



**Jersey Financial
Services Commission**

Feedback on Consultation Paper

No. 10 2017

Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008: Fees for registered persons

Issued: December 2017

Consultation Feedback

This paper reports on responses received by the JFSC to its Consultation Paper No.10 2017 (Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008: Fees for registered persons).

Glossary of Terms

AML/CFT	anti-money laundering / combating the financing of terrorism
JFSC	Jersey Financial Services Commission

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1 Executive Summary

1.1 Overview

- 1.1.1 We issued Consultation Paper No.10 2017 in October, proposing a 27.1% increase in relevant fee rates as well as some other changes to the calculation and collection of fees.
- 1.1.2 Two written responses to the consultation were received. A summary of the responses and our feedback are set out in the next Chapter. The JFSC also acknowledges that some comments regarding fees were made by attendees at an estate agents outreach session held in November, but in the absence of formal responses we have not attempted to capture those in this paper.
- 1.1.3 Taking account of the feedback received, we are proceeding with both the changes in fee rates and the other proposals set out in the consultation. The final fees notices can be found in Appendices B and C and on our website.

1.2 Next steps

- 1.2.1 Relevant firms will receive notification via the myJFSC portal that employee data needs to be supplied. Firms' attention is drawn to the changes that have been made about the charging of 'late' fees regarding the supply of information, as well as interest charges for late payments, and restrictions on the ability to pay by instalments.
- 1.2.2 A non-refundable application fee of £100 will apply for applications to be registered made from 1 January 2018.

2 Consultation Feedback

2.1 Feedback received

- 2.1.1 The JFSC received one response from a registered person (who wished to remain confidential) and one from an individual connected with a registered person but responding in a personal capacity. No specific comments were made on the proposals re late fees, interest on late payments, the application fee or the restriction on instalment payments.
- 2.1.2 The registered person commented that “...the proposed fee increase is entirely appropriate”.
- 2.1.3 The individual made a number of points about fees but also about the wider AML/CFT regime. We will respond directly on the wider points, but with respect to fees the individual commented that:
- 2.1.3.1 the fees were “unjust” as estate agents do not handle funds and purchaser’s advocates can be reluctant to confirm the origin of funds;
 - 2.1.3.2 in the event of purchase by a company, it would be helpful if the JFSC could confirm the beneficial owners instead of agents potentially having to look at multiple layers of annual returns;
 - 2.1.3.3 in the case of private sales, no checks are completed; it would be more appropriate for a fee to be charged for every transaction (to the purchaser);
 - 2.1.3.4 they would like confirmation that all other relevant firms (e.g. high value dealers) are registered with the JFSC and pay the same fee structure.
- 2.1.4 **JFSC response:** We would like to thank respondents for taking the time to provide feedback, and having taken this into account, we have proceeded with all the fee changes consulted on. We appreciate that there is a large percentage increase in fee rates, but as explained in the consultation, the vast majority of this is to replace a contribution to costs that the government has decided to remove over the next few years.
- 2.1.5 With respect to the comments in paragraphs 2.1.3.1 and 2.1.3.3, the requirement for registration is set out in law and does not include private sales (the activity of estate agency services must be carried on as a business for or on behalf of third parties). The JFSC does not consider that it would be practical or efficient to have a fee schedule covering only estate agents.
- 2.1.6 Regarding paragraph 2.1.3.2, beneficial ownership information is held confidentially and is only available to certain law enforcement and other bodies in strictly defined circumstances. It would require a change in the law for this to include estate agents. We would point out that annual returns do not necessarily include details of beneficial owners, rather they include details of legal owners.
- 2.1.7 In terms of paragraph 2.1.3.4, there are two fee structures: one for accountants and lawyers and one for other registrants (including estate agents and high value dealers), so estate agents and high value dealers incur fees calculated in the same way. We monitor the regulatory “perimeter” and take action where we suspect an entity should have registered but has not done so. It is a criminal offence to carry out unauthorised (unregistered) business.

Appendix A – List of respondents

- › A registered entity
- › Gary Bryant

Appendix B - Fees Notice under the Supervisory Bodies Law (for accountants and lawyers)

Notice of Fees

Published in accordance with:	Article 21 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended
Payable by or in relation to:	Firms of accountants and firms of lawyers
Pursuant to:	Article 20 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, 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 2018.

1 Interpretation

1.1 In this notice, unless the context otherwise requires:

a firm of accountants	means a person or persons (including but not limited to a sole trader) who carry on business alone or with others that falls within the scope of paragraph 2 of Part B of Schedule 2 of the Proceeds of Crime (Jersey) Law 1999, as amended, and who are required to hold a Level 2 registration under the Supervisory Bodies Law;
a firm of lawyers	means a person or persons (including but not limited to a sole trader) who carry on business alone or with others that falls within the scope of paragraph 1 of Part B of Schedule 2 of the Proceeds of Crime (Jersey) Law 1999, as amended, and who are required to hold a Level 2 registration under the Supervisory Bodies Law;
contract of employment, contract of service or partnership agreement	means an agreement between two or more parties whether express or implied and (if it is express) whether oral or in writing;
relevant date	means the last working day of the year immediately preceding the calendar year to which the fee relates;
relevant employee	means an individual who: <ul style="list-style-type: none"> a) works under a contract of employment or any other contract of service; b) practises alone or with others under the terms of a partnership agreement; or

	<p>c) is otherwise engaged within the business of a firm of accountants or lawyers,</p> <p>in all cases where the individual undertakes to do or perform, directly or indirectly, any work or service within a firm of accountants or lawyers, whether or not engaged directly by the firm of accountants or lawyers or through another entity forming part of the group of entities of which the firm of accountants or lawyers is a part, and the firm of accountants or lawyers is not by virtue of the contract a client or customer of the individual, and “relevant employee” shall be construed accordingly;</p>
sole trader	<p>means a person who is the sole proprietor of a firm of accountants or lawyers and who does not practise law or accountancy with any other person and who does not engage any relevant employee;</p>
Supervisory Bodies Law	<p>means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended.</p>

2 Calculation of number of relevant employees

- 2.1 For clarity, for the purposes of this notice “relevant employee” includes but is not limited to:
- a. a partner practising law or accountancy whether alone or with others;
 - b. an individual classified as self-employed for tax or social security purposes but in all other respects meets the definition of relevant employee;
 - c. an individual based or working outside Jersey but engaged within the Jersey business of the firm of accountants or lawyers; and
 - d. an individual engaged by a firm of accountants or lawyers which is a Jersey entity wherever in the world that individual works or is based and whether or not that individual is engaged in the Jersey business of that firm of accountants or lawyers.
- 2.2 For individuals with fixed term contracts that do not span the full calendar year, the hours worked should be annualised and the bandings (see paragraph 2.3) applied when calculating the number of relevant employees.
- 2.3 The following bandings should be applied when calculating the number of total relevant employees:
- a. up to and including 9 hours per week 0.25 of a person;
 - b. over 9 hours and up to and including 18 hours per week 0.50 of a person;
 - c. over 18 hours and up to and including 27 hours per week 0.75 of a person;
 - d. over 27 hours per week 1 person.
- 2.4 The calculation of the number of relevant employees should be undertaken as at the relevant date based upon the relevant employee’s engagement over the preceding 12 months. If, on the relevant date, there exists a post that is vacant but would normally be occupied by an individual who meets the definition of a relevant employee the calculation should include that position.

- 2.5 *Example 1: fixed term contract.* An individual who has a fixed term contract and is contracted to work full time (35 hours per week) for four months would equate to:

$$35 \text{ hours} \times 4 \text{ months} \div 12 \text{ months} = 11.67 \text{ hours per week}$$

The individual would therefore be equivalent to 0.5 of a person in calculating the number of relevant employees.

- 2.6 *Example 2: part time working.* An individual who is employed part time for the whole year at 25 hours per week would represent 0.75 of a person in the calculation of the number of relevant employees.

- 2.7 *Example 3: part time working + fixed term contract.* An individual who is employed part time on a fixed contract (20 hours per week for 6 months) would equate to:

$$20 \text{ hours} \times 6 \text{ months} \div 12 \text{ months} = 10 \text{ hours per week}$$

The individual would therefore be equivalent to 0.5 of a person in calculating the number of relevant employees NOT 0.75 of a person.

3 Annual fee

- 3.1 Firms of accountants and firms of lawyers shall pay an annual fee of an amount calculated in accordance with the table set out in the Schedule.
- 3.2 Payment of the annual fee should be made as follows:
- a. in full, on or before 31 March 2018; or
 - b. where the annual fee due is at least £1,000, and firms of accountants and firms of lawyers indicate that they intend to pay the annual fee on an instalment basis, then the annual fee is payable in four equal instalments. Payments should be made on or before:
 - i. 31 March 2018;
 - ii. 30 June 2018;
 - iii. 30 September 2018; and
 - iv. 31 December 2018.
- 3.3 The annual fee is subject to a fee cap of £14,440.

4 Late payment of fees and/or late submission of fees information

- 4.1 If the annual fee (or an instalment payment, if relevant) is not received in full by the JFSC by the due date, an additional late payment fee of 5% of the unpaid principal amount will be applied on the day after the due date, and on the 1st day of each calendar month after that.
- 4.2 If the firm does not supply the required information to calculate its fee by 31 March 2018, an administration fee of £100 will be charged on 1 April 2018, and on the 1st day of each calendar month after that while the information is still outstanding. This is in addition to the late payment fee set out in paragraph 4.1 which will be calculated once the information has been submitted.

5 Application fee

- 5.1 An application fee of £100 shall be payable in respect of an application by a firm of accountants or a firm of lawyers wishing to be registered under the Supervisory Bodies Law.
- 5.2 The application fee is due at the time of application and is non-refundable.

Schedule

	Base fee	Relevant employee element
Sole Trader	£289	Not applicable
All other firms	£1,154	Plus: £144 per relevant employee calculated in accordance with this notice (the total annual fee is capped at £14,440)

Appendix C - Fees Notice under the Supervisory Bodies Law (for specified Schedule 2 business, including estate agency services and lending)

Notice of Fees

Published in accordance with: **Article 21 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended**

Registered persons

Payable by or in relation to: (specified Schedule 2 business, including estate agency services and lending but excluding services provided by firms of accountants and firms of lawyers)

Pursuant to: **Article 20 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, 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 2018.

1 Interpretation

1.1 In this notice, unless the context otherwise requires:

contract of employment, contract of service or partnership agreement	means an agreement between two or more parties whether express or implied and (if it is express) whether oral or in writing;
registered person	means a person or persons (including but not limited to a sole trader): a) who carries on business alone or with others that falls within the scope of Schedule 2 of the Proceeds of Crime (Jersey) Law 1999, as amended, EXCEPT business that is defined in paragraphs 1 and 2 (lawyers and accountants) of Part B of Schedule 2; <u>and</u> b) who is required to hold either a Level 1 or Level 2 registration under the Supervisory Bodies Law;
relevant date	means the last working day of the year immediately preceding the calendar year to which the fee relates;

relevant employee	<p>means an individual who:</p> <p>a) works under a contract of employment or any other contract of service;</p> <p>b) practises alone or with others under the terms of a partnership agreement; or</p> <p>c) is otherwise engaged within the business of a registered person,</p> <p>in all cases where the individual undertakes to do or perform, directly or indirectly, any work or service within a registered person, whether or not engaged directly by the registered person or through another entity forming part of the group of entities of which the registered person is a part, and the registered person is not by virtue of the contract a client or customer of the individual, and “relevant employee” shall be construed accordingly;</p>
sole trader	<p>means a person who is the sole proprietor of a registered person and who does not practise Schedule 2 business with any other person and who does not engage any relevant employee;</p>
Supervisory Bodies Law	<p>means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended.</p>

2 Calculation of number of relevant employees

- 2.1 For clarity, for the purposes of this notice “relevant employee” includes but is not limited to:
- a. a partner carrying on Schedule 2 business whether alone or with others;
 - b. an individual classified as self-employed for tax or social security purposes but in all other respects meets the definition of relevant employee;
 - c. an individual based or working outside Jersey but engaged within the Jersey business of the registered person; and
 - d. an individual engaged by a registered person which is a Jersey entity wherever in the world that individual works or is based and whether or not that individual is engaged in the Jersey business of that registered person.
- 2.2 For individuals with fixed term contracts that do not span the full calendar year, the hours worked should be annualised and the bandings (see paragraph 2.3) applied when calculating the number of relevant employees.
- 2.3 The following bandings should be applied when calculating the number of total relevant employees:
- | | |
|--|-------------------|
| a. up to and including 9 hours per | 0.25 of a person; |
| b. over 9 hours and up to and including 18 hours per week | 0.50 of a person; |
| c. over 18 hours and up to and including 27 hours per week | 0.75 of a person; |
| d. over 27 hours per week | 1 person. |

2.4 The calculation of the number of relevant employees should be undertaken as at the relevant date based upon the relevant employee's engagement over the preceding 12 months. If, on the relevant date, there exists a post that is vacant but would normally be occupied by an individual who meets the definition of a relevant employee the calculation should include that position.

2.5 *Example 1: fixed term contract.* An individual who has a fixed term contract and is contracted to work full time (35 hours per week) for four months would equate to:

$$35 \text{ hours} \times 4 \text{ months} \div 12 \text{ months} = 11.67 \text{ hours per week}$$

The individual would therefore be equivalent to 0.5 of a person in calculating the number of relevant employees.

2.6 *Example 2: part time working.* An individual who is employed part time for the whole year at 25 hours per week would represent 0.75 of a person in the calculation of the number of relevant employees.

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The individual would therefore be equivalent to 0.5 of a person in calculating the number of relevant employees NOT 0.75 of a person.

3 Annual fee

3.1 Registered persons shall pay an annual fee of an amount calculated in accordance with the table set out in the Schedule.

3.2 Payment of the annual fee should be made as follows:

- a. in full, on or before 31 March 2018; or
- b. where the annual fee due is at least £1,000, and registered persons indicate that they intend to pay the annual fee on an instalment basis, then the annual fee is payable in four equal instalments. Payments should be made on or before:
 - i. 31 March 2018;
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4.1 If the annual fee (or an instalment payment, if relevant) is not received in full by the JFSC by the due date, an additional late payment fee of 5% of the unpaid principal amount will be applied on the day after the due date, and on the 1st day of each calendar month after that.

- 4.2 If the firm does not supply the required information to calculate its fee by 31 March 2018, an administration fee of £100 will be charged on 1 April 2018, and on the 1st day of each calendar month after that while the information is still outstanding. This is in addition to the late payment fee set out in paragraph 4.1 which will be calculated once the information has been submitted.

5 Application fee

- 5.1 An application fee of £100 shall be payable in respect of an application by a person wishing to be registered under the Supervisory Bodies Law.
- 5.2 The application fee is due at the time of application and is non-refundable.

Schedule

	Base fee	Relevant employee element
Sole Trader	£289	Not applicable
All other firms	£577	Plus: £144 per relevant employee calculated in accordance with this notice (the total annual fee is capped at £14,440)