case was the cost of obtaining permission from the FSA thought to be a likely 'barrier to entry to the market'.

**3.70** Three commented that costs would be passed on to consumers, although a fourth thought it 'doubtful whether charges in the shorter term could be increased'. One respondent thought that the 'benefit in terms of equality merit this'.

**3.71** While the RIA made a number of assumptions about possible regulatory fees, these were illustrative only. Reflecting the importance of FSA fees in determining costs, many respondents sought greater clarity on the precise nature and magnitude of the FSA's fees. There was some concern about the 'fee block' into which pension operators would be placed. This detail will be provided by the FSA's own consultation.

**3.72** Some principles underlying FSA fee policy are described in the previous section.



# 4

## NEXT STEPS

---

**4.1** Following the widespread industry support given in the consultation, Government will be creating a new FSA regulated activity related to personal pension schemes. This will base the eligibility rules for establishing registered pension schemes. The timetable for introducing this new activity from April 2007 will involve several key steps and milestones and is set out here for clarity.

**4.2** In April 2006 the FSA will need to consult with industry on the rules required to implement a new regulated activity of ‘establishing, operating or winding up a personal pension scheme’, and on the consequential regulation of dealing in, arranging and advising on rights under such schemes.

**4.3** Taking into account April 2006 consultation responses, the FSA will then make rules for the new activity by October 2006. This should allow sufficient time for persons to apply for permission to carry on the new activity before the new rules come into force. This will also allow existing providers time to adapt their internal systems and processes.

**4.4** Before 6 April 2007, Government will amend the Financial Services and Markets Act (FSMA) Regulated Activities Order (2001) to include a new regulated activity of ‘establishing, operating or winding up a personal pension scheme.’ The Government will then amend Finance Act 2004 (this can be done by Order, and so would not require Finance Bill legislation) to make any person having secured this permission eligible to establish a registered pension scheme. A final RIA will accompany this.



# 5

## LIST OF CONSULTATION RESPONDENTS

---

Association of British Insurers (ABI)  
Association of Consulting Actuaries (ACA)  
AEGON UK  
The Association of Independent Financial Advisers (AIFA)  
The Association of Investment Trust Companies (AITC)  
AJ Bell Holdings Limited  
The Association of Member-directed Pension Schemes (AMPS)  
Association of Pension Lawyers  
Barclays Plc  
Barnett Waddington Actuaries and Consultants  
The Financial Services Practitioners Panel  
The Hargreaves Lansdowne Group  
Hazell Carr Plc  
HBOS Financial Services  
Investment Management Association (IMA)  
International Financial Data Services (IFDS)  
James Hay Admin Co Ltd  
Legal and General Group Plc  
Norwich Union Life  
The Pensions Pitstop  
PEP and ISA Managers Association (PIMA)  
The Prudential Assurance Company Limited  
The Society of Pension Consultants (SPC)  
Standard Life  
The Institute of Chartered Accountants









ISBN 1-84532-170-7



9 781845 321703 >