

APRIL 2024

Consultation: Proposed exemptions for advice on UK law aspects of defined benefit pension transfers

About this consultation

The Financial Markets Authority - Te Mana Tātai Hokohoko (FMA) is considering a class exemption to provide relief from some of the requirements under Part 6 of the Financial Markets Conduct Act 2013 (FMC Act) for United Kingdom firms providing financial advice to clients in New Zealand on UK law aspects of the transfer of funds in a UK pension scheme with safeguarded benefits to a New Zealand Qualifying Recognised Overseas Pension Scheme (QROPS).

We welcome your feedback on the exemption proposal in response to the specific questions in this paper, as well as any other general comments.

Next steps

Please use the feedback form at the end of this document to submit your feedback. **Submissions close at 5pm on 13 June 2024.** After this date, we will consider all submissions, finalise our policy proposal and if the exemption is granted, work to get it in place.

This consultation is for United Kingdom financial advice providers, members of UK pension schemes with safeguarded benefits, New Zealand financial advice providers, and other interested parties.

It seeks feedback on proposed exemptions from Part 6 of the FMC Act for UK firms and their employed UK advisers providing advice to New Zealand clients on the UK law aspects of a transfer of funds from a UK safeguarded benefits pension schemes to a New Zealand QROPS.

Contents

Overview	2
Background	3
FMA's exemption powers	5
Exemption overview	6
Exemption proposals	7
Proposed conditions	8
Consultation questions	12
Feedback form	13

Overview

Part 6 of the FMC Act

Part 6 of the FMC Act provides for the licensing and regulation of market services. It specifies which market service providers must be licensed and the administration, monitoring and enforcement of those licences, and regulates the giving of financial advice and the provision of financial advice services.

It also provides for a range of duties regarding the provision of regulated financial advice, which provide important protections for New Zealand clients. This includes the duty to:

- meet standards of competence, knowledge and skill
- ensure the client understands nature and scope of advice
- give priority to the client's interests
- exercise care, diligence, and skill
- comply with the code of professional conduct for financial advice services (code of conduct)
- make prescribed information available.

Under Section 387 of the FMC Act, Part 6 applies to all financial advice services received by a client in New Zealand, regardless of where the person providing the service is resident, is incorporated, or carries on business.

Background

UK safeguarded benefit pension schemes and legal requirements

Individuals who were once employed in the UK may be a member of a UK pension scheme with ‘safeguarded benefits’.¹ UK residents who have immigrated to New Zealand or individuals of other nationalities who have lived and worked in the UK and now reside in New Zealand may wish to transfer their UK safeguarded benefits pension.²

Throughout this consultation paper, the terms ‘safeguarded benefits’ and ‘defined benefits (DB)’ are used interchangeably to mean benefits derived from *defined benefits schemes* or *final salary schemes* or *career average schemes* – all of which provide guaranteed lifetime income that usually increases each year to protect the pension holder against inflation. See [Considering a defined benefit pension transfer](#) on the UK’s Financial Conduct Authority (FCA) website for more information.

The UK oversees pension schemes through The Pensions Regulator and via the Financial Conduct Authority for the provision of related financial advice. Under UK law, if a pension scheme member has safeguarded benefits worth more than £30,000 and wishes to transfer their pension to another scheme, the pension holder must take regulated advice from an authorised independent financial adviser before transferring.³ The financial adviser must advise the pension holder in New Zealand on the potential risks and possible benefits of transferring funds from a safeguarded benefits pension to a scheme offering other benefits.

These UK financial advice firms and UK advisers (collectively “UK firms”) must hold specific qualifications and have authorisation from the FCA ([referred to as ‘advising on pension transfers and opt-outs’](#)) to advise pension holders on potential transfers:

- The UK firm must ensure the DB pension advice is given by a pension transfer specialist who holds the specific qualifications set out in the FCA Handbook [TC 2.1.5 Assessing and maintaining competence](#).
- The financial adviser must meet continuing professional development requirements (set out in paragraph 2.52 of FCA’s guidance [FG21/3: Advising on pension transfers](#)).
- The UK firm must provide confirmation to the DB pension scheme trustees that they have given appropriate independent advice to the scheme member. This confirmation is required by the DB pension scheme trustees to release the funds from a client’s DB pension scheme.

When pension funds are being transferred to an overseas account, UK law requires the transfer be to a Qualifying Recognised Overseas Pension Scheme (QROPS). There are several schemes in New Zealand that meet those requirements.⁴

¹ Safeguarded benefits are defined as ‘benefits other than – (a) money purchase benefits, and (b) cash balance benefits. See section 48(8) of the U.K. Pension Schemes Act 2015 for the meaning of “safeguarded benefits”.

² Under certain circumstances, the individual seeking to transfer the DB pension could also be a spouse, civil partner or dependant. See 5.31 on page 60 [FG21/3: Advising on pension transfers \(fca.org.uk\)](#)

³ [Transferring your defined benefit pension \(moneyhelper.org.uk\)](#)

⁴ [Check the recognised overseas pension schemes notification list \(www.gov.uk\)](#)

Compliance burden and its consequences

The FMC Act regulates financial advisers and financial advice given to people in New Zealand. Therefore, when a UK firm provides the FCA-mandated DB pension advice to a client in New Zealand, it is a “financial advice service” under the FMC Act. That UK firm would have to comply with the New Zealand financial advice regime, be licensed by the FMA, meet disclosure requirements and adhere to code of conduct obligations under the FMC Act.

As set out above, the provision of DB pension transfer advice is required in the UK. UK firms and their employed UK advisers must be authorised by the FCA to provide DB pension advice. Without an exemption, the UK firm would have to be licensed in New Zealand to give advice to people in New Zealand who want to transfer their DB pension to a QROPS. The UK firm would therefore be subject to dual regulation.

Additional New Zealand regulation of these UK firms is unlikely to provide a commensurate benefit for users of the advice. We understand that UK firms would face significant compliance costs if they had to comply with the New Zealand financial advice regime. Those costs may discourage UK firms from providing the necessary advice, and limit opportunities for those in New Zealand as they would not be able to transfer funds from a DB pension unless they travelled to the UK to get the required financial advice from a UK firm.

We are therefore seeking feedback about the suitability of a class exemption to address the potentially burdensome compliance costs faced by UK financial advice firms and affiliated advisers, and the lack of corresponding opportunity for New Zealanders to obtain the required advice on UK pension transfers to New Zealand.

FMA's exemption powers

To grant an exemption under section 556 of the FMC Act, we must be satisfied that the exemption is necessary or desirable to promote one or more of the purposes of the FMC Act. The extent of the exemption also cannot be broader than is reasonably necessary to address the matters that gave rise to the exemption.

The purposes of the FMC Act are:⁵

- to promote the confident and informed participation of businesses, investors, and consumers in the financial markets
- to promote and facilitate the development of fair, efficient, and transparent financial markets
- to provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services
- to ensure that appropriate governance arrangements apply to financial products and certain financial services that allow for effective monitoring and reduce governance risks
- to avoid unnecessary compliance costs
- to promote innovation and flexibility in the financial markets.

Our decision on the exemption proposals discussed in this paper will be based on whether we are satisfied the above statutory test is met.

⁵ See sections 3 and 4 of the FMC Act.

Exemption overview

We are considering a class exemption for UK firms and their employed UK advisers. The exemption would be limited to the provision of offshore advice on safeguarded benefit pension transfers to a New Zealand QROPS for clients in New Zealand.

We propose UK firms be exempted from certain FMC Act requirements:

- to be licensed as a financial advice provider
- to comply with duties or obligations:
 - where these are considered equivalent to those the UK firm or adviser is already adhering to in the UK; or
 - where the UK firm is unable to comply due to not being licensed in New Zealand; or
 - because compliance would be impracticable due to the nature of the limited advice offered.

The proposed conditions recognise the protections offered under UK law and will require UK firms and their employed UK advisers to:

- be regulated by the Financial Conduct Authority (FCA) under UK law
- register on the Financial Service Providers Register (FSPR) and be members of a New Zealand dispute resolution scheme
- provide written disclosure to New Zealand clients that details the nature and effect of the exemption
- make disclosure to New Zealand retail clients as if they were UK retail clients
- remain subject to core statutory duties for financial advice providers under Part 6 of the FMC Act.

Exemption proposals

Scope of exemption

To ensure the exemption is not wider than reasonably necessary, we propose the exemption will be limited to UK firms and their employed UK advisers giving DB pension transfer advice only. UK firms will not be permitted to advise on the New Zealand aspects of the transaction or provide any other types of financial advice to persons in New Zealand.

We think exemptions for UK firms are likely to be required from the following sections of Part 6 of the FMC Act.

UK firms will not have to comply with the requirement in section **388(ba)** to be licensed to act as a provider of a financial advice service to provide the necessary advice to DB pension holders who wish to transfer to a qualifying recognised overseas pension scheme in New Zealand.

The UK firms and their affiliated financial advisers will be registered and in compliance with existing FCA financial advice rules. The only individuals who will be providing the DB pension advice to those in New Zealand are those qualified UK advisers. Therefore, UK firms will not have to comply with the limitation in section **431F** (who can give regulated financial advice to retail clients on behalf of financial advice provider) as they are already registered under UK law.

UK firms will be exempted from the requirements in section **431I** (duty to meet the standards of competence, knowledge, and skill) and obligation to comply with the code of conduct as required by section **431M**, as UK firms and their advisers will have to meet equivalent duties to maintain compliance with FCA regulations. Further, complying with section **431O** (duty to make prescribed information available) would likely create an overlap in prescribed information requirements, so we propose to include an exemption from section 431O.

Last, the exemption proposal will also include sections **431Q** (persons engaging others to give advice must ensure compliance with duties) and **431R** (duties of persons who engage nominated representatives) because we do not believe they are applicable. UK firms must not engage others to give advice on the transfer from DB pension schemes.

UK firm not exempted from certain FMC Act duties

We consider it an important protection for New Zealand clients that UK firms comply with certain FMC Act statutory duties to:

- ensure New Zealand clients understand the nature and scope of advice
- give priority to the New Zealand client's interests
- exercise care, diligence, and skill.

We view these duties as being fundamental to giving advice in New Zealand and do not anticipate they will be costly or burdensome for UK firms to comply with, so we propose there will be no exemption from the requirements in sections **431G**, **431J**, **431K**, and **431L** of the FMC Act.

Proposed conditions

In the UK, financial advice firms are authorised and regulated by the FCA.⁶ In order for UK firms to maintain compliance with UK law, they are subject to many of the same duties and obligations as financial advice providers in New Zealand.

To enable UK firms to provide the required DB pension advice and ensure good outcomes for New Zealanders, we are considering the following proposed conditions. We do not believe these conditions will be burdensome or costly, as they are practical measures that streamline the process of giving advice and handling any disputes.

Compliance with UK law and FCA regulations

We are proposing a condition that the UK firm and its employed UK advisers must be in compliance with UK law and FCA regulations to be eligible for this exemption, and must maintain compliance at all times to provide required DB pension advice to persons in New Zealand.

Competence to provide DB pension transfer advice

We are considering a condition requiring the UK firm to be competent under UK law to provide exempt DB pension transfer advice. The UK firm must also ensure its employed UK advisers who give exempt DB pension transfer advice are adequately trained and competent under UK law to give that advice.

Procedures that safeguard compliance

We are proposing the UK firm has procedures in place that give reasonable assurance that the firm and its employed UK advisers will comply with all disclosure, conduct, and other relevant UK regulatory requirements in relation to the exempt DB pension transfer advice as if the advice were provided to a client in the United Kingdom. The UK firm must identify and promptly remedy any deficiencies in the effectiveness of the procedures.

Registered under FSP Act

To record which UK firms are providing advice through this exemption, we are proposing requiring each UK firm to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act).

New Zealand dispute resolution

As the exempted parties are located in the United Kingdom while the consumers are in New Zealand, we consider it is important to have a mechanism in place to protect good consumer outcomes. Depending on the case, this may be accomplished through dispute resolution schemes or the New Zealand court system.

⁶ [Apply for Financial Conduct Authority \(FCA\) authorisation \(www.gov.uk\)](http://www.gov.uk)

The FSP Act requires all financial service providers to register on the Financial Service Providers Register (FSPR) and belong to an approved dispute resolution scheme. Therefore, we are proposing UK firms be members of a New Zealand dispute resolution scheme as a condition of the exemption. If a dispute arises in the context of advice provided under the exemption, New Zealand clients will have access to a local independent process for resolving any disputes.⁷

It is proposed that a UK firm will have an exemption from the requirement in section 431F⁸ of the FMC Act to provide advice through individuals who are engaged as financial advisers or nominated representatives. This means the UK firm's employed UK advisers will not need to be registered on the FSPR by reason of being financial advisers. Nor will they need to be registered by reason of being 'in business of providing financial service' for the purposes of section 11(1) of the FSP Act⁹.

Submit to non-exclusive jurisdiction

We are proposing requiring the UK firm to submit to the non-exclusive jurisdiction of the New Zealand courts in respect of exempt DB pension transfer advice provided to New Zealand clients in reliance on the proposed class relief. This is the same requirement that applies to Australian licensees giving exempt financial advice in New Zealand.¹⁰ The benefit for New Zealand clients is easier access to New Zealand courts for the resolution of any complaints or issues in New Zealand. UK advisers will appoint a New Zealand agent for service.

Advice on all aspects of the transaction

It is important that New Zealand clients receive advice on all aspects of the transaction, not just the transfer out of the DB pension scheme. We are proposing the UK firm recommends that the New Zealand client should get advice from a New Zealand licensed financial advice provider about the New Zealand QROPS they are considering transferring to as well as tax advice from both jurisdictions. We are also proposing the UK firm provide a written disclosure statement, which may be in email (outlined below).

Provide a written disclosure statement

The written disclosure statement – to be worded and presented in a clear, concise, and effective manner – will explain the nature and effect of the exemption and cover the following points:

- The UK firm provides the DB pension transfer advice only and cannot advise on the New Zealand aspects of the transaction.
- The UK firm has been granted an FMA exemption from the requirement to be licensed as a financial advice provider in New Zealand.

⁷ See UK Public General Acts [section 9 of the Administration of Justice Act 1920](#) which provides for enforcement of a NZ judgment in the United Kingdom.

⁸ See [431F Limitation on who can give regulated financial advice to retail clients on behalf of financial advice provider](#)

⁹ A person to whom this Act applies who is in the business of providing a financial service must—

(a) be registered for that service under this Part; and

(b) if required by section 48, be a member of an approved dispute resolution scheme.

¹⁰ For example, see the [Financial Markets Conduct \(Australian Licensees\) Exemption Notice 2020 \(LI 2020/325\) 7 Conditions of exemptions – New Zealand Legislation](#)

- A recommendation that the New Zealand client should get advice from a New Zealand licensed financial advice provider about the New Zealand QROPS they are considering transferring to, and should get tax advice from both jurisdictions.
- The UK firm holds a specific permission from the FCA and is regulated by the FCA under UK law, which differs from New Zealand law.
- The UK firm remains subject to certain statutory duties under New Zealand law, including the requirements in sections 431J, 431K, and 431L of the Financial Markets Conduct Act 2013 to:
 - ensure New Zealand clients understand the nature and scope of advice being given
 - give priority to the New Zealand clients' interests
 - exercise care, diligence, and skill.
- The UK firm is a member of a dispute resolution scheme in New Zealand, and the name and contact details of the UK firm's dispute resolution scheme in New Zealand.
- The UK firm has submitted to the non-exclusive jurisdiction of the New Zealand courts in respect of the DB pension transfer advice given to New Zealand clients in New Zealand.
- Contact details of the UK firm's New Zealand agent for service.

Monitoring and notification

To enable the FMA to monitor the UK firms covered under the exemption, we are considering imposing a requirement that the UK firm must notify the FMA as soon as practicable of any investigation, enforcement, or disciplinary action taken by the FCA or any other overseas regulatory authority against the UK firm or its employed UK advisers that could impact or affect its ability to provide DB pension advice.

If there are any changes to the FCA permission for the UK firm or its employed UK advisers to provide DB pension transfer advice (including any variation, suspension, or cancellation), the firm must notify the FMA as soon as practicable.

Why the exemption is limited to transfers to a New Zealand QROPS

UK law requires that DB pensions being transferred overseas be transferred to a Qualifying Recognised Overseas Pension Scheme (QROPS).¹¹ Therefore, the proposed class relief and proposed conditions include the requirement that the DB pension must be transferred to a New Zealand QROPS.

To be considered a QROPS, the scheme must meet the following four definitions at all times:

1. The scheme must be a pension scheme;
2. The pension scheme must be an overseas pension scheme;
3. The overseas pension scheme must be a recognised overseas pension scheme; and

¹¹ The overseas scheme must be a 'qualifying recognised overseas pension scheme' (QROPS). It's up to the pension holder to check this with the overseas scheme or the UK pension provider or adviser. If it's not a QROPS, the UK pension scheme may refuse to make the transfer, or the pension holder will have to pay at least 40% tax on the transfer. See [Transferring your pension: Transferring to an overseas pension scheme \(www.gov.uk\)](https://www.gov.uk/transferring-your-pension/transferring-to-an-overseas-pension-scheme)

4. The recognised overseas pension scheme must become a QROPS as defined by the regulations. That is, the scheme will operate the overseas transfer charge and undertake to comply with the information requirements as prescribed by HM Revenue & Customs (the UK tax authority).¹²

Based on correspondence with UK firms, we are expecting most of the demand from New Zealand clients will be to transfer into a New Zealand QROPS. However, a DB pension holder may decide to do something else with their pension funds, such as transfer to a different plan or scheme within the UK, or liquidate the pension fund.

We are interested to know if most (or all) of the demand is for DB pension holders who wish to transfer to a NZ QROPS, or whether New Zealand clients often transfer to other pension schemes, such as a UK self-invested personal pension (UK SIPP).

We are also seeking feedback on whether the scope of the exemption should be expanded to include transfers to other UK pension products.

¹² [PTM112200 - International: qualifying recognised overseas pension schemes \(QROPS\): what is an overseas pension scheme - HMRC internal manual - GOV.UK \(www.gov.uk\)](#)

Consultation questions

1. Do you think we should grant an exemption for UK firms and their employed UK advisers on the terms and conditions proposed in this paper? What are the reasons for your view?
2. Do you think you or any of your clients or members would rely on such an exemption, if granted? If so, please provide details of the approximate value of any services provided and/or the impact of the exemption on regulatory compliance costs. Please give actual or estimated dollar amounts.
3. Should there be additional conditions or limitations imposed? What are the reasons for your view?
4. Do you think any additional exemptions from the FMC Act or regulations are required? If so, why do you think those exemptions would be appropriate, considering the purposes of the FMC Act, and that any exemption cannot be broader than is reasonably necessary to address the matters that gave rise to it.
5. Are there any potential problems or unintended consequences that may arise from granting the proposed exemptions?
6. Do you foresee any issues or challenges associated with enforcing a DRS resolution against a UK firm? If yes, please provide the reasons for your view.
7. Should the scope of the exemption be expanded to include transfers to other UK pension products like the self-invested personal pension (SIPP)?
8. If relevant, please provide your best estimate of how much DB pension advice your firm provides each calendar year (for any years that you are able or willing to provide data). How much of the DB pension advice requested by clients in New Zealand is about transferring a DB pension to a New Zealand QROPS? Please express your response both in:
 - a) pure numbers (e.g. your firm received 17 requests for DB pension advice from New Zealand clients in 2023); and
 - b) in relative terms (%) of DB pension transfer to a NZ QROPS advice compared to all DB pension advice requested by New Zealanders (e.g. a UK firm received 10 calls about DB pensions last year and 9 of them were about transferring a DB pension to a New Zealand QROPS. 90% of the DB pension advice requested by New Zealand clients was about transferring to a New Zealand QROPS.)

Feedback form

Consultation: Proposed exemptions for advice on United Kingdom law aspects of Defined Benefit Pension Transfers

Please submit this feedback form electronically in MS Word format and email it to us at consultation@fma.govt.nz with 'Proposed exemptions for advice on United Kingdom law aspects of defined benefit pension transfers: [your organisation's name]' in the subject line. Thank you.

Submissions close on 13 June 2024.

Date: _____ Number of pages: _____

Name of submitter: _____

Company or entity: _____

Organisation type: _____

Contact name (if different): _____

Contact email and phone: _____

Question number	Response
1. Do you think we should grant an exemption for UK firms and their employed UK advisers on the terms and conditions proposed in this paper? What are the reasons for your view	
2. Do you think you or any of your clients or members would rely on such an exemption, if granted? If so, please provide details of the approximate value of any services provided and/or the impact of the exemption on regulatory compliance costs. Please give actual or estimated dollar amounts.	

<p>3. Should there be additional conditions or limitations imposed? What are the reasons for your view?</p>	
<p>4. Do you think any additional exemptions from the FMC Act or regulations are required? If so, why do you think those exemptions would be appropriate, considering the purposes of the FMC Act, and that any exemption cannot be broader than is reasonably necessary to address the matters that gave rise to it.</p>	
<p>5. Are there any potential problems or unintended consequences that may arise from granting the proposed exemptions?</p>	
<p>6. Do you foresee any issues or challenges associated with enforcing a DRS resolution against a UK firm? If yes, please provide the reasons for your view.</p>	
<p>7. Should the scope of the exemption be expanded to include transfers to other UK pension products like the self-invested personal pension (SIPP)?</p>	
<p>8. If relevant, please provide your best estimate of how much DB pension advice your firm provides each calendar year (for any years that you are able or willing to provide data). How much of the DB pension advice requested by clients in New Zealand is about transferring a DB pension to a New Zealand QROPS? Please express your response both in:</p> <p>a. pure numbers (e.g. your firm received 17 requests for DB pension advice from New Zealand clients in 2023); and</p>	

b. in relative terms (%) of DB pension transfer to a NZ QROPS advice compared to all DB pension advice requested by New Zealanders (e.g. a UK firm received 10 calls about DB pensions last year and 9 of them were about transferring a DB pension to a New Zealand QROPS. 90% of the DB pension advice requested by New Zealand clients was about transferring to a New Zealand QROPS.)

Feedback summary – *if you wish to highlight anything in particular*

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.