

GREFFE
ROYAL COURT

11 JAN 2022

GUERNSEY

GUERNSEY STATUTORY INSTRUMENT

2021 No. 1

The Financial Services Commission
(Administrative Financial Penalties) (Bailiwick of Guernsey)
Regulations, 2021

Made

30th November, 2021

Coming into operation

1st January, 2022

Laid before the States

THE GUERNSEY FINANCIAL SERVICES COMMISSION, in exercise of the powers conferred on it by section 40 of the Financial Services Business (Enforcement Powers)(Bailiwick of Guernsey) Law, 2020^a and all other powers enabling it in that behalf, and after consultation with the States of Guernsey Policy & Resources Committee, the Policy and Finance Committee of the States of Alderney and the Chief Pleas of Sark Policy and Finance Committee, hereby makes the following Regulations:-

Late Filing Penalties.

1. (1) A late filing penalty shall become due in the event that a person does not file with the Commission a financial statement, annual return or other document described in the Schedule (a “**relevant document**”) by or on the last date on which the relevant document was required to be filed with the Commission by that

^a Order in Council No. XVII of 2020.

person (“the Filing Date”), which penalty shall be calculated in accordance with Regulation 3.

- (2) The late filing penalty arising in paragraph (1) -
 - (a) shall be incurred whilst the document remains outstanding after the Filing Date, commencing from the day after the Filing Date, and
 - (b) shall not be incurred on the day of filing the document, save where that day is the day immediately after the Filing Date in which case a penalty shall be incurred.

Late Payment Penalties.

2. (1) A late payment penalty shall become due in the event that any fee detailed in paragraphs (2) and (3) below is not paid by the Due Date.

(2) Fees due under the following regulations of the Financial Services Commission (Fees) Regulations, 2021,

- (a) regulation 1(2) and 1(3) (fees payable in respect of licensed banking institutions),
- (b) regulation 2(1)(b), 2(2)(b), 2(3)(b), 2(4) or 2(5) (fees payable in respect of licensed insurers),
- (c) regulation 3(2) and 3(3) (fees payable in respect of mutual, provident or friendly societies licensed as insurers),

- (d) regulation 5(2), 5(4)(b) and 5(6) (fees payable in respect of licensed insurance intermediaries),
- (e) regulation 6(2) and 6(3) (fees payable in respect of licensed insurance managers),
- (f) regulation 7(2), 7(4) and 7(5) (fees payable in respect of licensed controlled investment business),
- (g) regulation 8(2) and 8(3)(fees payable in respect of authorised or registered collective investment schemes),
- (h) regulation 9(2) (fees payable in respect of a designated territory business notification), and
- (i) regulation 10(2), 10(5), 10(7), 10(9) or 10(14) (fees payable in respect of licensed fiduciaries).

(3) Fees due under the following regulations of the Protected Cell Companies and Incorporated Cell Companies (Fees for Insurers) Regulations, 2021 –

- (a) regulation 2(1) and 2(2) (periodic fee payable by protected cell companies which are licensed as insurers),
- (b) regulation 3(1) and 3(2) (periodic fee payable by incorporated cell companies which are licensed as insurers), and

- (c) regulation 4 (periodic fee payable by incorporated cells which are licensed as insurers),
- (4) For the purpose of this regulation the “Due Date” is –
 - (a) the date specified by those regulations as the date by which the fee must be paid, or
 - (b) if no date is so specified, a date notified by the Commission to the person obliged to pay the fee in question which shall not be less than 30 days after the day on which the fee first became payable.
- (5) The late payment penalty arising under paragraph (1) –
 - (a) shall be incurred whilst the fee remains outstanding in whole or part after the Due Date, commencing from the day after the Due Date, and
 - (b) shall not be incurred on the day of payment of the entirety or the remainder of the outstanding fee, as the case may be.

Calculation of Penalties.

3. The late penalties are payable in respect of each month or part of a month falling within the period of default and shall be calculated as follows –

- (a) in respect of the first month (or part thereof) after the Filing Date or Due Date, as the case may be, £125,
- (b) in respect of the second month (or part thereof) after the Filing Date or Due Date, as the case may be, £250, and
- (c) in respect of the third month, and every month (or part thereof) thereafter, after the Filing Date or Due Date, as the case may be, £375.

Penalties: general

4. (1) The late penalties, shall be payable to the Commission by the person obliged to file the document or pay the fee, in question, as the case may be.

(2) The late penalties –

- (a) are recoverable from the person obliged to pay the penalty by the Commission as a civil debt, and
- (b) are not refundable and non-discretionary.

Appeals.

5. The provisions of section 106 of the Law apply in relation to a decision of the Commission to impose a late penalty, as they apply in relation to a decision of the Commission described in section 106, except that the sole ground of appeal is that the decision was wrong.

Effect on other penalties and sanctions.

6. The imposition of a late penalty under these regulations is without prejudice to any other power, penalty, sanction or remedy (criminal, civil or administrative) provided for by or under the prescribed Laws.

Interpretation.

7. (1) In these Regulations –

“**Commission**” means the Guernsey Financial Services Commission,

“**Due Date**” : see regulation 2(4),

“**filing**” includes delivery, deposit, furnishing and submission (and related expressions shall be construed accordingly),

“**Filing Date**” : see regulation 1(1),

“**late penalties**” means the late filing penalty arising under regulation 1 and the late payment penalty arising under regulation 2,

“**Law**” means the Financial Services Commission (Business Enforcement Powers)(Bailiwick of Guernsey) Law, 2020,

“**month**” means calendar month calculated from the beginning of the first day of the period of default (and for the avoidance of doubt if a month starts at the end of a month of the calendar which contains more days than the next month of the calendar, the month expires at the end of that next month of the calendar),

“**prescribed Laws**” has the meaning given by the Law,

“**relevant document**” : see regulation 1(1).

and other expressions have the same meaning as in the Law.

Revocation.

8. The following regulations are hereby revoked –

- (a) the Financial Services Commission (Administrative Financial Penalties) (Bailiwick of Guernsey) Regulations, 2016^b, and
- (b) the Financial Services Commission (Administrative Financial Penalties) (Bailiwick of Guernsey) (Amendment) Regulations, 2017.^c

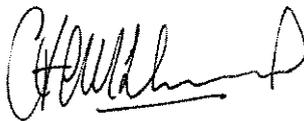
Citation.

9. These Regulations may be cited as the Financial Services Commission (Administrative Financial Penalties) (Bailiwick of Guernsey) Regulations, 2021.

Commencement.

10. These Regulations shall come into force on the 1st January, 2022.

Dated this 30th day of November, 2021.



CEES SCHRAUWERS

Chairman of the Guernsey Financial Services Commission

For and on behalf of the Commission

^b G.S.I. No. 87 of 2016

^c G.S.I. No. 100 of 2017

EXPLANATORY NOTE
(This note is not part of the regulations)

These Regulations prescribe, for the purposes of section 40 of the Financial Services Commission (Enforcement Powers)(Bailiwick of Guernsey) Law, 2020, the administrative financial penalties payable to the Commission for the late filing or delivery of financial statements and annual returns, and late payments of fees due, under the Protection of Investors (Bailiwick of Guernsey) Law, 2020, the Banking Supervision (Bailiwick of Guernsey) Law, 2020, the Regulation of Fiduciaries, Administration Businesses, and Company Directors, etc (Bailiwick of Guernsey) Law, 2020, the Insurance Business (Bailiwick of Guernsey) Law, 2002 and the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002

SCHEDULE

Relevant documents in respect of the late filing of which by a licensee there is payable a penalty are specified in column 2 of the following table.

The period within which the relevant document is required to be filed with the Commission is the period specified in column 3 of the table or such other period as may for the time being be specified by the relevant enactment.

The "**relevant provision**" is the provision of the Law, Ordinance or statutory instrument pursuant to which the relevant document is required to be filed or (if different) which specifies the period within which the relevant document is required to be filed.

Expressions used in the table have the same meanings as in the relevant enactment.

Relevant provision	Relevant Document	Period for Filing
The Banking Supervision (Bailiwick of Guernsey) Law, 2020		
Section 32(2)	Audited accounts of licensed institutions incorporated in the Bailiwick	Within 3 months after the due date to which the accounts are drawn up (Rule 2.1.3 of the Banking Supervision (Accounts, Disclosure and Reporting) Rules, 2021)
The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020		
Section 30	Financial statements of licensed fiduciary who holds a primary or secondary fiduciary licence	Within 4 months of the end of the accounting period to which the statements relate [Rule 2.4.2(3) of the Fiduciary Rules, 2021]
	Annual return of licensed fiduciary	Within 2 calendar months of the end of the annual return period to which it relates [Rule 2.4A(4) of the Fiduciary Rules, 2021]
	Annual return of a licensed Pension Scheme or Gratuity Scheme	Within 6 calendar months of the Scheme year end to which the return relates [Rule 2.4(b) of the Pension Scheme and Gratuity Scheme Rules, 2021]
	Annual Statistical Return of a licensed Pension Scheme or Gratuity Scheme	Within 6 calendar months of the Scheme year end to which the return relates [Rule 2.4(c) of the Pension Scheme and Gratuity Scheme Rules, 2021]
The Insurance Business (Bailiwick of Guernsey) Law, 2002		
Section 37(1)	Annual return of licensed insurer under section 33	Within 4 months beginning on the close of the financial year to which the accounts relate.
	Audited annual accounts of licensed insurer under section 35	
	Auditor's report under section 36	
	Actuarial report under section 41	
The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002		
Section 24 and 26	Auditor's management letter or confirmation that no such letter is required to be issued and evidence of professional indemnity	Within 6 months of the close of each financial year of the licensee [section 24(a) and (b) of this Law]

	insurance (where applicable)	
	Annual return of licensee under section 20, annual accounts of licensee under section 22 (audited, where applicable) and auditor's report under section 23 (where applicable)	Within 6 month of the close of the financial year to which the accounts relate section 26(1) of this Law
The Protection of Investors (Bailiwick of Guernsey) Law, 2020		
Holder of licence to carry on controlled investment business	Audited financial statements and compliance return of licensee	Within 4 months following the accounting reference date [Rule 4.2(5) of the Licensees (Conduct of Business) Rules, 2021
Licensed investment exchange	Annual accounts of exchange and auditors' report	Within 3 months of the annual accounting reference date [Paragraph 6(2) of Schedule 1 to the Investment Exchange (Notification) Rules, 1998]
Collective investment schemes Class A	Manager's annual report	Within 4 months of the end of the annual accounting period [Rule 4.5.11(i) of the Authorised Collective Investment Schemes (Class A) Rules 2008]
	Manager's half-yearly report	Within 2 months of the end of the half-yearly accounting period [Rule 4.5.11(i) of the Authorised Collective Investment Schemes (Class A) Rules 2008]
Collective investment schemes Class B	Manager's annual report	Within 2 months of the end of the annual accounting period [Rule 6.2(1) of the Authorised Collective Investment Schemes (Class B) Rules, 2021
Collective investment schemes Class Q	Manager's annual report and financial statements	Within 6 months of the end of the annual accounting period [Rule 7.2(1) of the Collective Investment Schemes (Qualifying Professional Investor Funds)(Class Q) Rules 2021

Authorised Closed-ended Investment Schemes	Audited annual report and accounts for the scheme	Within 6 months of the end of the annual accounting period [Rule 5.2(1) of the Authorised Closed-ended Investment Schemes Rules, 2021]
Registered collective investment schemes	Audited annual report and accounts for the scheme	Within 6 months of the end of the annual accounting period [Rule 5.3(1) of the Registered Collective Investment Scheme Rules 2021 and Rule 5.3(1) of the Private Investment Fund Rules 2021]

