

2015 No. 731

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2015

Made - - - - *16th March 2015*

Coming into force - - *6th April 2015*

In accordance with paragraph 26 of Schedule 2 to the Financial Services and Markets Act 2000(a), a draft of this Order has been laid before Parliament and approved by a resolution of each House of Parliament.

In the opinion of the Treasury, one of the effects of the following Order is that an activity which is not a regulated activity would become a regulated activity.

The Treasury, in exercise of the powers conferred by sections 22(1) and (5) and 428(3) of, and paragraph 25(1)(a) of Schedule 2 to, the Financial Services and Markets Act 2000(b), make the following Order.

Citation and commencement

1. This Order may be cited as the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2015, and comes into force on 6th April 2015.

Amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

2.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(c) is amended as follows.

(2) After article 53D (advising on regulated sale and rent back agreements) insert—

“Advising on conversion or transfer of pension benefits

53E.—(1) Advising a person (“P”) is a specified kind of activity if—

- (a) the advice is given to P in P’s capacity as—
 - (i) a member of a pension scheme; or
 - (ii) a survivor of a member of a pension scheme;
- (b) P has subsisting rights in respect of any safeguarded benefits; and

(a) 2000 c. 8. Paragraph 26 of Schedule 2 was amended by section 8(3) of the Financial Services Act 2012 (c.21).
(b) Section 22 and paragraph 25 of Schedule 2 were amended by sections 7(1) and 8(2) of the Financial Services Act 2012.
(c) S.I. 2001/544 as amended by S.I. 2003/1475, 2006/1969, 2006/2383 and 2009/1342; there are other amending instruments, but they are not relevant.

- (c) the advice is advice on the merits of P requiring the trustee or manager of the pension scheme to—
 - (i) convert any of the safeguarded benefits into different benefits that are flexible benefits under the scheme;
 - (ii) make a transfer payment in respect of any of the safeguarded benefits with a view to acquiring a right or entitlement to flexible benefits for P under another pension scheme; or
 - (iii) pay a lump sum that would be an uncrystallised funds pension lump sum in respect of any of the safeguarded benefits.

(2) In this article—

“flexible benefit” means—

- (a) a money purchase benefit;
- (b) a cash balance benefit; or
- (c) a benefit, other than a money purchase benefit or cash balance benefit, calculated by reference to an amount available for the provision of benefits to or in respect of the member (whether the amount so available is calculated by reference to payments made by the member or any other person in respect of the member or any other factor);

“pension scheme” has the meaning given by section 1(5) of the Pension Schemes Act 1993(a) or section 1(5) of the Pension Schemes (Northern Ireland) Act 1993(b);

“safeguarded benefits” means benefits other than—

- (a) money purchase benefits; and
- (b) cash balance benefits;

“subsisting right”—

- (a) in relation to a member of a pension scheme, means—
 - (i) any right which has accrued to or in respect of the member to future benefits under the scheme; or
 - (ii) any entitlement to benefits under the scheme; and
- (b) in relation to a survivor of a member of a pension scheme means any right to future benefits, or entitlement to benefits, which the survivor has under the scheme in respect of the member;

“survivor”, in relation to a member of a pension scheme, means a person who has survived the member and has a right to future benefits, or is entitled to benefits, under the scheme in respect of the member;

“trustees or managers” means—

- (a) in relation to a scheme established under a trust, the trustees; and
- (b) in relation to any other scheme, the managers; and

“uncrystallised funds pension lump sum” has the meaning given by paragraph 4A of Schedule 29 to the Finance Act 2004(c).

(3) Paragraphs (4) to (9) apply for the interpretation of “flexible benefit” and “safeguarded benefits”.

(4) “Cash balance benefit”, in relation to a member of a pension scheme or a survivor of a member, means a benefit calculated by reference to an amount available for the provision

(a) 1993 c. 48. Section 1(5) was inserted by section 239(1) of the Pensions Act 2004 (c. 35).

(b) 1993 c. 49. Section 1(5) was inserted by S.I. 2005/255 (N.I. 1).

(c) 2004 c. 12. Paragraph 4A of Schedule 29 was inserted by paragraph 57 of Schedule 1 to the Taxation of Pensions Act 2014 (c. 30).

of benefits to or in respect of the member (“the available amount”) where there is a promise about that amount.

(5) But a benefit is not a “cash balance benefit” if, under the scheme—

- (a) a pension may be provided from the available amount to or in respect of the member; and
- (b) there is a promise about the rate of that pension.

(6) The promise mentioned in paragraph (4) includes, in particular, a promise about the change in the value of, or the return from, payments made by the member or any other person in respect of the member.

(7) The promise mentioned in paragraph (5)(b) includes a promise that—

- (a) the available amount will be sufficient to provide a pension of a particular rate;
- (b) the rate of a pension will represent a particular proportion of the available amount.

(8) A benefit is not excluded from the definition of “cash balance benefit” by paragraph (5) merely because under the scheme there is a promise that—

- (a) the rate or amount of the benefit payable in respect of a deceased member will be a particular proportion of the rate or amount of the benefit which was (or would have been) payable to the member; or
- (b) the amount of a lump sum payable to a member, or in respect of a deceased member, will represent a particular proportion of the available amount.

(9) “Money purchase benefits”—

- (a) in relation to a pension scheme governed by the law of England and Wales or Scotland, has the meaning given by section 181 of the Pension Schemes Act 1993(a); and
- (b) in relation to a pensions scheme governed by the law of Northern Ireland, has the meaning given by section 176 of the Pension Schemes (Northern Ireland) Act 1993(b).”.

(3) In article 54 (advice given in newspapers etc.)—

(a) in paragraph (1)—

- (i) for “and 53D” substitute “, 53D and 53E”;
- (ii) in sub-paragraph (a) for “or 53D” substitute “, 53D or 53E”;
- (iii) after sub-paragraph (b)(v), insert—

“(vi) to require the trustee or manager of a pension scheme to take any of the actions referred to in article 53E(1)(c).”; and

(b) in paragraph (2), for “and 53D” substitute “, 53D and 53E”.

(4) In article 82 (rights under a pension scheme) after paragraph (2) insert—

“(3) Rights or interests under a pension scheme which provides safeguarded benefits (within the meaning given in article 53E(2)).

(4) Paragraph (3) specifies a kind of investment in relation to the kind of activity specified in article 53E (advising on conversion or transfer of pension benefits), and not in relation to any other specified kind of activity.”.

(5) In article 89 (rights to or interests in investments), after paragraph (2) insert—

“(2A) Paragraph (2) does not apply where the kind of activity specified in article 53E (advising on conversion or transfer of pension benefits) is carried on by way of business in relation to the interests under the trusts of an occupational pension scheme.”.

(a) Section 181 was amended by section 29(1) of the Pensions Act 2011 (c. 19) and article 2 of, and the Schedule to, SI 2005/2053.

(b) Section 176 was inserted by S.I. 2005/255 (N.I. 1).

Alun Cairns
Gavin Barwell

16th March 2015

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544). Article 2(2) inserts article 53E in that Order to provide that advising on the conversion or transfer of pension benefits which are safeguarded benefits (as defined in paragraph (2) of the inserted article) is a regulated activity for the purposes of the Financial Services and Markets Act 2000 (c. 8). A person who carries on a regulated activity in the United Kingdom must be an authorised person or an exempt person under that Act (see section 19).

An assessment of the effect that this Order will have on the costs of business and the voluntary sector is available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on www.gov.uk and is published alongside this Order on www.legislation.gov.uk.