

**EXPLANATORY MEMORANDUM TO**  
**THE FINANCIAL SERVICES AND MARKETS ACT 2000 (REGULATED ACTIVITIES)**  
**(TRANSITIONAL PROVISIONS) ORDER 2015**

**2015 No. 732**

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This instrument makes transitional provision in connection with what is to be a new regulated activity – article 53E – in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (“the RAO”). The new activity concerns the giving of advice on the conversion or transfer of a class of pension benefits known as safeguarded benefits. The amendment to the RAO to provide for this new activity will come into force on 6th April 2015.

- 2.2 This instrument provides that those advisors previously permitted to advise on an equivalent class of transfer, are automatically authorised to advise under the new activity.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 This instrument comes into force on 6th April 2015, 20 clear days after it is laid. This breaches the 21 day rule.

- 3.2 The reason for breaching the 21 day rule is that this instrument must come into force at the same time as the instrument amending the RAO to insert the new regulated activity in article 53E of the RAO: the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2015 (S.I. 2015/731) (“the amending Order”).

- 3.3 The amending Order was laid before both Houses in draft on 29th January 2015 and would have provided an earlier opportunity to deliver this transitional provision. However, at that time HM Treasury, having consulted with the Financial Conduct Authority (“the FCA”), was of the view that a statutory transitional provision was unnecessary as appropriate transitional arrangements could be delivered by administrative means. It was only during subsequent discussions with the FCA on 10th February 2015 that it became apparent that the FCA would not have the resources to use existing powers

to provide adequate administrative transitional arrangements to ensure that there would be sufficient persons authorised to carry out the new activity from 6th April 2015.

3.4 Without adequate transitional arrangements being in place as of 6th April 2015 those authorised persons who are currently permitted to advise on an equivalent class of pension transfer would no longer be permitted to do so under the Act. An authorised person providing such advice without the appropriate permission would be acting in contravention of the Act and may be guilty of misconduct. As a result, people needing advice under the advice safeguard (described below) would not be able to obtain it. This instrument will ensure that there is a sufficient body of advisers with the appropriate permission to effectively deliver the advice safeguard from 6th April 2015.

3.5 It was not possible for this transitional instrument to be made and laid any sooner because HM Treasury did not have power to make this transitional provision until the amending Order was made. This is because HM Treasury's power to make transitional provisions in section 426(1) of the Financial Services and Markets Act 2000 ("the Act") provides that transitional provisions may only be made "*in consequence of any provision made by or under this Act*" (emphasis added).

#### **4. Legislative Context**

4.1 This instrument is made under section 426 of the Financial Services and Markets Act 2000.

4.2 The instrument makes transitional provisions regarding the new regulated activity in article 53E (advising on the transfer and conversion of safeguarded benefits) introduced to the RAO by an amendment in the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2015 which was laid in draft before both Houses on 29th January 2015 and made, following resolutions of both Houses, on 16th March 2015.

4.3 The Pension Schemes Act 2015 compels those individuals with the class of benefits known as safeguarded benefits, to take financial advice if they wish to exchange those benefits for benefits that can be taken flexibly (see sections 48 and 49 of the Pension Schemes Act 2015). The category of advice required by the Pension Schemes Act 2015 is defined by reference to that provided by an "authorised independent advisor", which means a person who "*has permission under Part 4A of the Financial Services and Markets Act 2000, or resulting from any other provision of that Act, to carry on a regulated activity specified in regulations made by the Secretary of State*". The government intends that the regulated activity referred to will be article 53E, and this will be achieved through regulations brought forward by the Department for Work and Pensions.

#### **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 This instrument provides that firms who currently have permission from the FCA to advise on ‘pension transfers and opt-outs’ will gain the new permission to advise on the transfer or conversion of safeguarded benefits (the activity in new article 53E of the RAO). This will be effective from the same time as the new article 53E comes into force.

7.2 The effect of the SI is to help deliver on the commitment in the government’s response to the consultation on ‘Freedom and choice in pensions’, that from April 2015 advice required under a new safeguard for those wishing to transfer their defined benefit rights, would be provided by an FCA authorised advisor.<sup>1</sup>

7.3 The consultation response explained that since the new pension flexibilities announced at Budget 2014 would allow those with defined contribution pension wealth more flexible access to this wealth, this may lead to a greater demand from those with defined benefit wealth to transfer in order to take advantage of these flexibilities. Since the government expects that it will be in the best interest of the majority of those with defined benefit pots to remain in these schemes, a commitment was made to introduce a safeguard requiring that all those who wished to exchange defined benefit rights for rights that could be accessed flexibly, should obtain professional advice before doing so.

7.4 The provisions to create the advice safeguard are contained in the Pension Schemes Act 2015 at sections 48 and 49. In this Act, the benefits that require advice before being transferred are defined as ‘safeguarded benefits’, this is broadly equivalent to rights that are ‘defined benefit’. HM Treasury then also brought forward legislation to allow the nature of advice specified under the safeguard to be linked to the standard of advice the FCA currently applies to transfers from defined benefit to contract based defined contribution schemes. This was done by means of the creation of a new regulated activity which allowed the FCA to extend their advice standards to all transfers of safeguarded rights and interests to trust-based schemes that can be accessed flexibly. This ensures the proper operation and consistent regulation of advice provided under the safeguard.

7.5 To ensure this new regulatory framework is effective from 6 April 2015, at the same time the tax flexibilities become available, it is necessary to provide appropriately qualified firms with automatic authorisation to advise under Article 53E. If this automatic authorisation were not provided, it would not be certain that individuals who wished to

---

<sup>1</sup> Freedom and choice in pensions: government response to the consultation, July 2014, pp 29  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/332714/pensions\\_response\\_online.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332714/pensions_response_online.pdf)

transfer safeguarded benefits after April 2015, could obtain appropriate advice, and this would represent a risk to consumers and to the effective operation of the advice safeguard.

## **8. Consultation outcome**

8.1 The pensions flexibilities reforms were subject to a 12 week consultation over the summer of 2014, culminating in the publication ‘Freedom and choice in pensions: government response to the consultation’ on 20th July 2014.<sup>2</sup> This document set out the government’s intention that transfers from funded defined benefit schemes will continue to be allowed in the context of flexibility, but that there would be a safeguard ensuring that professional advice is received before a decision to transfer defined benefit (now known as ‘safeguarded’ benefits) is made. The proposal to make it a statutory requirement to take professional financial advice was recommended by a large number of stakeholders including the Association of British Insurers and the Confederation of British Industry.

8.2 The approach of extending the RAO to ensure the proper regulation of advice under the safeguard was subject to consultation with industry at a meeting on 12th December 2014. The specific approach of creating the safeguard required by section 48 of the Pension Schemes Act 2015 by reference to a new regulated, was subject to consultation with industry in a stakeholder meeting on 9th January 2015.

8.3 The FCA was consulted on, and was involved with the preparation of, this instrument in draft.

## **9. Guidance**

9.1 The FCA will provide guidance to advisers about their obligations under this instrument as it relates to the provision of advice under the advice safeguard, and will subsequently update their rules accordingly. This guidance will also cover the process of automatic authorisation provided for by this instrument.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is expected to be negligible. The Regulatory Policy Committee confirmed the wider measure to which this instrument is consequential as a low cost proposal on 12th January 2015.

10.2 The impact on the public sector entails the resources of the FCA being used to monitor and direct this new regulated activity. However, the FCA are reshaping their pension regulatory regime in response to the new pension flexibilities, and in this context the extra resource required to monitor this new regulated activity is not significant.

---

2

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/332714/pensions\\_response\\_online.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332714/pensions_response_online.pdf)

10.3 An Impact Assessment of the wider advice safeguard policy was published alongside the relevant amendments to the Pension Schemes Bill and can be found at the following link: <http://www.parliament.uk/documents/impact-assessments/IA14-13A.pdf>

10.4 No, or no significant, impact on the costs of business or the voluntary sector is foreseen as a consequence of this instrument.

## **11. Regulating small business**

11.1 The legislation applies to small business. Many financial advice firms will be small businesses, and the policy of requiring advice on transfers of safeguarded benefits is expected to generate business to these firms (the government's impact assessment estimated an annual benefit to advisors of £3.39m).<sup>3</sup> Therefore it would be unfair to exempt small business from this instrument, as it would prevent them delivering the appropriately regulated advice that would allow them to take advantage of this opportunity.

## **12. Monitoring & review**

12.1 The Government will keep this legislative framework under review as a matter of course, and are committed to monitoring the practices which emerge around the transfer of safeguarded benefits, including the advice safeguard, as the new pension flexibilities bed in after April 2015. The Tax Information & Impact Note published at Budget 2014, and republished at Autumn Statement 2014, commits the Government to continuing to monitor the tax flexibilities policy through tax data, and HMRC publishes significant amounts of data on tax receipts and liabilities annually. The Government has published costings and analysis of the measure at Budget 2014 and has updated these at Autumn Statement 2014, in line with revisions to the policy made as a result of consultation.

## **13. Contact**

Liam Izod at HM Treasury can answer any queries regarding the instrument. Tel: 0207 270 1407 or email: [liam.izod@hmtreasury.gsi.gov.uk](mailto:liam.izod@hmtreasury.gsi.gov.uk).

---

<sup>3</sup> <http://www.parliament.uk/documents/impact-assessments/IA14-13A.pdf>, pp 5