



Jersey

DRAFT FINANCIAL SERVICES OMBUDSMAN (AMENDMENT) (JERSEY) LAW 202-

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DRAFT FINANCIAL SERVICES OMBUDSMAN (AMENDMENT) (JERSEY) LAW 202-

A LAW to amend the Financial Services Ombudsman (Jersey) Law 2014 and the Financial Services Ombudsman (Exempt Business) (Jersey) Order 2014 in relation to certain activity relating to pension schemes

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

PART 1

FINANCIAL SERVICES OMBUDSMAN (JERSEY) LAW 2014 AMENDED

1 Financial Services Ombudsman (Jersey) Law 2014 amended

This Part amends the Financial Services Ombudsman (Jersey) Law 2014.

2 Article 1 (interpretation) amended

In Article 1 –

- (a) in the definition “financial service provider”, at the end there is inserted “or relevant pension activity”;
- (b) after the definition “Ombudsman”, there is inserted –
 - “ “pension scheme” means a fund, scheme or other arrangement, constituted in one or more instruments or agreements or by statute, that is, or is held out as being –
 - (a) an approved Jersey scheme, approved drawdown contract or approved trust, as defined in Article 130(1) of the Income Tax (Jersey) Law 1961;

- (b) an occupational pension scheme for overseas employees approved under Article 131A of that Law;
 - (c) a retirement annuity contract for overseas residents approved under Article 131C of that Law;
 - (d) a public service pension scheme; or
 - (e) the pension scheme for teachers established under the Teachers' Superannuation (Jersey) Law 1979;";
- (c) after the definition "Principal Ombudsman" there is inserted –
- “public service pension scheme” means –
- (a) a pension scheme established by Regulations made under Article 2(1) of the Public Employees (Retirement) (Jersey) Law 1967; and
 - (b) the Public Employees Pension Scheme established by the Public Employees (Pension) (Jersey) Law 2014;”
- (d) after the definition “relevant financial services business” there is inserted –
- “relevant pension activity” has the meaning given by Article 9;”;
- (e) after the definition “respondent” there is inserted –
- “scheme manager” has the meaning given in Article 130(1) of the Income Tax (Jersey) Law 1961;”.

3 Article 7 (eligible complaint) amended

In Article 7(b), after “business” there is inserted “or relevant pension activity”.

4 Article 8 (eligible complainant) amended

In Article 8 –

- (a) in paragraph (1) –
 - (i) after the definition “relevant act” there is inserted –

“relevant activity” means the relevant pension activity in the course of which the relevant act occurred;”;
 - (ii) for the definition “relevant provider” there is substituted –

“relevant provider” means –

 - (a) if the relevant act occurred in the course of relevant financial services business, the person whose act was the relevant act (being the person carrying on the relevant business at the time of that act, whether or not that person is or was a financial service provider at any other time); or
 - (b) if the relevant act occurred in the course of relevant pension activity –
 - (i) the scheme manager,
 - (ii) the employer of the person to whom the pension scheme in question relates,

- (iii) in the case of a public service pension scheme, the Committee of Management managing the scheme under Article 4 of the Public Employees (Pension) (Jersey) Law 2014, or the Treasurer of the States acting as administrator, or a person appointed as administrator, of the scheme under Article 19 of the Public Employees (Pension Scheme) (Administration) (Jersey) Regulations 2015, or
 - (iv) in the case of the pension scheme for teachers established under the Teachers' Superannuation (Jersey) Law 1979, the Teachers' Superannuation Management Board established by Article 2 of the Teachers' Superannuation (Administration) (Jersey) Order 2007,
- (whether or not the relevant act was an act of a relevant provider mentioned in this sub-paragraph or an act of another person that occurred in the exercise of any powers, duties or functions delegated to that person by the relevant provider).”;
- (b) in paragraph (6)(a)(i), after “business” there is inserted “or relevant pension activity”;
 - (c) in paragraph (8)(b), for “relevant business” there is substituted “relevant activity”;
 - (d) in paragraph (16), after “business” there is inserted “or relevant activity”.

5 Article 9 (relevant financial services business) amended

In Article 9 –

- (a) in the heading, after “business” there is inserted “and relevant pension activity”;
- (b) paragraph (1)(h) is deleted;
- (c) after paragraph (1) there is inserted –
 - “(1A) Relevant pension activity is any activity, other than activity exempted under paragraph (4), so far as it comprises the establishment or operation of a pension scheme (whether that activity is carried on by way of business or otherwise).”;
- (d) in paragraph (2) –
 - (i) in the opening words, for “(the “main business”)” there is substituted “or to any relevant pension activity within the meaning of paragraph (1A) (“the main business or activity”)”;
 - (ii) in sub-paragraph (a), after “main business” there is inserted “or activity”;
 - (iii) in sub-paragraph (b)(i) –
 - (A) after “main business” there is inserted “or activity”;
 - (B) after “that business” there is inserted “or activity”;
- (e) in paragraph (3) –
 - (i) in sub-paragraph (c), after “main business” there is inserted “or activity”;

- (ii) in sub-paragraph (d), after “main business” there is inserted “or activity”;
- (f) in paragraph (4) –
 - (i) after “classes of business” there is inserted “or activity”;
 - (ii) after “financial services business” there is inserted “or relevant pension activity”;
- (g) in paragraph (5)(b), after “business” there is inserted “or activity”.

6 Article 10 (respondents) amended

In Article 10 –

- (a) in paragraph (2)(b)(ii) –
 - (i) after “financial services business” there is inserted “or relevant pension activity”;
 - (ii) after “same business” there is inserted “or activity”;
- (b) in paragraph (3)(c) –
 - (i) after “financial services business” there is inserted “or relevant pension activity”;
 - (ii) after “same business” there is inserted “or activity”.

7 Article 11 (timing conditions) amended

In Article 11(7)(a), after “business” there is inserted “or relevant pension activity”.

8 Article 12 (initial handling of complaints referred) amended

In Article 12(3)(d)(i), after “employment matters” there is inserted “(other than where the complaint relates to relevant pension activity)”.

9 Article 16 (awards and directions) amended

In Article 16 –

- (a) in paragraph (2)(b)(ii), after “business” there is inserted “or activity”;
- (b) after paragraph (5) there is inserted –
 - “(5A) But if the act complained of occurred in the course of relevant pension activity, the steps that may be included in a direction under paragraph (1)(b) include the payment of money or money’s worth into the complainant’s pension scheme.”;
- (c) in paragraph (7), at the end there is inserted “, unless the act complained of occurred in the course of relevant pension activity”;
- (d) after paragraph (9) there is inserted –
 - “(9A) Where a direction under paragraph (1)(b) includes the payment of money [into the complainant’s pension scheme] by virtue of paragraph (5A), the direction may provide –

- (a) for the amount payable under the direction to bear interest at a rate and as from a date specified in the direction; and
- (b) that the amount payable under the direction is recoverable by the complainant as if it were a debt due from the respondent.”;
- (e) in paragraph (10) –
 - (i) after “(9)(b)” there is inserted “or an amount under paragraph (9A)(b)”;
 - (ii) in sub-paragraph (a), after “the award” there is inserted “or recover the amount”.

10 Article 25A (savings and transitional provision) inserted

After Article 25 there is inserted –

“25A Savings and transitional provision

Schedule 5 makes transitional provision and savings consequential upon amendments to this Law.”

11 Schedule 1 (constitution of OFSO) amended

In paragraph 1(7) (appointment of board members) of Schedule 1 –

- (a) after “financial services business”, in both places it occurs, there is inserted “or relevant pension activity”;
- (b) after “in business”, there is inserted “or activity”.

12 Schedule 3 (relevant pension business) deleted

Schedule 3 is deleted.

13 Schedule 5 (savings and transitional provision) inserted

After Schedule 4 there is inserted –

“SCHEDULE 5

SAVINGS AND TRANSITIONAL PROVISION

1 Interpretation

In this Schedule “commencement day” means the day on which the Financial Services Ombudsman (Amendment) (Jersey) Law 202- comes into force;

2 Complaints referred to the OFSO before commencement day

A complaint which before commencement day –

- (a) has been referred to the OFSO; and
- (b) has not been subject to a binding determination under Article 18,

is to be dealt with by the OFSO under the terms of the Law as in force immediately before commencement day.

3 Complaints not referred to the OFSO before commencement day

- (1) This paragraph applies to a complaint which –
 - (a) has not been referred to the OFSO before commencement day; and
 - (b) relates to a relevant act that occurred –
 - (i) before commencement day; and
 - (ii) in the course of “relevant business”, where that term has the meaning under the Law as in force immediately before commencement day.
- (2) A complaint described in sub-paragraph (1) is to be dealt with under the terms of the Law as in force immediately before commencement day, but as if –
 - (a) for paragraph (1)(c) of Article 11 there were substituted –
 - “(c) the complaint is referred to the OFSO on or before the expiry of the period ending 12 months after the day on which the Financial Services Ombudsman (Amendment) (Jersey) Law 202- comes into force”;
 - and
 - (b) paragraphs (4) to (9) of Article 11 were omitted.”

PART 2

FINANCIAL SERVICES OMBUDSMAN (EXEMPT BUSINESS) (JERSEY) ORDER 2014 AMENDED

14 Financial Services Ombudsman (Exempt Business) (Jersey) Order 2014 amended

This Part amends the Financial Services Ombudsman (Exempt Business) (Jersey) Order 2014.

15 Article 1 (interpretation) amended

In Article 1, in the definition “main business”, after “business” there is inserted “or activity”.

16 Article 2 (exempt business) amended

In Article 2 –

- (a) for paragraph (2)(j) there is substituted –
 - “(j) subject to Article 6, relevant pension activity;”
- (b) in paragraph (2)(l), after “business” there is inserted “or activity”;

17 Article 3 (exempt occupational pension business) deleted

Article 3 is deleted.

18 Article 6 (exempt ancillary brokerage business) amended

In Article 6 –

- (a) in paragraph (2) –
 - (i) in sub-paragraph (a), after “principal business”, in both places it occurs, there is inserted “or activity”;
 - (ii) in sub-paragraph (b), after “main business” there is inserted “or activity”;
- (b) in paragraph (3) –
 - (i) after “the business” there is inserted “or activity”;
 - (ii) after “main business” there is inserted “or activity”.

PART 3

CITATION AND COMMENCEMENT

19 Citation and commencement

This Law may be cited as the Financial Services Ombudsman (Amendment) (Jersey) Law 202- and comes into force [7 days after it is registered/on a day to be specified by the States by Act].