Guernsey Financial Services Commission

Modernisation of Pensions Supervision

FEEDBACK ON THE DISCUSSION PAPER ISSUED BY THE GUERNSEY FINANCIAL SERVICES COMMISSION OCTOBER 2016

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CONSULTATION ON THE PENSION LICENSEES (CONDUCT OF BUSINESS) & DOMESTIC AND INTERNATIONAL SCHEME RULES 2017

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(ON BEHALF OF THE POLICY & RESOURCES COMMITTEE)

CONSULTATION ON THE REGULATION OF FIDUCIARIES, ADMINISTRATION BUSINESSES AND COMPANY DIRECTORS, ETC. (BAILIWICK OF GUERNSEY) (PENSIONS AMENDMENT) REGULATIONS, 2017

This feedback paper reports on input received by the Guernsey Financial Services Commission on the Discussion Paper entitled "Proposals to Revise and Modernise the Bailiwick's Regulatory and Supervisory Framework for the Provision of Pensions Products" issued in October 2016 and a consequent consultation on proposed Pension Licensees (Conduct of Business) and Domestic and International Scheme Rules, which can be found via this link, and other related changes. This paper also includes, for consultation on its behalf, Policy & Resources' proposed associated amendments to The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 ("the Fiduciaries Law") making the formation, management or administration of pension schemes regulated activities, as referred to in the Policy & Resources Committee Policy Letter 'A Regulatory Framework for Pension Schemes and Their Providers' lodged with the Greffe on 27th April, 2017.

Further enquiries regarding this feedback paper may be directed to:

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1: Executive Summary

1.1 Background

This paper details and responds to the feedback received on the Discussion Paper ("DP").

Following initial engagement between representatives of the pension sector and the Guernsey Financial Services Commission (GFSC) during 2015 and early 2016, the Committee for Economic Development requested the GFSC to lead a review with the objective of modernising the regulatory framework for private pensions.

In October 2016, as a result of a request from the States, the Commission published a DP on the supervision and regulation of pension schemes and providers. This DP outlined a suggestion to revise and modernise the Bailiwick's regulatory and supervisory framework of pension schemes and their providers.

The goals set out were threefold:

- to better protect the interests of beneficial owners of pension schemes;
- to future proof the supervisory framework ahead of the introduction of the States secondary pension scheme; and
- to improve the competitive position of the Bailiwick.

Whilst, the Bailiwick has a deserved reputation for excellence in the regulation and supervision of financial service firms, the scope of that regulation and supervision does not presently extend to the regulation and supervision of firms expressly for the purposes of providing services to pensions' schemes nor specifically to the schemes themselves. The proposal in the DP was to introduce such a regime to rectify this issue.

It is imperative to the Bailiwick's reputation that consistent standards coupled with appropriate preventative and precautionary measures are in place which protect the consumer, prevent exploitation by firms or sponsors including employers and enable consumers to receive financial services and products that are suitable to their needs and that regulatory standards meet International Organisation of Pension Supervisors ("IOPS"), requirements and restrictions are consistent, and in accordance with modern expectations and standards.

1.2 Feedback received

The DP was issued publicly. There was overwhelming support for the goals and proposal above and significantly for rapid movement in order for the Bailiwick to meet relevant international reporting requirements. Further detail is in section 2.

The Commission is grateful to the respondents for taking the time to consider and comment on the DP. Responses to the DP were received from the Guernsey Association of Pension Providers, numerous licensed fiduciary firms and other stakeholders including the States of Guernsey.

1.3 Proposals

As a result of the feedback and following subsequent dialogue with the States of Guernsey and further industry engagement, the GFSC is making immediate moves to enhance its current approach and expand the scope of its supervisory activity to pension schemes through rules, issued under powers reserved to it under the Fiduciaries Law, encompassing the proposed new regulated activities of formation, administration and management of pensions schemes.

These proposals take the form of a set of conduct of business rules applying to pension providers and schemes and importantly requiring scheme notification and reporting. These will, amongst other things, enable Guernsey firms to apply an exemption to Common Reporting Standard ("CRS") reporting to pensions schemes conforming to criteria set out by Income Tax, but more importantly will in the eyes of the Commission create a regime that more closely conforms to international supervisory practice.

The extent of the applicable scope of the regulated activity and by construction, the rules, is determined by the proposed Policy & Resources Committee amendment to the Fiduciaries Law. This sets out the definition of pensions schemes to which the new law will apply. The amendment is also attached to this document for consultation and comments are invited on behalf of the Policy & Resources Committee on this proposed definition and scope.

1.4 Next steps

The proposed Pension Licensee and Scheme Conduct of Business Rules are published today for consultation. In light of the requirement for the scheme to be in force prior the CRS reporting deadline, the consultation period, with the prior notification to industry associations, has been truncated and ends 9.00am, 5th June 2017.

It is intended that the regime will come into force on the 30th June 2017. Transitional arrangements will apply, please see section 4 for further details.

Comments on this consultation paper may be directed to:

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2: Summary of Feedback and Commission Response

Responses to the DP were received from the Guernsey Association of Pension Providers, numerous licensed fiduciary firms and other stakeholders including the States of Guernsey.

There was overwhelming support for the goals and proposal as outlined in section 1 above. No specific proposals were included in the discussion paper. This section attempts to provide a summary of certain areas or points suggested by the Commission where the consensus provided in response differed and the Commissions' response to that.

Suggestion:

"A new regulatory and supervisory framework would apply to all defined contribution pension arrangements ('DC schemes') administered in Guernsey and/or marketed as pensions by firms licensed by the Commission. All types of schemes would be included: employer; group and personal; trust-based or contract-based, although requirements would differ across each".

The consensus response was of clear support for the scope of regulation and supervision to be cast across all types of schemes. However, respondents in general suggested that limitation to DC schemes was not preferred and argued in favour of inclusion of defined benefit ("DB") schemes but with a caveat that the specifics of any (scheme) solvency would need to be subject to separate discussion. The Commission has taken this view on board and the DB will be in the scope of the general rules but not include any specific rules to solvency issues.

Suggestion:

"The introduction of any new framework would be forward looking. It would ideally apply to newly introduced or marketed schemes."

The Commissions' suggestion had been motivated by a desire to minimise the impact of regulatory change. However, the clear, unanimous view of respondents was that universal application of the new regime was preferred due to a combination of significant concerns with the need to meet impending CRS requirements; better and more consistent consumer protection and safeguarding the reputation of the Bailiwick. The Commission has taken this view on board.

Suggestion:

"The requirements to be outlined for each activity would be developed in line with Principle Five of the IOPS principles. Principle 5: pension supervisory authorities should adopt a risk based approach; and to ensure as a minimum that while new rules may be prescriptive they will be effective and proportionate."

Whilst there was broad agreement with this principle, concerns were expressed (albeit not surprisingly) with the degree of prescription, with firms registering concerns with the potential compliance costs associated with overly prescriptive rules. Indeed a general lobby from industry was to go no further than a principles based approach. The Commission does not believe this is appropriate. Neither is it consistent with credible with previous regulation which offers proportionate protection to previous schemes. That said, we propose to keep prescriptive requirements proportionate.

Suggestion:

*"The proposed philosophical approach would be to outline clear requirements to define the **'Guernsey regulated product'** applying in the international context - the basis of which would be the requirement for a Guernsey licensee to 'own' the regulated product and to have some degree of overall responsibility for all its aspects, including marketing and investment advice."*

The general theme of responses was that in the international context in particular it would be unreasonable for regulation to determine from whom investment advice is taken and/or unreasonable for advice to be reviewed by a Guernsey regulated adviser. There was a sizeable number who expressed a preference to be able to opt to issue a disclaimer with respect to responsibility for investment advice.

The Commission's view remains that in the domestic context, where investment advice must be provided by a Guernsey regulated licensee, investment advice is straightforwardly within the regulated perimeter. It is proposed that unless in specific instances where advice standards of a local advisor are clearly equivalent to Guernsey's standards, and where it might be possible to provide a list of equivalent jurisdictions such as in the UK, it is the responsibility of the licensee to have undertaken its own assessment of providers of advice and be able to vouch for their standards of conduct if required.

Finally, the Commission had sought views on the most appropriate legislative route forward.

All considered opinion suggested that for various reasons most notably the requirement for transparency and clarity of purpose, new primary legislation would provide the best foundation for a modernised regime. However, the overwhelming and forceful lobby from the pension's administration sector was in favour of more rapid movement.[1]

[1] Citation of relevant section of OECD CRS Guidance.

3: Proposals

The principles and guidance of the relevant international standards (the IOPS Principles of Private Pension Supervision) states that: *"the objectives of private pension supervision focus on protecting the interests of pension fund members and beneficiaries, by promoting the stability, security and good governance of pension funds. Pension supervision involves the oversight of pension institutions and the enforcement of and promotion of adherence to compliance with regulation relating to the structure and operation of pension funds and plans, with the goal of promoting a well-functioning pensions sector."*

Recognised international practice[2] is that the scope of pension supervision includes regulation and supervision of both the provider of pension schemes and the scheme.

The States of Guernsey considers that the introduction of primary legislation, supported by rules and guidance, would allow Guernsey to have a clear and transparent framework which can meet international standards. It would be anticipated that the Commission would be appointed as the supervisory authority under the framework.

In the meantime, in light of the time required for all the necessary steps to be taken for the introduction of primary legislation; the importance which both the States and the Commission attach to the regulation of the provision of services in relation to pension schemes; the benefits of conforming to the criteria set out in the OECD CRS on the reporting of information in relation to pension schemes: the Policy and Resources committee has enhanced the scope of the current regulatory regime administered by the Commission. In order to achieve this enhancement, the Policy and Resources Committee has made regulations under section 2(2) of the Fiduciaries Law, which has added the formation, management or administration of pension schemes to the list of regulated activities set out in that section.

The States has stated that this is intended to be a preliminary step towards the introduction of a more comprehensive framework under primary legislation.

The Commission is now issuing for consultation limited, scheme rules; reporting requirements and business conduct rules relating to licenses undertaking regulated pension activity. All schemes included as defined in the proposed new section 2(2)(e) of the Fiduciaries Law will be in scope of the rules and all licensees providing regulated activities to such schemes will be subject to the conduct rules.

These rules are attached for consultation and, as described, provide for conduct of business rules on licensees together with notification, reporting and other requirement on domestic and international; personal; group and occupational schemes. They should ensure that Guernsey

[2] 'The IOPS Principles for Private Pension Supervision are designed to cover occupational and personal pension plans and/ or pension funds. "Pension supervision includes the monitoring of the activities of pension plans and funds to ensure that they remain within the requirements of the regulatory framework, essentially enforcing compliance with the rules…. The scope of supervision can encompass any supervisory activity that is primarily concerned with ensuring the requirements and limitations imposed on pension funds or plans are adhered to." The IOPS (International Organisation of Pension Supervisors) Principles for Private Pension Supervision.

schemes are subject to the required regulatory requirement to be able to apply an exemption for CRS reporting[3].

4: Practical matters

As the attached consultation makes clear, the proposed rules require providers to notify the Commission of various details of schemes on formation, together with an annual reporting requirement on schemes. The specifics of the reporting is now included in the rules but is prescribed to be in a manner and format determined by the Commission. For the purposes of the consultation, the likely required details are included as annexes to this paper. Details on the process of reporting will be provided in due course.

The Commission intends to apply a supplemental pension licence fee to relevant licensees to recover additional costs arising from the new supervisory arrangements only. This matter will be included in the annual fee consultation process.

5: Implementation Timeline

The consultation period is open until 5th June 2017. It is proposed that the revised regime will come into effect on 30 June 2017, which will allow for revisions to the rules to be made following feedback.

Preliminarily notification requirement and forms will be forwarded to all licensees once the rules are in effect, together with an explanation of the electronic procedures for annual reporting.

A transitional period, the exact period to be confirmed, will be in effect until mid to late 2018 to enable firms to fully comply with the new rules, after which it is expected firms or schemes that cannot comply will not be afforded regulated pension status.

[3] Subject to pensions schemes conforming to criteria set out by Income Tax in time to meet the June 30th, 2017 deadline.

Appendix 1: Notification requirements

Illustration

1 Date of establishment of the Pension Scheme;

2 Full name and address of each entity comprising the Provider of the Pension Scheme, including where any such entity is a corporate entity, details of its directors, or where the entity is a limited partnership, details of its partners;

3 The full name and address of each Service Provider appointed in relation to the Pension Scheme and confirmation of whom they are appointed by and the date of appointment;

Appendix 2: Annual reporting requirements

1. any changes to information provided in accordance with Appendix 1 which have not been notified to the Commission;

2. the total numbers of any active, deferred or pensioner members of the scheme during the Relevant Scheme Year;

3. a statement of whether the scheme is open to new members and whether it is open to future contributions;

4. where the investment approach in relation to the whole or any part of the scheme has changed, details of the change including the parties involved;

5. where the investment approach is Third Party Directed where the relevant Third Party has changed, details of the new third party;

6. total contributions of active members over the twelve month period; total value of scheme assets; investment shares by asset class; total value of scheme assets as of 12 months previous.

DRAFT FOR CONSULTATION:
Amendment of Regulation of Fiduciaries Law

GUERNSEY STATUTORY INSTRUMENT

2017 No.

The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Pensions Amendment) Regulations, 2017

Made	*****, 2017*
Coming into operation	*30th June, 2017*

THE POLICY AND RESOURCES COMMITTEE, in exercise of the powers conferred upon it by sections 2(2), 3(2) and 61 of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, as amended[4], and all other powers enabling it in that behalf, and after consultation with the Guernsey Financial Services Commission and with the agreement of the Policy and Finance Committee of the States of Alderney and the Policy and Performance Committee of the Chief Pleas of Sark, hereby makes the following Regulations:-

Amendment of Regulation of Fiduciaries Law.

1. After section 2(1)(d) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, as amended,

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[4] Order in Council No. I of 2001; amended by No. XIV of 2003; No. XVI of 2007; No. VIII of 2008; No. XXV of 2008; No. XIII of 2010; No. XVIII of 2010; Ordinance No. XXXIII of 2003; G.S.I. No. 3 of 2008; and G.S.I. No. 83 of 2010.

insert the following paragraph -

"(e) the formation, management or administration of pension schemes, and the provision of advice in relation to the formation, management or administration of pension schemes.

In this paragraph -

"**Income Tax Law**" means the Income Tax (Guernsey) Law, 1975,

"**pension scheme**" means any fund, contract, scheme or trust -

(A) approved by the Director of Income Tax under section 150, 154A, 157A or 157E of the Income Tax Law,

(B) established in Guernsey and recognised by the Director of Income Tax as being exempt from tax under section 40(o) of the Income Tax Law,

(C) any annuity or lump sum payable pursuant to which is recognised by the Director of Income Tax as being exempt from tax under section 40(ee) of the Income Tax Law.".

2. In section 3(1)(x)(ii) of that Law for the words "a pension scheme" substitute "a pension scheme (within the meaning of section 2(1)(e))".

3. In section 58(1) of that Law the definition of "pension scheme" is repealed.

Citation.

4. These Regulations may be cited as the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Pensions Amendment) Regulations, 2017.

Commencement.

5. These Regulations shall come into force on the 30th June, 2017.

Dated this day of , 2017

DEPUTY G. A. ST PIER

President

For and on behalf of the Policy and Resources Committee

EXPLANATORY NOTE

(*This note is not part of the regulations*)

These Regulations add activities relating to the formation, management or administration of pension schemes to the regulated activities referred to in section 2(1) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, thus rendering them subject to regulation by the Guernsey Financial Services Commission under that Law.