

Guernsey Financial Services Commission

Consultation Paper on the Annual Compliance Return Rules proposed to be issued under The Banking Supervision (Bailiwick of Guernsey) Law, 2020.

2nd September 2021

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Responses to this Consultation Paper are sought by 15th September 2021.

We welcome feedback or comment on any section and question. Feedback may be provided via the Consultation Hub section of the Commission's website (www.gfsc.gg).

PART 1 INTRODUCTION

Purpose of the Consultation Paper

Revision of Laws Project

In August and September 2020, the States of Guernsey, the States of Alderney, and the Chief Pleas of Sark, as part of a review of the legislation governing the finance industry, approved the following –

- The Banking Supervision (Bailiwick of Guernsey) Law, 2020 (the “New Banking Law”);

The New Banking Law forms part of the suite of legislation contemplated in the Policy Letter on the Revision of the Financial Supervisory and Regulatory Laws which was debated and approved by the States of Deliberation on the 30th of October 2015.

As part of the Revision of Laws project, the Commission undertook extensive public consultation and engagement on revising the Bailiwick’s supervisory and regulatory laws to maintain the Bailiwick’s reputation as an efficient and well-regulated international finance centre.

The New Banking Law updates the provisions of the previous law and

- brings it in line with current appropriate international standards;
- improves consistency between the regulatory laws;
- consolidates all enforcement powers, previously found across the laws, into the newly enacted Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020.

On 21 April 2021, the Commission issued consultation papers on proposals to issue and re-issue Statutory Instruments under the new and amended laws. Under these proposals, the substance and meaning of the Statutory Instruments, and the way in which they operate, is intended to remain the same but the language used would be updated, making it consistent with the new and amended laws and there would be harmonisation of the layout and numbering across the rules and correction of minor drafting errors. The consultations on Statutory Instruments closed on 17 June 2021.

On 10 June 2021 the Commission issued a further consultation paper covering the various Codes and Guidance Documents currently in issue. As with the earlier consultations on the Statutory Instruments, the Commission intends to keep the substance and meaning of the Codes and Guidance Documents the same while updating the language so that it is consistent with the New and Amended Laws. The consultation on Codes and Guidance Documents closed on 26 July 2021.

Re-issue of Guidance on the Annual Compliance Form for Banks as Rules

Due to changes in the structure of the New Banking Law, it is necessary to re-issue some of the requirements previously contained in the Law, along with the existing Guidance on the Annual Compliance Form for Banks, as a set of Rules in order to ensure that the regulatory framework continues to function correctly upon implementation of the New Banking Law. As these are new rules, albeit transposing the requirements in the current Law, they were not included in the previous consultations, which were for rules with no substantial changes.

Consistent with the Commission's objectives, the proposals in this Consultation Paper are designed to maintain confidence in the Bailiwick's regulatory framework.

Purpose

The purpose of this Consultation Paper is to seek feedback from all firms licensed under the Banking Law on the changes to be made in order to successfully implement the New Banking Law. The objective is to ensure that the regime continues to be both compliant with international standards and appropriate for the Guernsey market.

In preparing these new draft Rules and Guidance we have sought to minimise changes to reduce the administrative burdens on licensed entities who will use them.

The draft Annual Compliance Return Rules can be viewed through the hyperlinks in this paper.

This Consultation Paper does not prejudice any final decision to be made by the Commission.

Background to the proposals

Reason for re-issuing the Guidance on the Annual Compliance Form for Banks as Rules

Licensed banks are required to submit an Annual Compliance Form. This form includes, amongst other things, confirmation that the licensee has carried out an annual review. This annual review is a requirement under section 36C of the Banking Supervision (Bailiwick of Guernsey) Law, 1994 (the "1994 Banking Law"). The New Banking Law also requires an annual review under section 40.

However, where the 1994 Banking Law specifies the areas that must be covered by the annual review, the New Banking Law gives the Commission the power to issue rules specifying the areas that must be covered. For this reason, it is necessary to issue the Annual Compliance Return Rules. These proposed rules cover both the annual review and the other elements included in the Annual Compliance Form.

The requirements of the Annual Compliance Form and its associated guidance are not changing substantially. The substance and purpose of the Annual Compliance Return Rules are intended to remain the same as the current requirements under the 1994 Banking Law and guidance. It has, however, provided an opportunity to update the language used, making it consistent with the New Banking Law, correct minor drafting errors and check that any internal and external references remain relevant when the New Banking Law come into force.

Overall policy approach

The draft Annual Compliance Return Rules do not set out to implement policy changes. Save for new terminology the proposed Annual Compliance Return Rules will be familiar to licensees and should be consistent with their current practices.

Part 2 sets out the draft Annual Compliance Return Rules along with a more detailed explanation where any noteworthy amendments have had to be made, e.g. the replacement of out-dated references.

Next Steps

The closing date for the Consultation Paper is 15th September 2021. Responses to this Consultation Paper will be considered by the Commission with a view to issuing the Annual Compliance Return Rules, in final form, during 2021. At that time, the current Annual Compliance Form Guidance will be withdrawn.

PART 2 DRAFT ANNUAL COMPLIANCE RETURN RULES

It is proposed that the Annual Compliance Return Rules replace the Guidance on the Annual Compliance Form for Banks

A copy of the current guidance document can be found by following this link:

[Guidance on the Annual Compliance Form for Banks](#)

A copy of the proposed draft rules can be found by following this link:

[Annual Compliance Return Rules](#)

Noteworthy amendments

- References have been amended to the equivalent provisions of the the New Banking Law.
- In the guidance under Part 4 Statement of Compliance with Liquidity Stress Testing (Statement C) an out of date reference to the “Enhanced Liquidity Approach” has been removed.
- In the guidance under Part 5 Internal Capital Adequacy Assessment Process (Statement D) the section regarding the frequency of the Supervisory Review and Evaluation Process has been updated to reflect current practice.
- The submission deadline of the Annual Compliance Form has been amended to match that of licensees’ audited accounts.

Do you have any comments on the proposed Annual Compliance Return Rules?