



ISLE OF MAN
FINANCIAL SERVICES AUTHORITY

Lught-Reill Shirveishyn Argidoil Ellan Vannin

CONSULTATION RESPONSE CR17-05/T10

**DRAFT AMENDMENTS TO THE
REGULATED ACTIVITIES ORDER 2011
AND THE FINANCIAL SERVICES
(EXEMPTIONS) REGULATIONS 2011**

Issue Date: 13 November 2017

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GLOSSARY OF TERMS

Term	Meaning in this document
Authority	The Isle of Man Financial Services Authority
ERegs11	Financial Services (Exemptions) Regulations 2011
FSA08	Financial Services Act 2008
RAO11	Regulated Activities Order 2011
SEPA	Single Euro Payments Area

1 BACKGROUND

This Consultation Response is issued by the Isle of Man Financial Services Authority ('the Authority') following Consultation Paper CP17-09/T10¹.

The purpose of the consultation was to obtain information, views and evidence regarding proposed amendments to the RAO11 and the ERegs11 in relation to —

- (a) advising on pensions;
- (b) acting as manager, administrator, trustee, fiduciary custodian or custodian to an exempt or exempt-type scheme to no more than one exempt or exempt-type scheme;
- (c) payment services exclusions; and
- (d) other miscellaneous amendments relating to the Class 2 nominee exemption and Class 4 domestic services exemption.

2 SUMMARY OF RESPONSES

The Authority received 5 responses to the consultation from entities licensed under the FSA08. The responses are summarised below in order of the 5 proposals detailed in the Consultation Paper.

A. Amendments regarding advising on pensions

Of the 5 responses received, 4 commented on the Authority's proposal to amend Part 1 of Schedule 2 to the RAO11 to make rights under a *personal pension scheme* an 'investment' in relation to advice under Class 2(6) and (7) of that Order.

All 4 respondents who commented on the proposal were supportive.

One respondent expressed concern as to any potential delay in amending the definition of 'investment' on the basis that there would likely be a significant increase in the number of consumers seeking advice if any changes are made by the Treasury regarding pension freedoms. The respondent requested that the Authority considers bringing the changes into effect at an early stage so as to reduce the likelihood of any consumer detriment through unregulated financial advice. The Authority agrees with the respondent and confirms that it intends to implement the proposed changes as soon as possible. Subject to approval by the Treasury, it is expected that the Regulated Activities (Amendment) Order 2017 will be made and laid before Tynwald for approval at the December 2017 sitting with a view to the changes being brought into effect on 1 January 2018.

¹ <https://consult.gov.im/financial-services-authority/draft-amendments-regulated-activities-order-2011/>

Question A5 of the Consultation Paper asked respondents whether they believed advice in relation to interests under *occupational pension schemes* should also be regulated under Class 2 (Investment Business) of the FSA08. Two respondents expressed support for such an initiative. The main reasons cited for this were to help ensure a good standard of advice for consumers through the regulatory framework and to allow regulatory action to be taken against persons providing such advice. The Authority notes these responses and, whilst it does not propose to extend the definition of ‘investment’ at the current time to include interests under *occupational pension schemes*, it will consider the issue as part of any future review of the RAO11.

B. Amendments required due to the Payment Services Directive 2

Of the 5 responses received, 2 commented on the Authority’s proposal to change the wording of some of the Class 8 (Money Transmission Services) exclusions and definitions in the RAO11. These changes were sought to help ensure that this aspect of the Isle of Man’s regulatory framework continues to replicate PSD2, which in part also helps to maintain the original requirements in relation to SEPA membership.

Both respondents who commented on this proposal were supportive. One respondent sought, and was provided with, additional comfort that the Isle of Man’s framework for SEPA purposes would maintain parity with other jurisdictions, such as Jersey and Guernsey, in order to avoid creating implementation of adherence issues for firms within SEPA that operate across those jurisdictions.

The Authority, therefore, will progress with its plans to amend the relevant aspects of Class 8 regulated activity so that they continue to mirror those of the latest version of the Directive on which they were originally based.

C. Amendments required due to changes in the Rule Book

Of the 5 responses received, 2 commented on the proposal to amend exemption 2.7 in the ERegs11 to refer to ‘nominee bank accounts’ rather than ‘clients’ money’ and to the ‘Clients’ Asset Report’ rather than an ‘audit report’ in order to reflect the current requirements of the Financial Services Rule Book 2016.

Both respondents who commented on this proposal were supportive and were not aware of any unintended consequences.

D. Amendment to convert a Class 3 exclusion to an exemption

Of the 5 responses received, 2 commented on the proposal to convert the relevant exclusion in the RAO into an exemption under the ERegs11 so that the Authority’s powers under the FSA08 may be applied in respect of such activity. The current exclusion relates to

paragraph 11 of Class 3 (acting as a manager, administrator, trustee, fiduciary custodian or custodian to exempt or exempt-type schemes) where the person carrying on the activity acts for no more than one exempt or exempt-type scheme, taking into account that no person in the same economic group may act in the same capacity for an exempt or exempt-type scheme.

Both respondents who commented on this proposal were supportive and were not aware of any unintended consequences.

E. Amendments to update definitions in the RAO11 and ERegs11

Of the 5 responses received, 2 commented on the proposals to make the following updates to definitions in the RAO11 and ERegs11 —

- (a) in Schedule 2 (Interpretation) to the RAO11 —
 - (i) update the definition of ‘close relative’ and bring it into line with a similar definition in other Isle of Man regulatory legislation;
 - (ii) remove the surplus definition of ‘open-ended investment company’; and
 - (iii) make amendments to simplify the wording of collective investment scheme in the definition of ‘investment’ (sub-paragraph (f));
- (b) amend paragraph 4.7(1)(c)(iv) of the ERegs 11, to refer to ‘real property’ and define such as including shared areas such as car parks, gardens and access areas.

Both respondents who commented on this proposal were supportive and were not aware of any unintended consequences. Following a review of the proposed ‘real property’ definition, the Authority has decided to amend the wording of paragraph 4.7(1)(c)(iv) of the ERegs11 as follows in order to clarify that the exemption relates to the holding of real property in the Isle of Man —

‘...the holding of ~~the freehold of~~ real property ~~in the Isle of Man, where~~ the majority of ~~which that property is~~ ~~are owned by persons who are resident~~ in the ~~Island~~Isle of Man.’

3 CHANGES TO THE PROPOSALS

In view of the positive consultation responses received, the Authority has not made any changes to the proposals as outlined in the consultation paper apart from the wording of paragraph 4.7(1)(c)(iv) of the ERegs11 as explained in the paragraph above.

Copies of the following amending legislation are attached to this Consultation Response —

- **Appendix B** – Regulated Activities (Amendment) Order 2017

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- **Appendix C – Financial Services (Exemptions) (Miscellaneous Amendments) Regulations 2017.**

Subject to approval of the legislation by both the Treasury and Tynwald, amended versions of the RAO11 and ERegs11 will be made available on the Authority’s website in due course.

4 NEXT STEPS

The Authority plans to submit a recommendation to the Treasury for the making of the Regulated Activities (Amendment) Order 2017 shortly. Subject to that Treasury approval and its making the Regulated Activities (Amendment) Order 2017, the Authority will then make the Financial Services (Exemptions) (Miscellaneous Amendments) Regulations 2017 with a view to both pieces of legislation being laid before Tynwald for approval as soon as possible. It is anticipated that the legislation will be laid before the December 2017 sitting of Tynwald in order to commence on 1 January 2018.

In case of any query, please contact the undersigned —

Mr Andrew Kniveton
Isle of Man Financial Services Authority
PO Box 58, Finch Hill House
Bucks Road, Douglas
Isle of Man, IM99 1DT
Email: andrew.kniveton@iomfsa.im
Telephone: +44 (0) 1624 689304

APPENDIX A – LIST OF REPRESENTATIVE GROUPS WHO HAVE BEEN SENT THIS CONSULTATION RESPONSE

- Alliance of Isle of Man Compliance Professionals
- Association of Corporate Service Providers
- Association of Pension Scheme Providers
- Chartered Institute for Securities and Investment
- Chartered Institute for Securities and Investment
- Financial Planning & Insurance Brokers Association
- Institute of Directors
- IOM Wealth & Fund Services Association
- Isle of Man Bankers Association
- Isle of Man Law Society
- London Institute of Banking and Finance.

APPENDICES B-C – FINAL DRAFT LEGISLATION

Copies of the following amending legislation are attached to this Consultation Response —

- **Appendix B** – Final draft Regulated Activities (Amendment) Order 2017
- **Appendix C** – Final draft Financial Services (Exemptions) (Miscellaneous Amendments) Regulations 2017.

These documents can be accessed by clicking on the relevant hyperlinks or through the Consultation Webpage on the Isle of Man Government [Consultation Hub](#).