

**Consultation on the draft amendments to the Financial Services (Jersey) Law 1998**

**Summary:**

The Government of Jersey is seeking to amend the Financial Services (Jersey) Law 1998 (the “**FS Law**”), to bring within the existing regulated investment business framework those businesses who are giving investment type advice to consumers about Jersey pension products or private employer pension arrangements.

The Government has had the advantage of views from industry representatives and the Regulator ahead of the publication of this consultation, which views have informed the drafting of the relevant amending legislation:

1. the Draft Financial Services (Amendment of the Law No. X) (Investment Business) (Jersey) Regulations 202- ; and
2. the Draft Financial Services (Amendment of Schedules to Law) (No.3)(Jersey) Order 202- (the “**Draft Amendments**”).

This consultation now seeks views on the draft legislation.

**Date published:**  **Closing date:**

3 September 2021 30 September 2021

**Supporting documents attached:**

1. the Draft Financial Services (Amendment of the Law No. X) (Investment Business) (Jersey) Regulations 202-
2. the Draft Financial Services (Amendment of Schedules to Law) (No.3)(Jersey) Order 202-

**How will we use your information?**

The information you provide will be processed in accordance with the Data Protection (Jersey) Law 2018 for the purposes of this consultation. For more information, please read our privacy notice at the end of this document.

The Government of Jersey may quote or publish responses to this consultation (including sending to the Scrutiny Office, quoting in a published report, reporting in the media, publishing on www.gov.je consultation summary etc.) but will not publish the name and addresses of individuals without consent. Confidential responses will still be included in any summary of statistical information received and views expressed. Under the Freedom of Information (Jersey) Law 2011, information submitted to this consultation may be released if a Freedom of Information request requires it, but no personal data may be released.

Do you give your permission for your comments to be quoted?

1. No □
2. Yes, anonymously □
3. Yes, attributed □

Name to attribute comments to: [insert box]

Organisation to attribute comments to, if applicable: [insert box]

**Ways to respond**

**Charlotte Brambilla**

Associate Director, Financial Services | Economy | Office of the Chief Executive

Email: [c.brambilla@gov.je](mailto:c.brambilla@gov.je)

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

**Lisa Springate**

Head of Legal and Technical| Jersey Finance Limited

Email: [Lisa.Springate@jerseyfinance.je](mailto:Lisa.Springate@jerseyfinance.je)

This consultation paper has also been directly provided to:

* Jersey Branch of the Association of Professional Financial Advisers (“**JPF**”)
* Jersey Pensions Association (“**JPA**”)
* Jersey Finance Limited
* The Law Society of Jersey
* Jersey Financial Services Commission (“**Regulator**”)
* Channel Island Financial Services Ombudsman (“**CIFO**”)

**INTRODUCTION**

Jersey is recognised as a leading international centre for financial services, offering flexibility in a well-regulated environment, and with a wide body of experienced professionals able to assist.

Unlike in other jurisdictions, such as the UK and Guernsey, pension business is not regulated as a separate category of financial service business. The retail side of pension business is instead regulated in part through other categories of regulated financial service or insurance business which overlap into pensions business. The employer (non-retail) side of pension business is regulated typically by the employee’s employment contract, trust law, the Comptroller’s tax rules relating to pensions and, in the case of public employees, the statutory framework which applies to the public employee pension schemes.

In recent years, Government, the Regulator and representatives of the JPA and JPF have been in discussions to introduce a comprehensive framework for pension regulation to the Island, incorporating both the retail and non-retail aspects of it. The Government issued two consultations on the topic in 2018 and 2019.

Following these consultations Government has pledged to introduce, with the assistance of the Regulator, a phased, proportionate approach to the introduction of pension regulation.

The proposed regulation is intended to focus on the specific risks in the Jersey market and seeks to avoid over-burdening providers so that pension provision can remain cost-effective.

The Draft Amendments represent Phase 1 of pension regulation. There will be further phases to follow which further regulate both the retail and non-retail aspects of pension provision on the Island.

Phase 1 does not represent full pension regulation. Instead, the aim of Phase 1 is to close a gap in regulation which currently exists in relation to the retail ‘sale’ type of advice given to consumers about their Jersey pension arrangements or pension products. This was considered to be a priority as it was where local consumers were potentially most exposed to harmful practices. This gap was partly closed when the Regulator introduced changes to the FS Law in 2018 in relation to advice given to consumers relating to the transfer of their defined benefit pensions. The aim of Phase 1 is to fully close this gap. The details are set out below.

**PROPOSALS**

It is proposed that the FS Law is amended, by way of Regulations and an Order, to introduce into the existing investment business regime regulation of retail advice given to consumers in relation to their Jersey pension arrangements or the establishment of such arrangements. It is further proposed to remove the existing exemption relating to defined benefit schemes in Schedule 2 of the FS Law to avoid any confusion that an investment business provider acting only as an investment manager or dealing on behalf of a defined benefit pension scheme must be licensed for this activity.

**Who would be affected?**

The proposals in this Legislative Consultation have the potential to affect:

1. All registered persons licensed to carry on Class C (providing advice when holding client assets) investment business activities under FS Law;
2. All registered persons licensed to carry on Class D (advice only) investment business activities under FS Law; and
3. Any business providing advice to local consumers on pension arrangements and pension products in Jersey, whether or not already licensed under the FS Law.

**Summary of Draft Amendments**

FS Law Changes

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| Article 1 new definition of “subscription” | A new definition of subscription has been added to ensure that this term includes the application or arrangement for a person to participate or pay into a pension scheme for the purposes of Article 2(2)(c)(i). |
| Pension Scheme as an Investment under Paragraph 9A of Schedule 1 | This replaces the existing paragraph 9A (Defined Benefit Schemes) to widen it to include all tax approved pension arrangements in Jersey including tax approved drawdown contracts within the meaning of Article 130(1) of the Income Tax (Jersey) Law 1961 (“**Income Tax Law**”). |
| Introduction of Note to paragraph 9A of Schedule 1 | This note is to clarify that the inclusion of Pension Schemes as an investment under Schedule 1 only extends to the activity of giving investment advice and not to the activities of dealing or undertaking discretionary investment management under Articles 2(2)(a) and (b). |
| Deletion of Note in paragraph 10 of Schedule 1 | This note previously disapplied the rights and interests of those belonging under the trusts of an occupational scheme from being regulated as an investment under Schedule 1. These are now to be captured. |
| Deletion of paragraph 18 of Schedule 2 | This paragraph previously sought to exclude any activity other than advice given on the conversion of defined benefit pensions from regulation. This was to limit the scope of regulation only to advice given to consumers in respect of the transfer of their defined benefits. The intention is now to extend regulation to all advice given in relation to pension schemes and their underlying interests. The scope has been limited to advice only by virtue of the Note added to paragraph 9A of Schedule 1. This exemption is therefore no longer required and has been deleted. |

**New definition of subscription**

The purpose of this change is to ensure that the advice given to individuals when they are looking to establish a pension scheme in Jersey or join their employer’s scheme is captured. The term ‘subscription’ as ordinarily interpreted might not be understood to include these activities.

It is not anticipated that this new definition would capture the advice given by a provider to an employer on establishing a pension scheme for their employees as it is understood that an employer would not come within the definition of ‘investor’ or ‘potential investor’ for the purposes of Article 2(2)(c) of the FS Law: it being recognised that any sums paid into the pension scheme by the employer belong by virtue of the employment contract to the employee and not to the employer.

The new definition of subscription has been drawn so that its wider scope only applies to advice given under Article 2(2)(c)(i) and to pension schemes to ensure that other references to this term and the term ‘subscribe’ used throughout the FS Law do not unintentionally bring in other forms of business into regulation.

**Changes to the Schedules**

The changes to the Schedules clarify the regulatory treatment of advice given in the marketplace in relation to local pension arrangements and remove any previous regulatory gaps which allowed for local providers in giving such advice to be structured so as to avoid regulation.

This has been implemented in the Draft Order by the substitution of the term Defined Benefit Schemes with the newly defined term of Pension Schemes in paragraph 9A of Schedule 1, the removal of the exemption in paragraph 18 of Schedule 2, the removal of the note in paragraph 10 of Schedule 1 and the introduction of a note to paragraph 9A of Schedule 1.

Following careful consideration, it has been determined that the term ‘Pension Scheme’ should only capture locally tax-approved pension schemes and not equivalent foreign pension schemes or unapproved pension schemes. This is to minimise the complexity of the changes and to avoid any regulatory overlap and to ensure the protection is directed at remediating the consumer harm which was principally identified in the marketplace.

The previous definition of Defined Benefit Schemes did not expressly limit itself to locally tax approved pension schemes. This was found to have created a degree of ambiguity as to its application in the local market and greater complexity where there was a regulatory overlap.

The change has been limited to advice only as technically it is not possible to trade a pension scheme as an investment: only the underlying assets held by the pension scheme are tradable in the ordinary sense. For this reason, the activities of dealing and discretionary investment management can not apply to a pension scheme as an investment under the FS Law. The exemption previously included in paragraph 18 of Schedule 2 for these activities is therefore redundant and has been deleted for clarity.

All other exemptions in Schedule 2 relating to investment business activities remain unchanged and are not intended to be affected by these changes.

**Date proposals effective**

It is intended that these changes shall have immediate effect after their approval by the States Assembly and the Minister. The Regulator has been engaged with Government in the process and has confirmed the changes can have immediate effect but that it may wish to introduce further regulatory guidance at a later date.

**Impact on pension advice market providers**

It is presently understood that there is unlikely to be any businesses who are currently offering this type of advice who are not already:

1. licensed for investment business and regulated under the FS Law; or
2. regulated for other financial service business under the FS Law; or
3. a permit holder approved to carry on insurance business under the Insurance (Jersey) Law 1996.

To the extent that an unlicensed business was offering this service, the effect of these proposals is likely to be to alter their regulatory and tax status, and advice should be taken.

A company that is registered to carry on investment business and/or is a ‘financial services company’ within the definition of Article 123D of the Income Tax Law and that has a permanent establishment in Jersey is chargeable to tax at the rate of 10% unlike a company that does not fall within this definition, which is chargeable to tax at 0%.

Any business that remains unsure as to the effect on its status, should seek advice.

We are very keen to hear from businesses that are not presently licensed for Class C or Class D investment business, as the effect of these proposals would be that they would need to apply to be registered to carry on Class C or Class D investment business in accordance with the FS Law. This would be relevant to the proposed timing for giving effect to the proposals: a transitional period may be required.

**Responding to the Consultation**

The Government invites comments in writing from interested parties on the proposals and the Draft Amendments included in this consultation. Where comments are made by an industry body or association, Government requests that body or association provides a summary detailing the type of individuals or businesses it represents who have expressed a view on the proposals.

All responses must be provided before the closing date, set out above.

**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 may not pass any personal data on to anyone outside of the State 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 or 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 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 any 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).

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| **Financial Services and Digital Economic Department**  **Pension regulation: Phase 1 legislative consultation**  **Privacy Notice (Fair Processing Notice)**  The Office of the Chief Executive, Government of Jersey is registered as a ‘Controller’ under the Data Protection (Jersey) Law 2018 as we collect and process personal information about you. Our registration number is 57259. We process and hold your information in order to provide public services and meet our statutory obligations. This notice explains how we use and share your information. Information may be collected on a paper or online form, by telephone, email, or by a member of our staff, or in some cases, by an external organisation if attending organised events. | | | |
| **WHAT** | | **WHY** | |
| **What information we will collect about you?**  Should you take part in the Consultation we will collect the following types of information about you:   * Name * Postal address * Email address (optional) * Any other information you choose to provide to us as part of your consultation response. Our advice is to only share details that are relevant, and that you are happy for us to view and use.   If someone else provides us with your information we may need to hold this as part of their consultation response. However please be aware if you are providing information about a third party, please ensure they are happy for this data to be shared with us prior to doing so. | | **Why do we collect information about you?**  We need to collect and hold information about you in order to fully consider your views on the consultation and for Government officers (on behalf of the Minister for Financial Services), or the Associate Director, Policy officer, to contact you to discuss further your comments, if required.  We also collect your contact details so that we can keep you informed about key stages of the review process.  You can opt-out of being contacted please email us at c.brambilla@gov.je.  Other information may be collected during the consultation, where appropriate | |
| **HOW** | | | |
| **How will we use the information about you and who will we share your data with.**  Protecting your privacy and looking after your personal information is important to us. We work hard to make sure that we have the right policies, training and processes in place to protect our manual and electronic information systems from loss, corruption or misuse. Where necessary we use encryption, particularly if we are transferring information out of the department. Encryption means the information is made unreadable until it reaches its destination.  We will use the information you provide in a manner that conforms to the Data Protection (Jersey) Law 2018.  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 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.  Where necessary, we may disclose your information to other Government of Jersey departments or organisations, either to fulfil your request for a service 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. 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 will only do this, where possible, after we have ensured that sufficient steps have been taken by the recipient to protect your personal data and where necessary we will ensure that the recipient has signed a Data Sharing Agreement.  A Data Sharing Agreement sets out the purpose of the sharing and the rules that must be followed when processing your data.  We may need to pass your information to other departments or organisations outside the Government of Jersey who either process information on our behalf, or because of a legal requirement. 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 share or process your information overseas. We do not use web services that are hosted outside the European Economic Area.  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. | | | |
| **Publication of your information** | **E-Mails or Post** | | **Telephone Calls** |
| If you have submitted a formal comment on the consultation, we will publish your street name and parish alongside your comment on our website. This is published because geographic origin of comments provides important context for comments all matters.  You can ‘opt in’ to providing more information about you, if you want these details to be shared publicly, including full name, address and/or organisation.  Any other personal information included in your consultation response will be redacted before publication. | If you choose to email or post us information we may keep a record of details including the email address, a copy of the email or letter for record keeping purposes.  For security reasons we will not include any confidential information about you in any email we send to you.  We would also suggest that you keep the amount of confidential information you send to us via email or post to a minimum or only offering information we have requested.  We will not share your contact details unless is it necessary for us to do so, either to fulfil your request for a service; to comply with a legal obligation, or where permitted under other legislation. | | We do not record or monitor any telephone calls you make to us using recording equipment, although if you leave a message on our voicemail systems your message will be kept until we are able to return your call or make a note of your message. File notes of when and why you called may be taken for record keeping purposes. We will not pass on the content of your telephone calls, unless is it necessary for us to do so; either to fulfil your request for a service; to comply with a legal obligation, or where permitted under other legislation. |
| **Your rights** | | | |
| **You can ask us to stop processing your information**  You have the right to request that the xxx Department (on behalf of the Council of Ministers) 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 to have your personal information erased**  If you feel that personal data is no longer required for the original purpose. You can withdraw your consent, if you now object to your information being used. You cannot make this request if you are exercising a:  Freedom of expression.  A legal or official authority requirement.  A public health interest.  Data for archiving or research.  Or for the establishment, exercise or defense of legal claims.  **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.  You can [submit a subject access request (SAR) using our online form](https://one.gov.je/AchieveForms/?mode=fill&form_uri=sandbox-publish://AF-Process-0aaa4251-97f8-4525-99c2-ec4661ac542b/AF-Stage-16e6fae1-a88d-4792-90c1-33092a9964b5/definition.json&process=1&process_uri=sandbox-processes://AF-Process-0aaa4251-97f8-4525-99c2-ec4661ac542b&process_id=AF-Process-0aaa4251-97f8-4525-99c2-ec4661ac542b&_ga=2.53575148.513729453.1527153592-1231347188.1518176188).  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. | |
| **Complaints** | | | |
| **You can complain to us about the way your information is being used**  If you have an enquiry or concern regarding how the relevant Associate Director of the Office of the Chief Executive processes your personal data you can:  Telephone: +44 (0)1534 440375  Email: f.smith@gov.je  Fiona Smith  19 – 21 Broad Street  St Helier  Jersey JE2 3RR  **Or you can also complain to the Central Data Protection Unit about the way your information is being used**    Telephone: +44 (0)1534 440514  Email: [DPU@gov.je](mailto:DPU@gov.je)  Central Data Protection Unit  3rd Floor  28-30 The Parade  St Helier  Jersey  JE2 3QQ | | **You can also complain to the Information Commissioner about the way your information is being used**  The Office of the Information Commissioner can be contacted in the following ways:  Telephone: +44 (0)1534 716530  Email: [enquiries@jerseyoic.org](mailto:enquiries@jerseyoic.org)  Jersey Office of the Information Commissioner 2nd Floor  5 Castle Street  St Helier  Jersey  JE2 3BT | |