

The Commission's powers under the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022

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This Update provides a summary of the powers of the Guernsey Financial Services Commission (the **Commission**) under The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022.

Introduction

The *Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022* (the **LCF Law**) creates a new statutory framework by requiring specified financial services businesses and service providers that offer or intermediate certain services in or from within the Bailiwick of Guernsey to be licensed by the Commission to do so. For an overview of the licensing regime, see our Update [here](#). The definitions of the categories of licences used in that Update also apply.

The Commission's general enforcement powers under the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020 (the **Enforcement Law**) apply in respect of licensees regulated by the LCF Law. In addition, the LCF Law contains a number of sector-specific provisions relating to supervision, sanctions and offences, which are dealt with in this Update.

Failure to obtain a licence

From 1 July 2023 it will be an offence for a person or a Bailiwick body, in or from within the Bailiwick, to carry on any business activity that is within the scope of the LCF Law without a licence (or exemption, if eligible).

A person found guilty of committing such an offence will be liable:

- on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding twice level 5 on the uniform scale (currently £10,000), or to both, or
- on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

Principles of conduct for licensees

The LCF Law contains a general requirement (mirroring the Enforcement Law), that a licensee deal with the Commission in an open and cooperative manner and keep the Commission promptly informed of anything concerning it or its business, or the regulated business in relation to which it is acting as licensee, which ought reasonably to be disclosed to the Commission.

In addition, the LCF Law imposes a number of specific reporting requirements on licensees related to supervised roles, audited accounts and auditors (sections 45(5), 57(4), 58(7) and 58(8) of the LCF Law).

A person found guilty of breaching any of these requirements will be liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale (currently £10,000) or on conviction on indictment to a fine.

Supervisory powers

In addition to the above requirements, the LCF Law grants the Commission supervisory powers so that it can manage, monitor and, if needed, take enforcement action. These include:

The power to apply conditions to a Part II Licence (section 14(1)), Part III Licence (section 24(1)) or Part IV Licence (section 35(1))

The Commission has wide ranging powers to impose such conditions in respect of Part II, Part III and Part IV licensees as it thinks fit. By way of example only, since there is not an exhaustive list, this may include requiring licensees to take certain steps, refrain from certain courses of actions or impose limitations on business.

The power to give directions (section 39(1))

The Commission can at any time, provided it gives notice in writing, require that a '*directed person*' does or does not do anything as appears to the Commission to be necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre. The categories of person in respect of which such a direction may be made are wide ranging and include licensees, former licensees, officers and employees of licensees and persons exempt from requiring a licence.

The power to require the production of information and documents (section 53(1))

The Commission can, again provided it gives notice in writing, require a 'relevant person' to produce information and documents. The definition of 'relevant person' is broad and includes licensees, applicants for a licence, their employees and former employees and persons exempt from requiring a licence.

Upon receipt of the written notice, the receiving party is obligated to comply notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise (section 53(7)).

The only statutory exemption under the LCF Law to this disclosure requirement is where the information or document is subject to legal professional privilege (section 53(8)). However, in such circumstances, the Commission still have the power to contact the Advocate or other legal adviser to request the name and address (including an electronic address) of their client and ultimately seek disclosure.

General powers to investigate (section 54(4))

These powers to investigate extend to: (i) a licensee, (ii) anyone carrying on business regulated by the LCF Law, or (iii) anyone performing a function for or on behalf of a licensee or agent of a licensee (an **Inspected Person**) (section 54(4)).

The Commission can appoint or, alternatively, require the Inspected Person to appoint one or more skilled people to report on the nature, conduct or state of the business of the Inspected Person or any particular aspect of the business or the ownership and control of the Inspected Person (section 54(3)). There is a requirement to give all reasonable assistance to the person investigating (section 54(7)) and that includes providing documents and answering questions.

It is an offence if any person either does (or causes or permits) documents to be removed, concealed, tampered with, falsified, destroyed or otherwise disposed of in circumstances where they had reasonable grounds to suspect that the documents may be required by the Commission for any investigation (section 55).

Power to require meetings with auditors, actuaries, etc (section 60)

The Commission may by notice in writing request that a meeting be held, at such time, place and for such purposes as may be mutually agreed, with the auditors, actuaries, associated parties or officers of, or holder of supervised roles in respect of, a licensee or former licensee (the **Client**). At such meeting the Commission can discuss any aspect of the operation, regulation or licensing of the Client (section 60(1)) and can request information or documents and may ask questions (section 60(2)).

Control of advertising (section 61)

Section 61(1) empowers the Commission to make rules in respect of the issue, content and form of advertisements and this has been provided for in Rule 7.3 of the Lending, Credit and Finance Rules and Guidance, 2023 (the **LCF Rules**), which contains requirements in respect of:

- The issue of materials
- Specific requirements of Part II Licensees, and
- Virtual asset advertisements

In addition, the Commission can give directions in respect of advertisements issued or proposed to be issued, which can include prohibiting the issue of any advertisement, requiring all practical steps to be taken to withdraw an advertisement or requiring any advertisement to be modified (section 61(8)). The Commission can give these directions orally, but they must be confirmed by the Commission in writing no later than the next business day.

A person who issues or causes or permits to be issued, in or from within the Bailiwick or (in the case of a Bailiwick body) in or from within any place whatsoever, an advertisement the issue of which is prohibited by the LCF Rules or which otherwise contravenes any provision of such rules is guilty of an offence (section 61(3)).

A person found guilty of such an offence will be liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale (currently £10,000) or on conviction on indictment to a fine (section 73(1)).

Power to make regulations in respect of the making of unsolicited calls (section 62(2))

Section 62 of the LCF Law makes provision for regulations concerning the making of unsolicited calls to persons in the Bailiwick, or from the Bailiwick to persons elsewhere, with a view to soliciting those person or others to become a customer or client of or use the services provided by businesses regulated by the LCF Law.

No relevant regulations have been issued yet.

Offences

A person found guilty of failing to comply with the supervisory powers under the LCF Law listed above, with the exception of section 61(3) relating to prohibited advertisements, will be liable:

- on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding twice level 5 on the uniform scale (currently £10,000), or to both, or
- on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both (see sections 14(5), 35(5), 39(8), 40(9), 53(10), 54(10), 55, 60(4)(b), 62(3), 69(2) and 71(7) of the LCF Law).

Criminal liability of directors etc

Where an offence under the LCF Law is committed by a company or other legal person, certain individuals may also be guilty of the offence where it is proved to have been committed with their consent or connivance or was attributable to any neglect on their part (section 74(1)). This applies to a director, controller, secretary or other similar officer, equivalent positions in a limited partnership, limited liability partnership and foundation, as well as anyone purporting to act in that capacity. Members may also be liable where they manage the affairs of the legal person.

Appeals

Before the Commission makes certain decisions, in respect of which a right of appeal is conferred, such as to impose a condition or give a direction, the Commission will issue a 'minded to' notice to say that it proposes to reach that decision. The respondent has **28 days** to make representations and the Commission then reaches a decision, having taken account of any representations.

Any appeal of the Commission's decision is to the Royal Court and must be made within **28 days** of the notice of the Commission's decision. The grounds for appeal under the LCF Law are that:

- the decision was ultra vires or there was some other error of law

- the decision was unreasonable
- the decision was made in bad faith
- there was a lack of proportionality, or
- there was a material error as to the facts or as to the procedure.

On appeal, the Royal Court may set the decision of the Commission aside and, if the Royal Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Royal Court thinks fit. Alternatively, the Royal Court can confirm the decision in whole or in part.

The decision of the Royal Court can be appealed to the Court of Appeal, provided the applicant has the leave of the Royal Court or the Court of Appeal and the appeal is based on a question of law.

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