



Guernsey Financial  
Services Commission

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Consultation Paper on the Statutory Instruments proposed to be re-issued under The Protection of Investors (Bailiwick of Guernsey) Law, 2020, The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020, The Banking Supervision (Bailiwick of Guernsey) Law, 2020, The Financial Services Business (Enforcement Powers)(Bailiwick of Guernsey) Law, 2020, The Insurance Business (Bailiwick of Guernsey) Law, 2021 and The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2021

**Closed 17 Jun 2021**

Opened 21 Apr 2021

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**Feedback updated 14 Oct 2021**

**We asked**

On the 21<sup>st</sup> April 2021 the Commission published a Consultation Paper on its proposal to consider the status of its Statutory Instruments as a consequence of the Revision of Laws project. All were reviewed to ensure that the regulatory framework continues to function correctly following the implementation of the new laws.

The paper proposed that several Statutory Instruments would be revoked, as a consequence of no longer being in use, and that the remaining would either be re-issued in an updated format or considered at a later date. It invited comments both on the proposals and on the accompanying drafts of the proposed re-issued regulations and rules.

The consultation period ran for 8 weeks and closed on the 17<sup>th</sup> June 2021.

## You said

There were 12 responses, via the Consultation Hub and five further submissions made, directly to the Commission, after the consultation period had closed.

Feedback and comments were received from all industry sectors; either from Firms themselves or via their industry bodies. The Commission also received feedback from service providers and other official bodies.

The message from the majority of respondents was positive and supportive of the Commission's approach to 'cleaning up' the statutory instruments, by revoking and archiving those no longer in use, and updating those remaining to ensure they are all drafted in a similar format and in plain English.

The proposal to archive those Statutory Instruments no longer in operation was welcomed and the Commission recognises the importance of archiving these in such a way that they can be easily found for future reference.

## We did

### **POINTS SPECIFIC TO CERTAIN RULES**

# **The Collective Investment Schemes (Qualifying Professional Investor Funds)(Class Q) Rules**

At rule 7.2(2) the requirement is for confirmation to be provided and it was requested that this drafting should be reflected throughout these Rules – replacing the requirement for a ‘certificate’ with the requirement for ‘confirmation’ at each point it occurs.

The drafting of rule 7.2(2) reflects current practice and, on further consideration, the Commission did not feel that this applies to other parts of these Rules. This amendment would make changes to the regulatory framework that are outside the scope of this Consultation Paper and it is not proposed that these changes are made at this point.

## **The Licensees (Capital Adequacy) Rules**

Rule 2.1(1)(c) had lost its meaning due to formatting issues and this has been redrafted.

The definition of “audited financial statements” had been reinserted.

## **The Authorised Collective Investment Schemes (Class B) Rules**

A question was raised over the redrafting of the guidance to rule 1.1. This guidance was very lengthy, in the previous rules, and has been edited to ensure that it is clear. After consideration of the comments the Commission considers the guidance to cover everything that needs to be explicitly set out. The Commission would not typically expect a designated administrator to be responsible for investment management decisions where an investment manager is appointed but it was not felt that this needed to be explicitly stated in this section of guidance.

Rule 2.1 has been re-drafted and the fact that a scheme can be a company is included in the guidance.

As per the previous comments under The Class Q Rules, the Commission has considered the change from 'certificate' to 'confirmation' at rule 2.8(2) (now rule 2.9(2)) but has decided that this will remain as drafted.

Rule 2.16(5), in the current set of Rules, had been omitted from the draft. This was a drafting error and the rule has now been reinserted.

The wording in rules 4.6(2) and 4.7(1) has been redrafted to ensure consistency.

The definition of 'remuneration' has been removed.

## **The Licensees (Conduct of Business) Rules**

The rules and guidance have been drafted to reflect the current versions and, as such, the Commission do not feel that it is appropriate to add further guidance at this stage.

Guidance under rule 2.1 has been redrafted to harmonise with the other redrafted rules.

## **The Registered Collective Investment Scheme Rules**

The addition of the requirement for the declaration of registration to name the designated custodian and the designated administrator have been included, as in other draft rules, to reflect the fact that this was previously set out in the enabling law and has now moved down to the level of the rules.

## **The Prospectus Rules**

The drafting of rule 5.1 has been changed to reflect the more constricted drafting set out in the current rules.

For clarification, the 'Red Herring' rule can be found at rule 1.1(5)(d).

# Insurance Business Rules

There were a number of requests, in the feedback to these draft rules, to insert further guidance and to alter the scope of a number of rules. These requests are beyond the scope of this Consultation Paper and will not be addressed at this stage.

## GENERAL POINTS ACROSS THE RULES

Definitions have been omitted where they can be found in the enabling Law. In certain cases specific definitions have been reinserted where they bring clarity to the provisions.

Formatting and typographical errors, throughout the drafts, have been looked at and corrected where necessary.

A comment was received with regards to the replacement of the word 'shall' with the word 'must' throughout the Statutory Instruments. This comment has been considered and it has been decided that the replacement is appropriate throughout.

It was suggested that any referral to 'notice of meetings', throughout the Statutory Instruments, should be redrafted to bring into line with the amendments made to The Companies Law, 2008 in 2020. This has been incorporated.

The change to 'designated administrator' across the relevant fund rules, has been introduced due to the addition, in the enabling laws, of the definition of this term and the way in which it is used across the laws. This change ensures that the regulatory framework continues to operate effectively. The notification requirement, which has been introduced across the rules, is considered to be no different to the current position whereby a change in designated administrator cannot take place until the Commission has confirmed the designation of the new administrator and, as such, no new forms are proposed at this stage.

Savings provisions, ensuring that modifications and exclusions granted by the Commission under the current framework continue to apply, have been inserted.

The Commission has published the updated regulations and rules, incorporating minor amendments which have been made in line with the comments received.

These Statutory Instruments will come into effect at the same time as the laws come into force. Savings provisions have been inserted, into all the drafts, to ensure that the current status of firms and funds is maintained. As these statutory instruments do not incorporate any policy changes, or changes to the way in which licensees are required to operate, there is no requirement for a transitional period.

Some feedback received proposed further changes to the underlying regulatory framework. The Consultation Paper clearly set out the parameters of this exercise and stated:

“The regulations and rules, under which financial services businesses are regulated, are not changing substantially. The substance and meaning of the Statutory Instruments, and the way in which they operate, is intended to remain the same. It has, however, provided an opportunity to update the language used, making it consistent with the New and Amended Laws, harmonise the layout and numbering across the rules, correct minor drafting errors and check that any internal and external references remain relevant when the New and Amended Laws come into force.

The Statutory Instruments included in this Consultation Paper have been reviewed and updated but they retain the meaning and purpose of the Statutory Instruments that they replace.”

The decision to keep this exercise limited, in this way, was made due to the large amount of work that had to be undertaken to ensure that all the statutory instruments could be properly considered.

Substantive changes, to the way in which the regulatory framework operates, will not be considered at this time and would be more appropriate for future

## Overview

# Purpose of the Consultation Paper

### *Revision of Laws Project*

In August and September 2020, the States of Guernsey, the States of Alderney, and the Chief Pleas of Sark, as part of a review of the legislation governing the finance industry, approved the following –

- The Protection of Investors (Bailiwick of Guernsey) Law, 2020 (the “POI Law”);
- The Banking Supervision (Bailiwick of Guernsey) Law, 2020 (the “Banking Law”);
- The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020 (the “Fiduciaries Law”); and
- The Financial Services Business (Enforcement Powers)(Bailiwick of Guernsey) Law, 2020.

The amendment Ordinances to the Insurance Business (Bailiwick of Guernsey) Law, 2002 (“IBL”), The Insurance Managers, and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 (“IMIIL”) are currently progressing through the implementation process (the amendment Ordinances together with the new laws set out above are the “New and Amended Laws”).

These New and Amended Laws form the suite of legislation contemplated in the Policy Letter on the Revision of the Financial Supervisory and Regulatory Laws which was debated and approved by the States of Deliberation on the 30th of October 2015.

As part of the Revision of Laws project, the Commission undertook extensive public consultation and engagement on revising the Bailiwick's supervisory and regulatory laws to maintain the Bailiwick's reputation as an efficient and well-regulated international finance centre. This commenced in 2014 with the 'Discussion Paper on the Revision of Laws Project: Revising the Bailiwick's financial and regulatory laws to maintain the Bailiwick's reputation as an efficient and well-regulated international finance centre' and was followed, in 2015, by the 'Consultation Paper on the Revision of Laws project'.

Additionally the Commission has undertaken extensive engagement on the New and Amended Laws arising from the Revision of Laws project.

Since mid-2014, the Commission has undertaken more than 26 separate formal 'in-person' engagements on the Revision of Laws project including drop-in sessions, presentations and feedback sessions. These have been held with industry and interested parties including the Committees of the States of Guernsey, Chief Pleas of Sark, the States of Alderney, GIFA, Guernsey International Legal Association, NED Forum, GIIA, Guernsey Finance, Guernsey Company Registrar, IoD, Guernsey law firms, Commercial Bar Association, Association of Guernsey Banks, Guernsey Investment Management & Stockbroking Association, Guernsey Society of Chartered and Certified Accountants, Guernsey Association of Pension Providers, Guernsey Association of Compliance Officers, Bailiwick Insurance Intermediaries Association and Digital Finance Project.

The New and Amended Laws update the provisions of the previous laws and

- bring them in line with current appropriate international standards;
- improve consistency between the Regulatory Laws;
- consolidate all enforcement powers, previously found across the laws, into the newly enacted Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020.



## ***Changes to the Statutory Instruments***

Prior to the implementation of the New and Amended Laws later this year, the Statutory Instruments<sup>[\[1\]](#)</sup>, which are currently in force, have been reviewed to ensure that the regulatory framework continues to function correctly.

The Statutory Instruments considered, as part of this project, are listed at bottom of this page.

Consistent with the Commission's objectives, the proposals in this Consultation Paper are designed to enhance the levels of confidence and security in the Bailiwick's regulatory and supervisory framework.

## ***Purpose***

This Consultation Paper focuses on the regulations and rules to be made under the laws listed above. A second Consultation Paper, focussing on the guidance documents and codes to be made by the Commission under these laws is to follow.

The purpose of this Consultation Paper is to seek feedback from all interested parties on the changes to be made in order to successfully implement the New and Amended Laws. The objective is to ensure that the regime continues to be both compliant with international standards and appropriate for the Guernsey market.

In preparing these new rules we have sought to minimise changes to reduce the administrative burdens on licensed entities who will be required to follow them. We are also taking the opportunity, which these new rules presented, to eliminate swathes of obsolescent rules which have built up over the years.

The draft Statutory Instruments and those currently in force are accessible on the Commission website and can be viewed through the hyperlinks in this paper.

This Consultation Paper is a working document and does not prejudice any final decision to be made by the Commission.

### ***Omissions from this Consultation Paper***

There are a number of rules which have been omitted from this Consultation Paper. The Commission's view is that these rules require more significant changes meaning they need a separate consultation. With respect to these rules the Commission proposes the following –

#### **Collective Investment Schemes (Compensation of Investors) Rules, 1988**

These rules apply to the Authorised Collective Investment Schemes (Class A) Rules, 2008 and will be revised in line with those rules (see below);

#### **Investment Exchange (Notification) Rules, 1998**

These rules have not been amended. The transitional provisions, within the new POI Law, ensure these rules continue in force and they will operate as they currently do. A comprehensive revision of these rules will form part of a future Commission Consultation;

## **Authorised Collective Investment Schemes (Class A) Rules, 2008 and The Collective Investment schemes (Class A) Rules 2002**

These rules are not being utilised, at the present time, by licensees. It is the Commission's intention to suspend them until such time as it has sufficient resources to review them properly. We believe they are in need of substantial redrafting which is why they have not been copied out under the new Laws;

## **The Licensees (Conduct of Business and Notification) (Non-Guernsey Schemes) Rules 1994**

The Commission consulted on proposals for the Non-Guernsey Schemes regime in late 2020 and early 2021, and will shortly publish a feedback statement setting out the future requirements for such schemes;

## **Regulation of Fiduciaries (Fiduciary Advertisements and Annual Returns) Regulations, 2012**

The Commission proposes to revoke these regulations, the sole remaining active provision of which restricts advertising by personal fiduciary licence holders. This change will bring the treatment of advertising by personal fiduciary licence holders into line with that of other categories of fiduciary licensee under the Fiduciary Rules.

It is proposed that the regulations referring to annual returns, the Regulation of Fiduciaries (Annual Return) Regulations, 2017, be revoked and incorporated into the reissued Fiduciary Rules;

## **Fiduciary Rules / Fiduciary Rules and Guidance, 2020**

These rules, brought into force in January 2021 will be the subject of a separate Consultation Paper in Spring 2021. The changes to these rules will come into force at the same time as those proposed in this Consultation Paper. The changes will incorporate a change in nomenclature used when referring to fiduciary licenses, introduced by the Fiduciaries Law. They also incorporate rules previously found in The Regulation of Fiduciaries (Annual Returns) Regulations, 2017 (see above).

# Background to the proposals

## *Current Statutory Instruments*

All Commission Statutory Instruments, that are currently on the statute books, are set out below.

## *Current Statutory Instruments to be removed to clarify regulatory standards in force*

Some of the Statutory Instruments, set out below, are no longer in force and are only of historical interest.

The Commission believes that these Statutory Instruments should be removed from the 'active legislation' section, of the Commission's website, and placed into the 'archived' section. The Commission will discuss with the Law Officers updating the Guernsey Legal Resources website so that it correctly identifies rules that are no longer in force. This will make it easier for users to be confident that they are referring to the correct legislation.

The first question, of this consultation paper, invites comment on a table of those Statutory Instruments that the Commission intends to remove to reduce complexity and the reasons behind those decisions.

In some cases the change has come about as a result of the re-classification of the Statutory Instruments<sup>[\[2\]](#)</sup> and their subsequent re-drafting is part of this project.

## *Re-issued Statutory Instruments*

The Statutory Instruments of the Commission, made under the previous laws, were drafted and amended over a number of decades to reflect the changing needs of the financial services industry.

The regulations and rules, under which financial services businesses are regulated, are not changing substantially. The substance and meaning of the Statutory Instruments, and the way in which they operate, is intended to remain the same. It has, however, provided an opportunity to update the language used, making it consistent with the New and Amended Laws, harmonise the layout and numbering across the rules, correct minor drafting errors and check that any internal and external references remain relevant when the New and Amended Laws come into force.

The Statutory Instruments included in this Consultation Paper have been reviewed and updated but they retain the meaning and purpose of the Statutory Instruments that they replace.

## Overall policy approach

The draft Statutory Instruments do not set out to implement policy change but replicate the current Statutory Instruments with the incorporation of new terminology and, in some cases, the change of previous regulations into rules.

Save for new terminology the proposed re-issued Statutory Instruments will be familiar to licensees and should be consistent with their current practices.

Each of the invitations for comment sets out the draft Statutory Instruments along with a more detailed explanation where any noteworthy amendments have had to be made, e.g. the replacement of out-dated references.

## **THE FOLLOWING LIST SETS OUT ALL OF THE STATUTORY INSTRUMENTS WITHIN THE REMIT OF THIS PROJECT.**

Those entries underlined are not included in this Consultation Paper, the reasons for which have already been set out.

Insurance Business (Accounts, Annual Return and Approved Eurobonds) Regulations, 1987

Collective Investment Schemes Rules, 1988

Collective Investment Schemes (Compensation of Investors) Rules, 1988

Collective Investment Schemes (Designated Persons) Rules, 1988

Licensees (Conduct of Business and Notification) (Non-Guernsey Schemes) Rules, 1994

Banking Supervision (Accounts) Rules, 1994

Banking Supervision (Bailiwick of Guernsey) Regulations, 1994

Licencees (Financial Resources, Notification, Conduct of Business and Compliance) Rules, 1998

The Collective Investment Schemes (Qualifying Professional Investor Funds) (Class Q) Rules, 1998

Investment Exchange (Notification) Rules, 1998

Collective Investment Schemes (Class A) Rules, 2002

Insurance Managers and Insurance Intermediaries (Licensing) Regulations, 2002

Authorised Collective Investment Schemes (Class A) Rules, 2008

Protection of Investors (Market Abuse)(Bailiwick of Guernsey) Regulations, 2008

Authorised Closed-ended Investment Scheme Rules, 2008

The Registered Collective Investment Scheme Rules, 2008

Insurance Business (Annual Return) Regulations, 2008

Insurance Business (Duties of General Representatives) Regulations, 2008

Insurance Business (Adaptation for Members of the Society of Lloyd's) Regulations, 2008

Insurance Managers and Insurance Intermediaries (Client Monies) Regulations, 2008

Insurance Managers and Insurance Intermediaries (Annual Return) Regulations, 2008

Insurance Managers and Insurance Intermediaries (Approved Assets) Regulations, 2008

Licensees (Conduct of Business) Rules, 2009

Licensees (Capital Adequacy) Rules, 2010

Banking Supervision (Bailiwick of Guernsey) Regulations, 2010

Insurance Business (Licensing) Regulations, 2010

Insurance Business (Public Disclosure of Information) Rules, 2010

Regulation of Fiduciaries (Fiduciary Advertisements and Annual Returns) Regulations, 2012

Authorised Collective Investment Schemes (Class B) Rules, 2013

AIFMD Rules, 2013

AIFMD (Marketing) Rules, 2013

Insurance Managers (Conduct of Business) Rules, 2014

Insurance Intermediaries (Conduct of Business) Rules, 2014

The Registered Collective Investment Schemes Rules, 2015

Retirement Annuity Trust Scheme Rules, 2015

Insurance Business (Solvency) Rules, 2015

Licensees (Conduct of Business) Rules, 2016

Private Investment Fund Rules, 2016

Insurance Business (Special Purpose Insurer) Rules, 2016

Regulation of Fiduciaries (Annual Returns) Regulations, 2017



Prospectus Rules, 2018

Registered Collective Investment Scheme Rules, 2018

Insurance Business (Public Disclosure of Information) Rules, 2018

The Licensed Insurer's (Conduct of Business) Rules, 2018

Guernsey Green Fund Rules, 2018

The Financial Resources Requirements Rules, 2018

Fiduciary Rules, 2020

Pension Scheme and Gratuity Scheme Rules, 2020

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[\[1\]](#) Statutory Instruments include the regulations and rules made, under the laws, by the States and the Commission.

[\[2\]](#) E.g. in some cases matters which were, previously, covered by regulations made by the States can now be covered in rules made by the Commission.

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# Audiences

Financial Advisor   Financial Services Business   Banks

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