

Subsidiary Legislation made under ss.6(1), 24(3)(v), 44(4), 61(1), 63(3), 64(3), 150(1), 164(1), 166 (2), 610(1), 620(1), 621(1) and 627.

**Financial Services (Personal Pensions) Regulations 2020****LN.2020/026**

*Commencement* **15.1.2020**

Amending enactments	Relevant current provisions	Commencement date
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2022/326	r. 7(1), (3)	1.12.2022
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**2019-26**

**Financial Services**

**2020/026 Financial Services (Personal Pensions) Regulations 2020**

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*In exercise of the powers conferred upon the Minister under sections 6(1), 24(3)(v), 44(4), 61(1), 63(3), 64(3), 150(1), 164(1), 166 (2), 610(1), 620(1), 621(1) and 627 of the Financial Services Act 2019, the Minister has made the following Regulations.*

**PART 1  
PRELIMINARY**

**Title and commencement.**

1. These Regulations may be cited as the Financial Services (Personal Pensions) Regulations 2020 and come into operation on the day of publication.

**Interpretation.**

2.(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Financial Services Act 2019;

“AML Guidance Notes” means the guidance notes issued by the GFSC in relation to systems of control to prevent the financial system from being used for money laundering or terrorist financing activities;

“auditor”, in relation to a pension scheme firm, means the person appointed by the pension scheme firm to be its auditor for the purpose of these Act and these Regulations and who is in office at that time;

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

“client agreement” means any agreement the making or performance of which by either party constitutes pension advice business;

“consumer” means—

- (a) persons who use, have used or are or may be contemplating using any of the services provided by a pension scheme operator in carrying on pension scheme business;
- (b) persons who have rights or interests that are derived from, or otherwise attributable to, the use of such services by other persons;

- (c) persons who have rights or interests that may be adversely affected by the use of any of those services by persons acting on their behalf or in a fiduciary capacity in relation to them;

and, if a pension scheme operator is providing any such service as a trustee, 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;

“customer” means any person with which the pension scheme firm has entered into or intends to enter into an agreement for the provision of services constituting a regulated activity within the meaning of paragraph 106 or 107 of Schedule 2 to the Act and includes a potential customer;

“financial instrument” has the meaning given in paragraph 44(1) of Chapter 2 of Part 6 of Schedule 2 to the Act;

“financial year”, in relation to a pension scheme firm, means–

- (a) the period beginning with the day on which the pension scheme firm commences to carry on pension scheme business or pension advice business, as the case may be, and ending with the date as at which it prepares its first annual balance sheet; and
- (b) each subsequent period beginning with the day following the day as at which an annual balance sheet of the pension scheme firm is prepared for the purposes of these Regulations and ending with the day as at which the next annual balance sheet of the pension scheme firm is so prepared;

“GFSC” means the Financial Services Commission established under the Financial Services Commission Act 2007;

“management agreement” means any agreement the making or performance of which by either party constitutes pension scheme business;

“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 the scheme for the purposes of paying retirement benefits to the member or the member’s beneficiaries under that scheme;

“money” includes any form of money, whether represented by a cheque, or other payable order, or otherwise;

“occupational pension scheme” means a pension scheme established for employees by an employer or a number of employers or an association representing employers, jointly or separately for the benefit of employees;

“Part 7 permission” means a permission under Part 7 of the Act;

“pension advice business” means the regulated activity of a pension adviser within the meaning of paragraph 107 of Schedule 2 to the Act in respect of personal pension schemes;

“pension adviser” means a person who has a Part 7 permission to carry on the regulated activity under paragraph 107 of Schedule 2 to the Act in respect of personal pension schemes;

“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;

“pension scheme business” means the regulated activity of a pension scheme operator within the meaning of paragraph 106 of Schedule 2 to the Act;

“pension scheme firm” means—

- (a) a pension scheme operator; or
- (b) a pension adviser;

“pension scheme operator” means a person who has a Part 7 permission to carry out the regulated activity under paragraph 106 of Schedule 2 to the Act;

“personal pension scheme” means a pension scheme other than an occupational pension scheme;

“recognised credit institution” means—

- (a) a credit institution with Part 7 permission to carry on the regulated activity of accepting deposits;
- (b) a central bank of a state that is a member of the Organisation for Economic Co-operation and Development (an “OECD state”);
- (c) a credit institution that is supervised by the central bank or other banking regulator of an OECD state;

- (d) any credit institution that—
- (i) is subject to regulation by the banking regulator of a country or territory that is not an OECD state;
  - (ii) is required by the law of the country or territory in which it is established to provide audited accounts;
  - (iii) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time);
  - (iv) has a surplus of revenue over expenditure for the last two financial years; and
  - (v) has an annual report which is not materially qualified;

“regulatory system” means the arrangements for regulating a pensions scheme firm under the Act, these Regulations, any subordinate legislation made under the Act, and any rules or directions made by the GFSC under any statutory provision enabling it to do so;

“retail client” means a customer 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;

“staff”, in relation to a pension scheme firm, includes an officer, employee, contractor, agent, or other representative;

“the Register” means the register which is established and maintained by the GFSC in accordance with both Part 4 of the Act and, in relation to the provision of pension scheme business or pension advice business, as the case may be, carried on by a pension scheme firm, regulation 126;

(2) In these Regulations, any reference to a balance sheet or to a profit and loss account includes any notes to the financial statement in question giving information which is required by any provision of these Regulations and required or allowed by that provision to be given in a note to the pension scheme firm's financial statements.

**Application.**

3. These Regulations apply in relation to all pension scheme firms in respect of their pension scheme business or pension advice business in connection with personal pension schemes.

**PART 2  
AUTHORISATION CONDITIONS**

**Chapter 1  
Pension scheme firms: authorisation conditions**

**Conditions for authorising pension scheme firms**

4.(1) This Part includes provisions which supplement the threshold conditions as they apply to pension scheme firms.

(2) In giving or varying Part 7 permission to an applicant to take up or pursue business as a pension scheme firm, the GFSC must ensure that the applicant meets, and will continue to meet, the threshold conditions.

(3) A pension scheme firm, which has Part 7 permission, must at all times comply with the threshold conditions and these Regulations.

(4) This regulation applies in addition to any other requirement relating to a Part 7 permission.

(5) An applicant for Part 7 permission as a pension scheme operator must satisfy the GFSC that it meets, or will meet, the conditions set out in regulations 5 and 6.

(6) An applicant for Part 7 permission as a pension adviser must satisfy the GFSC that it meets, or will meet, the conditions set out in regulations 7 and 8.

**Chapter 2  
Pension scheme operator: insurance cover and financial resources**

**Professional indemnity insurance: pension scheme operator.**

5.(1) A pension scheme operator must at all times hold professional indemnity insurance at a level appropriate to the nature, scale, and complexity of the applicant's pension scheme business.

- (2) For the purposes of subregulation (1), the minimum level of cover required is—
- (a) £1,000,000 applying to each claim;
  - (b) in aggregate £1,500,000 per year for all claims.
- (3) An insurance policy required by subregulation (1) must as a minimum cover -
- (a) liability for any negligent act, error or omission or dishonest or fraudulent act or omission by the pension scheme operator, a director or a staff member in the course of its business;
  - (b) liability for libel or slander;
  - (c) liability for loss of customer funds or other property arising from fraud or dishonesty by any director, staff member, former director or former staff member; and
  - (d) liability resulting from the loss of documents and the cost of restoring or replacing them.
- (4) A pension scheme operator must assess regularly (and no less than once a year) the level of professional indemnity insurance cover necessary to comply with these Regulations.

**Financial resources: pension scheme operator.**

- 6.(1) A pension scheme operator must—
- (a) be able at all times to meet its liabilities as they fall due; and
  - (b) maintain sufficient financial resources to ensure that its pension scheme business can be wound down in an orderly manner.
- (2) For the purposes of subregulation (1)(b), the minimum level of financial resources required is £50,000.

**Chapter 3**

**Pension adviser: insurance cover and financial resources**

**Professional indemnity insurance: pension adviser.**

7.(1) Subject to sub-regulation (3), a pension adviser must at all times hold professional indemnity insurance at a level appropriate to the nature, scale, and complexity of its pension advice business.

(2) For the purposes of subregulation (1), the minimum level of cover required is—

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

(3) A pension adviser which does not hold professional indemnity insurance that meets the requirements in sub-regulations (1) and (2) (whether in whole or part) must at all times hold additional financial resources which—

- (a) it considers to be appropriate to meet any claims or potential claims made against it; and
- (b) in any event exceed by not less than £50,000 the financial resources which the pension adviser is otherwise required to hold in accordance with regulation 8.

**Financial resources: pension adviser.**

8.(1) A pension adviser must—

- (a) be able at all times to meet its liabilities as they fall due; and
- (b) maintain sufficient financial resources to ensure that its pension advice business can be wound down in an orderly manner.

(2) For the purposes of subregulation (1)(b), the minimum level of financial resources required is the higher of—

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

**Chapter 4****GFSC powers under the Act: insurance cover and financial resources****GFSC power to specify higher levels of cover and financial resources.**



9. Nothing in regulations 5 to 8 restricts the GFSC's power under the Act to impose on a pension scheme firm a condition specifying a level of professional indemnity insurance or level of financial resources that exceeds—

- (a) the firm's own assessment of the level of professional indemnity insurance cover or financial resources necessary to comply with the relevant regulation; or
- (b) the amounts specified in the relevant regulation.

**PART 3  
CONDUCT OF BUSINESS**

**Chapter 1  
Conduct of business generally**

**Chapter applies to pension scheme firms.**

10.(1) This chapter applies to pension scheme operators and pension advisers.

**Complaints.**

11.(1) A pension scheme firm must have internal procedures to ensure the proper handling of complaints received from customers and to ensure that any remedial action required on those complaints is taken promptly.

(2) A pension scheme firm must maintain a complaints register for the purposes of recording a summary of each complaint received and the action taken.

(3) The register must be made available at all times for inspection by the GFSC, or any person duly authorised by the GFSC to carry out such an inspection.

*Outsourcing*

**Outsourcing by pension scheme firms.**

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

“outsourcing arrangement” means an arrangement of any form between a pension scheme firm 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 pension scheme firm;

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

- (2) A pension scheme firm must not enter into an outsourcing arrangement unless-
- (a) it has obtained the prior written consent of the GFSC under sub-regulation (3); or
  - (b) the outsourcing service provider-
    - (i) is an entity affiliated with the pension scheme firm within a corporate group;
    - (ii) is established in Gibraltar; and
    - (iii) undertakes the outsourced activities in Gibraltar.
- (3) The GFSC may consent to an outsourcing arrangement only if the pension scheme firm can demonstrate-
- (a) that the outsourcing arrangement does not materially impair-
    - (i) the quality of the pension scheme firm’s internal controls; or
    - (ii) the ability of the GFSC to monitor the pension scheme firm’s compliance with all its obligations under these Regulations, the Act or the regulatory system;
  - (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 pension scheme firm 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 sub-regulation (3)(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 of termination; and
- (iv) provider from performing its obligations under the outsourcing arrangement in a manner which constitutes or could be deemed to constitute a breach of the pension scheme firm's obligations under these Regulations, the Act or the regulatory system; 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 pension scheme firm 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 recognised overseas pension scheme, the pension scheme firm must also demonstrate that the scheme will continue to comply with any-

- (a) requirements imposed on 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 pension scheme firm who enters into an outsourcing arrangement must ensure that the GFSC, the pension scheme firm and the pension scheme firm'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) "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.

## **Chapter 2**

### **Pension scheme operator: conduct of business**

**Chapter applies to pension scheme operators.**

13. This chapter applies to a pension scheme operator carrying on pension scheme business.

*Third party arrangements*

**Arrangements with third parties.**

14.(1) A pension scheme operator 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) In the event that a pension scheme operator 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 pension scheme operator must refuse to act on instructions received either directly or indirectly from the third party.

**Due diligence on financial instruments.**

15.(1) Before investing any part of a member’s fund in financial instruments, whether on the instruction of the member or a third party acting on the member’s behalf, a pension scheme operator must carry out due diligence to determine whether the proposed financial instrument is-

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

(2) In this regulation, “eligible counterparties” has the meaning given within regulation 44(3) of the Financial Services (Investment Services) Regulations 2020.

**Prohibition on certain financial instruments for retail clients.**

16.(1) A pension scheme operator must not invest any part of a member's fund, whether on the instruction of the member or a third party acting on the member's behalf, unless—

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

(2) Subregulation (1) does not apply where the member is a professional client.

**Notice of ineffective instructions.**

17. Where a pension scheme operator is unable to give effect to instructions received from a member or from a third party on the member's behalf whether by virtue of regulation 16(1) or for any other reason, the pension scheme operator must give written notice to the member or the third party acting on behalf of the member within 21 days of receiving the instructions.

**Identification of professional clients.**

18.(1) A member is a professional client for the purposes of regulation 16(2) if—

- (a) the member requests the pension scheme operator in writing to be treated as a professional client; and
- (b) the pension scheme operator determines under regulation 19(1) that the member is a professional client.

(2) A pension scheme operator must implement appropriate written internal policies and procedures to enable it to-

- (a) adequately deal with requests for professional client status; and
- (b) subsequently monitor the status of a member who is a professional client by request.

(3) Where a pension scheme operator determines that a member is a professional client for the purposes of subregulation (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 pension scheme operator must take such action as is appropriate in the circumstances.

**Determination that member is professional client.**

19.(1) A pension scheme operator may determine that a member is a professional client if the pension scheme operator is satisfied that—

- (a) the member is capable of—
  - (i) making the member’s own investment decisions; and
  - (ii) understanding the risks involved in respect of the relevant financial instrument or the relevant type of financial instrument; and
- (b) at least two of the following apply—
  - (i) the member has carried out significantly sizable transactions 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 but 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 that requires knowledge of the relevant type of financial instrument.

(2) In subregulation (1), “relevant financial instrument” and “relevant type of financial instrument” mean the financial instrument and type of financial instrument in relation to which a pension scheme operator carries out due diligence under regulation 15.

*Obligation to inform*

**Information for prospective member.**

20.(1) This regulation applies if a pension scheme operator and a consumer (“C”) propose to enter into an agreement under which C becomes a member of a personal pension scheme operated or to be operated by the pension scheme operator (“the scheme”).

(2) In good time before a pension scheme operator enters into an agreement with a consumer in relation to a scheme, the pension scheme operator must provide the consumer with the information identified in sub-regulation (3).

(3) The information that must be provided under sub-regulation (2) is the following—

- (a) details of the respective rights and obligations of the pension scheme operator and C under the agreement;
- (b) the nature, frequency and timing of reports required under regulation 22;
- (c) details of charges for which C will be liable in relation to the scheme, including—
  - (i) the total cost payable by C to the pension scheme operator in connection with the scheme or any ancillary service, including all related fees, commissions, charges and expenses, and taxes payable via the scheme; or
  - (ii) if a precise figure cannot be given for the total cost, the basis for the calculation of the total cost so that C is able to verify it;
- (d) notice of other costs, including taxes, not paid to the pension scheme operator or imposed by it for which C may be liable in relation to transactions in connection with the scheme.

(4) If C requests it, the pension scheme operator must provide C with a copy of the trust deed or other document constituting the scheme.

**Change in information provided to consumers.**

21.(1) A pension scheme operator who has provided information to a consumer under regulation 20 must notify the consumer of any material change to—

- (a) the information specified in regulation 20(3)(a) or (b) within one month of the change taking effect; or
- (b) the information specified in regulation 20(3)(c) or (d) one month in advance of the change taking effect.

(2) Sub-regulation (1) does not apply if the consumer to whom the information has been provided no longer proposes to enter into the agreement referred to in regulation 20(1).

**Investment information to members.**

22.(1) A pension scheme operator must provide investment information in accordance with sub-regulations (2) and (3) to a consumer who becomes a member of the personal pension scheme operated by the pension scheme operator.

(2) The pension scheme operator 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 the member with a valuation of all the assets in which the member's fund is invested.

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

*Exit charges*

**Exit charge.**

23.(1) A pension scheme operator may require a member to pay an exit charge for leaving a personal pension scheme.

- (2) If a member leaves after more than two years after becoming a member, an exit charge—
- (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.

*Advertisements*

**Advertising by pension scheme operator.**

24.(1) A pension scheme operator that issues an advertisement concerning pension scheme business must ensure that—

- (a) the advertisement identifies the pension scheme operator as the issuer; and
- (b) the contents and presentation of the advertisement are fair and not misleading.

(2) A pension scheme operator which becomes aware that a business associate for whom it provides services is itself advertising those services in such a way as may be detrimental to Gibraltar's reputation as a financial centre must report the matter to the GFSC without delay.

**Communication with customer.**

25. A pension scheme operator must take all reasonable steps to ensure that any agreement, written communication, notification or information provided to a customer—



- (a) is fair and not misleading; and
- (b) sets out in adequate detail the basis on which its services are provided.

**Management agreement.**

26.(1) A pension scheme operator must enter into a management agreement with each customer.

- (2) The management agreement must—
  - (a) describe and govern the relationship between the pension scheme operator and the customer; and
  - (b) clearly set out their respective functions, duties and responsibilities.
- (3) The management agreement must at a minimum cover the following points—
  - (a) the scope of the duties of the pension scheme operator;
  - (b) the extent, if any, to which the pension scheme operator must give advice;
  - (c) confidentiality arrangements which must include a proviso that the pension scheme operator may breach client confidentiality if required by law;
- (a) the governing law and jurisdiction.
- (4) A pension scheme operator must not, in any written communication or management agreement, seek to exclude or restrict—
  - (a) any duty or liability of the operator to a customer under the Act, these Regulations or the regulatory system;
  - (b) any other duty to act with skill, care and diligence that is owed to a customer in connection with the provision to the customer of pension scheme business;
  - (c) any liability owed to a customer for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of pension scheme business, subject to compliance by the customer with the customer's obligations under the management agreement.

**Confidentiality undertaking by staff.**

27.(1) A pension scheme operator must require its staff to sign an undertaking of confidentiality that complies with sub-regulation (2).

(2) The undertaking must cover—

- (a) all information that the member of staff receives or to which he or she has access in the course of work or provision of services for the pension scheme operator;
- (b) all materials of any kind to which the member of staff may have access in the course of work or provision of services for the pension scheme operator; and
- (c) the business activities of the pension scheme operator.

(3) The requirements of sub-regulation (2) apply subject to any duty in law to disclose information to any relevant authority and subject to any prior agreement with the customer as regards the disclosure of information as set out in the management agreement.

(4) A pension scheme operator must ensure the confidentiality of each customer's affairs.

*Ethical standards*

**Money laundering prevention.**

28.(1) A pension scheme operator must establish and maintain specific policies, procedures and training programmes that promote high ethical standards in order to prevent the business of the pension scheme operator and the financial system generally being used for the purposes of money laundering.

(2) The policies, procedures and training programmes required under subregulation (1) must cover—

- (a) internal controls;
- (b) communication of policies;
- (c) identification procedures;
- (d) record keeping;
- (e) recognition of, and procedures for reporting, suspicious transactions; and
- (f) education and training.

(3) A pension scheme operator must act in accordance with the requirements of the AML Guidance Notes.

**Conflict of interest.**

29.(1) A pension scheme operator must make all efforts to avoid a conflict of interest—

- (a) between itself and a customer; or
- (b) between customers.

(2) A pension scheme operator must not unfairly place its interests above those of its customers and where a properly informed customer would reasonably expect that the operator would place the customer's interests above its own, the operator must live up to that expectation.

**Disclosure of interest.**

30.(1) This regulation applies if a pension scheme operator—

- (a) has a material interest in a customer transaction; or
- (b) has a relationship that gives rise to a conflict of interest in relation to a customer transaction.

(2) The pension scheme operator must not knowingly enter a transaction with or for a customer unless it has—

- (a) fairly disclosed the interest or relationship, as the case may be, to the customer; and
- (b) taken reasonable steps to ensure that the interest or relationship does not adversely affect the interests of the customer.

(3) In this regulation, “customer transaction” means a transaction to be entered into with or on behalf of a customer.

**Inducements prohibited.**

31. A pension scheme operator must take all reasonable steps to ensure that neither it nor any of its directors or staff offers, gives, solicits or accepts any inducement that is likely to conflict with any duty owed to a customer.

**Chapter 3**  
**Pension adviser: conduct of business**

**Chapter applies to pension adviser.**

32. This chapter applies to a pension adviser in carrying on pension advice business.

*Independence*

**Independence.**

33. Where a pension adviser is advising a customer—

- (a) it must not claim it is independent or impartial if it is not;
- (b) it must ensure that any claim it makes as to its independence or impartiality adequately includes any limitation that there may be on either; and
- (c) it must ensure that any claim it makes as to the range of products and services it offers includes adequate information about any limitation that there may be on either.

**Material interest.**

34. Where a pension adviser has a material interest in a transaction to be entered into with or for a customer, or a relationship which gives rise to a conflict of interest in relation to such a transaction, the pension adviser must not knowingly advise in relation to that transaction unless it has—

- (a) fairly disclosed that material interest or relationship, as the case may be, to the customer; or
- (b) taken reasonable steps to ensure that neither the material interest nor relationship adversely affects the interests of the customer.

**Inducements.**

35. A pension adviser must take reasonable steps to ensure that neither it nor any of its employees or agents either offers or gives, or solicits or accepts, any inducement that is likely to conflict with any duties owed to customers.

**Commission.**

36.(1) A pension adviser must 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

*Advertising and marketing*

**Issue or approval of advertisements.**

37. Where a pension adviser issues or approves an advertisement concerning pension advice business, it must have appropriate expertise in relation to the product or service concerned and take all reasonable steps to ensure that—

- (a) the contents and presentation of the advertisement are demonstrably fair and not misleading; and
- (b) the advertisement discloses adequately and fairly the terms of and the risks involved in the service concerned; and
- (c) where the advertisement is directed principally to persons not resident in Gibraltar, that the advertisement discloses adequately the potential customer's protection or compensation rights.

**Identification of issuer.**

38. Where a pension adviser issues an advertisement concerning pension advice business, it must ensure that the advertisement identifies it as the issuer and the GFSC as its competent authority.

**Fair and clear communications.**

39.(1) A pension adviser may make a communication with another person which is designed to promote the provision of pension advice business only if it can show that it believes on reasonable grounds that the communication is fair and not misleading.

(2) A pension adviser must take reasonable steps to ensure that any agreement, written communication, notification or information that it gives or sends to customers to whom it provides pension advice is fair and clear.

**Retail clients understanding of risk.**

40. A pension adviser may not—

- (a) recommend a transaction to a retail client unless it has taken all reasonable steps to enable the retail client to understand the risks involved; or
  - (b) mislead a retail client as to any advantages or disadvantages of a contemplated transaction.
- (2) In respect of a warrant, derivative, or non-readily realisable financial instrument, before a pension adviser recommends a transaction it must have sent a retail client an appropriate warning notice, detailing the risks involved in the financial instrument, and obtained a copy, signed by the client, confirming that the client has had a proper opportunity to consider its terms and accept the risks involved.
- (3) A pension adviser must not state or imply that the performance any recommendation given as part of its pension advice business is guaranteed unless there is a legally enforceable arrangement to meet in full a retail client's claim under the guarantee. Sufficient detail about the guarantor and the guarantee must be provided to enable the retail client to make a fair assessment of the guarantee.

**Information about the pension adviser.**

41. A pension adviser must take reasonable steps to ensure that a customer to whom it provides pension advice is given the following information prior to the commencement of provision of the relevant services—

- (a) the identity of the pension adviser and, if applicable of the group to which it belongs, its business address and telephone number;
- (b) the fact that the pension adviser is regulated and the identity of the GFSC as its competent authority;
- (c) the activities the pension adviser undertakes so that the customer is able to assess the scope of the pension adviser's responsibilities;
- (d) the identity and status within the pension adviser of employees and other relevant representatives with whom the customer will have contact;
- (e) details of any cancellation rights or rights of reflection that may apply;
- (f) the applicable compensation scheme (if any);
- (g) the procedure by which any complaint may be made;
- (h) an outline of policies in relation to conflicts of interest and inducements; and

- (i) the languages in which the customer may communicate with the pension adviser.

**Representatives of the pension adviser.**

42.(1) A pension adviser must satisfy itself on reasonable grounds and on a continuing basis that any representative it appoints is fit and proper to act for it in that capacity.

(2) A pension adviser must also satisfy itself on reasonable grounds and on a continuing basis that it has adequate resources to monitor and enforce compliance by its representatives with high standards of business conduct.

*Customer status***Customer status.**

43.(1) A pension adviser must not deal with a customer unless the pension adviser has first taken reasonable steps to determine whether the customer is a retail client or a professional client.

- (2) A pension adviser must review a customer's status at least once a year.

**Identification of a professional client.**

44.(1) A customer is a professional client for the purposes of regulation 43 if—

- (a) the customer requests the pension adviser in writing to be treated as a professional client, whether generally or in respect of a particular transaction or type of transaction or product; and
- (b) the pension adviser determines under regulation 45 that the customer is a professional client.

(2) A pension adviser must implement appropriate written internal policies and procedures to enable it to—

- (a) adequately deal with requests for professional client status; and
- (b) subsequently monitor the status of a customer who is a professional client by request.

(3) A pension adviser who has determined under regulation 45 that a customer is a professional client must re-determine that customer's professional client status if the pension

adviser becomes aware of changes in the customer's circumstances that may affect eligibility for that status.

- (4) Before a customer may be determined to be a professional client—
- (a) a pension adviser must give the customer a clear written warning of the protections and investor compensation rights the customer may lose; and
  - (b) the customer must confirm in a separate document to the pension adviser that the customer is aware of the consequences of losing those protections and compensation rights.

**Determination that customer is professional client.**

45.(1) A pension adviser may determine that a customer is a professional client if the pension adviser is satisfied on reasonable grounds, after undertaking an adequate assessment of the expertise, experience and knowledge of the customer, that—

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

(2) In subregulation (1), “relevant financial instrument” and “relevant type of financial instrument” mean the financial instrument and type of financial instrument in relation to which a pension adviser gives pension advice.



(3) A professional client is responsible for informing a pensions adviser about any change that could affect its categorization as a professional client.

**Professional client may be treated as retail client.**

46. A pension adviser and a professional client may agree in writing that the professional client should be treated as a retail client.

*Dealing with customers*

**Agreements with retail clients.**

47. If a pension adviser gives pension advice to a retail client on written contractual terms, the agreement must set out in adequate detail in accordance with Schedule 2 the basis on which that advice is provided.

**Restrictions on exclusion of liability.**

48. A pension adviser must not, in any written communication or agreement, attempt to exclude or restrict—

- (a) any duty or liability of the pension adviser to a customer under the Act, these Regulations or the regulatory system;
- (b) any other duty to act with reasonable skill, care and diligence that is owed to a customer in connection with the giving of pension advice; or
- (c) any liability owed to a customer for failure by a pension adviser to act with reasonable skill, care and diligence in giving pension advice.

**Suitability of pension advice.**

49.(1) A pension adviser must take all reasonable steps to ensure that pension advice given to a retail client is suitable for that client, having regard to—

- (a) the facts disclosed by the retail client;
- (b) any other relevant facts about the retail client of which the pension adviser is or ought reasonably to be aware.

(2) A pension adviser must take reasonable steps to ensure that—

- (a) the facts to which the pension adviser must have regard under subregulation (1) are recorded as soon as they are disclosed or the pension adviser becomes aware of them; and
- (b) the record of facts is kept for at least three years after the pension adviser has concluded giving pension advice on the basis of those facts.

**Suitability record.**

50.(1) A pension adviser must record, in a document that complies with subregulation (2) (“suitability letter”), the suitability of the pension advice given to a retail client.

- (2) The suitability letter must—
  - (a) be sent to the retail client before any step is taken to implement the advice;
  - (b) be sent to the retail client in sufficient time to allow the client to read and understand it and obtain independent advice if the client requires;
  - (c) explain why the pension adviser considers that the advice is suitable for the retail client, having regard to the client’s personal and financial circumstances;
  - (d) contain a summary of the main consequences and any possible disadvantages of implementing the advice; and
  - (e) identify the individual who is authorised by the pension adviser to advise on the kind of product that the pension adviser recommends.

**Charges.**

51.(1) A charge or other fee for giving pension advice must be fair and reasonable.

- (2) Before giving pension advice to a customer, a pension adviser must disclose to the customer —
  - (a) the amount that the customer will be charged for the provision of the advice or, if that amount is not known, the basis for calculating it; and
  - (b) the nature and amount of any other remuneration receivable by the pension adviser that is attributable to the provision of the advice.

**PART 4  
CORPORATE GOVERNANCE AND RISK MANAGEMENT**

**Chapter 1****Pension scheme operator: internal organisation****Chapter applies to pension scheme operators.**

52. This chapter applies to pension scheme operators.

*Governance***Mind and management of pension scheme operator.**

53.(1) The mind and management of a pension scheme operator must be located in Gibraltar.

(2) The pension scheme business of a pension scheme operator must take place in or from within Gibraltar except that, in exceptional circumstances and when appropriate, a pension scheme operator may grant limited powers of attorney to parties outside Gibraltar.

(3) For the purposes of determining where the mind and management of a pension scheme operator is located, the following factors must be taken into account (but without limiting the relevance of other factors)—

- (a) where the day-to-day management decisions are taken;
- (b) where management and staff responsible for central administration and control perform their functions;
- (c) where management are located who are able to answer the full range of questions from the GFSC about the day-to-day running of the pension scheme operator;
- (d) if other parties are able to commit the pension scheme operator to accept pension scheme business, where those parties are located;
- (e) whether management functions are exercised by other parties;
- (f) whether management functions are exercised outside of Gibraltar.

**Pension scheme operator must have directors.**

54. A pension scheme operator, whether incorporated as a company or not, must have a board or similar committee of directors or persons who fulfil the functions of a director of a company.

**Functions of directors.**

55. The directors of a pension scheme operator —

- (a) are responsible for ensuring that the pension scheme operator complies with the regulatory system and acts promptly to remedy any breach of the relevant regulatory requirements;
- (b) are responsible for material errors, omissions and failures by the pension scheme operator in carrying on its pension scheme business;
- (c) must establish and keep under review written policies on those aspects of the business of the pension scheme operator that are of particular prudential significance;
- (d) must monitor compliance with those policies by staff of the pension scheme operator; and
- (e) must deal openly and frankly with the GFSC on all matters relating to the prudent management of the pension scheme operator's affairs.

**Meetings of directors.**

56. A pension scheme operator must have regular meetings of the directors that—

- (a) are held in accordance with a pre-arranged agenda; and
- (b) receive from the pension scheme operator's management regular and comprehensive reports appropriate to the type and scale of the pension scheme operator's pension scheme business.

*Management*

**Management structure.**

57.(1) A pension scheme operator must have not less than two executives who effectively direct its business.

(2) An executive must be—

- (a) a member of the board, that is, an executive director; or
- (b) a person appointed by the board with executive powers and who reports directly to the board.

(3) Notwithstanding subregulations (1) and (2), the GFSC may, in its discretion and depending on the situation of each pension scheme operator, accept a different arrangement.

**Role of executives.**

58.(1) Without limiting the scope of their role, the executives must perform the functions of—

- (a) formulating and implementing the strategy and day-to-day policies of the pension scheme operator; and
- (b) managing risks so as to minimise the likelihood of major errors occurring with resulting detriment to the business of the pension scheme operator.

(2) The executives must have sufficient experience and knowledge of the business and the necessary authority to detect and deal with any imprudence, dishonesty or other irregularity in the pension scheme operator or in the personal pension schemes to which its Part 7 permission extends.

*Staff***Staffing levels.**

59. A pension scheme operator must be structured and staffed in a manner appropriate to the operator's operations, taking into account—

- (a) the extent and complexity of its pension scheme business;
- (b) the number of personal pension schemes to which its Part 7 permission extends; and
- (c) the number of members within each of those schemes.

**Qualifications and experience of staff.**

60. A pension scheme operator must ensure that each member of its staff is appropriately qualified and experienced for the level of that person's responsibility.

**Staff policies and training.**

61.(1) A pension scheme operator must be structured and staffed in a manner appropriate to the operations of the operator and its management must ensure that staff are competent and adequately supervised.

(2) A pension scheme operator's staff must be appropriately qualified and experienced for the level of their responsibility.

(3) A pension scheme operator's management must—

- (a) provide training courses, or access thereto, to assist staff in understanding and complying with the pension scheme operator's policies and procedures which should include, wherever possible, professional examinations; and
- (b) encourage executive staff to obtain recognised professional qualifications.

**Compliance.**

62.(1) A pension scheme operator must take all reasonable steps, including the establishment and maintenance of appropriate procedures, to ensure that its officers, employees and other representatives are aware of their obligations under the Act, these Regulations and the regulatory system, and that they act in conformity with them.

(2) A pension scheme operator must designate an appropriately skilled and experienced person as its compliance officer.

(3) A pension scheme operator must ensure that sufficient information is recorded and retained about its regulated activities and compliance with the regulatory system.

**Chapter 2****Pension adviser: internal organisation****Chapter applies to pension advisers.**

63. This chapter applies to pension advisers.

**Essential staff.**

64.(1) A pension adviser must have at all times effective arrangements for safeguarding the interests of its customers in the event of the absence, illness, disability or death of any essential staff.

(2) Effective arrangements must as a minimum provide for—

- (a) carrying out urgent transactions;
- (b) completing unfinished transactions; and

- (c) without delay, releasing to a customer funds or assets held by the pension adviser or in relation to which the pension adviser is otherwise dealing in accordance with the customer's instructions.

**Suitability of advisory staff.**

65.(1) A pension adviser must not appoint a person to, or allow a person to continue in, an advisory role unless the pension adviser is satisfied on reasonable grounds that the person—

- (a) is of good character;
- (b) is competent to provide the advice to be given by a person in that role; and
- (c) complies with any requirements prescribed by the GFSC in relation to training and qualifications for the role in question.

(2) In this regulation, “advisory role” means a role in which the person gives advice on the services, financial instruments or other products concerning pension advice business to customers.

**Supervision.**

66. A pension adviser must establish and maintain procedures—

- (a) for the supervision of each of its officers, employees and other representatives; and
- (b) for ensuring that each such person does not give advice or provide services of such a nature as is beyond his competence to give or to provide.

*Compliance***Compliance.**

67.(1) A pension adviser must take reasonable steps, including the establishment and maintenance of procedures, to ensure that—

- (a) its officers, employees and other representatives are aware of their obligations under the Act, these Regulations and the regulatory system and that they act in conformity with them; and
- (b) sufficient information is recorded and retained about its pension advice business and compliance with the regulatory system.

(2) Records required to be maintained by the Act, these Regulations and the regulatory system must be kept available for a period of not less than 6 years by the pension adviser for inspection by the GFSC or any person duly authorised by the GFSC.

**Compliance by counterparty.**

68. A pension adviser must ensure that any person or entity with which it is undertaking a regulated activity is, if applicable, authorised to conduct that activity.

*Introductions***Restrictions on introduction arrangements.**

69.(1) A pension adviser must not enter into an introduction arrangement with a person (the “introducer”) unless—

- (a) the pension adviser is satisfied on reasonable grounds that the introducer is fit and proper to act for it in that capacity; and
  - (b) the pension adviser and introducer enter into a written agreement that complies with subregulation (2).
- (2) The agreement must as a minimum provide for—
- (a) the obligations of each party in respect of relations with customers, including reporting to customers, and advising or dealing for and on behalf of customers, or managing customer assets;
  - (b) complaints;
  - (c) the responsibilities of each party in relation to compliance with anti-money laundering requirements; and
  - (d) the remuneration payable.
- (3) For the purposes of this regulation, a pension adviser enters into an introduction arrangement with a person if it—
- (a) accepts the introduction of pension advice business from that person; or
  - (b) makes any form of payment to the person for effecting an introduction between the pension adviser and a customer.



**Chapter 3****Cessation of business by pension scheme firms****Chapter applies to pension scheme firms.**

70. This chapter applies to pension scheme firms.

*Cessation of business by pension scheme operator***Cessation of business by pension scheme operator.**

71. A pension scheme operator may cease its pension scheme business in relation to a particular scheme if the GFSC consents in accordance with the procedure set out in regulation 72.

**Procedure for obtaining GFSC consent to cessation of pension scheme business.**

72.(1) This regulation sets out the procedure that must be followed for obtaining the consent of the GFSC to the cessation of pension scheme business by a pension scheme operator in relation to a particular scheme (“the scheme”).

(2) The pension scheme operator must notify the GFSC, in the form that the GFSC directs, of the pension scheme operator’s intention to cease carrying on pension scheme business.

(3) The GFSC may consent to the cessation of business if it is satisfied that—

- (a) in the case of ceasing to establish or wind up the scheme, all steps necessary to establish or wind up the scheme have been taken; or
- (b) in the case of ceasing to operate the scheme, another pension scheme operator has been or will be appointed to operate the scheme.

(4) The GFSC must, within two months after receiving a notice under subregulation (2) either—

- (a) consent in writing to the cessation of business; or
- (b) refuse consent.

*Cessation of business by pension adviser***Cessation of pension advice business by pension adviser.**

73. A pension adviser that proposes to cease its pension advice business must ensure to the satisfaction of the GFSC that any outstanding business is properly completed or transferred to another pension adviser.

*GFSC refusal of consent*

**GFSC refusal of consent to cessation of business.**

74.(1) The GFSC must give a pension scheme firm a warning notice if it proposes to refuse consent to the cessation of pension scheme business or pension advice business, as the case may be, by the pension scheme firm.

(2) The GFSC must give a pension scheme firm a decision notice if it refuses consent to the cessation of pension scheme business or pension advice business, as the case may be, by the pension scheme firm.

**PART 5  
PRUDENTIAL REQUIREMENTS**

**Chapter 1  
General**

*Continuing compliance*

**Pension scheme firm must continue to comply with authorisation conditions.**

75.(1) A pension scheme firm which has Part 7 permission must at all times comply with—

- (a) the conditions for authorisation set out in Part 2; and
- (b) any other condition or requirement that the GFSC imposes on the pension scheme firm's permission.

(2) In addition to sub-regulation (1), a pension adviser must hold sufficient financial resources to meet the aggregate amount of all financial resource requirements that apply to its pension advice business.

*Financial resources*

**Notice of breach of financial resources condition.**

76. A pension scheme firm that breaches any of its continuing financial resources conditions must—

- (a) notify the GFSC of the breach as soon as reasonably practicable; and
- (b) within one month after the pension scheme firm becomes aware of the breach, submit a realistic recovery plan to the GFSC for its approval.

**Chapter 2**  
**Requirements for pension scheme operators only**

**Chapter applies to pension scheme operators.**

77. The obligations of this Chapter apply to pension scheme operators, subject to the requirements of Chapter 4.

**Accounting records and financial statements.**

78.(1) A pension scheme operator must—

- (a) keep proper accounting records of, and prepare financial statements for, any pension scheme business; and
- (b) maintain the general standards expected of a prudently run pension scheme operator.

(2) A pension scheme operator must implement a system of procedures and controls for proper accounting records to be kept.

(3) A pension scheme operator must file annually with the GFSC—

- (a) a statement of income and expenditure (profit and loss account) relating to its pension scheme business;
- (b) a balance sheet; and
- (c) an auditor's report on the statement of income and expenditure and the balance sheet.

**Reconciliation of customer money.**

79.(1) A pension scheme operator must, at least once every two months, reconcile the balance on each customer bank account (as recorded by the pension scheme operator) with the balance on that account (as set out on the statement issued by the recognised credit institution).

(2) Where a customer bank account contains the money of more than one customer a pension scheme operator must, in addition to the reconciliation made under sub-regulation (1), at least once every two months reconcile the balance on that account with the total of the credit balances in respect of each customer (both totals as recorded by the pension scheme operator).

(3) Where any difference arises on reconciliation under sub-regulation (1) or (2), the pension scheme operator must correct it forthwith unless the difference arises solely as a result of timing differences between the accounting systems of the recognised credit institution and of the pension scheme operator.

**Reconciliation of customers' financial instruments held by pension scheme operator.**

80.(1) A pension scheme operator must at least twice in every financial year carry out a reconciliation in accordance with this regulation and correct any discrepancy revealed by the reconciliation.

(2) The first such reconciliation must be carried out at some time in the fifth and sixth months of the financial year and the second must be carried out at some time in the eleventh and twelfth months of the financial year.

(3) The requirements of this regulation in relation to each reconciliation are—

- (a) in relation to documents of title and documents evidencing title to financial instruments of the pension scheme operator's customers which are in the possession of the pension scheme operator or in the possession of the pension scheme operator's own custodian, the pension scheme operator must inspect and count all those documents and, in the case of registrable financial instruments, reconcile any results which show discrepancies with the books and records of the appropriate register;
- (b) in relation to documents of title or documents evidencing title to financial instruments of the pension scheme operator's own customers which are in the possession of a custodian other than the pension scheme operator's own custodian, the pension scheme operator must obtain from that custodian a statement specifying in relation to each description of financial instrument the documents of title or certificates of title which were held by the custodian for the pension scheme operator, the amount of that financial instrument and, where the financial instrument is a registrable financial instrument, the amount so held in each

different name, made up as at the date at which the reconciliation under paragraph (a) is carried out; and

- (c) the pension scheme operator must reconcile the results of each inspection under sub-regulation (a) and the contents of each statement referred to in sub-regulation (b) with the records maintained by the pension scheme operator under regulation 96(2)(e).

**Records of transactions.**

81.(1) A pension scheme operator must keep accurate records of every transaction or commitment that it enters into.

(2) Subregulation (1) applies whether the pension scheme operator enters into the transaction or commitment—

- (a) on its own account; or
  - (b) on behalf of its customers.
- (3) The record of a transaction or commitment must contain sufficient information to—
- (a) explain the nature and purpose of the transaction or commitment;
  - (b) explain any asset and liability (actual or contingent) that results from it;
  - (c) explain any income or expenditure (current or deferred) that results from it; and
  - (d) clearly identify the parties.

**Assessment of financial resources.**

82.(1) A pension scheme operator must—

- (a) assess regularly (and at least every six months) the level of financial resources necessary to comply with its continuing financial resources conditions; and
- (b) be able to demonstrate financial resources at the assessed level.

(2) The excess or deductible under an insurance policy required by regulation 5(1) must not be greater than can be reasonably met by the financial resources of the pension scheme operator.

(3) A pension scheme operator must also carry out an assessment of the required level of its financial resources on each occasion when there is a material change to the operator's business plan.

(4) The measure of a pension scheme operator's financial resources must be the net asset figure in the operator's balance sheet.

(5) In this regulation, "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.

*Customer assets*

**Safeguarding of customer assets.**

83. A pension scheme operator that has custody of a customer's assets must—

- (a) keep safe, or arrange for the safekeeping of, any documents of title relating to those assets;
- (b) ensure that the location of the documents of title is recorded in the customer's records; and
- (c) ensure that any registrable financial instruments that it buys or holds for customers are properly registered in that customer's name or, with the consent of the customer, in the name of an appropriate nominee.

*Customer money*

**Customer money.**

84.(1) For the purposes of these Regulations customer money is money of any currency which, in the course of carrying on pension scheme business, a pension scheme operator holds or receives under sub-regulation (2) or which an operator owes to a customer under sub-regulation (3).

(2) A pension scheme operator holds or receives money for the purposes of sub-regulation (1) if the operator enters or expects to enter into an agreement with or for a customer and holds or receives in Gibraltar or elsewhere in respect of that agreement any money—

- (a) which is not immediately due and payable on demand to the operator for its own account; or
- (b) which, although so due and payable, is held or received in respect of any obligation of the operator which has not yet been performed.

(3) An operator owes money to a customer for the purposes of sub-regulation (1) where money owed to a customer is immediately due and payable whether demanded or not.

**Customer money must be deposited in customer bank account.**

85.(1) A pension scheme operator that receives customer money from a customer must deposit it without delay into a customer bank account that complies with regulation 87.

(2) A pension scheme operator that receives money that includes both customer money and other money must–

- (a) deposit the total money in a customer account; and
- (b) after the money has been received in the customer account, withdraw so much of the total money deposited as may properly be transferred to the pension scheme operator’s own account in accordance with these Regulations.

**Customers money is held on trust.**

86. Customer money is held by the pension scheme operator on trust for the respective customers for whom that customer money is received or held according to their respective shares in it.

**Requirements for customer bank account.**

87.(1) A customer bank account–

- (a) must be held with a recognised credit institution;
- (b) may be either a general account or an account in the name of a specified customer;
- (c) must be designated as a customer account;
- (d) must be segregated from any account holding money belonging to the pension scheme operator;
- (e) must clearly be set up as a customer account which a liquidator, recognised credit institution or any other person is not able to access in the event that the pension scheme operator defaults on its commitments or is put in liquidation; and
- (f) must be subject to dual signatory control consistent with the “four eyes” principle in the conduct of business.

(2) A pension scheme operator that opens a customer bank account must–



- (a) give the recognised credit institution clear written notice of the nature and purpose of the account; and
  - (b) in that notice require the recognised credit institution to acknowledge in writing that–
    - (i) it accepts the terms of the notice;
    - (ii) all money standing to the credit of the customer bank account is held by the operator as trustee and that the recognised credit institution is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any debt owed to it by the operator; and
    - (iii) interest payable to the account will be credited to the account.
- (3) If the recognised credit institution does not provide the confirmation referred to in sub-regulation (2)(b) within ten working days after the pension scheme operator sends the notice, the operator must–
- (a) withdraw all money standing to the credit of the account;
  - (b) close that account; and
  - (c) deposit the money in a customer bank account with another recognised credit institution.

**Payment of other money into customer bank account.**

88. Money which is not customer money must not be paid into a customer bank account unless it is required–

- (a) to open or to maintain the account;
- (b) to restore an amount withdrawn in error from the account; or
- (c) to be paid in as part of the interest earned on the account.

**Restriction on use of customer bank account.**

89.(1) A pension scheme operator must not use a customer bank account for the payment or settlement of the operator's own expenses or liabilities.

(2) Except as allowed by these Regulations and, in particular regulation 88 a pension scheme operator must ensure that no money is paid into a customer bank account other than the customer money of the customer in whose name the account is held.

(3) A pension scheme operator must ensure that–

- (a) it accounts properly and promptly for customer money;
- (b) customer money and other money do not become mixed; and
- (c) money belonging to one customer is not used for another customer.

**Withdrawals from customer bank account.**

90. Subject to regulation 91, a pension scheme operator may withdraw the following money from a customer bank account–

- (a) money properly required for a payment to or on behalf of the customer;
- (b) money that is then properly transferred to another customer bank account or into a bank account in the customer's own name;
- (c) money that is not customer money;
- (d) money properly required for or towards payment of fees or commissions payable to the pension scheme operator in accordance with the management agreement;
- (e) money properly required for or towards payment of a debt due to the pension scheme operator from the customer, otherwise than in respect of fees or commissions payable to the pension scheme operator; and
- (f) money withdrawn with the authority of the customer or in accordance with the management agreement.

**Restrictions on withdrawal from customer bank account.**

91.(1) A pension scheme operator must not withdraw money from a customer account in excess of the total of the money held for the time being in that account.

(2) A pension scheme operator must not withdraw money from a customer bank account for or towards payment of fees or commissions payable to the pension scheme operator unless–

- (a) the fees or commission accord with the arrangements agreed with the customer;

- (b) the customer and the pension scheme operator have agreed on the specific amount to be withdrawn; or
  - (c) the alternative procedure set out in sub-regulation (3) is followed.
- (3) The alternative procedure is the following–
- (a) the customer–
    - (i) has received a notice that complies with sub-regulation (4); and
    - (ii) has not objected or otherwise communicated disagreement within a reasonable time after receiving the notice; and
  - (b) the withdrawal is expressly authorised by a director or employee of the pension scheme operator who has authority to authorise withdrawals from customer bank accounts.
- (4) For the purposes of sub-regulation (3)(a)(i), the notice must–
- (a) be received by the customer not less than seven days before the withdrawal;
  - (b) state that money held in the account will be applied to the fees or commissions that are payable; and
  - (c) provide a breakdown in adequate detail of how the money to be withdrawn will be applied to those fees or commissions.

**Accounting for customer money.**

92.(1) A pension scheme operator must at all times–

- (a) maintain records in a form that clearly show the following–
  - (i) how much customer money stands to the credit of each customer;
  - (ii) the money that it has received, held or paid on account of its customers; and
  - (iii) details of any other money that it has dealt with through a customer bank account; and

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- (b) for each customer bank account, generate or otherwise retain adequate supporting documentation to justify each transaction in the account.
- (2) The records required by sub-regulation (1)(a) must clearly distinguish the money of each customer from the money of–
- (a) other customers; and
  - (b) the pension scheme operator.

**Interest on customer money.**

93.(1) Except in so far as may be agreed in writing to the contrary between a pension scheme operator and each of its customers, a pension scheme operator must, at least once in every six months, credit interest to each customer on money held for that customer and standing (or which should be standing) to the customer's credit in a customer bank account.

(2) Subject to any written agreement to the contrary, the minimum rate of interest payable is the minimum deposit rate publicly offered by the recognised credit institution at which the account is held.

**Chapter 3**  
**Requirements for pension advisers only**

**Chapter applies to pension advisers.**

94. The obligations of this chapter apply to pension advisers.

**Assessment of insurance cover and financial resources.**

95.(1) A pension adviser must assess regularly (and no less than once a year) the level of professional indemnity insurance cover necessary to comply with these Regulations.

(2) A pension adviser must assess regularly (and no less than every six months) the level of financial resources necessary to comply with these Regulations.

(3) A pension adviser must also carry out an assessment of the required level of its financial resources on each occasion when there is a material change to the adviser's business plan.

**Chapter 4**  
**Accounting**

*Accounting records***Duty to keep accounting records.**

96.(1) A pension scheme firm must, in respect of its pension scheme business or pension advice business, as the case may be, keep accounting records which are sufficient to show and explain the pension scheme firm's transactions (whether effected on its own behalf or on behalf of others) and must be such as to—

- (a) disclose with reasonable accuracy, at any time, the financial position of the pension scheme firm at that time;
- (b) demonstrate whether or not the pension scheme firm is at that time complying with any financial resources requirements imposed by the GFSC; and
- (c) enable the pension scheme firm to prepare a balance sheet and a profit and loss account as at any time and which comply with the requirements of these Regulations.

(2) A pension scheme firm's accounting records under sub-regulation (1) must in particular contain—

- (a) entries from day to day of all sums of money received and expended by the pension scheme firm, and the matters in respect of which the receipt and expenditure takes place;
- (b) a record of all assets and liabilities of the pension scheme firm including any commitments or contingent liabilities;
- (c) entries from day to day of all purchases and sales of financial instruments by the pension scheme firm distinguishing those which are made by the firm on its own account and those which are made by the firm on behalf of others;
- (d) entries from day to day of the receipt and dispatch of documents of title, or documents evidencing title, to financial instruments which are in the possession or control of the pension scheme firm;
- (e) a record of financial instruments the documents of title, or the documents evidencing title, to which are in the possession or control of the pension scheme firm identifying—
  - (i) where those documents are kept;

- (ii) the beneficial owner of each of those financial instruments;
- (iii) the purposes for which those documents are held; and
- (iv) whether those financial instruments are subject to any charge;

(3) In addition to complying with the requirements of sub-regulation (2), the accounting records of a pension scheme operator must contain:

- (a) entries from day to day of–
  - (i) all money which is paid into or out of a customer bank account maintained for the purposes of these Regulations; and
  - (ii) receipts and payments of customer money not passed through such a customer bank account, identifying the persons to whom each such receipt or payment relates; and
- (b) a record of–
  - (i) balances on individual customer bank accounts;
  - (ii) balances on individual customer accounts at intermediate brokers and exchanges;
  - (iii) balances with individual customers stating the name of each customer and the amount held or received for that customer; and
  - (iv) reconciliations made pursuant to regulations 79 and 80.

**Records to be kept up to date.**

97. The obligations under this Chapter are continuing obligations and continuous performance of them is required to ensure that records are at all times up to date.

**Audit trail.**

98.(1) Information required by this Chapter to be recorded must be recorded in such a way as to enable a particular transaction to be identified at any time and traced through the accounting systems of the pension scheme firm.

(2) All records must be arranged, filed, indexed and cross-referenced so as to permit prompt access to any particular record.

**Conformity with accounting standards.**

99. The accounting records required to be kept by a pension scheme firm must conform with statements of standard accounting practice issued by such body or bodies as may be prescribed.

**Retention of records.**

100. A pension scheme firm must preserve the accounting records, which it is required to keep under regulation 96 for 6 years from the date on which they are made.

**Inspection of records.**

101. Accounting records which are required to be kept under regulation 96 must, at any time during the period in which they are required to be preserved, be produced to the GFSC, or to any person with the authority of the GFSC, on demand at such reasonable time and place as may be specified by the GFSC or that person.

*Financial statements***Duty to prepare annual financial statements.**

102. A pension scheme firm must, in respect of its pension scheme business or pension advice business, as the case may be, prepare for each of its financial year's annual financial statements which must consist of–

- (a) a balance sheet as at the last day of the financial year; and
- (b) a profit and loss account for the financial year.

**Balance sheet to give true and fair view.**

103. The balance sheet must give a true and fair view of the state of affairs of the pension scheme firm as at the end of the financial year.

**Profit and loss account to give true and fair view.**

104. The profit and loss account must give a true and fair view of the profit or loss of the pension scheme firm for the financial year.

**Form and content of financial statements.**

105.(1) The financial statements of a pension scheme firm must comply with the provisions of Schedule 1 (so far as applicable) with respect to the form and content of the balance sheet, the profit and loss account and any additional information to be provided by way of notes to the financial statements.

(2) Where compliance with the provisions of Schedule 1 and the other provisions of these Regulations as to the matters to be included in the pension scheme firm's balance sheet or profit and loss account or in notes to them, would not be sufficient to give a true and fair view, the necessary additional information must be given in the balance sheet or profit and loss account or in a note to them.

(3) If in special circumstances compliance with any of those provisions is inconsistent with the requirement to give a true and fair view, the pension scheme firm must depart from that provision to the extent necessary to give a true and fair view.

(4) If the pension scheme firm departs under sub-regulation (3) from any such provision, particulars of the departure, the reasons for it and its effect must be given in a note to the financial statements.

**Annual financial statements to be submitted to meeting of partners, etc.**

106.(1) Where the pension scheme firm is not a sole proprietor, the annual financial statements of the pension scheme firm must be submitted to a meeting of the partners or, if the pension scheme firm is not a partnership, to a meeting of the directors or other governing body of the pension scheme firm and the meeting must be invited to pass a resolution approving those statements.

(2) Where sub-regulation (1) applies, the balance sheet must contain a statement, in a position immediately above the signatures, whether the annual financial statements were approved at a meeting of the partners, directors or governing body of the pension scheme firm and, if so, the date on which they were approved.

**Additional requirement in case of sole proprietor.**

107. Where the pension scheme firm is a sole proprietor, the balance sheet must be accompanied by a statement (which must not be regarded as part of the annual financial statements of the pension scheme firm for the purposes of regulation 110) stating whether, at the date as at which the balance sheet is made up—

- (a) his or her current assets exceed his or her current liabilities; and
- (b) his or her total assets exceed his or her total liabilities.



**Annual financial statements must be submitted to GFSC.**

108. Each financial year a pension scheme firm must submit its annual financial statements to the GFSC within 4 months after the end of the financial year to which the annual financial statements relate.

**Pension scheme firm must obtain auditor's report.**

109.(1) A pension scheme firm must submit its annual financial statements to its auditor for audit and must obtain an auditor's report thereon which report must comply with the requirements of regulation 110.

(2) A pension scheme firm must submit its auditor's report to the GFSC together with–

- (a) the annual financial statements in accordance with regulation 108; and
- (b) confirmation in writing that it has complied with each and every one of the provisions of this Part with which it is required to comply and such further information or confirmation as may be prescribed.

(3) Where the auditor's report is qualified on the grounds of the auditor's uncertainty as to the completeness or accuracy of the accounting records, that report must when submitted by the pension scheme firm to the GFSC be accompanied by a written document (signed by those who signed the balance sheet) stating–

- (a) whether all the accounting records of the pension scheme firm have been made available to the auditor for the purposes of the audit;
- (b) whether all transactions undertaken by the pension scheme firm have been properly reflected and recorded in the pension scheme firm's accounting records; and
- (c) whether all other records of the pension scheme firm and related information have been made available to the auditor.

**Contents of auditor's report.**

110.(1) The auditor's report must be addressed to the GFSC and must state whether the annual financial statements of the pension scheme firm have been audited in accordance with approved auditing standards.

(2) The auditor's report must also state whether in the opinion of the auditor–

- (a) the annual financial statements of the pension scheme firm have been properly prepared in accordance with these Regulations;
- (b) in the case of the balance sheet, a true and fair view is given of the state of affairs of the pension scheme firm as at the end of the financial year;
- (c) in the case of the profit and loss account, a true and fair view is given of the profit or loss of the pension scheme firm for the financial year;
- (d) the pension scheme firm has, throughout the financial year, kept proper accounting records in accordance with the requirements of these Regulations;
- (e) the balance sheet and the profit and loss account are in agreement with the pension scheme firm's accounting records;
- (f) the auditor has obtained all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit;
- (g) in the case of pension scheme operators, the operator has maintained throughout the financial year systems adequate to enable it to identify documents of title, or documents evidencing title, to financial instruments held in safekeeping for the operator's customers in accordance with regulation 83; and
- (h) in the case of pension scheme operators, the operator was in compliance with the requirements of regulation 83 as at the date on which the balance sheet was prepared.

**Qualified reports.**

111.(1) If the auditor is of the opinion that one or more of the requirements of regulation 110 have not been met, the auditor must state that fact in the auditor's report and must specify the relevant requirements and the respects in which they have not been met.

(2) If the auditor fails to obtain all the information and explanations which, to the best of the auditor's knowledge and belief, are necessary for the purposes of the audit, the auditor must state that fact in the auditor's report.

(3) If the auditor is unable to form an opinion as to whether one or more of the requirements of regulation 110 have been met, the auditor must state that fact in the auditor's report and must specify those requirements and give the reasons why the auditor has been unable to form an opinion.

**Chapter 5**

*Appointment of auditors***Auditor required.**

112. A pension scheme firm must not carry on, or hold itself out as carrying on, pension scheme business or pension advice business, as the case may be, unless it has appointed an auditor in accordance with the Act and these Regulations.

**Qualification for appointment as auditor.**

113. A person is not qualified for appointment as the auditor of a pension scheme firm unless the person is registered in accordance with sections 487 to 491 of Part 24 of the Act.

**Ineligibility on ground of lack of independence.**

114.(1) A person must not act as an auditor to a pension scheme firm if the person is ineligible for appointment to the office.

(2) A person is ineligible for appointment as auditor to a pension scheme firm if the person is—

(a) a director, officer, employee, shareholder or partner of the pension scheme firm;  
or

(b) a partner or employee of such a person.

(3) For the purposes of this regulation an auditor of a pension scheme firm is not regarded as an officer or employee of the pension scheme firm.

**Engagement letters.**

115. A pension scheme firm must ensure that the auditor appointed under these Regulations has the powers and duties specified in regulation 117 and that—

(a) those powers and duties are set out in an engagement letter;

(b) the engagement letter is signed by the pension scheme firm and the auditor; and

(c) the pension scheme firm retains a copy of the engagement letter.

**Auditor to notify GFSC of certain matters.**

116.(1) In the circumstances specified in sub-regulation (2) the auditor of a pension scheme firm must notify the GFSC of any matters which relate to the affairs of the firm and of which the auditor becomes aware in its capacity as auditor.

(2) The circumstances referred to in sub-regulation (1) are those in which the auditor has reasonable cause to believe that the matters are or are likely to be of material significance for determining either–

- (a) whether a person is a fit and proper person to carry on pension scheme business or pension advice business, as the case may be; or
- (b) whether powers under section 69, 97(2), 102 or Part 11 of the Act should be exercised in order to protect investors or customers from a significant risk of loss.

#### **Report on financial statements**

117.(1) An auditor must submit a report to the GFSC on the annual financial statements in accordance with these Regulations and the report must state the matters specified in regulation 110.

(2) In preparing an auditor's report for the purposes of these Regulations, the auditor must carry out such investigations as will enable the auditor to form an opinion as to the matters required by regulation 110 to be stated in the auditor's report.

#### **Resignation or removal of auditors.**

118.(1) This regulation includes provisions which supplement the requirements of section 168 of the Act as they apply to pension scheme firms.

(2) A pension scheme firm must, within 7 days, give written notice to the GFSC of the appointment, removal or resignation of an auditor.

(3) Where an auditor resigns or is removed by a pension scheme firm, a notice to that effect sent to the GFSC under sub-regulation (2) must contain either–

- (a) a statement signed by the auditor to the effect that there are no circumstances connected with the auditor's resignation or removal which the auditor considers should be brought to the attention of the GFSC; or
- (b) a statement signed by the auditor of such circumstances as are mentioned in (a).

(4) For the purposes of these Regulations, a failure to appoint an auditor at the end of the auditor's term of office must be deemed to be a removal of that auditor.

**PART 6  
REPORTING AND NOTIFICATION**

**Pension scheme firm must file returns with GFSC.**

119.(1) A pension scheme firm must file with the GFSC the returns specified in subregulation (2).

(2) A pension scheme firm must file annually the following—

- (a) in the case of a pension scheme operator only, a return (no later than 31 January of each year) of the number of members in personal pension schemes to which its Part 7 permission 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 pension scheme firm's accounting period).

**Notification of changes to GFSC by pension scheme firm.**

120.(1) A pension scheme firm must notify the GFSC in writing of the following matters—

- (a) any change to its name;
- (b) any change to any registered trading or business names under which it carries on a regulated activity for which the firm has Part 7 permission;
- (c) any change to its trading address;
- (d) any change to the address of its registered office;
- (e) any change to its shareholding and beneficial ownership;
- (f) any change in its board of directors;
- (g) any change in its executive management, including any change affecting compliance with the “four eyes” principle;
- (h) any material change in the nature of the business that it undertakes;
- (i) the making of an application to the court for its winding-up or the winding-up of a company that is its subsidiary or holding company;

- (j) any step taken by a person in any jurisdiction for the commencement of an insolvency proceeding or the appointment of a receiver or provisional liquidator in relation to the pension scheme firm or its assets;
  - (k) the conviction of the pension scheme firm or any of its staff under the law of any jurisdiction for an offence involving fraud or dishonesty;
  - (l) the grant or refusal of an application for, or the revocation of, authorisation of the pension scheme firm, its holding company or any subsidiary of the firm to carry on regulated business in any country or territory outside Gibraltar;
  - (m) in the case of a director or member of the staff of the pension scheme firm who holds a notifiable position—
    - (i) the withdrawal by that person of an application for membership of any professional body in any jurisdiction; or
    - (ii) the revocation of the person’s membership of any professional body in any jurisdiction;
  - (n) the appointment or resignation of its auditor;
  - (o) any notification to its professional indemnity insurers or any any payment to it by an insurer under a professional indemnity insurance policy;
  - (p) any other matter that the pension scheme firm considers is material to the obligations placed on it or the obligations of any notifiable person or staff member under the regulatory system;
  - (q) any matter that might reasonably be expected to affect the Part 7 permission of the pension scheme firm or be in the interests of its customers to disclose; and
  - (r) any matter that might be prejudicial to the reputation of Gibraltar as a finance centre.
- (2) The GFSC must notify the Minister of any matter that is notified to it under subregulation (1)(r).

**Record-keeping by pension scheme operator.**

121.(1) A pension scheme operator must keep all records required by the Act, these Regulations and the regulatory system which must be kept available for not less than 6 years for inspection by the GFSC and any person duly authorised by the GFSC.

**Returns and notifications to GFSC by pension scheme operator.**

122.(1) A pension scheme operator must submit to the GFSC the returns specified in sub-regulation (2) and must bring to the GFSC's attention such matters as are specified therein.

(2) The returns in sub-regulation (1) to be submitted by a pension scheme operator 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 Part 7 permission 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 pension scheme operator's accounting period).

**PART 7  
REGULATORY POWERS**

**Chapter 1  
Supervisory powers**

**Directions.**

123.(1) If it appears to the GFSC that a person is not fit and proper to carry out any function in relation to pension scheme business or pension advice business, as the case may be, carried on by a pension scheme firm, the GFSC may direct that the person must not perform a specified function, any function falling within a specified description, or any function as stated in the direction.

(2) Where the GFSC–

- (a) proposes to issue a direction under sub-regulation (1), it must give the regulated firm and the person concerned a warning notice; or
- (b) decides to issue a direction under sub-regulation (1), it must give the regulated firm and the person concerned a decision notice.

(3) Sub-regulation (2)(a) does not apply if the GFSC is satisfied that a warning notice–

- (a) cannot be given because of urgency;
  - (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the direction; or
  - (c) is superfluous having regard to the need to give notice of legal proceedings, or for some other reason.
- (4) A person aggrieved by a decision notice under sub-regulation (2)(b) may appeal against the decision under section 615 of the Act.
- (5) For the purposes of sub-regulation (3)(a), the GFSC must not consider that urgency exists unless Conditions B and C in section 80(3) and (4) of the Act are met.
- (6) If those conditions are met, the GFSC must give the regulated firm and the person concerned a notice stating that the direction takes effect on the date of the notice or on any later date that may be specified in the notice.
- (7) Sections 80(7) and (8) and 81 of the Act apply to a decision by the GFSC under sub-regulation (3)(a)–
- (a) as if references in those sections to the varying of a permission or the imposing or varying of a requirement (however expressed) were references to the imposition of a direction under sub-regulation (1); and
  - (b) with such other modifications as may be required by the circumstances and context of sub-regulation (3).
- (8) The issue of a decision notice imposing a direction under sub-regulation (1) is a specified regulatory decision to which section 24(3) of the Act applies.
- (9) A GFSC decision to issue a decision notice does not fall within sub-regulation (8) if the recipient has received a warning notice and–
- (a) has agreed in writing to the steps proposed in the warning notice being taken; or
  - (b) has not made any representations to the GFSC within the notice period specified in section 612(2)(a) of the Act (and in that event the GFSC may regard the facts and matters set out in the warning notice as undisputed).

**Chapter 2**  
**Sanctions for contravention**



**Sanctioning powers.**

124. Part 11 of the Act and this Chapter set out sanctioning powers for contravention of a regulatory requirement (including a regulatory requirement contained in these Regulations).

**Maximum amounts of administrative penalty.**

125.(1) Any administrative penalty imposed under section 152 of the Act for a contravention of a regulatory requirement in connection with the provision of pension scheme business or pension advice business, as the case may be, carried on by a pension scheme firm must be of an amount which does not exceed the higher of the following-

- (a) where the amount of the benefit derived as a result of the contravention can be determined, two times the amount of that benefit;
- (b) in the case of a legal person
  - (i) £250,000; or
  - (ii) 5% of the total annual turnover according to the last available annual accounts approved by its management body;
- (c) in the case of an individual, £125,000.

(2) Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with Part 7 of the Companies Act 2014, the relevant total turnover for the purpose of sub-regulation (1)(b) is the total annual turnover, or the corresponding type of income in accordance with the relevant accounting legislative acts, according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

**PART 8  
MISCELLANEOUS**

**The Register: pension scheme firms.**

126.(1) This regulation makes provision as to the contents of the Register in connection with pension scheme business and pension advice business.

(2) The Register must contain such information, as the GFSC considers appropriate and must include, at least, a list of pension scheme operators and pension advisers.

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(3) The Register must identify the pension scheme business or pension advice business, as the case may be, to which a pension scheme firm's Part 7 permission relates.

(4) The Register must include details of any variation or cancellation of a pension scheme firm's Part 7 permission.

(5) If it appears to the GFSC that a person in respect of whom there is an entry in the Register as a result of any provision of sub-regulation (2) has ceased to be a person in respect to whom that provision applies, the GFSC may remove the entry from the Register.

**Revocation of the 2017 Regulations.**

127. The Financial Services (Pensions) Regulations 2017 are revoked.

**SCHEDULE 1**

FORM AND CONTENT OF FINANCIAL STATEMENTS

**PART 1.**  
GENERAL RULES.

1. Subject to the following provisions of this Schedule, the annual financial statements of a pension scheme firm must—
  - (a) in the case of the balance sheet show the items listed in the balance sheet format set out in Appendix 1 to this Schedule; and
  - (b) in the case of the profit and loss account show the items listed in the profit and loss account format set out in Appendix 2 to this Schedule.
2. Any item required in accordance with paragraph 1 to be shown in a financial statement of a pension scheme firm may be shown in greater detail than required by the appropriate format.
3. A financial statement of a pension scheme firm may include as a separately identified item any item representing or covering the amount of any asset or liability, income or expenditure not otherwise covered by any of the items listed in the appropriate format.
- 4.(1) In respect of every item shown in a pension scheme firm's balance sheet or profit and loss account or in notes thereto, the corresponding amount for the immediately preceding financial year must also be shown.
  - (2) Where that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the financial year to which the balance sheet or profit and loss account relates, the former amount must be adjusted and particulars of the adjustment and the reasons for it must be disclosed in a note to the accounts.
5. Amounts in respect of items representing assets or income may not be set off against amounts in respect of items representing liabilities or expenditure (as the case may be), or vice versa.
6. In the case of a pension scheme firm which is a sole proprietor, the items to be included in the pension scheme firm's financial statements prepared in accordance with these Regulations must be those which arise in the course of the pension scheme business or pension advice business, as the case may be, of that pension scheme firm.

**PART 2.****ACCOUNTING PRINCIPLES AND RULES.**

7.(1) The amounts to be included in respect of all items shown in the annual financial statements of a pension scheme firm must be determined in accordance with the Companies Act 2014 and either Gibraltar Financial Reporting Standards or UK-adopted international accounting standards within the meaning of section 237(1) of the Companies Act 2014.

(2) Subparagraph (1) is subject to regulation 99.

8. Subject to paragraph 7, items must be included in such a way as to reflect the substance and not merely the form of the underlying transactions and balances.

**APPENDIX 1****BALANCE SHEET FORMAT****A. FIXED ASSETS****I. Intangible Assets**

1. Development costs
2. Goodwill
3. Other

**II. Tangible Assets**

1. Freehold land and buildings
2. Leasehold land and buildings
3. Motor vehicles
4. Office equipment and computers
5. Fixtures and fittings
6. Payments on account
7. Other tangible assets

**III. Investments**

1. Loans to and shares in group companies and connected companies
2. Other listed financial instruments
3. Other unlisted financial instruments

**B. CURRENT ASSETS****I. Physical stocks****II. Debtors (1)**

1. Trade debtors (2)
2. Other debtors
3. Amounts due from connected and group companies
4. Prepayments and accrued income

III. Financial instruments (long positions)(3)

IV. Cash at bank and in hand

**C. CREDITORS: AMOUNTS FALLING DUE WITHIN ONE YEAR**

1. Bank loans and overdrafts.
2. Eligible subordinated loans (6)
3. Other debenture loans
4. Trade creditors (4)
5. Financial instruments (short positions)(5)
6. Income tax
7. Other taxation and social security
8. Amounts due to group and connected companies
9. Other creditors
10. Accruals and deferred income

**D. NET CURRENT ASSETS (LIABILITIES)**

**E. TOTAL ASSETS LESS CURRENT LIABILITIES**

**F. CREDITORS: AMOUNTS FALLING DUE AFTER MORE THAN ONE YEAR**

1. Bank loans and overdrafts
2. Eligible subordinated loans (6)
3. Other debenture loans
4. Trade creditors(4)
5. Income tax
6. Amounts due to group and connected companies
7. Other creditors
8. Accruals and deferred income

**G. PROVISIONS FOR LIABILITIES AND CHARGES**

1. Commissions on indemnity terms
2. Pension and similar obligations

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3. Taxation including deferred taxation
4. Other provisions

**H. TOTAL ASSETS LESS TOTAL LIABILITIES**

**I. CAPITAL AND RESERVES**

1. Called up share capital (7)
2. Share premium account
3. Partners' or proprietors' capital accounts
4. Partners' or proprietors' current accounts
5. Revaluation reserve
6. Other reserves
7. Profit and loss account.

Approved by the directors / partners / governing body on

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Signature

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Signature

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**NOTES ON THE BALANCE SHEET FORMAT**

**(1) Debtors**

The amount falling due after more than one year must be shown separately for each item included under debtors.

**(2) Trade debtors**

**(a) Fees**

Outstanding for more than 30 days  
Outstanding for 30 days or less.

**(b) Commissions**

Outstanding for more than 30 days  
Outstanding for 30 days or less.

(c) Other

Amounts outstanding for more than 30 days  
 Amounts outstanding for 30 days or less.

**(3) Financial instruments (long positions)**

**(i) Debt instruments**

Residual Maturity

	0- 90 days	90 days- 12 Months	12 months - 5 years	more than 5 years	Total
UK Government, Government of Gibraltar and Local Authority debt					
Accepted or issued by a recognised credit institution					
Floating Rate Notes					
Other debt instruments					
Marketable Financial instruments					
not marketable Financial instruments					

**(ii) Shares (other than in group companies)**

- UK listed
- UK unlisted:
- marketable Financial instruments
- not marketable Financial instruments
- Overseas listed on an established investment exchange
- Overseas unlisted

**(iii) Collective investment schemes**

- Units in authorised and recognised unit trust schemes
- Other

**(iv) Futures, options, contracts for differences**

- Futures
- Purchased options
- Written options
- Contracts for differences

**(v) Shares in group companies****(vi) Other investments or financial instruments (specify)****(4) Trade Creditors**

- (a) Amounts due to be paid against delivery of securities
- (b) Amounts due to be paid in respect of securities transactions otherwise than against delivery of securities.
- (c) Others

**(5) Financial instruments (short positions)**

The same detail should be given as that required by note (3) above

**(6) Eligible subordinated loans**

- (a) Eligible long term subordinated loans
- (b) Eligible short term subordinated loans
- (c) Committed undrawn subordinated loan facilities
- (d) Bank Undertakings

**(7) Called up share capital**

Any amount of share capital which has not been paid up must be shown separately.

**(8) Contingent liabilities and commitments**

- (a) Amounts subject to an investment position risk factor
- (b) Other amounts arising in the ordinary course of business
- (c) Other contingent liabilities not provided for
- (d) Capital commitments contracted for but not provided for



- (e) Capital commitments authorised but not contracted for
- (f) Pension commitments not provided for
- (g) Other financial commitments not provided for

The following additional information must be given, where relevant–

- (i) Whether any valuable security has been provided by the pension scheme firm in connection with a contingent liability or commitment
- (ii) The amounts which relate to undertakings on behalf of or for the benefit of group and connected companies.

## APPENDIX 2

### PROFIT AND LOSS ACCOUNT FORMAT

#### A. DEALING

Gains/losses on principal dealings (trading)

- 1. equities
- 2. debt instruments
- 3. futures, options and contracts for differences
- 4. units in collective investment schemes
- 5. foreign exchange
- 6. other – specify

#### B. REVENUE

1. Commissions on transactions in collective investment schemes

- 1. authorised unit trust schemes and recognised schemes
- 2. other – specify

II. Commissions on transactions in life insurance policies

- 1. commission on indemnity terms
- 2. other initial commission
- 3. renewal commission
- 4. other specify

III. Commissions on securities transactions

- 1. equities

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2. debt instruments
3. other– specify

IV. Commissions on transactions in futures, options, contracts for differences, etc.

1. futures
2. options
3. contracts for differences
4. other– specify (e.g. commodities)

V. Investment management fees

VI. Fee income in respect of financial advice

VII. Company management fees

VIII. Trustee fees

IX. Interest and dividends

1. investment positions
2. loan accounts and margin accounts
3. in respect of balances in client bank accounts
4. other specify

X. Dealing and settlement services

XI. Revenue from research and consulting services

XII Retained underwriting and placing commissions

XIII. Other revenue – specify if material

**C. EXPENDITURE**

I. Commissions

1. paid to staff
2. paid to other investment businesses
3. other (specify)

II. Salaries and other employment costs (exclusive of commission)

III. Directors' emoluments

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IV. Staff bonuses

V. Interest charges

1. payable to customer in respect of customer's money balances
2. other (specify)

VI. Establishment costs

VII. Communications and marketing

VIII. Office equipment and services

IX. Provisions for losses, bad and doubtful debts

X. Professional charges

XI. Investment exchange and clearing house charges

XII. Regulatory fees and expenses

XIII. Audit fees (including expenses)

XIV. Miscellaneous office expenses

XV. Other expenditure - specify if material

**D. PROFIT OR LOSS BEFORE TAXATION**

**E. TAXATION**

**F. PROFIT OR LOSS AFTER TAXATION**

**G. EXTRAORDINARY ITEMS**

**H. PROFIT OR LOSS FOR THE FINANCIAL YEAR**

**SCHEDULE 2****CONTENT OF AGREEMENT****PART 1****Content of agreement provided to retail clients: general requirements**

A pension adviser's written agreement with a retail client must, where relevant, include provisions in relation to—

(1) Commencement of the agreement

When and how the agreement is to come into force.

(2) Competent Authority

The pension adviser's regulatory status.

(3) Investment objectives

The retail client's investment objectives.

(4) Restrictions

(a) any restrictions on—

- (i) the types of designated investment in which the retail client wishes to invest; and
- (ii) the markets on which the retail client wishes transactions to be executed; or

(b) that there are no such restrictions.

(5) Services

The services the pension adviser will provide.

(6) Payments for services

Details of any payment for services payable by the retail client to the pension adviser, including where appropriate—

- (a) the basis of calculation;
- (b) how it is to be paid and collected;
- (c) how frequently it is to be paid,

whether or not any other payment is receivable by the pension adviser (or to its knowledge by any of its associates) in connection with any advice provided by the pension adviser, with or for the retail client, in addition to or in lieu of any fees.

(7) Rights to withdraw

An explanation of any rights to withdraw or, if it is the case, a statement that such rights will not apply.

(8) Unsolicited real time financial promotions

The circumstances, if any, in which the pension adviser or its representatives or employees may communicate an unsolicited real time financial promotion to the retail client.

(9) Conflict of interest and material interest

When a material interest or conflict of interest may or does arise, the manner in which the pension adviser will ensure fair treatment of the retail client as required by regulation 34.

(10) Use of commission arrangements

If the pension adviser has commission arrangements in place, the disclosure required by regulation 36.

(11) Retail client's understanding of risk

The relevant risk warning when a pension adviser chooses to fulfil any of its obligations under regulation 40 in the agreement in relation to any of the following–

- (a) warrants or derivatives;
- (b) non-readily realisable investments;
- (c) penny shares;
- (d) securities which may be subject to stabilisation;

€ stock lending activity.

(12) Unregulated collective investment scheme

That the services to be provided by the pension adviser will or may include advice on investments relating to unregulated collective investment schemes, if this is the case.

(13) Complaints procedure

How to complain to the pension adviser, and a statement, if relevant, that the customer may subsequently complain directly to the Financial Services Ombudsman.

(14) Termination method

How the agreement may be terminated, including a statement:

- (a) that termination will be without prejudice to the completion of transactions already initiated, if this is the case;
- (b) that the retail client may terminate the agreement by written notice to the pension adviser and when this may take effect;
- (c) that if the pension adviser has the right to terminate the agreement, it may do so by notice given to the retail client, and specifying the minimum notice period, if any; and
- (d) of any agreed time after which, or any agreed event upon which, the agreement will terminate.