

UPDATE

Update on Pension Regulation in Jersey

Update prepared by Ed Devenport (Partner, Jersey) and Carly McIver (Senior Associate, Jersey)

Government of Jersey outlines proposed private pensions regulations: Implications for lay trustees.

The Government of Jersey announced in December 2020 that the phased introduction of regulation of private pensions provided by local financial services businesses is to proceed following two consultations on the matter in 2018 and 2019.

Phasing

Whilst neither the regulations nor a timetable for their introduction has been published, it has been proposed that the implementation of such regulation will take place over three phases:

1. **Phase 1:** addressing what the Government describes as "key consumer harms" in the market (such as high service provider fees and unsuitable advice by regulating investment businesses service providers);
2. **Phase 2:** extending the remit of the Channel Islands Financial Ombudsman (the CIFO);
3. **Phase 3:** regulating all local tax-approved pension products and service providers (including providers in the retail market, and the private market).

Whilst the scope of the regulations is not yet known, the Government has sought to alleviate concerns that the proposed regulations will unduly burden Jersey pension providers by clarifying that the regulations will "focus on the specific risks in the Jersey market and seek to avoid over-burdening providers with onerous record-keeping and reporting, so that it can remain cost-effective".

Extending the remit of the CIFO and implications for lay trustees

Trustees of approved Jersey schemes should note the proposals to extend the current remit of the CIFO to include all private pension schemes in the second phase of regulation. The Government intends that this move will "equalise the standards required of lay and professional trustees".

Whilst most of the Government's briefing only serves to provide an outline of the proposed regulations, this stated equalisation of treatment between lay and professional trustees is a notable development.

Potential effect of regulation of lay trustees

The regulation of lay trustees proved to be contentious topic through both stages of the pensions regulation consultation process that commenced in November 2018. This announcement is the first confirmation that the Government wishes to proceed with such regulation.

The Government's proposal to regulate lay trustees marks a departure from the approach taken in Guernsey, where the regulation explicitly excludes such persons from its remit. As such, for lay trustees, Jersey will move to a more stringent regulatory regime when compared to Guernsey.

Although this will entail some benefits, such as moving towards a 'gold standard' of regulation, ensuring parity in the treatment and expectations of all pension scheme trustees and aiming to ensure a better service for members, it does carry with it some drawbacks.

This is particularly for members of such pension schemes, who may have previously been encouraged to take an active role in the management of their scheme through becoming trustees, but for whom regulation proves too much of a barrier.

The same may also be true of existing lay trustees, who may choose to vacate their position prior to such regulation coming into effect, potentially leading to a loss of historic scheme and employee knowledge from the trustee boards of long-standing schemes.

Going forward

Without sight of the specific requirements of the regulations, it is not possible for trustees to effectively 'futureproof' their practices in light of the coming changes. Trustees may, however, wish to review their current administrative and member communication processes in the meantime to ensure that such procedures are efficient, transparent and robust.

Mourant Ozannes is able to assist trustees of approved Jersey schemes to consider their current processes and consider the implications of such regulation going forward.

Contacts



Edward Devenport
Partner, Mourant Ozannes
Jersey
+44 1534 676 366
edward.devenport@mourant.com



Carly McIver
Senior Associate
Jersey
+44 1534 676 064
carly.mciver@mourant.com

This update is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this update, please get in touch with one of your usual contacts. © 2021 MOURANT OZANNES ALL RIGHTS RESERVED