



Jersey Financial
Services Commission

Consultation Paper

No. 12 2016

Financial Services (Jersey) Law 1998:

Money Service Business Fees

A consultation on proposals to increase fees

Issued: December 2016

Consultation Paper

The Jersey Financial Services Commission (**JFSC**) invites comments on this consultation paper. Comments should reach Jersey Finance Limited by 31 January 2017.

Responses should be sent to:

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Alternatively, responses may be sent directly to the JFSC by 31 January 2017. 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

Commission/JFSC	Jersey Financial Services Commission
Commission Law	Financial Services Commission (Jersey) Law 1998, as amended
MSB	Money Service Business

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1 Consultation

1.1 Basis for consultation

- 1.1.1 The JFSC is issuing this consultation paper in accordance with Article 8(3) of the Financial Services Commission (Jersey) Law 1998, as amended (Commission Law), under which the JFSC “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”.
- 1.1.2 In addition, Article 15(3) of the Commission Law, requires that before the JFSC may introduce and publish any fee “...the Commission must first publish a report that must include:
- (a) *details of the duty or power for or in respect of which the fee is to be determined*
 - (b) *details of the proposed fee*
 - (ba) *details of the extent (if any) to which any penalties received have reduced the level of fee that would otherwise have been proposed*
 - (c) *a request for comments on the level of the proposed fee and*
 - (d) *a date, that is at least 28 days after the publication of the report, before which those comments may be made to the Commission”.*
- 1.1.3 The JFSC considers that this consultation paper constitutes such a report as required by the Commission Law.

1.2 Who will be affected by the proposed changes?

- 1.2.1 These amendments will affect all persons registered under the Financial Services (Jersey) Law 1998 to conduct money service business (**MSB**), and persons that are issued with a registration certificate on or after 1 January 2017.

1.3 Responding to the consultation

- 1.3.1 The JFSC invites comments, in writing, from interested parties on the content of this consultation paper and its likely impact on registered MSBs.
- 1.3.2 Comments should be received by either Jersey Finance Limited or the JFSC no later than 31 January 2017.

1.4 Next steps

- 1.4.1 Following this consultation, the JFSC will publish feedback and the final fees notice in the first quarter of 2017. Firms will be notified when their invoices are ready via the myJFSC portal, and should not make payments until this time.

2 The JFSC

2.1 Overview

- 2.1.1 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.
- 2.1.2 Article 15(2) of the Commission Law provides that fees set by the JFSC are to be retained and must, together with any other income:
- 2.1.2.1 Raise sufficient income to meet the JFSC's liabilities;
 - 2.1.2.2 Cover the JFSC's expenses; and
 - 2.1.2.3 Provide a reserve for the JFSC of such amount as it considers necessary.

2.2 The JFSC's functions

- 2.2.1 Article 5 of the Commission Law prescribes that the JFSC shall be responsible for:
- 2.2.1.1 The supervision and development of financial services provided in or from within Jersey
 - 2.2.1.2 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
 - 2.2.1.3 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
 - 2.2.1.4 Such functions in relation to financial services or such incidental or ancillary matters:
 - › As are required or authorised by or under any enactment, or
 - › The States may, by Regulations, transfer and
 - › Such other functions as are conferred on the JFSC by any other Law or enactment.

2.3 Guiding principles

- 2.3.1 Article 7 of the Commission Law provides that in exercising its functions the JFSC may take into account any appropriate matter, but that it shall have particular regard to:
- 2.3.1.1 The reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by, or the financial unsoundness of, persons carrying on the business of financial services in or from within Jersey
 - 2.3.1.2 The protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters
 - 2.3.1.3 The best economic interests of Jersey and
 - 2.3.1.4 The need to counter financial crime in both Jersey and elsewhere.

3 Proposals

3.1 Proposed fee increase

- 3.1.1 The current fee rates for MSBs were set in September 2008, almost a decade ago. Since that time inflation has materially eroded their value. The JFSC proposes to increase the fee rates by slightly less than the rate of inflation since then. The proposed increase in rates is 15%, which takes the standard annual fee from £2,000 to £2,300.
- 3.1.2 No penalties have been received which would reduce these fees.
- 3.1.3 The proposed fees notice reflecting the proposals can be found in Appendix B.
- 3.1.4 As in 2016, fees will be administered via MSBs' myJFSC portal accounts. Firms will receive an email prompt to notify them that an invoice is awaiting payment. The JFSC's bank details for payments are provided within the portal – cheques will not be accepted.

3.2 The work of the JFSC

- 3.2.1 The JFSC is the Island's statutory regulator of financial services. Our work includes the authorisation and supervision of financial services firms, as well as policy development and enforcement activity. The Companies Registry is an integral part of the JFSC.
- 3.2.2 Our Business Plans and Annual Reports set out our priorities and report on outcomes respectively. Some of the work we have carried out in 2015 and 2016 includes:
 - › Core 'day to day' supervision of firms, also covering authorisation activity and, where necessary, the progression of a number of complex enforcement cases
 - › Training for industry, particularly on AML/CFT issues, as well as the provision of speakers to industry seminars
 - › Input into the area of innovative Fintech, including the introduction of a regulatory regime for virtual currencies
 - › Involvement in the Jersey Fraud Prevention Forum as well as a modest contribution to the financial education of young people in the Island
 - › Continuous improvement of the JFSC's cyber-defences
 - › Helping to secure an excellent outcome for Jersey in its MONEYVAL assessment, a key determinant of future market access for 'Jersey plc'
 - › Other targeted international engagement, such as through the Group of International Finance Centre Supervisors, or demonstrating the equivalence of our funds regime to EU authorities and
 - › Introduction of a 'change programme' to modernise the JFSC's systems and increase the skills of our staff.
- 3.2.3 It is important to emphasise the unprecedented step-change in financial regulation and international relations brought about by the financial crisis in 2007/8. Since then, thousands of pages of requirements have been added to the global rulebook by both international, supranational and national standard setters. International finance centres like Jersey are under greater scrutiny, daily, than ever before.
- 3.2.4 Given our statutory remit, the JFSC's view is that we do not undertake significant amounts of discretionary work compared to what is expected of a modern regulator, and it is not credible to believe our workload will decline in the near future. So, the JFSC needs to be sustainably funded to carry out its current level of activity.

3.3 The JFSC's financial position

- 3.3.1 The JFSC's recent financial performance can be summarised as follows:
- 3.3.1.1 In 2014, the JFSC's income and expenditure were in balance, but absent an exceptional enforcement cost recovery there would have been a deficit of over £950,000 (after restatement due to FRS102)
 - 3.3.1.2 In 2015, the JFSC made a loss of some £640,000
 - 3.3.1.3 Whilst the impact of enforcement and litigation costs make forecasting uncertain, our current forecast for 2016 predicts a loss in excess of £300,000 for the year.
- 3.3.2 Because the JFSC holds reserves, these losses have been able to be accommodated, but that position is not sustainable; indeed, as well as bringing the JFSC's annual finances back into balance, the reserves need to be rebuilt to appropriate levels over a reasonable period of time.
- 3.3.3 The JFSC has previously signalled its intention to increase fees, including, for example, at our 2016 Business Plan presentation. Our 2017 Business Plan and budget will be published at the beginning of February.

3.4 Regulatory fees

- 3.4.1 Given the above facts, the JFSC has begun a programme of increasing fees to secure its financial sustainability, with the aim of reaching total income from 'regulated' entities of some £13m by 2019.
- 3.4.2 For MSBs, the JFSC proposes that the fee rates set in September 2008 be increased by just under the level of inflation since that time – that is, fee rates simply being maintained in real terms.
- 3.4.3 Retail prices information from the Jersey Government shows that the rate of inflation between September 2008 and September 2016 was 15.8%¹.
- 3.4.4 The JFSC proposes to increase the fee rates for MSBs (both application and annual fees) by 15%.

3.5 Question

- 3.5.1 Do you agree with the proposed below inflation fee rate increase of 15%?

¹ This is the Retail Prices Index (RPI) calculation. The RPI(X) calculation is higher, at some 20%.

Appendix A - List of Representative Bodies who have been Sent this Consultation Paper

- › Jersey Finance Limited

Appendix B - Draft Money Service Business Fees Notice

Notice of Fees

Published in accordance with:	Article 15 of the Financial Services Commission (Jersey) Law 1998, as amended
Payable by or in relation to:	Money Service Business
Pursuant to:	Articles 8(3) and 9(6) of the Financial Services (Jersey) Law 1998, as amended; and Article 15(6) of the Financial Services Commission (Jersey) Law 1998, as amended
Commencement date:	The fees set out in this notice and the attached schedule are effective for the period from 1 January – 31 December 2017.

1 Interpretation

1.1 In this notice, unless the context otherwise requires

Law means the Financial Services (Jersey) Law 1998 as amended

2 Application fee

2.1 The fee to accompany an application for registration to carry on money service business shall be £2,300. If an application for registration is made by a person after 30 June in a calendar year, the fee shall be £1,150.

3 Annual fee

3.1 A person registered to carry on money service business at any point during the calendar year shall pay a fee of £2,300.

4 Late payment of fees

4.1 If a registered person fails to pay, with value, the whole or any part of a fee on or before the date it becomes due the person shall be liable to pay, unless otherwise agreed by the JFSC, an additional late payment fee of 5% of the amount unpaid for each complete month it remains unpaid. The due date will be 30 days after issue of the invoice.

5 Late filing fees

5.1 If a registered person fails to file or deliver any document to the JFSC under the provisions of the Law or under any 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 un-filed or undelivered unless the registered 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.