

# PS11/8

Financial Services Authority

## Pension reform – Conduct of business changes



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This Policy Statement reports on the main issues arising from Consultation Paper 10/26 (*Pension reform – Conduct of business changes*) and publishes final rules.

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# Acronyms used in this paper

<b>CBA</b>	Cost-benefit analysis
<b>COBS</b>	Conduct of Business Sourcebook
<b>DB</b>	Defined benefit
<b>DC</b>	Defined contribution
<b>DMD</b>	Distance Marketing Directive
<b>DWP</b>	Department of Work and Pensions
<b>GPPs</b>	Group Personal Pensions
<b>KFDs</b>	Key Features Documents
<b>the Act</b>	Pensions Act 2008
<b>PS</b>	Policy Statement
<b>PSD</b>	Product Sales Data
<b>RDR</b>	Retail Distribution Review
<b>TPR</b>	The Pensions Regulator



# 1

## Overview

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### Introduction

- 1.1 In CP10/26 (*Pension Reform – Conduct of business changes*) we consulted on amendments to our Conduct of Business Sourcebook (COBS) resulting from the government's workplace pension reforms. The government is introducing significant reforms to workplace pensions from October 2012. Employers will be required to automatically enrol their eligible employees into a pension and contribute to it. The pension could be an occupational pension scheme or a group personal pension scheme<sup>1</sup> that meets the criteria set out in the Pensions Act 2008 ('the Act').
- 1.2 The starting point for our consultation is our view that it is in the best interests of most people to stay in (or join) a workplace pension where they receive an employer contribution. It will generally be impossible to identify in advance the very small number of people who are at risk of not benefiting from saving. We remain of the view that 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. We consulted on changes designed to continue providing appropriate protection for consumers who are automatically enrolled into Group Personal Pensions (GPPs) (our rules do not apply to occupational pension schemes) while at the same time minimising the areas of misalignment between FSA and Department of Work and Pensions (DWP) requirements.
- 1.3 This Policy Statement (PS) discusses the responses received to CP10/26 and includes final rules. We have explained where Handbook changes differ from the consultation. These new rules and guidance come into effect from 1 October 2012.
- 1.4 Chapter 2 analyses the responses we received to CP10/26 and gives our responses to the points raised, including comments made on the cost-benefit analysis (CBA). The Annex contains a list of the non-confidential respondents and the Appendix the final amended Handbook text.

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<sup>1</sup> 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.

**Who should read this report?**

- 1.5 This paper will be relevant to pension providers, advisers, consumer groups and professional bodies.

**CONSUMERS**

The proposals in this paper will affect those who have a pension now, expect to make contributions to a pension in the future or who will be automatically enrolled into workplace personal pensions from 2012.

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# 2

## Feedback on consultation questions: Rule change proposals

- 2.1 CP10/26 included proposals around rule changes, which we split into two categories.
- a) **Using group personal pensions for automatic enrolment, where we proposed:**
    - i) clarifying how the Distance Marketing Directive (DMD) applies in relation to automatic enrolment into GPPs;
    - ii) 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
    - iii) aligning the cancellation rules with the DWP opt-out legislation.
  - b) **Changes in the pension landscape, where we proposed:**
    - iv) 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
    - v) extending the additional requirements for recommendations relating to additional contributions to GPPs.
- 2.2 CP10/26 also set out what, in our view, the key issues are that firms need to consider in the run up to implementing the workplace pension reforms and beyond.
- 2.3 We are grateful to the firms, bodies and individuals who responded to one or more of the questions in CP10/26. The following section sets out a summary of the feedback we received, analysis of that feedback, and our conclusions.

## Analysis of responses relating to the rule change proposals in CP10/26

### Using GPPs for automatic enrolment

#### *The Distance Marketing Directive*

2.4 We set out in CP10/26 how, as part of introducing the workplace pension reforms, 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 Distance Marketing Directive (DMD) does not apply. We went on to highlight concerns expressed by the industry that the application of the DMD in the FSA's Handbook was not clear. We proposed 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. We asked:

*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?*

2.5 The vast majority of respondents agreed with our proposals. A small minority requested additional clarifications around the application of the DMD for the re-enrolment requirements, additional contributions (voluntary and transfers) and where employers seek to automatically enrol employees outside of those they are required to (this could include employees under 22 or earning below the minimum level.<sup>2</sup> One respondent pointed out that a legal risk could exist if someone chooses to challenge the Commission's advice to the DWP. Only one respondent disagreed with our proposals. They felt that GPPs should not be used for automatic-enrolment without additional protections and specifically called for the charges on GPPs used for automatic enrolment to be capped.

#### **Our response**

We are pleased that most respondents agreed with our proposals. The DWP has confirmed that the auto-enrolment and re-enrolment processes form part of the employer duty and therefore the process of re-enrolling individuals into a GPP is also outside of the scope of the DMD.

The DMD prohibits inertia selling.<sup>3</sup> Those joining a scheme voluntarily (rather than through the automatic enrolment or re-enrolment process) are making an

<sup>2</sup> Section 5 of the Pensions Act 2008 provides that an employer is under a duty to re-enrol a jobholder into an automatic enrolment scheme, on a date set out in regulations, where the jobholder is aged at least 22 and under pensionable age, and certain other conditions are met.

<sup>3</sup> The Distance Marketing Directive (DMD) prohibits inertia selling of distance contracts, which means that a lack of response cannot be taken as consent.

active decision to join the scheme and therefore the sale is not being made through inertia. This applies to employees who do not meet the earnings trigger in the jobholder definition, and also to employees making additional contributions and transferring benefits.

The one dissenting response focused on the use of GPPs as a vehicle for automatic enrolment. The decision around what is and what isn't allowed to be used to fulfil the obligation on employers to make pension contributions is a matter for government and is set out in Part 1 of the Act. If we decided to make additional rules in this area, we would risk introducing an arbitrage opportunity for those firms that also offer occupational pensions schemes. Finally, DWP research shows that the charges on GPPs are generally lower than the stakeholder pension charging cap and compare favourably with the charges proposed for the NEST scheme. We will therefore be making the proposed changes to the Glossary.

### *Cancellation and opt-out*

- 2.6 We proposed changes around applying the cancellation rules and set out our view that we are satisfied that if providers apply the opt-out process to anyone who joins a GPP being used as an automatic enrolment scheme, employees will be appropriately protected. We asked:

*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?*

- 2.7 The vast majority of respondents agreed that it is desirable to have one set of rules relating to this area from a consumer and provider perspective. A small minority thought the Handbook guidance would be better written as a rule. Some respondents requested confirmation around applying opt-out rules over the cancellation rules. Respondents were also keen to ensure that consumers were properly protected in this process and in particular felt it was important that the right to opt-out was clearly communicated to consumers and the forms made readily available. A small number of technical issues were raised which we deal with in our response below.

### Our response

We are pleased that most respondents agreed with our proposals and will therefore be proceeding with the changes, with COBS 15.3.3 G (3) updated to correctly refer to 'The Occupational and Personal Pension (Automatic Enrolment) Regulations 2010'.

We agree that the right to cancel or withdraw from a contract is an important safeguard for consumers and we are comforted by DWP legislation in this area that allows employees automatically enrolled into a pension scheme to opt-out by giving their employer a valid opt-out notice (in a prescribed format) within a month.

While we appreciate that some firms may prefer this section of the Handbook to be written as a rule, we are content that guidance will be sufficient here.

For the purposes of clarity, our guidance aims to make it clear that the opt-out rules contained within the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 ('the Regulations') will apply to all members of an automatic enrolment scheme, regardless of whether the right to opt-out exists in the Regulations.

A minority of respondents felt that it would be impossible for firms to tell whether a customer was automatically enrolled. We do not agree with this comment. There must be an application form if a customer was not automatically enrolled, as the DMD prohibits inertia selling.

The table below sets out where the opt-out can be used as per the guidance in COBS:

Type of event	Opt-out allowed
Jobholder auto-enrolled	Y
Jobholder re-enrolled	Y
Worker enrolled	Y
Transfer from other scheme	N
Single premium contribution	N

The cancellation rules in COBS 15 will continue to apply for any single premium contributions or transfers that would normally attract this right.

### Disclosure

- 2.8 In CP10/26 we set out why we felt no changes were required to our disclosure rules and that the requirements could be met through a single document. We also proposed to remove the requirement to make reference to a stakeholder pension being available in disclosure for GPPs 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?*

- 2.9** Most respondents agreed with us on both of these issues. Of those who did not, difficulties were highlighted around the need to include details of cancellation rights in Key Features Documents (KFDs), where firms would not necessarily know whether the consumer had been automatically enrolled. Another respondent highlighted a concern that COBS 13.3.1 states explicitly that the provider has to provide cancellation information in the KFD, whereas the DWP requires the employer to provide the cancellation information. This respondent also highlighted that the current requirements in COBS to show the address to which the opt-out notice is to be sent means that there would need to be a bespoke KFD for each employer given that the DWP requirement is for the opt-out notice to go to the employer rather than the provider. Some respondents highlighted the differences in disclosure requirements between contract-based and trust-based schemes.
- 2.10** In relation to referencing stakeholder pensions, one respondent disagreed and felt there should be an additional reference made to NEST. Several respondents stated that we should remove the requirement for providers to refer to stakeholder pensions in GPP KFDs altogether, mainly because of the difficulty in knowing whether the scheme is being used for automatic enrolment purposes, but also due to the perceived change in the role of stakeholder pensions in a post-automatic enrolment environment.

### **Our response**

We are pleased most respondents agreed that no further rule changes are required and we will proceed on that basis.

We understand that firms will need to consider new processes to effectively deal with the requirements around automatic enrolment, which we acknowledge is a new way for consumers to access a financial services product. The reforms themselves will mean firms already have to review and change their disclosure material to ensure it meets requirements in the DWP's legislation.

We have where possible sought to ease the burden on firms without reducing consumer protection by matching the requirements set out by the DWP. With regards to providing cancellation information, we believe COBS 13.3.1 2c allows providers to refer to the fact that the employer will have provided the employee

with information about their right to opt-out and how to go about it. The current requirement to show the address where the notice needs to be sent to can also be met with reference to the opt-out information provided by the employer.

Respondents will be aware that the DWP recently undertook an exercise looking at regulatory differences between occupational and workplace personal pensions and this includes considering the disclosure regimes.<sup>4</sup> We are working closely with the DWP to ensure there is a joined up approach.

We shall be removing the requirement to make reference to stakeholder pensions in the KFD for schemes used for automatic enrolment. We think it is not unreasonable for a firm to know what the scheme they have sold or are providing is being used for, so we see no difficulty in retaining the requirement for all other personal pensions. We would not expect to see providers continuing to use this or any other statement that might encourage inappropriate opt-out in communications relating to GPPs used for automatic enrolment.

We reject the call for the rule to be extended to include NEST. We believe this request misunderstands the purpose of the rule and could lead to increased incidence of consumer detriment. As set out in CP10/26, we believe it is in the best interests of most people to stay in (or join) a workplace pension where employers contribute. This is still our view. We also said that automatic enrolment would be a new way for consumers to gain access to a personal pension plan and that our rules are currently designed around mitigating the risks associated with a sales process. The disclosure regarding stakeholder pensions is designed to prompt the consumer to consider whether there might be (possibly lower charge) options available.

At the point that the end consumer receives the scheme information, the decision over the scheme has been made by his or her employer. Therefore we believe there is a risk that, by drawing attention to other choices, the risk warning would lead employees to opt-out and lose their right to an employer contribution, which far outweighs the potential benefit for (marginally) lower charges.

## Changes in the pension landscape

### *Advice on pension opt-outs*

- 2.11** We also made a number of proposals relating to ensuring our rules properly protect consumers after automatic enrolment is introduced. In line with our view that, for most people, joining an employer-sponsored pension scheme is likely to be in their best interest, we highlighted our concern that members of GPPs are not afforded the same protections as

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<sup>4</sup> [www.dwp.gov.uk/docs/personal-pensions-consultation.pdf](http://www.dwp.gov.uk/docs/personal-pensions-consultation.pdf)

occupational pension schemes in relation to advice. We therefore proposed to align the rules in relation to advice for individuals who are members of GPPs to the same level as members of trust-based schemes. We asked:

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

- 2.12 No respondents who expressed an opinion disagreed with this proposal. Some respondents, while welcoming the changes, felt that the reporting requirements for opt-outs should fall on advisers rather than providers. One respondent felt that contract-based scheme opt-outs should only be reported to the FSA if trust-based scheme opt-outs were also reported to us.

### **Our response**

Given the overwhelming support for this proposal, we shall proceed on the basis of our consultation and make rules expanding the definition of a pension opt-out in our Handbook Glossary. We agree the decision around transferring between defined contribution (DC) schemes is less complex than transferring from a defined benefit (DB) scheme. However, we did not propose changes to the rules around pension transfers. The requirement for a pension transfer specialist to check advice does not apply to transfers between personal pension schemes. The requirement will continue to apply to transfer from occupational pension schemes to personal pensions.

We do not propose to make changes to the existing requirement to report opt-outs as part of the Product Sales Data (PSD) return and therefore only pension opt-outs meeting the Glossary definition (i.e. transactions resulting from an individual opting out of a pension scheme to which his or her employer contributes in favour of a personal or stakeholder pension) will need to be reported. Providers already return PSD data, whereas the majority of advisers do not; therefore, any additional work is likely to be less onerous for providers than advisers. We acknowledge that there will be a difference in reporting requirements between trust-based and contract-based schemes, but this is driven by the schemes being regulated by different regulatory bodies.

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*Advice on additional contributions and suitability of advice on personal pensions*

2.13 CP10/26 also considered two issues relating to providing advice. The first related to members of workplace pensions wishing to make additional contributions; the second related to the treatment of NEST by advisers when giving advice on pensions. We asked:

*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?*

2.14 All respondents agreed with our proposals in Q7 and most were in favour of Q8. Some respondents highlighted reasons why making additions to the workplace pension may not be suitable and reasons why NEST may not be available to all consumers as there are restrictions over who can join NEST.

### **Our response**

As no significant objections were raised with these proposals, we will be making rules in line with our consultation.

As stated in CP10/26, the changes to 19.2.2 do not mean that advice must always be to add contributions to the workplace scheme. There might be circumstances where there are good reasons to make contributions outside of a workplace arrangement. For example, some individuals may be constrained by limits on the contributions they can make into their workplace scheme or there may be a cheaper personal pension available.

We acknowledge that there are certain groups of people who will not be eligible to join NEST and consider that the requirements in COBS 6.2A17 G would be met for these people once the adviser has established that fact. This situation is also true of some National Savings products that have eligibility criteria or limits on investments.

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# 3

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## Feedback on consultation questions: Other issues for the pensions market

- 3.1 As well as proposing changes to our rules, we also set out and sought feedback on the risks and issues firms should be considering in the run up to 2012 and beyond.

### **Analysis of responses relating to firms' preparedness for the changes**

#### **The design of products to be used for automatic enrolment**

- 3.2 We set out views on the importance of product design and the factors that should be considered and asked:

*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?*

- 3.3 No respondents disagreed that charges and default funds are important factors that should be taken into account when GPPs are being used for automatic enrolment. This question solicited a number of lengthy responses, some of which relate to work we cover in DP11/1: Product Intervention.<sup>5</sup>

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<sup>5</sup> [www.fsa.gov.uk/pubs/discussion/dp11\\_01.pdf](http://www.fsa.gov.uk/pubs/discussion/dp11_01.pdf)

### Our response

We are pleased that most respondents agreed with us and, in particular, that firms providing schemes acknowledged they had responsibilities regarding the products they sell to consumers. We also acknowledge that the provider firm is not the only party involved in discussions about the design of the pension scheme; advisers and employers often actively participate. It is quite clear to us, though, that firms offering products in the market have a duty to act in their client's best interests (COBS2.1.1 R). In the case of a GPP, the contract that exists between the consumer and the provider must mean that this rule applies. We clarify in this paper firms' duties regarding GPPs. We consider that pensions are long-term products and workplace pensions are likely to have an even longer lifespan as the employers can often exist for much longer than one generation of workers. Therefore we expect firms to periodically review their customer offerings to ensure their charging structure and default options remain current and appropriate for the customers they serve. We also agree with respondents that the guidance we are setting out here would apply to any workplace pension scheme whether it is used for automatic enrolment or not.

We do not propose to write rules around the suitability of advice to employers.

- 3.4 Most of the responses raising specific points fell into three broad categories: charges; default funds; and other matters.

#### *Charges*

- 3.5 There were a wide range of views on this subject, although all respondents agreed that charges were important. Some respondents called for more prescriptive additional rules limiting the shape and level of charges allowed on GPPs used for automatic enrolment schemes. Others felt that a flexible approach is needed to take account of the consultancy charge rules that we have introduced as part of the Retail Distribution Review (RDR). A number of respondents raised issues around fair treatment of different types of customers. Views were split, with some calling for a ban on active member discounts while others raised concerns about early leavers being subsidised by the members who remain in the scheme (and with the employer) for longer periods.<sup>6</sup> A number of respondents requested clarification around the comments we made in paragraph 3.7 of the CP and flat rate charges and value for money.

<sup>6</sup> Active member discounts have been introduced by some pension providers as a two-tier charging structure, with a higher annual management charge (AMC) for 'paid up' or 'inactive' members of GPPs, and a lower AMC for those who remain with the company and continue making contributions.

### Our response

In our view as set out in CP10/26 the charges are an important part of the design of the GPP. We understand that most GPPs are individually priced by providers taking into account factors such as the overall size, contribution rates and likely persistency of their membership. Given that the providers need to understand the general characteristics of a workforce, they should take this into account when deciding on the pricing. For example, in a scheme with a high turnover of staff, it may not be appropriate for there to be flat-rate monetary annual charges, as flat-rate charges are likely to erode the value of smaller sums in such a product.

Following the introduction of consultancy charges as set in Policy Statement 10/10, there is a limit on the provider's influence over the level of the charges. Advisers and distributors will negotiate with employers over the level of remuneration and – if not paid by fee – the way in which it is deducted from the product. We acknowledge one respondent's concern that previously non-engaged employers will try to get employees to pay most of the costs of establishing a workplace pension. However, we expect a high number of previously non-engaged employers to use NEST as their workplace pension rather than seeking out advice. Where advice is given, we expect distributors – as with providers – to take account of the characteristics of the employer's workforce in setting an appropriate remuneration structure.

It is also important to note that, with the advent of automatic enrolment and the employer duty, the marketing effort required to get individuals to join their GPP will decrease and therefore the costs that firms incur will decrease. We expect firms to be taking this into account when setting their charges.

That said, we will not be setting a price cap or prescribing allowable charging structures for GPPs used by employers to fulfil their statutory duties. The DWP is responsible for the legislation setting out the qualifying criteria for automatic enrolment schemes. If the FSA were to impose additional requirements on GPPs, it could lead to a distortion in the market and drive firms to use occupational pension schemes as a way of circumventing our rules. Therefore we believe that, if there is a case for introducing additional requirements for qualifying schemes, it should be done by the DWP across the whole of the market.

### *Default funds*

- 3.6 Some respondents pointed out that default funds by their nature are designed for the scheme membership in general and might not be the most suitable choice for some members. A number of respondents also pointed out that advisers have a role to play in the design of the default fund and have responsibilities in this area. One respondent was of the view that default funds should not necessarily seek to reduce volatility as members approach retirement, while another felt it was a key feature of the design.

### Our response

We understand that, as part of the proposition for employers and advisers, providers of GPPs wish to offer flexibility and choice in the investment funds on offer and the design of the default fund. It remains our view that, in an environment where inertia is important, it remains unlikely that, at least in the short-term, people who are new to pension saving are going to actively engage in the choice of their investment. For this reason we believe the design of the default is very important. The employer and distributor will have a key role in the design of the default, but GPP providers also have an active role to play. As the relationship between the customer and the provider is contractual, providers have responsibilities to ensure the products they are selling are fit for purpose and take account of the needs of their target market. In the case of a GPP, which is individually priced and designed for the workforce of a particular employer, we consider the target market to be that workforce – we would expect providers to act where in their view the default was not appropriate. These responsibilities apply equally to advisers who wish to design the default fund. We consider the use of the DWP's guidance as a good starting point in this process.

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### *Other issues*

- 3.7 Some respondents felt that our comments regarding the design principles of GPPs used for automatic enrolment should apply to all GPPs. A few respondents expressed concern that the FSA was putting duties on providers where employers and advisers are making decisions. Other factors raised by respondents that should be considered when deciding on a GPP include the service proposition, providing information (including the availability of tailored employer-specific information) and providing individual advice.

### Our response

Some respondents were keen to stress that other factors must be taken into account when selecting a GPP. While we agree there are other factors that are relevant, we believe that the charges and default funds are the primary issues. Some respondents highlighted service as a factor; however, in conversation with firms, we observed that many have had difficulty in articulating what it is about their service proposition that sets it apart from their competitors. Likewise, we agree with respondents who raised the issue of too much fund choice. As the vast majority of consumers will use the default, we believe that there is a risk that the number of funds can be a false focal point of competition. The appropriate number of funds to choose from is a matter for providers and advisers and will depend on the characteristics of the workforce.

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### Administering the automatic enrolment and opt-out processes

- 3.8 For firms operating personal pension schemes, and especially those active in the GPP market, we highlighted the operational risks associated with a large influx of customers and how it was important that firms operating in this market ensured they had adequate processes, resources and plans in place. We asked:

*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?*

- 3.9 No respondents disagreed with our view.

#### Our response

We are pleased by the responses we received, especially from those firms who articulated their plans for preparing for the pension reform changes. We are conscious of the amount of activity going on in this area and have made a number of efforts to minimise the burden of regulation. We shall continue to work closely with our colleagues in DWP and at the Pensions Regulator (TPR) to ensure there is a joined-up regulatory approach from government agencies. Firms may also wish to consider how an increased level of transfer and paid-up plan requests could affect their administration and, where relevant, take action to mitigate this. In the meantime, firms can expect preparedness for change to feature in their supervisory discussions with the FSA.

### Existing individual pension business

- 3.10 Our Consultation Paper also recognised that firms and consumers would have a number of considerations in the run up to 2012. There are many personal pension plans in place that consumers are contributing to. Many of these policies will be held by consumers who are currently employed, but do not have access to an employer-sponsored pension scheme. From 2012, many of these employees will be automatically enrolled into a workplace scheme of their employer's choosing. This set of consumers will therefore have to decide whether to continue their existing plans or cease making contributions. We asked:

*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?*

- 3.11 There was overwhelming support from respondents to both of these questions. Two points were raised by separate respondents: the first respondent asked for a change in the triviality rules to help with burden around small pots; the second felt there was a risk of firms profiteering from policies owned by disengaged investors and raising extra charges and revenue.

#### **Our response**

The triviality rules around pensions are a matter for the Treasury not for the FSA and we have passed these comments onto them. It is not clear to us how firms will profit unduly in the situation described above, and the respondent presented no evidence on this issue. Any changes to charges would have to be communicated to customers and disclosed in good time. Therefore, as respondents mainly agreed with us, we shall not be publishing additional guidance in these areas.

#### **Advice between now and 2012**

- 3.12 There will continue to be individuals seeking advice on saving for retirement between now and 2012. Most working-age individuals seeking advice are likely to have a need for some retirement saving. We asked:

*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?*

- 3.13 All but two respondents agreed with us. The two respondents who disagreed felt that some additional guidance would be warranted to ensure advisers made suitable recommendations.

### Our response

We will not be issuing guidance on this matter at this time. We consider that the general suitability requirements and COBS 19.2 provide sufficient protections for consumers. We confirm our view – as set out in CP10/26 – that where a need to save for retirement has been identified, putting off saving would not be in the consumer's best interests. We consider that individuals should not be advised to wait for automatic enrolment rather than starting to save for retirement now. As we get closer to implementing the automatic enrolment (taking account of the phasing, this period will last until 2017 for some consumers) 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 will continue to monitor this situation and if there is evidence that additional guidance is required, we will take the appropriate steps to issue it.

## Cost-benefit analysis

3.14 We asked for comments on our cost-benefit analysis (CBA):

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

3.15 There were very few comments on the CBA. One respondent believed that the CBA only held true if non-eligible employees joining automatic enrolment schemes were treated consistently with eligible employees. Other respondents thought that there would be additional costs not identified in the CBA around the production of literature for scheme members and one respondent challenged our assertion that the costs associated with record keeping on opt-outs were trivial.

### Our response

We are pleased that the majority of respondents did not raise significant challenge to the CBA.

We do not believe there will be additional costs incurred from non-eligible employees joining automatic enrolment schemes, as providers will already need to make changes due to the introduction of the government's reforms. Our proposals relating to the DMD, cancellation and disclosure, which align our requirements with the 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). We also do not believe that the record-keeping requirements will impose significant additional costs across the market. As stated in the CBA for CP10/26, our rules will not require additional records to be kept, but will mean providers need to keep some existing records indefinitely.

Providers are already keeping these records for significant periods as pensions are long-term contracts. In addition, on the basis of our discussions with the industry, we understand that these records are generally kept electronically and the cost of keeping the information on the system will therefore be minimal.

We acknowledge that some individual firms may incur higher costs, largely depending on their current processes and business mix, but our view remains that the CBA is a fair reflection of the costs likely to be incurred across the market as a whole.

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## Annex 1:

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# List of non-confidential respondents

AEGON

Association of British Insurers

Aviva Life

AWD Chase de Vere Limited

BPH Wealth Management LLP

Fidelity International

Financial Services Consumer Panel

Friends Provident

Heath Lambert Employee Benefits

Institute of Directors

Investment Management Association

Pinsent Masons

Standard Life

Scottish Life

Society of Pension Consultants

Tax Incentivised Savings Association

Which?

In addition we received two responses where the respondents requested confidentiality for part or all of their response.



## Appendix 1

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# Made rules (legal instrument)

**CONDUCT OF BUSINESS SOURCEBOOK (AUTOMATIC ENROLMENT INTO QUALIFYING PENSION SCHEMES) INSTRUMENT 2011**

**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);
    - (b) section 156 (General supplementary powers); and
    - (c) section 157(1) (Guidance); 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 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 2011.

By order of the Board  
26 May 2011

## 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 arrangements 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"> <li>(a) making, performing or marketing it does not constitute or form part of a <i>regulated activity</i>; <u>or</u></li> <li>(b) it is entered into on a strictly occasional basis outside a commercial structure dedicated to the conclusion of distance contracts; or</li> <li>(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; <u>or</u></li> <li>(d) <u>it is entered into to comply with the requirement in Part 1 of the Pensions Act 2008 to automatically enrol or re-enrol employees into an <i>automatic enrolment scheme</i>.</u></li> </ul> <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>	<p>a transaction, resulting from the decision of a <i>retail client</i> who is an individual to:</p> <ul style="list-style-type: none"> <li>(a) opt out of an <i>occupational pension scheme</i> <u>or <i>group personal pension scheme</i> to which his employer contributes and of which he is a member</u>; or</li> <li>(b) decline to become a member of an <i>occupational pension</i></li> </ul>

*scheme or group personal pension scheme to which his employer contributes and of 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.*

## Annex B

### Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

#### 13.3 Contents of a key features document

General requirements

13.3.1 R A *key features document* must:

...

(2) explain:

...

- (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 This chapter applies as modified to the extent necessary for it to be compatible with any enactment.

15.5.3 G For example:

(1) ...

(2) where legislation does not permit sums within a *personal pension scheme* or *CTF* to be returned to a *consumer*, the requirement to do so on cancellation is modified to permit payment to another provider on behalf of the *consumer*, the *firm* should notify him, where relevant, as soon as possible that it holds money awaiting re-investment instructions; if that money is held in a non-interest bearing account this should be drawn to his attention;

(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 Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 in relation to all members of an automatic enrolment scheme; the cancellation rules will continue to apply for any single premium contributions or transfers where these would normally attract this right.

...

## 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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