

Summary: Intervention & Options

Department /Agency: HM TREASURY	Title: Impact Assessment of Proposals for Facilitating Financial Promotions in the Workplace	
Stage: Final	Version: 1	Date: 22 March 2010
Related Publications:		

Available to view or download at:

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

Contact for enquiries: John Sparrow

Telephone: 0207 270 5312

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

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

Confusion about what constitutes a financial promotion has resulted in employers/contracted third parties being cautious about making communications about financial products such as work related insurance. Government intervention is necessary to clarify the situation facilitating improved communication with employees on these matters.

What are the policy objectives and the intended effects?

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

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

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

1. Not to legislate in which case employees would remain in a weaker position to make optimal decisions about their pensions, mortgage and insurance cover.

2. Non-legislative options: FSA guidance can help interpret the boundary of financial services regulation but it cannot mitigate the effects of legislation which specifies the boundary of regulation in a confusing or uncertain way.

3. Legislation - the preferred option - would clarify what constitutes a financial promotion, encouraging employers/contracted third parties to increase awareness & information access for employees.


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

The 2005 Order is subject to a process of continuous review by the Treasury.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

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

Signed by the responsible Minister:



Date: 22.3.10

Summary: Analysis & Evidence

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

COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' These changes are deregulatory and do not generate new or additional regulatory costs, because their purpose is to clarify and simplify the boundary of financial services regulation, thereby reducing the perceived need for certain financial promotions to be approved or issued by an authorised person.
	One-off (Transition) Yrs	
	£ De-minimis	
	Average Annual Cost (excluding one-off)	
	£ De-minimis	
Total Cost (PV)		£ De-minimis
Other key non-monetised costs by 'main affected groups'		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Much of this benefit is unquantifiable and relates to increased awareness and information access. Employees should be able to make better informed decisions about their pensions etc. Employers and pensions administrators should benefit from greater clarity on what what communications constitute a financial promotion.
	One-off Yrs	
	£ De-minimis	
	Average Annual Benefit (excluding one-off)	
	£ De-minimis	
Total Benefit (PV)		£ De-minimis
Other key non-monetised benefits by 'main affected groups'		

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ De-minimis	NET BENEFIT (NPV Best estimate) £ De-minimis
--------------------	----------------------	---	---

What is the geographic coverage of the policy/option?	UK
On what date will the policy be implemented?	Enactment of FPO
Which organisation(s) will enforce the policy?	FSA
What is the total annual cost of enforcement for these organisations?	£ De-minimis
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ None
What is the value of changes in greenhouse gas emissions?	£ None
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

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

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

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

BACKGROUND

1. The Financial Services and Markets Act 2000 (FSMA) contains a prohibition on all persons, in the course of business, communicating an invitation or inducement to engage in investment activity unless they are authorised, or the content of the communication is approved by an authorised person, or they are exempt by way of an order made by the Treasury.
2. Obtaining approval from an FSA-authorized person for a financial promotion can be expensive, however unauthorised persons making unapproved financial promotions risk civil or criminal sanctions. Confusion about what constitutes a financial promotion has resulted in many employers taking a cautious approach towards making communications about financial products such as work related insurance which might appear to be financial promotions.

CONSULTATION

3. 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.
4. The March 2006 Consultation covered the following two proposals:
 - to provide a new exemption in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 for communications made to employees about company pension schemes by the employer's pensions administrators; and
 - to provide a new exemption in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 for communications made by employers to employees about work-related insurance products.
5. A summary of responses is available on the Treasury website. Respondents to the 2006 consultation suggested the following additional changes.
 - The financial promotion restriction should not apply to communications made by employers or third party administrators in relation to staff mortgages;
 - For employee pensions it does not matter whether the employer or the third party administrator notifies the employee of the amount of the employer's contribution;
 - The exemption should be extended to exempt communications made by third party administrators in relation to work-related insurance products.
5. Respondents to the 2008 consultation supported these changes.

OPTIONS

Not to legislate

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

Non-legislative options

7. 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

8. The preferred option is to extend the existing financial promotion exemption to cover:
 - the promotion of staff pensions by third party pensions administrators
 - communications made by employers and third party administrators in relation to work-related insurance products
 - communications made by employers or third party administrators in relation to staff mortgages;
9. Pensions: existing legislation exempts communications about staff pensions by employers. Many companies outsource the administration of their pension schemes and are likely to turn to staff from the outsourced company to provide information about the pension. It is anomalous for the financial promotion regime to require regulation of communications where the pension is outsourced, so the legislation would extend the existing exemption to cover such communications.
10. Work related insurance products: the objective of the changes is to facilitate improved communication between employers and employees about the types and levels of work-related insurance.
11. Staff mortgages: staff mortgages tend to be offered at favourable rates and form a valuable part of an employer's benefits package. The legislation would provide that the financial promotion restriction should not apply to communications made by employers or third party administrators in relation to these products. It would be anomalous for the financial promotion regime to require regulation such of communications if communications relating to work-related pension or insurance products are to be exempt.
12. These changes can be made by extending the exemption from the financial promotion restriction provided by Article 72 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005. This exemption currently 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-authorized person.
13. 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.
14. If the new exemptions are used by employers and by their pensions administrators there may be resource implications in terms of the staff time and resources taken to provide employees with information about company pension schemes, work-related insurance products and staff mortgages. Employees may also have to devote time to considering the additional information they receive.

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

Benefits

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

IMPACT ON SMALL FIRMS

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

COMPETITION ASSESSMENT

19. 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.
20. 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.
21. In practice it is expected that employers and pensions administrators will provide generic advice to employees, and will refer employees to FSA-authorized persons when they are seeking specific advice relating to individual circumstances. As such these exemptions should lead to workplace financial promotions complementing the activities of FSA-authorized advisers, rather than employers or pensions administrators somehow competing unfairly against them.

RACE, DISABILITY, GENDER AND HUMAN RIGHTS

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

Specific Impact Tests: Checklist

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

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

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

< Click once and paste, or double click to paste in this style.>