



**Jersey Financial  
Services Commission**

# **Consultation Paper**

**No. 7 2016**

## **Class O Financial Service Business – Consultation on Consequential Provisions to the Proposed Rewording of the Class O Definition**

Issued: 29 July 2016

## Consultation Paper

The Jersey Financial Services Commission (JFSC) invites comments on this consultation paper. Comments should reach Jersey Finance Limited by 28 October 2016.

Responses should be sent to:

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Alternatively, responses may be sent directly to the JFSC by 28 October 2016. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, it is of course appropriate to contact the JFSC.

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It is the policy of the JFSC to make the content of all responses available for public inspection unless specifically requested otherwise.

It is the policy of Jersey Finance Limited (unless otherwise requested or agreed) to collate all responses and share them verbatim with the JFSC on an anonymised basis (with reference made only to the type of respondent, e.g. individual, law firm, trust company etc.) This collated, anonymised response will, typically, be placed in JFL's permanent electronic archive which is currently open to all JFL members.

## Glossary of Terms

Amending Order	Financial Services (Financial Service Business) (Amendment No. 2) (Jersey) Order 201-
Class O	the description of Class 'O' financial service business as set out in the Schedule to the FSB Order
JFSC	Jersey Financial Services Commission
Commission Law	Financial Services Commission (Jersey) Law 1998
FS(J)L	Financial Services (Jersey) Law 1998
FSB Order	Financial Services (Financial Service Business) (Jersey) Order 2009
Original CP	Consultation Paper No. 4 2012
Feedback Paper	Feedback Paper on the Original CP

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# 1 Executive Summary

## 1.1 Overview and background

- 1.1.1 In July 2012 the JFSC published the Original CP to seek views on proposed changes to legislation under which Industry is regulated. A copy of the Original CP may be viewed or downloaded from the JFSC's website<sup>1</sup>. Alternatively a hard copy may be obtained by contacting the JFSC.
- 1.1.2 One of the proposed amendments comprised a change to the description of Class O financial service business as set out in the Schedule to the FSB Order. The proposed amendment was included in the draft Omnibus Order Annexed to the Original CP, details of which were explained in Section 5.4 of the Original CP. In summary, the purpose to the rewording of Class O is to clarify the intended Jersey income tax residency requirements of the ultimate clients to whom the services are offered by Class O service providers.
- 1.1.3 Following such consultation, as set out in the Feedback Paper at Section 3.2, respondents agreed that the proposed new wording achieved the stated objective and generally supported the change.
- 1.1.4 However, as explained in Section 1.2.3 of the Feedback Paper, implementation of the amendment could not be finalised due to subsequent difficulties identified and so the revised definition of Class O was withdrawn from the Omnibus Order pending resolution of those difficulties.
- 1.1.5 The difficulties in question related to (hereinafter referred to as the "Difficulties"):
- › transitional provisions in respect of existing registrations under the current wording of Class O; and
  - › the potential scenario where the service provider, due to an unknown unilateral act of its client that causes the client's tax status to change, may automatically fall foul of the requirements of Class O and potentially be conducting unauthorised business.

which have now been resolved through the inclusion of additional provisions.

- 1.1.6 A copy of the draft Amending Order, setting out the proposed amendment to the wording of Class O is attached as Appendix B.

## 1.2 What is proposed and why?

- 1.2.1 The proposed changes to Class O consulted upon in the Original CP have not changed in any substantive way, so this consultation does not seek responses to that aspect of the revised wording.
- 1.2.2 The purpose of this consultation is to seek responses on the two additional provisions which have been included to address the Difficulties.

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<sup>1</sup>[http://www.jerseyfsc.org/the\\_commission/general\\_information/consultation\\_papers/consultation\\_papers.asp](http://www.jerseyfsc.org/the_commission/general_information/consultation_papers/consultation_papers.asp)

- 1.2.3 The first provision, at sub-paragraph (2)(a) of the proposed revised wording in the FSB Order, is a transitional provision whereby the provider of the service which met the requirements for Class O before the proposed Amending Order comes into effect will be treated as still being compliant for 6 months after its commencement or, if by then it has an application for registration in respect of another class of financial service business still outstanding, until that application is finally determined.
- 1.2.4 The second provision, at sub-paragraph (2)(b) of the proposed revised wording in the FSB Order, seeks to address the potential scenario where the service provider, due to an unknown unilateral act of its client that causes the client's tax status to change, may automatically fall foul of the requirements of Class O and potentially be conducting unauthorised business. In this scenario, provision has been included to allow a non-compliant service provider to be treated as still compliant until 3 months after that non-compliance is discoverable by reasonable diligence.
- 1.2.5 A copy of the draft Amending Order, setting out the proposed amendment to wording of Class O is attached as Appendix B.

### **1.3 Who would be affected?**

- 1.3.1 As explained in Sections 1.3.2 and 6.1.1 of the Original CP, the amendment to the wording of Class O will affect registered persons currently registered to conduct Class O financial service business who will not be able to satisfy the new criteria proposed.

## 2 Consultation

### 2.1 Basis for consultation

- 2.1.1 The JFSC has issued this consultation paper in accordance with Article 8(3) of the Commission Law, as amended, under which the Commission “may, in connection with the carrying out of its functions - ....consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate”.

### 2.2 Responding to the consultation

- 2.2.1 The JFSC invites comments in writing from interested parties on the proposals included in this consultation paper.

### 2.3 Next steps

- 2.3.1 Following the consideration of responses to this consultation and the making of any amendments deemed necessary to the Amending Order the JFSC will recommend the Chief Minister make the Amending Order. If the Chief Minister makes the Amending Order it will come into force one month thereafter.

## 3 The JFSC

### 3.1 Overview

- 3.1.1 The JFSC is a statutory body corporate established under the Commission Law. It is responsible for the supervision and development of financial services provided in or from within Jersey.

### 3.2 JFSC's functions

- 3.2.1 The Commission Law prescribes that the JFSC shall be responsible for:
- 3.2.1.1 the supervision and development of financial services provided in or from within Jersey;
  - 3.2.1.2 providing the States, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;
  - 3.2.1.3 preparing and submitting to the Minister recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;
  - 3.2.1.4 such functions in relation to financial services or such incidental or ancillary matters:
    - › as are required or authorised by or under any enactment, or
    - › as the States may, by Regulations, transfer; and
  - 3.2.1.5 such other functions as are conferred on the JFSC by any other Law or enactment.

### 3.3 Guiding principles

- 3.3.1 The JFSC's guiding principles require it to have particular regard to:
- 3.3.1.1 the reduction of risk to the public of financial loss due to dishonesty, incompetence, malpractice, or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;
  - 3.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
  - 3.3.1.3 the best economic interests of Jersey; and
  - 3.3.1.4 the need to counter financial crime in both Jersey and elsewhere.

## 4 Proposed Changes to Class O

### 4.1 The amendment

- 4.1.1 The proposed new description of Class O, which will replace the existing wording in its entirety, is set out in the Amending Order, at Appendix B of this consultation paper.
- 4.1.2 As consulted upon in the Original CP the new wording seeks to make it clear that a Class O registration is available where it is only natural persons who are tax-resident in Jersey that benefit, either directly or through ownership of one or more companies incorporated in Jersey, from the particular services listed. In summary, the new criteria will only permit the service to be provided where the ultimate clients are natural persons who are all resident in Jersey for income tax purposes.
- 4.1.3 Respondents generally supported the proposed new definition and therefore this consultation only seeks responses in respect of the incidental Difficulties identified, as explained at Section 1.1.5 above, and the proposed amendments to address those Difficulties, as explained at Section 1.2 above.
- 4.1.4 This change to the criteria of Class O may mean that some holders of Class O registration may no longer qualify for the “lighter touch” regulation that is a feature of Class O. However, transitional provisions have been included to allow current holders of Class O registration a period of 6 months from the date of the coming into force of the Amending Order in which to either exit any such non-compliant relationships or seek to apply to the JFSC for registration under another relevant class of financial service business.
- 4.1.5 A further provision has also been included which seeks to address the potential scenario where a service provider may for a period of time be unaware that the income tax residency of its ultimate client has changed and thus the Class O criteria no longer met. In such a scenario, provision has been made to allow such non-compliant provider to be treated as compliant until 3 months after that non-compliance was discoverable by reasonable diligence. Again, in such a scenario, where non-compliance may continue the holder of Class O registration may need to either exit any such non-compliant relationships or seek to apply to the JFSC for registration under another relevant class of financial service business.

**Question 1:** If there is any reason why the proposed provisions to address the Difficulties may cause an issue, please provide an explanation.

**Question 2:** Do you have any observations or concerns with the proposed transitional provisions? If so, please explain including what alternative proposals you would suggest.

**Question 3:** Do you consider that there should be other transitional provisions in relation to the change to the wording of Class O? If so, please explain why you consider it necessary, where such provisions are needed and suggestions for what they should comprise.

## 5 Cost Benefit Analysis

### 5.1 Costs to Industry

- 5.1.1 As explained in Sections 1.3.2 and 6.1.1 of the Original CP the amendment to the wording of Class O will affect registered persons currently registered to conduct such financial service business who will not be able to satisfy the new criteria proposed.

### 5.2 Costs to the JFSC

- 5.2.1 It is not expected that the JFSC will incur any additional costs as a result of the proposed amendment.

### 5.3 Benefits

- 5.3.1 Industry and the JFSC alike will benefit from the clarification made by way of this amendment as to the intended purpose of Class O and those that may benefit from the 'lighter touch' regulation and reduced fees.

## 6 Summary of questions

Page	Question
9	<b>Question 1:</b> If there is any reason why the proposed provisions to address the Difficulties may cause an issue, please provide an explanation. If there is any reason why the proposed provisions to address the Difficulties may cause an issue, please provide an explanation.
9	<b>Question 2:</b> Do you have any observations or concerns with the proposed transitional provisions? If so, please explain including what alternative proposals you would suggest.
9	<b>Question 3:</b> Do you consider that there should be other transitional provisions in relation to the change to the wording of Class O? If so, please explain why you consider it necessary, where such provisions are needed and suggestions for what they should comprise.

## 7 Appendix A

List of representative bodies who have been sent this consultation paper:

- › Jersey Association of Trust Companies
- › Jersey Finance Limited
- › Jersey Society of Chartered and Certified Accountants

## 8 Appendix B

Financial Services (Financial Service Business) (Amendment No. 2) (Jersey) Order 201-



Jersey

## **FINANCIAL SERVICES (FINANCIAL SERVICE BUSINESS) (AMENDMENT No. 2) (JERSEY) ORDER 201-**

### **Explanatory Note**

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This Order replaces the entry relating to Class O, one of the classes of financial service business prescribed in the Financial Services (Financial Service Business) (Jersey) Order 2009. The provision specifies a class of business consisting of providing of certain services that do not require the handling or control of trust company business assets except as a consequence of providing those services.

The original provision simply required the person to whom the service was provided to be resident in Jersey for tax purposes. The new provision now makes it clear that all individuals and all the beneficial owners of any company to which the services are provided have to be resident in Jersey for income tax purposes.

There is also a transitional provision whereby the provider of the service who met the requirements for Class O before this Order changed them is treated as still being compliant for 6 months after its commencement or, if by then it has an application for registration under another class of financial service business still outstanding, until that application is finally determined. A further provision allows a non-compliant service provider to be treated as still compliant until 3 months after that non-compliance is discoverable by reasonable diligence.





Jersey

**FINANCIAL SERVICES (FINANCIAL SERVICE  
BUSINESS) (AMENDMENT No. 2) (JERSEY)  
ORDER 201-**

*Made*

*[date to be inserted]*

*Coming into force*

*[date to be inserted]*

**THE CHIEF MINISTER**, in pursuance of Articles 8(2) and 42 of the Financial Services (Jersey) Law 1998, and on the recommendation of the Jersey Financial Services Commission orders as follows –

**1 Schedule amended**

In the Schedule to the Financial Services (Financial Service Business) (Jersey) Order 2009, in Part 2 for the entry relating to class O there shall be substituted the following entry –

“O	(1) Providing a service specified in Article 2(4)(a), (e), (f) or (i) of the Law (‘the specified service’) to a person who is –  (a) an individual resident in Jersey for the purposes of liability for income tax; or  (b) a company incorporated under the Companies (Jersey) Law 1991 all the beneficial owners of which are –  (i) individuals mentioned in paragraph (a),  (ii) companies incorporated under that Law the beneficial owners of which are all individuals mentioned in paragraph (a), or  (iii) both such individuals and companies,  where the provision of the specified service to that person by the provider does not	2(3) and 2(4)
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	<p>require the provider to handle or control the person's trust company business assets except as a necessary result of providing the specified service.</p>	
	<p>(2) The provider of a specified service registered in this class –</p> <p>(a) before the commencement of paragraph (1) but which, on its commencement, does not meet its requirements, is nevertheless treated as continuing to meet them –</p> <p>(i) until 6 months have elapsed from the date of such commencement, or</p> <p>(ii) if an application for registration in a class specified in this Part other than class O has not been finally determined at the expiry of that period, until it is so determined;</p> <p>(b) on or after the commencement of paragraph (1) is treated as continuing to meet its requirements until 3 months after the day on which the provider could have been expected, with reasonable diligence, to discover that the service no longer meets those requirements.</p>	
	<p>(3) For the purposes of paragraph 2(a), an application has been finally determined when –</p> <p>(a) the period for appealing against the determination has ended without an appeal being brought; or</p> <p>(b) if such an appeal has been brought, it has been determined by the Court or withdrawn.”.</p>	

## 2 Citation and commencement

This Order may be cited as the Financial Services (Financial Service Business) (Amendment No. 2) (Jersey) Order 201- and shall come into force one month after the day on which it is made.

