

## New pension and fiduciary rules coming in Guernsey: What do licensees need to do now?

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Following extensive consultation with industry, in February 2020 the Guernsey Financial Services Commission (GFSC) issued its final rules and guidance under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000.

The Fiduciary Rules and Guidance, 2020 (Fiduciary Rules) and The Pension Scheme and Gratuity Scheme Rules and Guidance, 2020 (Pension Scheme Rules) both come into force on 31 December 2020.

### **The Fiduciary Rules**

#### **Why introduced?**

A key intention in the introduction of the Fiduciary Rules is to consolidate and strengthen the existing regulatory framework, to replace existing GFSC Codes of Practice and bring the regime into compliance with the Group of International Finance Centre Supervisors standards. This includes consolidating and replacing the existing Codes of Practice, the Regulation of Fiduciaries (Accounts) Rules, 2001 and the Financial Resources Requirements Rules, 2018. The Fiduciary Rules also replace The Pension Licensees (Conduct of Business) & Domestic and International Pension Scheme and Gratuity Scheme Rules (No. 2) 2017 (2017 Rules) 1 to 9 and removes elements of duplication.

#### **Who do they apply to?**

The Fiduciary Rules will apply to all fiduciary licence holders, holding a licence issued under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000. Note that some of the rules only apply to full fiduciary licence holders and not personal licence holders, for example, Rule 2.1 (Corporate Governance).

#### **What has changed?**

Some of the key areas that will change and/or become more prescribed with the introduction of the Fiduciary Rules are:

- New banking and client money rules
- PI insurance requirements
- Outsourcing
- Record keeping
- Terms of business
- Complaints

- Employee screening and training
- Communications to clients
- Additional rules for fiduciaries acting as trustees
- Additional rules for corporate service providers and directors
- Additional rules for foundation service providers.

The Rules themselves set out the standards to be met by the licensed fiduciary and the guidance notes set out the GFSC's suggested ways of showing compliance with the Rules. Licensees may adopt alternative measures to those set out in the guidance as long as they can demonstrate those measures achieve compliance.

## **The Pension Scheme Rules**

### **Why introduced?**

The Pension Scheme and Gratuity Scheme Rules and Guidance, 2020 (Pension Scheme Rules) are intended to revise the existing framework, brought into effect in 2017 by The Pension Licensees (Conduct of Business) & Domestic and International Pension Scheme and Gratuity Scheme Rules (No. 2) 2017, with the benefit of experience and feedback from industry.

### **Who do they apply to?**

The Pension Scheme Rules apply (except where otherwise provided) to all holders of fiduciary licenses, licensed to carry on the formation, management or administration of pension schemes or gratuity schemes (Schemes) and in respect of all Schemes formed, managed or administered by them.

### **What has changed?**

The Pension Scheme Rules revoke and replace the following:

- Pension Licensees (Conduct of Business) & Domestic and International Pension Scheme and Gratuity Scheme Rules 2017 and the No. 2 2017 Rules
- Retirement Annuity Trust Scheme Rules, 2015
- Retirement Annuity Trust Scheme Rules, 2010.

There are a few key areas we highlight that differ from or extend the existing regime:

- There is a new fair treatment of Scheme members rule
- Self assessment has now been confirmed as an annual requirement (previously this was "periodically")
- There are a number of reporting requirements updates – for example to the notification of establishment of a Scheme, the transfer or termination of a Scheme. Quarterly and annual reporting has now been confirmed.
- Change to the definition of "defined benefit", which has been broadened from the 2017 rules.

- New actuarial valuation requirements imposed
- Updated documentation requirements – for example, clarification has been given as to what needs to be included and provided to Scheme members, the requirement to record terms of appointment and the regulatory status of service providers.
- Updated contribution schedule requirements
- New requirement to notify members where a plan may be exhausted by charges and member may be unlikely to benefit
- Confirmed annual reporting requirement
- Updated defined contribution benefit statement – licensees now need to provide an asset performance statement to members.

## **What do licensees need to do?**

The Fiduciary Rules and the Pension Scheme Rules both state that licensees must complete amendments to their internal controls to ensure compliance with the rules by 31 December 2020.

It is likely the practices, policies and procedures of most licensed fiduciaries will already comply with the majority of the Fiduciary Rules. However, because there are some important changes and some more prescriptive details introduced, it is necessary that all licensees undertake a review of (by way of example):

- Documentation, including for example, internal compliance/policy/procedure documents, standard terms and conditions, external agreements (e.g. with investment advisers or for outsourced functions)
- Internal policies and procedures themselves
- Client money controls
- PI insurance coverage
- Employee screening and training - relevant employees should also be made expressly aware of the changes and practically how this affects their day to day operations
- Communication with clients
- Reporting and provision of information to members of Schemes
- Reporting procedures (for GFSC reporting).

In addition, licensees must have policies and procedures in place to comply with the Fiduciary Rules themselves.

## **How can we help?**

The team at Collas Crill LLP and Collas Crill Compliance Ltd have a breadth of experience in dealing with legal and regulatory issues for licensed fiduciaries and pension service providers, from reviewing documentation, ensuring compliance with the new rules and offering advice on any areas of potential non-compliance or remedial action.

We would be delighted to health check your existing working practices and to answer any questions that you may have about these changes.

# COLLAS CRILL

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