

Revision of Laws – changes to the enforcement regime

Update prepared by Gordon Dawes and Iona Mitchell (Guernsey).

In this Update, we consider some of the key changes to Guernsey's enforcement provisions as a result of the Revision of Laws project.

Introduction

On 1 November 2021 Guernsey's new regulatory, supervisory and enforcement legislation came into effect. On the same date, the Guernsey Financial Services Commission (the **Commission**) published its updated Explanatory Notes accompanying the enforcement legislation ([here](#)).

In this Update, we outline some of the key changes made to the enforcement regime by the new Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020 (the **New Enforcement Law**).

The New Enforcement Law applies to all enforcement action, including anything commenced before 1 November 2021.

Purpose of the New Enforcement Law

One of the main reasons for the New Enforcement Law was to consolidate all enforcement powers, previously found across the industry-specific laws, into a newly enacted enforcement law. This is a welcome development, as it avoids unnecessary cross-referencing. Another reason was to deal with inconsistencies, which is useful, and to distinguish more clearly between the supervision and enforcement regimes.

In addition, the New Enforcement Law goes beyond consolidation to make substantive changes and additions to the enforcement regime.

Notable changes

Policing the regulatory perimeter

One of the Commission's stated aims in bringing in the New Enforcement Law was to extend its enforcement powers to any individual or business carrying out activities without the appropriate permission.

This is borne out in the new legislation, which extends the 'regulatory perimeter'. For example, as we stated in a recent [Update](#) in this series, the definition of 'relevant person' in respect of whom the Commission has information-gathering powers is now extremely wide. Most of the other enforcement powers also now apply beyond licensees and authorised/registered funds.

The New Enforcement Law goes a lot further than previously in giving ongoing powers to the Commission to police enforcement itself, for example extending discretionary financial penalties to breach of any prohibition, restriction, condition, obligation or enforcement requirement.

Suspension of a licence, authorisation or registration

The previous regulatory laws were silent on the effect of suspension of a licence, authorisation or registration. The New Enforcement Law provides that licensees and funds remain subject to regulatory requirements during the period of suspension.

The Commission also now has the power to **impose** a licence on a person that has not applied for one, meaning that the person will be subject to all obligations of a licensee. This power previously only applied under the legislation regulating insurance business.

Enforcement requirements

Under the New Enforcement Law, enforcement requirements may be imposed not just on licensees, funds and former licensees and funds, but also on **other persons** ('accountable persons'). Accountable persons includes employees and officers of a licensee and/or a fund. This is significant as the Commission is bringing more persons within its reach.

The New Enforcement Law places a six-year time limit on the Commission's power to impose enforcement requirements on **former** licensees and **former** authorised registered funds, although this can be extended.

Persons in relation to whom the Commission may apply to court for an Administration Management Order

Under the New Enforcement Law, the Commission may apply to court for an Administration Management Order in respect of not only licensees and authorised registered funds, but now also:

- persons otherwise carrying on regulated business, and
- persons who have applied for a licence or an authorisation registration as a fund (ie before it has been granted or refused).

The Commission currently has these powers in respect of applications for licences and authorisations/registrations under the POI Law, but the new provisions are wider as they apply to all sectors. This is a common feature of the changes.

The 28-day representations period

When the Commission makes certain types of enforcement decisions, it issues a 'minded to' notice to say that it proposes to reach that decision, and the respondent has 28 days to make representations. Under the previous regulatory laws, the Commission did not have the power to extend this representations period.

We are aware of at least one case where the Commission was able to, in effect, extend the period, but it involved procedural gymnastics. A welcome development in the New Enforcement Law is that it permits the Commission to extend the 28-day period.

Conclusion

Although it is a consolidation, the New Enforcement Law also makes many substantive changes to the regime, with the theme being the expansion of the regulatory perimeter.

There are a number of changes to the enforcement sanctions and we are going to issue a separate Update on this topic in the coming weeks.

We suggest obtaining early legal advice if you are concerned about possible regulatory enforcement.

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