

# **Feedback on Consultation Paper No. 2 2018**

## **Financial Services (Jersey) Law 1998:**

- › **Amendments to Schedules 1 and 2**

## **Financial Services (Investment Business (Client Assets)) (Jersey) Order 2001:**

- › **Amendment to Article 1**

A feedback paper on Consultation Paper No. 2 2018 relating to the proposal to expand Jersey's Investment Business regime to regulate advice given on the transfer out of defined benefit pension schemes.

## Feedback to Consultation Paper No. 2

This paper reports on responses received by the Jersey Financial Services Commission (**JFSC**) and the Government of Jersey to Consultation Paper No.2 2018; 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, which proposed amendments to the Financial Services (Jersey) Law 1998 (**FSJL**) and Financial Services (Investment Business (Client Assets)) (Jersey) Order 2001 (**IB CAO**).

## Glossary of Terms

Defined terms are indicated throughout this document as follows:

FSJL	Financial Services (Jersey) Law 1998
IB CAO	Financial Services (Investment Business (Client Assets)) (Jersey) Order 2001
JFL	Jersey Finance Limited
JFSC	Jersey Financial Services Commission

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# 1 Executive Summary

## 1.1 Overview

- 1.1.1 We issued Consultation Paper No.2 2018 on 4<sup>th</sup> April 2018, proposing to expand Jersey's Investment Business regime to regulate advice given on the transfer out of defined benefit pension schemes.
- 1.1.2 We received a number of responses directly and via Jersey Finance Limited (**JFL**) about the proposals. A summary of the responses and our feedback is set out in the next Section.
- 1.1.3 Taking account of the feedback received, we proceeded with all the proposed changes, both in the FSJL and in the IB CAO, on the 23<sup>rd</sup> of April 2018. A copy of the Amending Orders is shown in Appendix B.

## 1.2 Next steps

- 1.2.1 The amendments will come into force on the 23<sup>rd</sup> July 2018.
- 1.2.2 Government are preparing a consultation paper on the proposed regulation of pension providers and schemes.
- 1.2.3 The JFSC is planning on running an awareness initiative related to pensions.
- 1.2.4 The JFSC will be undertaking a broad review of the professional qualification requirements in 2018 and relevant pension professional qualifications are to be included in the review.
- 1.2.5 It is the intention of the JFSC to prepare and publish guidance in relation to the amended legislation. The aforementioned Government consultation and observations from the Jersey Pensions Association will be considered when writing the guidance.

## 2 Consultation Feedback

### 2.1 Feedback received and joint JFSC and Government Response

- 2.1.1 Twelve responses were received, either directly or via JFL. We would like to thank respondents for taking the time to provide comments. Having taken account of the feedback, we will be proceeding with all the changes consulted on.
- 2.1.2 All respondents either welcomed or had no concerns with the expansion of Jersey's Investment Business regime to regulate advice given on the transfer out of defined benefit pension schemes.
- 2.1.3 Four respondents would welcome further regulation of pensions as a whole, two of which indicated they already voluntarily undertake further measures.
- 2.1.4 **Response:** This is the first step in increasing investor protection regarding advice on pension services; it is a small and fast-tracked amendment with low industry cost but significant impact for at-risk investors. Government are currently preparing a consultation paper for Industry review on the subject of how best to administer pensions in Jersey; this coupled with an upcoming JFSC awareness campaign on pensions, demonstrate the intent to further regulate pension advice in the future.
- 2.1.5 One respondent recognised the timelines that were suggested in the consultation to implement the changes but indicated that they would not want this to be extended.
- 2.1.6 **Response:** The JFSC and Government both agreed with this sentiment, and recognised the importance of acting as quickly as possible to enhance regulation in this area of pension advice, given the observations of unsuitable advice by the JFSC and the Financial Conduct Authority (UK). The approach of amending orders demonstrates the intention to implement change as soon as possible, however the potential consequences related to the Income Tax (Jersey) Law 1961 and the requirement to register to carry on investment business in accordance with the FSJL (for businesses within Jersey that are advising on defined benefit schemes that are not currently regulated for such activity under FSJL), necessitated both a consultation period (albeit short) and a three month transition period. As such we consider the time period proposed and being implemented as both swift but appropriate.
- 2.1.7 The same respondent, in addition to supporting the proposal, indicated that it would support advice on pensions to be compulsory and that it would like to see an awareness campaign.
- 2.1.8 **Response:** the response in paragraph 2.1.4 refers to the preparation of a broad pensions consultation by Government and the JFSC awareness campaign regarding pensions; the former will present the opportunity for all options to be considered including compulsory advice.
- 2.1.9 Four respondents suggested that a minimum standard for professional qualifications would be beneficial. Two respondents indicated that if a minimum standard for professional qualifications were to be introduced, that adequate timeframes to respond to these should be considered.
- 2.1.10 **Response:** The JFSC will be undertaking a broad review of the professional qualification requirements in 2018 and relevant pension professional qualifications

are to be included in the review; the imposition of any new professional qualifications related to pensions will include a reasonable transition period.

- 2.1.11 One respondent raised questions regarding the accuracy of the terminology used to define the activity of defined benefit schemes and the accompanying exemptions, with the concern that the proposal might be ambiguous.
- 2.1.12 **Response:** We are aware that if we were to regulate pension advice more broadly we would consider amending Article 2 of the FSJL, and this may ultimately be necessary depending on the outcome of the pending Government consultation on pensions. Given the need to act quickly and that the scope of this amendment was solely on the advice given for transfers out of defined benefit schemes, we were able to achieve this by way of Orders without amending Article 2 of the FSJL.
- 2.1.13 The same respondent had concerns regarding how residency impacted the proposed regulation.
- 2.1.14 **Response:** Consideration should be given to Article 2(2)(c)(ii) of the FSJL with the view that the exemptions provided by the amending Orders were to ensure this was the only part of Article 2 that applied to the new activity, and thus captured the activity appropriately. In relation to residency, consideration should be given to Article 2 (1) of the FSJL.

## Appendix A – List of Respondents

- › Affinity Private Wealth
- › Bedell Cristin Jersey Partnership
- › Brooks Macdonald
- › De Carteret Wealth
- › European Insurance Brokers Limited
- › Fairway Pensions Trustees Limited
- › Personal Finance Society
- › Jersey Consumer Council
- › 3 Insurance companies (via Jersey Finance)
- › A bank (via Jersey Finance)



## Appendix B – Amending Orders

### FINANCIAL SERVICES (AMENDMENT OF SCHEDULES TO LAW) (JERSEY) ORDER 2018

*Made*

*23rd April 2018*

*Coming into force*

*23rd July 2018*

**THE CHIEF MINISTER**, in pursuance of Article 4(1) of the Financial Services (Jersey) Law 1998<sup>[1]</sup> and on the recommendation of the Jersey Financial Services Commission, orders as follows –

#### **1 Interpretation**

In this Order “Law” means the Financial Services (Jersey) Law 1998<sup>[2]</sup>.

#### **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<sup>[3]</sup>).”.

#### **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 by buying, selling, subscribing for or underwriting the defined benefit scheme, either as principal or as agent.
- (2) Undertaking discretionary investment management in respect of a defined benefit scheme by deciding 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 by 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 2018 and shall come into force 3 months after the day on which it is made.

**SENATOR I.J. GORST**

*Chief Minister*

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*11* chapter 13.225

*12* chapter 13.225

*13* chapter 24.750

# FINANCIAL SERVICES (INVESTMENT BUSINESS (CLIENT ASSETS)) (AMENDMENT) (JERSEY) ORDER 2018

*Made*

*23rd April 2018*

*Coming into force*

*23rd July 2018*

**THE CHIEF MINISTER**, in pursuance of Articles 20 and 42 of the Financial Services (Jersey) Law 1998<sup>[1]</sup> and on the recommendation of the Jersey 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<sup>[2]</sup>, 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 130B(2) of the Income Tax (Jersey) Law 1961<sup>[3]</sup>);”.

## **2 Citation and commencement**

This Order may be cited as the Financial Services (Investment Business (Client Assets)) (Amendment) (Jersey) Order 2018 and shall come into force on the same day as the Financial Services (Amendment of Schedules to Law) (Jersey) Order 2018<sup>[4]</sup>.

**SENATOR I.J. GORST**

*Chief Minister*

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<sup>[1]</sup> chapter 13.225  
<sup>[2]</sup> chapter 13.225.15  
<sup>[3]</sup> chapter 24.750  
<sup>[4]</sup> R&O.57/2018