



Jersey Financial
Services Commission

Consultation Paper

No. 10 2017

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

A consultation on proposals regarding fee rates and associated issues.

Issued: October 2017

Consultation Paper

The Jersey Financial Services Commission (**JFSC**) invites comments on this consultation paper. Comments should reach Jersey Finance Limited by 1 December 2017.

Responses should be sent to:

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Alternatively, responses may be sent directly to the JFSC by 1 December 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 Commission.

The JFSC contact is:

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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

AML/CFT	anti-money laundering / combating the financing of terrorism
DNFBPs	designated non-financial businesses and professions (a term used to refer to persons registered under the Law)
JFSC	Jersey Financial Services Commission
the Law	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism

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1 Consultation

1.1 Basis for consultation

- 1.1.1 Under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the Law), the JFSC is the supervisory body responsible for regulated persons' activity covered by the Law, as well as having been designated as the supervisory body for persons registered with the JFSC under the Law. Article 20 of the Law allows the Commission to charge fees to persons subject to the Law.
- 1.1.2 Article 21(6) of the Law requires that before the JFSC may publish any fee "*...the [Commission] shall publish a report that includes -*
- (a) details of the proposed fee;*
 - (b) a request for comments on the level of the proposed fee; and*
 - (c) 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 Law.

1.2 Who will be affected by the proposed changes?

- 1.2.1 The proposed new fees will affect all persons registered under the Law, and persons that become registered on or after 1 January 2018. Of particular relevance to the latter group is our proposal to introduce an application fee for registration.

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.
- 1.3.2 Comments should be received by either Jersey Finance Limited or the JFSC no later than 1 December 2017.

1.4 Next steps

- 1.4.1 Following this consultation, the JFSC will publish feedback and the final fees notices by the end of the year. Firms will be notified when either their invoices are ready, or they need to supply employee information via the myJFSC portal, and should not make payments until this time.
- 1.4.2 Please note that as well as significant changes to fee rates, we are consulting in this paper on charges for late submission of fees information and/or late payment of fees, as well as issues to do with payment by instalments.

2 Fee proposals

2.1 Proposed fee rate increase

- 2.1.1 The JFSC proposes to increase fee rates (and the level of the fee cap) by 27.1% for 2018. The majority of this increase is due to the phased withdrawal of a current contribution the JFSC receives from the Jersey Government.

2.2 Background

- 2.2.1 Last year, the JFSC increased fee rates under the Law for the first time since 2011. The increase in rates was 13.6%, matching inflation during the period – i.e. there was no increase in fee rates in real terms.
- 2.2.2 In addition to the fees raised directly from the industry, the Government of Jersey has up until now paid an annual amount of £248,965 to the JFSC towards its activities under the Law.
- 2.2.3 The question of this subsidy was raised in the JFSC's funding review consultation in 2015. It was asked whether it was appropriate for the Government payment to continue given that no other firms have their regulatory costs subsidised in this way. Of 14 responses, 13 were in favour of the payment ending. In the feedback statement, the JFSC said:

The Commission proposes to discuss the matter with the Government. If, as seems likely, the Government agrees that its funding should be withdrawn, the Commission will recommend that a phased withdrawal be implemented in order to spread the financial impact on DNFBPs over a period of several years.

- 2.2.4 The Government has now indicated that it does wish to withdraw the subsidy so that, as in all other areas of financial regulation, no public funds will be applied. The Government has indicated that it will withdraw the payment equally over the next three years. So, this year the JFSC will receive £248,965; in 2018, £165,977; in 2019, £82,988; and from 2020 onwards nothing.
- 2.2.5 **It is important to note that this is a decision of the Government and not of the JFSC.** The JFSC is in the position where it needs to collect from the industry itself the additional circa £83,000 that it will no longer receive from the government in 2018. The total cost of regulation under the Law is not changing¹, but the contribution from the Jersey taxpayer is being replaced by fees being charged to the industry instead.
- 2.2.6 Prior to the issue of this consultation paper, the JFSC and Government met with representatives of the Law Society of Jersey, the Jersey Estate Agents' Association and the Jersey Chamber of Commerce² to discuss the removal of the Government payment and its effects. Some of the material below is included in the consultation paper at their request.

¹ Apart from an inflation-only increase which the JFSC is proposing.

² The Jersey Society of Chartered and Certified Accountants were unable to attend the meeting but were made aware of the situation by correspondence.

2.3 Development of fees under the Law

2.3.1 The table below sets out how the JFSC’s fee income under the Law has changed over time:

	Government contribution (£'000s)	Industry contribution (£'000s)	Total fees under the Law (£'000s)	Total JFSC non-Registry fees (£'000s)	Fees under the Law v total non-Registry fees (%)
2011	249	248	497	9,953	5.0
2012	249	249	498	10,487	4.8
2013	249	269	518	11,002	4.7
2014	249	265	514	10,717	4.8
2015	249	296	545	11,281	4.8
2016	249	308	557	11,560	4.8
2017³	249	345	594	11,968	5.0

2.3.2 It can be seen from the above table that the share of the JFSC’s non-registry fees represented by fees collected under the Law has remained relatively constant – i.e. fees paid under the Law have not increased disproportionately compared to fees from firms who are registered for full financial supervision.

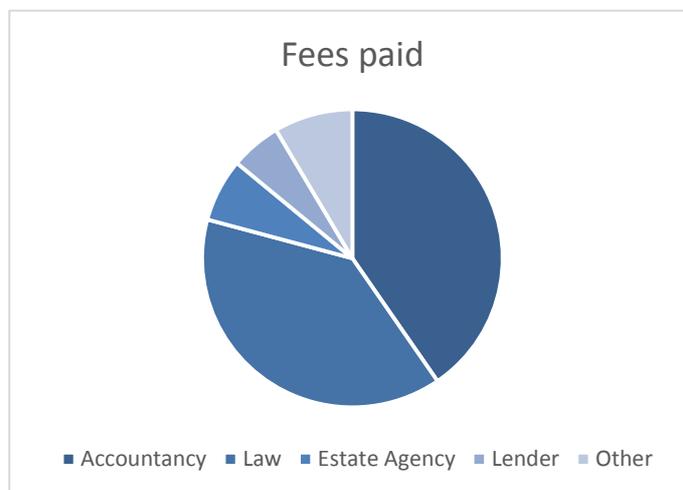
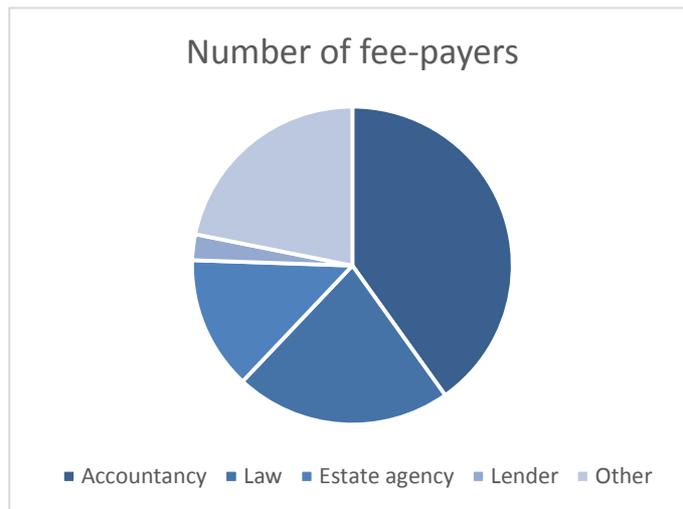
2.3.3 Unsurprisingly the fee rate increase for 2017 has boosted the industry’s share of fees under the Law compared to the static government contribution. Overall, the JFSC’s total fee income under the Law has increased by 19.5% since 2011. As set out in last year’s consultation, inflation from December 2010 to September 2016 was 13.6%, and before 2017, the JFSC had not made any fee rate increases (even of an inflationary nature). Changes in the total fees contributed by the industry before 2017 (£248k to £308k) therefore represent changes in the number of firms registered under the Law and their number of chargeable employees (the business mix).

2.3.4 We note that, based on the provisional figures for 2017, the 13.6% *fee rate* increase has not resulted in as high a percentage increase in *fee income*. Again, this will be linked to changes in business mix.

³ All 2017 figures are provisional.

2.3.5 The two pie charts below give an indication of the number of fee-payers and fees paid by sector. They are based on provisional 2017 data and therefore may be subject to change. Differences between the shares of number of fee-payers and the shares of fees paid by each sector will reflect differing business structures (e.g. the “other” category may include a large number of sole traders paying only the minimum fee, while law firms may on average be larger with more chargeable employees).

2.3.6 Only eight firms in 2017 paid the maximum fee (the fee is capped once an entity reaches a certain number of chargeable employees). Four are law firms and four are accountancy firms



2.4 The work of the JFSC

2.4.1 As explained above, the reduction in government contribution and its replacement by fees collected from the industry will not change the total income received by the JFSC under the Law. Nevertheless, the question arises of whether the JFSC could simply absorb the reduction in funding without increasing industry fees to compensate. Our

view is that this is not possible if the JFSC is to be funded sustainably for its current level of activity⁴.

- 2.4.2 We set out last year the kind of work that the JFSC carries out to fulfil its responsibilities as the Island’s statutory AML/CFT regulator. This includes the authorisation and supervision of firms, as well as policy development and enforcement activity.
- 2.4.3 Our Business Plans and Annual Reports set out our priorities and report on outcomes respectively. For example, some of the work we have carried out recently, particularly relevant to our functions under the Law, includes:
- › Core ‘day to day’ supervision of entities, also covering authorisation activity and, where necessary, the progression of a number of referrals to our enforcement unit (including “policing of the perimeter”, to make sure everyone who should be registered under the Law is in fact registered);
 - › Continual outreach and education on AML/CFT risk management through day-to-day interaction with firms, including the maintenance of sectoral handbooks for parts of the industry, including accountants and lawyers;
 - › Multiple training sessions for industry on aspects of the AML/CFT and sanctions regimes;
 - › Targeted international engagement, such as with the Financial Action Task Force through the JFSC’s membership of the Group of International Finance Centre Supervisors;
 - › Policy work, including the introduction of a regulatory regime for virtual currency; and
 - › Together with government and other Island authorities, helping to secure an excellent outcome for Jersey in the MONEYVAL assessment of its AML/CFT regime.
- 2.4.4 A current priority for the JFSC is preparation for the Island’s forthcoming National Risk Assessment on threats and vulnerabilities regarding money laundering and the financing of terrorism (part of which directly focusses on registered persons under the Law).
- 2.4.5 The representative bodies we pre-consulted at the meeting mentioned in paragraph 2.2.6 called for the JFSC to share more information about AML/CFT supervisory findings and for a greater amount of outreach generally. While we must apply our resources in a risk-based way, we will be looking to publish more ‘thematic’ reports with details of better/poor practice (including on AML/CFT topics), and we are holding a regulatory event for estate agents in November.
- 2.4.6 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

⁴ Further details of the JFSC’s general financial position were set out in last year’s consultation paper.

JFSC needs to be sustainably funded to carry out its current level of activity and be prepared to respond to emerging threats.

2.5 Proposed changes to annual fee rates for 2018

- 2.5.1 Based on the above, the JFSC proposes the following change to fee rates for 2018:
- 2.5.1.1 A 3.1% increase reflecting inflation since last year's fee rate change⁵; plus
 - 2.5.1.2 A 24% increase to collect the £83k reduction in the Government payment⁶;
 - 2.5.1.3 **Making a total proposed fee rate increase of 27.1% (fee rates will be rounded to the nearest £1).**
- 2.5.2 This increase will take the sole trader fee from £227 to £289. The fee cap will increase from £11,360 to £14,440 (rounded to the nearest £10).
- 2.5.3 The draft fee notices setting out the new fee rates can be found in Appendix B (for accountants and lawyers) and Appendix C (for other persons registered under the Law).
- 2.5.4 Dependent on changes in the business mix, we may end up raising more or less than the amount that is needed to replace the withdrawn government contribution – we will take that into account when setting fee rates for future years.
- 2.5.5 Because the government payment is being withdrawn over a number of years, firms should be aware that material increases in fee rates are also likely to be needed both in 2019 and 2020. We would expect those to be lower in percentage terms than that for 2018, although the final numbers will depend on inflation and changes in business mix.

2.6 Other proposed fee changes for 2018

- 2.6.1 We are also proposing some other changes relating to fees, set out in this section (and reflected in the draft fees notices in Appendices B and C).
- 2.6.2 *Application fee.* At the moment no fee is payable for applying to the JFSC to be registered under the Law. **We propose to introduce a fee of £100.**
- 2.6.3 *Instalments.* At the time of our funding review we proposed to remove the current ability for fees to be paid in instalments. Our recent investments in technology mean that the administrative overhead of allowing instalment payments is no longer so high. Nevertheless we question the efficiency of allowing smaller amounts to be paid in instalments. So **we propose to remove the ability to pay in instalments where the fee due is less than £1,000.**
- 2.6.4 *Late payment of fees/late supply of information on which fees are to be charged.* As already in place for other fees payable to the JFSC, **we propose to introduce interest charges when fees are not paid on time (including for instalments) as well as**

⁵ Jersey Retail Prices Index change from September 2016 to September 2017.

⁶ £83k reduction in Government payment divided by £345k in industry fees collected (provisionally) in 2017 (=24%).

administration fees if firms do not supply information required to calculate their fees.

2.7 Questions

2.7.1 Do you have any comments on the fee rate increase proposed in section 2.5?

2.7.2 Do you have any comments on the other changes to fees proposed in section 2.6?

Appendix A - List of representative bodies who have been sent this consultation paper

- › Association of English Solicitors practising in Jersey
- › Institute of Chartered Secretaries and Administrators, Jersey branch
- › Institute of Directors, Jersey branch
- › Jersey Association of Directors and Officers
- › Jersey Chamber of Commerce and Industry
- › Jersey Compliance Officers Association
- › Jersey Estate Agents Association
- › Jersey Finance Limited
- › Jersey Society of Chartered and Certified Accountants
- › Law Society of Jersey

Appendix B - Draft 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	<p>means an individual who:</p> <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 c) is otherwise engaged within the business of a firm of accountants or lawyers, <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 - Draft 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
Payable by or in relation to:	Registered persons (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): <ul style="list-style-type: none"> 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> <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 c) is otherwise engaged within the business of a registered person, <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 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.

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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 fees

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;
 - 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 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)