



# Feedback Paper on Consultation Paper No.7 2020

## Banking Business (Jersey) Law 1991: Deposit-taking fees

A feedback paper relating to a consultation on proposals regarding changes to fee rates

## Consultation Feedback

This paper reports on responses received by the JFSC to the Consultation Paper No. 7 2020 published by the JFSC in October 2020.

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## Glossary of Terms

Defined terms are indicated throughout this document as follows:

BBJL	Banking Business (Jersey) Law 1991, as amended
Commission/JFSC	Jersey Financial Services Commission
Commission Law	Financial Services Commission (Jersey) Law 1998, as amended
JBA	Jersey Bankers Association
JFL	Jersey Finance Limited
JRA	Jersey Resolution Authority

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# 1 Executive Summary

## 1.1 Overview

- 1.1.1 In October 2020 the JFSC issued Consultation Paper No. 7 2020, Deposit-taking fees, which sought views on proposals to change fee rates.
- 1.1.2 Within the consultation, five strategic options for achieving the JFSC's budgeted income from the banking sector were outlined and the JFSC engaged with the JBA during the course of the consultation to explore these in more depth:
  - 1.1.2.1 Option 1 – increase fee rates within current mechanism
  - 1.1.2.2 Option 2 – introducing a subsidiary charge
  - 1.1.2.3 Option 3 – introducing new income bands
  - 1.1.2.4 Option 4 – introducing balance sheet asset bands
  - 1.1.2.5 Option 5 – blended approaches
- 1.1.3 The purpose of this paper is to provide feedback on responses to the Consultation Paper.
- 1.1.4 In light of the feedback received, the JFSC will be changing the fee rates to the levels consulted on under Option 1, effective 30 November 2020. The final form of the fees notice can be found in Appendix A and on our website

## 1.2 Rates applied

- 1.2.1 Within the paper, Option 1 proposed an increase of 18% to fee levels within the existing fees notice for 2020 and a further 5.3% for 2021. Subsequent to the closure of the Consultation, the JFSC has reviewed the status of expected cessations for banking entities. This was the primary driver for the 18% increase to fee rates this year.
- 1.2.2 It has emerged that it is highly likely that the expected cessations which drove the proposed 18% fee uplift for 2020, followed by the further 5.3% uplift for 2021 under Option 1 will not take place in the same timeframe. As such, the JFSC has revised the amount that 2020 fees will be uplifted by downwards to 10%, rather than 18%. This will reduce the impact of the increased fee rates on fee payers.
- 1.2.3 Should an alternative mechanism not be agreed during 2021 the remainder of the uplift agreed under Option 1 would be applied for the 2021 fees. This would be a further 13% rather than the further 5.3% within the consultation.

## 1.3 Feedback received

- 1.3.1 The JFSC received two direct responses, a consolidated response from the JBA and JFL received five further responses to the consultation paper. The respondents' comments are detailed in Section 2.
- 1.3.2 The JFSC is grateful to the respondents and the JBA for taking the time to consider the proposals and for their constructive comments. In particular, the JFSC will take forward the suggestions from respondents regarding developing the fees methodology for deposit-taking firms in such a way that the regulatory fees base enables the JFSC to deliver its statutory functions while providing firms with a higher degree of medium-term surety regarding their regulatory fees.
- 1.3.3 The JFSC would also like to thank JFL for their efforts in coordinating anonymous responses to the consultation.

## 1.4 Next Steps

- 1.4.1 The revised fees will take effect from 30 November 2020.
- 1.4.2 Relevant firms will receive notification via the myJFSC portal that an invoice is ready for them.

## 2 Summary of responses

### 2.1 Support for budgeted income

- 2.1.1 Two respondents, including the JBA, expressed their support for the JFSC's budgeted income of £2.16m in annual fees from the banking sector for 2021 and no respondents indicated that they disagreed with the budgeted income amount.

### 2.2 Preference for Option 1 for the current fees cycle

- 2.2.1 The JBA and one other respondent expressed their view that the current structure (Option 1 within the Consultation) should be employed for the upcoming round of annual fees. Four respondents indicated a mix of preferences for the other options with one respondent having no preference.
- 2.2.2 As the consensus was that Option 1 would provide consistency in approach for banks in the immediate term, this is the Option that will be adopted for the next fees cycle and the fee rates are detailed in the fees notice at Appendix A.
- 2.2.3 The following table illustrates the overall positive and negative sentiment from individual bank respondents to each of the options within the consultation.

	Option 1	Option 2	Option 3	Option 4	Option 5
Positive sentiment	18	1	2	1	3
Negative sentiment		(1)	(1)	(1)	(1)

### 2.3 Commitment to further dialogue in 2021

- 2.3.1 It was unanimously considered important to continue the dialogue across the banking sector in 2021 to arrive at a future fees mechanism that is proportionate and sustainable for the spectrum of banking entities in Jersey with no respondent considering that the current charging mechanism should be used on an ongoing basis without that important dialogue taking place.
- 2.3.2 All of the initial feedback will be carefully considered and used as the JFSC, the JBA and individual banks continue the dialogue on future fees mechanisms during 2021.

## 3 Specific responses to the Strategic Options

### 3.1 Option 1 – increase fee rates within current mechanism

- 3.1.1 The consensus from all respondents was that utilising the existing charging mechanism for the next fees cycle will provide time to draw “information together to help complete a better understanding” such that further work between the JBA, Banks and the JFSC can take place during 2021 in order to “agree a model based on the research suggested which can more accurately represent the costs of regulation.”

- 3.1.2 As such, Option 1 has been adopted, as illustrated at Appendix A and the JFSC looks forward to positively engaging with the JBA and individual banks in formulating the future funding mechanism over the coming months.

### 3.2 Option 2 – introducing a subsidiary charge

- 3.2.1 One respondent considered that Option 2, “was viewed as excessive on subsidiary Banks and disproportionate to the level of supervision that is required on larger branches that operate in Jersey.”
- 3.2.2 Conversely, one respondent considered that Option 2, “is the preferred option as it imposes an additional charge to subsidiaries in accordance with the extra supervisory considerations and associated costs that the JFSC bears in relation to these firms.”
- 3.2.3 The JFSC recognises the merits of both of these positions and notes that the other proposed options tend towards more subtle differentiation in respect of the size of banking operations in Jersey than simply placing the burden of fees on subsidiaries.

### 3.3 Option 3 – introducing new income bands

- 3.3.1 Two respondents considered that Option 3 was an appropriate future fee mechanism noting “it made sense as fees then reflect our revenue” and that it “would be the fairest and would achieve the best outcome for the banking industry”. Another respondent noted that “the implementation of the user-pays principle and introduction of additional income bands to address the imbalance between those banks with significantly higher consolidated income levels than the current maximum within the fees notice of £20m” would be a positive step.
- 3.3.2 One respondent considered that Option 3 was not an appropriate future fee mechanism noting that the option is “not necessarily proportional to the supervisory effort & cost required” and that it was “potentially very significant for larger OIBs and JIBs” and considered Option 3 to have negative ramifications.
- 3.3.3 The JFSC recognises the merits of both of these positions and notes that, should Option 3 emerge as a favoured Option during our future dialogue, the effect of changes to the fee mechanism may require a phased introduction in light of the comments on their impact.

### 3.4 Option 4 – introducing balance sheet asset bands

- 3.4.1 One respondent considered that it was preferable to adopt Option 4 in order to “move away from the current income only approach.”
- 3.4.2 One respondent considered that Option 4 was not an appropriate future fee mechanism noting, as for Option 3, that the option is “not necessarily proportional to the supervisory effort & cost required” and that it was “potentially very significant for larger OIBs and JIBs” and considered Option 4 to have negative ramifications.

### 3.5 Option 5 – blended approaches

- 3.5.1 One respondent considered that it was preferable to adopt Option 5 in order to “move away from the current consolidated income approach” and another considered that Option 5 “would achieve the best outcome for the banking industry while enabling the JFSC to meet its budget requirements and receive sustainable funding in the long term.”
- 3.5.2 One respondent favoured Option 5 while maintaining consolidated income as the basis for the charging mechanism, considering that “over time it should better correspond to the supervisory effort (and therefore cost) compared to balance sheet assets.”

- 3.5.3 One respondent argued that “Strategic Option 5 would achieve the best outcome for the banking industry” by stating “that there are additional supervisory considerations and associated costs that the JFSC bears in relation to its work on subsidiaries (prudential regulation in particular) and therefore the banded fees paid by subsidiaries and branches should be differentiated.” The respondent made further comments regarding this matter which are summarised at 4.1.
- 3.5.4 One respondent considered that Option 4 was not an appropriate future fee mechanism noting that it was “potentially very significant for larger OIBs and JIBs” and considered Option 5 to have negative ramifications.
- 3.5.5 The JFSC recognises the merits of all positions in favour of, and against, Option 5 and will use this initial feedback to ensure that the continuing dialogue during 2021 achieves the best possible outcome for all parties.

## 4 Other comments

### 4.1 Supervisory effort and cost reduction

- 4.1.1 Three respondents expressed interest in “the key drivers” of JFSC costs and supervisory effort. These respondents wished to better understand why “the supervisory effort for the sector has remained broadly consistent despite the reduction in banking licences” and requested “JFSC analysis on the key costs of supervisory work undertaken”.
- 4.1.2 The respondents also noted that “like all organisations the JFSC has been challenged to reduce cost and gain efficiencies” then noted that “It would be helpful to understand in a little more detail how this has been addressed [...] including actual or potential savings from Capital programmes.”
- 4.1.3 The respondents expressed interest in future dialogue to “ensure the equitable allocation of costs across banks” and challenged whether supervisory effort and the associated costs could not be reduced on the basis that they consider the value of deposits in Jersey not to be necessarily reflective of supervisory effort.
- 4.1.4 Another respondent requested “more clarity around the reasons for setting higher subsidiary fees [for the JFSC to] be more transparent in terms of how the fees are being used, e.g. distinguishing between different types of regulatory activities (prudential, conduct etc.)” with one respondent stating that it “would be useful for banks to see a breakdown of the JFSC's budgeted income by sector and the rationale for these allocations - this would improve transparency and provide assurance that the banking sector is not cross-subsidising other sectors.”
- 4.1.5 The JFSC is committed to transparent engagement with all firms regarding the costs of supervision, drivers for these costs and the relative impact on individual sectors. As part of the JFSC's annual report and business plan documents, this information is presently available, however, as part of our ongoing engagement regarding future fees mechanisms during 2021, the JFSC will carefully consider how to best present this information in order that it facilitates deeper shared understanding of these important matters.

### 4.2 Benchmarking

- 4.2.1 Four respondents referred to work being undertaken on jurisdictional benchmarking. The JFSC is grateful for these comments and considers that this work is relevant to the upcoming dialogue on future fees mechanisms during 2021 so will be considered carefully during those discussions.



### 4.3 Collaboration

- 4.3.1 One respondent stated “We would encourage the JFSC to actively explore collaboration with their opposite numbers in the other Crown Dependencies to develop common policies, handbooks and reporting systems in those areas where interests are wholly aligned in meeting international standards (e.g. compliance with Basel prudential regulation standards, AML / CFT issues). Many of the largest banks operate across the three islands and steps to harmonise across these areas would have significant operating efficiencies for these firms.”
- 4.3.2 As in feedback to consultation paper No. 6 2019, the JFSC notes the comments regarding engagement between the Crown Dependencies and would highlight that there is frequent collegiate exchange between peer regulators, indeed, including the wider community of international finance centres as well as onshore jurisdictions. There are inherent complexities in cross-jurisdictional policy development and supervisory activity that mean, for the medium-term future, it is unlikely that there will be absolute parity in regulatory expectations, nevertheless, the JFSC continues to work closely with peer regulators including through fora such as the Group of International Finance Centre Supervisors and the International Organisation of Securities Commissions.

### 4.4 Advanced approaches

- 4.4.1 One respondent highlighted how they consider the present mechanism for review is satisfactory and therefore why they consider that an additional fee in respect of adopting advanced approaches under Basel III would not necessarily be appropriate. The respondent also highlighted that they “welcome further bilateral engagement regarding adoption of advanced approaches and the cost of supervisory effort”.
- 4.4.2 The JFSC is grateful for this feedback and will engage bilaterally with all affected banks in this regard as we develop an appropriate mechanism to address the risks inherent with the adoption of advanced approaches under Basel III.

### 4.5 Ceasing operations

- 4.5.1 One respondent recommended that annual fees be pro-rated where banks are ceasing their operations in Jersey. The JFSC is grateful for this comment, however, this approach is inconsistent with the JFSC’s approach for all firms and will not be adopted.

## Appendix A – Deposit-taking Business Fees Notice

### Notice of Fees

Published in accordance with: **Article 15 of the Financial Services Commission (Jersey) Law 1998, as amended**

Pursuant to: **Deposit-Taking Business**

Payable by or in relation to: **Article 9(1) of the Banking Business (Jersey) Law 1991, as amended**

Commencement date: The fees set out in this notice are effective from 30 November 2020.

#### 1 Interpretation

##### 1.1 In this notice, unless the context otherwise requires

advanced approaches	the adoption of advanced approaches to credit risk as defined at section 5 of the Code of Practice for deposit-taking business, issued in accordance with Article 19A of the Banking Business (Jersey) Law 1991, as amended
annual fee period	means the period between 1 February and 31 January in respect of which an annual fee is payable
business continuity	means the continuing in Jersey of business operations that are normally carried on in a place outside Jersey, where those operations are for the time being disrupted in that other place because of any accident, disaster, epidemic, civil unrest or occurrence of a similar nature
home supervisor	<p>means, in relation to a deposit-taking business, and to a person</p> <ul style="list-style-type: none"> <li>i. that carries on deposit-taking business in another country;</li> <li>ii. that is the holding company of a subsidiary company that carries on deposit-taking business in another country; or</li> <li>iii. that is the holding company of a subsidiary company that in turn is the holding company of a subsidiary company that carries on deposit-taking business in another country,</li> </ul> <p>an authority that</p> <ul style="list-style-type: none"> <li>i. is based in that other country; and</li> <li>ii. exercises supervision of the deposit-taking business</li> </ul>

JFSC	means the Jersey Financial Services Commission
Law	means the Banking Business (Jersey) Law 1991, as amended
registered person	means a person registered to conduct deposit-taking business under the Law

## 2 Fees payable

2.1 For the purposes of Articles 9(1) and 48E of the Law, the prescribed fee is:

- 2.1.1 In the case of a person applying to be registered under the Law £21,200 on application, plus the annual fee as and when such application is granted; or
- 2.1.2 In the case of a person registered under the Law, the annual fee.

## 3 Annual fee calculation

3.1 The annual fee is the sum of the following components:

- 3.1.1 A component calculated on the basis of £21,200 for each country (other than Jersey) where the person carries on a deposit-taking business through an office of the person based in the country, if the JFSC is a home supervisor in relation to that business;
- 3.1.2 A component calculated on the basis of £21,200 for each of the person's subsidiary companies that has its registered office outside Jersey and carries on a deposit-taking business, if the JFSC is a home supervisor in relation to that business;
- 3.1.3 A component calculated on the basis of £21,200 for each country where a subsidiary company of the person carries on a deposit-taking business through an office of the subsidiary company based in the country, if:
  - 3.1.3.1 The country is not Jersey, nor the country where the subsidiary company has its registered office; and
  - 3.1.3.2 The JFSC is a home supervisor in relation to that business;
- 3.1.4 A component calculated on the basis of £21,200 for each subsidiary company (hereafter called "X") of a subsidiary company of the person, if:
  - 3.1.4.1 X has its registered office outside Jersey and carries on a deposit-taking business; and
  - 3.1.4.2 The JFSC is a home supervisor in relation to that business;
- 3.1.5 A component calculated on the basis of the Consolidated Income of the registered person:
  - 3.1.5.1 For a Consolidated Income not exceeding £5,000,000 (or a loss or an income of zero), a component of £60,450;
  - 3.1.5.2 For a Consolidated Income exceeding £5,000,000 but not exceeding £10,000,000, a component of £69,800;
  - 3.1.5.3 For a Consolidated Income exceeding £10,000,000 but not exceeding £20,000,000, a component of £81,350;
  - 3.1.5.4 For a Consolidated Income exceeding £20,000,000, a component of £101,000.
- 3.1.6 Where any registered person that is incorporated in Jersey has adopted advanced approaches, the JFSC may amend this Notice to establish an additional component,

payable by such registered persons, that is sufficient to meet the JFSC's liabilities; cover its expenses; and to provide a reserve of such an amount as the JFSC considers necessary, in respect of this work.

#### **4 Calculation notes – overseas operations**

- 4.1 The components referred to in paragraphs 3.1.1 to 3.1.4 of the annual fee calculation shall be calculated on the basis of the factors mentioned in each paragraph; save that, in the case of a person applying to be registered under the Law, the components referred to in paragraphs 3.1.1 to 3.1.4 of the annual fee calculation shall be calculated as the person expects the factors to be when the business of the person to which the application relates starts operations.
- 4.2 If a new operation leads to a factor relevant to paragraphs 3.1.1 to 3.1.4 of the annual fee calculation subsequently increasing before the end of the annual fee period, the registered person should calculate a revised annual fee, being the incremental sum of the relevant components (pro rata reduced), being one-twelfth of the incremental sum multiplied by the number of whole or part calendar months between the date of opening and the end of the annual fee period, and notify the JFSC accordingly.
- 4.3 For the purposes of this Fees Notice:
  - 4.3.1 A territory is taken to be a country if the territory is co-extensive with a discrete jurisdiction concerned with the supervision of deposit-taking business;
  - 4.3.2 Jersey is a country;
  - 4.3.3 Guernsey is a country and Alderney and Sark are parts of that country;
  - 4.3.4 The Isle of Man is a country;
  - 4.3.5 Each member state (however described) of the following federations is taken to be a separate country:
    - 4.3.5.1 The United Arab Emirates; and
    - 4.3.5.2 The United States of America.

#### **5 Calculation notes – “Consolidated Income”**

- 5.1 The Consolidated Income referred to in paragraph 3.1.5 of the annual fee calculation must be calculated as the higher of the total income and the “Deemed Income” of the person. The total income means the total income of the registered person arrived at in accordance with prudential reporting guidance. This must be calculated on a consolidated basis if the registered person has banking subsidiaries or on a solo basis otherwise. The total income must be that calculated for the relevant period, being:
  - 5.1.1 In the case of a person applying to be registered under the Law, the total income that the person expects to report for the calendar year starting at midnight on 31 December following the making of the application (whether the application relates to that year or to another period);
  - 5.1.2 In the case of a person registered under the Law, whose business to which the registration relates did not operate for the whole of the year ending at midnight on 31 December in the previous year, the total income that the person expects to report for the calendar year starting at midnight on the following 31 December; or
  - 5.1.3 In any other case, the total income for the calendar year ending on 31 December in the previous year.
- 5.2 The Deemed Income of a registered person means an amount equal to 0.1% of its total assets plus the amount of its total operating expenses, each arrived at in accordance with prudential

reporting guidance. The components must be calculated on a consolidated basis if the registered person has banking subsidiaries or on a solo basis otherwise. The components must be those calculated for the relevant period, being:

- 5.2.1 In the case of a person applying to be registered under the Law:
  - 5.2.1.1 Total operating expenses: the calendar year starting at midnight on 31 December following the making of the application; and
  - 5.2.1.2 Total assets: as at the end of that period;
- 5.2.2 In the case of a person registered under the Law whose business to which the registration relates did not operate for the whole of the year ending at midnight on 31 December in the previous year:
  - 5.2.2.1 Total operating expenses: the calendar year starting at midnight on the following 31 December; and
  - 5.2.2.2 Total assets: as at the end of that period; or
- 5.2.3 In any other case:
  - 5.2.3.1 Total operating expenses: the calendar year ending on the previous 31 December; and
  - 5.2.3.2 Total assets: as at the end of that period.
- 5.3 For the avoidance of doubt, the total income, total operating expenses and total assets of a registered person includes all income, operating expenses and assets of the registered person and not just those relating to its deposit-taking business.

## **6 Reduced annual fee for applications in respect of a partial year**

- 6.1 If an application is made in respect of a period of less than a year, the annual fee may be pro rata reduced, being one-twelfth of the annual fee multiplied by the number of calendar months that the application spans in whole or in part.

## **7 Reduced application fee for registration for business continuity**

- 7.1 This section applies if the JFSC is satisfied that:
  - 7.1.1 A person who is applying for registration under Article 9 of the Law is a member of the same group of companies as another person who is registered under that Article;
  - 7.1.2 The first person is applying for registration so as to be able to use the other person's business facilities in Jersey for, but only for, the purpose of business continuity; and
  - 7.1.3 At the time when the application is made, the first person is not registered under the Law.
- 7.2 This section applies whether or not the applicant's business operates in a place where they are normally carried on outside Jersey have already been disrupted in that other place.
- 7.3 Where this section applies, the part of the prescribed fee for the purposes of Article 9(1) of the Law shall be reduced by 50%.

## **8 Reduced annual fee where registration is for business continuity**

- 8.1 This section applies if the JFSC is satisfied that a person is registered under Article 9 of the Law for, but only for, the purpose of business continuity in the event of the future disruption of the person's business operations in a place where they are normally carried on outside Jersey.
- 8.2 Where this section applies, the part of the prescribed fee for the purpose of Article 48E of the Law shall be reduced by 50%.

- 8.3 However, in the course of a period for which the annual fee is payable:
- 8.3.1 Disruption of the person's business operations in a place where they are normally carried on outside Jersey actually occurs; and
  - 8.3.2 The person begins to carry on operations in Jersey for the purpose of business continuity, the balance of the annual fee for that period shall become payable.

## **9 Late payment of fees**

- 9.1 The annual fee is payable:
- 9.1.1 In the case of a person applying to be registered under the Law, as and when such application is granted; and
  - 9.1.2 In the case of a person registered under the Law, by 31 October in each year.
- 9.2 If a registered person fails to pay the whole or any part of a fee on or before the date it becomes payable, the person shall be liable to pay an additional late payment fee, or fees, of 5% of the unpaid principal amount that shall be applied on the day after the date the fee becomes payable, and on the 1<sup>st</sup> day of each calendar month after that.

## **10 Late filing fees**

- 10.1 If a registered person fails to file or deliver any document to the JFSC under the provisions of the Law or under the provisions of any Order issued in accordance with the Law on or before the date that the document becomes due, the registered person shall be liable to pay a fee of £100 for each complete month or part thereof that the document remains unfiled or undelivered unless the person has given the JFSC prior written notice of the reasons for the late filing or delivery of a document and the JFSC has agreed in writing that the filing may be late. Any such later agreed date shall become the due date for the purposes of the calculation and the payment of late filing fees.