



Consultation on fee rates and associated issues for:

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

Consultation Paper No. 9 2019

Issued: December 2019

Consultation Paper

The Jersey Financial Services Commission (**JFSC**) invites comments on this consultation paper by **10 January 2020**. 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 JFSC.

The JFSC contact is:

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Alternatively, Lisa Springate at Jersey Finance Limited (**JFL**) is coordinating an Industry response that will incorporate any matters raised by local businesses. Comments should be submitted to JFL by **10 January 2020**.

The JFL contact is:

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It is the policy of the JFSC to provide the content of responses for inspection unless specifically requested otherwise.

It is the policy of JFL (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

Defined terms are indicated throughout this document as follows:

AML/CFT	anti-money laundering / countering the financing of terrorism
DNFBP	designated non-financial businesses and professions (a term used to refer to persons registered under the Law)
JFSC/Commission	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

Table of Contents

- 1 Consultation.....5**
 - 1.1 Basis for consultation 5
 - 1.2 Who will be affected by the proposed changes? 5
 - 1.3 Responding to the consultation 5
 - 1.4 Next steps..... 5

- 2 Fee proposals6**
 - 2.1 Proposed fee rate increase 6
 - 2.2 Proposed changes to fee rates..... 6

- Appendix A: List of Representative Bodies who have been sent this
Consultation Paper.....8**

- Appendix B: Draft Accountants and Lawyers Fees Notice9**

- Appendix C: Draft Registered Persons Fees Notice13**

1 Consultation

1.1 Basis for consultation

- 1.1.1 Under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (**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.
- 1.1.2 Article 20 of the Law allows the JFSC to charge fees to persons subject to the Law and Article 21(6) of the Law requires that before the JFSC may publish any fee the "[JFSC] 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 [JFSC]".
- 1.1.3 Article 21(7) of the Law provides that should the JFSC and a Representative Body be unable to agree a fee that the JFSC must request the Bailiff to appoint 3 Jurats to consider if the fee proposed is unreasonable.
- 1.1.4 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 2020.

1.3 Responding to the consultation

- 1.3.1 The JFSC invites comments in writing from interested parties on the proposals included in this consultation paper.
- 1.3.2 Comments should be received by the JFSC or Jersey Finance no later than **10 January 2020**.

1.4 Next steps

- 1.4.1 Following this consultation, the JFSC will publish feedback and final fees notices.
- 1.4.2 The new fee rates will take effect from 1 January 2020.
- 1.4.3 Firms will be notified when they need to use the myJFSC portal to collect their invoices or to supply employee data and should not make payments before this time.
- 1.4.4 As the feedback to this Consultation Paper and associated fees notices will not be released until after 10 January 2020, the due date for the payment of fees will be at least 28 calendar days after the release of these documents.

2 Fee proposals

2.1 Proposed fee rate increase

- 2.1.1 The proposals in this Consultation Paper seek to ensure that the JFSC obtains sufficient funding to carry out its supervisory objectives; to provide additional funding in support of the JFSC's work in respect of combatting financial crime; to enhance our data analytics capacity and to provide investment in the JFSC's reserves to return them to a level equal to at least six months' expenditure by 2022.
- 2.1.2 In 2021/2022, the Island will undergo its next MONEYVAL assessment. A strongly positive outcome to the assessment is considered crucial to the continued ability of the Island's financial services industry to access international markets efficiently. Jersey's Government has indicated that such an outcome to the assessment is one of its key targets over the course of the current Island Strategic Plan. In any event, the JFSC is of the view that the supervision of financial crime will require a significantly enhanced supervisory capacity in the next period having regard to the increasing sophistication and scale of financial crime risks.
- 2.1.3 The JFSC's efforts towards achieving a strongly positive outcome with regard to the forthcoming MONEYVAL assessment and tackling these financial crime risks are focused on demonstrating effective supervision as a key part of Jersey's AML/CFT regime, adequate remediation and enforcement activities, sufficient development of systems and data as well as ensuring the regime's overall compliance with FATF Recommendations. This work has already begun and the JFSC is currently building its Financial Crime supervision capacity.
- 2.1.4 The Law contemplates increases to fees in line with RPI, however, the cost of regulation has been and continues to rise well in excess of this metric.
- 2.1.5 As noted in Feedback to Consultation Papers No.4, No. 5 and No. 6 2019 in respect of the Funds, Insurance and Banking Industries, the JFSC is keen to discuss its fee structures with all industry sectors. During the course of 2020 the JFSC intends to hold strategic discussions with the DNFBP sector and to consult on potential methodologies to ensure that there is proportionality across the fees base.
- 2.1.6 The JFSC proposes to increase fee rates (and the level of the fee cap) by 21% for 2020. The majority of this increase is due to the phased withdrawal of the contribution that the JFSC has historically received from the Government of Jersey (**Government**).

2.2 Proposed changes to fee rates

- 2.2.1 From 2008 to 2016, Government contributed £248,965 each year to subsidise the cost of regulation for the DNFBP sector. As outlined in last year's consultation (No.8 2018) Government decided to withdraw this contribution in stages over the course of 2018 and 2019.
- 2.2.2 In 2018 the contribution was £165,977 and in 2019 it was be £82,988. From 2020 onwards there will be no contribution. As explained last year, the JFSC needs to recoup the withdrawn Government contribution from DNFBP firms through their annual fees (i.e. this is a transfer of cost from the Jersey taxpayer to firms).
- 2.2.3 Following the same approach as last year, we propose an increase to the fee rates of 21% overall, being:

- 2.2.3.1 A 2.7% increase reflecting the latest rate of annual Jersey inflation (for the year to September 2019); plus
- 2.2.3.2 A 12.2% increase to collect the £83k reduction in the Government payment; and
- 2.2.3.3 a further 6.1% comprising:
 - › a contribution towards meeting the significantly higher costs of the Island project to enhance the JFSC's work in respect of countering financial crime, which has already been initiated;
 - › investment towards restoring the JFSC's reserves to a level of six months' total expenditure from the prior year; and
 - › investment towards successfully implementing the JFSC's strategy including enhanced data analytics and industry portals.
- 2.2.3.4 **Making a total proposed fee rate increase of 21% (fee rates will be rounded to the nearest £5).**
- 2.2.1 This increase will take the sole trader fee to £425.
- 2.2.2 The fee cap will increase by 42% to £25,000.
- 2.2.3 The draft fees notices can be found in Appendix B (for accountants and lawyers) and Appendix C (for other types of firm).

2.2.4 Question 1

Do you agree with the proposal to change DNFBP fee rates?

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 Accountants and Lawyers Fees Notice

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 2020

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;
JFSC/Commission	means the Jersey Financial Services Commission
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 (c) is otherwise engaged within the business of a firm of accountants or lawyers, 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;
sole trader	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;
Supervisory Bodies Law	means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended.

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 partner practising law or accountancy whether alone or with others;
 - an individual classified as self-employed for tax or social security purposes but in all other respects meets the definition of relevant employee;
 - an individual based or working outside Jersey but engaged within the Jersey business of the firm of accountants or lawyers; and
 - 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 8.3) applied when calculating the number of relevant employees.
- 2.3 The following bandings should be applied when calculating the number of total relevant employees:
- up to and including 9 hours per week 0.25 of a person;
 - over 9 hours and up to and including 18 hours per week 0.50 of a person;
 - over 18 hours and up to and including 27 hours per week 0.75 of a person;
 - 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 2020; 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 2020;
 - (ii) 30 June 2020;
 - (iii) 30 September 2020; and
 - (iv) 31 December 2020.

3.3 The annual fee is subject to a fee cap of £25,000.

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 2020, an administration fee of £100 will be charged on 1 April 2019, 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 10.1 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.

6 Late filing fees

6.1 If a registered person fails to file or deliver any document to the JFSC under the provisions of the Supervisory Bodies Law or under any provisions of any Order issued in accordance with the Supervisory Bodies Law on or before the date that the document becomes due, the registered person shall be liable to pay a fee of £100 for each complete month or part thereof that the document remains un-filed or undelivered unless the registered person has given the JFSC prior written notice of the reasons for the late filing or delivery of a document and the JFSC

has agreed in writing that the filing may be late. Any such later agreed date shall become the due date for the purposes of the calculation and the payment of late filing fees.

Schedule

	Base Fee	Relevant employee element
Sole Trader	£425	Not applicable
All other firms	£1,700	Plus: £210 per relevant employee calculated in accordance with this notice (the total annual fee is capped at £25,000)

Appendix C: Draft Registered Persons Fees Notice

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 2020

7 Interpretation

7.1 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;
JFSC/Commission	means the Jersey Financial Services Commission
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	means an individual who: (d) works under a contract of employment or any other contract of service; (e) practises alone or with others under the terms of a partnership agreement; or (f) is otherwise engaged within the business of a registered person, 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;
sole trader	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;
Supervisory Bodies Law	means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended.

8 Calculation of number of relevant employees

8.1 For clarity, for the purposes of this notice “relevant employee” includes but is not limited to:

- (e) a partner carrying on Schedule 2 business whether alone or with others;
- (f) an individual classified as self-employed for tax or social security purposes but in all other respects meets the definition of relevant employee;
- (g) an individual based or working outside Jersey but engaged within the Jersey business of the registered person; and
- (h) 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.

8.2 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 8.3) applied when calculating the number of relevant employees.

8.3 The following bandings should be applied when calculating the number of total relevant employees:

- (e) up to and including 9 hours per week 0.25 of a person;
- (f) over 9 hours and up to and including 18 hours per week 0.50 of a person;
- (g) over 18 hours and up to and including 27 hours per week 0.75 of a person;
- (h) over 27 hours per week 1 person.

8.4 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.

8.5 *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.

8.6 *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.

- 8.7 *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.

9 Annual fee

- 9.1 Registered persons shall pay an annual fee of an amount calculated in accordance with the table set out in the Schedule.
- 9.2 Payment of the annual fee should be made as follows:
- (c) in full, on or before 31 March 2020; or
 - (d) 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:
 - (v) 31 March 2020;
 - (vi) 30 June 2020;
 - (vii) 30 September 2020; and
 - (viii) 31 December 2020.
- 9.3 The annual fee is subject to a fee cap of £25,000.

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

- 10.1 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.
- 10.2 If the firm does not supply the required information to calculate its fee by 31 March 2020, an administration fee of £100 will be charged on 1 April 2019, 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 10.1 which will be calculated once the information has been submitted.

11 Application fee

- 11.1 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.
- 11.2 The application fee is due at the time of application and is non-refundable.

12 Late filing fees

- 12.1 If a registered person fails to file or deliver any document to the JFSC under the provisions of the Supervisory Bodies Law or under any provisions of any Order issued in accordance with the Supervisory Bodies Law on or before the date that the document becomes due, the registered person shall be liable to pay a fee of £100 for each complete month or part thereof that the document remains un-filed or undelivered unless the registered person has given the JFSC prior written notice of the reasons for the late filing or delivery of a document and the JFSC has agreed in writing that the filing may be late. Any such later agreed date shall become the due date for the purposes of the calculation and the payment of late filing fees.

Schedule

	Base Fee	Relevant employee element
Sole Trader	£425	Not applicable
All other firms	£850	Plus: £210 per relevant employee calculated in accordance with this notice (the total annual fee is capped at £25,000)