

Title of consultation:

## **Introducing pension regulation: feedback and further consultation**

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Summary:

Earlier this year Government received feedback to a consultation proposing to regulate pensions. This paper outlines the feedback received alongside the proposed response, and presents new proposals on key components of pension regulation.

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## **Forward**

*Jersey has a world-class financial services sector built on sound regulation and high standards. Consumers rightly expect their pension arrangements to be well protected, and that those entrusted to look after their money are subject to regulatory scrutiny and oversight.*

*I am therefore delighted to put forward these proposals, which are a major step towards embedding further protections for users of Jersey pension products and services. This paper puts forward a framework for regulating pensions, on which I look forward to hearing your feedback.*

*Throughout 2020 Government will be considering the role of pensions in helping islanders ensure that they can gain financial independence in later life, in consultation with islanders and the pension industry. Regulation will help ensure that the pension industry is well run and focussed on the best outcomes for members, supporting this goal.*

*These proposals build on a consultation which received feedback earlier this year. I am grateful for the comments and support received and look forward to continuing this conversation as we work together to build a framework which elevates the standards of Jersey pensions.*

**Richard Buchanan, Assistant Minister for External Relations**

### **Ways to respond**

#### **James Roberts**

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Alternatively, Jersey Finance will be collating an industry response and these responses should be sent to:

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This consultation paper has been sent to the Public Consultation Register.

## Introduction

1. Earlier this year Government received feedback to a consultation paper<sup>1</sup> proposing to regulate the pension industry. The consultation primarily focussed on the scope of regulation rather than what regulatory requirements would be.
2. The objectives of Government in proposing to regulate the pensions sector are:
  - a. to create an appropriate regulatory and supervisory framework to protect the rights and interests of pension scheme members and beneficiaries using Jersey based products and services;
  - b. to ensure that framework is proportionate; and
  - c. to help support business growth in the pensions sector.
3. The first part of this paper provides a summary of the feedback received and outlines the proposed approach in response to that feedback.
4. The second part of the paper proposes new concepts which would form the basis of a regulatory regime and the requirements that regulated firms would be required to follow. It seeks feedback on these proposals.
5. Responses will be considered by Government to ensure that the proposals are proportionate whilst achieving the required consumer protection objectives. Thereafter Government, in consultation with the regulator, will take the responses into account when developing detailed proposals for implementing the regulation of pension business.
6. This Consultation Paper is a working document and does not prejudice any final decision to be made by the Government.

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<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/CD%20Consultation%20on%20Pension%20Business%2020191115%20JR.pdf>

## Summary of feedback

7. The first consultation paper on regulating pensions discussed various options around the scope of pension regulation. The consultation received 22 responses as well as a response from Jersey Finance which consolidated feedback from a number of their member firms. The responses to the specific questions raised are discussed below.
8. The consultation did not explicitly ask whether trustees of pension schemes should be regulated but did ask whether managing pension schemes should be regulated. Feedback on this was forthcoming and is addressed later in the paper. It is proposed that trustees who fall into the categories discussed below, such as those who manage pension schemes (by acting as the governing body) are within the scope of regulation, although the specific treatment of lay trustees is discussed later in the document. It is not proposed that introducing regulation of pensions should interfere with the fiduciary responsibilities of trustees. Regulatory responsibilities to consider the best interests of members aligns with trustees' ability to make decisions in the best interest of beneficiaries.

### Responses

**Question 1: In relation to each category of activity in the table below, in your opinion should that category be within the scope of regulation? Please explain your rationale.**

**(a) Should formation of pension schemes be regulated?**

**Summary of responses:**

9. Overall, the consensus was in support of the formation of pensions schemes being a regulated activity. A number of respondents suggested the formation of pension schemes should only be overseen by the tax authority rather than under separate regulation. One respondent suggested a regulatory framework similar to funds services businesses should be introduced, whereby a scheme would be licenced by the pension supervisor and the key and principal persons regulated by the JFSC.
10. Two respondents suggested advising on the formation of a pension scheme should not be a regulated activity as this is generally already carried out by a professional lawyer, accountant

or actuary. The exception to this would be formation of a pension scheme if carried out by way of business by a Jersey based business.

11. Some respondents suggested that it is not clear what formation of pension schemes means, and so this needs to be clearly defined. Furthermore, it was highlighted that regulating the formation of schemes would help schemes to be recognised by other countries such as the UK's QROPS regime.

**Proposed approach:**

12. It is proposed that the formation of pension schemes should be a regulated activity. Whilst the tax authority plays a role in the formation of pension schemes, this is purely from a tax perspective rather than considering broader consumer protection matters. It is also necessary for a regulator to be comfortable that a scheme it regulates meets the necessary regulatory standards at the point of being approved. Where schemes are already approved at the point at which regulation comes in to force, the regulator would work with the scheme to ensure that they meet the relevant regulatory requirements.
13. Matters relating to advice are discussed in the response to question 1(d).

**(b) Should management of pension schemes be regulated?**

**Summary of responses:**

14. There was broad agreement for the management of pension schemes being a regulated activity. By management of pension schemes, this refers to the governance of the scheme rather than the administration, which is addressed later in this document.
15. Respondents commented that confidence in the management of Jersey-based pension schemes could increase as they are benchmarked and held to a regulatory standard. Regulation of scheme management may serve to promote greater confidence in Jersey's international pensions marketplace and enforce its credibility.
16. Two respondents mentioned that consideration should be given to schemes already managed or administered by companies who are already regulated under existing regulations, and care needs to be considered in order to avoid duplication of oversight and reporting.
17. A number of respondents suggested that a "lighter touch" approach may be appropriate for any trustees of occupational schemes where there are lay trustees, as they are not carrying out their trustee duties by way of business. If they were to be regulated this could be a barrier

for volunteers for member-nominated trustee volunteer roles. Alternatively, a good-practice guide for non-professional trustees may be introduced. Others noted that there may be potential risks associated with unregulated lay trustees and potential for lack of governance as opposed to existing regulation of corporate trustees.

18. Several respondents highlighted the importance to define management and administration of pensions schemes, as Article 130 of the Income Tax (Jersey) Law only defines “Scheme Manager”. It was noted that management and administration could be grouped together where a scheme is trust based and managed/administered by the same trustee.
19. It was suggested there be an exemption for business regulated by a non-Jersey regulator, such as the UK, which applies similar or equivalent standards to those expected in Jersey to avoid dual regulation and the potential conflict and challenge this may bring.

**Proposed approach:**

20. It is proposed that the management of pension schemes should be a regulated activity. As discussed later in this document, this would cover schemes registered under the Income Tax Law.
21. Where companies are already regulated for non-pension related activities, for example under investment business rules, to the extent the rules for investment business and pension activity are comparable the firm’s compliance with investment business rules should be taken as compliance with the comparable rules for pension business. Where there are additional requirements for pensions business it would be expected that they are additionally complied with.
22. Considerations relating to lay trustees and the jurisdictional scope of regulation are discussed later in this document.

**(c) Should administration of pension schemes be regulated?**

**Summary of responses:**

23. The majority of respondents were in favour of regulating the administration of pension schemes. There were however some queries around the extent of such regulation, and some respondents requested that this is carefully considered.

24. It was noted that regulating formation, management, administration and advising on pension schemes would bring some consistency between Jersey's pension regulation and other jurisdictions such as Guernsey and the UK.
25. In favour of regulating the administration of pension schemes, some commented that this would likely benefit members, who it is not reasonable to expect to possess the knowledge or ability to spot miscalculations and errors. Even when possessing the knowledge and ability, members will not generally scrutinise the running of their pension administrators.
26. Some suggested that if a pension scheme is adequately regulated there is no need for administrators to be regulated as well as schemes. It was also argued that regulating trustees would result in dual regulation, increasing pension costs to the detriment of members. Others noted that administrators are not controllers or managers of schemes and so argued that implementing regulation would run counter to the OECD principle of not placing an excessive administrative burden on pension plan operators and sponsors nor require them to bear undue costs and risks as stated in the consultation document.

**Proposed approach:**

27. It is proposed that the administration of pension schemes should be a regulated activity. The effective administration of pension schemes is fundamental to their success, and notwithstanding that decisions are made elsewhere, ineffective administration can materially affect the functioning and pension outcome of pension schemes. Further, regulating administration supports pension trustees in delivering good member outcomes, and helps to ensure that this is the case in all pension schemes and not just well-run ones.
28. Putting good outcomes at the heart of regulatory responsibilities around administration is likely to ensure good outcomes and risk management as well as supporting trustee responsibilities in managing pension schemes. This will also help a regulator focus resources on schemes where scheme managers (such as trustees) cannot demonstrate they are operating in the best interest of members.
29. It is not proposed that introducing regulation of pensions should interfere with the fiduciary responsibilities of trustees. Regulatory responsibilities around effective administration would not prejudice trustees' ability to make decisions in the best interest of beneficiaries.
30. The jurisdictional scope of regulation and the treatment of trustees are addressed later in this document.



**(d) Should advising on pensions schemes be regulated?**

**Summary of responses:**

31. Feedback was mixed, although there was general agreement that pension advice should be regulated. Respondents noted that this would ensure that only appropriately qualified persons can provide advice on pensions, and it would further ensure that there is a clear divide between the regulation of investment advisor and investment manager.
32. Regulation could also help to provide useful guidance to trustees about how to best communicate general guidance to members on the choice of assets being made available in a pension fund, to allow the members to seek their own advice on suitability.
33. There were also calls for proportionate regulation of independent financial advisers who advise specifically in relation to pensions in order to protect members choosing to transfer their benefits to an alternative arrangement.
34. Concerns were raised about how advising on pension schemes may impact other professionals who may already be subject to their own industry's professional standards, potentially risking duplication of regulation. In particular it was suggested that provision of advice by legal, actuarial and investment advisers should be excluded. However, more respondents were in favour of making the provision of pension advice a regulated activity as this would ensure that only properly qualified advisors can advise on pensions.

**Proposed approach:**

35. It is proposed that pension advice is regulated. Pension advice can have a significant effect on people's ability to fund their retirement, and poor advice can have a major detrimental impact. It is therefore essential that consumers have assurance that advice is offered within a regulated framework. Problems and member detriment caused by poor advice have been seen in many markets internationally, and are one of the more common areas where difficulties can be found.
36. The definition of pension advice would leverage from the definition of investment advice under the Financial Services Law and associated Code of Practice for Investment Business. This would include exemptions where advice is given in the course of a non-investment or pensions business.

**(e) Are there other activities in relation to pension schemes that should be regulated?**

**Summary of responses:**

37. Some respondents suggested that any service relating to pension schemes should be regulated, including providers of schemes. In addition, purchase of buyout policies following the winding up of an occupational scheme and de-accumulation products such as the drawdown and annuities should also be included under regulation, to ensure the same level of protection throughout.
38. It was also noted that there is no concept of the “Approved Person” or a fit and proper regime as exists in other financial services sectors.

**Proposed approach:**

39. It is proposed that key persons and principal persons would be regulated. This would not apply to members of schemes, but would apply to those controlling the scheme. Where the scheme only contains one member it is not proposed that the individual is regulated. For a Retirement Annuity Contract it is proposed that this would be the directors of the holding company that is party to the Retirement Annuity Contract with the Annuitant.
40. It is important to ensure that those running the pension scheme retain liability and responsibility even if they have outsourced a service. So, for example, trustees and those managing pension schemes should be able to evidence that they properly monitor any third parties that deliver services to the scheme, and ensure that members are suitably protected. They would need to ensure that their overall risk management framework gives proper attention to operational and investment due diligence where services are outsourced.

**Question 2: In relation to each pension product in the table below, in your opinion should that product be within the scope of regulation? Please explain your rationale.**

**(a) Should defined contribution pension schemes be within scope?**

**Summary of responses:**

41. The consensus was that defined contribution schemes should be regulated. A number of respondents argued that defined contribution schemes are equally as important as defined

benefit schemes, and the potential for serious maladministration in defined contribution schemes is significant.

42. It was also suggested that consideration needs to be given to the “open architecture” nature of modern pension schemes (non-packaged schemes) where the investment manager is generally independent of the scheme management and administration.

**Proposed approach:**

43. Defined contribution schemes should be in scope of regulation. As investment management would generally be regulated already, the focus of such regulation would be on governance and administration.

**(b) Should defined benefit pension schemes be within scope?**

**Summary of feedback:**

44. The consensus response was of clear support for defined benefit pension schemes to be within scope. No contradictory responses were presented.

**Proposed approach:**

45. Defined benefit schemes should be in scope of regulation.

**(c) Should insured schemes and self-administered schemes be within scope?**

**Summary of responses:**

46. One respondent did not see a particular need to include fully insured schemes, however, regulation should apply in hybrid schemes to the part of the schemes which is not insured.
47. It was also noted to be important that regulatory arbitrage is avoided, so all pensions schemes should be subject to equivalent, but proportionate, regulation.
48. Some argued that self-administered schemes should not be within scope as members take decisions for themselves. It was also noted that the regulatory position could be unclear where a small number of members/trustees take decisions on behalf of the membership. Others argued that small self-administered schemes are likely to be of the highest risk and should certainly be within scope.

49. Some suggested that insured schemes are already regulated under insurance business regulations either in Jersey or where the scheme is constituted. Furthermore, it was suggested that self-administered retirement annuity companies should not be regulated, as they are managing their own monies and are controlled by the individuals who are the pensioners.
50. It was proposed that a risk-based approach should be used to avoid burdening fully insured arrangements with undue additional work where good governance can be demonstrated.

**Proposed approach:**

51. It is proposed that such schemes should be in scope of regulation, but there be an emphasis on regulation being proportionate and risk-based. Particularly for insurance-based schemes, regulation should not duplicate existing checks and controls that provide input into the quality and provision of pension products. Providers of such schemes are very likely to be regulated by the Prudential Regulation Authority in the UK. As such, regulation would focus on any potential gaps. As proposed later in this document, conflict of interest rules would apply, which would include how conflicts are managed between the governance of the scheme and investment management decisions.

**(d) Should private pensions be within scope?**

**Summary of responses:**

52. The consensus was that private pensions should be within the scope of regulation. One respondent emphasised that if private pensions were to be excluded this would create difficulties maintaining a common set of standards for associated service providers such as advisers and investment managers. There is also greater scope for mismanagement in private schemes where providers may not be currently regulated.
53. Others suggested that whilst private pensions should be within scope, sale and investment advice to individuals should be excluded where this is already regulated under existing laws. It was suggested that the main focus should be the operation, governance and oversight of these pension arrangements.
54. One respondent proposed that private pensions should be within scope, but this should depend on membership and how the scheme is operated.

**Proposed approach:**

55. It is important to avoid creating arbitrage in pension regulation, and risk incentivising the transfer of pension arrangements into unregulated schemes. It is therefore proposed that private pensions are regulated. This would include Retirement Trust Schemes and Retirement Annuity Contracts.

- (e) Are there any reasons why each of employer, group, and person, trust-based, contract-based pension schemes, or any other type of pension scheme should or should not be within scope?**

**Summary of responses:**

56. It was argued that a consistent approach is required to ensure that service providers, trustees and principal employers work to the same standards. This would ensure an appropriate level of regulation across the pensions industry.
57. It was proposed that any scheme which requires the tax advantage of being an approved scheme under the law ideally needs regulation. This would also protect the reputation of the jurisdiction and the improve of the quality of Jersey's offering. By applying regulation to all types of schemes this will safeguard customers and ensure that they will be appropriately protected regardless of the particular vehicle within which pension savings are held.

**Proposed approach:**

58. It is important to avoid creating arbitrage in pension regulation, and risk incentivising the transfer of pension arrangements into unregulated schemes. It is therefore proposed that all Part 19 approved schemes are regulated.

**Question 3: Do you consider that Jersey public service pension schemes should be within the scope of a new pension regulator?**

**Summary of responses:**

59. There was general agreement that Jersey public service pension schemes should be within the scope of a new pension regulator. Respondents highlighted that it would not be appropriate

to distinguish a public service scheme from any other schemes purely because it is a public service scheme. The same issues can potentially exist and would benefit from regulation.

60. It was also noted that the States of Jersey is a major employer, so exempting public service schemes could undermine the credibility of regulation. Regulation may also provide greater transparency to members and the general public in respect of funding (although it is noted that the schemes regularly publish actuarial assessments and valuations). It was also argued that given the potential increase in costs of provision brought about by regulation, equitable application of regulation is essential for collective buy-in.
61. It was also noted that there is a statutory framework underpinning public service schemes which provides higher protections than that for non-public sector schemes, so care should be taken to ensure that regulation does not contrast with such legislation. Given this statutory framework any regulation of public sector schemes might need to be designed in a bespoke way.

**Proposed approach:**

62. There appear to be few credible reasons for fully excluding Jersey public sector schemes from regulation. It is therefore proposed that they should be within the scope of regulation. Notwithstanding the presence of independent actuarial valuations of funds, an additional layer of oversight supports positive pension outcomes. It is also not appropriate for individuals to have differing layers of protection if they have multiple pensions in both public and private schemes.
63. It is important however to recognise that public service pension schemes are statutory schemes, and so by design will have some inherit protections that would not be present in non-public service schemes. For example, there is built-in statutory accountability to Ministers and the schemes rely on some functions of government for their administration. Also, the governing bodies of the schemes have some of their discretion limited by statute, for example around the ability to appoint an administrator other than the Treasurer of the States, which would require the consent of States Assembly. To a significant extent, the requirements in the Public Employees (Pensions) (Jersey) Law 2014 and accompanying secondary legislation provide existing regulation of public-sector schemes.
64. It is therefore acknowledged that the design of regulation of public service schemes will necessarily differ compared to non—public service schemes, in particular due to their statutory nature. It may therefore not be necessary to regulate all aspects equally. This will be

considered further as legislation is drafted and the need for a more tailored approach will be kept under review.

**Question 4: A potential method of bringing pension provision into the regulatory sphere would be to amend the Financial Services (Jersey) Law 1998 to create a new category of financial service business. Would this be a preferable approach and if not, which approach would be preferable?**

**Summary of responses:**

65. Respondents were broadly supportive of this approach on the basis that the JFSC should be the pension regulator. This would be consistent with the regulation of other fiduciary and investment business, and could be accompanied by Codes of Practice setting out principles, and perhaps more detailed requirements, for pension business.
66. It was noted that the current categories of financial services business to some extent all provide the foundations for pension regulation (trust, investment management, fiduciary, and administration). It was suggested that rather than create a new category, it would be beneficial to extend the current regulations (and more specifically the guidance notes) to incorporate pension regulation. This would have the added advantage of making the existing service providers accountable under the regulation.
67. A concern was raised that pensions are mischaracterised as a 'financial services product' first and a 'tax reduction vehicle' second. Instead, pensions should be seen as a vehicle for saving towards (and providing income in) retirement as set out in the summary of the consultation paper. Using the Financial Services Law as the basis for regulation could therefore be inappropriate.
68. Some argued that separate pensions legislation should be enacted as in the UK. This would allow for clearer legislation and lend itself to a separate, independent regulator. The Financial Services Law approach may be a 'quick fix' but potentially not appropriate in the long-run. It was also suggested that a division between personal and workplace pensions regulation may be appropriate (as in the UK with the Financial Conduct Authority and The Pensions Regulator).
69. Some suggested that it might not be appropriate for occupational pension schemes and the public service schemes to be regulated under the Financial Services Law. The public service

schemes and many occupational pension schemes have lay trustees, therefore it could be onerous for them to be caught by the Financial Services Law. However, in principle the schemes themselves should be regulated.

**Proposed approach:**

70. The responses to this question have highlighted a number of key considerations in the legislative design of pension regulation. As much of the requirements on pension providers and schemes, as proposed later in this document, will likely have similarities with the requirements under the Financial Services Law there are merits in extending that law. Equally there are specific factors unique to the complexity and breadth of pensions which may merit a stand-alone law. This will be reviewed as this work progresses, and the appropriate legislative structure will be decided at a later date in consultation with legislative drafters.

**Question 5:**

- (a) Do you agree that the current pensions' legislation wording in the Financial Services Ombudsman (Jersey) Law 2014 and the Income Tax (Jersey) Law 1961 should be used when integrating pensions business into the regulatory perimeter?**
- (b) Are there any other elements of the Financial Services Ombudsman Law that would be particularly useful, or not useful, for this purpose?**
- (c) Are there any other elements of the Income Tax Law that would be particularly useful, or not useful, for this purpose?**

**Summary of responses:**

- 71. Responses to these three questions were inter-linked, and so the summary and proposed approach are combined.
- 72. Respondents noted that it is important to ensure that definitions are harmonised where possible. Regulation should be focussed on approved pension schemes, and therefore any definitions in the Income Tax Law are relevant. Alternatively, it was noted that the wording is used for a different purpose, so whilst it may be useful reference point, regulatory concepts may need their own definitions.



73. Some suggested that the current definition of “relevant pension business” under the Financial Services Ombudsman (Jersey) Law would appear to be at odds with the stated objectives of the Government, by exempting employer-sponsored schemes which may pose significant risk to their members.
74. It was also suggested that the current pension wording defines a pension scheme as one which provides benefits on retirement from an employment or all employment, or in similar circumstances. This is narrower than UK legislation which defines a pension scheme as one which provides benefits “on retirement, on death, on having reached a particular age, on the onset of serious ill-health or incapacity, or in similar circumstances.” It was argued that the latter wording is preferable as it covers a wider range of circumstances than retirement from employment. It was also argued that the focus should be on regulation of retirement benefit structuring rather than pensions vehicles, and it was suggested that this is the position adopted by the Isle of Man and Guernsey.

**Proposed approach:**

75. Similarly to question 4, the responses to this question have highlighted a number of key considerations in the legislative design of pension regulation.
76. The starting point for the definition of a pension scheme is proposed to be those that are approved under the Income Tax Law. Nonetheless, later in this document the question of whether International Savings Plans should be within the scope of regulation is further explored.
77. Similarly, later in this document the mandate of the Channel Islands Financial Ombudsman in relation to pensions is discussed.
78. The feedback to these questions will be reviewed as this work progresses, and the appropriate legislative concepts will be decided at a later date in consultation with legislative drafters.

**Question 6:**

- (a) Do you agree that “carried on in or from within Jersey” is the correct test for the location of the pension services activity?**

**Summary of responses:**

79. There was a mix of views as to whether “carried on in or from within Jersey” should be the appropriate test for the jurisdictional scope of bringing pension service activity into regulation in Jersey. Alternatives included a suggestion that where the manager of the pension scheme is located should be the determining factor.
80. It was also suggested that the focus should be on Jersey based products and services, but why this test would not capture such services was not analysed. Another suggested that this could prevent providers from offering services internationally and potentially provide loopholes, but did not expand on these concerns.

**Proposed approach:**

81. In the absence of detailed suggestions to the contrary it is proposed that this test is used to assess whether a particular pension service activity is based in Jersey. A key aspect of this assessment would be whether the activity is managed and controlled from Jersey.

- (b) Do you agree that there should be an appropriate test to determine what constitutes a Jersey scheme as opposed to a non-Jersey scheme? If so, what factors should be considered?**

**Summary of responses:**

82. As already discussed, responses included a suggestion to leverage the definitions of schemes in the Income Tax Law definitions. This could include a blanket assessment that any scheme approved under the Income Tax Law must be within the scope of regulation.
83. Alternative suggestions included considering the governing law of the trust deed, and another respondent built on this to suggest that this would be particularly relevant where trustees and members are located in multiple jurisdictions. It was suggested that it is important to consider the governing law of the scheme as well as if it is managed and administered in Jersey. It was also noted that schemes approved in a jurisdiction are not necessarily established in that jurisdiction.

**Proposed approach:**

84. It is proposed that schemes registered under the Income Tax Law should be within the scope of regulation. Going beyond this is likely to raise significant complexities and risk duplicate regulation across jurisdictions. However, there is a consideration as to whether International

Savings Plans should be within the scope of regulation, despite not being pensions schemes as defined under the Income Tax law. This is discussed later in this document.

**Question 7:**

- a) Do you agree that pensions business should be supervised by the JFSC? If not, which other authority should supervise it? You may wish to offer thoughts on a new and independent pensions' regulator, such as the one in the UK.**

**Summary of responses:**

85. There was general agreement that the JFSC should be the pension regulator. It was argued that Jersey is not a large enough jurisdiction to justify the establishment and funding of a separate regulator such as the one in the UK. Instead this would be best provided by the JFSC, where possible utilising existing resources and expertise in the regulation of Jersey financial services providers.
86. It was noted that the JFSC being the pension regulator would bring efficiencies, and avoid infrastructure having to be duplicated. A risk based approach to supervision of regulated entities could be extended to include pensions schemes and regulated pension business. It was also noted that the Isle of Man established a separate regulator, but subsequently transferred its functions in to the Isle of Man Financial Services Authority.
87. Some others argued that the JFSC would not be the appropriate regulator. One respondent argued that this is not appropriate as employers might not be regulated by the JFSC, and therefore a separate regulator would be more appropriate. It was also suggested that as a financial services regulator, the JFSC is not appropriate as they could inappropriately treat pensions as a financial services product and omit to appreciate the social policy aspect of pensions. Another respondent questioned whether the JFSC would have sufficient capacity to act as a pension regulator, noting the need for guidance and the volume of likely enquiries.

**Proposed approach:**

88. At this stage it is proposed that the JFSC should be the Jersey pension regulator. This approach will be explored further in consultation with the JFSC. This would be more cost efficient than establishing a fully operationally independent regulator, which would incur

duplication of costs. Also, placing the regulator within the JFSC would allow the regulator to leverage from existing JFSC expertise.

89. As discussed throughout this paper, especially in the initial years of regulation it is envisaged that the regulator will act to assist regulated persons to comply with regulatory standards, in particular for lay trustees (subject to feedback on the regulation of lay trustees) and less established schemes. Supervision would be appropriate to the risks posed rather than a one-size-fits-all approach.

**b) Do you agree that the authorisation and supervision costs of a pension regulator should be levied through regulatory fees paid by regulated pensions businesses?**

**Summary of responses:**

90. Respondents offered a mix of views about how pension regulation should be funded. On balance there was support for fees being levied through regulatory fees, albeit with a call for proportionality and caution. Some explained that whilst they agree that regulation should be funded by regulated pension businesses it is important to keep additional regulatory costs to a minimum, being mindful that many of the organisations which would fall within the scope of the new regulations will already be regulated and subject to regulatory fees. It was also noted that to an extent any fees levied on regulated pension business may be passed through to their customers, i.e. pension members and beneficiaries.

91. Several respondents argued that the cost of regulation should wholly or partially be met by taxpayers. It was suggested that this may be appropriate as it is Government proposing to introduce regulation, and fees being paid by industry could reduce businesses profits and in turn reduce tax revenue. It was also suggested that regulatory fees could act as a disincentive to doing business in Jersey.

92. Importantly, a number of respondents noted that many businesses who would likely fall in to the scope of pension regulation are already regulated by the JFSC. Care should therefore be taken to consider the cumulative cost of additional regulation.

**Proposed approach:**

93. It is proposed that the cost of regulation is primarily borne by the regulated industry. The purpose of regulation is to increase standards in the industry and protect member outcomes

from the risk of misconduct and errors. It is appropriate that the costs of these protections is distributed across the industries within which the risks lie.

94. Were regulation to be funded by Government the cost would be borne by taxpayers. In considering whether regulation should be funded by Government or the regulated industry, a key consideration is therefore whether the cost should be spread across all taxpayers or by those who are active in the industry, albeit noting that some costs may be passed through to the users of pension products and services.
95. The precise nature of the funding model will require additional analysis and consultation, and may require an additional licence category within the JFSC fees model.

**c) Do you consider that a pensions' regulator should take on a funding control role?**

**Summary of responses:**

96. On balance, respondents suggested that the pension regulator should have a funding control role in respect of defined benefit schemes. Reasoning included to provide assurance and protection to members that their benefits are protected, helping to ensure that the scheme is well run, and noting that this approach is taken in the UK.
97. Some argued against such a role, noting that this would be a significant step to take in the initial years of regulation given that pensions are not currently regulated in their own right. Some argued that introducing such a role could risk sponsoring employers downgrading scheme benefits or winding up schemes altogether, which may not necessarily be in the best interests of the members. It was also suggested that a funding control role could significantly increase the costs of running a pension regulator, and hence regulatory fees.

**Proposed approach:**

98. We do not propose to introduce a funding control role at this stage. Rather, there will be an emphasis on a regulator identifying funding shortfalls and building remediation plans, in particular for defined benefit schemes. Managers of defined benefit schemes would however be required to report to the regulator if expected pension contributions from employers are not forthcoming.
99. Whilst the weight of opinion was towards introducing a funding control role the concerns expressed were significant. Introducing such a role would be a major step and could distract from the focus of regulation increasing standards across the industry more broadly. It could

also divert substantial resource of the regulator, and require the regulator to employ detailed actuarial skills at material cost.

100. Nonetheless, those who supported introducing a funding control role expressed sound arguments in favour of protecting member outcomes. The need for a pension regulator to have such a power will therefore be kept under review. However, given the current status of pension regulation, the initial focus will be on setting up a regulator and increasing standards across the pension industry more broadly.

## **Further proposals**

101. There are a range of potential approaches to regulating pensions. Some jurisdictions like the United Kingdom have developed a wide-ranging approach with multiple regulators, in-depth rules and mandatory levies to pool the costs of pensions failure. Other jurisdictions have taken a more principles-based approach aimed at ensuring that pensions schemes are well governed and pension advice is sound.
102. Regardless of the history of the country and the specificities of the jurisdiction, international standards and best practice examples such as those discussed in the first consultation have a strong focus on ensuring good outcomes for members and delivering a risk-based, proportionate and efficient approach to pension regulation and supervision.
103. It is important to balance the need to protect users of Jersey pensions products with ensuring that pension regulation recognises the size and scope of the Jersey pension market, and is proportionate. It is therefore proposed that pension regulation in Jersey focusses on helping schemes achieve better governance and a realistic understanding of the adequacy of their funding, as well as to ensure that advice and ancillary services meet fundamental regulatory standards.
104. These principles are broken down into themes. We welcome feedback on the merits of the approaches proposed, and alternative approaches that might be more suitable.

## **Governance**

105. Governance is fundamental to ensuring that pensions deliver the expected benefits to members. International evidence shows that poor governance is almost always involved in severe problems including major failures in financial services. Effective governance increases the likelihood that those overseeing and administering a pension scheme are aware of any emerging issues, shortfalls, or activity that might not be in the best interests of members. Effective governance is also closely related to effective and proactive risk management which is an essential part of any well-run pension – and indeed financial services providers more generally.
106. We propose that a number of principles are required of regulated pension schemes in order to increase these protections. The majority of schemes will already comply with many of the

provisions proposed below. However, in order to ensure that standards are increased across all schemes, it is proposed that these principles apply across the board.

<b>Requirement:</b>
i. The governing body is responsible for oversight, risk management and meeting regulatory obligations, and must hold regular meetings.
ii. Responsibilities within the governing body should be clearly identified and divided. These responsibilities should be documented and reviewed.
iii. JFSC suitability and background checks would apply to principal and key persons of regulated persons. This would ensure that the key and principal persons are fit and proper.
iv. Regulated persons must have a clear complaints procedure.
v. Requirement for the separation of scheme and sponsor. Pension assets for members must be held legally separately from the employer – for example in trust - and have adequate protections against excessive investment of those assets in the sponsoring employer.
vi. For schemes which choose investment strategies on behalf of members the governing body must identify and document what the goals of the scheme are, and monitor whether those goals are appropriate to member profiles.
vii. For schemes which choose investment strategies on behalf of members, the governing body must ensure investment strategy follows a prudent approach to support the delivery of good retirement outcomes, taking into account the profile and duration of liabilities where this is applicable. This could be done through contracts and agreements with the investment manager.

**Question 1: Do you have any comments on these proposals relating to governance standards?**

**Conflicts of interests**

107. In the pensions industry there is a significant risk that conflicts of interests are abused. By their nature pensions are a long-term product. Many people only engage with their pension



arrangements infrequently, and trust the expertise of others who should be acting in their best interests.

108. Conflicts of interest could emerge in many parts of the pensions industry. This may be through favouring investments that are in some way linked to the scheme or those governing the scheme, advising on or actively changing pension and investment arrangements due to favourable fees or commissions, or directly charging undisclosed fees, amongst others. This could be within a firm across business lines, or via commercial relationships between separate entities.

109. Where professional trustees choose to use the services of their own firm, for example to provide investment management or advice, it is particularly important to ensure that the conflicts of interest policy acknowledges these risks and ensures that the trustees are acting in the best interests of the members.

110. It is therefore important to ensure that all regulated persons within the pensions industry are aware of the conflicts of interest that they face, and actively manage the risks associated with these conflicts. It is also important to ensure that these can be scrutinised and challenged by the regulator. It is therefore proposed that:

<b>Requirement:</b>
i. The governing body must have a conflicts of interest policy that introduces robust controls to identify and manage conflicts.
ii. Regulated persons must have policies to ensure that the customers, members and beneficiaries are put first.
iii. The governing body must be able to evidence that the investments policy is not biased towards any related parties, for example through publishing a Statement of Investment Principles.

**Question 2: Do you have any comments on these proposals relating to conflicts of interest?**

**Communication with members**

111. Understanding of the key concepts underpinning pension savings and drawdown is mixed, and many members have limited ability to analyse their pensions arrangements without professional guidance. It is therefore important that pension schemes clearly communicate with members, providing regular updates about pension savings and expected benefits, in a format easily understandable to a person with basic financial literacy. Such communication should help the member to have a reasonable understanding of their likely pension benefits, and the key associated risks.

112. It is recognised that a full bottom up valuation of a scheme will not always be appropriate. For example, a SIPP might hold complex illiquid assets which could be costly to value. In such cases estimates could be used. It is proposed that:

Requirement:
i. Schemes must provide simple statements to clients on an annual basis. The JFSC will have the power to determine the minimum information that must be included, in consultation with industry. This should at a minimum include basic projections of the value of funds at retirement, an explanation of investment objectives and associated risks and assumptions.
ii. Schemes and administrators must provide breakdowns of all fees that are charged to members, through to individual funds. This would include, but not be restricted to: <ul style="list-style-type: none"><li>• Fees charged by the scheme itself;</li><li>• Commissions payable, for example between advisors and a scheme administrator, or between a scheme administrator and a fund;</li><li>• Administration fees levied by funds; and</li><li>• Dealing fees.</li></ul> Fee breakdowns should follow best practice guides such as the UK Cost Transparency Initiative. <sup>2</sup> Fees paid by employers for occupational pensions would not be required to be disclosed, as these are not costs to the member.
iii. Schemes and administrators must disclose their policy towards Environmental, Social and Governance considerations. This should outline how their investment policy takes account of the sustainability of investments, including consideration of environmental factors. This would explain the considerations taken to ensure that investments are not unduly exposed to the risk of environmental events, for example droughts, earthquakes, fire, flooding, habitat modification, climate change, pollution, sea level rise and water abstraction, amongst others.

<sup>2</sup> <https://www.plsa.co.uk/Policy-and-Research-Investment-Cost-Transparency-Initiative>

**Question 3: Do you have any comments on these proposals relating to communication with members?**

**Lay trustees**

113. Given the important role of trustees in trust-based pensions, the starting point is that trustees should be regulated and governance standards are applied to their activities. Many trustees will already be regulated by the JFSC in their role over Retirement Trust Schemes. Where trustees are not regulated, which will only apply to lay trustees who are not providing trustee services by way of business, respondents to the original consultation have queried whether they should be subject to regulation.
114. Feedback has been mixed about whether lay trustees and schemes governed by lay trustees should be within the scope of regulation. There is a risk that regulating lay trustees will push them out of the industry, potentially closing schemes. Alternatively they may transfer the scheme to a corporate trustee, which will incur costs on top of those already imposed by introducing regulation.
115. However, a more costly professional trustee which provides effective oversight of a scheme will in some cases be more effective in protecting members' long-term interests than a lay trustee who does not fulfil their duties and does not effectively protect members' interests. Given the long-term nature of pension saving and drawdown, increased administrative costs associated with a professional trustee could be dwarfed if that means pension schemes are more effectively managed, and their funds protected.
116. If lay trustees were not regulated there is a risk that they could be used as a loophole for avoiding regulation. It is therefore proposed that lay trustees are brought into regulation, but that the focus of the regulator should be working with lay trustees to ensure that they meet the required regulatory standards. There would be an increased implementation period for lay trustees to either meet regulatory standards or transition their schemes to corporate trustees.
117. There may be areas where exemptions for lay trustees could be appropriate, but should any exemptions exist this would need to be appropriately governed. For example, to be considered as a lay trustee the trustee should not possess professional trustee qualifications and be a professional trustee in a separate capacity.

118. The approach to regulating lay trustees would necessarily differ from corporate trustees, and the focus of regulation particularly at the early stages could be on helping trustees meet the new regulatory standard. This could include guidance such as a good practice guide.

119. In the future if there were to be any expansion in private or workplace pensions any pension scheme that wanted to be included in offering funds to new workers or unconnected workers would have to meet the highest standards of governance, and hence exemptions for any type of scheme operating in such a market might not be appropriate.

**Question 4: Do you agree that lay trustees should be within the scope of regulation?  
Are any exemptions required?**

#### **Record keeping**

120. It is also important that regulated entities can clearly demonstrate their financial position, and also evidence audit trails of actions relating to their members and clients. This keeps a record of how member interests have been considered as well as evidencing how regulatory requirements have been followed. It is therefore proposed that record keeping requirements are applied to firms providing regulated pensions business. It is therefore proposed that managers of pension schemes:

<b>Requirement:</b>
i. Are able to disclose the financial position of the scheme to the regulator at any time.
ii. Keep a record of all information relevant to complying with regulatory requirements, including any potential breaches of the requirements, and be able to provide such records to the regulator without delay.
iii. Maintain a register of complaints, providing sufficient details to demonstrate the status of each complaint.

**Question 5: Do you have any comments on these proposals relating to record keeping?**

### **Reporting**

121. One of the key focusses of a pension regulator in its formative years will be to build an understanding of the pensions industry and work with the industry to increase standards, good governance, and ultimately protect pension outcomes. To do this the regulator will require information from the industry it is regulating.

122. It is therefore proposed that the regulator will have an information gathering power, leveraging the JFSC's existing information gathering powers under Article 32 of the Financial Services (Jersey) Law 1998<sup>3</sup>. It is expected that the regulator will seek corporate and financial information as well as an analysis of the profile of the members of schemes.

123. It is important that information gathering is done in the most cost-effective way possible, and does not impose undue costs on the industry.

### **Question 6: Do you have any comments on these proposals relating to reporting?**

### **Cooperation with Comptroller of Taxes and other appropriate regulatory bodies**

124. It is possible that as pension regulation is introduced the regulator identifies a number of schemes that are not in compliance with regulation which would also not be in compliance with tax law. The Comptroller of Taxes may remove a scheme's approval under the Income Tax Law where the Comptroller considers that the scheme no longer warrants continuance of approval. Upon withdrawal of approval taking effect, the scheme is liable to income tax at a rate of 50%.

125. In such a scenario the Comptroller of Taxes would operate under an objective to collect taxes owed to the States of Jersey, whereas the pension regulator would have a potentially conflicting objective of protecting the interests of the scheme members who would be at risk of a substantial tax charge.

126. It would not be appropriate to amend the Comptroller of Taxes objective to collect taxes that are due. However it is important to ensure that the regulator and Comptroller can work together in such a scenario to ensure that the best possible outcome is achieved, balancing the

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<sup>3</sup> [https://www.jerseylaw.je/laws/revised/Pages/13.225.aspx#\\_Toc2683244](https://www.jerseylaw.je/laws/revised/Pages/13.225.aspx#_Toc2683244)

objectives of each party. It is therefore proposed that an information gateway is created between the regulator and the Comptroller of Taxes, permitting the sharing of information where the information would assist the other entity in the carrying out of its public functions. It is envisaged that creating this gateway should help prevent pension scheme failure through the sharing of information about individual pension schemes.

127. In addition to liaison with the Comptroller of Taxes, there may be other regulatory bodies – for example overseas pension regulators or the Channel Islands Financial Ombudsman – with whom the new pension regulator will need to liaise and exchange information. It is proposed that best practice information sharing subject to Memoranda of Understanding and strict confidentiality requirements be put in place to allow regulatory information to be shared where this is necessary to support members' outcomes, and assist bodies in their public functions.

**Question 7: Do you have any comments on these proposals relating to cooperation with Comptroller of Taxes and other appropriate regulatory bodies?**

#### **Channel Islands Financial Ombudsman alignment**

128. In introducing pension regulation it is important to consider the mandate of the Channel Islands Financial Ombudsman. It is currently not clear that occupational and public sector pension schemes are within the scope of the Ombudsman. We propose to amend the Financial Services Ombudsman (Jersey) Law 2014 to make clear that such schemes are within the mandate of the Ombudsman, in order to ensure that the Ombudsman's mandate in relation to pensions is aligned with the scope of the pension regulator.

**Question 8: Do you have any comments on these proposals relating to the remit of the Channel Islands Financial Ombudsman?**

#### **International Savings Plans**

129. International Savings Plans were introduced during 2019 and are generally used as a savings vehicle by companies wishing to provide alternatives to pensions for internationally mobile workforces. International Savings Plans are not pension schemes under the Income Tax Law

and tax treatment is applied differently. Notwithstanding, there are some similarities between traditional pensions and the way in which International Savings Plans are used.

**Question 9: Do you consider that International Savings Plans should be within the scope of a pension regulator?**

## **Data Protection (Jersey) Law 2018 Privacy Notice**

### **How will we use the information about you?**

We will use the information you provide in a manner that conforms to the Data Protection (Jersey) Law 2018.

We will endeavour to keep your information accurate and up to date and not keep it for longer than is necessary. In some instances the law sets the length of time information has to be kept. Please ask to see our retention schedules for more detail about how long we retain your information.

We may not be able to provide you with a service unless we have enough information or your permission to use that information.

We will not pass any personal data on to anyone outside of the States of Jersey, other than those who either process information on our behalf, or because of a legal requirement, and we will only do so, where possible, after we have ensured that sufficient steps have been taken by the recipient to protect your personal data.

We will not disclose any information that you provide 'in confidence', to anyone else without your permission, except in the few situations where disclosure is required by law, or where we have good reason to believe that failing to share the information would put someone else at risk. You will be told about this unless there are exceptional reasons not to do so.

We do not process your information overseas using web services that are hosted outside the European Economic Area.

### **Data Sharing**

We may need to pass your information to other States of Jersey (SOJ) departments or organisations to fulfil your request for a service. These departments and organisations are obliged to keep your details securely, and only use your information for the purposes of processing your service request.

We may disclose information to other departments where it is necessary, either to comply with a legal obligation, or where permitted under other legislation. Examples of this include, but are not limited to: where the disclosure is necessary for the purposes of the prevention



and/or detection of crime; for the purposes of meeting statutory obligations; or to prevent risk of harm to an individual, etc.

At no time will your information be passed to organisations for marketing or sales purposes or for any commercial use without your prior express consent.

### **Your rights**

#### **You can ask us to stop processing your information**

You have the right to request that we stop processing your personal data in relation to any of our services. However, this may cause delays or prevent us delivering a service to you. Where possible we will seek to comply with your request but we may be required to hold or process information to comply with a legal requirement.

#### **You can withdraw your consent to the processing of your information**

In the few instances when you have given your consent to process your information, you have the right to withdraw your consent to the further processing of your personal data. However, this may cause delays or prevent us delivering a service to you. We will always seek to comply with your request but we may be required to hold or process your information in order to comply with a legal requirement.

#### **You can ask us to correct or amend your information**

You have the right to challenge the accuracy of the information we hold about you and request that it is corrected where necessary. We will seek to ensure that corrections are made not only to the data that we hold but also any data held by other organisations/parties that process data on our behalf.

#### **You request that the processing of your personal data is restricted**

You have the right to request that we restrict the processing of your personal information. You can exercise this right in instances where you believe the information being processed is inaccurate, out of date, or there are no legitimate grounds for the processing. We will always seek to comply with your request but we may be required to continue to process your information in order to comply with a legal requirement.

#### **You can ask us for a copy of the information we hold about you**

You are legally entitled to request a list of, or a copy of any information that we hold about you. However where our records are not held in a way that easily identifies you, for example a land registry, we may not be able to provide you with a copy of your information, although we will do everything we can to comply with your request.

You can ask us:

- to stop processing your information
- to correct or amend your information
- for a copy of the information we hold about you.

You can also:

- request that the processing of your personal data is restricted
- withdraw your consent to the processing of your information.

You can complain to us about the way your information is being used by contacting us at [dataprotection2018@gov.je](mailto:dataprotection2018@gov.je) alternatively you can complain to the Information Commissioner by emailing [enquiries@dataci.org](mailto:enquiries@dataci.org).