

EXPOSURE DRAFT

QROPS CODE OF PRACTICE

Introduction to the Code

This Code of Practice has been prepared by the Guernsey Association of Pension Providers as a guide for Members on best practice in the establishment and operation of Qualifying Recognised Overseas Pension Schemes based in Guernsey. The Code is intended to apply to QROPS established as Retirement Annuity Trust Schemes although several of the principles will also be relevant to QROPS established as Occupational Pension Schemes or as Retirement Annuity Contracts. Adherence to the Code is voluntary but a list of Members who have agreed to adopt the Code will be published and will be available from the GAPP website. The list of such Members will be updated from time to time and inclusion on that list will be determined by GAPP at its sole discretion.

The Guernsey Association of Pension Providers is an association of pension providers, pension trustees and others with an interest in pensions established to foster and promote pension arrangements in Guernsey. Further details about GAPP are available from the website at www.gapp.gg.

We hope that the Code of Practice will be helpful to Members and will also provide a useful guide to others as to the standards expected of GAPP Members who have adhered to the Code.

The Code of Practice is a guide to best practice as at January 2011. It is intended that the Code of Practice should be revised as legislation and best practice evolves over time. However, nothing stated in this Code of Practice should be regarded as an authoritative statement of the law or taxation and action should not be taken as a result of its contents without seeking appropriate legal and taxation advice. References to legislation and defined terms reflect GAPP's understanding at the date of publication of this Code of Practice and should be interpreted appropriately as legislation is updated.

Definitions

A number of terms have specialist meanings within the Code of Practice. These appear in **bold type** and are described in the Glossary at the end of the Code of Practice.

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1. INTRODUCTION

1.1 An introduction to QROPS

Qualifying Recognised Overseas Pensions Schemes (**QROPS**) were introduced by **HMRC** in the UK Finance Act 2004, and they permit the transfer of UK accrued pension assets to an overseas pension arrangement, usually without tax charge, provided that the arrangement fulfils the requirements of **HMRC**.

Each **QROPS** has to be a pension scheme, **recognised** as such in its own jurisdiction, and following the pension rules for that jurisdiction. **HMRC** in turn have specific rules for how a **QROPS** should be operated, including reporting requirements.

HMRC publish a list of schemes that consent to have their details listed and that fulfil the requirements to be a **QROPS**, see www.hmrc.gov.uk/pensionschemes/qrops.pdf. As part of an application for a **QROPS** the scheme notifies **HMRC** that it fulfils the requirements for being a “recognised overseas pension scheme” (**ROPS**). **HMRC** state that publication on the list does not mean that **HMRC** has verified all of the information supplied by the scheme as part of the application process. If it transpires that the scheme does not meet the conditions of a **ROPS**, any transfer to it could result in an unauthorised payment charge liability for the member. (There is also the potential for a scheme sanction charge to be levied on the transferring scheme, but if the administrator of the transferring scheme has relied upon the fact that the **QROPS** to which the funds have been transferred was on the list at the point of transfer, this should provide sufficient grounds for **HMRC** to discharge any scheme sanction charge.)

The nature of **Guernsey** domestic approval is that each scheme receives approval from the **Income Tax Office**, under the Income Tax (Guernsey) Law, 1975, as amended (the **Law**), prior to submission to **HMRC**.

The process for the **QROPS** recognition of **Guernsey** based pension schemes is for **HMRC** to receive a copy of the **Scheme’s** trust deed, and in addition a **QROPS** application form.

2. TRANSFERS IN

2.1 Overview

A primary objective of **HMRC** in creating **QROPS** regulations was to provide for the transfer of accrued UK registered pension benefits to non-UK schemes for those leaving or having left the UK. **QROPS** should not normally be used to transfer benefits from UK registered pension schemes for members who are UK resident and who have no intention of leaving the UK.

Transfers of UK pension rights to **QROPS** are generally possible, even if a member of a UK scheme is already in drawdown. However, this may not always be possible as there may be situations where a UK trustee might not consent to transferring benefits out to a **QROPS**, or may request additional information from the **Trustee** before consenting to transfer. The rules of some schemes may, under certain circumstances, also prevent transfer.

The time transfers take to reach a **QROPS** varies considerably and is dependent upon the UK transferring scheme. Completion of the correct transfer discharge paperwork is crucial in achieving an efficient transfer.

Transfer values are given by existing schemes on request but it should be noted that frequently such value is provided only for a limited period of time. Thereafter a new transfer value will be required. In certain situations, particularly with final salary schemes, there may be a charge applicable to the generation of a new transfer quote where a guarantee date expires.

Transfers may be paid in cash form or by transfer of the assets themselves (in specie).

2.2 Need for Advice

The **Trustee** should use reasonable endeavours to ensure that potential members of a **QROPS** receive appropriate professional advice before joining and that the **Scheme** is suitable for their needs. In particular, potential members should normally receive transfer advice from a suitably qualified pensions adviser before transferring from a UK pension arrangement.

2.3 Transferring Scheme's Requirements

When a transfer is made to a **QROPS** the administrator of the transferring scheme should ensure **HMRC** are provided with the prescribed information, being

- the name of the member
- their address
- their date of birth
- their National Insurance number (if known)
- the amount of the sums or assets transferred
- the date of the transfer
- the name of the qualifying recognised overseas pension scheme and
- the country or territory under the law of which that scheme is established and regulated.

The **Trustee** should ensure that the administrator of the transferring scheme has all relevant information to deal with this disclosure.

2.4 Transfers from Defined Benefit Schemes

It is recommended that in all cases transferees from **Defined Benefit** schemes receive appropriate pension transfer advice from a suitably qualified professional advisor which should include a **Transfer Value Analysis** from an actuary or other competent advisor.

2.5 Transfers from Defined Contribution Schemes

It is recommended that in all cases transferees from **Defined Contribution** schemes receive appropriate pension transfer advice from a suitably qualified professional advisor. The advice should have regard to any guaranteed annuity rates which are being given up as a result of the transfer being made.

Although by definition such plans are not **Defined Benefit**, these schemes may contain elements of **Protected Rights** and **GMP** which, if material, should be considered in isolation and appropriate further advice taken.

2.6 Transfers of Protected Rights and GMPs

Whilst **Protected Rights** or **GMP** pension legislation does not exist in **Guernsey**, **Trustees** may agree to accept **Protected Rights** or **GMPs** into a **Guernsey RATS**. Such rights will vest as unprotected rights (ie, normal **Guernsey** scheme benefits) on receipt by the **Trustee**.

A **CA Form** should be completed by the transferring scheme and the member for every **Protected Rights** or **GMP** transfer. This form provides the **NISPI** with details of where the **Protected Rights** or **GMP** has been transferred to. Within this form the member is required to state that they understand that all protection associated with UK pensions legislation is being given up.

3. ADDITIONAL CONTRIBUTIONS

As a **QROPS** has to be a locally approved scheme and be capable of admitting local residents as members to the **Scheme**, it is possible for it to receive ongoing (regular and single) contributions both for residents and non residents (as well as receiving UK tax relieved funds).

However, before accepting such contributions the **Trustee** should consider the administrative and reporting issues as these are different from the treatment of the UK tax relieved funds transferred into the **QROPS**, in terms of reporting to HMRC, investment restrictions and the restrictions on the payment of benefits. In practice it may prove beneficial to establish a separate contract within the **Scheme** or a separate **ROPS** to receive additional contributions.

4. BENEFITS

4.1 Overview

This section describes the benefit regime that must be complied with to meet **HMRC** and **Income Tax Office** requirements. In addition, the **Scheme's** Trust Deed and Rules may impose further limitations on the benefits that can be provided.

In the UK, **Member Payment Charges** are levied if members receive **unauthorised member payments** or benefits in excess of **HMRC** allowances. These charges continue to apply to a **QROPS** member until the member has been resident outside the UK for five full UK tax years (the **Reporting Period**). Therefore, in addition to the requirements below, **Trustees** should abide by the UK pension requirements until at least a member is outside the **Reporting Period**.

4.2 Retirement Age

Guernsey **Approval** requires that a **Scheme's** retirement age, other than for retirement on ill health grounds, is between age 50 and 75. However, to receive **QROPS** recognition, the **Trustees** must also undertake not to pay benefits relating to a UK transfer before the member reaches the **Normal Minimum Retirement Age**, unless the member retires due to ill-health.

4.3 Pension Commencement Lump Sum

HMRC regulations require that at least 70% of the member's UK tax relieved funds are used to provide an income for life. In addition, it is an **Income Tax Office** requirement that no more than 25% of the member's fund value can be paid as a lump sum at retirement. However, it should be noted that, subject to the necessary legislation being passed in early 2011, the **Income Tax Office** restriction to 25% will be increased to 30%.

If a member transfers a pension that is already in payment to a **Guernsey QROPS** then no further lump sum should be paid from the **QROPS**.

4.4 Income Drawdown

On retirement members can either purchase an annuity from an insurance company or keep their fund invested with the pension provider and receive an annuity from the **Scheme** by drawing down an income from their fund (more commonly known as Income Drawdown).

If the annuity is not to be purchased from an insurance company, then the following procedure should be adhered to:

- (a) During the **Reporting Period**, trustees should follow the **GAD Tables** when calculating the level of drawdown to avoid a **Member Payment Charge**.
- (b) Outside the **Reporting Period**, if the UK **GAD Tables** are not followed, a quotation should be obtained either from an actuary or from a recognised insurance company. In obtaining such a quotation, the annuity may allow for no increases or for annual increases of a fixed rate of up to 5% per annum, or in line with the **Guernsey** Retail Prices Index. A contingent spouse's annuity not greater than the annuity may be provided for if required by the member. The quotation may take account of any reduced expectation of life for a member in poor health, but it is not compulsory to do so. The level of income drawdown should not normally exceed the quotation obtained but may be less if the member so requests and, in the case of a member resident in **Guernsey**, if the prior agreement of the **Income Tax Office** has been obtained.
- (c) Where a scheme is already in drawdown before transfer to a **QROPS** and the Member is within the **Reporting Period**, it is normal practice for the **Trustee** to match the drawdown schedule and drawdown review dates set by the transferring scheme(s) at least until expiry of the **Reporting Period**.
- (d) There should be periodic reviews to check whether the level of income drawdown remains appropriate given the market value of the remaining assets and the life expectancy of the member.

4.5 Loans to Members

The **Income Tax Office** permits **Trustees** to make loans to members, provided that:

- (a) The total amount advanced at any time does not exceed 25% of the fund value;
- (b) Interest is charged on a commercial basis. Such interest must be paid at least annually and, for these purposes, “commercial basis” means interest should be charged on the loan at a rate no lower than that obtainable on a similar amount deposited with, and not higher than that payable on a similar amount borrowed from, a financial institution;
- (c) The **Trustees** should ensure that they hold sufficient security for the loan, to enable them to enforce repayment at any time; and
- (d) The loan must be repaid before benefits commence to be paid in respect of the member for whom the loan was made.

During the **Reporting Period**, **Trustees** would not normally make loans to members, in order to avoid a **Member Payment Charge**.

4.6 Death Benefits

On death, **Guernsey** regulations permit a **QROPS** with **Approval** to provide either a return of the member’s fund or a pension to the member’s spouse or dependant. However, a **Scheme’s** rules may restrict this further and, during the **Reporting Period**, members may be liable for **Member Payment Charges** if benefits which would be unauthorised in the UK are paid.

5. TRANSFERS OUT

5.1 Member’s Opportunity to Transfer

All requests to transfer from a **QROPS** should be acknowledged and considered in a timely manner. The **Trustees** should confirm that the member has had an opportunity to take appropriate pension transfer and tax advice.

Trustees should exercise their discretion in the best interests of the members, bearing in mind the rules of the **Scheme**, **Income Tax Office** requirements, Guernsey Trust Law, the reputation of Guernsey as a centre of excellence for international pensions and, where the trustees are regulated by the **GFSC**, the regulatory requirements imposed upon them as a licensed fiduciary.

Whilst there is no specific legislation under **Guernsey** law regarding the member’s rights to transfer the pension away from its current **Scheme** (other than in relation to **Guernsey** members of occupational pension schemes), no reasonable request for a transfer of a pension, subject to the above conditions, should be refused.

5.2 Transfers to a Non-QROPS Arrangement

Under **Income Tax Office** requirements for **Approval**, no transfer can be made from a **QROPS** unless the receiving scheme has **QROPS** status itself, or has provisions in respect of benefits that are no more generous than those allowed under the requirements for **Approval**.

6. INVESTMENT

6.1 Need for Investment Advice

Subject to the **Scheme's** documentation ,for example where under the **Scheme's** deed the member is his own investment manager, **Trustees** should always take professional advice on investment matters from a suitably qualified investment adviser unless they have the necessary investment skills and experience themselves. The choice of assets capable of being held within a **QROPS** is wide ranging but, as with any pension portfolio, the suitability of the allowable investments should be carefully considered and, as with all trust arrangements, referenced against the **Scheme's** documentation.

6.2 Income Tax Office Requirements

Trustees should ensure that investments under the **Scheme** are made in accordance with the **Income Tax Office's** conditions of **Approval** and related guidance on investments. **Approval** is subject to the condition that, *inter alia*, notwithstanding anything to the contrary in the **Scheme** documentation, the following investments may be held:

- (i) Equity investment in any company quoted on a recognised stock exchange;
- (ii) Equity investment in companies not quoted on a stock exchange. Where any member of the **Scheme** holds, together with relatives or any other member, more than 15% of the issued share capital of the company, not more than 10% of the total fund shall be invested in the company;
- (iii) Any other investment marketed by a generally recognised financial institution;
- (iv) Loans to members subject to limitations as set out in Section 4.5;
- (v) Purchase of property let on a commercial basis and wholly owned by the **Trustee**.

6.3 HMRC Requirements and Taxable Property

Trustees should not normally hold taxable property within a **QROPS** if the **QROPS** is an **Investment Regulated Pension Scheme**.

Whilst a wide choice of investments is permitted under the **HMRC** rules there are tax charges levied on certain assets under **HMRC** rules (Finance Act 2004, in particular sections 174 and 185). These tax charges relate to the income and gains of "taxable property" which includes residential property and tangible moveable property such as vintage cars, wine, stamps, and fine art.

Where such taxable property is held in an **Investment Regulated Pension Scheme** the reporting requirements continue indefinitely and do not cease on completion of the **Reporting Period**.

6.4 Other Tax Reporting Requirements

In addition there may be tax reporting requirements in other jurisdictions resulting from the ownership of certain types of investments, depending on the tax legislation of the jurisdiction from which the income derives and **Trustees** should take appropriate advice as necessary.

7. TAX ADVICE

It is recommended that any client contemplating a transfer of accrued UK benefits to a **QROPS** should take tax advice at the transfer stage to establish the potential tax planning benefits a **QROPS** may provide depending on *inter alia*: current residence; planned future residence; domicile; potential to return to the UK; requirement for benefits; overall wealth; dependants; health and estate planning/testamentary wishes. The **Trustee** should use reasonable endeavours to ensure that such tax advice has been taken by the client, or that the client has confirmed that no such tax advice is required.

Should the member wish to make additional contributions to the **Scheme**, the **Trustee** should use reasonable endeavours to ensure that appropriate tax advice has been taken in the member's current country of residence. Where a member intends to move jurisdictions, the **Trustee** should use reasonable endeavours to ensure that the member takes appropriate tax advice in advance in relation to the treatment of his benefits in his new country of residence, or that the member has confirmed that no such tax advice is required.

8. MEMBER RELATIONS

8.1 Communications with members

Sales and marketing material should be written using plain English. Any abbreviations or technical terms should be fully explained. Material should be drafted with appropriately displayed and worded caveats indicating potential risks and warnings associated with the offering. Promotional literature should make clear who the product is most suitable for.

Members should be provided with the main terms and conditions applicable to their membership of the **Scheme** and should be granted reasonable access to a copy of the formal trust documentation.

There should be a clear disclosure of all charges and commissions payable.

Members should receive a benefit statement and/or accounts on an annual basis as a minimum.

8.2 Complaint handling

Internal complaint handling processes should be available from the **Trustees** on request. Any complaints should be managed on a timely basis and at an appropriate management level. There should be a process in place to review complaints should the client feel that their complaint has not been handled satisfactorily.

There is, currently, no Financial Ombudsman service in the Bailiwick of Guernsey.

9. COMPLIANCE AND REGULATION

9.1 Guernsey Requirements

QROPS in **Guernsey** are normally established as **RATS** and should therefore be administered by **Trustees** to comply with the Trusts (Guernsey) Law 2007, as amended.

Trustees which operate by way of business are licensed under the Regulation of Fiduciaries, Administration Businesses and Company Directors etc (Bailiwick of Guernsey) Law, 2000 and are regulated by the **GFSC**. At all times such **Trustees** must comply with all regulatory requirements applicable to licensed fiduciaries, including the Code of Practice for Trust Service Providers.

Such **QROPS** should also be administered by the **Trustees** to comply with the conditions of **Approval**. Non-Guernsey resident Members of the **RATS** are afforded tax exemptions under Section 40 (ee) of the **Law**.

9.2 HMRC General Requirements

Trustees should comply with the conditions of **HMRC** recognising **Guernsey** schemes as **QROPS**, namely that:

- a) The **Trustee** has given **HMRC** notification that it is a **ROPS** and has provided such evidence that it is a **ROPS** as **HMRC** may require.
- b) The **Trustee** has undertaken to inform **HMRC** if it ceases to be a **ROPS**.
- c) The **Trustee** has undertaken to **HMRC** to comply with any prescribed information requirement imposed on the **Trustee** (i.e. the name of the country in which the scheme is established and any other information required by an officer of **HMRC**).
- d) The **ROPS** is not excluded from being a **QROPS** because of failure to provide required information.

9.3 HMRC Reporting Requirements

Trustees should comply with their own tax reporting obligations to **HMRC** in respect of any **unauthorised member payment** made in the period of five full tax years after the member ceases to be UK resident. This reporting should continue (including after the five years have elapsed) for reporting **unauthorised member payments** where a member has not ceased UK residence, or to report changes in taxable property by an **Investment Regulated Pension Scheme**.

9.4 Due Diligence

Trustees must complete customer due diligence checks on prospective members.

Trustees must at all times comply with their obligations under the Data Protection (Bailiwick of Guernsey) Law, 2001 in connection with their performance of these obligations.

9.5 Training

Trustees should at all times maintain appropriate and effective procedures to ensure high standards of employee probity and competence.

Trustees should ensure that all employees responsible for the promotion, marketing and administration of **RATS** are suitably qualified and/or experienced to do so. However, no specific **QROPS** qualification is currently available in **Guernsey**.

The **GFSC** requires that comprehensive and on-going training is given to all employees of financial services businesses in the relevant Anti Money Laundering enactments, The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007, and the Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing (“The Handbook”).

GLOSSARY

Approval	Approval under Section 157A of the Law
CA Form	Form CA1881, CA1890 or CA1895 (as appropriate) must be completed before GMP or Protected Rights are transferred to an overseas scheme. The forms are available at http://www.hmrc.gov.uk/nic/forms/ca[xxxx]-notes.pdf
Defined Benefit	Benefits provided under a pension scheme that are calculated by reference to earnings or service of the member for the provision of benefits to or in respect of that member
Defined Contribution	Benefits provided under a pension scheme, the rate or amount of which is calculated by reference to a fund value available for the provision of benefits to or in respect of the member.
GAD Tables	The UK Government Actuary's Department Tables on a single life basis.
GAPP	Guernsey Association of Pension Providers
GFSC	Guernsey Financial Services Commission (www.gfsc.gg)
Guernsey	Guernsey, Herm and Alderney
GMP	Guaranteed Minimum Pension, being a minimum level of pension which had to be provided by UK pension schemes which were contracted out of SERPS
HMRC	Her Majesty's Revenue and Customs – the UK tax enforcement office
Income Tax Office	The States of Guernsey Income Tax Office
Investment Regulated Pension Scheme	A non-occupational scheme is an investment regulated pension scheme where one or more of its members is or has been able (whether directly or indirectly) to direct, influence or advise on the manner of investments held for the purposes of an arrangement under the scheme relating to the member. It also applies where the condition is satisfied by a person related to the member. An occupational scheme or a particular class or classes of members within an occupational scheme may be an investment regulated pension scheme where similar self direction tests are met.
Law	The Income Tax (Guernsey) Law 1975, as amended. A copy of the Law is available at http://www.gov.gg/ccm/navigation/income-tax/income-tax-legislation/income-tax--guernsey--law-1975/
Member Payment Charge	Tax due under section 208 of the UK Finance Act 2004 on either unauthorised member payments or unauthorised employer payments.
NISPI	National Insurance Services to Pensions Industry, part of the National Insurance Contributions Office.
Normal minimum retirement age	In the UK this is age 55 on or after 6 April 2010.
OPS	Overseas Pension Scheme

Pension commencement lump sum	A lump sum benefit paid to a member of a registered pension scheme (who is aged under 75) in connection with an arising entitlement to a pension benefit (other than a short-term annuity contract), and which meets the conditions detailed in paragraphs 1 to 3 of Schedule 29 to the Finance Act 2004.
Protected Rights	A minimum level of pension which had to be provided by UK pension schemes which were contracted out of the UK State second pension.
QNUPS	<p>A QNUPS is an overseas pension scheme which may operate in a similar manner to a QROPS. Under the UK Inheritance Tax (Qualifying Non-UK Pension Schemes) Regulations 2010 a QNUPS must broadly satisfy the same conditions necessary for either a QROPS, a ROPS or an OPS as set out in the UK Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 (as amended).</p> <p>Therefore whilst most QROPS will also be QNUPS, certain more flexible ROPS and OPS based overseas schemes are also capable of being QNUPS. A QNUPS (unless it is also a QROPS) is not required to report benefit crystallisation events to HMRC.</p>
QROPS	Qualifying Recognised Overseas Pension Scheme -per section 150(7) Finance Act 2004.
RATS	Retirement Annuity Trust Scheme
Recognised	Acknowledged as a bone fide pension arrangement in the jurisdiction where established
Reporting Period	Five full tax years after a member has ceased to be resident in the UK
ROPS	Recognised Overseas Pension Scheme
RPSM	The HMRC manual – Registered Pension Scheme Manual
Scheme	The QROPS of which the Trustee is the trustee
SERPS	States Earnings Related Pension Scheme in the UK
Transfer Value Analysis	A calculation which allows a scheme member to compare the benefits of a defined benefit pension with the alternatives available within a defined contribution scheme. It should also include a "critical yield" which indicates how fast a replacement defined contribution scheme will have to grow to match the benefits in the defined benefit scheme.
Trustee	The trustee or trustees of the QROPS
Unauthorised member payment	<p>An unauthorised member payment is</p> <ul style="list-style-type: none"> • a payment by a registered pension scheme to or in respect of a member or a former member of that pension scheme that is not an authorised member payment, or • anything which is treated as being an unauthorised payment to or in respect of a member or former member under Part 4 of the UK Finance Act 2004.