

Guernsey Financial Services Commission

**Consultation Paper on Revised Pension Rules**

Issued 12 September 2019

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## Responding to the Consultation Paper

Responses to this Consultation Paper are welcomed before 7 November 2019.

You can send your response to us via the Consultation Hub section of the Commission's website ([www.gfsc.gg](http://www.gfsc.gg)).

<https://consultationhub.gfsc.gg>

## Introduction

### *Purpose of the Consultation Paper*

The Commission seeks to regulate and supervise financial services in the Bailiwick of Guernsey, with integrity, proportionality and professional excellence, and in so doing help to uphold the international reputation of the Bailiwick of Guernsey as a finance centre.

Consistent with the Commission's objectives, the proposals in this Consultation Paper are designed to enhance the levels of confidence and security in the Bailiwick's regulatory and supervisory framework for private pension provision.

The purpose of this Consultation Paper is to seek feedback from all interested parties on detailed proposals for potential enhancement to the regulatory framework under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 (the "Fiduciaries Law") with the objective of ensuring that the regime continues to be both compliant with international standards and appropriate for the Guernsey market.

The publication of this Consultation Paper follows the Commission's review and consideration of feedback received on the Discussion Paper issued in March 2019 and earlier feedback received from industry stakeholders in relation to The Pension Licensees (Conduct of Business) & Domestic and International Pension Scheme and Gratuity Scheme Rules (No.2) 2017 ("the Rules").

This Consultation Paper provides an opportunity for review of the feedback provided in respect of the Discussion Paper and the earlier feedback and to provide greater clarity regarding the proposals to revoke Rules 2 to 9 of the existing Rules and to introduce the proposed changes to Rule 10 of the existing Rules. **It should be noted that a separate consultation on proposals for a revised Fiduciary Handbook is taking place concurrently with this consultation and licensed pension providers and other interested parties should consider these separate proposals in addition to the proposals in this Consultation Paper.**

The detailed proposals are set out in draft Pension Rules which are provided in the Appendix to this paper.

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

### *Next Steps*

The closing date for the Consultation Paper is 7 November 2019. Responses to this Consultation Paper will be considered by the Commission with a view to issuing the Pension Rules in final form.

## Part 1 - Feedback to the Discussion Paper

The Discussion Paper made high-level proposals to revise the regulatory framework for licensed fiduciaries and sought feedback on these proposals from interested parties.

Responses were received from trade associations and a cross-section of industry. Overall the majority of feedback was supportive of the proposals contained in the Discussion Paper. Responses indicate a willingness by stakeholders to contribute positively to the policy development process and a number of suggestions to improve the framework were received. The Commission has considered and where appropriate addressed all the feedback which has been received during the consultation process to date in drafting the proposed Pension Rules (e.g. it was recommended that the de minimis threshold for obtaining an independent report on transfer be amended and the Commission has adopted this recommendation in the proposed Rules). It will be appreciated, of course, that not every suggestion or recommendation has been adopted because feedback received often takes a variety of differing or opposing perspectives and may not always be in line with the Commission's regulatory duties. The Commission assures respondents that there is no requirement to repeat feedback previously submitted.

The Commission would like to thank everyone who responded to the Discussion Paper.

### *Structure of the new framework*

As has been noted in the Fiduciary Handbook Consultation Paper, an overwhelming majority of respondents agreed with the proposal to create a single Fiduciary Handbook and welcomed the improved ease of reference and elimination of duplication that this will bring.

In light of the feedback it is proposed that Chapters 2 to 9 of the Pension Rules (concerning Conduct of Business) will be repealed and absorbed within the new consolidated Fiduciary Handbook.

### *Overall Policy Approach*

The proposed revision of the Pension Rules is intended as an enhancement to existing pensions policy and does not represent a fundamental change in underlying policy approach or objectives. A key aim has been to improve the clarity of the current Rules, where necessary, in response to industry feedback since implementation in 2017 and also reduce the level of overlap and duplication of requirements placed on licensed pension providers. Overall the Commission's goal is one of regulatory simplification, while maintaining existing, sound regulatory underpinning.

Licensees should note that they should continue to comply with the current Pension Rules and codes until such time as new Rules are made and implemented.

### *Format of the Rules*

It should be noted that the proposed new Rules follow broadly the headings and structure of the current Rule 10 but that certain redrafting of existing provisions has been performed and guidance notes added with the aim of making the Rules more effective, clearer and easier to follow.

## Part 2 - Key Amendments

This part of the paper highlights key amendments to the framework and addresses feedback received from industry. Comments are welcomed in respect of any element of the proposed new Pension Rules.

### *1.2 Application*

In response to feedback received the proposed new Rules clarify the scope of application to licensees and individual schemes stating that the Rules shall apply “to all licensees and in respect of all Schemes.”

This is merely a clarification and the scope of the pensions framework remains unchanged. Where the regulated activity of the formation, management or administration of pension schemes or gratuity schemes, and the provision of advice in relation to the formation, management or administration of pension schemes or gratuity schemes is being conducted by way of business in or from within the Bailiwick of Guernsey, a fiduciary licence is required to be held by a pension provider connected to a scheme. Such schemes are within the scope of regulation.

### *General principles*

Feedback received on the current Rules noted that the General Principles section was potentially confusing as related provisions were found in this section and in other Rules. The new proposed Rules have been simplified with no General Principles section and related provisions grouped within the same Rule.

It should be noted, however, that a new Rule on the fair treatment of Scheme Members and beneficiaries has been included in the proposed Rules.

**Q1: Do you consider that the inclusion of a Rule on the Fair Treatment of Scheme Members and beneficiaries is appropriate?**

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### *2.2 Governing documentation*

The proposed Rules amend current requirements around governing documentation, by recognising that a Scheme may be formed by interim documentation and that a licensee acting as administrator may not have access to the full scheme documentation.

### *2.3 Governance procedures*

Feedback was received seeking clarification regarding the appointment of a Governance Committee. The proposed Rules offer guidance clarifying that, as is the case under the current framework, a Governance Committee need not be appointed where the licensee is satisfied that its own policies, procedures and controls are sufficient to provide oversight of each Scheme. The objective of this rule is that levels of governance are commensurate with the nature, scale and complexity of each Scheme.

### *2.4 and 2.5 Notifications and Reporting to the Commission*

Prior to the Discussion Paper being issued feedback was received in relation to notification and reporting arrangements where more than one licensee is appointed to act in relation to a Scheme, for example one licensee acting as Trustee and another as Administrator. The Commission has sought to address this scenario through amendment to the Rules, permitting one licensee to assume responsibility.

### *2.7 Documentation relating to the Scheme*

The Commission received feedback in relation to compliance with the current Rule 10.8.3 (relating to the provision of documentation to the beneficiary) where Governing Documentation contains information that might be commercially sensitive and notes the content of those comments. Nevertheless, the objective remains that the Commission has an expectation that licensees will communicate with Scheme Members in a clear and transparent manner. If the terms of documentation contain provisions that directly impact or are relevant to the rights of the beneficiary the expectation is that the licensee will make those available to the member.

It is the Commission's aim that Scheme Members have access to adequate information to make informed decisions and proposed Rules and accompanying guidance have been drafted accordingly.

Reflecting the Commission's view that actuarial calculation and review have a crucial role in governance for defined benefit pension schemes, a provision has been added requiring actuarial valuations at least every three years for schemes operated on a defined benefit basis.

### *2.8 Service Providers*

The Discussion Paper proposed broadening the Rules to require a licensee to take all reasonable steps to assess on appointment, and periodically review, the suitability, competence and performance of a third party-appointed Service Provider.

Feedback was received seeking clarification regarding the requirements for a licensee under the Rules where a Service Provider is appointed by another party. The proposed Rules have been updated obliging the licensee in such circumstances to maintain certain records and take reasonable steps to ensure monitoring of the appointment.

## *2.11 Charges*

In response to a risk which the Commission has observed crystallising in the case of certain licensees it is proposed that licensees will be required to notify members when there is no reasonable likelihood that, after member borne charges are applied, the member's account will be sufficient to achieve capital growth in current or future market conditions.

## *2.12 Provision of Information about Benefits*

### *Defined contribution schemes pre-retirement*

Certain feedback on the existing Rule 10.13.1 suggested that the Commission review the requirement to provide a "nil contribution" schedule. The provision of "nil contribution" schedules can keep members well informed and act as an important check but the Commission also recognises that there are certain schemes which, due to their design, will receive only one lump sum payment with subsequent "nil contribution" reporting being potentially redundant. The proposed Rules have been drafted to take into account such scenarios, requiring "nil" reporting only for three years after the last contribution made.

A guidance note has also been added on the consideration of the provision and presentation of benefit projections to members.

### *Defined benefit pre-retirement*

Feedback to the Discussion Paper sought further clarification around illustrative estimates, with some respondents noting that the non-prescriptive language of the current Rule may provide for confusing outcomes for members. An alternative approach may be the introduction of a standardised methodology for reporting benefit illustrations to members of a defined benefit scheme.

**Q2: Would a standardised methodology for reporting benefit illustrations to members of defined benefit schemes assist members in better understanding their entitlement to potential benefits from their scheme?**

### *Post-retirement*

A guidance note has been provided to Rule 2.12.3 on the consideration by licensees of the appropriate provision of information to scheme members approaching the decumulation phase.



### *2.13 Transfers*

A key area of focus for the Commission since the introduction of the Pension Rules has been pension transfers and consequently it is proposed that the Rules in this area will be strengthened. It is proposed that licensees must provide certain information to the member following receipt of a transfer request. Moreover, comprehensive guidance has been added setting out important considerations that the transferor licensee should take into account.

The feedback to the Discussion Paper was strongly in favour of a relaxation of the requirement to provide a valuation within a 21 day period, noting that this may not be practical for Defined Benefit schemes or where there are complex underlying investments. The new proposed Rules address this feedback and allow for provision of the valuation “as soon as reasonably practicable”, however where a transfer has taken more than 60 days to complete licensees must keep members informed of the reasons for the length of time taken.

Further, the feedback to the Discussion Paper was mostly in favour of an increase in the value of the transfer de minimis value to £50,000 and this change has been made to the proposed Rules.

A further area of clarification in relation to transfers relates to the scenario where the receiving scheme does not have a licensee providing services and is therefore not within the scope of regulation in the Bailiwick of Guernsey. The proposed Rules require that the licensee of the ceding scheme ensures that an independent report comparing respective benefits and returns under both schemes.

### *2.15 Investment Direction*

Feedback was received in relation to the applicability of current Rule 10.16, now proposed Rule 2.15, to occupational pension schemes. It is proposed that the scope in relation to occupational pension schemes is widened whilst recognising that the requirements may be completed on behalf of the licensee by another party such as the employer. Limited information provision requirements under new Rule 2.15.1, 2.15.5 and the requirements in relation to employer-related investments under Rule 2.15.6 apply.

Feedback sought clarification that the Rules permit different investment direction types to apply to different parts of a scheme. The proposed Rules permit an investment direction approach to apply either in relation to the whole or to part of a scheme.

As was noted in the Discussion Paper a query was raised in relation to disclosure around the respective investment responsibilities of the member, licensees and service providers under the current Rule 10.16.3 for Member Directed schemes. The Commission has addressed this issue as part of a wider review of the Investment Direction requirements in the proposed new Rule.

New guidance has also been drafted to provide illustrative examples of arrangements and their allocation to specific investment approaches.

Rule 2.15.1 and 2.15.4 refer to a list of permissible investments for the Third Party Directed investment approach, carried forward from the current Rules, listed at Appendix 1 to the

proposed Rules. Rule 2.15.4 requires that the investments for Schemes with the Third Party Directed investment approach and Guernsey resident members who have made Guernsey tax relieved contributions be restricted to the investments listed at Appendix 1.

Q3: Do you consider that the requirements and list of investments in relation to permissible investments for Schemes with the Third Party Directed approach remains appropriate?

### *2.16 Electronic Communication*

Feedback on communication via electronic means was received from licensees in relation to multiple sections of the Rules. In light of this feedback the Commission proposes introducing a new Rule expressly permitting the use of electronic means of communication to meet certain requirements under the Rules.

### *3.1 Interpretation*

Feedback was received on the definition of “defined benefit basis”, noting that restricting the definition to “final salary” certain schemes might fall outside scope of relevant rules e.g. career average earnings or career average revalued pension schemes. The definition has been amended in the proposed Rules to address this concern.

Q4: Please provide any comments you may wish to share with respect to the proposed Pension Rules.