

To: Sandra Holben sandra.holben@hmtreasury.gsi.gov.uk

From: Andrew Roberts andrew.roberts@barnett-waddingham.co.uk

Date: 29 February 2011

Response to Consultation on UK response to the 1 March European Court of Justice ruling that insurance benefits and premiums after 21 December 2012 should be gender-neutral (the “Consultation Paper”)

Introduction

AMPS is the main trade body that looks solely after self-invested pensions, or member-directed pension schemes to give them their proper title, such as Self Invested Personal Pensions (SIPPS) and Small Self Administered Schemes (SSASs). We have around 200 member firms from across the industry – SIPP providers, SSAS practitioners, pension lawyers, banks and software providers. These products are often used for drawdown pension and therefore our members represent a large proportion of drawdown providers.

Whilst the questions posed by the Consultation paper are perhaps not of direct relevance to drawdown products, the legislation setting out the maximum drawdown rates refers back to market annuity rates and we have been contacted by HM Revenue & Customs for assistance on how any amendment to the tables issued by the Government Actuary's Department could be implemented.

We are using the consultation process to express views in relation to the indirect issue of the impact on drawdown.

Question 1: The Government would welcome any data that would help us get a better understanding of whether our assumed market impact is correct. We are, in particular, seeking data on two key areas:

a) the number of term life policyholders and annuitants, and the gender mix, to allow extrapolation to estimated aggregate impact; and

b) industry implementation costs.

We conducted a straw poll of drawdown providers at our seminar on 28 February 2012 to determine the approximate gender mix of drawdown customers, the results of which are as follows:

Split (to closest 10%)	%age of Respondents	Split (to closest 10%)	%age of Respondents
90% male	20%	40% male	0%
80% male	33%	30% male	0%
70% male	36%	20% male	0%
60% male	11%	10% male	0%
50% male	0%		

Average split = 76% male : 24% female.

These results give an indicative representation of the split between male and female based on the audience of approximately 90 people at the AMPS conference, rather than a detailed analysis of actual underlying data.

Question 2: Do you agree that the scope of the regulations should be restricted to repealing paragraph 22 of Schedule 3 to the Equality Act?

A key concern is that drawdown from a company pension scheme (such as a SSAS) is treated differently from drawdown from a personal pension plan (such as a SIPP). Two-thirds of those expressing an opinion at our conference voiced concern if a different set of GAD tables applied to SSAS as compared to SIPP. 41% were very concerned by this prospect.

As well as introducing unnatural competition between SSAS and SIPP product providers, which the pension simplification changes of April 2006 attempted to remove, operating two sets of tables would create a situation where a female might be best transferring from a SSAS (or indeed another sort of company pension scheme) to a SIPP (or other drawdown arrangement) to obtain best rates and vice-versa for males.

Although the audience at the conference was mainly SIPP and SSAS providers, rather than legal experts, we relay that 17% of those surveyed thought the ECJ ruling does not apply to either SSAS or SIPP and 45% thought it applied to SIPP and not SSAS.

Question 3: Do you have any comments, in relation to these draft regulations, on the scope of indirect discrimination in insurance and related financial services?

With regard to the point above, a SIPP is easily available to UK taxpayers and so it would be relatively easy for a female to organise a transfer to a SIPP, as it is a personal contract. It is not so easy for a member to organise the transfer to a SSAS or other company pension scheme as the scheme needs to be in existence or the member would need their own trading company to establish the scheme. So having two sets of tables for company pension schemes and personal pension plans would create a situation where females are more able to manage their finances to their advantage than males and so indirect discrimination.

There is also a concern that if males are not able to drawdown from their pension pots at an actuarially equivalent rate as females (i.e. by being able to drawdown higher amounts), then they would expect to have a larger drawdown fund remaining on death which is ultimately taxed at 55% when passed on to beneficiaries. Males would therefore be unable to make as much use of their drawdown pot during their lifetime, hence indirect discrimination, and the overall tax rate on the drawdown fund (income tax on drawdown and 55% tax on left over funds) would be higher.

Question 4: Neither the collection of data on sex nor the use of sex for the purposes of assessing overall risk are prohibited by the Directive or the Equality Act 2010. No provision is therefore needed in the Regulations. Do you agree?

No comment from AMPS.

Question 5: Do you have any comments on the definition of a new contract in the context of implementation of the Test Achats judgement?

AMPS member firms have questioned whether a drawdown arrangement is a contract and, indeed, whether a transfer from one drawdown provider to another or a review of the maximum rates under an existing drawdown arrangement are new contracts.

Our member firms generally do not believe that drawdown arrangements are insurance products as, even if they are sold by insurance companies, there is no element of insurance built into the contracts.

However, we understand that at present legislation – in particular Statutory Instrument 2006/129 - links the maximum drawdown rates to the annuity rates in the market and the expectation is that the drawdown tables will be amended to operate on a unisex basis.

We would support amendment to SI 2006/129 to remove the link between drawdown rates and market annuity rates in such a manner as to enable gender specific tables to continue (noting that the ECJ ruling only applies to insurance contracts) or indeed consideration may wish to be given to allowing a much simpler method (such as allowing up 10% of the fund to be drawn each year, perhaps increased to 20% from age 75).

Question 6: Do you agree that no amendment is needed to paragraph 20 of Schedule 3 to the Equality Act 2010 as a result of the Test Achats judgment?

No comment from AMPS.

Other issues

I appreciate that the consultation was restricted to the Test Achats judgment but it would be remiss not to mention the overwhelming support shown by the drawdown industry at the conference for a review of the drawdown rules. Drawdown providers have seen how the change to the drawdown rules effective from 6 April 2011 have impacted on the maximum drawdown rates with reductions in pension of a third not uncommon. We understand that it is a policy decision that maximum drawdown rates do not exceed 100% of the single life annuity but we have seen that the tabled drawdown rates have diverged from the annuity market and, of course, the change in the rules coincided with funds under performing and interest rates reducing to historically low levels.

84% of our audience supported a review of the 100% GAD maximum drawdown rule and 93% supported an increase in the minimum yield (currently 2%) used for calculating maximum drawdown rates. You do not often get such strong support for issues and therefore the industry voice should not be ignored. Many of our members are remunerated on a percentage of fund basis and so there is no hidden agenda as an increase in the drawdown rate would reduce their funds under management.

It is also worth noting that according to a separate survey that AMPS conducted in February 2012, 64% of those expressing an opinion thought that Flexible Drawdown was proving less popular than they had anticipated. Simply put, Flexible Drawdown is not being used to counter reductions in maximum drawdown rates and only rarely is it being used to exhaust pension funds.

We therefore have a generation of pensioners who are restricted in accessing their pension funds far more than they anticipated when entering a drawdown regime and they are unable to use their pension funds in a manner that might suit them (such as drawing down funds when they are younger and in more need of the income).

The above points will be passed on to your colleagues at HM Revenue & Customs but I suspect that a policy decision will be required if there is to be any amendment.

The data backing the online survey conducted during February 2012 and the votes cast at the conference held on 28 February can be provided if of interest.



Andrew Roberts
AMPS Chairman
29 February 2012
andrew.roberts@barnett-waddingham.co.uk