



**Jersey Financial
Services Commission**



**Government
of JERSEY**

Consultation Paper No.2 2018

Financial Services (Jersey) Law 1998:

Amendments to Schedules 1 and 2

A consultation on the proposal to expand Jersey's Investment Business regime to regulate advice given on the transfer out of defined benefit pension schemes.

Consultation Paper

The Government of Jersey and the Jersey Financial Services Commission (**JFSC**) invites comments on this consultation paper by 18 April 2018. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, please do not hesitate to contact any of the following:

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Alternatively, Lisa Springate at Jersey Finance Limited (**JFL**) is coordinating an Industry response that will incorporate any matters raised by local businesses. Comments should be submitted to JFL by 18 April 2018.

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It is the policy of the Government and the JFSC to make the content of all responses available for public inspection (unless specifically requested otherwise by the respondent).

It is the policy of JFL (unless otherwise requested or agreed) to collate all responses and share them verbatim with the JFSC on an anonymised basis (with reference made only to the type of respondent, e.g. individual, law firm, trust company etc.). This collated, anonymised response will, typically, be placed in JFL's permanent electronic archive which is currently open to all JFL members.

Glossary of Terms

Defined terms are indicated throughout this document as follows:

FSJL	Financial Services (Jersey) Law 1998
JFL	Jersey Finance Limited
JFSC	Jersey Financial Services Commission
IB Code	Code of Practice for Investment Business
FCA	Financial Conduct Authority (UK)
Income Tax Law	Income Tax (Jersey) Law 1961

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1 Executive Summary

1.1 Overview

- 1.1.1 This consultation paper seeks feedback on the proposal to bring within scope of the investment business regime set out under the FSJL advice provided by a person to an investor or potential investor in respect of the merits of the exercise of a right conferred under a defined benefit scheme to acquire, dispose of, underwrite or convert such defined benefit scheme.

1.2 What is proposed, how will it be achieved, transitional arrangements, consequences as a result of the proposal, and why?

What

- 1.2.1 We propose to amend the FSJL so that it will apply to any person who gives advice to investors or potential investors on the merits of disposing of a defined benefits scheme or converting the benefits into different benefits. Such advice will constitute investment business for the purposes of FSJL and will be subject to regulation by the JFSC. Specifically, those people advising on defined benefit schemes will be subject to the FSJL as well as the IB Code.

How

- 1.2.2 We are proposing to amend the definition of “*Investments*” in Schedule 1 of the FSJL so that it cross refers to “defined benefit schemes”, which is set out in the Income Tax Law.
- 1.2.3 The Income Tax Law sets out what a defined benefit scheme is at Article 130B(2):
“defined benefit scheme” means a scheme where the scheme rules define the benefit independently of the contributions payable and benefits are not directly related to the investments of the scheme.
- 1.2.4 To limit the scope of the investment business regime as set out in Article 2(2) of the FSJL in respect of defined benefit schemes, it is proposed that this new investment type would only be applicable to advice provided in the case described in Article 2(2)(c)(ii) of the FSJL as follows:
Article 2(2)(c)(ii) of the FSJL:
(2) A person carries on investment business if the person –
(c) gives investment advice, that is, the person gives to persons in their capacity as investors or potential investors advice on the merits of –
(ii) the exercise of a right conferred by an investment to acquire, dispose of, underwrite or convert the investment.
- 1.2.5 It is intended that this change will be achieved by amending Schedules 1 and 2 in the FSJL by way of amending Order (the “Amending Schedules Order”), attached as Appendix A to this Consultation Paper.
- 1.2.6 We note that the Financial Services (Investment Business (Client Assets)) (Jersey) Order 2001 has a number of references to investments within that Order. It is intended that this new type of investment, being defined benefit schemes, will not be subject to this Order. On this basis we also intend to amend the Client Assets

Order to ensure that this is the case and attach the amending order (the Client Asset Order Amendment) as Appendix B to this Consultation Paper.

Transitional Arrangements under FSJL in respect of the Proposal

- 1.2.7 We recognise that there may be some companies whose operations are not currently regulated under FSJL for carrying on investment business. Accordingly, those companies will not at present be subject to regulation under FSJL or the IB Code.
- 1.2.8 To assist those companies that are currently unregulated, the Amending Schedules Order proposes a 3 month transitional period to allow all persons advising on defined benefit schemes time to make their application to the JFSC for authorisation to carry on investment business.

Consequence as a result of the Proposal

- 1.2.9 The Income Tax Law sets out specific taxation rules that apply to companies that meet the definition of “*financial services company*” as set out in Article 123D (4) of that Law.
- 1.2.10 The definition of “*financial services company*” includes a company which is registered under the FSJL to carry out investment business.
- 1.2.11 A company which is within the definition of a “*financial services company*” and has a permanent establishment in Jersey is charged tax under Schedule D at the rate of 10%.
- 1.2.12 Therefore, following a change to the scope of the investment business regime under the FSJL, a company which is subsequently required to register to carry on investment business and which has a permanent establishment in Jersey will also become chargeable to tax at the rate of 10% in accordance with the Income Tax Law.

Why

- 1.2.13 Defined benefit schemes provide valuable pension benefits to consumers. In some cases a transfer out of such a scheme may be appropriate, however the JFSC has become aware of a number of cases where advice to transfer benefits from such a scheme has been made without properly considering the suitability of the advice being given or explaining the risks that such a transfer may create.
- 1.2.14 This is particularly concerning given the strong relationship between a person’s pension arrangements and their standard of living post-retirement. Inappropriate financial advice on pension products can have a significant detrimental impact on consumer outcomes.
- 1.2.15 The current regulatory treatment of pension transfer advice in Jersey is somewhat unclear and has some gaps. Whilst the JFSC considers that advice on a transfer out of a defined benefit scheme would often be caught by regulation because of a related recommendation to invest the proceeds in one or more investments as defined under Schedule 1 of the FSJL, there is some inconsistency in how this is interpreted in Industry and there is a possibility that firms could seek to structure themselves in a manner that would avoid regulation.

- 1.2.16 The nature of these transfers means that consumers are not going to be aware they have received unsuitable advice until they are adversely impacted and most likely retired.
 - 1.2.17 The JFSC's supervision division has seen instances of unsuitable advice when undertaking on-site examinations. Please refer to paragraph 2.3 of the JFSC's summary findings from its Themed Examination Programme 2017: Suitability of Investments. <http://www.jerseyfsc.org/media/1726/themed-examination-programme-q2-2017-suitability-of-investments-summary-findings-feb-2018.pdf>
 - 1.2.18 The Financial Conduct Authority (UK) (FCA) publicised in late 2017 that the number of consumers transferring from defined benefit schemes to personal pensions had grown significantly in the past year; further less than 50% of the advice that was given was deemed suitable. <https://www.fca.org.uk/news/news-stories/our-work-defined-benefit-pension-transfers>
- 1.3 Who would be affected, and in what manner?
- 1.3.1 The proposals in this consultation paper have the potential to affect all persons who provide advice on transfers out (disposal) of defined benefit schemes.
 - 1.3.2 For the reasons set out in 1.2.15, above, the JFSC anticipates that most affected persons will already be carrying out investment business and applying the relevant regulatory provisions to pension transfer advice.
 - 1.3.3 Potentially there are some businesses within Jersey that are advising on defined benefit schemes that are not currently regulated for such activity under FSJL, and we are particularly interested to hear about the impact of this proposal to such businesses, particularly noting that:
 - 1.3.3.1 some companies involved in this activity may currently be subject to tax at the rate of 0% because they do not meet the definition of a "financial services company" in the Income Tax Law; whereas pursuant to Article 123D of the Income Tax Law, a company registered to carry on investment business that has a permanent establishment in Jersey will be charged to tax at the rate of 10%, and this may now apply to them;
 - 1.3.3.2 businesses would need to apply to be registered to carry on investment business in accordance with the FSJL within the transitional period discussed above.

2 Consultation

2.1 Basis for consultation

- 2.1.1 The JFSC has issued this consultation paper in accordance with Article 8(3) of the Commission Law, as amended, under which the JFSC “may, in connection with the carrying out of its functions ...consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate”.

2.2 Responding to the consultation

- 2.2.1 The Government and JFSC invite comments by email, or in writing, from interested parties on the proposals included in this consultation paper. Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.
- 2.2.2 Comments should be received by the Government and/or JFSC no later than 18 April 2018.

2.3 Next steps

- 2.3.1 Following this consultation, the JFSC will publish feedback in quarter 2 of 2018.
- 2.3.2 Barring unforeseen consequences the Amending Schedules Order would be signed no later than the 25 April 2018, coming into force 3 months after the day on which it is made.

3 The JFSC

3.1 Overview

- 3.1.1 The JFSC is a statutory body corporate established under the Commission Law. It is responsible for the supervision and development of financial services provided in or from within Jersey.

3.2 The JFSC's functions

- 3.2.1 Article 5 of the Commission Law prescribes that the JFSC shall be responsible for:
- 3.2.1.1 the supervision and development of financial services provided in or from within Jersey;
 - 3.2.1.2 providing the States of Jersey, any Minister of any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;
 - 3.2.1.3 preparing and submitting to the Chief Minister recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;
 - 3.2.1.4 such functions in relation to financial services or such incidental or ancillary matters:
 - › as are required or authorised by or under any enactment, or
 - › as the States of Jersey may, by Regulations, transfer; and
 - 3.2.1.5 such other functions as are conferred on the JFSC by any other Law or enactment.

3.3 Guiding principles

- 3.3.1 Article 7 of the Commission Law sets out the JFSC's guiding principles which require the JFSC to have particular regard to:
- 3.3.1.1 the reduction of risk to the public of financial loss due to dishonesty, incompetence, malpractice, or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;
 - 3.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
 - 3.3.1.3 the best economic interests of Jersey; and
 - 3.3.1.4 the need to counter financial crime in both Jersey and elsewhere.

4 The Proposal

- 4.1 To introduce the regulation of advice on the transfer out (disposal) of a defined benefit scheme
 - 4.1.1 Details of the proposal including what is proposed and why, the mechanism by which this will be achieved and who will be affected and in what manner, are explained in detail in sections 1.2 and 1.3 of this Consultation Paper. The proposed timeframes are explained in section 2.3.

Question 1

Do you have any concerns with this proposal being introduced in the manner and/or the timeframes detailed? Please explain in detail what your concerns are.

Appendices

Appendix A: The Amending Schedules Order

Appendix B: The Client Asset Order Amendment



FINANCIAL SERVICES (AMENDMENT OF SCHEDULES TO LAW) (JERSEY) ORDER 201-

Explanatory Note

This Order further amends Schedules 1 and 2 to the Financial Services (Jersey) Law 1998 (the “Law” as defined in *Article 1*).

Article 2 amends Schedule 1 to the Law to include as an investment a defined benefit scheme (within the meaning given by Article 130B(2) of the Income Tax (Jersey) Law 1961).

Article 3 amends Part 1 of Schedule 2 to the Law to exclude the following investment business from the classes of financial service business for the purposes of this Law –

- (a) dealing in a defined benefit scheme that is, the person buys, sells, subscribes for or underwrites the defined benefit scheme, either as principal or as agent;
- (b) undertaking discretionary investment management in respect of a defined benefit scheme, that is, the person decides as agent to buy, sell, subscribe for or underwrite a defined benefit scheme on behalf of a principal;
- (c) giving investment advice in respect of a defined benefit scheme, that is, giving to persons in their capacity as investors or potential investors advice on the merits of the purchase or sale of, subscription for, or underwriting of, a defined benefit scheme.

Article 4 provides the title of the Order and provides for it to come into force 3 months after the day on which it is made.



FINANCIAL SERVICES (AMENDMENT OF SCHEDULES TO LAW) (JERSEY) ORDER 201-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE CHIEF MINISTER, on the recommendation of the Commission, in pursuance of Article 4(1) of the Financial Services (Jersey) Law 1998, orders as follows –

1 Interpretation

In this Order “Law” means the Financial Services (Jersey) Law 1998.

2 Schedule 1 amended

In Schedule 1 to the Law after paragraph 9 there shall be inserted the following paragraph –

“9A Defined benefit schemes

Defined benefit schemes (within the meaning of Article 130B(2) of the Income Tax (Jersey) Law 1961).”.

3 Schedule 2 amended

In Part 1 of Schedule 2 to the Law, after paragraph 17 there shall be added the following paragraph –

“18 Defined benefit schemes

- (1) Dealing in a defined benefit scheme that is, the person buys, sells, subscribes for or underwrites the defined benefit scheme, either as principal or as agent.
- (2) Undertaking discretionary investment management in respect of a defined benefit scheme, that is, the person decides as agent to buy, sell, subscribe for or underwrite a defined benefit scheme on behalf of a principal.
- (3) Giving investment advice in respect of a defined benefit scheme, that is, giving to persons in their capacity as investors or potential investors advice on the merits of the purchase or sale of, subscription for, or underwriting of, a defined benefit scheme.
- (4) In this paragraph ‘defined benefit scheme’ has the meaning given by Article 130B(2) of the Income Tax (Jersey) Law 1961.

4 Citation and commencement

This Order may be cited as the Financial Services (Amendment of Schedules to Law) (Jersey) Order 201- and shall come into force 3 months after the day on which it is made.



FINANCIAL SERVICES (INVESTMENT BUSINESS (CLIENT ASSETS)) (AMENDMENT) (JERSEY) ORDER 201-

Explanatory Note

This Order amends Article 1 of the Financial Services (Investment Business (Client Assets)) (Jersey) Order 2001 to insert a definition for the term “investment” so that it does not include a defined benefit scheme (within the meaning given by Article 130B(2) of the Income Tax (Jersey) Law 1961). The amendment is required because of the changes made to Schedule 1 and Schedule 2 of the Financial Services (Jersey) Law 1998 by the Financial Services (Investment Business (Client Assets)) (Amendment) (Jersey) Order 201-) (*Article 1*).

Article 2 provides the title of this Order and provides for it to come into force on the same day as the Financial Services (Amendment of Schedules to Law) (Jersey) Order 201-.



FINANCIAL SERVICES (INVESTMENT BUSINESS (CLIENT ASSETS)) (AMENDMENT) (JERSEY) ORDER 201-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE CHIEF MINISTER, in pursuance of Articles 20 and 42 of the Financial Services (Jersey) Law 1998, and on the recommendation of the Financial Services Commission, orders as follows –

1 Financial Services (Investment Business (Client Assets)) (Jersey) Order 2001 amended

In Article 1 of the Financial Services (Investment Business (Client Assets)) (Jersey) Order 2001, after the definition “intermediary” there shall be inserted the following definition –

“ ‘investment’ does not include a defined benefit scheme (within the meaning given by Article 130(B(2) of the Income Tax (Jersey) Law 1961).”.

2 Citation and commencement

This Order may be cited as the Financial Services (Investment Business (Client Assets)) (Amendment) (Jersey) Order 201- and shall come into force on the same day as the Financial Services (Amendment of Schedules to Law) (Jersey) Order 201-.