



ISLE OF MAN
FINANCIAL SERVICES AUTHORITY

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**FEEDBACK TO THE DISCUSSION PAPER
ON PROPOSALS TO ENHANCE THE
REGULATORY FRAMEWORK FOR
PENSION SCHEMES AND PENSION
PROVIDERS**

FEEDBACK STATEMENT

FS18-01/T15

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GLOSSARY

Authority	Isle of Man Financial Services Authority
Consumers	Members and beneficiaries of retirement benefits schemes
Defined benefit	Pension scheme benefits based on a formula linked to years of service for an employer and the member's earnings
Defined contribution	Pension scheme benefits based on how much is paid in and how the investments have performed
FSA08	Financial Services Act 2008
Pension providers	Persons who provide certain services in relation to retirement benefits schemes registered under the RBSA00, mainly persons who act by way of business as a trustee and/or an administrator of retirement benefits schemes registered under that Act
Pension scheme	Used in this paper interchangeably with the term "retirement benefits scheme" within the meaning of the RBSA00
RBSA00	Retirement Benefits Schemes Act 2000
Rule Book	Financial Services Rule Book 2016

1 BACKGROUND

- 1.1 In March 2018, the Authority published a Discussion Paper DP18-02/T15 on proposals to enhance the regulatory framework for pensions and pension providers in the interests of advancing the Authority's regulatory objectives of consumer protection and maintenance of confidence in the Island's financial services sector through effective regulation. We set out, at a high-level, the nature of the proposed changes and outlined two different ways that these changes could be implemented. We specifically asked which option was considered to be preferable and why, and whether either option could have any adverse effects.
- 1.2 In this feedback statement we:
- summarise the feedback received on the Discussion Paper;
 - provide our responses to the feedback received; and
 - set out our next steps.
- 1.3 We would like to thank all respondents for taking the time to consider and comment on the Discussion Paper. Your feedback and constructive dialogue has played a vital role in informing our next steps and future areas of focus.

2 FEEDBACK AND RESPONSES

- 2.1 There were nine respondents to the Discussion Paper; seven of the respondents were pension providers and the other two respondents were representative bodies.

Conduct and prudential regulation

We asked

- 2.2 In the Discussion Paper we asked readers whether the proposal to amend the regulatory framework for pension providers to include appropriate conduct and prudential requirements would achieve the policy objective of developing an effective regulatory framework which helps to ensure the fair treatment of pension consumers and helps to maintain and enhance the Island's reputation as a well-regarded offshore finance centre.

You said

- 2.3 There was strong support for the proposal to enhance the regulatory framework (seven out of the eight respondents who expressed a view in this respect).

2.4 The respondents who agreed that the proposals would achieve the policy objectives welcomed a strengthened regulatory framework for a number of reasons, including the following:

- the proposed amendments would bring the Island’s regulatory framework into line with other jurisdictions, such as Guernsey, which recently extended the regulatory oversight to include pension providers as well as the schemes themselves;
- the proposed amendments would enhance the Island’s international standing and safeguard the reputation of the Island;
- it is imperative that the local pensions industry can point to a regulatory regime which is robust in nature in order to attract new business; and
- the proposed amendments would enhance consumer protection, and it is essential that the pensions industry is well regulated so that members of retirement benefit schemes can have comfort that their pension savings are secure, especially given the recently introduced pension freedoms.

2.5 One respondent was neutral, and one respondent did not agree with the proposals on the basis that the existing body of legislation that applies to pension providers, in addition to the voluntary controls implemented by pension providers, were considered to be adequate.

Our response

2.6 The Authority is pleased that the majority of respondents are in favour of the proposals and agree that appropriate business conduct and prudential provisions would help to ensure the fair treatment of pension consumers and enhance the Island’s reputation as a well-regarded offshore finance centre.

Implementation approach

We asked

2.7 In the Discussion Paper we asked for views as to whether option 1 or option 2 was considered to be preferable and why, as well as whether either option might result in any unintended consequences. We also engaged in constructive discussions where appropriate following receipt of initial responses.

You said

2.8 A minority of respondents were neutral and the majority of respondents expressed a preference as to how the changes should be implemented.

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- 2.9 Of those who expressed a preference regarding the way the changes should be implemented:
- the majority expressed a preference for option 1 (FSA08 for the regulation of pension providers, and the RBSA00 for the pension schemes themselves); and
 - a minority expressed a preference for option 2 (RBSA00 for the regulation of both pension providers and pension schemes).
- 2.10 The respondents who expressed a preference for option 1 cited a number of reasons for their preference, including the following:
- they are familiar with the existing requirements and framework under the FSA08, because parts of their group are regulated under that legislation and/or they are already applying those requirements across the whole of their business, including the pensions part thereof; and
 - one respondent considered that a disadvantage of option 2 is that it may effectively require some regulated entities to separate different parts of their business in order to facilitate reporting under different regulatory Acts.
- 2.11 The respondents who expressed a preference for option 2 cited a number of reasons for their preference, including the following:
- it was felt that option 2 would provide a greater degree of flexibility than option 1, with one respondent stating that it believed that the RBSA00 can be strengthened to ensure it is equivalent to the FSA08, but also retains the ability to adopt changes independently where it is required for pensions;
 - a number of respondents cautioned against excessive regulatory burdens, and some of those respondents felt that option 2 would result in lower compliance costs than option 1;
 - that having a separate dedicated Act which contains regulatory provisions in respect of pension schemes (i.e. the RBSA00) is a valuable marketing tool; and
 - there was concern that option 1 would result in split regulatory oversight between the pension providers and the pension schemes, and that it would be preferable for them both to be regulated under the same Act.
- 2.12 Several respondents also suggested that the development of the regulatory framework should take into account their view that the pensions sector was considered to be generally lower risk.

Our response

2.13 As a result of the feedback and subsequent dialogue with internal stakeholders and further industry engagement, the Authority's preference is to expand the scope of regulation to encompass pension providers by bringing them within the scope of the FSA08, and to retain the RBSA00 for the regulation of the pension schemes themselves (i.e. option 1). The rationale for the Authority's preferred legislative route, and its responses in relation to the main points raised by respondents who expressed a preference for option 2, have been set out below.

Regulatory flexibility

2.14 We believe that the perception that the RBSA00 would provide greater flexibility than the FSA08 is largely unfounded, because any of the rules in the Rule Book which are not appropriate in the context of the pensions sector would either not be applied to that sector or could be adapted for it, as appropriate. The regulatory framework under the FSA08 is also flexible enough to allow any of the rules in the Rule Book to be modified for a particular licenceholder, or to except a particular licenceholder from any of the rules, if appropriate¹.

2.15 In addition, many of the business conduct provisions in the Rule Book made under the FSA08 are broadly equivalent to business conduct provisions applicable to insurance businesses regulated under the Insurance Act 2008, as well as being broadly equivalent to provisions applicable to financial service providers, including pension providers, in other jurisdictions. Therefore, we envisage that the need to draft new and modified business conduct provisions specifically for the pensions sector would be fairly limited due to the relatively standardised nature of such provisions.

Compliance burdens

2.16 Enacting business conduct and prudential provisions under the FSA08 rather than the RBSA00 should not result in different compliance burdens, because (as suggested above) it is envisaged that the business conduct and prudential provisions would be largely the same irrespective of which Act is used as the vehicle to implement the changes. Therefore, there should be no material difference in compliance burdens if the changes are introduced via the FSA08 or the RBSA00.

2.17 We agree that pensions may present a lower level of risk, for example, from a prudential perspective due to the trust-based nature of most pension schemes. Where applicable, the lower level of risk will be taken into account in developing the proposals. However, pensions have an impact on the lives of very many people, and

¹ Section 7(3) and section 18(2) FSA08.

the risks associated with pensions can be particularly problematic due to the characteristics of these financial products, for example: the long-term nature of the products; their coverage of a wide social and economic range of the population; the low risk tolerance of pension scheme members and beneficiaries; and the complexity of the products. Consequently, these characteristics increase the need to ensure that the regulatory framework for pensions and pension providers is sufficiently robust from a consumer protection perspective.

- 2.18 Nevertheless, the Authority aims to create a proportionate regulatory framework and, in developing the proposals, we will consider the appropriateness of each provision in the context of the pensions sector and the risk profile thereof. We will also publish further consultations setting out the proposals in more detail for consideration in due course and, to the extent that they are not incompatible with the Authority's regulatory objectives, we will take into consideration any comments received from the local pensions industry and other stakeholders in finalising our proposals. It is hoped that this approach will result in an effective and proportionate regulatory framework which enhances rather than reduces the Island's competitiveness.
- 2.19 Finally, whilst concerns were raised regarding regulatory burdens in the event that the FSA08 was chosen to implement the relevant changes, comments were also received suggesting that many of the rules and requirements under the FSA08 are already being followed by pension providers on a voluntary basis, albeit without recourse to regulation at this time. We agree that this is likely to be the case for most pension providers (for example, as part of general good business management and to reduce the risk of claims and associated reputational damage); therefore, it is anticipated that any increase in compliance burdens will be relatively minimal in practice.

Competitive advantage

- 2.20 The Authority acknowledges that the RBSA00 is a useful marketing tool which enhances the competitiveness of the Island's pensions sector. It is for this reason that option 1 still retains the RBSA00, and the pension schemes (as opposed to the pension providers) would continue to be regulated under the RBSA00. The main difference between option 1 and option 2 is that the pension providers themselves would be regulated in respect of their business conduct and financial stability under the FSA08 as opposed to the RBSA00 under option 1. Consequently, the retention of the RBSA00 under option 1 means that the RBSA00 could continue to be used as a marketing tool in the same way as before. Indeed, option 1 may further enhance the effectiveness of the RBSA00 in this regard by virtue of remaining focused on the regulation of the retirement benefit schemes.

Regulatory oversight etc.

- 2.21 The supervision of both pension schemes and pension providers would be carried out by the current pensions team irrespective of the legislative route used to implement the proposed changes to the regulatory framework. Therefore, we consider that the regulatory oversight split would be academic in practice.
- 2.22 As one respondent noted, the regulatory framework for collective investment schemes and their functionaries is structured similarly to the proposed structure of the regulatory framework for pension schemes and pension providers under option 1. We acknowledge that collective investment schemes are very different to pension schemes, however they do have some similarities and they are both regulated financial products. The focus of the RBSA00 is the regulation of pension schemes (product regulation), whereas the focus of the FSA08 is the regulation of persons who provide certain financial products or services in or from the Island by way of business (provider regulation), therefore it is considered to be preferable to extend the scope of the Island's regime for financial services regulation to include the regulation and supervision of pension providers by bringing them within the scope of the FSA08, yet still retaining the RBSA00 for the purposes of product regulation.

Chosen legislative route

- 2.23 Taking into account the responses we received, the Authority has concluded that bringing pension providers under the scope of the FSA08 represents the optimal means of developing the regulatory framework for pension providers, whilst also retaining the benefits of having the RBSA00 for the regulation of the pension schemes. Therefore, the Authority intends to implement the relevant changes using option 1.
- 2.24 The reasons for the decision to implement the changes using option 1 include:
- the relatively standardised nature of business conduct and prudential provisions means that the outcome will be largely the same whichever Act is used as the vehicle to implement the changes;
 - the FSA08 route will avoid the need to enact a sizeable body of legislation in/under the RBSA00 to largely replicate tried and tested business conduct and prudential provisions which already exist under the FSA08. Such a duplicate body of legislation would also need to be periodically updated to mirror changes to the regulatory framework under the FSA08;
 - the FSA08 route will address the gaps in the regulatory framework for pension providers whilst still retaining the RBSA00 in relation to the pensions schemes,

and should not therefore detract from the ability to market pension schemes using the RBSA00;

- many pension providers have stated that they are familiar with the provisions under the FSA08, and some firms already comply with those provisions on a voluntary basis; and
- the FSA08 route will enable those firms which operate in more than one sector to apply a consistent set of standards across the whole of their business, as well as enabling them to report on a consolidated basis.

Other matters

- 2.25 In the Discussion Paper we invited readers to advise us of any other issues they felt should be considered in connection with the proposals and we welcomed any other suggestions that could improve the Island's regulatory framework for pensions and pension providers.
- 2.26 Appendix B contains a summary of some of the other feedback we received and our responses to that feedback.

3 NEXT STEPS

- 3.1 The Authority will take the Discussion Paper responses into consideration in developing the proposals further.
- 3.2 The next phase of the project will focus on the preparation of a draft Amendment Bill to amend the RBSA00. Work will also simultaneously commence on preparing the necessary draft secondary legislation to bring pension providers² within the scope of regulation under the FSA08, and to apply appropriate business conduct and prudential requirements to persons carrying on that new class of regulated activity.
- 3.3 The draft Amendment Bill and draft secondary legislation will be consulted on in due course. It is anticipated that these consultations will take place from Q1 2019 onwards.

² It is envisaged that the new class of regulated activity will primarily include persons who act by way of business as a trustee and/or an administrator of retirement benefits schemes registered under the RBSA00.

APPENDIX A – LIST OF REPRESENTATIVE GROUPS WHO HAVE BEEN SENT THIS FEEDBACK STATEMENT

- Alliance of Isle of Man Compliance Professionals
- Association of Chartered Certified Accountants
- Association of Corporate Service Providers
- Chartered Institute for Securities and Investment
- Financial Planning & Insurance Brokers Association
- Institute of Chartered Secretaries and Administrators
- Institute of Directors
- Isle of Man Association of Pension Scheme Providers
- Isle of Man Bankers Association
- Isle of Man Captives Association
- Isle of Man Chamber of Commerce
- Isle of Man Insurance Institute
- Isle of Man Law Society
- Isle of Man Society of Chartered Accountants
- Isle of Man Trade Union Council
- Isle of Man Wealth & Fund Services Association
- London Institute of Banking & Finance
- Manx Insurance Association
- Society of Trust and Estate Practitioners

APPENDIX B – OTHER FEEDBACK AND OUR RESPONSES

B1. Licensing queries

You said

B1.1 A respondent raised specific queries relating to licensing under the FSA08, including queries in relation to the licensing process, regulatory exemptions, grandfathering arrangements, licence fees and competency standards.

Our response

B1.2 At this stage we are focusing on the high-level proposals; however, we intend to issue further consultations in due course which set out the full details of the proposals, including full details regarding the proposed scope of the new regulatory framework, as well as details of any proposed regulatory exemptions, and we will welcome any feedback that pension providers and other stakeholders have in relation to the same at that time.

B1.3 The regulatory fees across all sectors that the Authority regulates are currently in the process of being reviewed and this topic will be subject to a separate consultation in due course.

B1.4 With reference to competency standards, it is envisaged that retirement benefits scheme trustees and administrators will remain subject to current fitness and propriety assessment criteria.

B2. Unnecessary duplication

You said

B2.1 Some respondents raised the issue of duplication, either in the context of reporting financial information about pension schemes to the Treasury and the Authority or in more general terms, stating that they assumed that implementation of the changes to the regulatory framework using the FSA08 legislative route would remove any duplication of requirements under the FSA08 and RBSA00.

Our response

B2.2 In developing the proposals, we will attempt to eliminate any unnecessary duplication. Full details of our proposals will also be consulted on in due course, which will provide the pensions industry with the opportunity to advise us of any unintended duplication so that we may consider how to resolve the same.

B2.3 However, it is noted that private pensions are essentially a financial product which provide a tax-efficient means of saving for later life. Therefore, notwithstanding any changes to the regulatory framework, both the Treasury and the Authority will invariably continue to require certain financial information about pension schemes in order to carry out their respective functions effectively, and that information may differ due to the different nature of their respective functions.

B3. Scheme accounts etc.

You said

B3.1 One respondent submitted a separate response which raised a number of specific issues in relation to the preparation and reporting of pension scheme accounts under the RBSA00.

B3.2 Another respondent welcomed the Authority's proposal to review the current regulatory framework (with specific reference to the regulatory requirements in relation to the submission of annual returns and the preparation of scheme accounts) with the aim of introducing a more risk-based approach to supervision.

Our response

B3.3 As stated in the Discussion Paper, in recognition of the need to minimise the adverse effects of regulation and to move towards a more risk-based approach to supervision, we intend to review the provisions under the RBSA00 in relation to the submission of annual reports and the preparation of scheme accounts.

B3.4 We are pleased to note the support for the Authority's proposed review, and the issues raised in respect of the scheme accounts will be taken into consideration as part of that review.

B4. Enforcement powers

You said

B4.1 A respondent expressed the view that the current enforcement powers under the RBSA00 were fairly extensive, and that respondent referred specifically to sections 6, 36(4) and 49 of the RBSA00.

Our response

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- B4.2 Section 6 RBSA00 is an enabling power which permits secondary legislation to be made regarding the various matters, including enforcement matters, but it is not itself an enforcement power.
- B4.3 Section 49 is an ancillary provision which effectively allows the Authority to pierce the corporate veil and hold officers of a company responsible for offences committed under the RBSA00 if those offences were committed with the consent or connivance of the company's officers, however it is not a standalone enforcement provision.
- B4.4 Section 36(4) is an enforcement power; however, the concept of fitness and propriety is not currently underpinned by appropriate business conduct and prudential provisions, therefore the ability to use that power in appropriate circumstances may be restricted in practice.
- B4.5 In addition, the enforcement powers under the RBSA00 are less extensive than the enforcement powers under other regulatory Acts, and this is partly due to the fact that the focus of the RBSA00 is on the regulation of pension schemes rather than the regulation of pension providers.

B5. Corporate governance

You said

- B5.1 A respondent suggested that development of the regulatory framework should focus on effective management oversight and governance.

Our response

- B5.2 We agree that effective management oversight and governance are crucial to achieving good outcomes for consumers, and consequently they will be key areas of focus in developing the regulatory framework.

B6. AML and CFT guidance

You said

- B6.1 A respondent suggested that the introduction of sector specific guidance in respect of AML and CFT would be well received and supported by the wider pensions industry along with templates for regulatory reporting.

Our response

B6.2 The Authority has commenced a review of the AML/CFT requirements and guidance across all sectors that it regulates and oversees, and the Authority will engage with industry in respect of any proposals arising from that review in due course.

B7. Pension Protection Fund

You said

B7.1 A respondent suggested that an arrangement similar to the UK Pension Protection Fund should be established in the Island.

Our response

B7.2 The Pension Protection Fund in the UK provides certain protections to the members of defined benefit pension schemes in the event that employers who sponsor private-sector defined benefit pension schemes become insolvent and leave underfunded pension schemes.

B7.3 However, the cost of providing these protections are ultimately borne by the scheme members themselves³, and there are only 30 defined benefits schemes regulated in the Island under the RBSA00 compared to approximately 1,300,000 defined benefit schemes in the UK⁴. In addition, the vast majority of new pension schemes being established today are defined contribution schemes. Consequently, it is understood that there are no plans to introduce a similar pension benefit guarantee scheme in the Island at this time.

B7.4 Nevertheless, we intend to review the provisions in relation to defined benefit scheme funding in the course of developing the regulatory framework, and the full details of any proposed amendments arising from that review will be consulted on in due course.

B8. Regulatory failures

You said

B8.1 A respondent questioned the effectiveness of the regulatory framework under the FSA08 in light of some regulatory failures that have occurred.

³ A primary source of funding is a mandatory annual Pension Protection Levy paid by defined benefit schemes, and this cost will invariably be passed on to the members of those schemes.

⁴<https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/pensionsavingsandinvestments/bulletins/occupationalpensionschemessurvey/uk2016>

Our response

B8.2 A robust regulatory framework should help to reduce the risk to the Authority's regulatory objectives, which include the protection of consumers and safeguarding the Island's reputation. This is achieved, for example, by requiring firms to have appropriate controls in place to mitigate relevant business risks and by providing a deterrent effect. However, it is not feasible to remove all harm from markets or operate a zero failure regime.

B9. Regulatory relations

You said

B9.1 Respondents emphasised the importance of maintaining a positive relationship between the regulator and regulated entities.

Our response

B9.2 We recognise that a positive relationship between the Authority and regulated entities is a valuable asset, and the Authority is keen to continue to develop and build-on the current positive working relationship with the pensions industry.

B10. Collaborative approach

You said

B10.1 Respondents also requested that we engage with the Island's industry body for the pensions sector once we have decided which legislative route to take, as they wish to be fully involved in the development of the proposals.

Our response

B10.2 We look forward to working with the Isle of Man Association of Pension Scheme Providers and other stakeholders in developing the proposals further, and it is hoped that a collaborative approach to the development of the regulatory framework will help to ensure that it remains appropriate and proportionate.