

**2001 No. 2512**

**FINANCIAL SERVICES AND MARKETS**

**The Financial Services and Markets Act 2000 (Transitional Provisions) (Reviews of Pensions Business) Order 2001**

*Made* - - - - - *12th July 2001*

*Laid before Parliament* *13th July 2001*

*Coming into force* - - *6th August 2001*

The Treasury, in exercise of the powers conferred on them by sections 426 to 428 of the Financial Services and Markets Act 2000(a), hereby make the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Financial Services and Markets Act 2000 (Transitional Provisions) (Reviews of Pensions Business) Order 2001 and comes into force on 6th August 2001.

(2) In this Order—

“the Act” means the Financial Services and Markets Act 2000;

“commencement” means the beginning of the day on which section 19 comes into force;

“the deemed scheme” has the meaning given by article 2(3);

“designated provision” means a pension review provision designated in accordance with article 3 as that provision has effect after commencement by virtue of this Order;

“designation instrument” means an instrument made under article 3;

“free standing additional voluntary contribution scheme” means a scheme approved by the Commissioners of Inland Revenue as such a scheme under section 591 of the Income and Corporation Taxes Act 1988(b);

“new provision” has the meaning given by article 6(4);

“occupational pension scheme” and “personal pension scheme” have the meaning given by section 1 of the Pension Schemes Act 1993(c);

“pensions review provision” means any (or any part of any) enactment, subordinate legislation or other instrument or provision (including guidance in writing or other legible form) which (or to the extent that it) provides for, or relates to, the conduct of a review into, or the taking of other steps with respect to—

(a) the selling, between 29th April 1988 and 30th June 1994, by persons who were at the time—

(i) authorised persons under the Financial Services Act 1986(d), or

(ii) appointed representatives of such persons (within the meaning of that Act), of rights in, or interests under, personal pension schemes; or

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(a) 2000 c. 8.

(b) 1988 c.1. Section 591 was amended by the Finance Act 1988 (c. 39), Sch. 13, Part 1; the Finance Act 1994 (c. 9), Sch. 26, Part V; the Finance Act 1995 (c. 4), section 59(2); and the Finance Act 1999 (c. 16), Sch. 10.

(c) 1993 c. 48. The definition of “personal pension scheme” in section 1 was amended by the Welfare Reform and Pensions Act 1999 (c. 30), Sch. 2, para. 3(1)(a).

(d) 1986 c. 60.

- (b) the selling, by such persons between 29th April 1998 and 15th August 1999, of rights in, or interests under, free standing additional voluntary contribution schemes.
- (3) References in this Order to “selling” rights or interests are to be construed in accordance with paragraph 27 of Schedule 2, but also include—
  - (a) the giving of advice to acquire rights or interests, and
  - (b) the making of arrangements for another person to acquire, or with a view to another person acquiring, rights or interests.
- (4) References in this Order to numbered sections or Schedules are (except where otherwise indicated) references to sections of, or Schedules to, the Act.

**Pensions review provisions to take effect as deemed scheme under section 404**

- 2.—(1) This article applies to a pensions review provision which—
  - (a) has been designated by the Authority under article 3; and
  - (b) has not been amended (other than under article 4, or article 6(1)(b) as applied by article 6(3)) or revoked at any time between its designation and commencement.
- (2) Where a pensions review provision—
  - (a) has been designated by the Authority under article 3; and
  - (b) has been amended (other than under article 4, or article 6(1)(b) as applied by article 6(3)) at any time between its designation and commencement by a further such provision which has itself been so designated,
 this article applies to the original provision, subject to that amendment.
- (3) After commencement, a pensions review provision to which this article applies has effect, with such modifications (if any) as may be made under article 4, or article 6(1)(b) as applied by article 6(3), as if it were a provision of an authorised scheme within the meaning of section 404 (schemes for reviewing past business) (“the deemed scheme”), subject to any modifications later made in accordance with article 6(1)(b).
- (4) Paragraph (3) applies—
  - (a) in spite of any repeal, revocation or other lapsing of the pensions review provision which occurs on commencement;
  - (b) notwithstanding the fact that no scheme order has been made under section 404 (or that the conditions for the making of such an order have not been satisfied); and
  - (c) irrespective of whether the pensions review provision could have been included in a scheme authorised by such an order.

**Designation of pre-commencement provisions**

- 3.—(1) The Authority may under this article designate any pensions review provision currently in force.
- (2) To designate a pensions review provision, the Authority must—
  - (a) make an instrument in writing identifying the provision in the manner required by paragraph (3);
  - (b) specify in the instrument that the provision is to have effect as a provision of an authorised scheme within the meaning of section 404;
  - (c) specify any modification to be made to the provision pursuant to article 4;
  - (d) identify the class of persons to whom the provision is to apply;
  - (e) publish the instrument in the way appearing to the Authority to be best calculated to bring it to the attention of the public;
  - (f) have in place arrangements whereby a copy of the provision (incorporating any modifications made pursuant to article 4) may be made available to any person on request.
- (3) In order to identify the pensions review provision for the purposes of paragraph (2) the Authority must give sufficient information about—
  - (a) the date, title, author and source of the enactment, subordinate legislation or other instrument in which the provision is found;
  - (b) whether the provision comprises the whole of that enactment, subordinate legislation or other instrument or only a part of it (in which case identifying which part);

(c) whether the provision has been amended prior to its designation, or whether its meaning has been affected by any subsequent provision made prior to that time; to ensure that a person can ascertain with certainty the content of the provision being designated.

(4) Paragraph (3)(c) does not require the giving of information about amendments (or changes in meaning) made by any provision which is itself designated under this article.

(5) To the extent to which the instrument does not comply with paragraph (2)(b), it is void.

(6) The Authority may charge a reasonable fee for providing a person with a copy of an instrument made under this article or of a provision pursuant to paragraph (2)(f).

(7) The Authority must give a copy of any designation instrument to the Treasury without delay.

(8) The making of an instrument under this article is a legislative function for the purposes of Schedule 1.

#### **Modifications on designating pensions review provisions**

4.—(1) When designating a pension review provision, the Authority must make such modifications of it (if any) as appear to the Authority necessary to ensure—

- (a) that, so far as possible, the pensions review provision has the same effect after commencement as it did immediately before commencement; and
- (b) in particular, that the class of persons to whom it applies at any time after commencement consists of persons of the same description as the class of persons to whom it would have applied at that time if the Act had not been passed and the provision had remained as it had effect immediately before commencement.

(2) When designating a pensions review provision, the Authority may make such modifications of it as have the effect of limiting its application to a class of persons narrower than the class to which it applied immediately before commencement; and paragraph (1) is not to be taken—

- (a) as preventing any modification under this paragraph; or
- (b) as requiring any modification which is inconsistent with a modification that has been made under this paragraph.

(3) The modifications authorised by paragraph (1)(a) include the addition of such transitional provisions as are necessary to achieve the result there mentioned.

(4) This article does not affect the power of the Authority to make modifications of the deemed scheme under article 6(1)(b).

#### **Waiver or modification as respects particular persons**

5.—(1) This article applies where—

- (a) immediately before commencement a waiver or modification of a pensions review provision is in operation as respects a person;
- (b) the pensions review provision to which the waiver or modification relates is designated in accordance with article 3; and
- (c) the person to whom the waiver or modification has been granted would, but for this article, be subject to the resultant designated provision.

(2) In a case where this article applies, the waiver or modification has effect after commencement as if it were a direction under subsection (2) of section 148 (modification or waiver of rules) (as applied by article 7(1))—

- (a) that the designated provision is not to apply to the person; or
- (b) as the case may be, that the designated provision is to apply to him with the modification in question.

(3) Any condition subject to which the waiver or modification was granted has effect after commencement as if imposed under section 148(5).

(4) Subsection (6) of section 148 does not apply to a direction having effect by virtue of this article but subsection (9) of that section applies to such a direction as it applies to a direction given after commencement.

- (5) In this article, references to a waiver or modification—
- (a) are to a waiver or modification granted in writing;
  - (b) include references to any partial disapplication of a pensions review provision, however described.

#### **Modifications of section 404 in its application to deemed scheme**

- 6.—(1) In its application to the deemed scheme, section 404 has effect as if—
- (a) subsection (6) provided that, for the purposes of the Act, failure on the part of an authorised person—
    - (i) to comply with any obligation imposed on him by the deemed scheme to make any payment to the Authority,
    - (ii) to comply with any obligation imposed on him by the deemed scheme to provide information to the Authority, or
    - (iii) otherwise, to take all reasonable steps to comply with the provisions of the deemed scheme (so far as applicable to him),were (subject to paragraph (2)) to be treated as a failure on his part to comply with rules;
  - (b) it provided for the Authority to make to the deemed scheme such modifications as it considers necessary or appropriate for the purposes of—
    - (i) determining the nature and extent of any failure on the part of authorised persons to comply with any applicable requirements relating to the selling between 29th April 1988 and 30th June 1994 of rights in, or interests under, personal pension schemes, or the selling between 29th April 1988 and 15th August 1999 of rights in, or interests under, free standing additional voluntary contribution schemes;
    - (ii) establishing the liability of authorised persons to make compensation payments with respect to any such failure; or
    - (iii) determining the amounts payable by way of compensation payments with respect to any such failure;or such incidental, supplemental, consequential or transitional modifications as it considers appropriate.

(2) A person is not (by virtue of paragraph (1)(a)) to be treated as having failed to comply with rules by reason of his failure to comply with any designated provision, if he shows that at the time of the alleged contravention the designation instrument concerned had not been published in accordance with article 3(2)(e).

(3) The Authority may, before commencement, exercise the power in paragraph (1)(b) so as to make modifications to a designated provision, to have effect after commencement (but not before) as modifications of the deemed scheme.

(4) A provision which is modified under paragraph (1)(b), or which is added to the deemed scheme as a result of a modification made under that paragraph, is referred to in this Order as a “new provision”.

#### **Provisions of deemed scheme: procedural requirements**

7.—(1) Section 148 (modification or waiver of rules) applies to provisions of the deemed scheme as it applies to rules (subject to article 5(4)).

(2) Sections 152 to 154 and 156 (procedural provisions relating to rules) apply to new provisions as they apply to rules.

(3) Section 155 (consultation on proposed rules) does not apply to new provisions.

(4) Section 154 (verification of rules) does not apply to designated provisions, but the following provisions of this article apply instead.

(5) The production of a printed copy of a designation instrument or a designated provision purporting to be made by the Authority on which is endorsed a certificate which—

- (a) is signed by a member of the Authority’s staff authorised by it for that purpose; and
- (b) contains the required statement or statements,

is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.

- (6) The required statements in relation to a designation instrument are—
- (a) that the instrument was made by the Authority;
  - (b) that the copy is a true copy of the instrument; and
  - (c) that on a specified day the instrument was published in accordance with article 3(2)(e).
- (7) The required statement in relation to a copy of a designated provision is that the text set out in the document is a designated provision within the meaning of article 3.
- (8) A certificate purporting to be signed as mentioned in paragraph (5) is to be taken to have been properly signed unless the contrary is shown.
- (9) A person who wishes in any legal proceedings to rely on a designation instrument or on a designated provision may require the Authority to endorse a copy of that instrument or provision with a certificate of the kind mentioned in paragraph (5).

12th July 2001

*Nick Ainger*  
*John Heppell*  
Two of the Lords Commissioners of  
Her Majesty's Treasury

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes transitional provisions, under the Financial Services and Markets Act 2000 (“the 2000 Act”), with respect to the reviews of pension selling being conducted under the Financial Services Act 1986 (c. 60) (“the 1986 Act”). The reviews concern (a) the selling of personal pension schemes between 29th April 1988 and 30th June 1994, and (b) the selling of free standing additional voluntary contribution schemes between 29th April 1988 and 15th August 1999.

The Order provides for the reviews, as they were being conducted immediately before the coming into force of the relevant provisions of the 2000 Act (and the repeal of the 1986 Act), to be treated as if they constituted a scheme under section 404 of the 2000 Act (schemes for reviewing past business) (see article 2). This means that the Financial Services Authority will be able to continue to conduct the reviews using its powers under the 2000 Act; and failure by relevant firms to take reasonable steps to comply with the provisions of the scheme will be treated as a breach of a rule made by the Authority under the 2000 Act (see article 6(1)(a)).



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