

**CONSULTATION DRAFT**

**(NON-STATUTORY CONSULTATION)**

**DRAFT FINANCIAL SERVICES OMBUDSMAN  
(ELIGIBLE COMPLAINANTS) (JERSEY) ORDER  
201-**

**Explanatory Note**

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This Order makes further provision as to the eligibility of complainants under Article 8 of the Financial Services Ombudsman (Jersey) Law 201[-].

*Article 1* defines “Law” as the Financial Services Ombudsman (Jersey) Law 201[-].

*Article 2* provides that a Jersey charity, entitled to income tax exemption, is an eligible complainant, subject to an income condition. The condition is that the charity’s total income must be less than £1,000,000 in the tax assessment year in which the act occurred that is the subject of the complaint, and (if different) in the tax assessment year so far when the complaint is referred to the OFSO.

The charity may be a foundation or other body entitled to income tax relief, even though that body is not an individual (and so is not eligible under Article 8(3)(a) of the Law). If charity trustees are individuals, and are acting for purposes other than their trade, business or profession, then they are separately eligible to complain under Article 8(3)(a) of the Law (if they are not financial service providers themselves, and have the required relationship to the respondent), and the income condition in this Order does not apply to the charity.

[*Article 3* is a separate provision (not relating to charities as such) made under Article 8(10)(b) of the Law, which relates to whether a relationship of a complainant to a financial service provider is to be treated as sufficiently close to justify eligibility to refer a complaint to the OFSO. Article 3 of the Financial Services Ombudsman (Exempt Business) (Jersey) Order 201[-] exempts, from the scope of the Law, business carried on by an employer in relation to an occupational pension scheme, but it does not exempt relevant pension business carried on in relation to that pension scheme by a financial service provider other than the employer. In those circumstances the contractual or other main relationship of that financial service provider may be with the employer rather than with the employees. *Article 3* of this Order ensures that, if the complainant is one of the employees (or other persons) to or in respect of whom benefits are to be provided under the occupational pension scheme, then the complainant is generally to be taken as having a close enough relationship to the provider (even if the provider’s relationship to the employer is closer).]

*Article 4* names the Order and would bring it into force on the commencement of Article 8 of the Law.

## **CONSULTATION - DRAFT FINANCIAL SERVICES OMBUDSMAN (ELIGIBLE COMPLAINANTS) (JERSEY) ORDER 201-**

*Made*

*[date to be inserted]*

*Coming into force*

*[date to be inserted]*

**THE MINISTER FOR ECONOMIC DEVELOPMENT**, in pursuance of Article 8 of the Financial Services Ombudsman (Jersey) Law 201-, orders as follows –

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### **1 Interpretation**

In this Order “the Law” means the Financial Services Ombudsman (Jersey) Law 201[-].

### **2 Eligibility of charities**

- (1) The category of person specified for the purpose of Article 8(3)(c)(iii) of the Law is a corporation, association or trust –
  - (a) that does not fall within either of the categories described in Article 8(3)(a) or (b) of the Law;
  - (b) the income of which is exempt from income tax under Article 115(a) of the Income Tax (Jersey) Law 1961; and
  - (c) the total income of which, within the meaning of that Law and but for that exemption, would have been less than £1,000,000 in each relevant period, as determined under paragraph (2).
- (2) A relevant period is –
  - (a) if the complaint is referred to the OFSO in the year of assessment (within the meaning of the Income Tax (Jersey) Law 1961) in which the relevant act occurred, the part of that year of assessment falling before the referral of the complaint; or
  - (b) if paragraph (a) does not apply –
    - (i) the year of assessment in which the relevant act occurred, and
    - (ii) the part of the year of assessment in which the complaint is referred to the OFSO, being the part that falls before that referral.

**3 [Required relationships: occupational pensions]**

[The relationship of a complainant to a respondent is generally to be treated as sufficiently close to justify eligibility for the purpose of Article 8(6)(c) of the Law, if –

- (a) an employer carries on –
  - (i) relevant occupational pension business that is exempt business under Article 3 of the Financial Services Ombudsman (Exempt Business) (Jersey) Order 201- in respect of a pension scheme, or
  - (ii) relevant brokerage business that is exempt business under Article 6 of that Order, in respect of which the main business is relevant pension business relating to a pension scheme falling within Article 3(2)(b) of that Order;
- (b) the respondent –
  - (i) is not the employer, and
  - (ii) is a financial service provider carrying on relevant pension business in relation to the pension scheme; and
- (c) the relationship of the complainant to the respondent falls within Article 8(8)(b) of the Law.]

**4 Commencement and citation**

This Order may be cited as the Financial Services Ombudsman (Eligible Complainants) (Jersey) Order 201- and comes into force on the commencement of Article 8 of the Law.