

Revision of Laws – notable changes

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In this Update, we look at some of the more notable changes that have been made to Guernsey's new regulatory and supervisory legislation across the industry sectors.

Introduction

For a quick recap on Guernsey's new regulatory, supervisory and enforcement laws, which are coming into force next week on **1 November 2021**, view our Update [here](#).

Following on from last week's Update ([here](#)), we now take a closer look at certain changes that have been made across the industry sectors; some of which are new provisions and others which have been substantially rewritten.

Change of control

The new regulatory laws use new and revised terminology across all industry sectors in order to align them and create certainty. This is particularly significant where an entity is licensed under more than one regulatory law.

Notably so in relation to change of control and the introduction of the concept of a 'Supervised Role', which comprises three categories, namely 'Approved Supervised Roles', 'Vetted Supervised Roles' and 'Notified Supervised Roles'. The persons, roles, positions and/or interests that fall into those categories, and their respective notification requirements (or for whom written approval or confirmation of no objection must be sought), however, vary according to the industry sector concerned. This 'divergence' is intentional as each industry sector follows its own international regulatory standard. It is therefore important to be aware of these new categories of Supervised Role and who falls into which category, as failure to notify within the requisite period is an offence.

'Relevant persons'

The range of persons from whom the Guernsey Financial Services Commission (the **Commission**) can obtain information and/or documents (a **relevant person**) has been broadened so that it is not limited to licensees and their management and controllers.

Under the new regulatory laws, a relevant person includes, among others, exempt persons, unsupervised group entities, special purpose vehicles, associated parties, funds and auditors of a relevant person. Failure to comply with such a request is an offence.

The requirement to furnish information and/or documents overrides any duty of confidentiality or other restriction on disclosure of information but it cannot compel the disclosure of a communication subject to legal professional privilege, other than the name and address, including any email address, of any client.

Meetings with auditors and holders of Supervised Roles

New provisions permit the Commission to request bi-lateral meetings, ie not in the presence of the licensee, with a range of persons including a licensee's auditors, actuaries, general representatives or

authorised insurance representatives and holders of supervised roles to discuss any aspect of the operation, regulation or licensing of a permission holder and whenever the Commission considers necessary. The Commission may also impose confidentiality provisions around such meetings and the auditors or others meeting with the Commission will not be in breach of their obligations of confidentiality in doing so.

Power to issue directions

Directions allow the Commission to impose a requirement on a 'directed person' to do, or not to do, something. However they only currently apply where a licence is surrendered or revoked.

Under the new regulatory laws, the Commission's power to issue directions has been enhanced (and introduced in respect of the Protection of Investors (Bailiwick of Guernsey) Law, 2020) so that they are available as a regulatory tool at any time. Moreover their application is general rather than limited so as to apply to a wider range of persons, including holders of Supervised Roles and exempt persons. For example, the Commission can require the removal of an auditor of the directed person. The Commission can publish the imposition of directions on its website.

Increased penalties and new offences

While enforcement provisions are dealt with under a new Enforcement Powers Law, penalties in the new regulatory laws, to the extent that they remain, have in some cases increased with certain fine limits doubled to twice level 5 (currently level 5 is £10,000) and the term of imprisonment on summary conviction for certain offences doubled to six months.

New offences have also been introduced. For example, failure to notify the Commission in writing **within 14 days** of becoming aware of any change of fact, circumstances or information supplied to the Commission in relation to an exemption (which includes a discretionary exemption) is not only a ground for refusal or revocation of the exemption but also an offence.

Fees

The Commission's powers to set fee regulations have been made substantially similar and expanded across the new regulatory laws (which currently significantly vary). Monies due to the Commission are recoverable as a civil debt and the Commission can charge interest on late payments.

Conclusion

In next week's Update, we will look at industry specific changes.

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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