

10/26**

Financial Services Authority

Pension reform –
Conduct of business
changes

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The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 9 February 2011.

Comments may be sent by electronic submission using the form on the FSA's website at:

www.fsa.gov.uk/Pages/Library/Policy/CP/2010/cp10_26_response.shtml.

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It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure.

A confidential response may be requested from us under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Tribunal.

Copies of this Consultation Paper are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

List of acronyms used in this Consultation Paper

CLD	Consolidated Life Directive
COBS	Conduct of Business Sourcebook
DMD	Distance Marketing Directive
DWP	Department for Work and Pensions
GPP	Group Personal Pension
KFD	Key Features Document
NEST	National Employment Savings Trust
SIPP	Self Invested Personal Pension
TPR	The Pensions Regulator

1 Overview

Introduction

- 1.1 The government is introducing significant reforms to workplace pensions from October 2012.¹ Employers will be required to automatically enrol their eligible employees into a pension and contribute to it.² The pension could be an occupational pension scheme or a group personal pension scheme³ that meets the criteria set out in the Pensions Act 2008 ('the Act'). The government is also creating the National Employment Savings Trust (NEST), a multi-employer occupational pension scheme that employers can use to meet the automatic enrolment obligation. As an occupational pension scheme NEST will be regulated by the Pensions Regulator (TPR), the regulator of workplace pensions.⁴ TPR will also be responsible for ensuring employers comply with their new pension obligations under the Act.
- 1.2 The government published the report of the independent *'Making Automatic Enrolment Work'* review on 27 October 2010. It also announced its intention to accept their recommendations, therefore confirming that the workplace pension reforms will be introduced from 2012 and that NEST will continue. The report recommended changes to some elements of the workplace pension reforms; although these changes are not directly relevant to our proposals we have taken them into account.

Why we are proposing changes to the Conduct of Business Sourcebook

- 1.3 As a result of the workplace pension reforms, the landscape for pension provision will change significantly. We are proposing changes to achieve two main objectives. Firstly, that the interaction between our rules and the Department for Work and Pensions (DWP) legislation does not present unnecessary barriers to employers using group personal pensions (GPPs) for automatic enrolment. Secondly, that consumers remain adequately protected in the changed pension landscape.

1 The new requirements will be staged in over four years from 1 October 2012. Throughout this paper we use '2012' to refer to the implementation date of the workplace pension reforms.

2 The Pensions Act 2008 sets out which employees must be automatically enrolled and what contributions must be made. www.legislation.gov.uk/ukpga/2008/30/contents

3 In this paper the term 'personal pension' includes stakeholder pensions and self invested personal pensions (SIPPs). We also use the term group personal pension (GPP) to include grouped arrangements of stakeholder pensions and SIPPs.

4 We are likely to regulate some activities, such as managing NEST's investments; however, we will not regulate how the scheme operates.

- 1.4 Employers will be able to use GPPs to meet the automatic enrolment obligation. The automatic enrolment process set out in legislation will be a new process of acquiring a financial services product, but our current rules are designed to address risks in advice and sales processes. Our proposals are designed to continue providing appropriate protection for consumers who are automatically enrolled into GPPs.
- 1.5 The changes resulting from the workplace pension reforms will affect consumers' pension and investment needs outside the workplace. Consequently there will be an impact on providing, and giving advice on, pensions and other investment products outside the workplace. There will also be a new product available, NEST, which many individuals will be able to use to save for retirement.⁵
- 1.6 We believe it is in the best interests of most people to stay in (or join) a workplace pension where employers contribute. It will generally be impossible to identify in advance, the very small percentage of people who are at risk of not benefiting from saving. In our view the greatest risk to consumers in the automatic enrolment environment is that they opt out of a workplace scheme inappropriately, and lose their employer's contribution to their pension.
- 1.7 We have worked very closely with the DWP as they have developed the reforms. Our discussions with the DWP have been very open and have focused on the interaction between our existing rules and the new legislation, and as a result these interactions have been minimised. Now that the legislation implementing the reforms has been finalised, we need to address the few remaining areas where our rules and the DWP legislation interact.
- 1.8 We have been aware of these issues as the reforms have developed and have communicated with the DWP about areas where it would be possible to consult on changes to the Conduct of Business Sourcebook (COBS) rules. If we do not make changes in these areas, provider firms would find it difficult to use GPPs for automatic enrolment in the new pension landscape without breaching the legislation or the COBS rules.

Outline of proposals

- 1.9 Our proposals can be split into two categories.
 - **Using group personal pensions for automatic enrolment:** Proposals so GPPs can be used effectively for automatic enrolment and so employees are adequately protected in the automatic enrolment and opt-out processes.
 - **Changes in the pension landscape:** Proposals that aim to ensure consumers are adequately protected against relevant risks that arise in the changed pension landscape.

5 NEST can be used outside of the workplace by the self-employed. Those who have previously used NEST within the workplace will also be able to continue to contribute to NEST outside of any workplace arrangement.

Using group personal pensions for automatic enrolment

1.10 We are proposing the following changes in this category:

- clarifying how the Distance Marketing Directive⁶ (DMD) applies in relation to automatic enrolment into GPPs;
- removing the requirement to include a statement on the existence of stakeholder pensions in the disclosure information for GPPs being used for automatic enrolment; and
- aligning the cancellation rules with the DWP opt-out legislation.

Changes in the pension landscape

1.11 We are proposing the following changes in this category:

- extending the additional requirements for pension opt-out transactions by extending the definition of a pension opt-out to cover opt-outs from GPPs; and
- extending the additional requirements for recommendations relating to additional contributions to GPPs.

Pre-consultation

1.12 We have discussed our proposals with a range of stakeholders, including relevant trade bodies, consumer groups and individual firms. We have also consulted the Consumer Panel, Practitioner Panel and Smaller Businesses Practitioner Panel. We have worked closely with the DWP and have also discussed the proposals with the Treasury and TPR. We would like to thank all who have contributed to these discussions and helped inform our proposals.

Next steps

1.13 This consultation will close on 9 February 2011. We will then finalise our proposals in light of the responses received with a view to publishing a Policy Statement, together with final Handbook text, in the second quarter of 2011. The implementation date for changes resulting from this consultation will be 1 October 2012, when the workplace pension reform legislation comes into effect.

Who should read this paper?

1.14 This Consultation Paper will be of interest to all firms involved in providing, distributing and operating group and individual personal pensions. It will also be of interest to relevant trade bodies. The proposals may also be of interest to employer representatives.

6 The distance marketing of consumer financial services, Council Directive 2002/65/EC <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0065:en:NOT>

CONSUMERS

The proposals in this paper will affect those who have a pension now, expect to make contributions to a pension in the future and who will be automatically enrolled into workplace pensions from 2012. This paper will therefore be of interest to consumers and their representative groups.

2 Proposals

- 2.1 This chapter explains the changes we propose to make to the Handbook, and should be read in conjunction with the proposed Handbook text as set out in Appendix 1.
- 2.2 Our policy proposals fall broadly into two categories.
- **Using group personal pensions for automatic enrolment:** Proposals so group personal pensions (GPPs) can be used effectively for automatic enrolment and so employees are adequately protected in the automatic enrolment and opt-out processes.
 - **Changes in the pension landscape:** Proposals that aim to ensure consumers are adequately protected against relevant risks that arise in the changed pension landscape.
- 2.3 In general, the proposals specify requirements for GPPs that are being used for automatic enrolment purposes. We will add a definition of an **automatic enrolment scheme** to the glossary. This will refer to the definition in the Act of an automatic enrolment scheme.

Using GPPs for automatic enrolment

The Distance Marketing Directive

- 2.4 The Distance Marketing Directive (DMD) prohibits inertia selling of distance contracts, which means that a lack of response cannot be taken as consent.⁷ The automatic enrolment process is built on the premise of inertia selling; automatically putting people into pension saving unless they say otherwise.
- 2.5 As part of introducing the Act, the Department for Work and Pensions (DWP) reached an agreement with the European Commission that when automatic enrolment is used to fulfil the employer's statutory obligation under the Act, the DMD does not apply.

⁷ Council Directive 2002/65/EC Article 9 (as amended by Council Directive 2005/29/EC – the Unfair Commercial Practices Directive): ‘Given the prohibition of inertia selling practices laid down in Directive 2005/29/EC of 11 May 2005 of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market, Member States shall take the measures necessary to exempt the consumer from the provision of any consideration in cases of unsolicited supply, the absence of a response not constituting consent.’

We agree with the DWP's conclusion that these transactions will fall outside the definition of a distance contract.

- 2.6 The industry believes this position is not clear in the Handbook, and without additional clarity, they would not be comfortable automatically enrolling employees into GPPs. GPPs are an important part of the workplace pensions landscape, and we wish to avoid any unnecessary barriers to using GPPs in the workplace pensions market under the reforms.
- 2.7 We propose to clarify in the Handbook Glossary that automatic enrolment under the employer's statutory obligation does not fall within the definition of a distance contract. This will make it clear that automatic enrolment transactions (when used under the requirements of the Act) are outside the scope of the DMD, and therefore the requirements in the Handbook relating to distance contracts. It should be noted that, for those who choose to join a workplace pension scheme other than through automatic enrolment, the requirements relating to distance contracts will continue to apply (when the contract is made at a distance).

Q1: Do you agree with our proposal to clarify that automatic enrolment under the employer's statutory obligation does not fall within the definition of a distance contract?

Cancellation and opt-out

- 2.8 Our cancellation rules and the DWP opt-out legislation⁸ exist to ensure an individual joining a pension scheme has the right to change their mind. The right to cancel a contract is an important consumer protection mechanism. Within a sales environment it is a key protection against pressure selling. In the automatic enrolment environment, it is a particularly important protection, and those who are automatically enrolled should not face barriers to exercising their choice to opt out.
- 2.9 The right to cancel in the Conduct of Business Sourcebook (COBS) and the right to opt out under the DWP's legislation do not operate in exactly the same way. The current cancellation rules in COBS 15 state consumers have the right to cancel a contract to join a personal pension within 30 calendar days and providers should accept any indication that they wish to do so. Under the DWP legislation, employees automatically enrolled into a pension scheme can opt out by giving their employer a valid opt-out notice (in a prescribed format) within a month.
- 2.10 It is not desirable for automatically-enrolled individuals to have both the right to cancel and to opt out. It is also not desirable for those voluntarily joining an automatic enrolment scheme to have to follow a different process to those who are automatically enrolled. This would present barriers to GPPs being used for automatic enrolment and may confuse employees:

⁸ When we refer to DWP legislation in this paper this includes the Pensions Act 2008 and The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010. Regulations 9, 10 and 11 relate to opt-outs and refunds. www.legislation.gov.uk/ukksi/2010/772/contents/made

- Providers processing one of these rights could breach the requirements of the other. For example, if they processed a cancellation where they had received a letter rather than the specified opt-out form, this would meet our cancellation requirements, but breach the DWP legislation. If they did not process the cancellation, they would breach our rules but meet the DWP's requirements.
- The existence of different rights within one scheme has been raised as a specific area of concern by the industry. They believe running two processes would create significant costs for the industry. They would also need to rely on employers to identify which employees had which rights, placing an additional burden on employers.
- Significant confusion could arise if some employees have both the right to opt out and cancel and others only the right the cancel. There would be difficulties in explaining which process individuals needed to follow. If colleagues rely on each other for information about what they need to do, this could cause difficulties. This could result in those wishing to opt out failing to do so or vice versa.

2.11 We believe the best solution would be to ensure that a single process applies. We believe the DWP opt-out legislation offers protection equivalent to the cancellation requirements. We are satisfied that if providers apply the opt-out right and process to anyone who joins a GPP being used as an automatic enrolment scheme, employees will be appropriately protected.

2.12 COBS 15 already contains a provision which applies the chapter 'as modified to the extent necessary for it to be compatible with any enactment'.⁹ We propose to make it clear through additional guidance that this specifically applies to the opt-out process in the DWP legislation. The effect of this is that where providers follow the opt-out process as set out in DWP legislation for all joiners¹⁰ of GPPs used as automatic enrolment schemes, they will be considered to be complying with COBS 15. The cancellation rules will continue to apply for any single premium contributions, transfers or future additional contributions (where these would attract a right to cancel under our rules).

Q2: Do you agree that it is unnecessary for us to require additional protections beyond the opt-out legislation for all those joining a GPP being used for automatic enrolment?

Q3: Do you agree with the proposal to clarify through guidance that the COBS 15 requirements are modified by the opt-out process in the DWP legislation in relation to all those joining a GPP being used for automatic enrolment?

⁹ COBS 15.5.2 R

¹⁰ The right to opt-out applies to those automatically enrolled into an automatic enrolment scheme under s3 of the Pensions Act 2008 (requirement to automatically enrol employees) and those who join under s7 of the Pensions Act 2008 (jobholder right to opt in – for those with qualifying earnings but outside the age criteria for automatic enrolment). Those who join under s9 are not given the opt-out right under the legislation (those without qualifying earnings).

Disclosure

2.13 The DWP legislation sets out the process employers must follow to automatically enrol employees into a pension scheme. For personal pensions this includes arranging for the provider to give employees information about the terms and conditions of the contract.¹¹ This information is already required as part of the content requirements for Key Features Documents (KFDs). We do not believe there are any incompatibilities between the FSA rules and the DWP legislation in this area. Providers would not need to provide two different documents to meet both sets of requirements. This will reduce the likelihood of consumers being overburdened with information and should keep administrative burdens on providers to a minimum.

Q4: Do you agree with our analysis that there are no difficulties in meeting the disclosure requirements of both sets of requirements within the current rules? If you think there are difficulties, please provide details in your response.

2.14 As previously noted, automatic enrolment is a new process of becoming a member of a workplace pension. Consumers' information needs will be slightly different due to this and providers will need to reflect this in their disclosure material. Our disclosure rules require a description of the product, its aims and the risks. It is likely that providers will need to amend the information they currently provide to take account of the automatic enrolment and voluntary joining processes.

2.15 As stated in the introduction, we believe the greatest risk to individuals is opting-out inappropriately. We currently require KFDs for personal pension schemes to state that stakeholder pension schemes are generally available and might meet the client's needs as well as the scheme on offer.¹² We are concerned that where a GPP is being used for automatic enrolment this statement may encourage the employee to opt out. They may feel they are being warned that this is not the best scheme for them. The existence of an employer contribution means it is very unlikely that entering instead into a stakeholder pension without an employer contribution will be in the employee's best interests. We therefore propose to remove the requirement for this statement to be made in the KFD for GPPs where they are used for automatic enrolment.

Q5: Do you agree with our proposal to remove the requirement for a statement about stakeholder pensions to be made in the KFD for any GPP used for automatic enrolment?

2.16 We would not expect to see providers continuing to use this or any other statement which might encourage inappropriate opt-out within communications relating to GPPs used for automatic enrolment.

11 The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 Section 6 (3) www.legislation.gov.uk/uksi/2010/772/contents/made

12 COBS 13.3.1 R (e)

Changes in the pension landscape

Advice on Pension opt-outs

- 2.17 From 2012 many more people will have their pension needs met through workplace pension provision than is currently the case. We are concerned that the resulting reduction in the market for individual personal pensions could lead some advisers to make unsuitable recommendations for clients to opt out of their workplace scheme in favour of a personal pension.
- 2.18 Once the Retail Distribution Review (RDR) is implemented the potential for commission to bias advice will be removed. However, as discussed in PS10/6,¹³ an element of product and provider bias could remain if advisers find it easier to generate income by recommending a new product and arranging to take an adviser charge from the new product (as opposed to requesting a fee directly from the customer). There is no obligation for occupational pension schemes or providers of GPPs to facilitate an adviser charge to be taken from an existing scheme or arrangement. Therefore, if an individual with a workplace scheme seeks advice, recommending a new individual pension contract may be the only way to obtain an adviser charge if it is not paid through an up front fee.
- 2.19 There may also be an incentive for an adviser to sell an alternative pension, perhaps one which is more complicated, to generate an ongoing income for providing an ongoing service. Even where advice is being paid for by a fee, advisers may feel pressured to recommend an alternative pension in order to justify the fee.
- 2.20 We already have additional rules in place that seek to mitigate these risks in relation to occupational pension schemes. A pension opt-out is defined as a transaction to opt out of or decline to join an occupational pension where the individual is eligible in favour of a personal or stakeholder pension.¹⁴ COBS 19 sets out additional requirements for giving advice on pension opt-outs:
- The advisory firm must have the permission to advise on pension transfers and opt-outs.
 - The advice must be given by, or checked by, a pension transfer specialist. To be a pension transfer specialist an adviser must meet specific qualification requirements.
 - There is additional guidance on factors that should be considered in relation to suitability and that should be included in a suitability report.
 - Records relating to opt-out transactions must be kept indefinitely.
 - Pension opt-out transactions must be reported to us by providers through product sales data reports.

13 Policy Statement PS10/6, *Distribution of retail investments: Delivering the RDR – feedback to CP09/18 and final rules*, www.fsa.gov.uk/pages/Library/Policy/Policy/2010/10_06.shtml

14 Therefore the ‘opt out’ under the DWP legislation is not the same as a ‘pension opt-out’. An employee exercising his right under the Pension Act 2008 to ‘opt-out’ of an automatic enrolment scheme will not be making ‘pension opt-out’ transaction unless they do so in order to make contributions to a personal pension.

2.21 These additional requirements do not currently apply to opt-outs from GPPs. To ensure that those who are automatically enrolled into GPPs receive the same protection as those enrolled into occupational pensions, we propose extending the definition of a pension opt-out to cover opt-outs from any workplace pension schemes with an employer contribution in favour of a personal pension. This will mean that all the additional requirements above will apply to these transactions.

Q6: Do you agree with our proposal to extend the definition of a pension opt-out to cover any workplace pension scheme to which the employer contributes?

Advice on additional contributions

2.22 The Handbook also contains specific rules about advice on additional contributions to occupational pension schemes, again within COBS 19. The intention is to ensure advisers consider any arrangement within the existing occupational pension scheme for additional contributions before recommending an alternative arrangement. Like the pension opt-out protections, this extra protection does not currently apply to advice to make additional contributions outside a GPP. We propose to change the Handbook to ensure those within GPPs receive the same protection as those enrolled into occupational pensions.

2.23 This does not mean that recommending making additional contributions outside the workplace arrangement will never be suitable. There may be circumstances where there are good reasons to make contributions outside of a workplace arrangement. For example, some individuals may be restrained by a limit to the contributions that can be paid into the workplace scheme or there may be a personal pension available with lower charges.

Q7: Do you agree with our proposal to extend the additional requirements about advice on additional contributions to GPPs?

Suitability of advice on personal pensions

2.24 As part of our discussions with different stakeholders, we considered the effect of COBS 19.2.2 (the RU64 rule). This rule requires advisers, when recommending a personal pension, to explain in the suitability report why it is at least as suitable as a stakeholder pension. Views remain polarised on this rule, with the industry advocating its removal and consumer bodies viewing it as a key consumer protection.

2.25 When an individual is seeking advice post-2012 this rule will only really become relevant where that individual does not have access to a pension at work (i.e. they are self employed). If they are an employee the adviser would have to meet the requirements on pension opt-outs and additional contributions before an alternative pension could be recommended.

2.26 Wider regulatory changes lead us to conclude that this is not the right time to consider changing this rule: the direction set by our Consumer Protection Strategy and the proposed creation of the Consumer Protection and Markets Authority

(CPMA) needs to be considered. As we move toward the introduction of the CPMA we will publish papers outlining our new approach and discussing the options open to us. Rather than discuss RU64 further at present, therefore, we intend to defer further consultation on it to the broader consultations which will form part of the transition to the CPMA.

- 2.27 Some stakeholders also suggested that NEST should form the benchmark from 2012. NEST will be available for many individuals to use outside of the workplace, in particular the self-employed. When giving advice on pensions, advisers should take into account whether the individual could use NEST and whether it is capable of meeting their needs. COBS 6.2A17 G states specifically that:

‘In providing unrestricted advice a firm should consider relevant financial products other than retail investment products which are capable of meeting the investment needs and objectives of a retail client, examples of which could include national savings and investments products and cash deposit ISAs.’

- 2.28 We would consider NEST to be a ‘relevant financial product’ in the context of advice on pensions.

Q8: Do you agree with our interpretation of COBS 6.2A17 G in its application to NEST?

3 Other issues for the pensions market

- 3.1 In this chapter we cover what we believe are the key issues for firms to consider in the run up to implementing the workplace pension reforms and beyond.
- 3.2 As a result of the workplace pension reforms, the landscape for pension provision, both in and out of the workplace, will change significantly. There will be wider impacts on all firms involved in corporate and individual pensions as providers, advisers and service providers. The issues considered in this section are not exhaustive and firms need to consider all the potential effects of the reforms on their business and make the necessary preparations. Firms also need to ensure they continue to meet our regulatory requirements in the changed pension landscape.

Preparation for 2012

The design of products to be used for automatic enrolment

- 3.3 Under the Principles for Businesses firms are required to pay due regard to their customers' interests and treat them fairly. In addition, COBS 2.1.1 R(1) specifically requires firms to act honestly, fairly and professionally in accordance with the best interests of their clients. Our new Consumer Protection Strategy emphasises the importance of these concepts in the design and governance processes used by product providers. We are taking increasing interest in how products are designed and how this meets the target market's needs.
- 3.4 In the existing market GPPs are often tailored for each employer arrangement. The characteristics of the employer and his workforce can determine the charges and the investment options available, including the default option. Charges are generally taken via an annual management charge only in the current market; the level of the charge will be set in relation to each arrangement and will depend on factors like the level of contributions and the likely persistency of employees. Most GPPs already use default options¹⁵ and these may vary between employer arrangements. Whilst some

15 All schemes used for automatic enrolment will have to have a default option where members' investments are allocated unless they make an alternative investment selection. This might be a default strategy e.g. lifestyling, rather than an individual fund.

providers specify a default option for all arrangements (and this is a requirement for stakeholder pensions) it is usually possible for an alternative option to be used as a default option for a particular employer arrangement. Although employers and their advisers may play a role in choosing and designing an alternative default option the GPP provider is ultimately responsible for the product, including the investment choices. The members are the providers' customers and firms must fulfil their responsibilities to them.

- 3.5 The introduction of automatic enrolment will bring new employers and employees into workplace pensions, many of whom will be unfamiliar with financial services. Providers of GPPs should be mindful of ensuring that the products they design for this market treat these employees fairly. In doing so they should, as far as reasonable, take account of the characteristics of the employees who will be enrolled.
- 3.6 There are two main areas firms should particularly consider to meet the requirements to act in the best interests of their customers and treat them fairly: charging structures and the design of the default option.
- 3.7 When designing the charging structure for a product,¹⁶ firms should consider the product's target market and how the product is likely to be used. For example:
- A GPP product with a flat rate annual charge is unlikely to be appropriate for a group of employees where overall pension pot sizes are expected to be small. Flat rate charges will quickly erode the value of savings within such a product.
 - Due to the nature of GPPs being linked to a specific employment, periods of 'active' membership may be fairly short. This may also mean there are likely to be transfers if individuals want to consolidate a number of pension pots built up in different employments. Therefore we would not expect to see charges that penalise this consumer behaviour. While it may be reasonable for a charging structure to seek to recover costs if contracts are only held for short periods, we would not expect to see penalty charges being applied.
 - If firms cannot structure their charges so that the business is economical for the firm and consumers can get value from the product, then they should consider whether it is appropriate to provide a GPP in these circumstances.
- 3.8 One of the most important aspects of product design for GPPs used for automatic enrolment will be the default option. It is likely that most members will invest in the default option. The DWP is developing guidance on the default option for defined contribution Automatic Enrolment Pension Schemes. We would expect providers to take account of this guidance in developing their products and in monitoring how their products are sold. If providers depart from the DWP guidance, we would expect them to be able to provide a detailed explanation of how they are meeting the requirement to act in their customers' best interests and treat them fairly. We understand that advisers and employers often play a role in designing the default option for a GPP. However, this does not remove or replace the responsibility of providers to treat their customers fairly. It is extremely

¹⁶ This section is discussing the product charge only. Following the implementation of consultancy charging under the RDR product charges will be designed independently of the consultancy charge. Work is currently ongoing with the industry to consider the way in which it is appropriate to apply consultancy charges in practice.

important that all parties involved in designing the default option take into account the needs of customers likely to be using that option.

Q9: Do you agree that the charging structure and default option are factors that should be taken into account in the design of GPPs used for automatic enrolment? Are there other factors that are of particular relevance?

Administering the automatic enrolment and opt-out processes

3.9 Industry data currently estimates GPP take-up rates to be 30-50%. Even if some of these employers move to NEST, automatic enrolment will increase the take-up of the remaining GPP arrangements, leading to increased volumes of new business. This will put pressure on administration systems. In particular, providers are likely to see significantly higher opt-out levels than the current levels of cancellation.

3.10 Firms need to be prepared for this and consider the impact on their business. In particular, firms should look at the levels of new business likely to be generated from their existing active GPP book and the timing of these new business flows. Firms should also ensure they have the capacity to process this and any business from new GPP arrangements. We have discussed this issue with the industry and firms have indicated they are already thinking about these issues and how to address them. We will continue to have discussions at an industry level (and with individual firms as part of our ongoing supervisory process) as the implementation of the reforms approaches.

Q10: Do you agree that firms will need to make preparations to ensure their administration systems are able to deal with the potential increase in volumes? Are there any other aspects of administration which may cause issues for firms?

Existing individual pension business

3.11 There are many individuals currently contributing to individual personal pensions. From 2012 many of these individuals will be automatically enrolled into workplace schemes where they will also contribute. This may lead to high levels of individual pension policies becoming paid up or lapsing as the reforms are introduced. This may, in turn, impact on firms' capital assessments and business model planning.

3.12 Another matter is whether we would expect providers to warn existing policyholders who are being automatically enrolled to stop contributing to their individual pensions so they can contribute to the workplace pension. We understand providers will not know which of their policyholders are being automatically enrolled and which are not. They are also unlikely to know whether the policyholder is able to, and wants to, contribute to their existing personal pension as well as their new workplace pension. We do not propose to introduce additional rules or guidance in this area. We propose to confirm in the Policy Statement (PS) that we do not consider it necessary for providers to proactively contact policyholders about this in order to meet existing rules.

Q11: Do you agree with our assessment that no additional rules or guidance are needed to address the possible impact of many policies lapsing and becoming paid up?

Q12: Do you agree that it is unnecessary for providers to contact policy holders about the contributions to their existing pensions in relation to the workplace pension reforms?

Advice in the period between now and 2012

3.13 There will continue to be individuals seeking advice between now and 2012. Many will be specifically seeking advice on saving for retirement and most are likely to have a need for some retirement saving.

3.14 We published a statement on our website which was last updated in January 2009. This states that where a need to save for retirement has been identified, putting off saving would not be in the client's best interests. We consider that individuals should not be advised to wait for automatic enrolment rather than starting to save for retirement now. Accordingly we do not propose to introduce any interim guidance to this effect. We propose to confirm this view in our PS. As we get closer to 1 October 2012 advisers will no doubt wish to consider whether it remains appropriate to advise a client to commence a personal pension if they will be automatically enrolled. We propose to confirm this position in our PS.

Q13: Do you agree that it is not necessary to introduce specific interim guidance in relation to deferring savings until automatic enrolment comes into effect?

4 Cost-benefit analysis

- 4.1 When proposing new rules, we are obliged (under section 155 of the Financial Services and Markets Act 2000) to publish a cost-benefit analysis (CBA), unless we consider the proposals will give rise to no costs or to an increase in costs of minimal significance. In relation to proposed guidance, we will undertake a CBA in the following circumstances:
- where we consider our proposed guidance may materially impact market structures;
 - where it may change the behaviours of firms in a way which is not already accepted in the market; and
 - where the guidance is not reasonably predictable from the principle (without it being a new requirement).
- 4.2 FSMA requires us to publish an estimate of the costs and an analysis of the benefits that will arise from the proposals. A CBA is a statement of the differences between the baseline and the position that will arise if we implement the proposals. In most cases the baseline can be approximated with the status quo but this is not the case here: the changes introduced by the workplace pension reforms will alter the landscape of the pension market substantially and this needs to be taken into account when assessing the costs and benefits.
- 4.3 This CBA reflects analysis undertaken in the FSA. In undertaking this analysis we have used cost information provided by the industry as part of the pre-consultation process.
- 4.4 Firms are likely to incur costs as a result of the workplace pension reforms themselves and therefore some of our proposals would only have minimal incremental costs. In some cases, our proposed changes are likely to result in savings compared to the baseline. We discuss this where appropriate within this section.

Direct costs

Direct costs to the FSA

- 4.5 The direct costs of regulation are those we incur in implementing our proposals. This could include additional staff or changes to our systems. We have not identified any changes to our information systems as a result of our proposals. The introduction of the workplace pension reforms themselves will be an environmental change, which will be taken into account in the supervision of regulated firms. For example, our wider supervisory work will include discussing firms' preparedness for the reforms. Supervision of firms' behaviour in relation to the proposals will then form part of our existing and ongoing supervision of firms involved in pensions. We are not planning any specific additional thematic work as a result of the proposals. Therefore, we expect any costs to the FSA from these proposals to be minimal.

Compliance costs

Costs to providers

- 4.6 The proposals relating to the Distance Marketing Directive (DMD), cancellation and disclosure which align our requirements with the Department for Work and Pensions (DWP) legislation will result in a cost saving for providers as they will not need to comply with two different sets of rules (FSA and DWP). The savings associated with these proposals are covered in the benefit section below.
- 4.7 The reforms themselves will mean firms have to review and change their disclosure material to ensure it meets the requirements in the DWP's legislation. They are likely to need to make changes to ensure it meets our existing requirements in the changed pension landscape. The proposal to remove the requirement to refer to stakeholder pensions in Key Features Documents and the proposal to allow the opt-out process to be used in place of the cancellation process will require firms to change their disclosure material. However, as they will be making changes to their disclosure documentation anyway to fulfil the new DWP requirements the incremental compliance cost of removing this statement will be minimal.
- 4.8 Indeed, as explained in the benefits section below, the ability of providers to use the same disclosure information for all those joining automatic enrolment schemes will represent a cost saving for firms, compared to the situation if we were not to introduce any changes.
- 4.9 The costs of extending the definition of a pension opt-out to group personal pensions (GPPs) will mainly fall on advisers and are discussed below. For providers, there will be an increase in the number of transactions that they will need to report as pension opt-outs in their product sales data; however the system for reporting these transactions will not change. Therefore we do not expect this to lead to incremental costs to firms.
- 4.10 COBS contains specific provisions on records which must be kept by provider firms in relation to their regulated activities. The time period for keeping these records

varies for different types of transactions. Records relating to pension transactions are already required to be kept for five years from the point the relationship between the firm and the customer ceases. For pension transfers and opt-outs records must be kept indefinitely. The proposals will not require additional records to be kept but will mean providers need to keep some existing records indefinitely. Provider firms are already keeping these records for significant periods as pensions are long term contracts. The incremental cost of keeping these records indefinitely will vary depending on a firm's record management systems. On the basis of our discussions with the industry, we understand that these records are generally kept electronically. Therefore the cost of keeping the information on the system will be minimal.

- 4.11 The low number of transactions expected (see paragraph 4.17) also supports our analysis that the cost incurred will not be material.
- 4.12 There are no costs for providers from the proposal to extend the additional suitability requirements on additional contributions to GPPs used for automatic enrolment.

Costs to advisers

- 4.13 The proposals relating to enabling GPPs to be used effectively for automatic enrolment do not affect advisers.
- 4.14 We believe extending the definition of a pension opt-out to GPPs with an employer contribution should not result in a change to the recommendation given to the customer. If the transaction is suitable it will continue to be suitable under the definition of a pension opt-out. The additional requirements are for a pension transfer specialist to explicitly check suitability, for it to be clearly explained in the suitability report and kept on record indefinitely. The advisory firm itself must also have a specific permission to give advice on pension transfers and opt-outs.
- 4.15 In order to assess the cost due to these proposals we can use existing data. According to our Product Sales Data in 2009 there were approximately 600 advised pension opt-outs and 900 non-advised pension opt-outs (1,500 transactions overall). Most firms who gave advice in this area only recommended one or two pension opt-outs in the year. This overall number of transactions is an extremely small proportion of the number of employees who work for employers who have occupational pension schemes.¹⁷ It is also a very small proportion of the number of annual pension sales which was around 340,000 in 2009 (excluding SIPPs).
- 4.16 This reflects the fact that opting out of an occupational pension scheme in favour of setting up an individual personal pension is unlikely to be suitable for the vast majority of individuals. This is true for any workplace pension with an employer contribution. Therefore we would expect a similarly small proportion of transactions within the population of those employees eligible for a GPP with an employer contribution. We estimate that there are currently around 8.1 million employees who

¹⁷ DWP research report 687 Employers' Pension Provision Survey 2009 shows that 25% of private sector employees work for an employer with an open occupational pension scheme. In addition to this the majority of public sector employees will have access to an employer contribution. According to the Economic and Labour Market Review there were 22.8m private sector and 6m public sector employees in 2009. Therefore it is reasonable to estimate that around 11m employees work for an employer with an occupational pension scheme (25 % of 22.8m is 5.7m, plus the vast majority of public sector employees). This does not necessarily mean they are all eligible to join the scheme or receive an employer contribution.

are eligible for GPPs with an employer contribution.¹⁸ We do not expect this to increase significantly post-2012 as it is likely that the majority of employers who do not currently offer pension schemes will use NEST to meet their new obligation.¹⁹ Indeed, these will generally be the smaller employers that NEST was designed for and who existing providers find it unprofitable to serve.

- 4.17 If opt-outs are seen at the same rate from GPPs as for occupational pensions we would therefore expect to see around 1,100 opt-out transactions from GPPs, around 440 of which would be advised. We would also expect that these would continue to be spread widely between adviser firms.
- 4.18 The cost for an existing advisory firm to extend its permission to enable it to advise on pension transfers and opt-outs would be a one off cost of £250. We would not expect to see a large number of firms applying for this permission as a result of the proposals. Many of the advisory firms who do not currently have the permission to advise on pension transfer and opt-outs have made the explicit decision not to advise on these transactions. They view these types of transactions as carrying more risk for them as advisers. Our proposals do not change the incentives on firms to advise on pension opt-outs. Approximately 28% of all investment advice firms already have this permission and these firms make up around 40% of all individual advisers (not all of these are pension transfer specialists).²⁰ Only a very small proportion of these advisory firms actually recommended pension opt-outs in 2009.
- 4.19 For firms that advise on pension opt-outs, each transaction would need to be advised or checked by a pension transfer specialist. We have estimated a maximum cost of £1,400 per case for this.²¹ There would also be an extension of the record keeping requirement from six years to indefinitely for cases caught under the new definition. The 2006 report, *'Estimation of FSA Administrative Burdens'* by Real Assurance Risk Management reported the cost of record keeping of suitability reports as minimal since 'Suitability letters are system produced therefore there is a nil additional cost of keeping the information on the system'. We believe this analysis continues to apply in this situation. We do not expect these additional transactional costs to be significant as we do not expect a large number of opt-out transactions to occur.
- 4.20 Advisers already have to explain in the suitability report why the recommended transaction is suitable for the client. The additional guidance for a pension opt-out describes in more detail what this should include. Suitability reports are prepared on an individual basis so firms should already have sufficient flexibility to including the required detail. As indicated above, we only expect this to apply to one or two

18 Industry data suggests there are currently around 3-3.5m members of GPPs and that take up rates are currently around 30-50%. Taking the mid-point of both these ranges would indicate overall eligibility for GPPs to be around 8.1m (3.25m x (100/40)).

19 DWP research report 683 shows 35% of employers without current provision intending to use NEST for all employees and 12% would use NEST for some employees. However the majority of respondents were not aware of the reforms at the time of the research and 26% responded 'don't know'. Although this research indicated that 27% of employers intended to use an alternative qualifying scheme for some or all employees, we believe that this reflects the general lack of knowledge of the reforms and that, in practice, employers will find it difficult to set up their own individual schemes.

20 From Product Sales Data reports and CF30 approved person data.

21 This is the cost we have been quoted for a pension transfer specialist to check pension transfer advice and therefore would represent an upper bound as pension opt-out is likely to be less complex. Also if a firm has a pension transfer specialist on their staff the additional transactional cost would likely be much smaller.

additional transactions per firm for a relatively small number of advisory firms. Therefore this element will not introduce significant costs for advisers.

- 4.21 We estimate that extending the definition of a pension opt-out would represent a cost increase of around £600,000 per year across all advisers (around £2,800 per adviser currently active in this business assuming these transactions are similarly spread as current opt-out transactions).²²

Market impacts

- 4.22 In this section we describe the ways in which our proposals can lead to better market and consumer outcomes. We also set out the indirect costs that might arise if our proposals are implemented.

Indirect costs

- 4.23 Adviser firms may choose not to give any advice in this area rather than pay for the additional permission, particularly if pension transfers and opt-outs are not expected to be a regular feature of their advice. We do not believe this would significantly impact on a consumer's ability to get advice in this area. There would still be a large proportion of advisers who could give advice in this area and the number of transactions expected is small.
- 4.24 The proposals to enable GPPs to be used efficiently for automatic enrolment under the workplace pension reforms seek to ensure that there are no unnecessary regulatory barriers to firms in this market. They therefore aim to mitigate any adverse effects on competition which could arise if there were significant barriers to GPPs being used for automatic enrolment

Benefits

- 4.25 We believe the main benefits of our proposals are to enable GPPs to be used effectively for automatic enrolment and to provide protection to consumers in the new pension environment.
- 4.26 The proposals relating to the DMD, cancellation and disclosure which align our requirements with the DWP legislation represent a cost saving for provider firms. If the regulatory position in relation to the DMD is not clarified, the industry has indicated they would not use GPPs for automatic enrolment. This would represent a significant opportunity cost for firms. GPPs currently account for around 40% of regular premium business.
- 4.27 Data provided to us by the pensions industry has indicated that the administrative costs for the industry and employers of running parallel systems to meet different requirements of the opt-out and cancellation requirements would be prohibitive.

²² We are assuming no one off costs as we do not expect this to drive firms to apply for the additional permission to advise on pension transfers and opt-outs. We have assumed a transactional cost of £1400 based on the pension transfer specialist fee being an over-estimate and other transactional costs being minimal. We expect around 440 additional advised pension opt-outs so aggregate costs would be around £600,000 per year across the industry.

Industry figures suggest £1m-£3m per provider in one off systems costs and up to £100,000 per provider per year in other administrative costs. Therefore our proposals in this are would equate to a cost saving for the industry of around £20m-£25m in one off costs and £1m in annual administrative costs.

- 4.28 There is also a benefit to consumers in the continuation of this market as GPPs play an important role in current workplace pension provision and many offer higher employer contributions than the minimum 3% of band earnings required under the reforms. Minimising the impact of the reforms on these schemes may reduce the incentives on employers to reduce their contributions to the minimum level. The fewer changes employers need to make to their existing provision to comply with the new requirements the more likely it is that they will continue with their current arrangements.
- 4.29 The proposals will benefit consumers by mitigating the risk of those eligible for a GPP from receiving unsuitable advice to opt out. As stated in paragraph 2.17 we are concerned that the reduction in the market for individual personal pensions resulting from the reforms could increase this risk. Our proposal will give employees eligible for GPPs the same protection as employees eligible for occupational pensions.
- 4.30 The potential detriment to an individual of being wrongly advised to opt out can be illustrated by the loss of the employer contribution. For example, an employee earning £25,000 per year would lose an employer contribution of around £600 per year if they were advised to opt out of a GPP to which their employer made the minimum contribution. Automatic re-enrolment would occur after three years (or sooner if they move employment). If the employee did not opt out again their loss would be around £1,800 in terms of lost contributions. However, the fact that they have been advised to opt out once may make it more likely for them to continue to opt out at future re-enrolment dates which would lead to a much greater loss in contributions. If that money were invested in a pension it would hopefully earn a return for the individual. The impact on the individual's pension at retirement could therefore be much larger than just the value of the lost employer contributions.
- 4.31 The benefit to consumers from extending the suitability report requirement around additional contributions is that it will mitigate the risk of those within GPPs being advised to make additional contributions to other pension vehicles when contributing to the workplace scheme would be the most suitable option. This will put them in the same position as an employee who has an occupational pension.
- 4.32 The change to the definition of a pension opt-out will also result in benefits for us in our ability to supervise effectively in this area. As a result of the proposals there will be additional transactions for providers to report as pension opt-outs through the product sales data returns. This will benefit us by increasing our ability to identify these transactions, monitor any trends and identify potential issues in this area.

Q14: Do you have any comments on our analysis of the costs and benefits of the proposals we are making?

Compatibility statement

1. In this section we set out how the approach on which we are consulting is compatible with our general duties under Section 2 of the Financial Services and Markets Act 2000 (FSMA) and with the regulatory objectives set out in Sections 3 – 6 of FSMA. We also outline how our proposals are consistent with our principles of good regulation to which we must have regard.

Compatibility with our statutory objectives

2. The proposals in Chapter 2 of this Consultation Paper are consistent with our statutory objectives of securing the appropriate degree of protection for consumers and improving confidence in the financial system. Our proposals are designed so consumers remain adequately protected in the changed pension landscape following the implementation of the workplace pension reforms. The proposals are also designed to remove unnecessary regulatory barriers to firms active in the workplace personal pensions market. Overall, we believe our proposals will lead to higher standards for pension advisory firms and will support the continuation of a sustainable GPP market. This will serve to improve the quality of advice and consumer confidence in the market.

Compatibility with the principles of good regulation

3. Section 2(3) of FSMA requires us to consider certain principles when discharging our general functions. We set out below how our approach supports these principles.

The need to use our resources in the most efficient and economic way

4. As indicated in the CBA in Chapter 4 we expect there to be little impact on the use of FSA resources. In line with our approach elsewhere, we will use thematic tools to ensure efficient use of our resources.

The responsibilities of those who manage the affairs of authorised persons

5. The proposals do not have an effect on the responsibilities of the senior management of authorised firms beyond those currently required by our Principles for Business and Senior Management arrangements. Our proposals form rules and guidance in the Handbook and it remains the responsibility of senior management to ensure the rules are effectively implemented, whether by using this guidance or by other means.

The restrictions we impose on the industry must be proportionate to the benefits that are expected to result from those restrictions

6. The proportionality of our proposed approach is addressed in the CBA in Chapter 4. A number of the proposals we are making are permissive to allow GPPs to be used efficiently for automatic enrolment, rather than being restrictions and will result in a cost saving for the industry compared to the alternative of doing nothing.
7. As stated in the CBA we believe the proposals around increased protections on transactions relating to GPPs used for automatic enrolment will not lead to significant costs and the benefits of consumer protection outweigh these costs.

The desirability of facilitating innovation in connection with regulated activities

8. The proposals will enable regulated firms to continue to play an active role in the provision of workplace pension arrangements including through innovation in relation to this market.

The international character of financial services and markets and the desirability of maintaining the competitive position of the UK

9. The proposals facilitate the implementation of the government workplace pension reforms. We do not believe our proposals will have a material impact on the competitive position of the UK.

The need to minimise the adverse effects on competition that may arise from our activities and the desirability of facilitating competition between the firms we regulate

10. The proposals to enable GPPs to be used efficiently for automatic enrolment under the workplace pension reforms seek to ensure that there are no unnecessary regulatory barriers to firms in this market. They therefore aim to mitigate any adverse effects on competition which could arise if there were significant barriers to GPPs being used for automatic enrolment. The potential competition issues this may cause would be between GPPs and occupational pension provision rather than between regulated firms.

Compatibility with our duties under equalities legislation

11. We have conducted an assessment of the equality issues that arise in our proposals. We believe that our proposals do not give rise to discrimination and that the proposals are of low relevance to the equality agenda. We would nevertheless welcome any comments consultees may have on any equality issues they believe arise from the proposals in this CP.

List of questions

- Q1: Do you agree with our proposal to clarify that automatic enrolment under the employer's statutory obligation does not fall within the definition of a distance contract?
- Q2: Do you agree that it is unnecessary for us to require additional protections beyond the opt-out legislation for all those joining a GPP being used for automatic enrolment?
- Q3: Do you agree with the proposal to clarify through guidance that the COBS 15 requirements are modified by the opt-out process in the DWP legislation in relation to all those joining a GPP being used for automatic enrolment?
- Q4: Do you agree with our analysis that there are no difficulties in meeting the disclosure requirements of both sets of requirements within the current rules? If you think there are difficulties please provide details in your response.
- Q5: Do you agree with our proposal to remove the requirement for a statement about stakeholder pensions to be made in the KFD for any GPP used for automatic enrolment?
- Q6: Do you agree with our proposal to extend the definition of a pension opt-out to cover any workplace pension scheme to which the employer contributes?
- Q7: Do you agree with our proposal to extend the additional requirements about advice on additional contributions to GPPs?

- Q8: Do you agree with our interpretation of COBS 6.2A17 G in its application to NEST?
- Q9: Do you agree that the charging structure and default option are factors that should be taken into account in the design of GPPs used for automatic enrolment? Are there other factors that are of particular relevance?
- Q10: Do you agree that firms will need to make preparations to ensure their administration systems are able to deal with the potential increase in volumes? Are there any other aspects of administration which may cause issues for firms?
- Q11: Do you agree with our assessment that no additional rules or guidance are needed to address the possible impact of many policies lapsing and becoming paid up?
- Q12: Do you agree that it is unnecessary for providers to contact policy holders about the contributions to their existing pensions in relation to the workplace pension reforms?
- Q13: Do you agree that it is not necessary to introduce specific interim guidance in relation to deferring savings until automatic enrolment comes into effect?
- Q14: Do you have any comments on our analysis of the costs and benefits of the proposals we are making?

Draft handbook text

**CONDUCT OF BUSINESS SOURCEBOOK (AUTOMATIC ENROLMENT
INTO QUALIFYING PENSION SCHEMES) INSTRUMENT 2010**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power); and
 - (b) section 156 (General supplementary powers); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 October 2012.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Conduct of Business Sourcebook (COBS) is amended in accordance with the Annex B to this instrument.

Citation

- F. This instrument may be cited as the Conduct of Business Sourcebook (Automatic Enrolment into Qualifying Pension Schemes) Instrument 2010

By order of the Board
[date]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text.

<u><i>automatic enrolment scheme</i></u>	<u>a scheme that meets the conditions in Part 1 of the Pensions Act 2008. In summary this is a qualifying <i>occupational pension scheme</i> or qualifying <i>personal pension scheme</i> that enables automatic enrolment to take place.</u>
...	
<i>distance contract</i>	<p>any contract concerning financial services concluded between a supplier and a <i>consumer</i> under an organised distance sales or service provision scheme run by the supplier which, for the purpose of that contract, makes exclusive use (directly or through an intermediary) of one or more means of distance communication (that is, any means which, without the simultaneous physical presence of the supplier or intermediary and the <i>consumer</i>, may be used for the distance marketing of a service between those parties) up to and including the time at which the contract is concluded.</p> <p>A contract is not a distance contract if:</p> <ul style="list-style-type: none">(a) making, performing or marketing it does not constitute or form part of a <i>regulated activity</i>;(b) it is entered into on a strictly occasional basis outside a commercial structure dedicated to the conclusion of distance contracts; or(c) a <i>consumer</i>, and an intermediary acting for a product provider, are simultaneously physically present at some stage before the conclusion of the contract; or<u>(d) it is entered into to comply with the requirement in Part 1 of the Pensions Act 2008 to automatically enrol employees into an <i>automatic enrolment scheme</i>.</u> <p>[Note: recitals 15 and 18 to, and articles 2(a) and (e) of, the <i>Distance Marketing Directive</i>]</p>
...	
<i>pension opt-out</i>	a transaction, resulting from the decision of a <i>retail client</i> who is an individual to:

- (a) opt out of an *occupational pension scheme* or *group personal pension scheme* to which his employer contributes and of which he is a member; or
- (b) decline to become a member of an *occupational pension scheme* or *group personal pension scheme* to which his employer contributes and which he is eligible to join, or will be eligible to join at the end of a waiting period

in favour of a *stakeholder pension scheme* or a *personal pension scheme* to which his employer does not contribute.

...

Annex B

Amendments to the Conduct of Business Sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

...

13.3 Contents of a key features document

General requirements

13.3.1 R A *key features document* must:

- (1) include enough information about the nature and complexity of the product, how it works, any limitations or minimum standards that apply and the material benefits and risks of buying or investing for a *retail client* to be able to make an informed decision about whether to proceed; and
- (2) explain:
 - (a) the arrangements for handling complaints about the product;
 - (b) that compensation might be available from the *FSCS* if the *firm* cannot meet its liabilities in respect of the product (if applicable);
 - (c) that a right to cancel or withdraw exists, or does not exist, and, if it does exist, its duration and the conditions for exercising it, including information about the amount a *client* may have to pay if the right is exercised, the consequences of not exercising it and practical instructions for exercising it, indicating the address to which any notice must be sent;
 - (d) (for a CTF) that *stakeholder CTFs*, *cash-deposit CTFs* and *security-based CTFs* are available and which type the *firm* is offering; and
 - (e) (for a *personal pension scheme* that is not an automatic enrolment scheme) clearly and prominently that *stakeholder pension schemes* are generally available and might meet the *client's* needs as well as the scheme on offer.

...

15.5 Special Situations

Other legislation including for child trust funds and automatic enrolment into pensions

15.5.2 R ...

15.5.3 G For example:

(1) ...

(2) ...

(3) the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 contain provisions relevant to cancellation rights; in particular they provide rights of opt-out from an *automatic enrolment scheme*. The cancellation rights in this chapter are modified to permit a provider to adopt the opt-out process in the Personal Pension Schemes (Automatic Enrolment) Regulations 2010 in relation to all members of an *automatic enrolment scheme*.

...

19.2 Personal pensions, FSAVCs and AVCs

...

Suitability

...

19.2.2 R When a firm prepares a *suitability report* it must:

(1) (in the case of a *personal pension scheme*), explain why it considers the *personal pension scheme* to be at least as suitable as a *stakeholder pension scheme*; and

(2) (in the case of a *personal pension scheme, stakeholder pension scheme or an FSAVC*), explain why it considers the *personal pension scheme, stakeholder pension scheme or FSAVC* to be at least as suitable as any ~~*stakeholder pension scheme, AVC*~~ or facility to make additional contributions to an *occupational pension scheme or group personal pension scheme* which is available to the *retail client*.

...

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