

CONSULTATION DRAFT

FINANCIAL SERVICES OMBUDSMAN (ELIGIBLE COMPLAINANTS) (JERSEY) ORDER 201-

Explanatory Note

This Order makes further provision as to the eligibility of complainants under Article 8 of the Financial Services Ombudsman (Jersey) Law 2014. Under Article 8(3)(a) of the Law an individual is eligible, but only if not acting for the purposes of his or her trade, business or profession. Under Article 8(3)(b) a microenterprise is eligible. This Order adds a further category of eligible complainant, under Article 8(3)(c), in relation to charities.

Article 1 contains definitions. A “small Jersey charity” is defined as a body or trust that is entitled to income tax exemption (by virtue of its charitable and related purposes), but subject to an income condition. The condition is that the charity’s total income must be less than £1,000,000 in the tax assessment year preceding the year in which the charity refers a complaint to the Ombudsman.

Article 2 specifies the additional categories of eligible complainant.

A small Jersey charity is specified as an eligible complainant if it is a corporation or association, such as a foundation or an association incorporated under the Loi (1862) sur les teneurs en fidéicomis et l’incorporation d’associations. This will apply to such charities even though they are not individuals or microenterprises (and so cannot already be eligible under Article 8(3)(a) or (b) of the Law).

A trust is not a person, so if the charity is a trust then its trustees are specified as eligible complainants when making a complaint for the benefit of the charity. Individual trustees not acting for the purposes of their trade, business or profession, and corporate trustees which are microenterprises, are already eligible under Article 8(3)(a) and (b) of the Law. So the effect of this provision is to extend eligibility to charity trustees where they are individual professional trustees, or are corporate trustees which are not microenterprises.

A Guernsey charity is similarly specified as an eligible complainant, if it is also eligible under Guernsey’s equivalent scheme.

In each of these cases the charity (or trustee) must also meet the requirements of Article 8(2)(b) and (c) of the Law, in not being a financial service provider and in having the required relationship to the relevant provider.

Article 3 names the Order and would bring it into force on the commencement of Article 8 of the Law.

CONSULTATION DRAFT

FINANCIAL SERVICES OMBUDSMAN (ELIGIBLE COMPLAINANTS) (JERSEY) ORDER 201-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE MINISTER FOR ECONOMIC DEVELOPMENT, in pursuance of Article 8 of the Financial Services Ombudsman (Jersey) Law 201-, orders as follows –

1 Interpretation

In this Order –

“Income Tax Law” means the Income Tax (Jersey) Law 1961;

“Ombudsman Law” means the Financial Services Ombudsman (Jersey) Law 2014;

“small Jersey charity” means a corporation, association or trust –

- (a) that does not fall within Article 8(3)(b) of the Ombudsman Law;
- (b) the income of which is exempt from income tax under Article 115(a) of the Income Tax Law; and
- (c) the total income of which, within the meaning of the Income Tax Law and disregarding the exemption under Article 115(a) of the Income Tax Law, would have been less than £1,000,000 in the year of assessment (within the meaning of the Income Tax Law) preceding the year of assessment in which the complaint is referred.

2 Eligibility of charities and charity trustees

- (1) The categories of person specified for the purpose of Article 8(3)(c)(iii) of the Ombudsman Law are –
 - (a) a corporation or association that is a small Jersey charity;
 - (b) a relevant trustee of a trust that is a small Jersey charity; and
 - (c) a relevant Guernsey charity.
- (2) For the purpose of paragraph (1)(b) a trustee, of a trust that is a small Jersey charity, is a relevant trustee if –
 - (a) the relevant business (within the meaning of Article 8(1) of the Ombudsman Law) was carried on for the benefit of that charity;
 - (b) the trustee makes the complaint for the benefit of that charity; and

-
- (c) the trustee does not fall within Article 8(3)(a) of the Ombudsman Law.
 - (3) For the purpose of paragraph (1)(c) “relevant Guernsey charity” means a charity, as defined in the Financial Services Ombudsman (Eligible Complainants) (Bailiwick of Guernsey) Order, 2015, that –
 - (a) falls within a category specified by that Order for the purpose of section 8(3)(c) of the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014; and
 - (b) does not fall within paragraph (1)(a) or (b).

3 Commencement and citation

This Order may be cited as the Financial Services Ombudsman (Eligible Complainants) (Jersey) Order 201- and comes into force on the commencement of Article 8 of the Ombudsman Law.

