

Jersey Pension Regulation Consultation



“It is important to avoid an excessive regulatory burden”

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Categories of Isle of Man Schemes

Authorised schemes are those which must comply fully with the regulatory requirements.

Recognised schemes are those which are already deemed to be adequately regulated in another jurisdiction recognised by the Isle of Man's regulator.

Permitted schemes are those without an Isle of Man-based employer and have no more than 5 Isle of Man members (or 10% of the membership if less).

If you are a trustee of a Jersey approved pension scheme then you will probably have received a letter recently from the Jersey Income Tax office, providing notification of the consultation on proposals to regulate the administration and management of pension schemes. Currently Jersey is the only Crown Dependency not to have any form of pension regulation, but probably not for much longer.

The consultation document, which was published in November 2018, identifies three key objectives for the regulatory framework:

- Protects the rights and interests of pension scheme members and beneficiaries using Jersey-based pension products and services;
- Ensures that the framework is proportionate
- Helps support business growth in the pension sector

We welcome the consultation and have submitted our comments, based on our practical experience of advising schemes operating within the regulatory frameworks in the Isle of Man and Guernsey. If introduced as indicated, both pension schemes and pension scheme providers in Jersey are likely to fall within the regulatory scope. Rather than providing very detailed information about what is likely to be required of pension arrangements, the consultation's seven questions focus on how the regulatory framework should be introduced and structured.

One area which needs careful consideration is how schemes which have members in more than one jurisdiction may be affected. It is important to avoid an excessive regulatory burden as a result of having to comply with two (or more!) different regulatory regimes.

Isle of Man

The Isle of Man has been regulating both domestic and international schemes for over 15 years. Their regulatory regime was introduced by primary legislation; the Retirement Benefit Schemes Act 2000. The detailed requirements are covered by a number of regulations. The regime is regulated by the Isle of Man's Financial Services Authority (originally the Insurance & Pensions Authority).

The Isle of Man has adopted a proportionate approach with three categories of scheme; authorised, recognised and permitted. Recognised or permitted schemes benefit from much reduced compliance requirements in the Isle of Man.

Interestingly, the Isle of Man is currently in the process of considering whether to extend its regulation to include pension providers, as well as schemes. This was put out for consultation in March 2018, with feedback published in August 2018; the formal proposals are expected during the first quarter of 2019.

Guernsey

Guernsey introduced pension regulation in June 2017, by extending the scope of the existing rules for licensed fiduciaries to cover the “formation, management and administration” of pension and gratuity schemes by a regulated entity. In practice, this means that if a scheme has a trustee or administrator which is a Guernsey licensed fiduciary then it falls within the scope of the regulation. Guernsey's regulator is the Guernsey Financial Services Commission.

The Isle of Man and Guernsey have adopted different approaches to introduce pension regulation. The route chosen by Guernsey means that the regime was able to be up and running quickly. However, the trade-off is the regulatory scope. In particular, those schemes where there are individual lay trustees and the administration is not carried out by a regulated entity fall outside of the scope of Guernsey's regulation. Arguably, it is some of these schemes where there may be a greater risk of members' benefits not being paid, or incorrect benefits being paid and where regulation could improve outcomes for members.

Comments

It will be interesting to see which way Jersey decides to go. Will they opt to follow the Isle of Man or Guernsey route? The consultation runs until 31 January and full details can be found at <https://www.gov.je/News/2018/Pages/pensionsandconsumerlendingconsultations.aspx>

At this stage there is no indication of when the results of the consultation are expected, or when we might expect to see draft regulations. However, we would hope that the new regulatory framework would not lead to significant additional costs for existing well-run schemes. Nevertheless, there is likely to be some form of regulatory return to be submitted to the newly appointed regulator in due course.