

Consultation on proposed regulation of pension business

Summary

The finance industry in Jersey is a well-regulated and reputable industry with high standards. The objective of the Government of Jersey (**Government**) is to uphold the standards of consumer protection and protect Jersey's international reputation through robust and proportionate regulation, legal controls and practice standards.

A pension is a tool which allows a person to defer income earned during their working life and then draw that income at a later stage, generally after they retire. This can be an essential part of funding a person's retirement. There are various different types of pension, some of which are explored further in this paper. Government encourages private pension savings by providing income tax relief on them.

The States of Jersey published a report in 2016 titled "Living Longer: Thinking Ahead"¹, seeking views on ways to support a population that is living longer. This consultation paper supports this work by proposing a regulatory framework for pensions in Jersey.

Pension scheme provision is not currently addressed with specific financial services regulation in Jersey. Government considers that it is timely and prudent to introduce proportionate regulation in this area. The purpose of this Consultation Paper is to propose that pension scheme providers, as well as pension schemes, be brought within the scope of financial services regulation, and seek input on the exact scope of the proposals. Government invites feedback from all interested parties on the proposals which, if brought forward, will amend aspects of Jersey's regulatory laws and create a pensions' regulator.

Responses will be considered by Government to ensure that the proposals are proportionate while 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.

This Consultation Paper is a working document and does not prejudice any final decision to be made by the Government.

¹ States of Jersey, Living Longer: Thinking Ahead: <https://statesassembly.gov.je/assemblyreports/2016/r.105-2016.pdf>

Date published:

19 November 2018

Closing date:

31 January 2019

How we will use your information

The information you provide will be processed for the purpose of consultation. The Chief Executive's Office will use your information in accordance with the Data Protection (Jersey) Law 2018 and the Freedom of Information (Jersey) Law 2011. We may quote or publish responses to this consultation but we will not publish the names and addresses of individuals. If you do not want any of your response to be published, you should clearly mark it as confidential. Confidential responses will be included in any summary of statistical information received and views expressed.

Who should respond and ways to respond

The Government of Jersey is interested in receiving responses from individuals, businesses or organisations that have an interest in the pensions industry.

Responses should be submitted by email to:

James Roberts

Lead Policy Adviser | Financial Services | Chief Executive's Office

Email: j.roberts3@gov.je

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

Lisa Springate

Head of Technical | Jersey Finance Limited

Email: lisa.springate@jerseyfinance.je

Responses sent to Jersey Finance will be shared with the Government of Jersey unless the respondent indicates that they wish to remain anonymous. Please indicate clearly on your response if this is the case.

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

Feedback on this consultation

We value your feedback on how well we consult or seek evidence. If you have any comments on the process of this consultation (as opposed to the issues raised) please email communications.unit@gov.je.

Government objectives

1. The objectives of the 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.

The current framework

Introduction

2. Legislation in Jersey provides for the establishment of the three typical pillars of domestic pension provision: (i) the pay-as-you-go social security pension scheme, administered by Government (the so called "State Pension"); (ii) occupational schemes (on a defined benefit or on a defined contribution basis); and (iii) private pension schemes. This paper is concerned with pillars (ii) and (iii).

Regulation of product

3. All domestic and international occupational and personal pension schemes require the initial approval of the Comptroller of Income Tax under the provision of the Income Tax (Jersey) Law 1961. The Comptroller's interest in a scheme after it has been initially approved is one restricted by the Income Tax Law and therefore is not one of regulatory oversight.

Regulation of provider

4. Regulation of pension providers in Jersey only occurs indirectly, i.e. there is no regulated activity of 'pension business' or similar. Rather, the Jersey Financial Services Commission (**JFSC**) regulates and supervises associated activities. Trust companies and investment advisers are regulated under the Financial Services (Jersey) Law 1998 (**FSJL**), while banks that provide any services to these pension schemes are regulated and supervised under the provisions of the Banking Business (Jersey) Law 1991. The Insurance Business (Jersey) Law 1996 covers annuities (pensions in payment) that are usually provided by insurance companies as well as the pension plans that may be offered by those companies.

Pensions' regulatory authority

5. There is no specific pension regulatory authority in Jersey, which means that there is a regulatory and supervisory gap in respect of pension schemes and business associated

with pensions, such as advising on pensions. The absence of regulation specifically covering pension business means that pension activity which does not fall in to the activities described in paragraph 4 fall outside of regulation. Further, there is no independent regulator to authorise and supervise pensions or co-operate with other regulators.

6. The performance and financial position of occupational pension schemes are therefore not independently monitored. While this may be a less significant issue for defined contribution schemes, the financial solvency of defined benefit schemes and their ability to meet their future pension liabilities is not subject to any regulatory assessment. Nevertheless, the trustees of these schemes should be monitoring the financial positions and taking the necessary corrective action in conjunction with the employers as a key element of their responsibilities.
7. The Comptroller of Taxes has limited information about the level of closures, because there is little or no subsequent regulatory oversight or supervision, although for occupational schemes the Comptroller typically receives a notice of closure.

Summary

8. There is little to no pensions' specific regulation in Jersey. For example, pension providers, where not otherwise regulated for other activity, are not currently subject to explicit rules relating to: corporate governance; scheme rules; client advice; risk management; conflicts; outsourcing rules; or prudential requirements.
9. The lack of regulation gives rise to the potential for harm to consumers. As pensions are a long-term product, consumers could take a false sense of security that their pension scheme is well managed and funded, but not find out that this is incorrect until many years later, which could lead to material financial hardship. Bringing pensions into regulation would mitigate these risks and enhance protection and assurance for consumers.

A comparative review

International standards

10. It is a recognised approach of the Government to ensure financial regulation of the 'highest standard' and to 'meeting international regulatory standards'.

The Organisation for Economic Co-operation and Development (OECD)

11. The OECD's Core Principles of Private Pension Regulation² set out 10 Principles for private pension regulation, applying to both occupational plans and personal pension plans. Extracts from the first two Core Principles provide an introduction to the level of regulation recommended.

12. Core Principle 1:

- a) Private pension systems should have clear and well-defined objectives regarding coverage, adequacy, security, efficiency and sustainability. The achievement of these objectives should be regularly monitored. An effective legal framework, a robust institutional and financial market infrastructure, and a sound regulatory and supervisory system for pensions should be in place to support these objectives.
- b) The ultimate goal of pension regulation and supervision should be to protect the rights and interests of plan members and beneficiaries. The regulatory framework should not, however, place an excessive administrative burden on pension plan operators and sponsors nor require them to bear undue costs and risks. It should allow scope for operators within the private pension market to adapt to evolution in the environment in which they operate.

13. Core Principle 2: Pension plans, pension funds, and pension entities, jointly or separately, should be subject to an adequate, transparent and coherent set of legal, accounting, technical, financial, managerial and governance requirements, without imposing an excessive administrative burden.

The International Organisation of Pension Supervisors (IOPS)

14. IOPS, an offshoot of the OECD, is an independent international body representing those involved in the supervision of private pension arrangements. Jersey, not having a pensions' regulator, is not represented, but other offshore jurisdictions such as Guernsey, Isle of Man and Gibraltar are members. The Government and any proposed regulator would consider associate membership (for the regulator). The IOPS Principles of Private Pension Supervision, which are contained in Core Principle 6 of the OECD's Core Principles of Private Pension Regulation, set out the fundamentals of supervision in the pension sector as that group sees them.

² <http://www.oecd.org/daf/fin/private-pensions/Core-Principles-Private-Pension-Regulation.pdf>

15. The objectives of private pension supervision focus on protecting the interests of pension fund members and beneficiaries by promoting the stability, security and good governance of pension funds. Pension supervision involves the oversight of pension institutions and the enforcement of and promotion of adherence to compliance with regulation relating to the structure and operation of pension funds and plans, with the goal of promoting a well-functioning pensions sector.
16. IOPS Principle 5 would also shape the introduction of pensions' regulation in Jersey: *Pension supervisory authorities should adopt a risk-based approach.*

Summary

17. It is recognised international best practice to regulate and supervise, effectively, both the provision of pension schemes as well as the schemes themselves. This would include the authorisation of the scheme's formation and the authorisation and supervision of the scheme's service providers, in particular the manager and the administrator. It would also mean that such schemes and service providers would be subject to regulatory fees to cover the authorisation and supervision costs of the regulatory regime.

Comparable jurisdictions

*Guernsey*³

18. With effect from the 30 June 2017, the formation, administration and management of pension schemes and gratuity schemes are regulated activities in Guernsey. Guernsey amended their headline fiduciaries law to include the new regulated activity. In common with other regulated activities, the Guernsey Financial Services Commission (**GFSC**) then issued Conduct of Business Rules to set out full regulation in this sector.

*Isle of Man (IoM)*⁴

19. The IoM Financial Services Authority have recently consulted on proposals to enhance the regulatory framework for pension schemes and pension providers. They consider two options for implementing change: (i) creating a new class of regulated activity under their

³ GFSC's [Discussion Paper](#), [Feedback Paper](#), [Conduct Rules](#).

⁴ IoM's FSA [Proposals and Feedback Statement](#).

Financial Services Act 2008; or (ii) enacting new conduct and prudential requirements under their Retirement Benefits Schemes Act 2000.

United Kingdom (UK)

20. The Financial Conduct Authority regulates firms and individuals that promote, arrange or provide stakeholder pension and personal pension schemes. Establishing, operating or winding up a stakeholder pension scheme is a specified kind of activity under the Financial Services and Markets Act 2000. These are pension schemes anyone can join, regardless of any arrangements their employer may offer.
21. The Pensions Regulator is the UK regulator of work-based pension schemes, giving guidance to trustees, employers, pension specialists and business advisers on what is expected of them. This is specifically legislated for in the Pensions Act 2004.
22. The Pension Protection Fund is a statutory fund whose main function is to provide compensation to members of eligible defined benefit pension schemes which are considered to be insolvent, and there are insufficient assets in the pension scheme to cover a set level of compensation. This is in part funded by an annual Pension Protection Levy, which is paid for by eligible pension schemes.

Scope of activities

23. Some of the types of pension activity which could be within the scope of regulation in Jersey are set out in the below table. This would include schemes set up, administered or managed by financial services companies operating in Jersey, and also schemes set up and operated by employers for their employees in Jersey, not just those within the financial services sector. Some activities, such as advising on pension schemes, could also apply to third-party entities that do not directly manage pension schemes.

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.

	Activity	Question(s)
1.	Formation of pension schemes (please also refer to paragraph 30)	Question 1(a): Should formation of pension schemes be regulated?

2.	Management of pension schemes	Question 1(b): Should management of pension schemes be regulated?
3.	Administration of pension schemes	Question 1(c): Should administration of pension schemes be regulated?
4.	Advising on pension schemes (where not already subject to regulation)	Question 1(d): Should advising on pension schemes be regulated?
5.	Other	Question 1(e): Are there other activities in relation to pension schemes that should be regulated?

Scope of products included

24. The types of pension products which could be within scope are set out in the below table.

Question 2:

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

	Product	Question(s)
1.	Defined contribution pension schemes	Question 2(a): Should defined contribution pension schemes be within scope?
2.	Defined benefit pension schemes	Question 2(b): Should defined benefit pension schemes be within scope?
3.	Insured schemes and self-administered schemes	Question 2(c): Should insured schemes and self-administered schemes be within scope?

4.	Private pensions	<p>Question 2(d): Should private pensions be within scope?</p>
5.	Other categories of pensions scheme, such as employer, group and personal, trust-based, contract-based, which are not considered to fall in to 1 or 2.	<p>Question 2(e): Are there any reasons why each of employer, group and personal, trust-based, contract-based pension schemes, or any other type of pension scheme should or should not be within scope?</p>

Occupational schemes administered by the States of Jersey

25. There are a number of public service pension schemes for States of Jersey employees which fall within the definition of an occupational pension scheme. Unless there is a specific exemption for these public service pension schemes they would be within the scope of the proposals in this consultation paper.

26. Such schemes are a significant part of Jersey's pensions industry. It may therefore be appropriate that such schemes should be within the scope of and subject to oversight by a pension's regulator, and the regulatory powers afforded to such a regulator.

Question 3:

Do you consider that Jersey public service pension schemes should be within the scope of a new pension's regulator?

Approach

27. The proposals set out herein could be achieved by:

- a) creating a new pensions regulation law;
- b) adding to existing pensions related legislation; or
- c) by adding pension provision as a class of financial service business within Article 2 of the Financial Services (Jersey) Law 1998 (**FSJL**).

28. This consultation paper is not prescriptive on the approach that may be used to create a regulatory framework. However, one approach would be to form a new category of financial service business under the FSJL. This would allow a regulator, potentially the JFSC, to issue Codes of Practice to set out the principles and detailed requirements for pensions services business.

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?

29. The Financial Services Ombudsman (Jersey) Law 2014 contains a definition of relevant pensions business, as prescribed in Schedule 3 of that law. In turn, that definition refers to the Income Tax (Jersey) Law 1961 (**Income Tax Law**) which holds significant wording on pensions in Part 19. The intention of the Government would be to use current pensions' legislation wording when integrating pensions business into the regulatory perimeter.

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?

Jurisdictional scope

30. Subject to Question 4, the Government considers that the use of the existing jurisdictional scope test in the FSJL, which covers activities "carried on in or from within Jersey", should be used in relation to pension provision. This is a well-established test which applies, based on the facts and various considerations of each particular case, regardless of the location of incorporation or offices. This would seek to capture pension services provided to Jersey residents as well as pension businesses incorporated in Jersey providing pension services to the international market.

31. The jurisdictional scope applicable to schemes also needs to be considered to determine what constitutes a Jersey scheme as compared with a non-Jersey scheme. Factors such as the governing law of the pension scheme, its management and the location of its pensioners will need to be considered.

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?
- 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?

A pensions' regulator

- 32. One of the intended effects of these proposals is to bring pension services businesses within regulation. For example, if this were achieved by adding pension services business as a category of financial services business in Article 2 of the FSJL, businesses carrying on pension business would need to be registered with the JFSC. This category of financial service business could apply to all pension schemes and their service providers; not just those in the financial services industry.
- 33. This would empower the JFSC to apply requirements and standards, such as the “fit and proper” test in Article 9 of the FSJL which would mean on an on-going basis the JFSC would consider the integrity, competence, financial standing, structure and organisation of the business and the principal persons employed by or associated with it. It would also permit the JFSC to set requirements through Codes of Practice which regulated firms must follow. It would also empower the JFSC with enforcement powers and other regulatory tools set out elsewhere in the FSJL and other legislation. The purpose is to bring the experience and legislative force of the JFSC to bear in regulating the pensions industry, and achieving the same standards and international reputation as has been achieved in other parts of the industry regulated by the JFSC.
- 34. This would also mean that such schemes and service providers would be subject to regulatory fees to cover the authorisation and supervision costs of the regulatory regime.
- 35. In some jurisdictions pension regulators have a funding control role, where the regulator could effectively order employers to make payments into underfunded schemes. This can include schemes set up, administered or managed by financial services companies and also schemes set up and operated by non-financial services firms for their employees. This is a significant power for a pensions' regulator which affords considerable assurance to members that their pensions are robustly regulated, and that on retirement they will receive the pension income that they expect. On the other hand, a pension scheme will have actuarial valuations which a regulator will be able to rely on, and a pensions' regulator will be able to challenge the pension scheme administrator where there are significant shortfalls, which may allow sufficient oversight.

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.
- b) Do you agree that the authorisation and supervision costs of a pension's regulator should be levied through regulatory fees paid by regulated pensions businesses?
- c) Do you consider that a pensions' regulator should take on a funding control role?

Summary of questions

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?
- b) Should management of pension schemes be regulated?
- c) Should administration of pension schemes be regulated?
- d) Should advising on pension schemes be regulated?
- e) Are there other activities in relation to pension schemes that should be regulated?

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?
- b) Should defined benefit pension schemes be within scope?
- c) Should insured schemes and self-administered schemes be within scope?
- d) Should private pensions be within scope?
- e) Are there any reasons why each of employer, group and personal, trust-based, contract-based pension schemes, or any other type of pension scheme should or should not be within scope?

Question 3

Do you consider that Jersey public service pension schemes should be within the scope of a new pension's regulator?

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?

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?

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?
- 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?

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.
- b) Do you agree that the authorisation and supervision costs of a pension’s regulator should be levied through regulatory fees paid by regulated pensions businesses?
- c) Do you consider that a pensions’ regulator should take on a funding control role?

General comments

We invite general comments respondents may have on the proposals set out herein.

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 alternatively you can complain to the Information Commissioner by emailing enquiries@dataci.org.