

STATES OF JERSEY



Jersey

DRAFT BANKING BUSINESS (DEPOSITORS COMPENSATION) (AMENDMENT No. 2) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 14th August 2019
by the Minister for External Relations**

STATES GREFFE

REPORT

The Draft Banking Business (Depositors Compensation) (Amendment No. 2) (Jersey) Regulations 201- (the “draft Regulations”) amend the [Banking Business \(Depositors Compensation\) \(Jersey\) Regulations 2009](#) (the “Compensation Regulations”). The Compensation Regulations established a Bank Depositor Compensation Scheme (“the Scheme”), which exists to provide protection for certain bank deposits held in Jersey should a bank no longer be in a position to immediately return deposits to depositors.

The Scheme is governed by the Jersey Bank Depositors Compensation Board (“the Board”), which is independent of the States and Ministers. Currently the Board does not have the powers to collect information from banks regarding the deposits that they hold, or the profile of depositors. The Scheme therefore has restricted knowledge of the make-up of the Jersey-based bank deposits that the Scheme exists to protect. Also, if the Scheme were ever to be triggered, a lengthy manual process could be required to understand what deposits are protected by the Scheme and who they belong to. This could lead to a delay in depositors receiving their protected deposits.

The draft Regulations therefore grant the Board powers to collect information about deposits held by Jersey banks. This will include setting a standardised format for the collection of data. This is ultimately intended to underpin a system whereby if the scheme is triggered, information about protected deposits can be automatically processed, and so deposits can be returned quickly, irrespective of which bank they were held by.

The draft Regulations also incorporate offences into the Compensation Regulations. Offences under the Compensation Regulations were most recently included in Triennial Regulations, the [Banking \(Depositors Compensation Supplementary Provisions\) \(Jersey\) Regulations 2012](#) (“the Triennial Regulations”). The offences described in the Triennial Regulations are broad in nature, but in large (although not exclusively) assigned offences where persons fail to comply with obligations to provide information under the Compensation Regulations. The draft Regulations incorporate the substance of the Triennial Regulations into the Compensation Regulations, putting offences under the Compensation Regulations on a permanent footing.

Financial and manpower implications

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

EXPLANATORY NOTE

The Draft Banking Business (Depositors Compensation) (Amendment No. 2) (Jersey) Regulations 201- if passed, will amend the Banking Business (Depositors Compensation) (Jersey) Regulations 2009 (the “2009 Regulations”) to add criminal offences and provisions about information. The offences are created under the powers now contained in Article 37(3) and (5)(a) of the Banking Business (Jersey) Law 1991 (the “Banking Law”), and replace those that were formerly in the Banking (Depositors Compensation Supplementary Provisions) (Jersey) Regulations 2012 (the “Supplementary Regulations”), which are spent. The amendments also give the Board powers to demand relevant information from various persons, adapted from those in Article 26 of the Banking Law, and a new power to demand information from banks, at any time and in a specified format, about their total holdings of eligible deposits (and other information relevant to functions under, or the operation of, the depositors compensation scheme).

Regulation 1 is an interpretation provision referring to the 2009 Regulations.

Regulation 2 amends Regulation 1 of the 2009 Regulations (which is the interpretation provision), to refer to the Banking Law by that abbreviated name.

Regulation 3 amends Regulation 16 of the 2009 Regulations (which provides for the preliminary steps that the board must take in respect of a default). It adds offences of failing to comply with notices to banks and administrators under that Regulation, based on the offences in Regulation 3(3) and (5) of the Supplementary Regulations. It does not reproduce the offences in Regulation 3(4) and (6) of the Supplementary Regulations because they are covered by Article 22(1)(a) of the Banking Law. It also provides that the new power to specify the format of information (see notes on *Regulation 7* below) applies to notices demanding information under Regulation 16 of the 2009 Regulations.

Regulation 4 inserts Regulation 21A into the 2009 Regulations, to add offences of giving false information in connection with an application for compensation, or failing to inform the Board of subsequent events reducing the entitlement to compensation. The offences recreate those in Regulation 3(1) and (2) of the Supplementary Regulations.

Regulation 5 amends Regulation 24 of the 2009 Regulations (which provides for reductions in the amount of compensation). The amendment adds an offence of failing to comply with paragraph (3) of that Regulation, which requires a depositor to refund compensation the Board if the depositor subsequently receives other payments in respect of the deposit. The offence recreates that in Regulation 3(7) of the Supplementary Regulations.

Regulation 6 amends Regulation 25 of the 2009 Regulations (which provides for the annual administration levy), merely to use the newly defined term “Banking Law” instead of the full name of that Law.

Regulation 7 inserts Regulations 35A and 35B into the 2009 Regulations, which both make provision as to information.

The new Regulation 35A provides for the format of, and access to, information held by banks. It applies paragraphs (1), (3), (5), (13), (14) and (15) of Article 26 of the Banking Law. As adapted, those provisions give the Board (or its officers or agents) powers to serve notices requiring the recipients to provide information (or documents) reasonably required for the performance of the Board’s functions. The notices can also

require recipients to attend places to answer questions, or to provide verification, and the notices give a right to enter premises (but do not over-ride legal professional privilege or the right against self-incrimination). In addition the new Regulation 35A gives the Board the power to serve a notice on a bank requiring it to provide a statement of the total amount it holds in eligible deposits (or any other information relevant to the Board's functions), and the power (after consulting the Minister) to specify the format in which information must be provided, as well as the power (again after consulting the Minister) to require the statement of the total holding to be provided forthwith. Lastly this Regulation includes an offence of failing, without reasonable excuse, to comply with a requirement imposed under this Regulation, or of obstructing an officer exercising a power of entry. That offence matches the offence in Article 26(12) of the Banking Law.

The new Regulation 35B makes provision as to disclosure of information. It applies Article 42 of the Banking Law, adapted to make it an offence to disclose information received for the purposes of the Regulations (rather than of the Banking Law). The offence is equivalent to that in Regulation 3(8) to (9) of the Supplementary Regulations. The Board is then permitted to disclose information in the same circumstances as provided for in Regulation 3(10) of the Supplementary Regulations.

Regulation 8 inserts Regulation 35C into the 2009 Regulations, to provide for criminal liability of officers and others. Equivalent provision was made by Regulation 4 of the Supplementary Regulations. But the inserted Regulation instead applies Article 52(1) of the Banking Law, which has similar effect, as permitted by Article 37(3)(b) of the Banking Law.

Regulation 9 provides for the name by which these Regulations may be cited and for their commencement 7 days after they are made.



Jersey

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

THE STATES make these Regulations under Article 37 of the Banking Business (Jersey) Law 1991¹ –

1 Interpretation

In these Regulations a reference to a Regulation or Part by number only is to the Regulation or Part of the same number in the Banking Business (Depositors Compensation) (Jersey) Regulations 2009².

2 Amendment of Regulation 1 (interpretation)

In Regulation 1 –

- (a) in the definition “bank” for “Banking Business (Jersey) Law 1991” there is substituted “Banking Law”;
- (b) after the definition “bank in default” there is inserted –

“ “Banking Law” means the Banking Business (Jersey) Law 1991³.”.

3 Amendment of Regulation 16 (Board must take preliminary steps in respect of default)

At the end of Regulation 16 there is inserted –

- “(8) Regulations 35A(3) and (4) apply to a notice under this Regulation as they apply to an information notice under that Regulation.
- (9) A bank commits an offence, and is liable to a fine, if it fails without reasonable cause to comply with a notice sent to it under paragraph (2).
- (10) An administrator of a bank in default commits an offence, and is liable to a fine, if the administrator fails without reasonable cause to comply with a notice sent to the administrator under paragraph (3) or (4).”.

4 Insertion of Regulation 21A (offences: applications)

After Regulation 21 there is inserted –

“21A Offences related to applications

- (1) A person commits an offence, and is liable to imprisonment for a term of 2 years and to a fine, if the person, 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.
- (2) A person commits an offence, and is liable to imprisonment for a term of 2 years and to a fine, if the person –
 - (a) makes an application to the Board for compensation; and
 - (b) knowingly fails to inform the Board of any subsequent event that reduces the amount of compensation that may be claimed.”.

5 Amendment of Regulation 24 (reduction in amount of compensation)

At the end of Regulation 24 there is inserted –

- “(4) A person commits an offence, and is liable to imprisonment for a term of 2 years and to a fine, if the person fails without reasonable cause to comply with paragraph (3).”.

6 Amendment of Regulation 25 (annual administration levy)

In Regulation 25(7)(a) for “Banking Business (Jersey) Law 1991” there is substituted “Banking Law”.

7 Insertion of Regulations 35A and 35B (information)

After Regulation 35 there is inserted –

“Information

35A Powers to demand information, and to specify format

- (1) Articles 26(1), (3), (5), (13), (14) and (15) of the Banking Law apply in relation to these Regulations –
 - (a) with the substitution, for references to the Commission, of references to the Board; and
 - (b) with the substitution, for references to the performance of functions under that Law, of references to the performance of functions under these Regulations.

- (2) Without prejudice to the generality of paragraph (1), the Board may at any time serve a notice on a bank under Article 26 of the Banking Law, as applied by paragraph (1), requiring the bank to provide the Board, within a time specified in the notice, with either or both of the following –
 - (a) information consisting of a statement of the total amount held, as at a time specified in the notice, by that bank by way of eligible deposits;
 - (b) other information, specified in the notice, that –
 - (i) relates to eligible deposits held by the bank, and
 - (ii) is relevant to the raising of a levy or to any other matter connected with the functions of the Board or any other person under these Regulations, or connected with the operation of the depositors compensation scheme.
- (3) The Board may, after consulting the Minister, include in an information notice a requirement that the information is to be provided in a format specified in the notice.
- (4) For the purpose of paragraph (3) –
 - (a) an information notice is a notice served on a bank under –
 - (i) Article 26 of the Banking Law as applied by paragraph (1), or
 - (ii) paragraph (2);
 - (b) different formats may be specified in respect of different descriptions of banks and different descriptions of information;
 - (c) a format may be specified by reference to a general notice published by the Board in a manner that, in the opinion of the Board, is likely to bring the notice to the attention of banks; and
 - (d) the specified format may include any description of electronic record, as defined by the Electronic Communications (Jersey) Law 2000⁴, and any description of electronic communication, as defined by that Law.
- (5) Nothing in paragraph (4)(b), (c) or (d) limits any of paragraphs (1), (2) and (3).
- (6) If a notice under paragraph (2) includes a requirement to provide information under paragraph (2)(a), the Board may, after consulting the Minister, specify in the notice that the information is to be provided forthwith.
- (7) A person commits an offence, and is liable to imprisonment for a term of 6 months and to a fine, if the person –
 - (a) fails without reasonable excuse to comply with a requirement imposed on the person under this Regulation; or
 - (b) obstructs an officer, or an agent, exercising powers under Article 26(5) of the Banking Law, as applied by paragraph (1) or (2).

- (8) For the purpose of Article 26(14) of the Banking Law, as applied by paragraph (1) of this Regulation, the reference to proceedings under Article 26(12) or 22 of that Law is to be read as a reference to proceedings under any of –
 - (a) paragraph (7)(b) of this Regulation;
 - (b) Regulation 21A(1); and
 - (c) Article 22(1) of the Banking Law.

35B Disclosure of information

- (1) Article 42 of the Banking Law applies, subject to paragraph (2), in relation to information received under or for the purposes of these Regulations as it applies in relation to information received under or for the purposes of the Banking Law.
- (2) The Board, or a person who is, or is acting as, an officer, servant or agent of the Board, may disclose information –
 - (a) to any of 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;
 - (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 these Regulations,
 - (ii) with a view to the investigation of a suspected offence or to the institution of criminal proceedings, or otherwise for the purposes of criminal proceedings (in each case whether in Jersey or elsewhere and whether under these Regulations or otherwise),
 - (iii) in connection with any other proceedings (whether in Jersey or elsewhere) arising out of these 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 these 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.”.

8 Insertion of Regulation 35C (criminal liability of officers and others)

- (1) In the heading of Part 4, for “PROVISION” there is substituted “PROVISIONS”.
- (2) After the heading of Part 4 there is inserted –

“35C Criminal liability of officers and others

Article 52(1) of the Banking Law applies to an offence under these Regulations as it applies to an offence under that Law.”.

9 Citation and commencement

These Regulations may be cited as the Banking Business (Depositors Compensation) (Amendment No. 2) (Jersey) Regulations 201-, and come into force 7 days after they are made.

ENDNOTES

Table of Endnote References

<i>1</i>	<i>chapter 13.075</i>
<i>2</i>	<i>chapter 13.075.30</i>
<i>3</i>	<i>chapter 13.075</i>
<i>4</i>	<i>chapter 04.280</i>