

PENSIONS TAX SIMPLIFICATION INSTRUMENT 2005

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 145 (Financial promotion rules);
 - (3) section 149 (Evidential provisions);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157 (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 April 2006.

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 is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Pensions Tax Simplification Instrument 2005.

By order of the Board
17 November 2005

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text.

Amend the following definition:

- income withdrawals*
- (a) ~~*income withdrawals*~~ under section 630 of the Income and Corporation Taxes Act 1988; or (as defined in paragraph 7 of Schedule 28 to the Finance Act 2004) in relation to a member of a pension scheme:
- (i) if the member has not reached the age of 75, amounts (other than the payment of annuity) which the member is entitled to be paid from the member's unsecured pension fund (as defined in paragraph 8 of that Schedule) in respect of an arrangement;
- (ii) if the member has reached the age of 75, amounts which the member is entitled to be paid from the member's alternatively secured pension fund (as defined in paragraph 11 of that Schedule) in respect of an arrangement; or
- (b) payments made under interim arrangements in accordance with section 28A of the Pension Schemes Act 1993;

in respect of an election to make income withdrawals, a reference to a *private customer*, an investor or a *policyholder* includes, after that *person's* death, his surviving spouse, or anyone who is, at that time, his dependant, or both.

Insert the following definitions in the appropriate alphabetical position:

- alternatively secured pension* (as defined in paragraph 5 of Schedule 28 to the Finance Act 2004) *income withdrawal*.
- scheme pension* (1) (as defined in paragraph 2 of Schedule 28 to the Finance Act 2004) in relation to a member of a pension scheme, in the case of a pension scheme with fewer than 50 members, a pension payable to the member if:
- (a) it is payable by an insurance company selected by the scheme administrator or, where the scheme administrator

- is an insurance company, by the scheme administrator; and
- (b) it satisfies the condition in (3);
- (2) in the case of a pension scheme with 50 or more members, a pension payable to the member if:
- (a) it is payable by the scheme administrator or by an insurance company selected by the scheme administrator; and
 - (b) it satisfies the condition in (3);
- (3) the condition is that (subject to (4)):
- (a) the pension is payable (at least annually) until the member's death or until the later of the member's death and the end of a term certain not exceeding ten years; and
 - (b) the rate of pension payable in respect of any relevant 12 month period is not less than the rate payable in respect of the previous 12 month period;
- (4) none of the following prevent the pension satisfying the condition in (3):
- (a) if the ill-health condition (as defined in paragraph 1 of that Schedule) is met when the member becomes entitled to the pension, the pension not being payable for a period during which the individual's physical and mental condition is no longer such as would, under the terms of the scheme, give rise to entitlement to the pension; or
 - (b) a reduction in the rate of the pension which applies to all the scheme pensions being paid to or in respect of members of the pension scheme; or
 - (c) if the member becomes entitled to state retirement pension, a reduction in the rate of the pension which does not exceed the rate at which state retirement pension is payable (or, if the rate at which state retirement pension is payable is greater than the rate of the pension, the pension ceasing to be payable);
- (5) for the purposes of (4)(c) the following constitute "state retirement pension":
- (a) retirement pension under the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992; and

- (b) graduated retirement benefit under the National Insurance Act 1965 or the National Insurance Act (Northern Ireland) 1966;
- (6) a pension is payable until the end of a term certain even if it may, after the death of the member during the term, end on the pensioner:
 - (a) marrying; or
 - (b) reaching the age of 18; or
 - (c) ceasing to be in full- time education;
- (7) a relevant 12 month period is any 12 month period which:
 - (a) begins on or after the first anniversary of the day on which the member becomes entitled to the pension; and
 - (b) ends before the day on which the pension ceases to be payable.

short-term annuity

(as defined in paragraph 6 of Schedule 28 to the Finance Act 2004) in relation to a member of a pension scheme, an annuity payable to the member if:

- (a) it is purchased by the application of sums or assets representing the whole or any part of the member's unsecured pension fund (as defined in paragraph 8 of that Schedule) in respect of an arrangement;
- (b) it is payable by an insurance company;
- (c) the member had an opportunity to select an insurance company;
- (d) it is payable for a term which does not exceed five years and ends before the member reaches age 75; and
- (e) it is either a level annuity, an increasing annuity or a relevant linked annuity.

unsecured pension

(as defined in paragraph 4 of Schedule 28 to the Finance Act 2004):

- (a) a short-term annuity; or
- (b) an income withdrawal.

Annex B

Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

3.9.3 G Table: Location of the provisions applicable to direct offer financial promotions

This table belongs to *COB 3.9.2G*

...

(9) Information to be contained in direct offer financial promotions regarding:

(a) *investments* which can fluctuate in value

...

(i) *income withdrawals* or short-term annuities

...

...

Income withdrawal and short-term annuity

3.9.29 R A *direct offer financial promotion* relating to, or offering a facility for, *income withdrawals* or a short-term annuity must include the following explanations:

(1) ~~taking withdrawals may erode the capital~~ the value of the fund may be eroded, especially if investment returns are poor and a high level of income is taken; this could result in a lower income ~~when the annuity is eventually purchased~~ in the future;

(2) the investment returns may be less than those shown in the illustrations;

(3) annuity or scheme pension rates may be at a worse level ~~when annuity purchase eventually takes place~~ in the future; and

(4) ~~if the maximum withdrawals permitted by HM Revenue and Customs regulations are to be taken, high income withdrawals may not be sustainable during the deferral period.~~ when maximum withdrawals are taken or the maximum short-term annuity is

purchased, high levels of income may not be sustainable; and

- (5) the maximum income that can be withdrawn under an *alternatively secured pension* after age 75 is significantly less than the maximum that applies before age 75.

...

- 5.3.5 R (1) A *firm* must take reasonable steps to ensure that, if in the course of *designated investment business*:
- (a) it makes any *personal recommendation* to a *private customer* to:
- (i) buy, sell, subscribe for or underwrite a *designated investment* (or to exercise any right conferred by such an *investment* to do so); or
- (ii) elect to make *income withdrawals*, or purchase a *short-term annuity* or not; or

...

...

- 5.3.13 G (4) *COB 5.3.29G* contains *guidance* which is relevant for assessing the suitability of:

...

- (a) *pension transfers* and *pension opt-outs* ;
- (b) *personal pension schemes* and *free-standing additional voluntary contributions (FSAVCs)* compared to *stakeholder pension schemes*;
- (c) hybrid products;
- (d) *industrial assurance policies*;
- (e) *income withdrawals* and *short-term annuities*;
- (f) ...;

...

...

- 5.3.14 R (1) ...
- (2) If, following a *personal recommendation* by a *firm* that does not fall within (1), a *private customer*:

- (a) buys, sells, surrenders, converts, cancels, or suspends *premiums* for or contributions to, a *pension contract* or a *stakeholder pension scheme*; or
- (b) elects to make *income withdrawals* or purchase a short-term annuity; or

...

...

5.3.29 G

...

E. ~~W~~Income withdrawals and short-term annuities

When a *firm* is advising a *customer* about personal pension fund withdrawals or purchase of short-term annuities:

- (a) the *customer's* personal and financial circumstances should be considered carefully, in particular:
 - (i) the *customer's investment* objectives, need for tax-free cash and state of health;
 - (ii) current and future income requirements, existing pension assets and the relative importance of the plan, given the *customer's* financial circumstances;
 - (iii) the *customer's* attitude to risk, ensuring that any discrepancy between his attitude to risk relating to pension fund withdrawals or purchase of a short-term annuity and that in relation to other investments is clearly explained;
- (b) the *suitability letter* should explain:
 - (i) the purpose of the contract for the *customer*;
 - (ii) the relative importance of the contract, given the *customer's* financial circumstances;
 - (iii) the *customer's* attitude to risk; and
 - (iv) the risk factors involved in entering into a pension fund withdrawal or purchase of a short-term annuity which include ~~are~~:
 - ~~taking withdrawals may erode~~ the capital value of the fund may be eroded, especially if

investment returns are poor and a high level of income is taken; this could result in a lower income ~~when the annuity is eventually purchased in the future;~~

- the *investment* returns may be less than those shown in the illustrations;
- annuity or *scheme pension* rates may be at a worse level ~~when annuity purchase takes place in the future;~~
- ~~when maximum withdrawals are to be taken, high income withdrawals may not be sustainable during the deferral period;~~
- when maximum withdrawals are taken or the maximum *short-term annuity* is purchased, high levels of income may not be sustainable;
- the maximum income that can be withdrawn under an *alternatively secured pension* after age 75 is significantly less than the maximum that applies before age 75.

...

6.1.1 R COB 6.1 to COB 6.5 apply to a *firm*:

...

(4) which effects, *personally recommends* or arranges *income withdrawals* or *short-term annuities* for ~~or to~~ a *private customer*; or

...

...

6.2.43 R (1) When a *firm* sells, *personally recommends* or arranges for the sale of a *simplified prospectus scheme* to a *private customer* and the proposed transaction is for a *scheme*:

(a) which relates to an election to make *income withdrawals* or *purchase of a short-term annuity*; or

...

...

- 6.4.1 R *COB 6.4 applies to a firm in accordance with COB 6.1.1R, in respect of occupational pension schemes, self invested personal pension schemes, income withdrawals and short-term annuities, cash deposit ISAs, cash deposit CTFs, Revenue allocated CTFs, traded life policies, stakeholder pension schemes, packaged products, other deposits and long-term care insurance contracts.*
- ...
- 6.4.8 R *Income withdrawals and short-term annuities*
- When a firm personally recommends, arranges or effects income withdrawals or purchase of short-term annuities to or for a private customer, the customer must be provided with key features or with a simplified prospectus in good time before he signs any form of application or authority electing to make those withdrawals or purchases, whether that election or purchase is made with advice on investments or on an execution-only basis, unless COB 6.4.10R to COB 6.4.12R or COB 6.4.27R to COB 6.4.31R (telephone sales and other exemptions) applies.*
- 6.4.9 R *In relation to an election to make income withdrawals, or short-term annuities, the requirement for the provision of key features or a simplified prospectus in:*
- (1) *COB 6.2.7R also applies when an existing life policy is to be endorsed;*
 - (2) *COB 6.2.22R or, for simplified prospectus schemes, COB 6.2.33R also applies when an existing scheme holding is to be used.*
- 6.4.10 R *In relation to an election to make income withdrawals, or purchase of short-term annuities, the requirements of COB 6.4.11R and COB 6.4.12R override the relevant requirement in COB 6.2 (Provision of key features or simplified prospectus), where there is conflict, but only where this would not contravene a requirement of the UCITS Directive.*
- 6.4.11 R *When a private customer makes a series of elections within a period of 12 months to make income withdrawals, or purchase of short-term annuities, the firm that is personally recommending, arranging or effecting the elections may provide one combined set of key features or simplified prospectuses for those elections, or may provide separate sets of key features for elections which relate to life policies and key features schemes or separate simplified prospectuses for simplified prospectus schemes.*
- 6.4.12 R *~~At intervals no longer than 12 months from the date of an election by a private customer to make income withdrawals , the relevant product provider must:~~ Where income is being taken, no less than six weeks before the end of the annuity period for a short-term annuity or at intervals no longer than 12 months from the date of an election by a private customer to make income withdrawals the product provider of the unvested pension*

scheme must:

- (1) provide the *private customer* with such information required by COB 6.6.13R as will enable the *private customer* to review the ~~election~~ options available; and
- (2) inform the *private customer* how to obtain *advice on investments* in respect of his ~~income withdrawals~~ unsecured or alternatively secured pension, and that it would be in his best interests to do so.

...

6.5.15 R A *firm* must include a *projection*, illustrating how the principal terms of the proposed transaction apply to the *private customer*:

...

- (2) where the proposed transaction does not relate to a *CTF* or a *stakeholder product* sold through *basic advice* and is for a *key features scheme* or a *linked life stakeholder product*:
 - (a) and relates to an election to make *income withdrawals* or purchase of a short-term annuity; or
 - (b) ...

...

6.5.19 R ...

(3) A *scheme projection* in *key features* must be based on either:

- (a) the actual amount which the *private customer* is proposing to invest; or
- (b) an amount which typically represents the type of business which the *firm* conducts (or proposes to conduct) in relation to the *scheme* in question;

unless it is for *income withdrawals* or purchase of a short-term annuity, when it must be on the basis of (a).

...

6.5.25 R When completing COB 6.5.24R, a *firm* must:

...

- (2) under the heading 'the later years' include figures ... except in the following cases:

...

(d) ~~for a *personal pension policy with income withdrawals*, there is an option to quote figures for the sixth year and at three-yearly intervals thereafter~~

for an *alternatively secured pension*, figures must be included for each year for a term of ten years, but figures for a longer term can be shown in addition; and

(e) ...

...

(6) where the *life policy* is a personal pension, replace 'What you might get back' with 'What the transfer value might be' and make suitable amendments to the explanatory text; for a *personal pension policy with income withdrawals* or *short-term annuity* it must be replaced with 'Open market value';

(7) where the *private customer* is entitled to exercise and has chosen, or expressed the intention, to exercise the right to make partial surrenders, include a column headed 'Withdrawals' or, in the case of a personal pension with *income withdrawals* or *short-term annuity*, 'Total income taken'; the sum of withdrawals must be shown;

(8) for a personal pension with *income withdrawals* or *short-term annuity*, include a table headed 'What effect will the deductions have?' instead of 'The early years' and 'The later years'; where there is any charge or penalty in calculating the open market value, all the years to which this applies should be given; and

...

...

6.5.32 R When including the contents of *COB* 6.5.31R, a *firm* must replace the wording in brackets as directed by the instructions in those brackets and:

...

(6) where the contract is a personal pension, replace 'What you might get back' with 'What the transfer value might be', and make suitable amendments to the explanatory text; for a *personal pension contract with income withdrawals* or *short-term annuity* the replacement must be 'Open market value';

(7) ...

(a) where the *private customer* is entitled to exercise and has chosen, or expressed the intention, to exercise the right to make partial withdrawals, an extra column must be included headed 'Withdrawals' or, in the case of a *personal pension contract with income withdrawals* or *short-term annuity*,

'Total income taken'; 'withdrawals' must include distributions of income

...

- (8) for a *personal pension contract* with *income withdrawals* or *short-term annuity*, include in a table under the heading 'What effect will deductions have?' figures for ~~every third year~~ or every fifth year; where there is any charge or penalty in calculating the open market value, all the years to which this applies must be given;

...

...

6.6.13 R A *projection* for an unsecured or alternatively secured pension income ~~withdrawals~~ from a personal pension or *stakeholder pension scheme*:

(1) must include:

- (a) a statement of the initial amounts of ~~minimum and~~ maximum income as specified in the current tables published by the Government Actuary for an unsecured or alternatively secured pension income ~~income withdrawals~~;
- (b) a statement of the assumed initial level of income and the assumed basis for future years and in particular where there is a short-term annuity, if subsequent short-term annuities are assumed;
- (c) a schedule showing under the heading 'WHAT THE BENEFITS MIGHT BE' the amount of income and the fund at each, or every ~~third~~, fifth, anniversary for each of the rates of return specified in *COB* 6.6.49R;
- (d) a statement of the projected open market values and the amounts of annuity at age 75 or the date at which it is reasonably assumed an annuity will be purchased; and which for an alternatively secured pension will be after ten years; and
- (e) ...

...

...

6.6.25 R The contract period of a *life policy, key features scheme, simplified prospectus scheme* or *stakeholder pension scheme* is the period beginning with the commencement of the contract and ending as follows:

...

- (6) in the case of a *pension contract* other than an immediate annuity, on the maturity date or, if the contract provides for annuities at various dates, the latest date at which an annuity may be purchased, except for an alternatively secured pension, where this is at the tenth anniversary of the contract;

...