

Guernsey regulations for pension schemes and gratuity schemes now in place

JULY 2017

Following a short but comprehensive consultation with industry, the Guernsey Financial Services Commission (GFSC) has issued The Pension Licensees (Conduct of Business) & Domestic and International Pension Scheme and Gratuity Scheme Rules 2017, which came into operation on 30 June 2017. (You can see our insight into the new regime, written before the Rules had been finalised, [here](#).)

The rules regulate both Guernsey fiduciary licensees that carry out pension scheme business or gratuity scheme business (i.e. the formation, management or administration of pension schemes or gratuity schemes) and Guernsey pension schemes and gratuity schemes themselves. The rules operate alongside other applicable legal, tax and regulatory requirements so, for example, the existing Guernsey income tax legislation and related rules in respect of pension schemes and the regulatory laws and codes of practice in respect of trust and corporate service providers continue to apply.

Key changes to the draft rules

The GFSC took on board a number of comments made by interested parties during the consultation process and made some amendments to the draft of the rules published earlier this year.

Gratuity schemes

The most significant change was the inclusion of gratuity schemes within the scope of the rules so that these types of schemes are now regulated alongside pension schemes, as is carrying out gratuity scheme business. Gratuity schemes were not included in the draft rules but the GFSC appear to have recognised the importance of such schemes to the Guernsey pensions and employee benefits industry and the opportunities in regulating such schemes, which will enable them to compete on an international stage with regulated products offered by other jurisdictions.

Collas Crill welcomes the inclusion of gratuity schemes in the scope of the new regulatory regime and we believe this will assist us with marketing such schemes internationally, particularly in the Middle East where we have seen significant uptake in end of service gratuity schemes being structured in the Channel Islands and similar "pensions" offerings being launched by our UAE corporate clients. [Click here](#) for our brief factsheet on how these schemes work and why they are so important.

Other changes

Other key changes to the draft rules include:

- Clarification that the new regulatory obligations only apply to Guernsey fiduciary licensees as opposed to all trustees of pension schemes (which was ambiguous and suggested that the rules applied to lay persons)

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acting as trustees, which the GFSC confirmed during the consultation process is not the intention of the rules)

- A more detailed definition of "defined benefit basis" to reflect how such benefits are calculated and an amendment to the definition of "defined contribution basis" to allow for adjustments made for investment returns or losses
- Provisions for outsourcing by licensees
- Clarification as to when the transfer of a block of business requires GFSC consent
- Guidance in respect of complaints procedures for licensees
- Guidance in respect of the governance procedures of licensees and when a governance committee should be appointed
- Where funds held in a defined benefit pension scheme are transferred to another pension scheme, a requirement for the licensee of the transferee scheme to obtain a report comparing the actual benefit being given up with the projected returns
- Confirmation of the applicable transitional period (see under 'Timing' below)

Common Reporting Standard (CRS)

The main driver for the timing of the introduction of the rules on 30 June 2017, the same date as the first reporting deadline for CRS in Guernsey, was to enable Guernsey pension schemes to fall within one of the applicable exemptions from the CRS reporting requirements.

To qualify for an exemption a retirement or pension account must satisfy certain criteria, one of which is that it is subject to regulation. This requirement will be satisfied once a scheme and its licensee are compliant with the rules. However, licensees need to be aware that a scheme must satisfy all of the relevant criteria in order to be exempted and whether a scheme will qualify needs to be determined on a case by case basis.

Legal advice should be sought if there is any doubt as to whether a particular scheme qualifies for an exemption from CRS – it should not be assumed that all Guernsey pension schemes (or gratuity schemes) will automatically be exempted.

Timing

The rules provide for a transitional period which requires licensees carrying on pension scheme business or gratuity scheme business to conduct an assessment of their internal controls by **30 September 2017** in order to identify and plan for any amendments required to ensure compliance with the Rules by **30 September 2018**.

'Internal controls' means a licensee's arrangements and procedures to be followed in the formation, management or administration of the schemes and its systems and arrangements for monitoring that formation, management or administration.

Licensees carrying out pension scheme business or gratuity scheme business therefore need to take action now in order to have completed their assessments by the first deadline. Advice should be taken in the intervening period where needed.

However, licensees do have a reasonable amount of time to make any amendments needed to ensure compliance with the rules by the second deadline, and to take appropriate advice.

How we can help

For a fixed fee, we can carry out a 'health check' of scheme documentation for existing schemes to help licensees to identify any amendments which need to be made. We would suggest that this 'health check' is carried out prior to **30 September 2017** as part of the licensee's assessment of its arrangements and procedures to ensure the scheme documentation itself will be compliant with the new regime. We can also prepare scheme documentation for new schemes ensuring compliance from the scheme's creation. [Click here for more details on this service.](#)

In addition, we can assist licensees with reviewing procedure manuals and internal policies in respect of pension scheme business or gratuity scheme business and we can advise on where amendments will need to be made.

Please do not hesitate to contact us if you would like assistance in respect of your pension scheme or gratuity scheme business.