

2010 No. 905

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (Financial
Promotion) (Amendment) Order 2010**

<i>Made</i> - - - -	<i>22nd March 2010</i>
<i>Laid before Parliament</i>	<i>23rd March 2010</i>
<i>Coming into force</i> - -	<i>13th April 2010</i>

The Treasury make the following Order in exercise of the powers conferred by sections 21(5) and (6) and 428(3) of the Financial Services and Markets Act 2000(a):

1. This Order may be cited as the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2010 and comes into force on 13th April 2010.

2. The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005(b) is amended as follows.

3. In article 2 (interpretation: general), in paragraph (1) after the definition of “deposit” insert—
““direct financial benefit” includes any commission, discount, remuneration or reduction in premium;”.

4. In article 72 (pension products offered by employers)—

(a) in paragraph (2)—

(i) for sub-paragraph (b) substitute—

“(b) the employer has not received, and will not receive, any direct financial benefit as a result of making the communication;”;

(ii) at the end of sub-paragraph (c) after “that employee” insert “or the basis on which the contribution will be calculated”;

(b) omit paragraph (3).

5. After article 72 insert—

“Pension product offers communicated to employees by third parties

72A.—(1) If the requirements of paragraph (2) are met, the financial promotion restriction does not apply to any communication which is made to an employee by or on behalf of a person (“A”) in relation to a group personal pension scheme or a stakeholder pension scheme.

(2) The requirements of this paragraph are that—

(a) 2000 c. 8.

(b) S.I. 2005/1529, as amended by S.I. 2006/1969. There are other amending instruments but none is relevant to this Order.

- (a) the employer and A have entered into a written contract specifying the terms on which the communication may be made;
- (b) in the case of a communication made by a person (“B”) on behalf of A, A and B have also entered into a written contract specifying the terms on which the communication may be made;
- (c) the employer has not received, and will not receive, any direct financial benefit as a result of the communication being made;
- (d) the employer will make a contribution to the scheme in the event of the employee becoming a member of the scheme and the communication contains a statement informing the employee of this;
- (e) in the case of a non-real time communication, the communication contains, or is accompanied by, a statement informing the employee of their right to seek advice from an authorised person or an appointed representative; and
- (f) the employer or A notifies the employee in writing prior to the employee becoming a member of the scheme of—
 - (i) the amount of the contribution that the employer will make to the scheme in respect of that employee, or the basis on which the contribution will be calculated; and
 - (ii) any remuneration A or B has received, or will receive, as a consequence of the employee becoming a member of the scheme, or the basis on which any such remuneration will be calculated.

(3) In this article “group personal pension scheme” and “stakeholder pension scheme” have the meaning given by article 72(4).

Insurance product offers communicated to employees by employers

72B.—(1) If the requirements of paragraph (2) are met, the financial promotion restriction does not apply to any communication which is made by an employer to an employee in relation to work-related insurance.

(2) The requirements of this paragraph are that—

- (a) where the provider of the insurance is not the employer, the employer has not received, and will not receive, any direct financial benefit as a result of making the communication; and
- (b) in the case of a non-real time communication, the communication contains, or is accompanied by, a statement informing the employee of their right to seek advice from an authorised person or an appointed representative.

(3) In this article “work-related insurance” includes—

- (a) life assurance;
- (b) long term disability insurance (also known as permanent health insurance); and
- (c) accidental death, injury, critical illness, medical, dental, income protection or travel insurance.

Insurance product offers communicated to employees by third parties

72C.—(1) If the requirements of paragraph (2) are met, the financial promotion restriction does not apply to any communication which is made to an employee by or on behalf of a person (“A”) in relation to work-related insurance.

(2) The requirements of this paragraph are that—

- (a) the employer and A have entered into a written contract specifying the terms on which the communication may be made;

- (b) in the case of a communication made by a person (“B”) on behalf of A, A and B have also entered into a written contract specifying the terms on which the communication may be made;
 - (c) the employer has not received, and will not receive, any direct financial benefit as a result of the communication being made;
 - (d) in the case of a non-real time communication, the communication contains, or is accompanied by, a statement informing the employee of their right to seek advice from an authorised person or an appointed representative; and
 - (e) the employer or A notifies the employee in writing prior to the employee entering into a contract for the work-related insurance of any remuneration A or B has received, or will receive, as a consequence of the employee entering into the contract, or the basis on which any such remuneration will be calculated.
- (3) In this article “work-related insurance” has the meaning given by article 72B(3).

Staff mortgage offers communicated to employees by employers

72D.—(1) If the requirements of paragraph (2) are met, the financial promotion restriction does not apply to any communication which is made by an employer to an employee in relation to a staff mortgage.

(2) The requirements of this paragraph are that—

- (a) where the provider of the staff mortgage is an undertaking in the same group as the employer, the employer has not received, and will not receive, any direct financial benefit as a result of making the communication; and
- (b) in the case of a non-real time communication, the communication contains or is accompanied by a statement informing the employee of their right to seek advice from an authorised person or an appointed representative.

(3) In this article, “staff mortgage” means a regulated mortgage contract between the employer, or an undertaking in the same group as the employer, as lender and the employee (alone or with another person) as borrower to defray money applied for any of the following purposes—

- (a) acquiring any residential land which was intended, at the time of the acquisition, for occupation by the employee as their home;
- (b) carrying out repairs or improvements to any residential land which was intended, at the time of taking out the loan, for occupation by the employee as their home; or
- (c) payments in respect of a loan (whether of interest or capital).

(4) In this article, “borrower”, “lender” and “regulated mortgage contract” have the meaning given by article 61(3)(a) (regulated mortgage contracts) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a).

Staff mortgage offers communicated to employees by third parties

72E.—(1) If the requirements of paragraph (2) are met, the financial promotion restriction does not apply to any communication which is made to an employee by or on behalf of a person (“A”) in relation to a staff mortgage.

(2) The requirements of this paragraph are that—

- (a) the employer and A have entered into a written contract specifying the terms on which the communication may be made;

(a) S.I. 2001/544. Article 61(3)(a) was substituted by S.I. 2001/3554.

- (b) in the case of a communication made by a person (“B”) on behalf of A, A and B have also entered into a written contract specifying the terms on which the communication may be made;
 - (c) where the provider of the staff mortgage is an undertaking in the same group as the employer, the employer has not received, and will not receive, any direct financial benefit as a result of the communication being made;
 - (d) in the case of a non-real time communication, the communication contains, or is accompanied by, a statement informing the employee of their right to seek advice from an authorised person or an appointed representative; and
 - (e) the employer or A notifies the employee in writing prior to the employee entering into the staff mortgage of any remuneration A or B has received, or will receive, as a consequence of the employee entering into the staff mortgage, or the basis on which any such remuneration will be calculated.
- (3) In this article “staff mortgage” has the same meaning as in article 72D(3).”.

Bob Blizzard
Dave Watts

22nd March 2010

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 (Financial Promotion) Order 2005 (S.I. 2005/1529) (“the 2005 Order”).

The 2005 Order sets out a number of exemptions from the restrictions on financial promotions contained in section 21(1) of the Financial Services and Markets Act 2000 (c. 8) (“the financial promotion restriction”).

This Order inserts five new articles into the 2005 Order to provide further circumstances in which the financial promotion restriction is disapplied. It also makes consequential changes to articles 2 and 72 of the 2005 Order.

New article 72A relates to communications made to employees by or on behalf of third parties about group personal pension schemes and stakeholder pension schemes.

New articles 72B and 72C relate to communications made to employees about work-related insurance by employers and by or on behalf of third parties.

New articles 72D and 72E relate to communications made to employees about staff mortgages by employers and by or on behalf of third parties.

Each new exemption only applies if certain requirements for the employees’ protection are met.

A regulatory impact assessment of the effect of this instrument on the costs of business may be obtained from the Financial Services Strategy Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is available on the Treasury’s website (www.hm-treasury.gov.uk).

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