



ISLE OF MAN  
FINANCIAL SERVICES AUTHORITY

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CONSULTATION RESPONSE CR18-03/T12

**INFORMATION ON CHANGES TO FITNESS  
AND PROPRIETY ASSESSMENTS FOR ALL  
REGULATED ENTITIES, INCLUDING A  
CONSULTATION ON RESULTING  
AMENDMENTS TO THE FINANCIAL  
SERVICES RULE BOOK 2016**

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## GLOSSARY OF TERMS

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<b>Term</b>	<b>Meaning in this document</b>
<b>Authority</b>	Isle of Man Financial Services Authority
<b>Amendment Rule Book</b>	The draft Financial Services (Amendment) Rule Book 2018
<b>CISA2008</b>	Collective Investment Schemes Act 2008
<b>F&amp;P assessments</b>	Assessments of the fitness and propriety of certain persons in connection with regulated entities – often called ‘vetting’
<b>FSA2008</b>	Financial Services Act 2008
<b>IA2008</b>	Insurance Act 2008
<b>RBSA2000</b>	Retirement Benefits Schemes Act 2000
<b>Regulated entity</b>	A licenceholder under the FSA2008, persons authorised or registered under the IA2008, permit holders, other than EU permit holders, under the IA2008 and persons registered under the RBSA2000. The term also encompasses the governing bodies of certain collective investment schemes
<b>Regulatory Guidance</b>	The Authority’s document titled “Regulatory Guidance – Fitness and Propriety”
<b>Rule Book</b>	Financial Services Rule Book 2016

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## 1 BACKGROUND

This Consultation Response is issued by the Isle of Man Financial Services Authority ('the Authority') following Consultation Paper CP18-01/T12, which was open from 2 March to 13 April 2018.<sup>1</sup>

The purpose of the consultation was to provide information on forthcoming changes to fitness and propriety assessments for all regulated entities. It also included a consultation to obtain information, views and evidence regarding proposed amendments to the Financial Services Rule Book 2016 ('the Rule Book') which are required as a result of the changes to fitness and propriety assessments; as well as make miscellaneous minor amendments.

The forthcoming changes to fitness and propriety assessments have not resulted in a change in insurance and pensions legislation, but the changes themselves will apply, and are therefore of importance, to those regulated entities.

## 2 SUMMARY OF RESPONSES

Responses were received from 19 parties across the regulated sector. The questions asked by the Authority along with a summary of the responses received are shown in the following tables:

### Questions asked by the Authority

1. Do you have any comments on the proposed amendments to the Financial Services Rule Book 2016 in general, and also specifically regarding the introduction of the ability to post-notify the Authority of the appointment of individuals to certain roles?
2. What are your views on the harmonisation of the processes and documentation regarding the assessment of fitness and propriety?
3. Do you consider that the changes in relation to conducting fitness and propriety assessments will achieve their aims of:
  - a. Reduction of the burden on regulated entities in relation to post notification roles?
  - b. Utilising regulatory resource in the areas of most value in relation to assessments?

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<sup>1</sup> [https://consult.gov.im/financial-services-authority/changes-to-fitness-and-propriety-assessments/consult\\_view/](https://consult.gov.im/financial-services-authority/changes-to-fitness-and-propriety-assessments/consult_view/)

## Questions asked by the Authority

- c. Avoiding duplication of matters that should have already been conducted by responsible regulated entities in their recruitment processes?
4. Do you have any feedback on the draft F&P forms and other draft documents within the Appendices to this paper?

## Responses received (in summary)

Topic	Responses
<b>Question 1</b>	<ul style="list-style-type: none"><li>• Amendments to the Rule Book are broadly supported.</li><li>• The ability to post-notify the Authority of the appointment of individuals to certain roles is considered by those who responded to be a positive step which will be more efficient for both the Regulator and the regulated entities.</li></ul>
<b>Question 2</b>	<ul style="list-style-type: none"><li>• Harmonisation is seen as beneficial – particularly among those regulated under multiple elements of the regulatory legislation.</li><li>• The ability in due course to submit forms electronically is viewed positively.</li><li>• One respondent advised that the change of process would be better deferred to 2019 to allow for the implementation of the wider regulatory roadmap of that sector. However, the implementation date will remain 1 August 2018.</li></ul>
<b>Question 3</b>	<ul style="list-style-type: none"><li>• Most respondents were broadly supportive.</li><li>• Two respondents raised queries in respect of criminal records checks and whether undertaking such checks is appropriate in certain cases.</li><li>• One respondent was supportive of the proposals, but suggested additional guidance around what is considered to be a Senior Manager with Significant Influence (R18).</li><li>• One respondent felt that the proposals will result in increased costs because they consider that regulated entities will “<i>now have to perform duties previously carried out by the Authority</i>”. The Authority does not consider this to be the case. The changes reduce the Authority’s duplication of verifications that should already be being performed by regulated entities.</li></ul>

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## Responses received (in summary)

<b>Question 4</b>	<ul style="list-style-type: none"><li>• Feedback on the forms and documentation was positive.</li><li>• Some requests for further clarity were sought and are being addressed in the final versions of the documents.</li></ul>
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### 3 MORE DETAILED QUESTIONS ASKED AND COMMENTS RAISED, AND THE AUTHORITY'S RESPONSE

**Q. Three respondents raised queries about the personal data sought in the relevant forms and why this is required.**

A. Whilst we can understand the queries on the extent of data provided on career history and qualifications, the Authority requires this information in order to determine the need for inter-regulatory communications. Additionally, the information is required in order for the Authority to make its assessment regarding whether or not a person is fit and proper, for example, whether the rationale of a regulated entity to accept an individual that does not meet certain typical requirements is reasonable, can be understood and is sufficiently justified. The proposed process seeks to remove the duplication of verifying the information submitted (e.g. seeking references).

Understanding an individual's experience and qualifications remain key to the Authority's ability to discharge its functions.

As for why the Authority seeks personal data such as date of birth and residential address, this information allows the Authority to filter results of searches and enquiries of persons with similar or the same names. Moreover, although rare, the Authority does occasionally need to correspond with applicants directly when discussing sensitive personal matters, such as spent convictions.

**Q. In connection with Controlled Function R3 – intermediate controller. One respondent queried whether there is a distinction between private and public companies with regard to non-individual controllers.**

A. No – our expectations and requirements are no different, neither does the statutory definition of controller make such a distinction.

**Q. The Controlled Function of a person responsible for the submission of the regulatory returns to the Authority (R17) was queried, and it was also asked if, once the online portal becomes available, would every inputter need to be in R17?**

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A. The Authority's experience shows that, typically larger firms, may assign responsibility for the submission of the regulatory returns to a member of staff other than Head of Compliance or the Financial Controller – subject to appropriate internal authorisation by the regulated entity. For example, a compliance assistant (who may not otherwise be in a Controlled Function) may be tasked with inputting data into regulatory returns. Role R17 applies where an individual is not already in a notified and accepted Controlled Function for the same regulated entity; and is notified only. This will be clarified in the Regulatory Guidance.

Regarding the online portal – R17 should not cover every submitter, this is because it relates to the individual with the responsibility for the accuracy of the submission, not necessarily the individual keying the data into the system.

**Q. In respect of Controlled Function R18, one respondent sought clarity on whether an individual who reports directly to the governing body means reporting to an individual who is a member of the governing body.**

A. R18 is for Senior Managers (i.e. individuals directly level below that of the governing body), but only those Senior Managers who report either directly into the governing body as a whole, or any individual member of the governing body. For example, an R18 Senior Manager may report to the Board of Directors or to an individual who is appointed as a Director. To assist regulated entities in understanding the nature of the R18 role additional guidance will be added to the Regulatory Guidance document.

**Q. With regard to Controlled Function R21 (Senior Manager with responsibility for persons providing investment or insurance advice), it was queried whether if such Senior Manager does not report directly to the Board or an individual member of it, should they still be R21?**

A. Ideally a Senior Manager who is responsible for this advice should be reporting to the governing body as a whole, or an individual member of it (especially for smaller regulated entities such as insurance brokers and financial advisers). However, if an individual has this responsibility but does not report directly to the governing body or one of the individuals making up the governing body, they are still in R21. To avoid confusion, the reporting to the governing body element of the role description will be removed from the Regulatory Guidance.

**Q. One respondent advised that they foresee difficulties in obtaining employers' references for a minimum of 10 years on the basis that many employers remove their records 6 years after the employee left.**

A. This is not always possible, however, attempts at obtaining such must be made. It is quite likely that an employee may have been in a certain role 10 years ago, but only left that role,

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say, three years ago, in which case the documentation would still be held as they haven't been left for 6 years at that time. The Regulatory Guidance will have text added to include "where possible" or similar.

**Q. One respondent queried whether other non-individual controllers within Controlled Function R3 and Key Person (R10) are the same and whether they can they only be used by the FSA.**

A. The two functions are distinct. R3 is any non-individual (i.e. typically a corporate entity) that is a controller of a regulated entity, but which is neither the immediate parent company of the regulated entity, nor its ultimate beneficial owner. It will often be an intermediate holding company. There is a specific form for R3 (F&P 4) which requires less detail than the standard controller form (F&P 3) for controllers meeting R1 and R2.

R10 refers to only to individuals rather than non-individuals and can only be used by the Authority. It is for cases where an individual doesn't clearly fall in any other class of Controlled Function, yet is clearly influencing the activities of a regulated entity. Its use is expected to be rare.

**Q. Three respondents noted that within the Training & Competency Framework the Head of Compliance function should have served in the particular industry for 2+ years at management level. One respondent felt that this was too onerous and should be lowered and two respondents believed that the expectations were too low. Most believed the standards outlined in the T&C were reasonable and appropriate.**

A. The Authority is sympathetic to the difficulties in recruiting and retaining appropriately qualified and experienced staff. However, regulatory legislation requires that persons in key roles, such as the Head of Compliance, are fit and proper, which includes having sufficient competence. The provision in the Training and Competence Framework is an expectation, not mandatory, and must remain in place so that the regulatory regime continues to ensure sufficiently knowledgeable staff are in place so as to protect consumers and the Island's reputation. It is believed that the current expectations strike a reasonable and appropriate balance.

**Q. One respondent felt the title 'Head of compliance' was misleading and only suitable in larger entities where there may be several persons with the title 'compliance officer'. The respondent also queried why roles which are non-key roles are permitted to use these titles.**

A. The Regulatory Guidance explains that whether an individual falls within the description of a Controlled Function must be determined based on the nature of their functions and not the job title. With regard to Head of Compliance the definition pertains to the individual's functions and seniority, not the job title, and Head of Compliance (whatsoever named) is



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considered the most appropriate definition. The Authority is aware of certain grandiose job titles for jobs that are not necessarily grandiose, and the intention of the new process is to focus on the functions and responsibilities of a role, not its title, where fitness and propriety assessment is concerned.

**Q. Three respondents requested that the Authority’s internal service level standards for fitness and propriety assessment of Controlled Functions be published.**

A. The Authority aims to respond to fully completed forms within 20 business days, this will be added to the Regulatory Guidance document.

**Q. Three respondents queried whether the process will apply retrospectively, particularly where the Training and Competence Framework recommends certain qualifications, and whether those persons will be expected to undertake qualifications if they do not hold them.**

A. The new process is not retrospective. Those individuals who are currently in roles for a particular regulated entity, that would in future be Controlled Functions, do not need to apply retrospectively in respect of the position(s) they already hold, and nor are they required to have specific qualifications. However:

- If the individual changes employer but undertakes a similar role they are likely to be entering a new Controlled Function for a new employer and would need to meet the requirements at that time;
- If the individual takes on an additional Controlled Function for the same employer they would need to meet the new requirements for that additional Controlled Function; and
- If they leave the employer, the individual taking over their vacated Controlled Function will need to meet the new requirements.

**Q. Two respondents queries whether Basic Criminal Records Checks are required for all Controlled Functions, or just those which are notified and accepted.**

A. Basic criminal records checks are expected for roles which are notified and accepted only. Where a role is notify only a check is not required. This will be clarified in the Regulatory Guidance.

Some responses indicated some confusion around the requirements to disclose spent and unspent convictions. The Rehabilitation of Offenders Act allows for a person not to have to disclose spent convictions (even if asked directly). However, there are exemptions from this laid out in the Rehabilitation of Offenders (Exemptions) Order, of which the Authority is included. This means that if an individual has a spent conviction, they would tick ‘no’ to the questions around convictions on the F&P forms (thus not having to disclose the fact to their

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employer who countersigns the forms), but that individual is expected to write to the Authority under separate cover to disclose the pertinent facts. This requirement is mentioned within the F&P forms.

#### **4 OUTCOME AND NEXT STEPS**

Following the consultation, and because there were no concerns raised about the contents of the Amendment Rule Book, the Authority intends to proceed with the proposed amendments to the Financial Services Rule Book 2016 as set out in the original Consultation Paper. Please refer to the consultation webpage for details.<sup>2</sup>

As a result of the broadly supportive responses received in respect of the information on changes to fitness and propriety assessments for all regulated entities, the Authority will be making the clarifications requested in the Regulatory Guidance and Forms as set out above.

#### **5 IMPLEMENTATION**

Subject to the approval of Tynwald, the Amendment Rule Book is planned to come into effect on 1 August 2018. The 'as amended' version of the Rule Book available on the Authority's website will be updated by that date also.

Meanwhile, the Regulatory Guidance, Forms and related documents will be updated with the clarifications, and will be made available on the Authority's website in good time before 1 August 2018. At that time, although not mandatory, regulated entities may start to use the new forms and processes, and from 1 August 2018 the new forms and processes become mandatory.

In case of any query, please contact the undersigned —

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<sup>2</sup> [https://consult.gov.im/financial-services-authority/changes-to-fitness-and-propriety-assessments/consult\\_view/](https://consult.gov.im/financial-services-authority/changes-to-fitness-and-propriety-assessments/consult_view/)