

Consultation: Proposed standard conditions for financial advice provider transitional licences

About this consultation

The Financial Services Legislation Amendment Act 2019 (FSLAA) will introduce a new regulatory regime for financial advice. If you currently give financial advice or you may do so in future, this is likely to affect you. Once the new regime comes into force you will need to operate under a financial advice provider licence to give regulated financial advice to retail clients. New obligations will apply to licence holders and others giving financial advice.

There will be two phases to the financial advice provider licensing process – transitional and full. This consultation relates to transitional licences. We are considering imposing two standard conditions for transitional licences. All transitional licence holders will need to comply with the standard conditions.

We welcome your feedback on the proposed standard conditions discussed in this paper. Please use the feedback form to provide us with any comments. In addition to your general feedback, we have included specific questions in this paper. If you have questions, please email questions@fma.govt.nz or call us on 0800 434 567 (+64 3 962 2698).

Submissions close at 5pm on Friday, 26 July 2019

After this date, we will consider all submissions and publish any standard conditions we may impose

About this consultation:

This consultation paper is for potential transitional licence applicants, their advisers and interested parties.

It seeks feedback on proposed standard conditions for financial advice provider transitional licences.



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New financial advice regime

Background

The FSLAA will introduce a new regulatory regime for financial advice and revoke the Financial Advisers Act 2008.

The Government has agreed the start date for the new regime will be June 2020. The exact date will be set by Order in Council in the coming months.

If you currently give financial advice or you may do so in future, this is likely to affect you. Individuals and businesses who may be affected include:

- Authorised Financial Advisers
- Registered Financial Advisers
- Qualifying Financial Entities (QFEs)
- QFE advisers.

What is changing?

New licensing requirement

Once the new regime comes into force you will need to operate under a financial advice provider licence to give regulated financial advice to retail clients. You can hold your own licence, or you can work on behalf of someone else who holds a licence.

New Code of Conduct

If you give regulated financial advice to retail clients you will be subject to the new Code of Professional Conduct for Financial Advice Services (the new code). This outlines the standards of ethical behaviour, conduct, client care, competence, knowledge and skill you need to meet when providing regulated financial advice to retail clients in New Zealand.

New disclosure requirements

You must disclose specific information to your clients to ensure they are making informed decisions if you give regulated financial advice. The Ministry of Business, Innovation and Employment will consult on draft regulations shortly.

Further information

You can find further information about the changes and their expected timing on our [website](#).



Financial advice provider licensing

Overview

As noted on page 3, once the new regime comes into force you will need to operate under a financial advice provider licence to give regulated financial advice to retail clients. You can hold your own licence, or you can work on behalf of someone else who holds a licence. Licensed financial advice providers can give advice directly (e.g. online), through financial advisers or through nominated representatives. If you only give regulated advice to wholesale clients, you will not need a licence but some duties will apply to you.

Holding your own licence enables you, and anyone covered by your licence, to provide regulated financial advice to retail clients. As a licence-holder, you will be regulated under the Financial Markets Conduct Act 2013 (FMC Act), as amended by the FSLAA, and you will need to comply with certain duties and obligations.

You will need to register on the FSPR before you apply for a transitional licence. Your authorised bodies will also need to register.

To help you transition to the new regime, there will be two phases to the licensing process – transitional and full. This is designed to make the changes smoother and more manageable.

Transitional licensing

As part of the application process for a transitional licence, we will ask you to provide some details about your business, such as the types of services and products you will provide advice about, and who will be providing advice under your licence. We will consider whether:

- Your directors and senior managers are fit and proper for their roles
- There is any reason to believe you may not meet your obligations
- You will be registered on the FSPR.

Transitional licensing provides us with a better sense of who is operating in the market – enabling us to anticipate the number of full licence applications and resources needed for ongoing monitoring and supervision.

Full licensing

You will need to obtain a full licence by the time your transitional licence expires – unless you've decided instead to operate under another financial advice provider's licence or no longer provide regulated financial advice to retail clients.



The criteria we will assess in full licensing will be more comprehensive than for transitional licensing. In addition to the matters considered for transitional licensing, we will consider whether you are capable of effectively performing the services you intend to provide.

The information you need to provide will vary depending on factors such as:

- the nature and size of your business and the services you provide
- whether you're a single adviser business, or engage financial advisers and/or nominated representatives
- whether the financial advisers or nominated representatives you engage will independently meet the standards of competence, knowledge and skill required by the new code.

We will provide more details about full licensing, including how and when to apply, later this year.

New obligations will apply

Under the new regime, anyone giving regulated financial advice will need to comply with certain duties. There are a few additional duties for licensed financial advice providers.

Here's a brief outline of the duties that apply to everyone:

- Ensure retail clients understand the nature and scope of the advice being provided. For example, you must explain if you're only able to give advice about certain products
- Where there's a conflict of interest, give priority to your client's interests
- At all times, exercise care, diligence and skill
- Comply with the new code if you give regulated advice to retail clients. The new code has competence, knowledge and skill requirements as well as requirements for ethical behaviour, conduct and client care
- Only recommend financial products that are offered in compliance with the FMC Act
- Ensure you follow the new disclosure regulations. Any information you make available must not be false or misleading, or likely to mislead, and there must be no material omissions.

In addition, as a financial advice provider you must also:

- Make sure anyone you engage to give regulated financial advice under your licence complies with all the duties listed above
- Have appropriate processes and controls in place when you engage nominated representatives. These should allow you to control the advice being given and the circumstances in which it is given
- Not give or offer your nominated representatives any payments or other incentives intended or likely to encourage them to engage in conduct that contravenes their statutory duties
- Comply with any licence conditions we may include when granting your licence or that are imposed by legislation



- Tell us if you materially contravene your obligations, and also let us know if you change the legal structure of your business or make certain other changes, such as changes in directors or senior managers.

You should refer to the FMC Act (as amended by the FSLAA) and the FMC Regulations for further details on the obligations that will apply to you.

Timing

We expect to start accepting transitional licence applications during quarter four, 2019. Once a specific date is known we will let you know. The licence application window will be open until the start date for the new regime in June 2020. We recommend you submit your application as early as possible to ensure we have time to process it. All transitional licences approved during the licence application window will take effect from the start date of the new regime (even if we approve your application earlier). Your transitional licence will be in force for two years unless it is cancelled sooner. However, if you are issued with a full licence your transitional licence will cease to cover any type of regulated financial advice that is covered by your full licence.

Further information on transitional licensing

We are currently developing the transitional licensing application form and preparing a guide with details on how to apply. Once the form and guide are finalised we will share them with you.



Proposed standard conditions

Overview

Licence conditions can be imposed by legislation or by the FMA when we issue a licence. Conditions are obligations licence holders must comply with. Licence conditions can be standard (i.e. apply to all licence holders) or specific (i.e. apply to an individual licence holder).

We are considering imposing two standard conditions on financial advice provider transitional licences:

1. You must maintain adequate written records in relation to your financial advice service
2. You must have an internal process for resolving client complaints in relation to your financial advice service.

You can see the full version of these proposed conditions below. We expect these standard conditions will also apply for full licences. However, it is likely there may be additional standard conditions for full licences.

Why licence conditions are necessary

Licence conditions may be imposed on transitional licences in relation to the licensing assessment requirements. Conditions are necessary to ensure licence holders continue to meet requirements and to help us effectively monitor the licensed population. We have commented more specifically below on why we think these proposed standard conditions are needed.

Proposed standard conditions

Record keeping

Condition: You must maintain adequate written records in relation to your financial advice service. The records must demonstrate how you, and any persons engaged by you to give regulated financial advice to retail clients, have complied with the FMC Act, the Financial Markets Conduct Regulations (FMC Regulations) and the new code. You must ensure the records are kept for at least seven years and provide them to us on request as soon as practicable.

Explanatory note: In this condition ‘you’ means the person who holds the licence and each of the licence holder’s authorised bodies. ‘Adequate written records’ include, without limitation, information about any regulated financial advice given to retail clients and copies of any written information or documents required by or for the purposes of the FMC Act, the FMC Regulations and the new code in connection with the service. You can comply with this condition by ensuring records are kept by another person on your behalf if you are satisfied that person is capable of keeping the records to the standard required by the condition, and the records are available for inspection by the FMA on request.



Our comments

Businesses already need to keep adequate records so they:

- know how much money their business makes and how much it spends
- can meet their tax and other legal obligations
- know about their employees
- can run their business effectively and meet their customers' needs.

We intend to make record keeping about financial advice services a licence condition for transitional licences. This is to ensure licence holders (and any authorised bodies) continue to meet the requirements assessed at licensing and so we can effectively monitor compliance with their obligations. In addition, this requirement will ensure adequate information is available for retail clients about the financial advice services provided to them.

Record keeping is a requirement under the current Code of Professional Conduct for Authorised Financial Advisers (the existing code). However, this has not been included as a standard under the new code. The new code takes a principles-based approach and applies to everyone who gives regulated financial advice to retail clients. Record keeping is a process requirement that should apply to the licensed business.

Methods and tools you can use to keep records for your business

What you choose will depend on your personal preferences and the nature and scale of your business. Records must be in writing (either on paper or electronically) and in English. To keep your records electronically, you must make sure:

- they are a true and clear copy of the original
- the computer or device is backed up in case of computer failure
- the records are kept in a form or manner that allows them to be easily accessed and converted into written form.

You can outsource record keeping to another person if you are satisfied that person is capable of keeping the records to the standard required by the condition, and the records are available for our inspection when requested.

Demonstrating how you have met your obligations

Records should show the financial advice services provided and demonstrate how you have met your legal obligations, including the duties in the FMC Act (e.g. the duty to give priority to your client's interests if there is a conflict of interest), the new disclosure obligations under the FMC Regulations and your obligations under the new code.

Example

To show you have complied with your disclosure obligations your records will need to include a copy of any disclosure statement(s) provided to your client. If disclosure was made verbally, you should keep a transcript of the disclosure or retain a file note, made at the time of the conversation, recording the key details.



Internal complaints process

Condition: You must have an internal process for resolving client complaints in relation to your financial advice service that provides for:

- complaints to be acknowledged as soon as practicable
- retail clients to be given information about the process and how it works
- complaints to be resolved and a response provided to the client as soon as practicable
- a written record to be kept of all complaints and the action taken to resolve them.

Explanatory note: In this condition ‘you’ means the person who holds the licence and each of the licence holder’s authorised bodies. A complaint means a statement of dissatisfaction communicated to you by a client about your financial advice service, other than a statement of dissatisfaction that is trivial or vexatious or that the client indicates is not intended to be a complaint.

Our comments

Having an appropriate internal process for resolving client complaints is a requirement under the existing code. However, this has not been included as a standard under the new code. The new code takes a principles-based approach and applies to everyone who gives regulated advice to retail clients. Having a complaints process is a process requirement that needs to apply to the licensed business.

Financial service providers may be required to have an internal dispute resolution process under the membership terms for their approved dispute resolution scheme.

We intend to make an internal complaints process a licence condition for transitional licences. This will ensure client complaints are adequately dealt with and there is a record of any issues arising in relation to the financial advice service. It will also enable us to effectively monitor whether licence holders and authorised bodies are complying with their obligations. Having this as a licence condition (even though external dispute resolution schemes may also require it) means we can take appropriate regulatory action against the licence holder and any authorised body if they do not comply.

An internal process for resolving client complaints does not have to be complex or expensive. However, it must meet the four requirements in the proposed condition. How you comply with this condition will depend on your personal preferences and the nature and scale of your business.



Questions

Questions on record keeping condition

1. Do you agree or disagree with the proposed standard condition? Please provide your reasons.
2. What written records do you currently keep for your financial advice business?
3. Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.
4. Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
5. Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
6. Do you have any other comments on the proposed condition or how it is drafted?

Questions on internal complaints process condition

7. Do you agree or disagree with the proposed standard condition? Please provide your reasons.
8. Do you currently have an internal complaints process for your financial advice business?
9. Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.
10. Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
11. Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
12. Do you have any other comments on the proposed condition or how it is drafted?

Feedback: Proposed standard conditions for financial advice provider transitional licences

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider transitional licences' in the subject line. Thank you. **Submissions close at 5pm on Friday, 26 July 2019.**

Date: _____ Number of pages: _____

Name of submitter: _____

Company or entity: _____

Organisation type: _____

Contact name (if different): _____

Contact email and phone: _____

Question number	Comment	Recommendation
<i>You don't need to quote from the consultation document if you use page numbers. You may insert additional lines or pages - please label each additional page with your name & organisation.</i>		

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.