



Feedback on Consultation Paper

Amendment to the definition of Class O Financial Service Business

No. 7 2016

Feedback to a consultation on proposals to amend the definition of Class O to:

- › clarify and amend the ultimate beneficial ownership element of the criteria to whom Class O services can be offered;
- › provide transitional provisions in respect of existing registrations under the current wording of Class O; and
- › provide new provisions to prevent Class O service providers, due to an ultimate beneficial owner's change in residency, immediately falling foul of this criteria and thereby potentially conducting unauthorised business.

Consultation Feedback

This Feedback Paper reports on responses received by the Commission on the *CP*.

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Glossary of Terms

Please note that terms in *italics* are defined in the Glossary of Terms.

<i>Amending Order</i>	Financial Services (Financial Service Business) (Amendment No. 2) (Jersey) Order 201-
<i>Class O</i>	the description of Class 'O' financial service business as set out in the Schedule to the <i>FSB Order</i>
<i>CP</i>	Consultation Paper No. 7 2016
<i>JFL</i>	Jersey Finance Limited
<i>JFSC</i>	Jersey Financial Services Commission
<i>Commission Law</i>	Financial Services Commission (Jersey) Law 1998
<i>FS(J)L</i>	Financial Services (Jersey) Law 1998
<i>FSB Order</i>	Financial Services (Financial Service Business) (Jersey) Order 2009
<i>Original CP</i>	Consultation Paper No. 4 2012
<i>Original Feedback Paper</i>	Feedback Paper on the <i>Original CP</i>

Contents

- Consultation Feedback2**
- Glossary of Terms.....3**
- Contents4**
- 1 Executive Summary.....5**
 - 1.1 Overview..... 5
 - 1.2 Feedback received..... 5
 - 1.3 Next steps..... 5
- 2 Summary of Responses6**
 - 2.1 Structure of this section 6
 - 2.2 Amendment to the residency requirements - paragraph (1)(a) of the *Amending Order*..... 6
 - 2.3 Transitional provision in respect of existing registrations under the current wording of Class O – paragraph (2)(a) of the *Amending Order*. 7
 - 2.4 Saving provision in respect of the ongoing possibility of a change in the residency of an ultimate beneficial owner – paragraph (2)(b) of the *Amending Order*. 7
- Appendix A9**
 - List of respondents to the *CP*..... 9
- Appendix B.....10**
 - Final draft of the Amending Order 10

1 Executive Summary

1.1 Overview

- 1.1.1 The *CP* sought views on the proposed amendment to the definition of *Class O* along with transitional and consequential provisions thereto.
- 1.1.2 The purpose of this Feedback Paper is to provide feedback on the responses received to the *CP*.

1.2 Feedback received

- 1.2.1 Respondents provided comments either directly to the Commission or indirectly via *JFL*.
- 1.2.2 *JFL* provided the Commission with comments it had received from: two law firms. Two other respondents provided comments directly to the Commission. A full list of respondents is given in Appendix A.
- 1.2.3 Section 2 of this Feedback Paper presents a summary of the substantive comments received and the Commission's response.
- 1.2.4 The Commission is grateful to respondents for taking the time to consider and comment on the proposals. Each respondent has been sent a copy of this Feedback Paper.

1.3 Next steps

- 1.3.1 The *Amending Order* (in the form annexed at Appendix B hereto) will now be presented by the Commission to the Chief Minister with the recommendation that it be made. If the Chief Minister makes the *Amending Order* it will come into force one month thereafter.

2 Summary of Responses

2.1 Structure of this section

- 2.1.1 This section summarises the substantive comments received on the proposals in the *CP* and the Commission's response to those comments.
- 2.1.2 The comments that were received can be split into responses received in respect of:
 - 2.1.2.1 the proposed re-wording of the Jersey residency requirements of the ultimate beneficial owners to whom the services are offered by *Class O* service providers; and
 - 2.1.2.2 the consequential and transitional provisions introduced to address the Difficulties¹ identified in the *CP*.

2.2 Amendment to the residency requirements - paragraph (1)(a) of the *Amending Order*

- 2.2.1 The *CP* did not request comments on the proposed re-wording of the Jersey residency requirements of ultimate beneficial owners under the *Class O* definition, because it had already been consulted upon in the *Original CP* and as per the *Original Feedback Paper*, respondents agreed that the proposed new wording achieved the stated objective and generally supported the change, however, one respondent queried the interpretation and implications of the residency criteria being linked to residency for income tax purposes.
- 2.2.2 Another respondent requested that the ultimate beneficial ownership requirements should not be restricted to all ultimate beneficial owners having Jersey residency and instead suggested a "concession" of up to 5% of the ultimate beneficial ownership being non-Jersey resident.

Commission response

- 2.2.3 In relation to the comment referred to at 2.2.1 above, as set out in the *CP*, the Commission's original and continuing policy has been that all ultimate beneficial owners of a company to which *Class O* services are provided must be Jersey resident. However, to make the provision at paragraph (1)(a) of the *Amending Order* clearer, the reference to tax residency has been removed and replaced with ordinarily resident in Jersey
- 2.2.4 In relation to the comment referred to at 2.2.2 above, the Commission has already consulted extensively to clarify its original policy intention that **all** ultimate beneficial owners must be Jersey resident, and therefore no further change will be made.
- 2.2.5 The final revised wording to paragraph (1)(a) of the *Amending Order* is annexed at Appendix B.

¹ See Section 1.1.5 of the *CP*

2.3 Transitional provision in respect of existing registrations under the current wording of *Class O* – paragraph (2)(a) of the *Amending Order*.

- 2.3.1 As summarised in the *CP*, proposed paragraph (2)(a) is a transitional provision allowing existing *Class O* service providers a 6 month “amnesty” within which to become compliant, by either exiting a relationship that does not meet the residency criteria or applying for registration under another relevant class of financial service business.
- 2.3.2 One respondent requested that the transitional provision be further extended, by an additional 3 months after the final determination of any application for registration under another relevant class of financial service business, in order to give the service provider further time in which to terminate any existing non-compliant relationships.

Commission response

- 2.3.3 The Commission, in developing the policy behind this provision, has carefully considered what would be a reasonable transitional time period once the amendment comes into force, and considers an “amnesty” period of six months, as well as the period for determination of any applications that may be submitted during that 6 month period, to be reasonable. Like any other legal or regulatory obligations that a service provider may have which may impact on its relationship with its client, the Commission would expect the service provider to be able to terminate a relationship with its client(s), as necessary, in order to be compliant with those obligations.
- 2.3.4 The Commission therefore will not be making any changes to proposed paragraph (2)(a) of the *Amending Order*.

2.4 Saving provision in respect of the ongoing possibility of a change in the residency of an ultimate beneficial owner – paragraph (2)(b) of the *Amending Order*.

- 2.4.1 As summarised in the *CP* (see in particular section 1.1.5), proposed paragraph (2)(b) is intended to address the potential scenario where a service provider, due to an unknown unilateral act of its client that causes his or her residency to change, may automatically fall foul of the requirements of *Class O* and potentially be conducting unauthorised business.
- 2.4.2 In respect of the proposed 3 month period to be introduced into paragraph (2)(b), one respondent commented that it was “fairly common” for a *Class O* service provider’s terms of engagement with its client to include a notice period of longer than 3 months. The respondent was concerned that the requirement to terminate the relationship would impact on such notice period provisions within the terms of engagement with its client. The respondent requested a provision be included allowing the service provider, within the 3 month period, to give notice to terminate the relationship.
- 2.4.3 The same respondent made an additional request that, should the *Class O* service provider, within the 3 month period, apply to the Commission for registration under another relevant class of financial service business, an additional provision be included, similar to the provision in proposed paragraph (2)(a)(ii) of the *Amending*

Order, expressly providing that the applicant continue to be treated as compliant until such application is finally determined.

Commission response

- 2.4.4 The Commission wishes to firstly point out that this new provision within paragraph (2)(b) does not impose any new requirement on a *Class O* service provider, but instead expressly provides that the service provider will not automatically conduct unauthorised business by an unknown unilateral act of an ultimate beneficial owner changing their residency. The provision provides that the service provider is to be treated as compliant until 3 months after the non-compliance is discoverable by reasonable diligence.
- 2.4.5 In relation to the response summarised at 2.4.2 above, the Commission would expect all regulated service providers to be able to terminate a relationship with its client, as necessary, in order to be compliant with its legal and regulatory obligations. The Commission considers proposed paragraph (2)(b) to be clear, and reflective of its policy position, namely that once non-compliance is reasonably discoverable, the service provider will after 3 months (subject to an application being submitted within those three months for registration under another class of financial service business – see further at paragraph 2.4.6 below) be in breach. Therefore, in respect of that specific response, the Commission does not propose making any changes to proposed paragraph (2)(b) of the *Amending Order*.
- 2.4.6 In relation to the response summarised at 2.4.3 above, the Commission considers it appropriate and consistent with its policy position, to extend paragraph (2)(b), so that an equivalent provision to (2)(a)(ii) is included, expressly providing that the *Class O* service provider will continue to be treated as complying with the *Class O* requirements if an application is made within that 3 month period, until the application is finally determined.
- 2.4.7 Therefore, in respect of that specific response, the Commission will revise the proposed wording of paragraph (2)(b) of the *Amending Order*, as set out at Appendix B.

Appendix A

List of respondents to the *CP*

- › Jersey Finance Limited (whose response consisted of comments it had received from two law firms)
- › HS Corporate Services Limited
- › An accountancy firm

Appendix B

Final draft of the *Amending Order*

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 is substituted the following entry –

"O	<p>(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 –</p> <ul style="list-style-type: none"> (a) an individual ordinarily resident in Jersey; or (b) a company incorporated under the Companies (Jersey) Law 1991 all the beneficial owners of which are – <ul style="list-style-type: none"> (i) individuals ordinarily resident in Jersey, (ii) companies incorporated under that Law the beneficial owners of which are all individuals ordinarily resident in Jersey, or (iii) both such individuals and companies, <p>where the provision of the specified service to that person by the provider does not 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>	2(3) and 2(4)
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	<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 or, if an application for registration in a class specified in this Part other than class O has been made within that 3 month period but not finally determined at the expiry of that period, until it is so determined.</p>	
	<p>(3) For the purposes of paragraph (2), 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.