

Subsidiary Legislation made under s.5 and s.53.

**FINANCIAL SERVICES (PENSIONS) REGULATIONS
2017**

(LN. 2017/061)

Commencement **31.3.2017**

Amending enactments	Relevant current provisions	Commencement date
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In exercise of the powers conferred upon the Minister by sections 5 and 53 of the Financial Services (Investment and Fiduciary Services) Act, as read with section 23(g)(i) of the Interpretation and General Clauses Act, and conferred upon the Government by section 23(g)(ii) of the Interpretation and General Clauses Act, and in order to further transpose Directive 2003/41 of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision, the Minister and the Government have made the following regulations-

PART 1 INTRODUCTION

Title and commencement.

1. These Regulations may be cited as the Financial Services (Pensions) Regulations 2017 and come into operation on the day of publication.

Interpretation.

2. In these Regulations, unless the context otherwise requires-

“advising on pensions” has the meaning given in regulation 5(2)(b);

“beneficiary” in relation to a pension scheme means a person, other than a member of the pension scheme, who is entitled to a payment of benefits under the pension scheme;

“Commissioner” means the Commissioner for Income Tax of Gibraltar;

“consumer” means-

- (a) persons who use, have used or are or may be contemplating using any of the services provided by licensees in carrying on the controlled activity of establishing, operating or winding up a personal pension scheme;
- (b) persons who have rights or interests which are derived from, or otherwise attributable to, the use of such services by other persons; or
- (c) persons who have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them;

and, if a licensee is providing any such service as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or may use the service;

- “eligible counterparty” has the meaning given to it in section 24(2) of the Financial Services (Markets in Financial Instruments) Act 2006;
- “establishing, operating or winding up a personal pension scheme” has the meaning given in regulation 4(2)(b);
- “the FSC” means the Financial Services Commission established under section 3 of the Financial Services Commission Act 2007;
- “income tax guidance notes” means the guidance notes issued by the Commissioner or the Ministry of Finance from time to time;
- “income tax rules” means the Income Tax Act 2010 and the Income Tax (Allowances, Deductions and Exemptions) Rules 1992 as amended, varied, supplemented or substituted from time to time and any rules or regulations made under the income tax rules and includes the income tax guidance notes;
- “licensee” means a person who has a licence granted under section 8 of the Principal Act;
- “member” means a member of a pension scheme;
- “member’s fund”, in relation to a member of a personal pension scheme, means the assets held under that scheme for the purposes of paying retirement benefits to the member or the member’s beneficiaries under that scheme;
- “the Minister” means the Minister with responsibility for financial services;
- “occupational pension scheme” means a pension scheme established for or by an employer or a number of employers or an association representing employers, jointly or separately, for the benefit of employees;
- “personal pension scheme” means a pension scheme other than an occupational pension scheme;
- “pension scheme” means a scheme or arrangement established under a contract or other agreement, a trust deed or rules with the principal purpose of providing retirement benefits;
- “Principal Act” means the Financial Services (Investment and Fiduciary Services) Act;

“professional client” means a member who meets the requirements of regulation 20;

“retail consumer” means a consumer who-

- (a) is an individual; and
- (b) is not a professional client;

“retirement benefits” means benefits paid by reference to reaching, or the expectation of reaching, retirement or, where they are supplementary to those benefits and provided on an ancillary basis, in the form of payments on death, disability, or cessation of employment or in the form of support payments or services in case of sickness, indigence or death, whether in the form of payments for life, for a temporary period or as a lump sum;

“tax approval” means the approval of a pension scheme by the Commissioner under the income tax rules.

PART 2

CONTROLLED ACTIVITIES RELATING TO PENSIONS

Pension activities to be controlled activities.

3. The activities described in regulations 4 and 5 are controlled activities for the purposes of the Principal Act.

Establishing, operating or winding up personal pension schemes.

4.(1) The activity described in this regulation is establishing, operating or winding up a personal pension scheme.

(2) This controlled activity-

- (a) is subject to the exclusions specified in paragraph 8 of Schedule 3 to the Principal Act; and
- (b) is referred to in these Regulations as “establishing, operating or winding up a personal pension scheme”.

(3) A person must not carry on, or purport to carry on, in or from Gibraltar the controlled activity of establishing, operating or winding up a personal pension scheme other than in accordance with-

- (a) the terms of a licence granted under section 8 of the Principal Act;

- (b) these Regulations;
- (c) the Financial Services (Conduct of Fiduciary Services Business) Regulations 2006; and
- (d) any other provision in or made under the Principal Act, other than-
 - (i) the Financial Services (Advertisements) Regulations 1991;
 - (ii) the Financial Services (Conduct of Business) Regulations 1991;
 - (iii) the Financial Services (Unsolicited Calls) Regulations 1991.

(4) The Minister may by regulations amend the list of enactments in sub-regulation (3).

Advising on pensions.

5.(1) The activity described in this regulation is advising another person on-

- (a) the merits of the person participating in, or being a member of, a personal pension scheme or occupational pension scheme; or
- (b) the acquisition or disposal of any interests, rights, benefits or other entitlements under a personal pension scheme or occupational pension scheme;

or offering or agreeing to give such advice.

(2) This controlled activity-

- (a) is subject to the exclusions specified in paragraph 9 of Schedule 3 to the Principal Act; and
- (b) is referred to in these Regulations as “advising on pensions”.

(3) A person must not carry on, or purport to carry on, in or from Gibraltar the controlled activity of advising on pensions other than in accordance with-

- (a) the terms of a licence granted under section 8 of the Principal Act;
- (b) these Regulations;

- (c) the Financial Services (Conduct of Business: Investment Firms and Insurance Intermediaries) Regulations 2006; and
- (d) any other provision in or made under the Principal Act, other than-
 - (i) the Financial Services (Conduct of Business) Regulations 1991;
 - (ii) the Financial Services (Unsolicited Calls) Regulations 1991.

(4) The Minister may by regulations amend the list of enactments in sub-regulation (3).

Regulations 4 and 5: supplementary.

6.(1) This regulation applies for the purposes of giving effect to regulations 4 and 5.

(2) Schedule 1 makes amendments to the Principal Act.

(3) For the purposes of regulation 4(3), the Financial Services (Conduct of Fiduciary Services Business) Regulations 2006-

- (a) apply to persons carrying on the controlled activity of establishing, operating or winding up personal pension schemes, as if those persons were licensees carrying on fiduciary services business (within the meaning of those Regulations); and
- (b) in their application to such persons, are subject to the modifications specified in Part 1 of Schedule 2.

(4) For the purposes of regulation 5(3), the Financial Services (Conduct of Business: Investment Firms and Insurance Intermediaries) Regulations 2006-

- (a) apply to persons carrying on the controlled activity of advising on pensions, as if those persons were firms carrying on financial services business (within the meaning of those Regulations); and
- (b) in their application to such persons, are subject to the modifications specified in Part 2 of Schedule 2.

Licensing of persons establishing etc. schemes.

7.(1) Sub-regulations (2) to (4) apply to any person who applies for a licence under section 8 of the Principal Act to carry on the controlled activity of establishing, operating or winding up a personal pension scheme.

(2) Without limiting the Principal Act, the FSC must not grant a licence to the applicant unless the FSC is satisfied that-

- (a) the applicant will at all times hold professional indemnity insurance at a level appropriate to the nature, scale and complexity of the applicant's personal pension scheme business; and
- (b) the applicant will at all times be able to meet its liabilities as they fall due and will maintain sufficient financial resources to ensure that the applicant's personal pension scheme business can be wound down in an orderly manner.

(3) The minimum level of the professional indemnity insurance cover required under sub-regulation (2)(a) is-

- (a) £1,000,000 applying to each claim; and
- (b) in aggregate £1,500,000 per year for all claims.

(4) The minimum level of the financial resources required under sub-regulation (2)(b) is £50,000.

(5) Nothing in this regulation restricts the FSC's power under section 10 of the Principal Act to impose on a licensee establishing, operating or winding up personal pension schemes a licence condition which specifies an amount for professional indemnity insurance cover or financial resources which is higher than-

- (a) the licensee's own assessment of the level of professional indemnity insurance cover or financial resources necessary to comply with sub-regulation (2)(a) or (b); or
- (b) any amount specified in sub-regulation (3) or (4).

Ongoing obligations of licensees establishing etc. schemes.

8.(1) A licensee establishing, operating or winding up a personal pension scheme must at all times comply with the requirements for professional indemnity insurance cover and financial resources which are set out in regulation 7.

(2) If a licensee's financial resources at any time fall below the required level, the licensee must-

- (a) notify the FSC of that fact as soon as reasonably practicable; and
- (b) before the end of the period of one month from the date on which the licensee first becomes aware of that fact, submit a realistic recovery plan for the FSC's approval.

(3) A licensee must not cease carrying on the controlled activity of establishing, operating or winding up a personal pension scheme in relation to a particular scheme unless-

- (a) the licensee has notified the FSC, in such form as the FSC may direct, of the licensee's intention to cease establishing the scheme, operating the scheme or winding up the scheme (as the case may be);
- (b) the FSC is satisfied-
 - (i) that all steps necessary to establish or wind up the scheme have been taken; or
 - (ii) in any other case, that another licensee is, or is to be, appointed to carry on, in relation to the scheme, the activity carried on by the licensee; and
- (c) the FSC has given its consent in writing to the licensee ceasing to carry on the controlled activity in relation to the scheme.

Not later than two months after the receipt by the FSC of a notification under sub-regulation (3)(a) the FSC must either-

- (a) give its consent under sub-regulation (3)(c) to the licensee ceasing to carry on the controlled activity and provide written confirmation; or
- (b) refuse to give its consent.

(5) If the FSC proposes to refuse to give its consent under sub-regulation (3)(c), it must give the licensee a warning notice.

(6) If the FSC decides to refuse to give its consent under sub-regulation (3)(c), it must give the applicant a decision notice.

Licensing of persons advising on pensions.

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9.(1) Sub-regulations (2) to (4) apply to any person who applies for a licence under section 8 of the Principal Act to carry on the controlled activity of advising on pensions.

(2) Without limiting the Principal Act, the FSC must not grant a licence to the applicant unless the FSC is satisfied that-

- (a) the applicant will at all times hold professional indemnity insurance at a level appropriate to the nature, scale and complexity of the applicant's pension advisory business; and
- (b) the applicant will at all times be able to meet its liabilities as they fall due and will maintain sufficient financial resources to ensure that the applicant's pension advisory business can be wound down in an orderly manner.

(3) The minimum level of the professional indemnity insurance cover required under sub-regulation (2)(a) is-

- (a) £1,000,000 applying to each claim; and
- (b) in aggregate £1,500,000 per year for all claims.

(4) The minimum level of the financial resources required under sub-regulation (2)(b) is the higher of-

- (a) 4 per cent. of the annual turnover of the business; or
- (b) £15,000.

(5) Nothing in this regulation restricts the FSC's power under section 10 of the Principal Act to impose on a licensee advising on pensions a licence condition which specifies an amount for professional indemnity insurance cover or financial resources which is higher than-

- (a) the licensee's own assessment of the level of professional indemnity insurance cover or financial resources necessary to comply with sub-regulation (2)(a) or (b); or
- (b) any amount specified in sub-regulation (3) or (4).

Ongoing obligations of licensees advising on pensions.

10.(1) A licensee ("L") advising on pensions must at all times-

- (a) comply with the requirements for professional indemnity insurance cover and financial resources which are set out in regulation 9; and
- (b) ensure that L holds sufficient financial resources to meet the aggregate amount of all financial resource requirements which apply to all of the investment business or controlled activities for which L holds a licence.

(2) If a licensee's financial resources at any time fall below the required level, the licensee must-

- (a) notify the FSC of that fact as soon as reasonably practicable; and
- (b) before the end of the period of one month from the date on which the licensee first becomes aware of that fact, submit a realistic recovery plan for the FSC's approval.

PART 3

APPROVAL OF PERSONAL PENSION SCHEMES

Requirement for approval of personal pension schemes.

11. No member may be accepted into any personal pension scheme unless the licensee establishing, operating or winding up the scheme has obtained approval for the scheme from the FSC under regulation 13.

Application for scheme approval.

12.(1) An application to the FSC for its approval of a personal pension scheme may only be made by a licensee establishing, operating or winding up the personal pension scheme.

(2) The application-

- (a) must be made in such manner as the FSC may direct; and
- (b) must contain or be accompanied by such information as the FSC may reasonably require for the purpose of determining the application.

(3) At any time after receiving an application and before determining it, the FSC may require the applicant to provide the FSC with such further information as it reasonably considers necessary to enable it to determine the application.

(4) The FSC may require the applicant to present any information required under paragraph (2)(b) or (3) in such form, or to verify it in such a way, as the FSC may direct.

(5) Different directions may be given by the FSC, and different requirements imposed, in relation to different applications.

Determination of application under regulation 12.

13.(1) An application made by a licensee for approval of a personal pension scheme under regulation 12 must be determined by the FSC before the end of the period of two months beginning with the date on which the FSC receives a completed application.

(2) The FSC may decide to allow more time for an application to be determined if the FSC considers that it is necessary or desirable to do so in order to allow-

- (a) further information, documents or evidence to be obtained from the applicant under regulation 12(3);
- (b) the applicant to make representations in response to a warning notice under regulation 14(2) or (3);
- (c) any right of appeal to be exercised under regulation 26; or
- (d) due consideration otherwise to be given to the application.

(3) If the FSC decides under sub-regulation (2) to allow more time for the determination of an application it must inform the applicant in writing before the end of the period referred to in sub-regulation (1).

(4) The applicant may withdraw an application, by giving the FSC written notice, at any time before the FSC determines it.

(5) The FSC may grant an application only if-

- (a) it is satisfied that the scheme in respect of which the application is made complies with the requirements set out in sub-regulation (6); or
- (b) it is satisfied that those requirements will be met if the application is granted subject to one or more conditions.

(6) The requirements referred to in sub-regulation (5) are that-

- (a) the person who has established, and the person who will operate, the personal pension scheme hold a licence to do so under section 8 of the Principal Act;
- (b) the applicant has obtained tax approval in relation to the scheme; and
- (c) the proposed name of the scheme-
 - (i) does not conflict with the name of any other scheme; and
 - (ii) is not misleading as to who has established the scheme or who will operate it.

(7) Approval of a scheme may be made subject to such conditions as appear to the FSC to be necessary or desirable for the protection of consumers.

(8) The FSC may impose further conditions on an approved scheme, and may vary or revoke any condition imposed at any time after granting the approval, as appears to the FSC to be necessary or desirable for the protection of consumers.

Grant or refusal of application or imposition of conditions: procedure.

14.(1) If the FSC proposes to grant an application for the approval of a personal pension scheme it must give written notice to the applicant.

- (2) If the FSC proposes-
 - (a) to refuse an application for the approval of a personal pension scheme; or
 - (b) to grant the application but to exercise its power under regulation 13(7) in connection with the approval;

the FSC must give the applicant a warning notice.

(3) If the FSC proposes to exercise its power under regulation 13(8) in connection with an approved scheme, it must give each licensee establishing, operating or winding up the scheme a warning notice.

- (4) If the FSC decides-
 - (a) to refuse an application for the approval of a personal pension scheme;

- (b) to grant the application but to exercise its power under regulation 13(7) in connection with the approval; or
- (c) to exercise its power under regulation 13(8) in connection with an approved scheme;

the FSC must give the person concerned a decision notice.

Withdrawal of scheme approval.

15.(1) The FSC may revoke its approval of a personal pension scheme-

- (a) if the scheme no longer satisfies any one or more of the conditions imposed on it under regulation 13(7) or (8);
- (b) if the scheme, or the licensee establishing, operating or winding up the scheme, fails to satisfy any other requirements imposed by virtue of these Regulations;
- (c) if the scheme loses tax approval;
- (d) if revocation is necessary or desirable for the protection of consumers; or
- (e) on any other ground which Regulations made by the Minister may specify as a ground for the revocation of an approval.

(2) If the FSC proposes to exercise its power under sub-regulation (1) to revoke the approval of a personal pension scheme, it must give the licensee establishing, operating or winding up the scheme a warning notice.

(3) If the FSC decides to revoke a scheme's approval, it must give the licensee establishing, operating or winding up the scheme a decision notice.

PART 4 ESTABLISHING, OPERATING OR WINDING UP PERSONAL PENSION SCHEMES

Application of Part 4.

16. This Part applies to any licensee establishing, operating or winding up a personal pension scheme.

Arrangements with third parties.

17.(1) A licensee must-

- (a) exercise due skill, care and diligence when entering into, managing or terminating an arrangement with, or accepting instructions from, a third party;
- (b) before entering into an arrangement with, or accepting instructions from, a third party, take the necessary steps in order to verify that the third party has the ability, capacity, fitness and propriety to perform its activities reliably, professionally and effectively; and
- (c) assess on an ongoing basis the ability, capacity, fitness and propriety of any third party with which it has entered into an arrangement or from which it receives instructions to perform its activities reliably, professionally and effectively.

(2) Where a licensee is unable to verify, whether initially or on an ongoing basis, that a third party has the ability, capacity, fitness and propriety to perform its activities reliably, professionally and effectively the licensee must refuse to act on instructions received either directly or indirectly from the third party.

Due diligence on investments.

18. Prior to investing any part of a member's fund in an investment, either on the instruction of the member or a third party acting on the member's behalf, a licensee must carry out due diligence to determine whether the proposed investment is-

- (a) suitable for retail consumers; or
- (b) unsuitable for retail consumers and suitable only for professional clients or eligible counterparties.

Prohibition on certain investments for retail consumers.

19.(1) A licensee must not invest any part of a member's fund whether on the instruction of the member or a third party on the member's behalf unless-

- (a) it has carried out due diligence on the proposed investment to satisfy itself that the proposed investment is suitable for a retail consumer; and
- (b) it is satisfied, on reasonable grounds, that the proposed investment is suitable for a retail consumer.

(2) Sub-regulation (1) does not apply where the member is a professional client.

(3) Where the licensee is unable to give effect to instructions received from the member or from a third party on the member's behalf whether by virtue of sub-regulation (1) or by virtue of any provision of these Regulations, the Principal Act, any other regulations made under the Principal Act or for any other reason the licensee must give written notice to the member or a third party acting on behalf of the member within 21 days of receiving the instructions.

Identification of professional clients.

20.(1) A member is a professional client for the purposes of regulation 19(2) if-

- (a) the member makes a request in writing to the licensee for the member to be treated as a professional client; and
- (b) the licensee determines, in accordance with sub-regulation (2), that the member is a professional client.

(2) In order to determine that a member is a professional client for the purposes of sub-regulation (1)(b) the licensee must satisfy itself that-

- (a) the member is capable of making their own investment decisions and understanding the risks involved in respect of the relevant investment or the relevant type of investment; and
- (b) at least two of the following apply-
 - (i) the member has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;
 - (ii) the size of the member's financial instrument portfolio, excluding the member's fund, including cash deposits and financial instruments, exceeds £500,000;
 - (iii) the member works or has worked in the financial sector for at least one year in a professional position which requires knowledge of the relevant type of investment.

(3) The assessment required for the purposes of sub-regulation (2)(a) must be carried out in relation to the investment (or investments of a similar type) in relation to which the licensee is required by regulation 18 to carry out due diligence.

(4) A licensee must implement appropriate written internal policies and procedures to enable it to deal adequately with requests made under sub-

regulation (1)(a) as well as to monitor the position once a decision has been made in relation to such a request.

(5) Where a licensee determines that a member is a professional client for the purposes of sub-regulation (1)(b) above and subsequently becomes aware of any change in the member's circumstances which would affect the member's eligibility to be treated as a professional client the licensee must take such action as is appropriate in the circumstances.

Information to consumers.

21.(1) In good time before a licensee enters into a binding agreement with a consumer in relation to a personal pension scheme, the licensee must provide the consumer with the information identified in sub-regulation (2).

(2) The information referred to in sub-regulation (1) is-

- (a) details of the respective rights and obligations of the licensee and the consumer under the binding agreement referred to in sub-regulation (1);
- (b) the nature, frequency and timing of the reports on the scheme to be provided by the licensee pursuant to regulation 22; and
- (c) details of charges for the personal pension scheme, including-
 - (i) the total price to be paid by the consumer to the licensee in connection with the scheme or any ancillary service, including all related fees, commissions, charges and expenses, and all taxes payable via the scheme or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the consumer can verify it; and
 - (ii) notice of the possibility that other costs, including taxes, related to transactions in connection with the scheme may arise for the consumer that are not paid to the licensee or imposed by it.

(3) A licensee must notify a consumer of any material change to-

- (a) the information specified in sub-regulation (2)(a) or (b) within one month of the change taking effect; and
- (b) the information specified in sub-regulation (2)(c) one month in advance of the change taking effect.

(4) A licensee must make available on request from the consumer-

- (a) the trust deed constituting the scheme, if it is constituted by a deed; or
- (b) any document constituting the scheme, if it is not constituted by a trust deed.

Investment information to members.

22.(1) Subject to sub-regulation (2), a licensee must at least once in every period of 12 months after the date on which a consumer becomes a member of a personal pension scheme, provide to the member a valuation of all the assets in which the member's fund is invested.

(2) At least once in every period of 36 months after the date on which a consumer becomes a member of a personal pension scheme, a licensee must provide to the member a valuation of all the real property in which the member's fund is directly or indirectly invested.

Exit charges.

23.(1) A licensee may impose charges on a member for leaving a personal pension scheme ("exit charges").

(2) Where a member intends to leave a scheme after a period of two years from the date on which that person became a member, the exit charges imposed by a licensee-

- (a) must not exceed the administrative costs associated with the member leaving the scheme; and
- (b) must not amount to the imposition of a sanction on the member.

Outsourcing.

24.(1) For the purposes of this regulation-

"outsourcing arrangement" means an arrangement of any form between a licensee and an outsourcing service provider by which the outsourcing service provider performs a process, a service or an activity which would otherwise be undertaken by the licensee;

"outsourcing service provider" means a supplier of goods, services or facilities to a licensee under an outsourcing arrangement, and which may be an entity affiliated with the licensee within a corporate group or an entity that is external to that group.

- (2) A licensee must not enter into an outsourcing arrangement unless-
- (a) it has obtained the prior written consent of the FSC under sub-regulation (3); or
 - (b) the outsourcing service provider-
 - (i) is an entity affiliated with the licensee within a corporate group;
 - (ii) is established in Gibraltar; and
 - (iii) undertakes the outsourced activities in Gibraltar.
- (3) The FSC may consent to an outsourcing arrangement only if the licensee can demonstrate-
- (a) that the outsourcing arrangement does not materially impair-
 - (i) the quality of the licensee's internal controls; or
 - (ii) the ability of the FSC to monitor the licensee's compliance with all its obligations under these Regulations, the Principal Act and any other regulations made under the Principal Act;
 - (b) that the outsourcing service provider has the ability, capacity, fitness and propriety to perform the outsourced functions reliably, professionally and effectively;
 - (c) that the respective rights and obligations of the licensee and the outsourcing service provider under the outsourcing arrangement are clearly allocated and set out in a written agreement;
 - (d) that as a minimum, the written agreement referred to in (c)-
 - (i) sets out each outsourced function together with the expected performance and service levels pertaining to that function;
 - (ii) includes an undertaking by the outsourcing service provider to provide the rights of access set out in sub-regulation (6);
 - (iii) sets out the conditions surrounding the termination of the outsourcing arrangement including a minimum period of notice; and

(iv) prohibits the outsourcing service provider or any sub-contractor of the outsourcing service provider from performing its obligations under the outsourcing arrangement in a manner which constitutes or could be deemed to constitute a breach of the licensee's obligations under these Regulations, the Principal Act and or any other regulations made under the Principal Act; and

(e) in any case to which sub-regulation (4) or (5) applies, that the requirements of that sub-regulation are met.

(4) Where the outsourcing arrangement is to be made with an outsourcing service provider outside Gibraltar, the licensee must also demonstrate that no person in Gibraltar possesses the ability, capacity, fitness and propriety to perform the outsourced functions reliably, professionally and effectively.

(5) Where the outsourcing arrangement involves or may involve a qualifying recognised overseas pension scheme, the licensee must also demonstrate that the scheme will continue to comply with any-

(a) requirements imposed on qualifying recognised overseas pension schemes under the laws of England and Wales;

(b) guidance issued for the purposes of determining where the scheme is established; and

(c) other related guidance.

(6) A licensee who enters into an outsourcing arrangement must ensure that the FSC, the licensee and the licensee's auditors have access to-

(a) data relating to the outsourced functions; and

(b) the business premises of the outsourcing service provider.

(7) In sub-regulation (5) "qualifying recognised overseas pension scheme" has the meaning given to it in section 150(8) of the Finance Act 2004 of the laws of England and Wales.

PART 5 FINAL PROVISIONS

Warning notices and decision notices.

25.(1) A warning notice must-

- (a) state the action which the FSC proposes to take;
- (b) be in writing;
- (c) give reasons for the proposed action; and
- (d) specify a reasonable period (which may not be less than 14 days) within which the person concerned may make representations.

(2) A decision notice must-

- (a) be in writing;
- (b) give the FSC's reasons for the decision to take the action to which the notice relates;
- (c) give an indication of the right to appeal the decision of the FSC; and
- (d) give an indication of the procedure for such appeal.

(3) If the FSC decides not to take-

- (a) the action proposed in a warning notice; or
- (b) the action to which a decision notice given by it relates;

it must give a notice of discontinuance to the person to whom the warning notice or decision notice was given.

(4) Sub-regulation (3) does not apply if the discontinuance of the action in question results in the granting of an application made by the person to whom the warning or decision notice was given.

(5) A notice of discontinuance must identify the proceedings which are being discontinued.

Appeals.

26.(1) A person ("P") may appeal to the Supreme Court if P is aggrieved by a decision specified in sub-regulation (2).

(2) The specified decisions are-

- (a) regulation 8(6) (refusal of consent to licensee ceasing to act in relation to particular scheme);

- (b) regulation 14(4)(a) (refusal of an application for scheme approval);
- (c) regulation 14(4)(b) (grant of application for scheme approval subject to conditions);
- (d) regulation 14(4)(c) (imposition of further conditions on approved scheme or variation or revocation of existing conditions);
- (e) regulation 15(3) (revocation of scheme's approval);
- (f) paragraph 7(6) of Schedule 3 (determination that personal pension scheme no longer to be treated as approved); and
- (g) paragraph 11(4) of Schedule 3 (decision to take specified steps against a pension adviser).

(3) An appeal must be brought within 28 days of the date of the FSC's decision.

Offences and penalty fees.

27.(1) A person who carries on, or purports to carry on the controlled activity of establishing, operating or winding up a personal pension scheme in contravention of regulation 4(3) is guilty of an offence.

(2) A person who carries on, or purports to carry on the controlled activity of advising on pensions in contravention of regulation 5(3) is guilty of an offence.

(3) Sections 49 to 52 of the Principal Act apply to an offence under sub-regulation (1) or (2) as they apply to an offence under that Act.

(4) A person who contravenes any provision of these Regulations is liable to a penalty fee under the Financial Services (Penalty Fees) Regulations 1993.

Enforcement and sanctions.

28.(1) The FSC's powers under or by virtue of the Principal Act extend to enforcing the provisions of these Regulations.

(2) Sub-regulation (1) applies without limiting any such powers of the FSC or any provision of these Regulations.

(3) Without limiting any other power, where the FSC is satisfied that a contravention of these Regulations has occurred, it may take the actions specified in sub-regulations (4) to (6).

(4) The FSC may publish a statement specifying-

- (a) the nature of the contravention; and
- (b) the identity of the person who has committed it.

(5) Publication under sub-regulation (4) may take any form, or combination of forms, that the FSC thinks appropriate.

(6) The FSC may vary the terms and conditions of a licence granted to a person under section 8 of the Principal Act by imposing limitations or restrictions on the licence for a specified period, which must not exceed 12 months.

(7) Sections 44 and 45 of the Principal Act apply to any action taken by the FSC under sub-regulations (4) to (6) as if it was a decision specified in section 44(1) of that Act.

(8) The FSC may disclose to the public any measure taken in respect of a contravention of these Regulations, unless doing so would-

- (a) seriously jeopardise the financial markets; or
- (b) cause disproportionate damage to the parties involved.

Small occupational pensions institutions.

29. After section 3 of the Financial Services (Occupational Pensions Institutions) Act 2006 insert-

“Opt-in by institutions with fewer than 100 members.

3A.(1) This section applies to institutions to which the Act does not apply by virtue of section 3(2)(e) (“small institutions”).

- (2) A small institution may opt to be subject to the provisions of this Act by making an application to the Authority in such form and manner as the Authority may require.
- (3) On receipt of an application under subsection (2), the Authority must give the small institution a notice under subsection (4).
- (4) The notice must-

- (a) be in writing;
 - (b) acknowledge that the small institution has voluntarily opted to be subject to the provisions of this Act;
 - (c) state the effect of subsection (5); and
 - (d) specify the date on which the notice comes into force.
- (5) With effect from the date specified in the notice, this Act applies to a small institution to which the notice has been given as it applies to any other institution for occupational retirement provision which is subject to the provisions of the Act.
- (6) Any small institution which was complying with this Act before the date on which this section comes into force (“the commencement date”) is to be treated as if it had-
- (a) opted to be subject to the provisions of this Act by making an application under subsection (2); and
 - (b) received a notice under subsection (4) which specified the commencement date as being the date on which the notice comes into force.

Cancellation of opt-in under section 3A.

- 3B.(1) An institution to which this Act applies by virtue of section 3A may apply to the Authority for its opt-in under that section to be cancelled.
- (2) An application under subsection (1) must be made in such form and manner as the Authority may require.
 - (3) If the Authority considers that it is necessary or desirable to refuse the application for the protection of customers or that refusal is otherwise in the public interest, the Authority must inform the institution of its decision by a notice in writing stating the reasons for refusal.
 - (4) If the Authority decides to grant the application, it must give the institution a notice which-
 - (a) is in writing;
 - (b) states that the institution has applied for the cancellation of its option to be subject to the provisions of the Act;
 - (c) states the effect of subsection (5); and

(d) specifies the date on which the notice comes into force.

(5) With effect from the date specified in the notice, this Act ceases to apply to an institution to which the notice has been given.”.

Transitional provision.

30. Schedule 3 contains provision in connection with the coming into force of these Regulations.

SCHEDULE 1
CONSEQUENTIAL AMENDMENTS**The Financial Services (Investment and Fiduciary Services) Act.**

1.(1) Schedule 3 to the Principal Act is amended as follows.

(2) For paragraph 2 substitute-

“Professional trusteeship.

- (1) Holding out, or soliciting for or undertaking business, for profit or reward, in or from Gibraltar as a professional trustee.
- (2) This paragraph does not apply to the following persons when performing duties within the ambit of their respective professions and which are carried out other than in connection with an activity regulated by this Act-
 - (a) barristers or solicitors admitted and enrolled under the Supreme Court Act; or
 - (b) statutory auditors or audit firms who are registered under Part III of the Financial Services (Auditors) Act 2009.
- (3) This paragraph does not apply to any activity carried on by a person who acts as trustee of one or more personal pension schemes.
- (4) In sub-paragraph (3), “personal pension scheme” has the same meaning as in the Financial Services (Pensions) Regulations 2017.”.

(3) After paragraph 7 insert-

“8. Establishing, operating or winding up a personal pension scheme.

- (1) Establishing, operating or winding up a personal pension scheme.
- (2) Sub-paragraph (1) does not apply to activities which-
 - (a) are carried on by a person authorised under the 2011 Act to act as the manager of a UCITS and are carried on in connection with or for the purposes of managing a UCITS;

- (b) are carried on by an AIFM authorised in accordance with the 2013 Regulations and are carried on in connection with or for the purposes of managing an AIF;
 - (c) are carried on by a person acting as a licensed insolvency practitioner.”.
- (3) In sub-paragraph (2)-
- (a) “the 2011 Act” means the Financial Services (Collective Investment Schemes) Act 2011 and “manager” and “UCITS” have the same meaning as in that Act;
 - (b) “the 2013 Regulations” means the Financial Services (Alternative Investment Fund Managers) Regulations 2013 and “AIF” and “AIFM” have the same meaning as in those Regulations; and
 - (c) “licensed insolvency practitioner” has the same meaning as in the Insolvency Practitioner Regulations 2014.

9. Advising on pensions.

- (1) Advising another person on-
- (a) the merits of the person participating in, or being a member of, a personal pension scheme or an occupational pension scheme; or
 - (b) the acquisition or disposal of any interests, rights, benefits or other entitlements under a personal pension scheme or occupational pension scheme.
- (2) Offering or agreeing to give advice of the kind specified in sub-paragraph (1).
- (3) Sub-paragraph (1) does not apply to the giving of advice by a person (“P”) exclusively for P’s parent undertaking, P’s subsidiaries or for other subsidiaries of P’s parent undertaking.
- “Parent undertaking” and “subsidiary undertaking” have the same meaning as in Part VII of the Companies Act 2014.
- (4) Sub-paragraph (1) does not apply to the giving of advice by a person (“P”) acting as trustee or personal representative-

- (a) to a fellow trustee or personal representative for the purposes of the trust or estate; or
- (b) to a beneficiary under the trust, will or intestacy concerning the beneficiary's interest in the trust fund or estate, unless P is remunerated for doing so in addition to any remuneration P receives for discharging P's duties as trustee or personal representative.
- (5) Sub-paragraph (1) does not apply to the giving of advice in an incidental manner in the course of a professional activity that is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the giving of advice.
- (6) Sub-paragraph (1) does not apply to the giving of advice in writing or other legible form if the advice is contained in a newspaper, journal, magazine or other periodical publication, or is given by way of a service comprising regularly updated news or information, if the principal purpose of the publication or service, taken as a whole and including any advertisements or other promotional material contained in it, is not that of leading or enabling persons to-
- (a) participate in or become a member of a personal pension scheme or occupational pension scheme; or
- (b) acquire or dispose of interests, rights, benefits or other entitlements under a personal pension scheme or occupational pension scheme.
- (7) Sub-paragraph (1) does not apply to the giving of advice in any service consisting in the broadcast or transmission of television or radio programmes, if the principal purpose of the service, taken as a whole and including any advertisements or other promotional material contained in it, is neither of those mentioned in sub-paragraph (6)(a) or (b)."

Financial Services (Licensing) Regulations, 1991.

2. At the end of Schedule 1 to the Financial Services (Licensing) Regulations 1991 insert-

<i>FINANCIAL SERVICES BUSINESS</i>	<i>CLASS</i>	<i>DESCRIPTION</i>
"Establishing, operating or winding up a personal pension scheme (Paragraph 8, Schedule 3 of the Act)	XVI	Personal pension scheme controller

Advising on pensions (personal or occupational) (Paragraph 9, Schedule 3 of the Act)	XVII	Pension adviser”
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Financial Services (Penalty Fees) Regulations, 1993.

3. At the end of the Schedule to the Financial Services (Penalty Fees) Regulations 1993 insert-

“Financial Services (Pensions) Regulations 2017

All regulations	Failure to comply with the provisions of the regulations	Level 5”
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**SCHEDULE 2
MODIFICATION OF CONDUCT OF BUSINESS RULES****Part 1****Establishing, operating or winding up a personal pension scheme**

1. The Financial Services (Conduct of Fiduciary Services Business) Regulations 2006 are modified as follows.

2. Regulation 2 is to be read as if-

(a) for the definition of “fiduciary services business” there were substituted-

““fiduciary services business” means any activity falling within paragraph 8 of Schedule 3 to the Act and “fiduciary services” shall be construed accordingly;” and

(b) for the definition of “management agreement” there were substituted-

““management agreement” means any agreement the making or performance of which by either party constitutes an activity falling within paragraph 8 of Schedule 3 to the Act;”.

3.(1) The Schedule is to be read as if-

(a) paragraph 2(3)(c) and (f) to (i) were omitted;

(b) in paragraph 3(2), for “the date these Regulations come into operation” there were substituted “the date on which the Financial Services (Pensions) Regulations 2017 come into operation”;

(c) for paragraph 3(3) there were substituted-

“(3) A licensee shall ensure the confidentiality of each customer’s affairs.”;

(d) paragraphs 4 to 6 were omitted;

(e) paragraph 7(4) were omitted;

(f) in paragraph 11(1), for “a prudently run company or trust management operation” there were substituted “a prudently run personal pension scheme operation”;

(g) in paragraph 11(4), for “either on its own behalf or on behalf of companies for which directors are provided or trusts administered” there were substituted “either on its own behalf or on behalf of its customers”;

(h) for paragraph 12(1), there were substituted-

“(1) A licensee shall assess regularly (and no less than once a year) the level of professional indemnity insurance cover necessary to comply with regulations 7 and 8 of the Financial Services (Pensions) Regulations 2017.”;

(i) paragraph 12(4) and (5) were omitted;

(j) for paragraph 13, there were substituted-

“13.(1) A licensee shall-

(a) assess regularly (and no less than every six months) the level of financial resources necessary to comply with regulations 7 and 8 of the Financial Services (Pensions) Regulations 2017; and

(b) be able to demonstrate financial resources at the assessed level.

(2) A licensee shall also carry out an assessment of the required level of its financial resources on each occasion when there is a material change to the licensee’s business plan.

(3) The measure of a licensee’s financial resources shall be the net figure in the licensee’s balance sheet.

(4) In this paragraph, “net assets” means the total assets of any type less the total liabilities of any type except for-

(a) intangible fixed assets; and

(b) related party balances (e.g. shareholders and directors and associated companies) unless, in the ordinary course of business, outstanding balances are being settled under normal commercial terms.”;

(k) for paragraph 16(5), there were substituted-

“(5) The executives shall have sufficient experience and knowledge of the business and the necessary authority to detect and deal with any imprudence, dishonesty or other irregularities in the licensee or in the personal pension schemes to which their licence extends.”;

(l) for paragraph 17(1), there were substituted-

“(1) A licensee shall be structured and staffed in a manner appropriate to the licensee’s operations taking into account the number of personal pension schemes to which their licence extends and the number of members within each of those schemes and the licensee’s management shall ensure that staff are competent and that they are adequately supervised.”; and

(m) for paragraph 19(6), there were substituted-

“(6) The returns in sub-paragraph (5) to be submitted by a licensee on an annual basis are-

(a) return (no later than 31 January each year) of the number of members within personal pension schemes to which their licence extends as at 31 December of the preceding year; and

(b) financial statements and statement of compliance (within 4 months of the end of the licensee’s accounting period).”.

Part 2

Advising on pensions

4. The Financial Services (Conduct of Business: Investment Firms and Insurance Intermediaries) Regulations 2006 are modified as follows.

5. Regulation 2 is to be read as if-

(a) the definition of “authorised European investment firm” were omitted;

(b) for the definition of “financial services business” there were substituted

““financial services business” means any business falling within paragraph 9 of Schedule 3 to the Act and “financial services” shall be construed accordingly;”;

- (c) for the definition of “firm” there were substituted-

““firm” means a person licensed under section 8 of the Act to carry on the business of advising on pensions;”;

- (d) for the definition of “management agreement” there were substituted-

““management agreement” means any agreement the making or performance of which by either party constitutes an activity which falls within paragraph 9 of Schedule 3 to the Act;”.

6. Regulation 3 is to be read as if-

- (a) for sub-regulation (1) there were substituted-

“(1) These regulations apply in relation to firms which are carrying on business falling within paragraph 9 of Schedule 3 to the Act.”; and

- (b) sub-regulations (3), (5) and (6) were omitted.

7. Regulation 12 is to be read as if there were substituted-

“12.(1) A firm shall assess regularly (and no less than once a year) the level of professional indemnity insurance cover necessary to comply with regulations 9 and 10 of the Financial Services (Pensions) Regulations 2017.

(2) A firm shall assess regularly (and no less than every six months) the level of financial resources necessary to comply with regulations 9 and 10 of the Financial Services (Pensions) Regulations 2017.

(3) A firm shall also carry out an assessment of the required level of its financial resources on each occasion when there is a material change to the firm’s business plan.”.

8. Regulation 15 is to be read as if the words “or acting for” were omitted.

9. Regulation 16 is to be read as if the words “either” and “or deal in the exercise of discretion” were omitted.

10. Regulation 18 does not apply.
11. Regulation 19 is to be read as if the words “an investment or” were omitted.
12. Regulation 20 is to be read as if the words “an investment or” were omitted.
13. Regulation 21 is to be read as if, in sub-regulation (2) the words “an investment or” were omitted.
14. Regulation 22 is to be read as if-
 - (a) in sub-regulation (1)(a), the words “, or effect a discretionary transaction with or for him,” were omitted;
 - (b) in sub-regulation (2), the words “, arranges or executes a transaction, or acts as a discretionary manager,” were omitted; and
 - (c) in sub-regulation (3), for “an investment or” there were substituted “a”.
15. Regulation 23 is to be read as if the words “an investment or” were omitted.
16. Regulation 26(1) is to be read as if the words “or for” were omitted.
17. Regulation 26(2) is to be read as if-
 - (a) for “investment firm” (in each place), there were substituted “firm”; and
 - (b) the words “investment service or” were omitted.
18. Regulation 29(1) is to be read as if-
 - (a) in sub-regulation (1), the words “, nor effect a discretionary transaction with or for,” and the words “or transaction” were omitted; and
 - (b) sub-regulation (5) were omitted.
19. Regulation 31 is to be read as if there were substituted-

“31. A firm shall provide a customer at the customer’s request with information in cash terms of any remuneration or commission it receives or will receive from a product provider.”

20. Regulation 32 does not apply.

21. Parts IV and V do not apply.

22. Regulation 44 does not apply.

23. Schedule 1 does not apply.

**SCHEDULE 3
TRANSITIONAL PROVISION****Part 1
General****Interpretation.**

1. In this Schedule-

“interim licensee” has the meaning given in paragraph 2(3);

“pension adviser” has the meaning given in paragraph 8(2);

“relevant personal pension scheme” has the meaning given in paragraph 2(2).

Part 2**Establishing, operating or winding up a personal pension scheme:
interim licensees****Persons to whom Part 2 applies.**

2.(1) This Part applies to any person who, immediately before 1st April 2017, carries on an activity in relation to one or more relevant personal pension schemes which, if carried on on or after that date, would be the controlled activity of establishing, operating or winding up a personal pension scheme.

(2) “Relevant personal pension scheme” means any personal pension scheme-

- (a) which is in existence immediately before 1st April 2017; and
- (b) in relation to which tax approval has been obtained before that date.

(3) A person to whom this Part applies is referred to in this Part as an “interim licensee”.

Interim licences.

3.(1) On and after 1st April 2017, an interim licensee (“L”) is to be treated as having an interim licence to carry on the controlled activity of establishing, operating or winding up a personal pension scheme, to the extent that L was carrying on such activity immediately before 1st April 2017.

(2) L's interim licence extends to L carrying on the controlled activity of establishing, operating or winding up a personal pension scheme in relation to

- (a) any relevant personal pension scheme in relation to which L was acting immediately before 1st April 2017;
- (b) any personal pension scheme in relation to which L has been acting since the date of the scheme's approval under Part 3 of these Regulations; and
- (c) any qualifying personal pension scheme.

(3) A personal pension scheme is a qualifying personal pension scheme if-

- (a) at any time on or after 1st April 2017, a person other than L has carried on the controlled activity of establishing, operating or winding up a personal pension scheme in relation to the scheme; and
- (b) before L first carries on that activity in relation to the scheme, the FSC has given its consent under regulation 8(3)(c) to that other person ceasing to carry on the activity.

(4) The FSC must establish and maintain a register of-

- (a) every person who appears to the FSC to be an interim licensee; and
- (b) in respect of each interim licensee, the personal pension schemes to which that person's interim licence extends.

Obligations of interim licensees.

4.(1) An interim licence is to be treated as a licence under section 8 of the Principal Act and the FSC may exercise its powers under the Principal Act so as to-

- (a) impose conditions on an interim licence;
- (b) vary or revoke such conditions;
- (c) cancel, suspend or alter an interim licence; or
- (d) exercise its powers under Part 5 of the Principal Act in relation to an interim licensee.

(2) Accordingly, an interim licensee must comply with the requirements of the enactments listed in regulation 4(3) which apply to persons carrying on the controlled activity of establishing, operating or winding up a personal pension scheme.

(3) In the application of the Principal Act to interim licensees, section 59 of the Principal Act (savings and transitional provisions) is to be disregarded.

(4) In the application of Part 3 of these Regulations to interim licensees-

- (a) no application for the FSC's approval of any personal pension scheme is required for so long as the scheme is, by virtue of paragraph 7, treated as having been approved under that Part; and
- (b) an interim licensee is not required to seek the FSC's consent under regulation 24 for any outsourcing arrangement which is in force immediately before 1st April 2017 until 5th July 2017 or, if earlier, when the interim licensee makes an application for a licence under section 8 of the Principal Act.

Duration of a person's interim licence.

5.(1) In this paragraph, "an application" means an application to the FSC for a licence under section 8 of the Principal Act to carry on the controlled activity of establishing, operating or winding up a personal pension scheme which is made by an interim licensee.

(2) If a person with an interim licence does not make an application before 5th July 2017, the person's interim licence ceases to have effect on 5th July 2017.

(3) If an interim licensee makes an application before 5th July 2017, the applicant's interim licence ceases to have effect on-

- (a) 31st December 2017; or
- (b) if sub-paragraph (4) applies, such later date as is specified in the notice given to the applicant under sub-paragraph (5).

(4) The FSC may decide to allow more time for a person's application to be determined if the FSC considers that it is necessary or desirable to do so in order to allow-

- (a) further information, documents or evidence to be obtained from the applicant under section 6(2) of the Principal Act;

- (b) the applicant to make representations under section 44 of the Principal Act in response to a notice that the FSC is considering refusing the application;
- (c) any right of appeal under section 45 of the Principal Act to be exercised; or
- (d) due consideration otherwise to be given to the application.

(5) If the FSC decides to allow more time for a person's application to be determined, it must give the person a notice which must-

- (a) be in writing;
- (b) be sent to the person concerned on or before 31st December 2017;
- (c) specify any information, documents or evidence which the FSC reasonably requires;
- (d) specify the date before which the application is to be determined; and
- (e) state that person's interim licence will cease to have effect on the date so specified.

Interim licensee ceasing to carry on controlled activity.

6.(1) This paragraph applies if-

- (a) the FSC has given its consent under regulation 8(3)(c) to an interim licensee ceasing to carry on the controlled activity of establishing, operating or winding up a personal pension scheme in relation to a particular scheme; and
- (b) as a result, there are no personal pension schemes to which that person's interim licence extends.

(2) The person's interim licence ceases to have effect on such date as the FSC may specify in a notice in writing given to the person.

Approval of relevant schemes

Approval of relevant personal pension schemes.

7.(1) This paragraph applies to each relevant personal pension scheme.

(2) On and after 1st April 2017, the scheme is to be treated as if it had been approved under Part 3 of these Regulations.

(3) A scheme ceases to be treated as having been approved on the relevant date.

(4) The relevant date is-

- (a) if the scheme loses tax approval, the date on which tax approval is removed;
- (b) if the scheme is one in respect of which the FSC has given its consent under regulation 8(3)(c), the date on which the consent is given;
- (c) if the FSC determines that it is necessary or desirable for the protection of customers that the scheme should no longer be treated as approved, the date of the FSC's notice under sub-paragraph (6);
- (d) if paragraph 5(4) applies to any person whose interim licence extends to the scheme, on the date specified in the notice given to that person under paragraph 5(5);
- (e) in any other case, 31st December 2017.

(5) If the FSC proposes to make a determination under sub-paragraph (4)(c) in respect of a scheme, the FSC must give the person whose interim licence extends to the scheme a warning notice.

(6) If the FSC makes a determination under sub-paragraph (4)(c) in respect of a scheme, the FSC must give the person whose interim licence extends to the scheme a decision notice.

Part 3

Persons giving pension advice

Persons to whom Part 3 applies.

8.(1) This Part applies to any person who, immediately before 1st April 2017, is carrying on an activity which, if carried on on or after 1st April 2017, would be the controlled activity of advising on pensions.

(2) A person to whom this Part applies is referred to in this Part as "a pension adviser".

Advising on pensions before 5th July 2017.

9. Between 1st April 2017 and 4th July 2017, a pension adviser-

- (a) may continue to carry on the controlled activity of advising on pensions without having obtained a licence under section 8 of the Principal Act in respect of that activity; and
- (b) is not to be regarded as contravening the Principal Act by doing so.

Advising on pensions during the transitional period.

10.(1) This paragraph applies to any pension adviser who satisfies the conditions that-

- (a) before 5th July 2017, the FSC receives an application for a licence under section 8 of the Principal Act for the pension adviser to carry on the controlled activity of advising on pensions;
- (b) the application is not withdrawn; and
- (c) the FSC has not given a direction under paragraph 11(2)(c) in respect of the pension adviser.

(2) Sub-paragraphs (a) and (b) of paragraph 9 continue to have effect between 5th July 2017 and 31st December 2017 (“the transitional period”) in relation to any pension adviser to whom sub-paragraph (1) applies.

(3) The FSC may decide to extend the transitional period in relation to any pension adviser if the FSC considers it necessary or desirable to do so in order to allow-

- (a) further information, documents or evidence to be obtained from the pension adviser under section 6(2) of the Principal Act;
- (b) the pension adviser to make representations under section 44 of the Principal Act in response to a notice that the FSC is considering refusing the pension adviser’s application for a licence under section 8 of the Principal Act to carry on the controlled activity of advising on pensions;
- (c) any right of appeal under section 45 of the Principal Act to be exercised; or
- (d) due consideration otherwise to be given to the pension adviser’s application for a licence under section 8 of the Principal Act.

(4) If the FSC decides to extend the transitional period in relation to a pension adviser, it must give the pension adviser a notice which must-

- (a) be in writing;
- (b) be sent to the pension adviser concerned on or before 31st December 2017;
- (c) specify any information, documents or evidence which the FSC reasonably requires;
- (d) specify the date on which the transitional period is to end; and
- (e) state that sub-paragraphs (a) and (b) of paragraph 9 will no longer have effect in relation to the pension adviser after the end of the extended transitional period.

Powers of the FSC.

11.(1) This paragraph-

- (a) has effect in relation to any pension adviser to whom paragraph 10 applies; and
- (b) ceases to have effect-
 - (i) where the FSC decides to extend the transitional period in relation to the pension adviser, on such later date as is specified in the notice given to the pension adviser under paragraph 10(4);
 - (ii) in any other case, on 31st December 2017.

(2) The FSC may if it considers it necessary or desirable to do so-

- (a) impose such conditions on a pension adviser as appear to the FSC to be necessary or desirable either for the protection of investors or consumers or in the public interest;
- (b) vary or revoke any such condition;
- (c) give a direction to a pension adviser that the adviser is to cease carrying on the controlled activity of advising on pensions; or
- (d) exercise the FSC's powers under section 33 or 34 of the Principal Act (and, for this purpose, those provisions are to be

read as if the definition of “relevant person” in section 32 of that Act included a pension adviser).

(3) If the FSC proposes to take any of the steps specified in sub-paragraph (2), it must give the pension adviser concerned a warning notice.

(4) If the FSC decides to take any of the steps specified in sub-paragraph (2), it must give the pension adviser concerned a decision notice.