



## Tax guidance notes for pension scheme administrators

**VERSION 3.3:**

**This version is effective from 1 January 2023**

Please use the e-mail link below to feedback comments or questions about this guide:

[taxpensionschemes@gov.je](mailto:taxpensionschemes@gov.je)

Please find below the links to the relevant legislation relevant to this publication:

[Income Tax \(Jersey\) Law 1961](#)

[Income Tax \(Jersey Occupational Pension Schemes\) \(Jersey\) Order 2014](#)

[Income Tax \(Actuarial Equivalents\) \(Jersey\) Order 2017](#)

[Income Tax \(Minimum Retirement Capital\) \(Jersey\) Order 2017](#)

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## Section 1 – Background

- 1.1 This information has been prepared primarily for the use and assistance of persons who provide advice on or manage pension schemes in Jersey.
- 1.2 These guidance notes reflect changes which have effect from 1<sup>st</sup> January 2023 and supersede all other guidance notes previously published. These notes are intended to provide some background information only and should not be taken as a definitive statement of the law on any aspect.
- 1.3 Any reference to a particular Article within these guidance notes means in reference to the Income Tax (Jersey) Law 1961 (“Income Tax Law”), unless otherwise stated<sup>1</sup>.
- 1.4 These guidance notes outline the prescribed conditions and requirements which must be complied with for a scheme to be approved by the Comptroller of Revenue (“the Comptroller”) under the relevant Article, and for that approval to be maintained. The tax rules set out the boundaries of what is acceptable, but there is no obligation on pension schemes to offer the maximum flexibility stated.
- 1.5 Pension Schemes should review their documentation to ensure that the definitions contained in their scheme rules comply with the legal definitions set out at Appendix 7 of this document.

## Section 2 – Approval of Jersey occupational pension schemes under Article 131 of the Income Tax Law

- 2.1. A scheme must comply with the provisions of Article 131 of the Income Tax Law to be approved as a Jersey occupational pension scheme.
- 2.2. The scheme must be established in connection with a trade or undertaking that has employees in Jersey, to provide an income for life for those employees. The scheme must be a superannuation fund bona fide established under irrevocable trust, or an otherwise bona fide established scheme.
- 2.3. If only part of the scheme has the purpose of being established in connection with a trade or undertaking that has employees in Jersey, the approval would be for that part of the scheme only. The Income Tax (Jersey Occupational Pension Schemes) (Jersey) Order 2014 details how applications for approval of a scheme shall be made. Subsequent amendments and alterations to the rules of an approved scheme shall be notified to the Comptroller.
- 2.4. If the scheme rules provide an income for life and in addition provide for a death in service payment, that scheme is capable of approval under Article 131. However, if the scheme provides only for a death in service payment for an individual, then that scheme will not be capable of approval under Article 131<sup>2</sup>.
- 2.5. The employer must contribute to the scheme. However, should the scheme close and the employer cease to contribute, approval of the scheme will not be automatically withdrawn.

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<sup>1</sup> [Click here to go to the Income Tax \(Jersey\) Law 1961 on JE Law website](#)

<sup>2</sup> See Appendix 10

## Membership of Jersey occupational pension schemes

- 2.6. Membership must be confined to employees of the employer(s) but need not be open to all employees. The scheme may include part time or temporary employees.
- 2.7. An employer may participate in a centralised or multi-employer scheme on the condition that the scheme is established under a master trust. Any participating employer with less than 12 members remains subject to the additional conditions applying to “small self-administered occupational pension schemes”<sup>3</sup>.
- 2.8. Only full-time working directors may be included in a scheme, whether or not they have a controlling interest in the business<sup>4</sup>.
- 2.9. A proprietary director or employee may be admitted to a “small self-administered occupational pension scheme” subject to the prescribed conditions and requirements set out in Section 3 of these guidance notes.
- 2.10. Proprietor(s) of a business (e.g. partners in a partnership, sole traders) are not employees and neither they nor their spouse(s) or civil partner(s) can be included in the membership of the scheme. Should an employee become a proprietor of a business, they must be treated as having withdrawn from the scheme.

## Pension benefits payable by a Jersey occupational pension scheme

- 2.11. The scheme must provide for the payment of an income for life to members, which must commence when the member is between the ages of 50 and 75. Early commencement of payments is provided for under Article 12.3 of these guidance notes. Other payments may only otherwise be made as provided for in Part 19 of the Income Tax Law.
- 2.12. There is no requirement for the member to retire or change their employment duties before the scheme commences the payment of an income for life. This allows for flexible retirement, where members can combine employment with pension income from a Jersey occupational pension scheme.
- 2.13. From 1 January 2015 there are no tax rules regarding the amount of pension income that may be paid by an approved Jersey occupational pension scheme (“benefit limits”). However, in the case of an approved Jersey occupational pension scheme which was subject to an approval under Article 131 as at 31<sup>st</sup> December 2014, if the scheme:
  - (a) Restricts the amount of pension income that the scheme can provide, referencing a maximum amount; and
  - (b) Does not allow for variation or amendmentThen the Former Benefit Limit Rules<sup>5</sup> shall continue to apply, save to the extent that the scheme manager notifies the Comptroller in writing to the contrary.

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<sup>3</sup> See Section 3 of these guidance notes

<sup>4</sup> A full-time working director is a director who spends a minimum of 35 hours per week solely on the business of that company.

<sup>5</sup> The limits imposed on the maximum pension income that a scheme could pay as at 31 December 2014, without prejudicing approval of that scheme under Article 131, as more specifically set out in the paragraphs numbered 14, 15, 16, 17, 19, 22, 30, 31, 32, 33, 42 and 46 of the “Occupational superannuation funds and pension schemes practice notes”, which was published by the Comptroller and in effect on 31 December 2014. [Pre 2015 Occupational scheme benefit limit rules](#)

- 2.14. In addition, from 1 January 2015 schemes will have the option of introducing “pension flexibilities”, e.g. the relaxation of limits on access to lump sums, drawdown contracts, and pension fund transfers. The adoption of these new flexibilities is not compulsory.
- 2.15. A deferred or frozen pension can be payable by the scheme no earlier than the minimum pension age of 50, and no later than the maximum pension age of 75.
- 2.16. If the rules of the scheme provide for a deferred or frozen pension it cannot be assigned or surrendered.
- 2.17. following the death of a member, the scheme may provide for the payment of:
- (i) An income for life to one or more of the member’s dependants; or
  - (ii) A lump sum to the member’s estate; or
  - (iii) A lump sum to any other person
- 2.18. The scheme may provide for the income payable to a member to continue for a term not exceeding 10 years, starting with the commencement of payment of the income for life, notwithstanding the member’s death during that term. If the member dies, such income shall be capable of assignment to a dependant of the member by:
- (i) Testamentary disposition by the member; or
  - (ii) If the member dies intestate, by the member’s personal representatives in accordance with the laws of intestacy

### **Repayment of member contributions**

- 2.19. A scheme may allow for a member’s contributions to be returned to them if they have:
- (i) Been a member of the scheme for less than 5 years; and
  - (ii) Ceased to be employed by the employer; and
  - (iii) Not commenced benefits from the scheme
- 2.20. A refund of contributions may include interest or investment return.
- 2.21. If the rules of the scheme give an option to a member withdrawing from employment either to take a refund of his own contributions or to take other benefits, the election to take a refund of contributions must prohibit him/her from receiving any other benefits.

### **Pension fund transfers**

- 2.22. The scheme may allow for the transfer of the whole fund value, or part of the fund value (subject to prior written approval of the Comptroller), in accordance with Article 131CG. If the employee ceases to be a member of the scheme but continues in the service of the employer, their benefits may be held under the scheme until they retire or leave the employer’s service or be transferred to an approved annuity contract or retirement trust.
- 2.23. The scheme may therefore permit a transfer to or from an approved Jersey occupational pension scheme of a subsequent or previous employer.
- 2.24. The receiving scheme may regard the employees’ contributions within the transfer payment as representing the employee’s contributions for the purposes of determining how much could be returned to the employee under paragraph 2.22.

## Repayment of employer contributions

2.25. The scheme may allow all or part of the employer's contributions to be returned to the employer, with or without interest, subject to the exception below, with approval from the Comptroller. Where for administrative reasons, around individual's accounts, the employer makes and receives contributions to and from the same scheme, approval is only required if there is a net return of contributions to the employer.

## Discontinuance of schemes

2.26. The rules of a scheme may provide for its discontinuance due to bankruptcy or liquidation of the employer, or at the discretion of the employer. On discontinuance all contributions must cease, and the assets must be held by or on behalf of the scheme manager, to provide benefits according to the rules. The scheme will be wound up when all benefits have been paid.

2.27. Alternatively, the scheme may be immediately wound up and applied to provide the respective benefits. The benefits may be:

- (i) Transferred to approved Jersey occupational pension schemes of the new employers of the members
- (ii) Transferred and secured by the purchase of immediate or deferred non-assignable annuity contracts duly endorsed with the appropriate restrictions and agreed with the Comptroller; or
- (iii) Transferred to an annuity contract approved under Article 131B
- (iv) Transferred to a Jersey RTS approved under Article 131CA

2.28. If the scheme is operated by means of policies securing benefits for particular employees, the policies may be assigned to the employees with the agreement of the Comptroller.

2.29. If a scheme is wound-up, it may permit a member to commute the whole of their fund value if the rules regarding the commutation of small pots at Appendix 4 are met.

## Section 3 – Additional conditions and requirements in context of “small self-administered occupational pension schemes”

### Introduction

3.1. In this context, “small” means fewer than 12 members. “Member” includes active members, deferred members, and those in receipt of a pension from the scheme.

3.2. In these schemes it is often the case that some of the members also control the employer company and are trustees. This can present a trustee with a conflict of interests. Therefore, there are additional conditions attaching to the approval of these schemes.

### Additional conditions

3.3. An independent trustee, acceptable to the Comptroller, must be appointed, who:

- (i) Is a professional with financial experience, or a corporate trustee regulated by the Jersey Financial Services Commission under the Financial Services (Jersey) Law 1998 for the conduct of trust company business; and
- (ii) Is resident in Jersey; and
- (iii) Is unconnected with the other trustee(s)

- (iv) Cannot be removed by the other trustee(s) without permission of the Comptroller
- 3.4. The trustees must be prohibited from entering into any transactions with:
  - (i) The members of the scheme, or any person connected with them
  - (ii) The employer or participating employers
  - (iii) The directors and employees of the employer and participating employers, and anyone connected with them
- 3.5. Assets of the scheme may not be used for the personal benefit or enjoyment of the trustees or the scheme members.
- 3.6. Annual accounts must be prepared by a qualified accountant (acceptable to the Comptroller) and must be filed within 6 months of each year end.
- 3.7. The trustees of the scheme must be prohibited from paying any pension income or annuity directly. Pension benefits must be secured by the purchase of non-assignable annuity contracts, duly endorsed.
- 3.8. The scheme must be wound up in accordance with its rules at the same time as the employer goes into liquidation or otherwise ceases to exist.

#### **Exclusions from the above conditions**

- 3.9. Where a SSAS invests the whole of its assets in insurance policies written by an authorised insurance company, the Comptroller may allow some of the above conditions to be relaxed.
- 3.10. Monies held on current account, for incidental purposes only, will be disregarded in determining whether the whole of the scheme's assets are invested in such insurance policies.
- 3.11. The additional requirements for SSASs apply to all schemes no matter when they were established.

### **Section 4 – Approval of occupational schemes for overseas employees under Article 131A of the Income Tax Law**

- 4.1. A scheme seeking approval must comply with the provisions of Article 131A of the Income Tax Law to be an approved occupational pension scheme for overseas employees. The scheme must be a superannuation fund established under irrevocable trust in connection with a trade or undertaking that is carried on outside Jersey by a person non-resident in Jersey and have as its sole purpose the provision of superannuation benefits in respect of persons' employment in that trade or undertaking wholly outside Jersey. An exception to this is where a scheme is a multi-jurisdictional occupational pension scheme, referred to in Section 5.
- 4.2. If only part of the scheme has the purpose described above, then it is only that part of the scheme which can be approved under, and must comply with, Article 131A.
- 4.3. The scheme must:
  - (i) Prevent pension benefits being paid before the age of 50 (unless provided for under Article 12.3 of these guidance notes)
  - (ii) Require that pension benefits commence before the age of 75

- (iii) Expressly prohibit loans (or discretionary distributions prior to the age of 50) to members (or to any person connected (as defined in Article 3A) with a member)

## **Section 5 – Additional notes relating to multi-jurisdictional occupational pension schemes**

### **Introduction**

- 5.1. It is acknowledged that some occupational pension schemes are set up on a multi-jurisdictional basis. The scheme can be established in or outside of Jersey.
- 5.2. A “Jersey member” of a multi- jurisdictional occupational pension scheme is:
  - (i) A member of the scheme whose employment is or was being on in Jersey; or
  - (ii) Any dependant of a member described above
- 5.3. If a member of the scheme leaves the employment of the employer at a time when they remain within the scope of the Article 131 approval (i.e. they are/were a Jersey member), they remain within the scope of Article 131 approval even if they subsequently become tax resident outside Jersey. As such, whenever benefits are paid to the individual the scheme manager is required to meet the tax obligations outlined in Article 131 and Part 19 of the Income Tax Law.
- 5.4. A “non-Jersey member” is any member of a multi-jurisdictional occupational pension scheme who is not a “Jersey member”.

### **Part approval under Article 131**

- 5.5. Under the tax rules applying from 1 January 2015, it is statutorily possible to obtain approval under Article 131 for the “part” of an occupational pension scheme relating to the Jersey members.
- 5.6. To obtain part approval, the scheme rules and conditions, generally as well as those applying to the Jersey members, must meet the conditions outlined in Article 131, and the scheme manager must comply with the tax obligations under Part 19 of the Income Tax Law in relation to the jersey members. Where the scheme is established outside of Jersey, the scheme manager must provide a written undertaking to comply with these tax obligations.

### **Further guidance relating to multi-jurisdictional occupational pension schemes established in Jersey**

#### **Non-Jersey members**

- 5.7. Pension benefits paid by a pension scheme established in Jersey are Jersey source payments on which the recipient is subject to Jersey tax irrespective of where the recipient is tax resident.
- 5.8. A multi-jurisdictional occupational pension scheme can seek approval under Article 131A<sup>6</sup> for the part of the scheme relating to the non-Jersey members. The payment of benefits to the non-Jersey members within the scope of the Article 131A approval is statutorily exempt from Jersey tax under Article 131O(1), provided that the recipient is non-Jersey tax resident.

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<sup>6</sup> See Section 4 of these guidance notes.

## Jersey member becomes a non-Jersey member

5.9. Where there is:

- (i) A Jersey member of a multi-jurisdictional occupational scheme
- (ii) Who remains within the employment of the sponsoring employer
- (iii) But leaves Jersey and moves to another jurisdiction from which their employment is carried on; and
- (iv) Continues to save for their retirement within the same pension scheme

No pension fund transfer, within the meaning of Article 131CG, has taken place.

5.10. However an employee in a multijurisdictional scheme can if they have requested to do so transfer their pension fund to or from the Article 131 part to the other part. Where the other part is approved under Article 131A the scheme manager can rely on the approval of the Comptroller under 131CG(4) and that there will be no objection under 131CG(6), albeit the Comptroller would require notifications and confirmation of the pension fund holders residence. If the other part of the scheme is not approved under Article 131A then the process would be the same as a transfer to/from any other overseas scheme.

5.11. An employee who is seconded to another employer may contribute to the scheme, even if no remuneration or reduced remuneration is paid by the employer during this absence, provided that:

- ✓ There is a definite expectation of return to service; and
- ✓ The period of absence is not expected to exceed 3 years; and
- ✓ The employee does not become a member of any other approved occupational pension scheme during the period of absence

## Section 6 – Approval of Jersey Retirement Annuity Contracts under Article 131B of the Income Tax Law

### General

6.1. A contract shall be capable of approval as a Jersey retirement annuity contract if it complies with the following conditions:

- (i) The contract is made by an individual ordinarily resident in Jersey; and
- (ii) The contract is made with a company carrying on the business of granting annuities on human life in Jersey or Guernsey; and
- (iii) The contract complies with Article 131B of the Income Tax Law
- (iv) The company must be:
  - ✓ Resident in Jersey; or
  - ✓ An authorized insurance company; or
  - ✓ A person or institution authorised in accordance with the laws of the UK to carry on the business of granting Annuities on human life and carrying on through a branch or agency in Jersey or Guernsey

6.2. In the case of an insurance company, the company must ensure that tax is deducted from any annuity or lump sum payments and accounted for to the Comptroller.

6.3. The contract must not provide for contributions to be made by any person apart from:

- (i) The individual who made the contract; and
- (ii) The person from whom that individual receives relevant earnings

- 6.4. The contract must provide for the payment of an annuity to the individual for the life of the individual. Any annuity payable must be paid by an authorised insurance company. Following the death of the individual the contract may provide for the payment of:
- (i) An annuity to one or more of the individual's dependants for the life of the dependant
  - (ii) A lump sum commuting the whole of the fund value to the individual's estate or to any person
- 6.5. Notwithstanding the above, the scheme may provide for the income payable to a member to continue for a term not exceeding 10 years, starting with the commencement of payment of the annuity notwithstanding the member's death during that term). In the event the member dies, such income shall be capable of assignment to a dependant of the member either by:
- (i) Testamentary disposition by the individual; or
  - (ii) If the individual dies intestate, by the member's personal representatives in accordance with the laws of intestacy
- 6.6. No payments can be made to the individual other than those provided for in legislation.
- 6.7. Where an Article 131B contract is divided into "segments", each contract must have an independent legal existence. In addition, the scheme manager must be able to identify the fund value of each individual segment/contract.

#### **Additional conditions applying to self-administered retirement annuity contracts**

- 6.8. A company normally requires a permit from the Jersey Financial Services Commission to carry on insurance business in Jersey. However, a company that is incorporated by or on behalf of an individual and carries on an annuity business solely for that individual and their dependants, is exempt from the requirement to obtain a permit by virtue of Article 1(2) of the Insurance Business (General Provisions) (Jersey) Order 1996.
- 6.9. In effect, an individual can set up their own annuity company and enter into an annuity contract, with that company. This is a self-administered retirement annuity contract. The company must be established for the sole purpose of holding an annuity contract and cannot be used for any other purpose. In approving contracts with such companies the Comptroller will consider the compliance history of the individual and any other companies which they have had control over, as a proxy for their ability to manage this type of arrangement.
- 6.10. The contract must prohibit:
- (i) The person having control of the annuity fund borrowing funds on its behalf
  - (ii) The pension scheme loaning funds to the individual or to any person or company connected with the individual
  - (iii) Transactions between the individual (or any person or company connected with them) and the annuity fund – other than those transactions permitted by Law
  - (iv) *In specie* transfer of assets between the individual and retirement annuity company
  - (v) The individual (or any connected person) using the assets of the fund for personal benefit or enjoyment
  - (vi) Investment in a purchased life annuity
  - (vii) Any refund of contributions from the annuity fund to the individual
- 6.11. The contract must provide for the payment of an annuity to the individual, but the company

itself is not permitted to pay an annuity. At the retirement date, the annuity fund, net of any permissible lump-sum, is to be applied in the purchase of an annuity from the Jersey or Guernsey office of an authorised insurance company.

- 6.12. Where the individual's spouse or civil partner also enters a contract with the same annuity company, before approval can be granted, each contract must include the provision that the two funds will be kept in separate accounts. From 1 January 2015 the intermingling of the funds between the contracts held by the two individuals is prohibited. Transactions between the two separate funds are also not allowed.
- 6.13. Where a fund transfer into a self-administered retirement annuity contract which is segmented takes place, the fund which is being transferred can only be split between the segments if it originates from a scheme which was itself segmented.
- 6.14. Contributions paid to a Jersey retirement annuity contract in a year of assessment qualify for tax relief, subject to limits. The payment must be paid to the scheme by the pension holder.
- 6.15. A transfer of funds from another pension scheme is not treated as a contribution paid by or on behalf of the individual.
- 6.16. Accounts of the company must be made up to 31 December each year and must be prepared and signed by an independent qualified accountant, not connected to the annuitant and acceptable to the Comptroller. The annual accounts must be filed as soon as possible following the relevant year end.

## **Section 7 – Approval of Retirement Annuity Contracts for overseas employees under Article 131C of the Income Tax Law**

- 7.1. A scheme must comply with the provisions of Article 131C to be an approved retirement annuity contract for overseas residents.
- 7.2. The contract must be made by an individual:
  - (i) Who is not resident in Jersey; and
  - (ii) Whose employment, trade, or profession (if any) is exercised outside Jersey
- 7.3. The contract must be made:
  - (i) With a company carrying on business through a branch in Jersey, and carrying on the business of granting annuities on human life; or
  - (ii) Under an irrevocable trust established under the law of Jersey and administered in Jersey and having for its sole purpose the provision of retirement benefits for the individual
- 7.4. The contract may provide for the right to receive a lump sum representing the fund value.
- 7.5. The Comptroller's interpretation of the term "retirement annuity contract" is that the contract must accord generally with the terms of an approved Jersey retirement annuity contract, subject to any modifications to ensure it meets the requirements of the local laws of the pension holder, including:
  - (i) Prevent pension benefits being paid before the age of 50
  - (ii) Require that pension benefits commence before the age of 75
  - (iii) Expressly prohibit loans (or discretionary distributions prior to the age of 50) to the individual (or to any connected person (as defined in Article 3A)).

- 7.6. Pension income or a lump sum paid from a retirement annuity contract for overseas residents to a person not resident in Jersey, shall be exempt from Jersey income tax under Article 131O(1).
- 7.7. Income derived from the investments and deposits of an approved annuity fund created by a retirement annuity contract for an overseas resident, shall be exempt from Jersey income tax under Article 131O(3).

## **Section 8 – Approval of Jersey Retirement Trust Schemes under Article 131CA of the Income Tax Law**

- 8.1. A scheme is capable of approval as a Jersey Retirement Trust Scheme (Jersey RTS) if:
  - (i) It is Established under irrevocable trust under Jersey law and is administered in Jersey; and
  - (ii) It complies with all the provisions of Article 131CA of the Income Tax Law; and
  - (iii) Its sole purpose the provision of benefits in accordance with Article 131CA; and
  - (iv) It has two or more trustees, or a corporate trustee, who are subject to regulation by the Jersey Financial Services Commission under an enactment in respect of the carrying on of the business of the trustee of that trust
- 8.2. Contributions may only be paid into the scheme by the primary beneficiary and the person from whom the primary beneficiary receives relevant earnings.
- 8.3. Primary beneficiaries may not be trustees of the scheme, nor may their spouse, civil partner, or any other connected person.
- 8.4. The scheme must provide for the payment of an annuity equivalent to the primary beneficiary. The scheme may only otherwise provide for payments as permitted by Part 19 of the Law.
- 8.5. As an alternative to the payment of an annuity equivalent, a Jersey RTS may use the whole of the fund value to purchase a traditional lifetime annuity from an authorised insurance company.
- 8.6. The annuity equivalent must be calculated with reference to Appendix 6 “Calculation of Annuity Equivalent”. The Trustees and or the Administrator must keep a record of the annuity equivalent calculation and pay an annuity equivalent in accordance with the calculation published by the Comptroller.
- 8.7. The trust deed must prohibit:
  - (i) Loans to the primary beneficiary, or any person connected to the primary beneficiary
  - (ii) Investment transactions between the primary beneficiary (or any connected person) and the fund
  - (iii) The Individual (or any connected person) using the assets of the fund for the personal benefit or enjoyment
  - (iv) Investment in a purchased life annuity
- 8.8. Following the death of the primary beneficiary, the scheme may provide for the payment of annuity equivalent to one or more of the secondary beneficiaries and/or the payment of a lump sum commuting the whole of the fund value to the primary beneficiary’s estate, or to any person.
- 8.9. The calculation of the annuity equivalent to the secondary beneficiary must be based on the

age of that dependant when the annuity becomes payable to them.

8.10. The annuity equivalent can be paid to the secondary beneficiary prior to the age of 50.

## **Section 9 – Approved drawdown contract – Article 131D**

- 9.1. The contract must be made between an individual and the drawdown manager. To obtain approval for a drawdown contract the manager must certify to the satisfaction of the Comptroller that:
- (i) On the day the contract is made the individual is in receipt of the Minimum Retirement Income or Minimum Retirement Capital
  - (ii) The contract complies with all the provisions of Article 131D of the Income Tax Law
  - (iii) The contract prohibits the transfer to the contract funds other than the individual's fund value in an approved Jersey scheme and funds being returned from an approved trust

The tax-free cash commutation cannot be taken directly from the drawdown contract it must be taken before entering into the contract.

- 9.2. Where on the day the contract is made, the individual is not in receipt of Minimum Retirement Income (as determined in accordance with Article 131F or Article 131FB) or Minimum Retirement Capital, the contract must require the manager to:
- (i) Purchase from an authorised insurance company, which is unconnected with the Individual, a lifetime annuity payable to the individual, which is sufficient to secure that, on that day, they will be entitled to Minimum Retirement Income; or
  - (ii) Subject to the requirements of Article 131E, transfer sufficient funds to a trustee for the establishment of an approved trust
- 9.3. The manager must show to the satisfaction of the Comptroller that the contract requires the manager to invest the remaining funds, after any such annuity purchase or transfer, to an approved trust, in:
- (i) Cash deposits with any bank, building society, or other institution carrying on deposit taking business in the jurisdiction in which it is authorised to carry on such business; or
  - (ii) Securities or financial instruments traded on a recognised stock exchange; or
  - (iii) Units in collective investment funds within the meaning of the Collective Investment Funds (Jersey) Law 1988; or
  - (iv) Investments falling within paragraph 9 of Schedule 1 of the Financial Services (Jersey) Law 1998
- 9.4. The contract must prohibit any payments to any person other than the individual or the individual's personal representative apart from:
- (i) Sums applied to purchase a lifetime annuity, payable to the individual, or, on the individual's death, to a dependant of the individual, from an authorised insurance company (which is unconnected with the individual); or
  - (ii) Fees and commission properly incurred in the administration of the contract and tax payable to the Comptroller
- 9.5. The Manager must be:
- (i) Resident in Jersey
  - (ii) Unconnected with the individual

(iii) Regulated under one of the provisions set out in Article 131D(4)(c)<sup>7</sup>

- 9.6. The contract may only be assigned from one manager to another with the consent of the individual and with the prior written approval of the Comptroller, and subject to any conditions imposed.
- 9.7. The pension holder, or their dependant, cannot transfer the fund value from an approved Jersey scheme to an approved drawdown contract before the first day on which the payment of pension income could have commenced.
- 9.8. Payments made to an individual under a drawdown contract must be paid in cash and not in the form of a transfer of assets in-specie.

## **Section 10 – Approved trust – Article 131E**

- 10.1. The trust, and the approved drawdown contract to which it relates, must be established before the individual reaches pensionable age.
- 10.2. The manager of the approved drawdown contract and the trustee of the trust must certify to the satisfaction of the Comptroller that:
- (i) Disregarding the investments held by the trust, the individual will be entitled to Minimum Retirement Income on the “relevant day” (no later than when the individual reaches pensionable age); and
  - (ii) When the approved drawdown contract is made, the manager will transfer to the trustee at least sufficient funds to fulfil the purpose for which the trust has been established
- 10.3. The trustee must show, to the satisfaction of the Comptroller, that the trust requires the trustee to:
- (i) On the day the trust is established, purchase sufficient securities issued by the UK Government that will yield an income for the individual that, taking the actuarial equivalent of the income from those securities into account and disregarding the fact that the income from them ceases on or after the relevant day, is the Minimum Retirement Income
  - (ii) Hold the securities purchased upon trust for the individual until the relevant day
  - (iii) Receive the income from the securities and pay it to the individual
- 10.4. The actuarial equivalent of any income shall be determined in accordance with the Income Tax (Actuarial Equivalents) (Jersey) Order 2017
- 10.5. The trustee must show to the satisfaction of the Comptroller that the trust:
- (i) Prohibits any payments out to any person other than the individual or their personal representative (save for any tax needing to be paid to the Comptroller)
  - (ii) Prohibits any payment out to the individual other than income accrued on the funds invested by the trustee
  - (iii) Shows whether the individual is entitled to Minimum Retirement Income on the “relevant day”.

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<sup>7</sup> (i) The holder of a permit under the CIF (Jersey) Law 1988; (ii) Registered under the Banking Business (Jersey) Law 1991 (iii) The holder of a permit under the Insurance Business (Jersey) Law 1996; or (iv) Registered under the Financial Services (Jersey) Law 1998.

- 10.6. Where on the relevant day the individual is entitled to Minimum Retirement Income, the trustee must show to the satisfaction of the Comptroller that the funds may be withdrawn for the following purposes only:
- (i) The transfer to an approved drawdown contract; or
  - (ii) The purchase from an authorised insurance company, which is unconnected with the individual, of a lifetime annuity payable to the individual
- 10.7. Where, on the relevant day, the individual is not entitled to Minimum Retirement Income, the trust shall continue on the same terms for the life of the individual, however the trustee shall be required to:
- (i) Purchase a lifetime annuity payable to the individual (from an authorised insurance company, unconnected with the individual), purchase securities issued by the UK Government, or convert the securities previously purchased, so as to secure that the individual is entitled to Minimum Retirement Income on the “relevant day”
  - (ii) To hold the securities (if any) for the life of the individual
  - (iii) Where securities are held, to pay to the individual the income arising from them
- 10.8. On the death of the individual, the trustees must pay any remaining invested funds and accrued income to the individual’s personal representative within three months of the date of death.
- 10.9. The Trustee must be:
- (i) Resident in Jersey; and
  - (ii) Unconnected with the individual; and
  - (iii) Registered under the Financial Services (Jersey) Law 1998

## **Section 11 – Minimum Retirement Income and Minimum Retirement Capital**

*Appendix 10 gives detailed Guidance Notes for Drawdown Managers regarding the calculation of Minimum Retirement Capital.*

### **Minimum Retirement Income**

- 11.1. An individual’s entitlement to Minimum Retirement Income shall be determined in accordance with Article 131F.
- 11.2. An individual is entitled to Minimum Retirement Income if, on the day for which the entitlement is to be determined, the individual is in receipt of “relevant income” which is not less than the amount of the old age pension specified in paragraph 3(1) of Part 1A of Schedule 1 to the Social Security (Jersey) Law 1974.
- 11.3. “Relevant income” means any one or more of the following:
- (i) The amount of the old age pension payable to the individual in accordance with Article 25 of the Social Security (Jersey) Law 1974
  - (ii) An old age pension payable by another Government, other than a pension for which the income is fixed for the life of the individual
  - (iii) Any income not described above which:
    - ✓ Shall be paid for the remainder of the life of the individual; and
    - ✓ Is guaranteed to increase by not less than 3% p.a.

- (iv) The actuarial equivalent<sup>8</sup> of any income not described in (i)-(iii) above which shall be paid for the remainder of the individual's life. This includes any Government or personal pension which is fixed for the rest of the person's life.

### **Minimum Retirement Capital (131FA)**

- 11.4. An individual's minimum retirement capital shall be determined in accordance with Article 131FA and the Income Tax (Minimum Retirement Capital) (Jersey) Order 2017.
- 11.5. An individual is entitled to minimum retirement capital if, the individual is entitled to relevant capital in excess of the prescribed threshold. The point of determination is the position at end of the day when the entitlements is determined, for example at the end of the day the drawdown contract has been signed.
- 11.6. Article 131FB applies where, on the day for which such entitlement is to be determined, the individual is not entitled to minimum retirement income nor minimum retirement capital.

## **Section 12 – Payments from approved Jersey schemes**

### **Requirement to pay pension income (Article 131CB)**

- 12.1. The payment of a pension to a pension holder from an approved Jersey scheme must not start before the individual reaches the age of 50 but must start before the individual reaches the age of 75.
- 12.2. Where the individual has reached the age of 75 and an annuity equivalent calculation (see Appendix 6) is required on the individual's 75<sup>th</sup> birthday, therefore causing the minimum funds to be paid after the age of 75 (due to processing and payment times), the scheme shall be treated as compliant with the requirements of Article 131CB.

### **Permitted early payment of pension income (Article 131CC)**

- 12.3. A scheme may provide for the payment of pension income to an individual before that individual reaches the age of 50 if:
  - (i) The individual is in "ill health"<sup>9</sup>; or
  - (ii) The individual's employment in the trade or undertaking is one in which persons customarily cease work before attaining that age<sup>10</sup>

### **Permitted commutation – serious ill health (Article 131CD)**

- 12.4. An approved Jersey scheme may permit the individual to elect to commute the whole of the fund value if that individual is in "serious ill health" regardless of if they have attained the age of 50 and the scheme has commenced paying benefits to the individual.

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<sup>8</sup> Determined in accordance with the Income Tax (Actuarial Equivalents) (Jersey) Order 2017.

<sup>9</sup> As defined in Appendix 7

<sup>10</sup> At this point in time, the Comptroller is unaware of any such employments. Please contact Revenue Jersey if you believe this condition applies.

### **Permitted commutation – trivial pension (Article 131CE)<sup>11</sup>**

12.5. An approved Jersey scheme may permit the pension holder to elect (under Article 131CE (1)) to commute the whole of the fund value if, at the time the election is made:

- (i) The individual has reached the age of 60; and
- (ii) The aggregate of the following amounts does not exceed £35,000<sup>12</sup>:
  - The fund value; and
  - All lump sums that the individual has previously commuted

The taxation provisions relating to trivial commutations are detailed in Section 14: Taxation  
An example calculation can be found at Appendix 4.

### **Small pots commutation (Article 131CE)**

- (a) An approved Jersey scheme may permit the pension holder to elect to commute the whole of the fund value if, at the time the election is made, the fund value to be commuted does not exceed £19,000; and
- (b) The aggregate of all lump sums that the pension holder has previously commuted under Article 131CE(3) does not exceed £50,000.

The fund value from a small pot commutation will be subject to a standard deduction of 20% at source, regardless of the member's place of residence.

### **Permitted commutation – 30% of the net fund value (Article 131CF)**

12.6. An approved Jersey scheme may permit the pension holder to elect to commute up to 30% of the net fund value in one or more tranches if, on the day the election is made, the pension holder has attained the age of 50 and has not attained the age of 75. The lump sum payment must be in cash and not a transfer of assets in-specie.

12.7. There is no restriction on the number of elections/commutations that a pension holder can make under Article 131CF. Having commenced receipt of an income for life does not prevent them from making an election under Article 131CF.

12.8. The 30% tax free commutation is determined using the “net fund value”<sup>12</sup>.

## **Section 13 – Transfers (Article 131CG)**

### **Permitted transfers out – domestic**

13.1. An approved Jersey scheme may only permit the pension holder (or, following the pension holder's death, his or her dependant) to elect to transfer:

- (i) The whole of the fund value to another approved Jersey scheme; or
- (ii) Part of a fund value to another approved Jersey scheme, subject to the prior written approval of the Comptroller; or
- (iii) The whole of the fund to an approved drawdown contract.

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<sup>11</sup> Also see Appendix 4 to these guidance notes.

<sup>12</sup> Article 131CF (2). Examples are outlined in Appendix 5.

## Permitted transfers out – international

- 13.2. An approved Jersey scheme may, subject to the prior written approval of the Comptroller, permit the pension holder (or, following the pension holder's death, their dependant) to elect to transfer the whole of the fund value to an "equivalent scheme" established outside Jersey, provided that at the time of the election the pension holder (or dependant) is not resident in Jersey.
- 13.3. To obtain the Comptroller's approval the following information must be provided:
- (i) The member/individual's full name
  - (ii) Any previous name of the member
  - (iii) The member's date of birth
  - (iv) the member's tax reference number (if known)
  - (v) The member/individuals' permanent residential address
  - (vi) The fund value
  - (vii) The full name of the scheme that the fund is being transferred from
  - (viii) The full name of the scheme that the fund is being transferred to
  - (ix) The jurisdiction in which that scheme is established; and
  - (x) Evidence that the scheme is an equivalent scheme<sup>13</sup>
- 13.4. For the purposes of Article 131CG, a scheme established outside Jersey is an "equivalent scheme" if the Comptroller agrees that the scheme has characteristics which are consistent with the characteristics of an approved Jersey scheme. The Comptroller has issued a statement of practice around his views on equivalence in certain circumstances (please see Appendix 14).
- 13.5. A request for the Comptroller to approve a transfer to an equivalent scheme established outside of Jersey must be submitted on the template provided. [Pension fund transfer request form](#)
- 13.6. An approved transfer of the fund value of a pension holder in an approved Jersey scheme to an equivalent scheme established outside Jersey is exempt from income tax.

## Permitted transfers in – international

- 13.7. An approved Jersey scheme may permit the pension holder (or, following the pension holder's death, his or her dependant) to elect to transfer into an approved Jersey scheme the whole of the fund value from an "equivalent scheme" established outside Jersey.
- 13.8. Transfers in from an equivalent scheme established outside of Jersey must be reported on the

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<sup>13</sup> The information required to support the equivalent status test would need to include evidence if the following factors in order for the Comptroller to consider the request:

- Restricted access until at least 50 years of age
- Benefits to commence prior to 75 years of age
- Inability to commute more than 30% of the fund value to a lump sum
- The majority of the fund value is used to pay an income for life
- Tax charged on the income tax life
- Tax is charged when value is transferred following death
- The scheme to which the funds are being transferred following death
- The scheme to which the funds are being transferred is approved by the local tax authority

The submission of the schemes' registration with a third-party jurisdiction is not sufficient for the equivalent test for Jersey tax purposes. Also, the submission of the destination scheme's documentation is not sufficient for this purpose and should not be submitted unless requested by the Comptroller

annual return by the Scheme Manager and must include the following:

- (i) The full name of the pension holder
- (ii) The date the transfer was received
- (iii) The amount of the transfer
- (iv) The name of the scheme from which it was transferred
- (v) The jurisdiction in which that scheme is established and
- (vi) Whether benefits have commenced from that scheme

13.9. Transfers in from an equivalent scheme established outside of Jersey may require approval from the originating tax authority. Should a declaration regarding the tax treatment on pension income from a Jersey scheme be required to gain such approval, please contact Revenue Jersey via the pension's team email inbox.

### **Transfers - General**

13.10. In the context of all transfers, the transferring scheme manager must notify the receiving scheme manager of the status of the pension fund (i.e. has a tax-free commutation been taken (if yes, include details) and whether the payment of income for life has commenced from the scheme).

### **Bulk transfers**

13.11. The scheme manager of an approved Jersey occupational pension scheme may, where notification is given and subject to the prior written approval of the Comptroller, transfer the whole or part of the fund to another approved Jersey occupational pension scheme. The scheme manager of the approved Jersey occupational pension scheme must notify the Comptroller, in writing, of:

- (a) The date of the proposed transfer
- (b) The name of the scheme from which the transfer is proposed to be made
- (c) The name of the scheme to which the transfer is proposed to be made
- (d) The name of each member of the scheme whose fund value is proposed to be transferred (an included member)
- (e) The name of each member of the scheme (if any) who is not to be an included member
- (f) In relation to each included member:
  - i. The amount to be transferred, and whether the amount represents the whole or part (and if so what part) of the member's fund value, and
  - ii. Whether benefits have commenced from the scheme from which the transfer is to be made.

### **Rule against legal avoidance – Permitted transfers overseas**

13.12. This applies where:

- a) A permitted transfer of fund value has taken place pursuant to an election under Article 131CG(4) on or after 1 January 2018; and
- b) After that transfer, the pension holder becomes resident in Jersey –
  - i) In the same year of assessment as that in which the transfer took place, or
  - ii) In and of the ensuing 3 years of assessment; and
- c) After that transfer, but before the pension holder becomes resident in Jersey, a lump sum payment is made to the pension holder of the whole or part of the fund value transferred by that transfer.

Where this Article applies, the amount of the payment mentioned in paragraph (1)(c) shall be treated as the recipient's income and chargeable to tax under Case III(d)(ii) of Schedule D.

## Section 14 – Taxation

### Taxation of approved Jersey schemes, drawdown contracts and trusts (Article 131G)

14.1. Income derived from the investments and deposits of approved Jersey schemes, drawdown contracts and approved trusts is exempt from income tax.

### Contributions by employer to approved Jersey occupation pension scheme (Article 131H)

14.2. The employer's contribution is deductible from its trading profits in the year in which the contribution is paid, provided it is an "ordinary annual contribution" (a fixed amount, or a varying amount calculated on some definite basis by reference to the earnings, contributions, or number of members of the scheme).

14.3. Where a contribution is not an "ordinary annual contribution" it shall be treated as the Comptroller shall direct, either:

- (i) As an expense incurred in the year in which the sum is paid; or
- (ii) As an expense to be spread over such period of years as the Comptroller thinks proper

### Contributions by pension holder (Article 131I)

14.4. There is no limit on the amount a pension holder can pay into his/her pension scheme, nor is there any provision for refund of contributions from a pension scheme<sup>14</sup>.

14.5. However, the amount of a pension holder's contributions paid to an approved Jersey scheme which is allowed to be deducted for tax purposes for a year of assessment cannot exceed whichever is the lower of:

- (i) £50,000, less the pension holder's "excess income" if any; and
- (ii) The pension holder's "relevant earnings" in the year of assessment, less the pension holder's "excess income", if any

14.6. The deductible contributions shall be deducted from the pension holder's relevant earnings as an expense for the year of assessment in which they were paid.

14.7. In this context "excess income" means the amount by which a pension holder's "income" for a year of assessment exceeds £150,000. "Income" means the pension holder's total income for a year of assessment before the deduction of:

- (i) Interest in respect of which the pension holder is entitled to a marginal income deduction under Article 90AA; and
- (ii) The pension holder's total approved pension contributions

### Repayment of contributions made by employer (only available in the context of occupational schemes) – Article 131J

14.8. Where contributions to an approved Jersey occupational pension scheme (including interest on contributions) are repaid to the employer – that amount shall be treated as a receipt of the trade, profession or vocation carried on by the employer upon whichever is the earlier of:

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<sup>14</sup> With the exception of paragraphs 2.25-2.29 which apply in the context of approved Jersey occupational pension schemes.

- (i) When the repayment falls due; or
- (ii) The last day on which the trade, profession or vocation is carried on by the employer

### **Repayment of contributions made by pension holder (only available in the context of occupational schemes) – Article 131J**

14.9. Where contributions to an approved Jersey occupational pension scheme (including interest on contributions) are repaid to the pension holder during his or her lifetime:

- (i) Income tax shall be charged at the rate of 10% under Case VI of Schedule D in respect of the amount repaid; and
- (ii) The scheme manager shall deduct the income tax charged from the amount repaid to the pension holder

14.10. The scheme manager must pay the tax so deducted to the Comptroller within a reasonable time frame.

14.11. Where a repayment of contributions (including interest) is made to a pension holder from an approved Jersey occupational scheme as described above:

- (i) The amount repaid, after deduction of income tax, shall not be treated as income of the pension holder for any other purpose of the Income Tax Law; and
- (ii) The pension holder shall not be entitled to any deduction, allowance, or relief under the Income Tax Law in respect of the income tax charged on and deducted by the scheme manager on the amount repaid

### **Taxation of pension income paid from an approved Jersey scheme (Article 131K)**

14.12. For the purposes of the Income Tax Law the following payments shall be treated as the recipient's earned income:

- (i) An income for life paid out of an approved Jersey occupational scheme to the member or his dependant
- (ii) An annuity paid under an approved Jersey retirement annuity contract to the individual who made the contract or his or her dependant
- (iii) An annuity equivalent paid under an approved Jersey retirement trust scheme to a primary or secondary beneficiary
- (iv) An amount paid to the pension holder following an election to commute the fund value under the small pots provisions at Article 131CE(3)

14.13. When making a payment referred to above, a scheme manager shall:

- (i) Deduct tax at the standard rate from payments made to individuals who are non-Jersey resident individuals (unless the Comptroller directs that the income tax deducted is at a rate that is less than the standard rate);
- (ii) Deduct tax at the standard rate from all payments under Article 131CE(3) whether the recipient is resident or non-resident; and
- (iii) Deliver to the Comptroller an account of the payment and the tax deducted

### **Taxation of lump sums paid from approved Jersey schemes to the pension holder or their dependant (Article 131L)**

14.14. Subject to specific exceptions, and where the lump sum is specifically taxed under separate taxation provisions, Income tax shall be charged under Case VI of Schedule D at the rate of 10% on a scheme manager of an approved Jersey scheme where a lump sum is paid in commutation

of or in lieu of pension income under the scheme to:

- (i) The pension holder during his or her lifetime; or
- (ii) Following the death of the pension holder, the pension holder's estate, or any other person

Trivial commutations under Article 131CE(1) are taxed under the provisions of Article 131L.

14.15. The following payments to a pension holder from an approved Jersey scheme shall be exempt from income tax:

- (i) Lump sums commuted by the pension holder as permitted by the legislation in cases of serious ill health provided the election is made before the commencement of benefits
- (ii) In cases of trivial pensions under Article 131CE(1), 30% of commutation of the trivial pension can be commuted tax free
- (iii) Lump sums commuted by the pension holder as permitted commutations under Article 131CF, where an individual accesses up to 30% of net fund value.
- (iv) Where the pension holder dies before the commencement of benefits, lump sums commuted as permitted by Article 131(9)(b), 131B(7)(b) or 131CA(6)(b)

14.16. Irrespective of whether a lump sum is taxed or is exempt from tax:

- (i) The amount paid, after deduction of tax (if any) shall not be treated as income of the recipient for any other purpose of this Law; and
- (ii) The recipient shall not be entitled to any deduction, allowance, or relief in respect of any income tax charged on and deducted by the scheme manager from the amount paid.

### **Taxation of sums paid from approved drawdown contracts and approved trusts (Article 131M)**

14.17. A scheme manager of an approved drawdown contract or approved trust, when paying any sum that is charged to tax under Case VII of Schedule D to an individual or an individual's personal representative, shall:

- (i) Deduct income tax at the standard rate; and
- (ii) Deliver to the Comptroller an account of the payment and the tax deducted

14.18. Any sum that is paid to an individual (other than an individual to whom it is paid in their capacity as a personal representative) shall be treated as "earned income".

### **Taxation of approved overseas schemes**

14.19. Pension income, a lump sum from an occupational pension scheme for overseas employees (approved under Article 131A), or a retirement annuity contract for overseas residents (approved under Article 131C) paid to a person who is not resident in Jersey, shall be exempt from income tax. Likewise, income derived from investments and deposits of the same shall be exempt from Income tax.

### **Rule against legal avoidance – Permitted transfers overseas**

14.20. If –

- (i) A permitted transfer of fund value has taken place pursuant to an election under Article 131CG(4) on or after 1 January 2018; and

- (ii) After that transfer, the pension holder becomes resident in Jersey in the same year of assessment as that in which the transfer took place or in any of the ensuing 3 years of assessment; and
- (iii) After that transfer, but before the pension holder becomes resident, a lump sum payment is made to the pension holder of the whole or part of the fund value transferred by that transfer.

Then the payment mentioned in paragraph (1)(c) shall be treated as the recipient's income and chargeable to tax under Case III(d)(ii) of Schedule D.

## **Section 15 – Assignment**

The fund of a Jersey approved scheme must not be assignable or capable of surrender unless provided for in Part 19 of the Legislation or specifically provided for within this guidance.

## **Section 16 – Anti-avoidance**

Any transaction or series of transactions made wholly or mainly for the purpose of avoiding tax may lead to the anti-avoidance provisions of Article 134A being invoked.

## **Section 17 – Appeals**

Any person aggrieved by a decision of the Comptroller, (eg. refused to approve a scheme, imposed a condition or requirement on the approval, withdrew approval), may appeal to the Commissioners of Appeal, giving 40 days' notice to the Comptroller.

## **Section 18 – Withdrawal of approval**

- 18.1. If the facts concerning an approved scheme, contract, or trust (or its administration) do not warrant continuing approval, the Comptroller will give notice in writing on the date on which the approval is withdrawn to:
  - (i) The scheme manager and any person connected with the scheme manager
  - (ii) Any person(s) whose acts or omissions are a reason for the withdrawal
  - (iii) Any person(s) who has benefitted from the acts or omissions which are a reason for the withdrawal and any person connected with them.
- 18.2. If the Comptroller gives a notice to a person other than the scheme manager, he will inform the scheme manager that the notice of withdrawal has been given.
- 18.3. A withdrawal of approval may take effect on a day that is earlier than the day the notice is given but shall not be earlier than the day on which the grounds for withdrawal appear to the Comptroller to have arisen.
- 18.4. Upon the withdrawal of approval taking effect, a person given notice shall be liable to income tax at the rate of 50% on an amount equal to (on the day on which the withdrawal takes effect) the greater of -
  - (a) The market value of the assets held for the purposes of the scheme, contract, or trust; or
  - (b) The aggregate of contributions to the scheme, contract, or trust (including transfers from other schemes, contracts, or trusts) and income accrued from investments or deposits of the scheme contract or trust.

- 18.5. Where the Comptroller is unable to ascertain either or both amounts described above, the Comptroller may, for the purposes of raising an assessment of the liability to tax, estimate the amount that he is unable to ascertain.
- 18.6. The Comptroller may decide to abate the liability to tax by an amount which is, just and reasonable. A Guide on the level of abatement can be viewed at Appendix 8.
- 18.7. Where all or any of the tax charged remains unpaid, the Comptroller may give a further notice to any of the persons mentioned in 18.1 who has not previously been given notice; and that person shall be liable to pay any of the tax charged which remains unpaid.

### **Genuine Mistake**

The Comptroller may consider the facts and circumstances where a genuine error has taken place. There must be a full disclosure of the facts and there must be no other available remedy.

### **Attaining the age of 75**

A pension holder is required to commence benefits from an approved Jersey scheme prior to attaining the age of 75. In exceptional circumstances where the scheme manager/ administrator has made all reasonable efforts to contact the pension holder and been unable to do so, the details should be submitted to the Comptroller.

## **Appendix 1: Application for approval**

### **Application for approval of a Jersey occupational pension scheme (Article 131 Scheme)**

To obtain approval of a Jersey occupational pension scheme, or part of such a scheme, the scheme manager must make an application to the Comptroller.

The application must be:

- (i) In writing
- (ii) Made before the end of the year of assessment for which approval of the scheme is sought; and
- (iii) Accompanied by-
  - ✓ a copy of the instrument under which the scheme is established
  - ✓ a copy of the rules of the scheme
  - ✓ a copy of the most recent annual accounts of the scheme (if available)
  - ✓ an undertaking by the scheme manager that they will comply and administer the scheme in accordance with:
    - the provisions of Part 19 of the Income Tax Law,
    - the Income Tax (Jersey Occupational Pension Schemes) (Jersey) Order 2014
    - and these guidance notes

If a scheme has been established outside of Jersey and approved by that jurisdiction, an application for approval can be made for part of the scheme that relates to the Jersey members. This may be by either:

- (i) By deed to reflect separate rules for Jersey members; and/or
- (ii) By the trustees signing an undertaking confirming that they will comply and administer the scheme as per (iii) above

The scheme manager must comply with Article 131. In addition, the following information should be provided:

- (i) The principal employer
- (ii) Details of any participating employers
- (iii) Name of the Administrator to which the annual tax returns should be issued

If the application is in respect of a centralised or multi-employer scheme established under a master trust, then the master trust must submit the trust deed and rules for approval and each participating employer must obtain approval by submission of an executed deed of adherence to the master trust.

If the Comptroller decides to approve the scheme, or part of a scheme, a notification of the approval will be issued in writing. That approval may contain additional conditions or requirements imposed on the scheme and the reason for the imposition.

If the Comptroller decides not to approve the scheme, a notification will be issued in writing of the decision and the reason for it.

Any subsequent changes in the rules, constitution, objects, or conditions of the scheme must be notified to the Comptroller in writing immediately by the scheme manager. The notification must also include confirmation that following the changes, the scheme manager will continue to comply and administer the scheme in accordance with Part 19 of the Income Tax Law, the Income Tax (Jersey Occupational Pension schemes) (Jersey) Order 2014, and the guidance notes.

The amending scheme documentation should not be submitted with the application to the Comptroller but must be available if requested.

### **Application for approval of a Jersey retirement annuity contract (Article 131B contract)**

An application for approval of a retirement annuity contract must be submitted to the Comptroller in writing. The application must be accompanied by:

- (i) The Contract or certified true copy of the contract; and
- (ii) A declaration made by the scheme manager and the company holding the annuity fund that they have read, understood, and will comply with and administer the scheme in accordance
  - The relevant sections of part 19 of the Income Tax Law
  - These guidance notes

Any changes to the contract must be agreed in advance by the Comptroller.

### **Application for approval of a retirement trust scheme (Article 131CA scheme)**

An application for approval of a retirement trust scheme must be made in writing to the Comptroller by the scheme manager accompanied by:

- (i) A copy or certified true copy of the trust deed and rules
- (ii) A declaration made by the scheme manager that they have read, understood, and will comply with and administer the scheme in accordance with the applicable sections of Part 19 of the Income Tax Law and these tax guidance notes
- (iii) The name and address of the Jersey administrator of the scheme

Any subsequent amendments to the trust deed or rules must be notified to the Comptroller to confirm ongoing approval.

### **Application for approval of a drawdown contract (Article 131D Contract)**

An application for approval of a drawdown contract must be made in writing by the drawdown manager who must submit a copy of the contract to the Comptroller together with a statement in which they certify that the scheme manager, the individual, and the contract all satisfy the conditions laid down in Article 131D of the Income Tax Law.

The certificate must also include a section in which the scheme manager identifies the source of the funds to be transferred into the contract, and the source and amount of Minimum Retirement Income (“MRI”) or Minimum Retirement Capital (MRC) as well as certification that they have evidence to that effect.

Evidence should not be submitted with the application but must be available to the Comptroller if requested. The certificate must be signed by the manager.

### **Application for approval of an Approved Trust (Article 131E)**

In seeking approval of a trust, the trustee must submit a copy of the trust instrument to the Comptroller together with a statement in which they certify that the trustee, the individual, and the trust deed all satisfy the conditions laid down in Article 131E of the Income Tax Law.

The statement will include a section in which the trustee certifies that he has seen evidence from the drawdown manager to show that on the relevant day there is every likelihood that the individual will possess, from other sources, Minimum Retirement Income (“MRI”). The statement must show the expected source of MRI, and its amount, together with the identity of the drawdown manager involved.

Before the funds may be released back to the drawdown manager at the expiration of the trust period, a further certificate is required. In it the trustee must certify that he has seen evidence of the existence of MRI, and its source and amount should be identified.

Both the drawdown manager and the trustee are required to supply annual certificates to the pensioner showing the gross amounts paid to him and the tax deducted.

### **Application for approval of an occupational pension scheme for overseas employees (Article 131A)**

An application for the approval of, or part of, an occupational pension scheme for overseas employees will be made in writing to the Comptroller accompanied by a declaration from the scheme manager that the scheme

- (i) Meets the requirements of Article 131A of the Income Tax (Jersey) Law 1961; and
- (ii) Is in accordance with the relevant sections of these tax guidance notes

An application will include:

- (i) The name and address of the sponsoring employer
- (ii) The name and address of the scheme manager
- (iii) Confirmation that the scheme manager will comply and administer the scheme in accordance with the relevant sections in Part 19 of the Income Tax (Jersey) Law 1961 and these tax guidance notes
- (iv) Confirmation that any changes to the scheme will be notified to the Comptroller in writing

The scheme documentation should not be submitted with the application but must be available to the Comptroller if requested.

### **Application for approval of a retirement annuity contract for overseas residents (Article 131C)**

An application for the approval of a retirement annuity contract for an overseas resident under the provisions of Article 131C must be made in writing to the Comptroller by the scheme manager, accompanied by a declaration that the scheme:

- (i) Meets the requirements of Article 131C of the Income Tax Law
- (ii) Is in accordance with the relevant sections of these tax guidance notes
- (iii) And is affected through a local financial intermediary

An application must include:

- (i) The name and address of the individual to which the contract applies
- (ii) State how the individual qualifies under Article 131C
- (iii) Confirmation of the name and address of the Jersey administrator
- (iv) The scheme manager will comply and administer the scheme in accordance with the relevant sections in Part 19 of the Income Tax Law and these tax guidance notes
- (v) Confirmation that any changes to the contract will be notified to the Comptroller in writing

The scheme documentation should not be submitted with the application but must be available to the Comptroller if requested.

## **Appendix 2: Investments**

These rules apply from 1<sup>st</sup> January 2015 where the scheme may allow for one or more of the pension holders, or persons connected to the pension holders, to be able to direct, influence or advise the investment decisions made by the scheme. These rules apply to:

- Approved Jersey retirement annuity contracts
- Approved Jersey retirement trust schemes
- Small self-administered approved Jersey occupational pension schemes (SSAS)

When deciding the scheme's investment policy, the administrator/trustee must consider the need to have sufficient liquid funds to pay pension benefits.

If a pension scheme acquires assets on the list of prohibited investments, then approval may be withdrawn from the scheme or part of the scheme.

The prohibitions apply to assets that are held directly and indirectly by the scheme.

### **Direct holdings**

Direct holdings apply to interests that are held jointly, alone or in common. It covers where the asset or property is held by the scheme (not for example via a holding company) and:

- (i) It holds the asset or property or any rights interest or power over
- (ii) It has a right to use, or participate in arrangements relating to the use of the property
- (iii) It has the benefit of any obligation, restriction or condition affecting the value of the property, interest, right or power in or over the property; or

- (iv) It has an entitlement to receive payments derived directly or indirectly from it

### **Indirect holdings**

Indirect holdings apply to assets that are held through another 'vehicle', such as via a separate company.

A person indirectly holds an interest in a vehicle if the person:

- (i) Holds an interest in a person who holds an interest in the vehicle; or
- (ii) Holds an interest in a person who holds an interest in another person who holds the interest in the vehicle and so on through any length of chain of interests held

The holding of shares in companies directly controlled or indirectly controlled by a scheme member or someone connected to the scheme member are not permitted.

Indirect investments in prohibited assets through genuinely diverse commercial vehicles will not be subject to these restrictions.

### **Prohibited Investments – Residential Property**

A residential property is:

- (i) A building or structure that is used or is suitable for use as a dwelling
- (ii) Any related land that is wholly or partly the garden for the building or structure
- (iii) Any related land that is wholly or partly grounds for the residential property and which is used or intended for use for a purpose connected with the enjoyment of the building
- (iv) Any building or structure on such related land
- (v) Any property that provides accommodation rights, such as a timeshare.

Ground rents that are held in relation to residential property are also included as residential property. Land which is in the process of development becomes residential property from the point when it first becomes suitable for use as a dwelling.

The restriction applies to all residential property in Jersey or overseas. The only exception to the prohibition is where a residential property forms a small part of a fund value which is being transferred to a Jersey approved scheme from an equivalent scheme established outside Jersey, and the existing fund holds a small element of non-Jersey residential property, which is integral to a commercial property held in the fund and was purchased in accordance with the rules in the existing jurisdiction. In these circumstances the scheme manager may seek exemption to this rule from the Comptroller.

Property bought by a pension scheme becomes the asset of the scheme. In some cases, the property will have to be sold before the pension can be drawn as an income in retirement. *In specie* transfers of assets between the pension holder and the scheme are prohibited, and it follows that a property could not be transferred from the scheme to the pension holder when benefits are due to commence, nor can the property be sold to a connected party.

### **Prohibited Investments – Tangible Moveable Property**

These include things that can be touched or moved.

An exception is gold and silver bullion which is of investment grade, on condition that the

investment is purchased through a regulated bullion company and stored in independent, fully insured allocated storage.

### **Prohibited Investments – Loans**

Loans to pension holders (or any person connected to pension holders) are not permitted.

Loans made to third parties must be genuine investments of the scheme. They must be prudent, secure and on a commercial basis.

Loans to a third party where a corresponding loan is made to the pension holder or a connected party, with the purpose of providing access to funds from the pension scheme, will not be deemed a genuine investment of the scheme.

### **Prohibition on Assurance Products**

There is a prohibition on investing in insurance contracts such as life insurance, critical illness, and permanent health insurance.

### **Borrowing by pension schemes**

Where permitted by the rules of the scheme, the borrowing of an approved Jersey scheme may not exceed 50% of the fund value immediately before the borrowing has taken place. (self-administered retirement annuity contracts are expressly prohibited from borrowing).

All investments must be made in the name of the company and are not permitted to be in the individual's name.

## **Appendix 3: Reporting requirements**

### **Completing the superannuation funds and pension schemes return (11SF)**

The Comptroller will require an annual income tax return to be completed which contains the following information:

- ✓ The name and place of residence of every person in receipt of an income for life from the scheme, the amount paid to each such person, and the tax deducted
- ✓ The amount of employee contributions, including interest, refunded to a member who has ceased to be employed by the employer, and details of the tax deducted
- ✓ The amount of employer contributions, including interest, refunded to the employer, including the date that the Comptroller approved the refund
- ✓ Each amount transferred from the scheme to another scheme or contract, the details of the scheme or contract to which the transfer was made and the name of the pension holder who elected for the transfer
- ✓ The funds transferred to an insurance company to purchase an annuity in an individual's own name
- ✓ The funds transferred into the scheme from another scheme or contract, to include the pension holder's name, the date the transfer was received, the amount transferred, the name of the scheme or contract from which it was transferred, the jurisdiction in which that scheme is established, and whether benefits have commenced from the scheme
- ✓ Sums paid in commutation or in lieu of pension on the grounds of triviality, to include

- ✓ the pension holder's details and details of the tax deducted from the payment
- ✓ Very small pension funds (i.e. small pots) commuted to include the pension holder's details and the amount paid
- ✓ Sums paid in commutation of the fund on the grounds of serious ill health
- ✓ Death in service payments
- ✓ Any other lump sum payments
- ✓ The contributions made by the employer and the employees to the scheme
- ✓ The amount and constituent parts of the scheme's income for the year

In the case where a multi-employer scheme has been approved, a schedule must also be provided outlining the contributions paid by each relevant employer.

#### [Completing the superannuation funds and pension scheme return \(form 11SF\)](#)

The Comptroller may also request the scheme manager to provide a copy of the most recent accounts of the scheme and any such other information and particulars as reasonably required for the purposes of Part 19 of the Income Tax Law.

#### **Article 131B Jersey retirement annuity contracts**

Accounts of the company, incorporating the annuity fund, must be made up to 31 December each year and must be prepared and signed by an independent qualified accountant, not connected to the annuitant and acceptable to the Comptroller. The annual accounts must be filed as soon as possible following the relevant year end.

If employer contributions are paid into a Jersey retirement annuity contract, the financial statements must identify separately the employer contributions and member contributions. The notes to the accounts should identify the employer making the contributions.

Fees can only be deducted if they are a true reflection of costs properly incurred for the administration of the contract.

Where multiple contracts have been entered between the annuity company and the individual, a summary reflecting the funds in each contract must be included with the annual accounts.

Where an annuity company holds contracts for an individual and a separate contract for their spouse/civil partner, the annual accounts of the company must include a report of the funds held in each contract.

#### **Withdrawals**

One-off withdrawals which must be reported immediately:

- ✓ Any transfers to other schemes (subject to preapproval in certain circumstances)
- ✓ The purchase of a traditional annuity
- ✓ A qualifying commutation of the fund on the grounds of triviality
- ✓ A commutation on the grounds of serious ill health
- ✓ Payments following the death of the primary beneficiary

## Article 131CA Jersey retirement trust scheme (“Jersey RTS”)

The trustees are responsible for reporting to the Comptroller as follows and within the set timeframes.

### Establishment of sub-trusts

On the establishment of any underlying sub-trusts, the overarching trust must ensure that the sub-trust (and its trustees) meet the requirements for approval and keep accurate records. The trust is no longer required to provide the Comptroller with an Establishment certificate for each new sub-trust.

### Withdrawals

One-off withdrawals which must be reported immediately:

- ✓ Any transfers to other schemes (subject to preapproval in certain circumstances)
- ✓ The purchase of a traditional annuity
- ✓ A qualifying commutation of the fund on the grounds of triviality
- ✓ A commutation on the grounds of serious ill health
- ✓ Payments following the death of the primary beneficiary

### Annual accounts

The annual accounts of the RTS must be made up to 31 December each year and submitted to the Comptroller, including the additional information required, within a reasonable timeframe.

Where a RTS has been approved involving a master trust, the following minimum information must also be included, for each sub-trust and returned in an electronic format agreed with the Comptroller:

- (i) Primary beneficiary’s full name and address
- (ii) Primary beneficiary’s tax reference
- (iii) Tax status of the sub-trust (i.e. pre-commencement of benefits, post-commencement of benefits or making annuity equivalent payment)
- (iv) Primary beneficiary’s contributions to the scheme in the year of assessment
- (v) Employer’s contribution to the scheme in the year of assessment, including the amount paid in the year and the name of the employer who made the contributions
- (vi) Payments from the scheme in the year of assessment, separately identified, including:
  - ✓ Transfers out, to include details of the scheme to which the transfer was made/from
  - ✓ The amounts paid by way of tax-free cash elections
  - ✓ The amounts paid by way of annuity equivalent payments
  - ✓ Trivial commutation elections paid in the year
  - ✓ Small fund (pot) commutations paid in the year
  - ✓ Payments made on the grounds of serious ill health
  - ✓ Payments made on death
  - ✓ Details of the tax deducted by the trustee from each payment
- (vii) Transfers into the scheme, identifying transfers in from Jersey approved schemes and equivalent schemes outside Jersey.

The following must be reported as an attachment to the annual accounts in respect of transfers received into the Scheme:

- ✓ The individual’s name
- ✓ The individual’s tax reference number (if known)

- ✓ The date the transfer was received
  - ✓ The amount of the transfer
  - ✓ The name of the scheme from which it was transferred
  - ✓ The jurisdiction in which that scheme is established
  - ✓ The status of the fund i.e. have benefits commenced from that scheme
- (viii) A tax schedule to include full details of all payments from which tax has been deducted in the year

### **Article 131D and Article 131E – Approved drawdown contracts and approved trusts**

The reporting requirements of the Manager and the Trustee are the same.

At the end of each year each must send the Comptroller a statement showing:

- ✓ The funds invested at the beginning of the year or, if the contract commenced during the year the funds invested at the start of the contract
- ✓ Monies received during the year
- ✓ All monies paid out during the year
- ✓ The funds invested at the end of the year, or at the date of death of the individual
- ✓ The manner of the investment of the funds

Reports must be submitted three months after the end of the year of assessment, or six months after the date of the individual's death.

### **Appendix 4: Triviality**

*Example 1: Individual has three pension schemes with a fund value of:*

- £5,000
- £10,000
- £3,000

*The maximum commutation possible under Article 131CE(1) is £35,000, so the individual can commute all three schemes. Under Article 131L 30% of each commutation will be tax free (i.e. £5,400 will be tax free), while the remaining £12,600 will be subject to tax at 10%.*

*(This example assumes the individual has not made any previous commutations)*

*Example 2: Individual has three pension schemes with a fund value of:*

- £16,000
- £11,000
- £10,000

*The maximum commutation possible under Article 131CE(1) is £35,000 so the individual cannot commute all three schemes.*

*Any two of the schemes can be commuted under Article 131CE(1) – the individual cannot commute two schemes, and then take a balance from the third scheme to total £35,000 (there can be no partial commutation). The individual would still be permitted to commute 30% of the fund value of the third scheme under Article 131CF.*

*(This example assumes the individual has not made any previous commutations)*

## Appendix 5: 30% tax free commutation

The legislation contains a calculation which seeks to allow pension holders to elect to commute 30% of their entire pension savings in a tax-free lump sum, irrespective of when pension contributions were made and whether previous commutations have been taken under Article 131CF. This is achieved through the calculation of the pension holder's "net fund value" (Article 131CF(2)).

The calculation process under Article 131CF(2) differs depending on whether it is:

- (i) The first election for a commutation under Article 131CF; or
- (ii) A subsequent election

### Calculation process for first commutation under Article 131CF<sup>15</sup>

Step 1: Identify the "fund value"<sup>16</sup> on the day that the election under Article 131CF is made

Step 2: Multiply the identified "fund value" by 30%

This calculates the maximum amount that the pension holder can commute at the time of the first commutation under Article 131CF.

#### *Example 3: Defined contribution scheme, first election for commutation*

*Mr X reaches the age of 50 and has £100,000 in his RTS. He wishes to take the maximum lump sum available immediately. The RTS is permitted to allow Mr X to commute 30% of the "net fund value".*

*Step 1: The "fund value" on the date of the election = £100,000*

*Step 2: Multiply £100,000 by 30% = £30,000*

*Therefore the RTS is permitted to allow Mr X to commute up to £30,000 from his pension scheme. The amount commuted will be tax free under Article 131L(3)(c). The remaining pension fund of £70,000, and any subsequent growth in it, can only be used to pay Mr X an annuity equivalent.*

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<sup>15</sup> Please note, for the purpose of this section of the guidance notes it is assumed that no pension fund transfer under Article 131CG has been received by the pension scheme involved in the commutation, pension fund transfers are considered further below

<sup>16</sup> For the purposes of this Part 'fund value' means, at any time –

- (a) in relation to a member of an occupational pension scheme that is a defined contribution scheme, or, following the death of the member, his or her estate or any person entitled to a payment from the scheme, as permitted by Article 131(9), the aggregate, at that time, of the amounts accumulated in the scheme for the benefit of the member or of his or her estate or any person, as the case requires
- (b) in relation to a member of an occupational pension scheme that is a defined benefit scheme or, following the death of the member, his or her estate or any person entitled to a payment from the scheme, as permitted by Article 131(9), the capital value of the benefits to which the member, or his or her estate or any person, as the case requires, is entitled at that time, calculated by an actuary
- (c) in relation to an individual who has made a retirement annuity contract or the primary beneficiary of a retirement trust scheme or, following the death of the individual or primary beneficiary, his or her estate or any person entitled to a payment from the contract or scheme, as permitted by Article 131B(7) or 131CA(6), the fund accumulated under the contract or trust at that time.

## Calculation process for second (and subsequent) commutations under Article 131CF

In this situation the calculation process is as follows:

Step 1: Identify the “fund value” on the day that the election under Article 131CF is made

Step 2: Identify each amount previously commuted either under Article 131CF or under any of the similar commutation provisions that applied prior to 1 January 2015

Step 3: Take each amount identified in Step 2, firstly multiply each amount by 7 and then divide the answer by 3 – in Article 131CF(2) this is known as amount “A”

The purpose of Step 3 is to identify the amount of the pension fund that would have had to be “retired” in order to pay the commutation identified in Step 2

### Example

*An amount of £30,000 is identified at Step 2. £30,000 is 30% of £100,000 (i.e. a pension holder would need a fund value of £100,000<sup>17</sup> for a 30% commutation to be £30,000). After the £30,000 has been commuted, the remaining fund value is £70,000 (£100,000 - £30,000). This is equal to  $(£30,000 \times 7)/3$ .*

*This remaining fund value (amount “A”) cannot be used to pay any further commutations and hence has been “retired”. This “retired” amount, and any subsequent growth in it, can only be used to pay an income for life.*

Step 4: Identify how much of the changes in the fund value between the date of the original election and the current election is attributable to amount “A”, (the change in the fund value can be either positive or negative) – in Article 131CF(2) this is known as amount “B”

Step 5: Subtract “A” and “B” from the “fund value to calculate the “net fund value”

Step 6: Multiply the remaining “net fund value” by 30%

Example 5: Continuation of example 3, second election for commutation, no additional contribution.

*Post the age of 50 Mr X decides to make no further contributions to his RTS and does not commence the payment of an annuity equivalent. Over the next 8 years the funds remaining in his RTS grow by 20%. As Mr X commuted the maximum £30,000 available on his 50th birthday, the pension fund remaining in the scheme immediately following the first commutation would have been £70,000. Therefore, by Mr X’s 58<sup>th</sup> birthday, the remaining pension fund would have grown to £84,000 (£70,000 x 120%).*

*Step 1: The “fund value” on Mr X’s 58<sup>th</sup> birthday = £84,000*

*Step 2: £30,000 has been previously commuted under Article 131CF*

*Step 3:  $(£30,000 \times 7)/3 = £70,000$  – this is amount “A”*

*Step 4: All of the subsequent growth in the fund value between Mr X’s 50<sup>th</sup> and 58<sup>th</sup> birthday is*

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<sup>17</sup> Note: the “fund value” of the pension scheme could be greater than £100,000, this is the amount required, at 30%, to pay a commutation of £30,000. If the “fund value” of the pension scheme was greater than £100,000, the amount in excess would be treated as “unretired”.

attributable to "A" (there being no contributions since Mr X's 50<sup>th</sup> birthday and no "unretired" fund). Hence the value of "B" is £14,000 (£84,000 - £70,000).

Step 5: £84,000 (current "fund value") - £70,000 (amount "A") - £14,000 (amount "B") = Nil

Step 6: Therefore Mr X cannot make a further commutation from his RTS on his 58<sup>th</sup> birthday; he has already taken the maximum commutation permitted under Article 131CF

Example 6: Continuation of example 5, third election for commutation, additional contributions

Post his 58<sup>th</sup> birthday Mr X decides to make some further contribution to his RTS. Between his 58<sup>th</sup> and 65<sup>th</sup> birthday Mr X contributes a further £15,000. The growth achieved in the pre-existing £84,000 increases the value of that part of the fund to £100,800. While the growth achieved in the £15,000 of further contributions takes the value of that part of the fund to £16,500.

Step 1: The "fund value" on Mr X's 65<sup>th</sup> birthday is £117,300 (£100,800 + £16,500)

Step 2: £30,000 has been previously commuted under Article 131CF

Step 3:  $(£30,000 \times 7)/3 = £70,000$  – this is amount "A"

Step 4: The subsequent growth in this part of the fund between Mr X's 50<sup>th</sup> and 65<sup>th</sup> birthday is attributable to "A" and hence the value of "B" is £30,800 (£100,800 - £70,000).

Step 5: £117,300 (current "fund value") - £70,000 (amount "A") - £30,800 (amount "B") = £16,500<sup>18</sup>

Step 6: Multiply £16,500 by 30% = £4,950

Therefore Mr X can make a further commutation from his RTS on his 65<sup>th</sup> birthday of £4,950; this will be tax free under Article 131L.

Example 7: Continuation of example 6, fourth election for commutation, additional contributions

Assuming Mr X takes the full commutation available on his 65<sup>th</sup> birthday, Mr X's fund value on his 65<sup>th</sup> birthday was £112,350 (£117,300 - £4,950). Between his 65<sup>th</sup> birthday and his 70<sup>th</sup> birthday Mr X contributes a further £10,000. The growth achieved in the existing £112,350 increases the value of that part of the fund to £123,585. The growth achieved in the £10,000 of further contributions takes the value of that part of the fund to £10,500.

Step 1: The "fund value" on Mr X's 70<sup>th</sup> birthday is £134,085 (£123,585 + £10,500)

Step 2: £30,000 was commuted on Mr X's 50<sup>th</sup> birthday and £4,950 on Mr X's 65<sup>th</sup> birthday.

Step 3: Therefore there are two values for "A": "A1" from the 50<sup>th</sup> birthday commutation  $(£30,000 \times 7)/3 = £70,000$ ; and "A2" from the 65<sup>th</sup> birthday commutation  $(£4,950 \times 7)/3 = £11,550$

Step 4: The subsequent growth attributable to "A1" between Mr X's 50<sup>th</sup> and 70<sup>th</sup> birthdays, and hence the value of "B1", is £40,800. The subsequent growth attributable to "A2" between Mr X's 65<sup>th</sup> and 70<sup>th</sup> birthdays, and hence the value of "B2", is £1,155.

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<sup>18</sup> Note: this is equal to the value of the contributions made post Mr X's 58<sup>th</sup> birthday plus the growth in those contributions.

Step 5: £134,085 (“fund value”) - £70,000 (amount “A1”) - £40,880 (amount “B1”) – “£11,550 (amount “A2”) - £1,155 (amount “B2”) = £10,500

Step 6: Multiply £10,500 by 30% = £3,150

Therefore Mr X can elect for a further commutation from his RTS on his 70<sup>th</sup> birthday of £3,150; this will be tax free under Article 131L.

## Application in context of defined benefit schemes

The rules outlined in Article 131CF apply equally to pension schemes which are structured as defined benefit schemes<sup>19</sup>.

*Calculation process for first commutation under Article 131CF<sup>20</sup>*

Although there is no restriction on the number of commutations that may be taken from defined benefit schemes, it is anticipated that most of such schemes will only allow pension holders one commutation under Article 131CF.

In this situation the calculation process is as follows:

Step 1: Identify the “fund value”<sup>21</sup> on the day that the election under Article 131CF is made

Step 2: Multiply the identified “fund value” by 30%

This calculates the maximum amount that the pension holder can commute.

## Calculation process for second (and subsequent) commutations under Article 131CF

If a defined benefit scheme does allow pension holders subsequent commutations under Article 131CF, the scheme manager should seek appropriate actuarial advice to allow them to calculate amount “B” (i.e. the change in the “fund value” between the date of the original election and the current election that is attributable to amount “A”) and then contact Revenue Jersey to discuss and agree the proposed approach.

## Fund transfers

If no tax-free commutation has been taken from the scheme from which the transfer has been made, no adjustment to the “net fund value” is required.

Where a pension scheme receives a fund transfer from another scheme and a commutation has been taken from that scheme, an adjustment to the “net fund value” in the receiving pension scheme is required. The “net fund value” must be reduced by:

- (a) The amount transferred in from the other scheme; and
- (b) The growth in the fund that is attributable to the amount transferred in

For the avoidance of doubt, it is irrelevant whether the maximum amount possible was previously

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<sup>19</sup> Defined in Article 130B(2)

<sup>20</sup> Please note, for the purpose of this section of the guidance notes it is assumed that no pension fund transfer under Article 131CG has been received by the pension scheme involved in the commutation, pension fund transfers are considered further below.

<sup>21</sup> The term “fund value” in this context is defined in Article 130B(1)(b), and requires the scheme manager to take appropriate advice from an actuary.

commuted. However, if the receiving scheme manager has received full details of the previous elections from the previous scheme manager, and is satisfied of their accuracy, an adjustment can be made to take the previous elections into account when calculating subsequent elections, rather than discounting the entire fund transferred in on the assumption that the full 30% election had been made. The Comptroller must be notified in writing of any elections made according to this paragraph before the payment is made.

## Calculation process

In this situation the calculation process is as follows:

Step 1: Identify the “fund value” on the day that the election under Article 131CF is made

Step 2: Identify each “relevant amount previously transferred into the scheme”

(defined in Article 131CF (4), and includes any fund transfer from a pension scheme from which a tax free commutation has been taken) – this amount is known as amount “C” in Article 131CF(2).

Step 3: Identify how much of the changes in the fund value between the date of the transfer and the election is attributable to amount “C”, please note this change in the fund value can be either positive or negative – in Article 131CF (2) this is known as amount “D”.

Step 4: Subtract “C” and “D” from the “fund value”

Step 5: Multiply the remaining “net fund value” by 30%

*Example 8: Transfer from a scheme from which a commutation under Article 131CF has already taken place*

*Mr X has two pension schemes, a RTS and a retirement annuity contract. On his 50<sup>th</sup> birthday the “fund value” of the RTS is £100,000 and the retirement annuity contract is £50,000. Mr X decides to take the maximum possible commutation under Article 131CF from the retirement annuity contract of £15,000. He then decides to consolidate his pension savings by transferring the remaining amount (£35,000) into his RTS. He then decides to immediately commute the maximum amount possible from his RTS. The maximum commutation possible is calculated as follows:*

*Step 1: Identify the “fund value” on the day that the election is made = £135,000 (£100,000 + £35,000)*

*Step 2: Identify each “relevant amount previously transferred into the scheme” = £35,000 (this is amount “C”)*

*Step 3: Identify how much of the change in the fund value between the date of the transfer and the election is attributable to amount “C” = there has been no change in the fund value since the date of the transfer and hence the value of “D” is nil.*

*Step 4: Subtract from the “fund value” the amounts of “C” and “D” = £100,000 (£135,000 - £35,000)*

*Step 5: Multiply the remaining “net fund value” by 30% = £30,000*

*Therefore, the maximum possible commutation that Mr X can take from his RTS under Article 131CF is £30,000.*

Note, when calculating the amount that can be commuted from the receiving scheme, it is irrelevant

whether the maximum amount was commuted in the transferring scheme.

*Example 9: Transfer from scheme from which a commutation under Article 131CF has taken place*

*Mr X has two pension schemes, a RTS and a retirement annuity contract. On his 50<sup>th</sup> birthday the “fund value” of the RTS is £100,000 and the retirement annuity contract is £50,000. Mr X decides to take half of the maximum possible commutation under Article 131CF from the retirement annuity contract, a commutation of £7,500. He then decides to consolidate his pension savings by transferring the remaining amount (£42,500) into his RTS. He then decides to immediately commute the maximum amount possible from his RTS. The maximum commutation possible is calculated as follows:*

*Step 1: Identify the “fund value” on the day that the election is made = £142,500 (£100,000 + £42,500)*

*Step 2: Identify each “relevant amount previously transferred into the scheme” = £42,500 (this is amount “C”)*

*Step 3: Identify how much of the change in the fund value between the date of the transfer and the election is attributable to amount “C” = there has been no change in the fund value since the date of the transfer and hence the value of “D” is nil*

*Step 4: Subtract from the fund value the amounts of “C” and “D” = £100,000 (£142,500 - £42,500)*

*Step 5: Multiply the remaining “net fund value” by 30% = £30,000*

*Therefore, Mr X the maximum possible commutation that Mr X can take from his RTS under Article 131CF is £30,000.*

In calculating amounts “B” and “D” it is necessary to identify the increase or decrease in “fund value” that is attributable to amounts “A” or “B” as appropriate. The Income Tax Law does not prescribe how this increase/decrease should be identified. Therefore, the Comptroller will accept any reasonable approach to the identification of this increase or decrease.

## **Non-Jersey schemes**

Under Article 131CG, transfers into Jersey schemes can be made from “equivalent schemes” located outside of Jersey. The same adjustment to “net fund value” applies in the context of transfers in from equivalent schemes.

## **Transfers out**

When there is a transfer out from a pension scheme, this will be reflected in a reduction of the “fund value” and hence no further adjustment is required.

## **Appendix 6: Annuity equivalent**

### **Introduction**

The rules applying to approved Jersey retirement trust schemes (“Jersey RTS”) provide for the trustees to pay an annuity equivalent directly from the scheme, rather than a traditional annuity contract, purchased from an insurance company.

## Qualification

Members of a Jersey RTS, who have attained the minimum pension age<sup>22</sup>, may receive pension income directly from their scheme. The amount and frequency of this pension income has been determined with reference to the UK Government Actuary’s Department (“GAD”) published tables.

## Method of calculation

The following 7 stage calculation is to be used by trustees to determine the basis calculation for the maximum amount of annuity equivalent that the trustees can pay annually, from the primary beneficiary’s fund.

### Step 1

Establish the date of election, which is the date that the primary (or secondary) beneficiary decides that the annuity equivalent calculation payments are to commence. This is referred to as the “point of calculation”.

Determine the age, in complete years, of the primary (or secondary) beneficiary- this is the age attained at the end of the calendar month prior to the point of calculation.

### Step 2

Obtain the gross redemption yield on UK Gilts (15 year) from the FTSE UK Gilts Indices, as published in the Financial Times for the last working day of the calendar month before the calendar month in which the point of calculation falls. Should the 15-year UK Gilts gross redemption yield be below 2%, the trustees can opt to apply the 2% rate or apply the prevailing rate if lower

If the dependant has not obtained the age of 23, the gross redemption yield on the 5 year UK Gilts from the FTSE UK Gilts Indices should be used.

### Step 3

Round this yield down to the nearest 0.25%.

### Step 4

Refer to the GAD table published on the UK government’s website: [drawdown pension tables](#) . The 2011 GAD tables must be used as the basis of calculation. Table 1 is to be used if the member or dependant is aged 23 or over Table 2 is to be used if the dependant is aged under 23.

### Step 5

Determine the fund value, as at the end of the most recent calendar month and after any tax-free cash has been commuted.

### Step 6

Determine the basis amount of income withdrawal per £1,000 of fund value from table 1 by extracting the relevant figure applicable to the member’s age (step 1) and yield (steps 2 and 3). This is known as the Annuity Equivalent Factor (“AEF”).

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<sup>22</sup> As defined under Article 131CB of the Income Tax Law

### Step 7

The basis of the calculation of the income withdrawal is then calculated as: Valuation (step 5) / £1,000 multiplied by the AEF (step 6)

With effect from 21 May 2014 the maximum annual permissible income withdrawal is calculated on the basis calculation x 150%

### **Members attaining the age of 75**

From the age of 75 an annuity equivalent must be paid to the primary beneficiary. The minimum and maximum levels of income to be taken are based on a percentage of the basis calculation in accordance with steps 1 to 7 above.

- (i) In step 1 the age is based on the actual age in the GAD tables
- (ii) The minimum level of annual income withdrawal is 55% of the basis calculation
- (iii) The maximum level of annual income withdrawal is 150% of the basis calculation

It is a requirement from the age of 75 that the annuity equivalent calculation is subject to an annual review on 1 January of each subsequent year.

### **Responsibilities**

The trustees of the Jersey RTS are responsible for calculating the individual's maximum annuity equivalent. The Comptroller may request evidence of the calculations to verify that the payments are being paid in accordance with this Appendix.

To ensure that the annuity equivalent remains appropriate for the primary beneficiary or their dependant throughout their life, the trustees must recalculate the maximum rate no later than the beginning of the 4<sup>th</sup> tax year following the date of the prior calculation. This allows a RTS Trustee to re-calculate the annuity equivalent for its members as at the 31<sup>st</sup> December of the 3<sup>rd</sup> tax year following establishment, and every 3<sup>rd</sup> year end thereafter. The trustees must then adjust the income payments to the annuitant if appropriate. The maximum permissible amount to be based on January to December tax year.

If a subsequent tax-free cash election is made, or a transfer is received into an existing fund value, the maximum AE rate must be recalculated immediately to reflect the new fund value.

On the death of the primary beneficiary, and where the scheme provides for the payment of an annuity equivalent to a secondary beneficiary, the annuity equivalent calculation must be re-calculated within six months of the primary beneficiary's death.

The calculation for the new AE for the secondary beneficiary must use that secondary beneficiary's age. An AE for a secondary beneficiary can commence prior to the age of 50.

## **Appendix 7: Definitions**

**Approved drawdown contract** - a contract approved under Article 131D.

**Approved Jersey occupational pension scheme** - a scheme approved under Article 131.

**Approved Jersey retirement annuity contract** - a contract approved under Article 131B.

**Approved Jersey retirement trust scheme** - a scheme approved under Article 131CA.

**Approved Jersey scheme** – an approved Jersey occupation pension scheme, an approved Jersey retirement annuity contract, or an approved Jersey retirement trust scheme

**Approved trust** - a trust approved under Article 131E.

**Commencement of benefits** - in relation to a pension, a reference to whichever is the earlier of:

- (i) An election by the pension holder to receive a lump sum by way of commutation of part of the fund value,
- (ii) The day from which income is paid to the pension holder, whether or not the pension holder actually receives a payment on that day
- (iii) The pension holder has attained the age of 75

**Defined benefit scheme** - 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. Defined in Article 130B(2) of the Income Tax Law.

**Defined contribution scheme** - a scheme where the benefits of a member are determined by reference to contributions paid into the scheme in respect of that member, usually increased by an amount based on profits and gains arising from those contributions.

**Dependant** - A person is a dependant of a pension holder if s/he was married to or the civil partner of the pension holder at the date of the pension holder's death; or if the rules of an occupational pension scheme, retirement annuity contract or retirement trust scheme so provide, on the date when the pension holder first became entitled to a pension under the scheme or contract. A child of a pension holder is a dependant of the pension holder if the child has not attained the age of 23; or has attained that age and, in the opinion of the scheme manager, was at the date of the pension holder's death dependant on the pension holder because of physical or mental impairment.

A person who was not married to, or a civil partner of, a pension holder at the date of the pension holder's death, and is not a child of the pension holder, is a dependent of the pension holder if, in the opinion of the scheme manager, at the date of the pension holder's death, the person was financially dependent on the pension holder, or the person's financial relationship with the pension holder was one of mutual dependence, or the person was dependent on the pension holder because of physical or mental impairment.

**Fund value** - at any time in respect of –

An Occupational Pension Scheme that is a defined contribution scheme, or, following the death of the member, his or her estate or any person entitled to a payment from the scheme, as permitted by Article 131(9)<sup>23</sup>, the aggregate, at that time, of the amounts accumulated in the scheme for the benefit of the member or of his or her estate or any person as the case requires. Additionally, the capital value of the benefits to which the member, or his or her estate or any person, as the case requires, is entitled at that time, calculated by an actuary<sup>24</sup>;

A Retirement Annuity Contract or the primary beneficiary of a Retirement Trust Scheme or, following the death of the individual or primary beneficiary, his or her estate or any person entitled

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<sup>23</sup> An income for life to one or more of the member's dependants; or a lump sum to the member's estate or to any person

<sup>24</sup> "Actuary" means a person who is or a body of persons each of whom is a Fellow of the Institute and Faculty of Actuaries

to a payment from the contract or scheme, as permitted by Article 131B(7)<sup>25</sup> or 131CA(6)<sup>26</sup>, the fund accumulated under the contract or trust at that time.

**Ill health** - A pension holder is in ill health if a medical practitioner has, in writing, provided evidence to the scheme manager that the pension holder is, and will continue to be, incapable of carrying on his or her occupation because of physical or mental impairment, and the pension holder has in fact ceased to carry on his or her occupation.

**Pension holder** – in relation to an approved Jersey occupational pension scheme, a member of the scheme, as described in Article 131;

- ✓ In relation to an approved Jersey retirement annuity contract, the individual by whom the contract was made; or
- ✓ In relation to an approved Jersey retirement trust scheme, the primary beneficiary.

**Pension income** – in relation to

- ✓ An occupational pension scheme, an income paid for the life of the recipient
- ✓ A retirement annuity contract, any annuity payable under the contract; or
- ✓ A retirement trust scheme sums payable under the scheme by way of annuity equivalent.

**Pensionable age** has the same meaning as in the Social Security (Jersey) Law 1974

**Prescribed** - prescribed by Order of the Minister

**Primary beneficiary** - in relation to a retirement trust scheme, the individual for whose benefit the trust is primarily established

**Relevant earnings** - in relation to an individual, any of his or her income assessed to tax being income arising in respect of emoluments (these do not include pension income) from an office or employment held by the individual. A spouse/civil partner B's relevant earnings shall not be treated as spouse/civil partner A's relevant earnings, notwithstanding that spouse/civil partner B's income chargeable to tax is treated as spouse/civil partner A's income.

**Scheme manager** – in the case of

- ✓ an occupational pension scheme that is established otherwise than as a trust, the person having management of the scheme
- ✓ a retirement annuity contract, the person having control of the fund
- ✓ a drawdown contract, the manager

**Secondary beneficiary** - in relation to a retirement trust scheme, a dependant of the primary beneficiary

**Serious ill health** - A pension holder is in serious ill health if a medical practitioner has, in writing, provided evidence to the scheme manager that the pension holder is expected to live for less than one year.

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<sup>25</sup> An annuity to one or more of the individual's dependants, for the life of the dependant; or a lump sum commuting the whole of the fund value, to be paid to the individual's estate or to any person.

<sup>26</sup> For the payment of a sum by way of annuity equivalent to one or more secondary beneficiaries; or for the payment of a lump sum commuting the whole of the fund value to the primary beneficiary's estate or to any person.

## Appendix 8 Guidance on the level of abatement under Article 131P

### Determining issues and principles

The purpose of any compliance regime is to ensure that those who break the rules are not better off than those who stay within them. This principle underpins the way in which we intend assessments to be applied to those who breach pension scheme rules. Starting from the statutory value of the assessment being 50% of the value of the fund involved, an abatement may be applied on a sliding scale. The Comptroller will always seek in the assessment to recover the 'tax advantages' for any funds impacted by the breach, and for which no remedy can be put in place.

Determining the final level of the abatement is a matter of judgement, considering all the factors involved in the breach. Such factors include (but are not limited to):

- ✓ The degree to which the behaviour was deliberate or reckless, with repeat offences carrying a higher penalty
- ✓ The nature and extent of the potential or actual benefit to the individual as a direct consequence of the breach
- ✓ The actual or potential loss to the Treasurer
- ✓ Whether the breach was voluntarily disclosed or not
- ✓ The extent of cooperation with Revenue Jersey in dealing with the consequences of the breach
- ✓ Whether the breach has been quickly remedied
- ✓ The size of the pension fund and the proportion of the funds involved in the breach, as well as the absolute value of the amount involved
- ✓ Whether or not the breach was caused by an individual who has detailed pension knowledge

## Appendix 9 Related issues

### Group life insurance schemes

These schemes are not pension schemes. The treatment for tax purposes is under Article 70D Income Tax (Jersey) Law 1961.

This treatment reflected the long-term position of Revenue Jersey as expressed in previous iterations of these guidance notes.

## Appendix 10 Additional guidance notes for drawdown managers

### Updated Actuarial Equivalent Order and Minimum Retirement Capital Order Guidance Notes for Drawdown Managers

#### Introduction

1. On the 23 December 2017 the Income Tax (Actuarial Equivalent) Order 2017<sup>27</sup> (Actuarial Equivalent Order 2017) and the Income Tax (Minimum Retirement Capital) Order 2017 (MRC Order 2017)<sup>28</sup> came into force.

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<sup>27</sup> See <https://www.jerseylaw.je/laws/enacted/Pages/RO-137-2017.aspx>

<sup>28</sup> See <https://www.jerseylaw.je/laws/enacted/Pages/RO-138-2017.aspx>

## **Income Tax (Actuarial Equivalent) Order 2017**

### **Actuarial Equivalent Income under Article 131F(3)(d)**

2. Under Article 131F of the Income Tax Law an individual is entitled to Minimum Retirement Income (“MRI”) if, on the day that for which entitlement is to be determined, the individual is in receipt of **relevant income** which is not less than the standard States old age pension payable to a single person.
3. **Relevant income** is defined in Article 131F (3) of the Income Tax Law as including:
  - (i) The States old age pension
  - (ii) An old age pension payable by another government, other than a pension for which the income is fixed for the life of the individual
  - (iii) Any income not falling within the two bullets above which:
    - Shall be paid for the remainder of the life of the individual, and
    - Is guaranteed to increase by not less than 3% per annum; and
  - (iv) The “actuarial equivalent” of any income not falling within the three bullets above which shall be paid for the remainder of the life of the individual.
4. For an income source to be **relevant income**, it must be guaranteed to be paid for the remainder of the individual’s life.
5. Where an income source is paid/received in a foreign currency, the conversion into sterling should be carried out in accordance with the exchange rates published by HMRC for VAT/customs purposes<sup>29</sup>.

#### Standard rules for determining the actuarial equivalent

6. This **actuarial equivalent** calculation is outlined in paragraph 3 of the Actuarial Equivalents Order 2017<sup>30</sup>.
7. The **actuarial equivalent** is calculated by multiplying the current annual amount of income received from the source, by the **adjusting percentage (see Appendix 11)**.
8. The table in paragraph 3 only specifies the **adjusting percentage** to be applied when income is guaranteed to increase by 0%, 1%, 2%, 2.5% or 3% per annum. Where a source of income is guaranteed to increase by a different percentage between 0% - 3% per annum, the **adjusting percentage** is to be determined by interpolation between the **adjusting percentages** shown in the table.

#### Special rules applying to pensions payable from a defined benefit scheme

9. Special rules apply for determining the **adjusting percentage** when the income source is a pension payable from a **defined benefit scheme**.
10. There is no requirement for the **defined benefit scheme** paying the pension to be approved by the Comptroller. however, where it is not so approved, for a pension to be subject to these special rules, the pension scheme paying it must have the characteristics that means it

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<sup>29</sup> See <https://www.gov.uk/government/collections/exchange-rates-for-customs-and-vat>

<sup>30</sup> The table in paragraph 3 has been reproduced in Appendix 11.

is capable of being approved under Article 131A. This approach means that pensions payable by defined benefit schemes with no Jersey connection<sup>31</sup> can be subject to these special rules.

11. Under the standard rules, where an income stream is guaranteed to increase by inflation, when determining the **adjusting percentage**, the income is treated as if it is guaranteed to increase by 0% per annum. However, under these special rules, where a pension payable by a **defined benefit scheme** is guaranteed to increase with (or above) inflation each year<sup>32</sup>, the pension shall be deemed to be guaranteed to increase by 3% per annum for the purposes of determining the **adjusting percentage**. Where a pension payable is guaranteed to increase with inflation but subject to a cap which is less than 3% per annum, the pension shall be deemed to be guaranteed to increase by the amount of the cap.

#### Special rules applying to an annuity from an authorized insurance company

12. Special rules apply when determining the **adjusting percentage** when the income source is an annuity payable from an **authorized insurance company**, as defined in Article 3 of the Income Tax Law. The rule described in point 11 above shall also apply in this instance.

#### **Income Tax (Actuarial Equivalent) Order 2017**

##### **Actuarial equivalent of income from securities under Article 131E(4)(a)(i)**

13. Where an individual does not have MRI nor MRC, they may still be able to enter an approved drawdown contract under the provisions of Article 131D(3)(b). The drawdown contract manager can either:
  - (i) Purchase from an **authorized insurance company**<sup>33</sup> a lifetime annuity payable to the individual sufficient to secure that, on that day, the individual is entitled to MRI; or
  - (ii) Transfer sufficient funds to a trustee for the establishment of an approved trust.
14. Article 131E creates the concept of an **approved trust**. For a trust to be an **approved trust** it must meet the conditions outlined in Article 131E.
15. Under Article 131E(4)(a)(i) the trustees of an **approved trust** must show that they have purchased sufficient securities issued by the UK Government “yielding an income having an **actuarial equivalent** ... as will secure that, on the day that the trust is established, the individual is entitled to an income which, taking into account the **actuarial equivalent** of the income from those securities and disregarding the fact that the income from them ceases on or after the relevant day, is Minimum Retirement Income”.
16. The calculation of the **actuarial equivalent** of the income required for the purposes of Article 131E(4)(a)(i) is outlined in paragraph 2 of the Actuarial Equivalents Order 2017 as follows:  
(MRI – RI) x income multiplier.
  - (i) **MRI** in this context is the annual amount of minimum retirement income on the day the approved trust is established.
  - (ii) **RI** in this context is the individual’s **relevant income** on the day the approved trust is established.
  - (iii) The **income multiplier** is determined in the table contained within paragraph 2<sup>34</sup>.

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<sup>31</sup> Other than the fact that the pension holder is resident in Jersey.

<sup>32</sup> The inflation rate that can be used in this context is either Jersey or the UK.

<sup>33</sup> Authorised insurance company is defined in Article 3 of the Income Tax Law.

<sup>34</sup> The table in paragraph 2 has been reproduced in Appendix 12.

### Example 10

17. An individual on his 60<sup>th</sup> birthday with relevant income of £10,000 wishes to enter into an approved drawdown contract, however he has insufficient **relevant income** to have **MRI**. The individual will have **MRI** on their 63<sup>rd</sup> birthday (the relevant day for these purposes) and hence seeks to enter an **approved trust** during the interim 3-year period.
18. To calculate the amount of UK Government securities that need to be purchased, the trustees need to follow the calculation in paragraph 2 of the Actuarial Equivalents Order 2017.
19. **MRI** today, the day on which the **approved trust** is being established, is £11,385.92<sup>35</sup>, the individual's **relevant income** today is £10,000, and the **income multiplier** from the table is 1.046 (as per appendix 12, reflecting the three year gap between today, the day on which the **approved trust** is being established, and the date on which the individual will have **MRI**).
20. The calculation in this example is therefore:  $(£11,385.92 - £10,000) \times 1.046 = £1,449.67$ .
21. Therefore today, the day on which the **approved trust** is established, the trustees must purchase sufficient UK Government securities to yield an annual income of at least £1,449.67.
22. For the avoidance of doubt, where the time gap between the day that the **approved trust** is established and the **relevant day** is not an exact number of years, the **income multiplier** that should be applied should be calculated by interpolation between the relevant figures shown in the table in paragraph 2.

### **Income Tax (Minimum Retirement Capital) Order 2017** **Calculation of "MRC threshold" and determination of "relevant capital"**

#### Introduction and responsibilities of drawdown contract managers

23. A number of individuals are unable to access an approved drawdown contract ("ADC") because they do not have sufficient **relevant income** from the sources specified in Article 131F(3) of the Income Tax Law to achieve **MRI**. This includes a cohort of individuals with significant wealth. In response, the concept of Minimum Retirement Capital ("MRC") was introduced in the 2017 Budget. Under this approach an individual will have **MRC**<sup>36</sup> and hence be able to enter an ADC provided that, on the day they seek to enter the ADC, they own a minimum amount of certain assets (**relevant capital**) which exceeds that individual's **MRC threshold**.
24. Under Article 131D(2)(b) of the Income Tax Law it is the responsibility of the drawdown contract manager<sup>37</sup> to certify that the individual owns **relevant capital** in excess of that individual's **MRC threshold** and hence has **MRC**.
25. When making a certification under Article 131D(2) of the Income Tax Law, the drawdown contract manager is expected to comply with the requirements in both the Income Tax (Minimum Retirement Capital) Order 2017 and these guidance notes; producing and maintaining appropriate records and documents to support the certification made.

<sup>35</sup> As at the time of writing – March 2019. The trustees must continue to acquaint themselves with the maximum States old age pension payable to a single person on the date that the individual seeks to enter an approved trust.

<sup>36</sup> Minimum Retirement Capital is defined in Article 131FA of the Income Tax Law.

<sup>37</sup> The requirements in order to be a drawdown contract manager are contained in Article 131D(4) of the Income Tax Law.

26. These records and documents should not be submitted to Revenue Jersey as part of the certification process under Article 131D(2) of the Income Tax Law.
27. Revenue Jersey will audit a number of certifications made, requesting and reviewing copies of the records and documents from the drawdown contract manager that supported the certification made.
28. Revenue Jersey accepts that drawdown contract managers may adopt a risk-based approach when making certifications (e.g. where it is abundantly clear that an individual has **relevant capital** clearly in excess of their **MRC threshold**, the need to identify all of the assets owned by the individual is less pressing). Revenue Jersey expects drawdown contract managers to be particularly focused on those circumstances where there is a small differential between an individual's **relevant capital** and their **MRC threshold**.
29. Where a certification has been made fraudulently or negligently by a drawdown contract manager, Revenue Jersey will consider raising penalty tax assessments under Article 131P of the Income Tax Law.

#### Calculation of MRC threshold

30. An individual's **MRC threshold** is calculated using the following formula:  
MRC threshold = MRI x MRC Factor x Coefficient.
31. **MRI** is defined in Article 131F of the Income Tax Law. **MRI** is equal to the maximum States old age pension payable on that day to an individual who has never been married.
32. The **MRC Factor** is determined by reference to the individual's age on the date that they are seeking to determine their **MRC threshold**. A table showing the **MRC Factor** at all ages between 50 and 85 is shown in Appendix 13. There is no need to interpolate between ages.
33. The **Coefficient** is 2.25.

#### Calculation of relevant capital

34. The process of establishing an individual's **relevant capital** on the day that the ADC is to be made is as follows:
  - (i) Step 1: Identify and list all the assets owned directly by the individual.
  - (ii) Step 2: Remove from the list any **excluded assets**.
  - (iii) Step 3: Identify the open market value of the assets remaining on the list.
  - (iv) Step 4: Identify and list all the loans/borrowings/similar obligations entered into by the individual, including where the individual is the guarantor (or equivalent) for a loan/borrowing/similar obligation entered into by another person.
  - (v) Step 5: Remove from the list any loan/borrowing/similar obligations which was taken out to purchase the individual's **only or main residence**.
  - (vi) Step 6: Identify the outstanding value of all the loans/borrowing/similar obligations remaining on the list.
  - (vii) Step 7: Subtract the figure identified in Step 6 from the figure identified in Step 3 to calculate the individual's **relevant capital**.

#### *Step 1: Listing of individual's assets*

35. The individual must own the asset directly. Exclude Assets that are owned indirectly.
36. Assets held on trust for the benefit of the individual (other than bare trust) may not be included on the list.
37. An individual's pension savings<sup>38</sup> can be included on the list even where those pension savings are held on trust for the individual.
38. Where an asset is owned jointly with another person (including their spouse/civil partner), only the proportion of the asset owned by the individual may be included on the list.

*Step 2: Removal of "excluded assets"*

39. **Excluded assets** must be removed from the list prepared in Step 1. **Excluded assets** are as follows:
  - (i) Any tangible, moveable property (e.g. cars, art works, antiques, etc.);
  - (ii) The individual's **only or main residence**<sup>39</sup>;
  - (iii) The capital value of any life assurance policies taken out on the individual's life.
40. Where an individual owns a single residential property, that property will be treated as their **only or main residence** even where they do not live in that property on the day that the ADC is to be made.

*Step 3: Open market valuations*

41. The open market value of the assets remaining on the list must then be determined in sterling.
42. Where an asset is traded on a recognized stock exchange<sup>40</sup>, the value of that asset is determined by reference to the closing bid price on the trading day immediately before the day that the ADC is to be made.
43. Where an asset does not fall within the paragraph above, the individual should ordinarily obtain an independent, professional valuation for the asset. The valuation date must be no earlier than 3 months prior to the day that the ADC is to be made.
44. In this context, Revenue Jersey reiterates the risk-based approach expected of drawdown contract managers. The type of the valuation obtained should reflect the nature of the asset owned. For assets which are hard to value Revenue Jersey would expect a full independent, professional valuation, particularly where the individual is reliant on the value to have **MRC**. However, for example, where an individual owns shares in an investment holding company which in turn solely owns assets which are traded on a recognized stock exchange an independent valuation may not be required.
45. Where an individual owns an **excluded asset** indirectly (e.g. they own 100% of the shares of a company which in turn owns tangible, moveable property) when valuing the asset owned directly by the individual (e.g. the shares in the company), the valuation must be adjusted

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<sup>38</sup> Including any pension fund that the individual ultimately wishes to transfer into an ADC.

<sup>39</sup> The term "only or main residence" is defined by reference to Article 90AA of the Income Tax Law.

<sup>40</sup> Recognized stock exchange" is defined in Article 3(1) of the Income Tax Law.

downwards by the open market value of the **excluded assets**.

46. Where the asset to be valued is pension savings<sup>41</sup>, the **fund value** must be calculated in accordance with Article 130B of the Income Tax Law, then be reduced by 20% to reflect that Jersey income tax will be paid on amounts withdrawn from the pension schemes.

47. Where an asset is valued in a foreign currency, the conversion into sterling should be carried out in accordance with the exchange rates published by HMRC for VAT/customs purposes<sup>42</sup>.

*Step 4: Listing of individual's loans/borrowings/similar obligations*

48. The individual must list all loans/borrowings/similar obligations that the individual has entered into, including where the individual is the guarantor (or equivalent).

*Step 5: Removal of any loan/borrowing/similar obligations which was taken out to purchase the individual's "only or main residence".*

49. The only loan that can be removed from the list prepared at Step 4 is any loan that was taken out by the individual in order to acquire their **only or main residence**.

50. A loan secured on the individual's **only or main residence** but not taken out for the purposes of acquiring that property must not be removed from the list.

*Step 6: Identify the outstanding value of all the loans/borrowing/similar obligations remaining on the list*

51. The outstanding value of all the loans/borrowings/similar obligations remaining on the list prepared at Step 4 must then be established and a total figure calculated.

52. Where a loan/borrowing/similar obligation is valued in a foreign currency, the conversion into sterling should be carried out in accordance with the exchange rates published by HMRC for VAT/customs purposes<sup>43</sup>.

*Step 7: Subtract the figure identified in Step 6 from the figure identified in Step 3 to calculate the individual's "relevant capital".*

Individual has neither MRI nor MRC

53. It is acknowledged that circumstances could arise where an individual's **relevant income** falls short of MRI and their **relevant capital** falls short of their **MRC threshold**.

54. To address this situation the Income Tax Law allows an individual to consider a mixture of both **relevant income** and **relevant capital** when determining whether they can enter into an ADC.

55. This is achieved by converting an individual's **relevant capital** (as calculated above) into an

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<sup>41</sup> "Pension savings" is given a broad definition in this context and includes savings under both "approved Jersey schemes" as defined in Article 130(1) of the Income Tax Law and "overseas schemes" as defined in Article 131OA(1) of the Income Tax Law.

<sup>42</sup> See <https://www.gov.uk/government/collections/exchange-rates-for-customs-and-vat>

<sup>43</sup> See <https://www.gov.uk/government/collections/exchange-rates-for-customs-and-vat>

equivalent amount of **relevant income** and subtracting that amount from MRI<sup>44</sup>; effectively making it easier for the individual to achieve MRI.

56. The conversion of relevant capital is achieved through the mechanism of a **relevant capital factor**. This **relevant capital factor** is outlined in Paragraph 4 of the MRC Order as follows:  
Relevant capital factor = relevant capital ÷ MRC Factor ÷ Coefficient.
57. **Relevant capital** is as calculated as above.
58. The **MRC Factor** is determined by reference to the individual's age on the relevant date. A table showing the **MRC Factor** at all ages between 50 and 85 is shown in Appendix 13. There is no requirement to interpolate between ages.
59. The **Coefficient** is 2.25.
60. Subtract The relevant capital factor calculated through this formula from MRI to determine an **adjusted MRI figure**.
61. The individual should then compare their **relevant income** against their **adjusted MRI figure** to determine whether they have adjusted MRI.
62. When making a certification under Article 131D(1) of the Income Tax Law in relation to adjusted MRI, the drawdown contract manager is expected to comply with the requirements in both the Income Tax (Minimum Retirement Capital) Order 2017 and these guidance notes; producing and maintaining appropriate records and documents to support the certification made.

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<sup>44</sup> See Article 131FB of the Income Tax Law.

## Appendix 11 – table of adjusting percentages

Age	Percentage adjustment for guaranteed rate of pension increase				
	0% pa	1% pa	2% pa	2.5% pa	3% pa or higher
50	56	67	81	90	100
51	57	68	82	90	100
52	57	68	82	90	100
53	58	69	82	91	100
54	59	70	83	91	100
55	60	70	83	91	100
56	61	71	84	91	100
57	62	72	84	92	100
58	62	72	85	92	100
59	63	73	85	92	100
60	64	74	86	92	100
61	65	74	86	93	100
62	66	75	86	93	100
63	67	76	87	93	100
64	68	77	87	93	100
65	69	77	88	94	100
66	69	78	88	94	100
67	70	79	88	94	100
68	71	79	89	94	100
69	72	80	89	94	100
70	73	81	90	95	100
71	74	82	90	95	100
72	75	82	91	95	100
73	76	83	91	95	100
74	77	84	91	96	100

**Appendix 12 – table of income multipliers contained in paragraph 2 of Actuarial Equivalents Order 2017**

<p style="text-align: center;">Period between the day that the approved trust is established, and the relevant day described in Article 131E(3)(a) (Years)</p>	<p style="text-align: center;">Income Multiplier</p>
1	1.015
2	1.030
3	1.046
4	1.061
5	1.077
6	1.093
7	1.109
8	1.126
9	1.143
10	1.160
11	1.177
12	1.194
13	1.212
14	1.229
15	1.248
16	1.266
17	1.284

## Appendix 13 – Table of MRC Factors at ages between 50 and 85.

Age of the individual on the day that the individual seeks to determine their MRC threshold	MRC factor
50	46.208
51	44.699
52	43.211
53	41.745
54	40.299
55	38.870
56	37.458
57	36.061
58	34.682
59	33.323
60	31.985
61	30.669
62	29.378
63	28.116
64	26.888
65	25.694
66	24.529
67	23.385
68	22.256
69	21.142
70	20.045
71	18.968
72	17.912
73	16.879
74	15.876
75	14.909
76	13.983
77	13.101
78	12.258
79	11.450
80	10.671
81	9.920
82	9.200
83	8.511
84	7.854
85	7.229

## Appendix 14 – Equivalent Schemes – Statement of Practice

(7) For the purposes of this Article, a scheme established outside Jersey is an equivalent scheme if the Comptroller agrees that it is an equivalent scheme.

(8) The Comptroller may agree that a scheme established outside Jersey is an equivalent scheme if, in the Comptroller's opinion, the scheme has characteristics which are consistent with the characteristics of an approved Jersey scheme.

The Comptroller having reviewed the legislation and discretion he is afforded, considers he needs to provide certain clear parameters as to when he will agree that transfer out of a pension scheme, in particular can be made.

The Comptroller's view is that the fundamental characteristics of the approved Jersey schemes are that they operate with the intention of providing an income for life for a person when they have reached an age when it can be expected that they will no longer be working. The Jersey schemes operate as a vehicle for people to essentially defer their income from a working career to this period of their lives. The approved Jersey schemes recognise this through the tax system by broadly relieving the tax burden for putting funds into such a vehicle, and the accumulation of investment returns on these funds, but ensuring that tax is then charged as such funds are withdrawn from the vehicle.

Once these fundamental characteristics are recognised, the Comptroller recognises that it is then a question of balancing the degree as to where, on a number of factors, the differences between a scheme (both that scheme's rules and the jurisdiction's legal framework) and approved Jersey schemes, are such that they can be said to be or not to be equivalent. The Comptroller considers that where a DTA has been negotiated with a jurisdiction then the pension position will have been explored, and this can provide a proxy for his deliberations.

In order to provide certainty of treatment the Comptroller is of the opinion that he can agree to treat any scheme as equivalent if

- 1) It meets the fundamental criteria above,
- 2) Notwithstanding provisions around ill health and hardship – the normal age of pension commencing is 50 years or over, being a time at which a working career may be ending,
- 3) There is a Double Taxation Agreement with the jurisdiction in which the member is resident, which contains a Pension's Article in line with the current OECD Model Agreement,
- 4) That the pension scheme being transferred into, is in the same jurisdiction as the member and registered with all the relevant Authorities as being a pension scheme, and
- 5) The member is at that time in good standing with all aspects of their affairs the Comptroller is aware of.

Some examples of DTAs which the Comptroller considers have a suitable pensions Article include Cyprus, Luxembourg, Poland, UK.

In other circumstances the Comptroller will still need to consider on a case-by-case basis.

Notwithstanding this practice note, scheme managers must still seek approval before any transfer outside of an approved Jersey pension scheme. The practice note just provides certainty of approval in the described circumstances.

If the Comptroller suspects this statement of practice is being abused, he will reserve his opinion in such a case.