

Revision of Laws – looking at 'universal' provisions across the industry sectors

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In this Update we highlight some of the provisions in Guernsey's new regulatory and supervisory legislation that are universal across the different industry sectors.

Introduction

By way of recap, the Bailiwick of Guernsey's (**Guernsey**) new regulatory, supervisory and enforcement legislation will come into force on **1 November 2021** – less than two weeks' time!

Last week, we provided an overview of the legislation concerned and the rationale for its change ([here](#)).

As noted, one of the reasons for updating the regulatory and supervisory laws (**regulatory laws**) and introducing a separate enforcement powers law, is to create efficiency by 'standardising' across the industry sectors, ie investment, fiduciary, banking and insurance.

In this week's Update, we look at some of the universal changes that standardise and align the new regulatory laws.

Universal changes

- **Enforcement** has been removed from the current regulatory laws and dealt with in a newly created enforcement powers law, the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020 (**Enforcement Powers Law**). The intention is to distinguish between 'supervision' and 'enforcement' and ensure a consistent approach to enforcement. For example, the Guernsey Financial Services Commission's (the **Commission**) powers to object to names, make prohibition orders, revoke licences, seek warrants or injunctions, among others, have been moved into the Enforcement Powers Law.
- **Definitions** have been updated throughout, out of date and redundant definitions removed and new ones introduced, for example 'auditor', 'compliance officer', 'contravention', 'documents' and 'person'.
- **Electronic communication** provisions have been modernised to facilitate electronic transmission, notably in relation to service of notices and documents. The definition of 'documents' includes information stored or recorded 'in electronic form'; and 'advertising' includes advertising by 'electronic means'.
- **Change of control terminology** has been revised and aligned across the regulatory laws although the persons/roles/positions that sit under the standard terminology, and the notification requirements, vary according to the industry sector concerned. This divergence is to follow international standards which differ according to the industry sector. We will cover this in next week's Update.
- **Deemed withdrawal of applications** is facilitated in relation to applications which have been inactive or for which applicants have failed to provide the Commission with the requisite information and/or documentation within a period of **three months**. Under the current legislation, the applicant can only initiate withdrawal of an application.
- **Surrender of a permission** will require the Commission's prior written consent which can be refused in certain circumstances, eg in the Commission's opinion, the liabilities of the permission holder have not

been discharged or transferred. This is to ensure that a permission is only surrendered in appropriate circumstances and without prejudice to the interests of the public.

- **Notification of changes to facts and/or circumstances in relation to exemptions** must be given to the Commission within **fourteen days**. This is to ensure that the facts and/or circumstances justifying the exemption remain unchanged. Similar notification requirements apply to the insurance sector in relation to directions of the Commission having the effect of an exemption.
- **Appointment of skilled persons** provisions replace the current provisions regarding 'inspectors'. These new provisions have a broad application in that they apply to permission holders, applicants, former permission holders (in the previous six years), exempt persons, holders of supervised roles, associated parties, functionaries such as auditors and any other person so prescribed (**inspected persons**). The Commission can appoint, or require the inspected person to appoint, a skilled person to investigate and report back to the Commission on the nature, conduct and/or state of the inspected person's business and/or its control or ownership.
- **Retention of documents** provisions require that permission holders, exempt persons and any other person prescribed by the Commission must retain information and documents for **six years** after they ceased to be a permission holder or exempt person.
- **Request for meetings** with auditors, actuaries, associated parties or officers of, or holders of supervised roles in respect of, (former) permission holders is a new power which overrides confidentiality and contractual requirements to seek permission from/inform a third party (but not legal professional privilege). The Commission can only strictly 'request', ie not require, such meetings and accordingly a person can decline to attend (however there are consequences for failure to comply).
- **Requirement to maintain list of permission holders** which the Commission publishes on its website is substantially re-written and expanded. In particular, the Commission **must** (rather than may, as currently) publish the fact that a permission holder has ceased to hold, or surrendered, its permission (for whatever reason).
- **Obligation to be open and honest** is enacted into the new legislation. Principle 10 of the Principles of Conduct of Finance Business has been incorporated in the regulatory laws in order to balance the Commission's legal duty to act reasonably and proportionately in the exercise of its functions.

This is not an exhaustive list of changes in common – there are more.

In next week's Update we will consider notable changes which are industry specific, as well as some areas which remain intentionally inconsistent.

Conclusion: is there anything you need to do before 1 November 2021?

All licences, authorisations, registrations, exemptions, conditions and derogations currently in place will continue under the new legislation.

A reminder however in relation to current 'joint' fiduciary licensees: all existing lead licensees will automatically convert to **primary** licensees and, unless written notice is given to the Commission to the contrary, joint licensees will convert to **secondary** licensees on **1 November 2021**. Under the new legislation, a primary fiduciary licensee may **not** have a corporate director and a secondary fiduciary licensee must **not** be actively trading. The Commission's notice to fiduciary licensees explaining the re-categorisation process is available [here](#).

From an operational point of view, the Commission's Online Submissions Portal will not be available between 17:00 on **Friday 29 October 2021** and 22:00 on **Sunday 31 October 2021**. Therefore any returns with a filing deadline of 31 October 2021, eg Financial Crime Risk Returns, should be submitted by **17:00 on Friday 29 October 2021** (with a grace period until close of business on Monday 1 November 2021).

If you require legal advice in respect of any of the matters covered in this Update, or otherwise related to the new regulatory laws, please do get in touch.

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