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**CONSULTATION PAPER**

**FEE RATE PROPOSALS**

**2012**

**CONSULTATION PAPER**

The Guernsey Financial Services Commission (“Commission”) invites comments on this consultation paper. Comments should reach the Commission by 30 September 2011.

**Responses should either be emailed to the Commission Secretary, Fionnuala Carvill, at** **feeconsultationresponses@gfsc.gg****, or be marked for her attention and sent to:**

Guernsey Financial Services Commission

P.O. Box 128

Glategny Court

Glategny Esplanade

St. Peter Port

Guernsey

GY1 3HQ

Telephone: +44 (0) 1481 712706

Facsimile: +44 (0) 1481 733444

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**1 EXECUTIVE SUMMARY**

**1.1 Fee rate proposal for 2012**

 1.1.1 The Commission proposes to retain the fees tariff for 2012 at 2011 levels, except that it proposes to create a further fee band for full fiduciary licences, so that fiduciary licensees with annual fee income between £2 million and £4 million will pay fees at a lower rate in 2012 than in 2011.

**2 CONSULTATION**

**2.1 Basis for consultation**

2.1.1 The Commission issues this Consultation Paper in accordance with Section 8(2) of the Financial Services Commission (Bailiwick of Guernsey) Law 1987, as amended (“Law”), under which the Commission *“may, in connection with the carrying out of its functions - ….consult and seek the advice of such persons or bodies as it considers appropriate”.*

2.1.2 This Consultation Paper provides the setting in which the Commission proposes to retain the current tariff of fees payable for 2012, save for the introduction of a new intermediate fee band for Fiduciary licenses.

2.1.3 The Commission invites industry representatives to submit comments on this Consultation Paper.

**2.2 Who will be affected by the proposed retention of the current fees tariff**

2.2.1 These provisions will affect all licensees, registered businesses and individuals, and applicants for licences or registration in accordance with applicable laws and regulations.

**2.3 Responding to the consultation**

2.3.1 The Commission invites comments in writing.

2.3.2 Comments should be received by the Commission no later than 30 September 2011.

 **3 THE COMMISSION**

**3.1 Commission’s regulatory objectives**

3.1.1 The Policy Council has restated the Commission’s regulatory objectives as follows:

* Maintaining financial stability in the regulated finance sector.
* Managing risk to the financial system and maintaining market confidence.
* Ensuring fair, efficient and transparent markets.
* Protecting financial services’ customers.
* Countering financial crime and the financing of terrorism.

**3.2 Commission’s functions**

3.2.1 The Law prescribes that the Commission shall be responsible for:

3.2.1.1 supervising and regulating financial services in the Bailiwick of Guernsey;

3.2.1.2 providing the Committees with reports, advice and assistance in relation to any matter connected with finance business;

3.2.1.3 preparing and submitting to the Committees recommendations and schemes for the statutory regulation of financial business and generally for the revision of legislation appertaining to companies and other forms of business undertakings;

3.2.1.4 countering of financial crime (including fraud, dishonesty, financial market misconduct, misuse of financial market information and handling the proceeds of crime) and the financing of terrorism;

3.2.1.5 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

3.2.1.6 such other functions as the States may by Resolution assign to the Commission.

**4 PROPOSALS**

**4.1 Overview**

4.1.1 It is the Commission’s policy to review the level of fees annually for all business sectors. Following the significant increases effected in the last two years, the Commission’s financial position is stronger, though financial challenges and uncertainties remain.

4.1.2 The Commission is presently the subject of an Independent Evaluation Review, which is referred to in the Annual Report for 2010. The results of this review are not yet known and any implementation of recommendations may have a significant effect on the Commission’s finances in 2012 and beyond. No reorganisational expense has been recognised in the budget for 2012 because the financial effect cannot be reasonably anticipated, but it is clear that the Commission is in a period of transition and that its future resource requirements may shift significantly. Aside from the independent evaluation review, the Commission has commenced a project to implement a system in the fourth quarter of next year enabling licensees to submit documents electronically. This will result in significant investment in 2011 and 2012, with a commensurate depreciation charge in late 2012 and beyond. This Consultation Paper does not reflect this uncertain additional cost, but rigorous cost control elsewhere justifies the present fees tariff being held for 2012 at 2011 levels.

4.1.3 It is the intention of the Commission to continue the policy pursued in 2009 and 2010 that the regulatory fee income of each regulatory Division should eventually and approximately cover its direct operating costs (principally salaries), but also its share of allocated costs. The Commission maintains its view that this provides a fairer apportionment of costs of regulation between licensees. Clearly, in the absence of fee rate increases, the progress that can be made in 2012 will be limited as it will be addressed solely through cost control.

4.1.4 The current fees tariff remains insufficient however for fees received to cover direct and allocated costs for the Banking Division, Insurance Division and Non-Regulated Financial Services Businesses/Prescribed Businesses (“NRFSB/PBs”). With the exception of the Banking Division, where the expected surrender of three licences in 2011 will reduce overall fees income in 2012, and in the Insurance Division, where a significant number of surrenders occurred shortly before the end of 2010, substantial progress has already been made towards removing cross-subsidisation due to the fee rate increases effected at the start of this year, with the Fiduciary sector now generating a small surplus.

4.1.5 Since last year’s Consultation Paper on fee rate proposals, various factors have affected the Commission’s finances, including:

* developing and improving regulatory and supervisory activities to meet international standards and expectations, besides domestic requirements;
* legal and professional expenses continue to be reduced, assisted by last year’s appointment of an in-house Legal Counsel;
* in the Banking, Insurance and Investment sectors there has been a reduction in the number of licensees since 2011’s fee rates were set;
* bank interest income estimates for 2012 have declined by a further £80,000 due to continuing low interest rates;
* the final salary pension scheme funding cost (including 8 Commission staff on permanent secondment to the GTA). Cost containment measures derived in part from the Hutton Report on UK public sector pensions are presently being discussed with the Public Sector Remuneration Committee of the States of Guernsey, for implementation as soon as practicable. This is expected to moderate future employer contribution rate increases. The Commission prepares its budget by estimating final salary pension costs at a level approximating to the service cost calculated under the pensions accounting standard FRS17 (which determines the charge in the Income and Expenditure Account of the Commission’s financial statements).

In summary, the Commission’s reserves, which currently represent approximately three months’ expenses, cannot afford to be materially diminished in 2012 and beyond.

4.1.6 Whilst the Commission is cognisant of the need to take note of comparable jurisdictions such as Jersey and the Isle of Man, fees can only be set by reference to the Commission’s circumstances. Setting out fee rate comparisons between Guernsey, Jersey and the Isle of Man is not straightforward, given their different structures, funding commitments and expenses. To draw up a comparison simply comparing licence fees is apt to be misleading.

4.1.7 Three new posts will be created in 2012. An internal auditor is proposed for appointment to the Director General’s Division to replace reliance on contracted internal auditing functions and to extend oversight of the regulatory Divisions, and two systems development contractors in the Finance and Operations Division (to work, inter alia, on the electronic document submission project). All vacant posts created by staff leaving are evaluated and replacements only hired if the post is essential. In 2011, many vacant posts were filled by internal promotions, resulting in the majority of recruitment being at Analyst or Senior Analyst level. All staff appointments continue to require the approval of the Director General.

4.1.8 Inflation has been included at 3.0% p.a. for 2012, though Guernsey RPI was 2.9% and the underlying cost of living, RPIX (excluding interest rate movements) was also 2.9% at March 2011 The rate used for 2012 of 3.0% takes into account not only current Guernsey inflation but also Bank of England inflation projections. Inflation assumptions will be reviewed again as data is released. As the fees rates have not been increased, the effect of inflation means that in real terms fees have reduced.

4.1.9 The Commission continues to seek efficiencies and to control costs and it is proposed that fees for 2012 and beyond will only be collected by electronic funds transfer and that the option for licence fees to be paid by cheque will be withdrawn.

**4.2 Background – Banking Division**

4.2.1 The Banking Division is forecasting a net deficit of £86,000 for 2011. The net deficit in 2010 was £435,000 (before the FRS17 pension fund accounting adjustment).

4.2.2 Direct costs for 2012 are projected to increase by £35,000 (3%) as a result mainly of higher staff costs, though headcount will be maintained at 12.

4.2.3 The current fee tariff is forecast to generate income of £1,717,000 in 2012 (allowing for expected reductions in licensee numbers and no new licence applications), leading to an expected net deficit of £287,000.

4.2.4 The table below forecasts licensee numbers and headcount.

 **Forecasts 2011 2012**

Number of licensees - banks 21 19

 Number of licensees – branches 17 16

 Headcount (FTE) 11.63 11.63

 The Division continues to receive enquiries about licence applications but budget practice is to not assume any conversion into licence issuance.

**4.3 Tariff – Banking Division**

4.3.1 It is proposed to retain the current tariff and structure of charges for annual and application fees.

4.3.2 The tariff is set out below

 **Current Fee, retained for 2012**

 **Income band**

 Application fee £36,700

 Annual licence fees:

Under £5 million £36,700 £5 million to £10 million £42,100

 £10 million to £20 million £50,400

 Over £20 million £63,100

 Branches outside jurisdiction £12,600

**4.4 Background – Insurance Division**

4.4.1 The Insurance Division is forecasting a net deficit of £155,000 for 2011. The net deficit in 2010 was £187,000 (before the FRS17 pension fund accounting adjustment).

4.4.2 Direct costs for 2012 are projected to increase by £64,000 (4%) mainly as a result of higher staff costs, due to positions presently vacant being filled.

4.4.3 The current fee tariff is forecast to generate income of £2,773,000 in 2012, leading to an expected net deficit of £142,000.

4.4.4 The Commission projects a broadly constant level of new licence applications and licence surrenders in 2012 when compared to 2011. Although the number of licensees is forecast to rise by 1% in 2012, the mix of licence types had shifted towards lower fee categories by the start of 2011, depressing fee income for 2011 and beyond.

4.4.5 The table below forecasts licensee numbers and headcount.

 **Forecasts 2011 2012**

Number of licensees 750 756

Headcount (FTE) 18.06 18.06

**4.5 Tariff – Insurance Division**

4.5.1 It is proposed to retain the current tariff and structure of charges for annual and application fees.

4.5.2 The tariff is set out below:

 **Current Fee, retained for 2012**

 Application fees:

 Insurance Manager £4,690

 Insurance Manager – Lloyd’s £2,580

 Insurer/Reinsurer/Captive £5,040

 Protected/Incorporated Cell Company £5,040

 Cell of a PCC/ICC £1,420

 Domestic Insurer £2,840

 Intermediary £4,740

 (addition of licence categories) £170 to £1,630

 Member of association for travel insurance £1,300

 Annual fees:

 Insurance Managers – pure £4,450

 Insurance Managers – commercial £7,450

 Insurance Manager – Lloyd’s £2,580

 Insurer/Reinsurer/Captive £5,040

 Protected or Incorporated Cell Company £5,040

 Cell of a PCC or ICC £1,650

 Transformer cell £750

 Dormant cell £130

 Life Insurer (from/to) £5,040 to £19,930

 Domestic Insurer (turnover < £12,000) £420

 Domestic Insurer (turnover £12,000+) £2,840

 Intermediary (base fee) £2,290

 Intermediary (licence type) £170 to £1,630

 Intermediary (turnover level) £1,620 to £6,500

 Member of association for travel insurance £1,300

 Other fees:

 Conversion of a company to a

 regulated PCC or ICC £950

 Conversion of a regulated PCC to a

 regulated ICC £950

 Conversion of a PCC or ICC to a

 regulated non-cellular company £950

**4.6 Background – Fiduciary Services Division**

4.6.1 The Fiduciary Services Division is forecasting a net surplus of £200,000 for 2011. The net surplus in 2010 was £102,000 (before the FRS17 pension fund accounting adjustment).

4.6.2 Direct costs for 2012 are projected to decrease by £41,000 (4%) as a result mainly of reducing legal costs.

4.6.3 The current fee tariff, which is proposed to be varied by the introduction of a new annual income band of £2 million to £4 million, is forecast to generate income of £2,283,000 in 2012, leading to an expected net surplus of £43,000.

4.6.4 The Commission projects a net reduction of 7 fiduciary licensees (of which 1 is a personal licensee) between now and the end of 2011.

4.6.5 The table below forecasts licensee numbers and headcount.

 **Forecasts 2011 2012**

Number of licensees 188 184

 Headcount (FTE) 13.79 13.79

**4.7 Tariff changes – Fiduciary Services Division**

4.7.1 It is proposed to retain the current tariff and structure of charges for application fees. It is proposed that for annual fees a new income band be introduced for annual income between £2 million and £4 million. This has the effect of reducing fees for those licensees with annual income in that band by 9%.

4.7.2 The proposed tariff is set out below:

 **Current Fee 2012 Revised Fee**

 Application fees:

 Personal licence £860 £860

 Full licence £1,940 £1,940

 Group applicant £260 £260

 Annual licence fees:

 Personal fiduciary licence £970 £970

 Full fiduciary licence

 *Income band (annual):*

Under £250,000 £5,820 £5,820

 £250,000 to £1 million £9,690 £9,690

 £1 million to £2 million £19,720 £19,720

 £2 million to £4 million £23,910 £21,800

 Over £4 million £23,910 £23,910

 Other fees:

 Personal discretionary exemption 430 430

 Company/partnership discretionary

 Exemption 860 860

 Consent to use a name 1,640 1,640

**4.8 Background – Investment Division**

4.8.1 The Investment Division is forecasting a net surplus of £777,000 for 2011. The net surplus in 2010 was £1,293,000 (before the FRS17 pension fund accounting adjustment).

4.8.2 Direct costs for 2012 are projected to increase by £224,000 (11%) as a result mainly of higher staff costs as international policy issues and dealing with problem cases increases workload beyond resources available via existing staff complement. As at mid-2011, three Analyst positions remained unfilled and it is expected that two of these will remain so for the majority of the remainder of the year, with the effect of reducing costs in 2011 below the original 2011 budget.

4.8.3 The current fee tariff and charging structure is forecast to generate income of £5,216,000 in 2012 leading to an expected net surplus of £567,000.

4.8.4 In light of these forecast surpluses for the Investment Division, the Commission proposes retaining the current tariff and structure of charges of annual and application fee levels.

4.8.5 In considering this matter, the following key facts are pertinent:

 4.8.5.1 Staffing levels are under constant review and it is envisaged that three additional staff members will join the Division by the end of 2011.

 4.8.5.2 The Commission projects a constant level of new licence applications and licence surrenders in 2012 when compared to 2011.

4.8.6 The table below forecasts licensee and licensed scheme numbers and headcount.

 **Forecasts 2011 2012**

Number of licensees/collective

 investment schemes\* 3,548 3,548

 Headcount (FTE) 31.05 31.05

 *\* Included are licensees, authorised and registered collective investment schemes, classes of Guernsey open-ended authorised and registered collective investment schemes, and non-Guernsey open-ended collective investment schemes*

**4.9 Tariff– Investment Division**

4.9.1 It is proposed to retain the current tariff and structure of charges for annual and application fees.

4.9.2 The tariff is set out below:

 **Current Fee, retained for 2012**

 Application fees:

 Open-ended Collective Investment Schemes

* Schemes\* £3,100
* New classes of existing schemes\* £650
* Non-Guernsey schemes £1,000
* Designated Territories scheme notification
* (EX) (Jersey schemes remain at nil) £1,000

Closed-ended Collective Investment Schemes

* Schemes\* £3,100
* Additional classes\* £650

 Licensees £2,100

 Annual fees:

 Open-ended Collective Investment Schemes

* Schemes\* £3,100
* Additional classes\* £200
* Non-Guernsey schemes £500
* Designated Territories scheme (EX) £500

Closed-ended Collective Investment Schemes

* Schemes\* £3,100
* Additional classes\* £200

Licensees

* Designated Persons of open-ended schemes £3,000
* Principal Managers of open-ended schemes £1,500
* Designated Managers of closed-ended

 schemes £3,000

* Managers of closed-ended schemes £1,500
* Investment exchanges £11,000
* Other Licensees £3,000

 *\* Authorised and Registered*

**4.10 Background – Non-Regulated Financial Services Businesses (“NRFSBs”) and Prescribed Businesses (“PBs”)**

4.10.1 The Commission is forecasting fee income for 2011 of £153,000 from NRFSBs and PBs (ie firms of lawyers, accountants and estate agents).

4.10.2 The current fee tariff is forecast to generate income of £157,000 in 2012, leading to an expected net deficit of £84,000.

4.10.3 Direct costs for 2012 are projected to increase by £21,000 (24%) to £111,000 as a result of the full staff complement of 1.71 FTE being in place for the whole year.

4.10.4 Costs associated with monitoring the NRFSB/PB sector are now separately identified and include the direct costs of two members of staff (1.71 FTE), together with a share of overhead expenses.

**4.11 Tariff – Non-Regulated Financial Services Businesses and Prescribed Businesses**

4.11.1 It is proposed to retain the current tariff and structure of charges for annual and application fees.

4.11.2 The tariff for NRFSBs is detailed below:

 **Current Fee, retained for 2012**

 Application fee £1,090

 Annual fees:

 Base fee £1,090

 Fee for 1-5 additional outlets £60

 Fee for 6-10 additional outlets £130

 Fee for 11-15 additional outlets £200

 Fee for more than 15 additional outlets £260

4.11.3 The tariff for PBs is detailed below:

|  |  |
| --- | --- |
| **Number of full time or full time equivalent staff** | **Current Fee, retained for 2012** |
| 1-5 | £590 |
| 6 | £680 |
| 7 | £770 |
| 8 | £860 |
| 9 | £950 |
| 10 | £1,040 |
| 11 | £1,130 |
| 12 | £1,220 |
| 13 | £1,310 |
| 14 | £1,400 |
| 15 | £1,490 |
| 16 | £1,580 |
| 17 | £1,670 |
| 18 | £1,760 |
| 19 | £1,850 |
| 20 | £1,940 |
| 21 | £2,030 |
| 22 | £2,120 |
| 23 | £2,210 |
| 24 | £2,300 |
| 25 or more | £2,390 |

**APPENDIX A**

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

* States of Guernsey Policy Council
* States of Guernsey Commerce and Employment Department
* States of Alderney Policy and Finance Committee
* Chief Pleas of Sark General Purposes and Advisory Committee
* Guernsey Finance
* Chamber of Commerce Guernsey
* Guernsey International Business Association
* Association of Guernsey Banks
* Guernsey Investment Fund Association
* Guernsey Investment Managers and Stockbrokers Association
* Guernsey International Insurance Association
* Bailiwick Insurance Intermediary Association
* Guernsey Association of Trustees
* Institute of Directors