STATES OF JERSEY

DRAFT FINANCIAL SERVICES COMMISSION (AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

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Lodged au Greffe on 31st May 2011
by the Minister for Economic Development

STATES GREFFE

Jersey

DRAFT FINANCIAL SERVICES COMMISSION (AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

REPORT

The Regulations propose amendments to the provisions relating to the terms and conditions of appointment of Commissioners of the Financial Services Commission (“the **Commission**”), which are contained in the Schedule (“the **Schedule**”) to the Financial Services Commission (Jersey) Law 1998 (“the **Law**”).

The primary purposes of the amendments are

- to extend the maximum period for which a Commissioner may be appointed from 3 years to 5 years; and
- to require the Minister for Economic Development to report to the States on any use of the power to terminate the appointment of a Commissioner, with that report providing only limited reasons for the decision, whilst giving the full reasons to the person concerned.

The opportunity is also being taken to make a small correction to remove an obsolete reference in the Schedule to Article 3 of the 1998 Law to the Finance and Economics Committee.

Maximum period of appointment

Since the Law came into force, the Jersey Appointments Commission (the “**JAC**”) has been established and, by mutual consent, oversees the selection for appointment of Commissioners, the Chairman and the Deputy Chairman. The code of practice published by the JAC in July 2006 recommends that, for appointments such as that of a Commissioner of the Commission, the total period in office should not normally exceed 10 years. The code of practice also recommends that a second and subsequent re-appointment should normally be subject to open competition.

At present, the maximum period of appointment of a Commissioner is 3 years. As a result, the practical consequence of following the recommendations of the JAC code of practice is that a Commissioner is unlikely to be in post for more than 6 years. This is considered to be too short a period for a person to accumulate experience in the specialist work of the Commission, to function most effectively and for there to be the necessary continuity in the Board.

The proposal to extend the maximum period of any appointment to 5 years would allow, with one re-appointment, a total time in office of 10 years. This is consistent with the provision for equivalent appointments to the Jersey Competition Regulatory Authority and to the Board to administer the Depositor Compensation Scheme.

Associated with this proposed amendment is a new provision that will enable the States to extend the appointment of anyone appointed for less than the maximum period, providing that maximum is not exceeded.

Termination of appointment

One of the recommendations of the International Monetary Fund ("**IMF**") after its assessment in 2008 was that the reasons for terminating the appointment of a Commissioner should be made public. The Schedule provides for the Minister to terminate an appointment on any of the grounds specified.

In certain circumstances, full disclosure of the detailed reasons for terminating a person's appointment could cause unnecessary and unwarranted embarrassment to the person concerned. Therefore, the amendment proposed is for public disclosure to be by means of a report made to the States, with the reasons being limited to a reference to the relevant clause that provides the grounds for the decision; and for the full reasons to be given only to the person concerned.

European Convention on Human Rights and Data Protection

Although there is no formal requirement for a declaration to be made regarding compliance of the Regulations with the European Convention on Human Rights, it was considered advisable to seek the opinion of the Law Officers on this issue. The advice received confirmed that the proposed new provisions regarding termination of a Commissioner do engage rights under the Convention (particularly Article 8 – respect for private and family life), however, in the particular case, the limited interference can properly be justified.

The Data Protection Commissioner has also been consulted and has confirmed that the proposed amendments would be in accordance with the principles set out in the Data Protection (Jersey) Law 2005.

Financial and manpower implications

There are no financial or manpower implications arising from this proposition for the States, the Commission or for the financial services industry in Jersey.

Explanatory Note

These Regulations amend Part 2 of Schedule 1 to the Financial Services Commission (Jersey) Law 1998 (the "Law"). Commissioners of the Jersey Financial Services Commission are appointed by the States under Article 3 of the Law. Part 2 of Schedule 1 to the Law makes provision as to the terms of appointment of Commissioners and the procedures of the Commission.

Regulation 1 amends Part 2 of Schedule 1 to the Law.

The amendment in paragraph (a) is partly consequential upon the amendments that follow but also removes a reference to Article 3(1)(a) of the Law that became otiose when that provision was last amended, in 1999.

The amendment in paragraph (b) extends the maximum period of appointment of a Commissioner from 3 to 5 years.

The amendment in paragraph (c) enables the States to extend the period of appointment of a Commissioner, if the Commissioner was not appointed for the maximum period permitted. The extension must not cause the Commissioner's period of appointment to exceed the maximum permitted. A States debate on whether to extend a Commissioner's period of appointment would be held *in camera*. This is consistent with the requirement in Article 3 of the Law that a debate on whether to appoint a person as a Commissioner must be held *in camera*.

The amendment in paragraph (d) does not make any substantive change. It corrects the wording of the provision that empowers the Minister for Economic Development (the "Minister") to terminate the appointment of a Commissioner. The wording was only partially amended at the time when the function passed from a Committee to the Minister. This amendment completes the changes by substituting a reference to "it" (that is, the Committee), with a reference to the Minister.

The amendment in paragraph (e) introduces a new procedure that the Minister must follow when terminating the appointment of a Commissioner. It makes it clear that the Minister must give the person written notice of the termination and of the reasons for it. In addition, the Minister must present a report to the States, informing the States of the termination and specifying on which of the 4 grounds for termination the appointment has been terminated. The grounds for termination are set out in paragraph 1(4) of Part 2 of the Schedule to the Law. Paragraph 1(4) gives the Minister power to terminate a Commissioner's appointment if satisfied that the Commissioner –

(a) has been absent from meetings of the Commission for a period longer than 6 consecutive months without the permission of the Commission;

(b) has become bankrupt;

(c) is incapacitated by physical or mental illness; or

(d) is otherwise unable or unfit to discharge the functions of a Commissioner.

Regulation 2 provides for the citation of these draft Regulations and for them to commence on the day that they are made.

Jersey

DRAFT FINANCIAL SERVICES COMMISSION (AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

Made	*[date to be inserted]*
Coming into force	*[date to be inserted]*

THE STATES, in pursuance of Articles 4(3) and 22 of the Financial Services Commission (Jersey) Law 1998[1], have made the following Regulations –

1 Schedule 1 to the Financial Services Commission (Jersey) Law 1998 amended

In paragraph 1 of Part 2 of Schedule 1 to the Financial Services Commission (Jersey) Law 1998[2] –

(a) in sub-paragraph (1) for the words "Subject to Article 3(1)(a) and sub-paragraphs (2) to (6) of this paragraph," there shall be substituted the words "Subject to sub-paragraphs (2) to (4), (5) and (6),";

(b) in sub-paragraph (2) for the words "3 years" there shall be substituted the words "5 years";

(c) after sub-paragraph (2) there shall be inserted the following sub-paragraphs –

"(2A) Where a Commissioner has been appointed, or reappointed, for a period of less than 5 years, the States may extend his or her period of appointment, provided that the period, as extended, does not exceed 5 years.

(2B) A debate on whether to extend a period of appointment shall be held *in camera*.";

(d) in sub-paragraph (4) for the words "it may terminate" there shall be substituted the words "the Minister may terminate";

(e) after sub-paragraph (4) there shall be inserted the following sub-paragraph –

"(4A) If the Minister terminates the appointment of a Commissioner the Minister shall –

(a) give the person whose appointment is terminated notice, in writing, of the termination and of the reasons for it; and

(b) present a report to the States informing the States of the termination and specifying upon which of the grounds in sub-paragraph (4) the appointment has been terminated.”.

2 Citation and commencement

These Regulations may be cited as the Financial Services Commission (Amendment of Law) (Jersey) Regulations 201- and shall come into force on the day that they are made.

1 *chapter 13.250*
2 *chapter 13.250*