

STATES OF JERSEY



DRAFT BANKING (DEPOSITORS COMPENSATION SUPPLEMENTARY PROVISIONS) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 14th August 2012
by the Minister for Economic Development**

STATES GREFFE



Jersey

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REPORT

1. The Jersey Bank Depositors Compensation Scheme (“DCS”) was established by the Banking Business (Depositors Compensation) (Jersey) Regulations 2009 (“the DCS Regulations”) along with the Jersey Bank Depositors Compensation Board (“the Board”), which will administer the scheme.
2. In the unlikely event of a Jersey bank failure, the DCS would pay compensation to depositors to prevent hardship resulting from lack of access to funds. Compensation is limited to £50,000 per depositor per banking group and is subject to an overall cap of £100 million in any 5 year period.
3. On the advice of the Law Officers’ Department, the DCS Regulations could not provide for offences because the enabling power under which they were made (i.e. Article 37 of the Banking Business (Jersey) Law 1991 (“BBL”)) was not sufficiently wide.
4. Provision for offences relating to the DCS was therefore made separately in the Banking (Depositors Compensation) (Jersey) Regulations 2009 (“the Triennial Regulations”), which were made at the same time as the DCS Regulations.
5. Such Regulations only remain in force for 3 years and the Triennial Regulations therefore need to be replaced before they expire in November 2012.
6. The Banking (Depositors Compensation Supplementary Provisions) (Jersey) Regulations 201- (“the Amendment”) will replace the Triennial Regulations and will remain in place for a further 3 years.
7. During this time, the enabling power in Article 37 of the BBL will be amended so that provision for offences can be imported into the DCS Regulations in due course, thus consolidating the 2 sets of DCS-related regulations.

Financial and manpower implications

8. There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

These Regulations re-enact the Banking (Depositors Compensation) (Jersey) Regulations 2009 (“the 2009 Triennials”), which are triennial Regulations, due to expire at the end of 5th November 2012. The opportunity is taken to alter the name of the Regulations to make clearer the relationship with the Banking Business (Depositors Compensation) (Jersey) Regulations 2009 (“the Compensation Regulations”) with which they must be read, and to correct numbering errors in some cross-references to the Compensation Regulations. The purpose of the Regulations is to continue to provide for offences in relation to the Compensation Regulations.

Article 1 is unchanged from its equivalent in the 2009 Triennials. It defines the Banking Business (Depositors Compensation) (Jersey) Regulations 2009 as “the Compensation Regulations”.

Article 2 is unchanged from its equivalent in the 2009 Triennials. It provides that these Regulations are to be read as one with the Compensation Regulations, which particularly means that definitions in the Compensation Regulations also apply in these Regulations.

Article 3 is subject to minor changes from its equivalent in the 2009 Triennials, correcting cross-references to the relevant provisions of the Compensation Regulations which had changed during the original passage of the 2 sets of Regulations. It is the main provision, creating a set of offences in relation to the Compensation Regulations. All the offences carry a penalty of imprisonment for up to 2 years and/or an unlimited fine, except those in paragraphs (3) and (5) which only carry an unlimited fine.

Paragraph (1) makes it an offence knowingly or recklessly to provide false, misleading or deceptive information in connection with a compensation application. Paragraph (2) makes it an offence knowingly to fail to inform the Board of an event, after a compensation application, that reduces the amount of compensation.

Paragraph (3) makes it an offence for a bank, without reasonable cause, to fail to comply with a notice under the Compensation Regulations requiring details of its eligible deposits, and paragraph (4) makes it an offence for the bank knowingly or recklessly to provide false, misleading or deceptive information in response to such a notice. Paragraphs (5) and (6) provide for equivalent offences by an administrator of a bank in default in relation to notices requiring details of that bank’s eligible deposits.

Paragraph (7) makes it an offence to fail, without reasonable cause, to comply with the duty under the Compensation Regulations to pay back the Board after receiving payments from the Board and another source in respect of the same deposit.

Paragraph (8) makes it an offence to disclose information received under the Compensation Regulations, whether received directly or from an intermediary, without the consent of the person from whom the information is received and, if the information is received from an intermediary, the consent of that person. There are certain exceptions. Under paragraph (9) no offence is committed if the information is already in the public domain or is a summary from which no information about particular persons can be ascertained. In addition, under paragraph (10), the Board can lawfully pass information to specified persons, or for specified purposes.

Article 4 is unchanged from its equivalent in the 2009 Triennials (except that it includes reference to “separate limited partnerships”, which were introduced in 2011).

It makes standard provision for the liability of officers of corporate bodies, and similar persons, responsible for offences by those bodies.

Article 5 names the new Regulations, brings them into force on the expiry of the 2009 Triennials, and provides for them to expire after 3 years (as triennials). The opportunity is taken to add “Supplementary Provisions” to the name of the new Regulations, to make them more readily distinguishable from the Compensation Regulations.



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Arrangement

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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of the Order in Council of 14th April 1884¹, have made the following Regulations –

1 Interpretation

In these Regulations, “the Compensation Regulations” means the Banking Business (Depositors Compensation) (Jersey) Regulations 2009².

2 Regulations to be read as one

These Regulations are to be read as one with the Compensation Regulations.

3 Offences under the Compensation Regulations

(1) A person who, in connection with an application to the Board for compensation, knowingly or recklessly provides –

- (a) information that is false, misleading or deceptive in a material particular; or
- (b) a document that contains any such information,

is guilty of an offence and is liable to a fine and to imprisonment for a term of 2 years.

(2) A person –

- (a) who makes an application to the Board for compensation; and
- (b) who knowingly fails to inform the Board of any subsequent event that reduces the amount of compensation that may be claimed,

is guilty of an offence and liable to a fine and to imprisonment for a term of 2 years.

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- (3) A bank that fails, without reasonable cause, to comply with a notice sent to it under Regulation 16(2) of the Compensation Regulations is guilty of an offence and is liable to a fine.
- (4) A bank that, in purported compliance with a notice sent to it under Regulation 16(2) of the Compensation Regulations, knowingly or recklessly provides information that is false, misleading or deceptive in a material particular is guilty of an offence and is liable to a fine and to imprisonment for a term of 2 years.
- (5) An administrator of a bank in default who fails, without reasonable cause, to comply with a notice sent to the administrator under Regulation 16(3) or (4) of the Compensation Regulations is guilty of an offence and is liable to a fine.
- (6) An administrator of a bank in default who, in purported compliance with a notice sent to the administrator under Regulation 16(3) or (4) of the Compensation Regulations, knowingly or recklessly provides information or a document that is false, misleading or deceptive in a material particular is guilty of an offence and is liable to a fine and to imprisonment for a term of 2 years.
- (7) A person who fails, without reasonable cause, to comply with Regulation 24(3) of the Compensation Regulations is guilty of an offence and is liable to a fine and to imprisonment for a term of 2 years.
- (8) Except as provided by paragraphs (9) and (10), a person who receives information relating to the business or other affairs of a person –
- (a) under or for the purposes of the Compensation Regulations; or
 - (b) directly or indirectly from a person who has received the information under or for the purposes of the Compensation Regulations,
- is guilty of an offence and is liable to imprisonment for a term of 2 years and a fine if he or she discloses the information without the consent of the person to whom it relates and, if sub-paragraph (b) applies, of the person from whom it was received.
- (9) Paragraph (8) does not apply to information –
- (a) that is already available to the public; or
 - (b) that is a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.
- (10) Despite paragraph (8), the Board or a person who is, or is acting as, an officer, servant or agent of the Board may release information –
- (a) to the following persons –
 - (i) the Viscount,
 - (ii) the Comptroller and Auditor General,
 - (iii) the administrator of a bank in default, if the information concerns the bank;
 - (b) to the Minister, if the information concerns the administration and operation of the scheme;

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- (c) to the Commission, or to a person acting on its behalf, to enable or assist the Commission to discharge a function under an enactment that gives the Commission a supervisory function; or
 - (d) to any person –
 - (i) for the purpose of enabling or assisting the Board, or a person acting on its behalf, to discharge the Board's functions under the Compensation Regulations,
 - (ii) with a view to the investigation of a suspected offence or to the institution of, or for the purposes of, criminal proceedings, in each case, whether or not under these Regulations and whether or not in Jersey,
 - (iii) in connection with any other proceedings, whether or not in Jersey, arising out of the Compensation Regulations,
 - (iv) in compliance with a court order,
 - (v) for the purpose of obtaining advice on the performance by the Board of its functions under the Compensation Regulations, or
 - (vi) for the purpose of cooperating with any person or body administering a bank depositors compensation scheme (however called) in another jurisdiction in respect of a bank in default.

4 Criminal responsibility

- (1) If an offence under these Regulations committed by a limited liability partnership, a separate limited partnership or a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
 - (a) a person who is a partner of the partnership or a director, manager, secretary or other similar officer of the body corporate; or
 - (b) a person purporting to act in any such capacity,the person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for the offence to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if the person were a director of the body corporate.

5 Citation and duration

- (1) These Regulations may be cited as the Banking (Depositors Compensation Supplementary Provisions) (Jersey) Regulations 201-.
- (2) These Regulations come into force on 6th November 2012 and remain in force for 3 years.

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- ¹ *chapter 16.700*
² *chapter 13.080*