



Feedback Paper on Consultation Paper No. 8 2018

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

A feedback paper relating to a consultation on proposals regarding fee rates and associated issues.

Consultation Feedback

This paper reports on responses received by the JFSC to the Consultation Paper No. 8 2018 published by the JFSC on 24 October 2018.

Glossary of Terms

Defined terms are indicated throughout this document as follows:

DNFBP/Schedule 2 firms	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

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1 Executive Summary

1.1 Overview

- 1.1.1 On 24 October 2018 the JFSC issued Consultation Paper No. 8 2018, Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008: Fees for registered persons, which sought views on proposals to change fee rates and associated charges.
- 1.1.2 The purpose of this paper is to provide feedback on the responses received to the CP.
- 1.1.3 In light of the feedback received, the JFSC will be changing the fee rates to the levels consulted on, effective 1 January 2019. The final form of the fees notices can be found at Appendices B and C as well as on our website.

1.2 Feedback received

- 1.2.1 Respondents provided comments either directly to the JFSC or indirectly via Jersey Finance.
- 1.2.2 Jersey Finance provided the JFSC with comments it had received from:
 - 1.2.2.1 One accountancy firm; and
 - 1.2.2.2 One law firm.
- 1.2.3 Three other respondents provided comments directly to the JFSC. A full list of respondents is given in Appendix A.
- 1.2.4 Section 2 of this paper presents a summary of the substantive comments received and the JFSC's response.
- 1.2.5 The JFSC is grateful to respondents for taking the time to consider and comment on the proposals. Each respondent has been sent a copy of this paper.

1.3 Next Steps

- 1.3.1 The revised fees will take effect from 1 January 2019.
- 1.3.2 Relevant firms will receive notification via the myJFSC portal that they need to submit employee data and that an invoice is ready for them. The due date for payment is 31 January (total fees of over £1,000 may be paid in instalments). Late payment may incur fees as detailed in the fees notices.

2 Consultation feedback

2.1 Feedback received

- 2.1.1 This section summarises the substantive comments received in response to the CP. Whilst not every comment received is individually listed, this section contains summaries of the most commonly made comments in relation to each question posed and, as appropriate, the JFSC's response to those comments.
- 2.1.2 The comments that were received can be split into those responding to a specific question posed in the CP and those on other matters. This section is structured on those lines.
- 2.1.3 Where the specific comments of a respondent are summarised, the respondent will have been a registered person (or represented a group of registered persons).

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

- 2.2.1 Two respondents disagreed with the changes to fee rates while the other respondents were neutral regarding the increases.
- 2.2.2 The majority of respondents expressed interest in the cost of DNFBP supervision, and how resources were allocated (see 2.4 Other comments).
- 2.2.3 The two respondents who disagreed stated that their reasons were:
 - 2.2.3.1 "No, we do not agree. The majority of medium to small accountancy practices hold restricted TCB licences as well as being supervised as DNFBPs. In the past two years the JFSC has restructured its supervision teams so that oversight of accountancy firms who also hold restricted TCB licences happens concurrently, i.e. inspection visits, correspondence and enquiries are combined."

JFSC response

- 2.2.3.1 The JFSC notes that where a person holds a licence, certificate or permit (is a registered person) under one or more of the Regulatory Laws¹ they will, in general, be exempt from registration as a Schedule 2 firm. There will remain the requirement to notify the JFSC under Article 11(6) of the Law.
- 2.2.3.2 In the circumstance mentioned here, the tendency is for a group of legal entities under common ownership and control to hold certain licences under the Regulatory Laws and for other firms under the same common ownership and control to hold a registration as a Schedule 2 firm.
- 2.2.3.3 The JFSC's approach to engagement with such associated firms will, in general, be through a single supervisory point of contact which aids consistent engagement with the related group of entities.
- 2.2.3.4 "The whole consultation exercise is only for the benefit of the JFSC and nothing will change as a result. Small trader increases are not

¹ Financial Services (Jersey) Law 1998, Banking Business (Jersey) Law 1991, Insurance Business (Jersey) Law 1996, Collective Investment Funds (Jersey) Law 1988

proportionate and fee increases should be focussed on larger firms. While understanding the government contribution is falling away it is extremely disappointing, even heart-breaking to try to make it as a sole trader, but to have the disincentive of these fee increases which are disproportionate for the man on the street and not in the interests of the local small business community.”

JFSC response

- 2.2.3.5 The JFSC is sensitive to the concerns raised by sole traders, however, draws attention to the uniform increase across all registered persons which is intended not to prejudice individuals, smaller or larger firms.
- 2.2.3.6 As noted in the Consultation Paper, the element of the increase in fee rates above inflation is caused by the phased withdrawal of the Government subsidy which does not diminish the levels of supervisory, policy or enforcement activity required to effectively supervise DNFBPs. Rather, it is a transfer from Jersey taxpayers to the sector itself.

JFSC response

- 2.2.4 Taking account of the feedback received, we are proceeding with the changes in fee rates. The rates have been set to only increase total fees by the rate of inflation since last year.

2.3 Do you agree with the proposed introduction of late filing fees?

- 2.3.1 Three respondents expressed no view on the introduction of late filing fees and two respondents requested clarification on the nature of such fees as well as their use, as follows:

- 2.3.1.1 “We agree with the introduction of late filing fees however would request clarification on what these fees will be levied on. To our knowledge DNFBPs are not required to file any documents by law.”

JFSC response

- 2.3.1.1 Registered persons may be required to submit documents in accordance with Article 30 of the Law. The addition of the late filing provision brings consistency with all other fees notices where similar provisions exist under the Regulatory Laws.

- 2.3.1.2 “We would expect that any late filing penalties would be implemented within a timeframe that would not punish DNFBPs where exceptional circumstances are encountered and these are communicated on a timely basis. Otherwise we have no other comments in relation to the introduction of the late filing fees as proposed”.

JFSC response

- 2.3.1.3 Registered persons are able to request extensions to deadlines for the submission of documents. In such circumstances, the JFSC may provide a derogation to deadlines particularly where reasonable grounds are

given and requests are made in a timely manner (i.e. in advance of the deadline).

JFSC response

- 2.3.2 Taking account of the feedback received, we are proceeding with the introduction of late filing fees.

2.4 Other comments

- 2.4.1 Three responses requested additional information about how much the supervision of Schedule 2 firms costs the JFSC and how income from the DNFBP sector is allocated.
- 2.4.2 Two responses posed additional questions attendant to this theme, as follows:
- 2.4.2.1 "We believe Law firms are under reactive supervision and it would be helpful if the JFSC reassessed their costs and the amount that is attributable to reactive regulation"
- 2.4.2.2 "It would be good if the JFSC could demonstrate for how much more a regulated business is paying than a similar sized DNFSB for regulation. Given all the other incidents of regulation there should be a demonstrable and significant difference."
- 2.4.3 One respondent requested information about similar fees in Guernsey by way of comparison.

JFSC response

- 2.4.1 There are approximately 220 Schedule 2 firms that pay fees and circa 60 further firms that are registered exempt Schedule 2 firms. The average fee paid by Schedule 2 firms during 2018 is approximately £2,000 each with a further, approximately, £750 from the diminishing Government subsidy. By comparison there are approximately 1,500 non-Schedule 2 fee paying entities. The average fee paid by these entities is approximately £8,200. As such, Schedule 2 firms pay roughly one quarter of the amount of entities registered under the Regulatory Laws.
- 2.4.2 Income from all fee payers contributes to the costs of supervision, enforcement and policy work as well as contributions to general overheads (without which the JFSC would be unable to carry out its functions under the Law). In the consultation on Schedule 2 fees last year we included a table that showed that the proportion of JFSC fees from Schedule 2 businesses had remained roughly around 5% of the total non-Registry fees since 2011. This is while international regulatory requirements (including those AML/CFT standards applying to the DNPB sector, and the expectations of supervisors of those standards) have only increased.
- 2.4.3 The fee paid by any particular firm in any particular year is not directly linked to the "quantity" of supervision that it receives. Such a system would be highly volatile and administratively complex and costly to administer. However, the output of the National Risk Assessment and future Moneyval assessments will be key factors in determining the allocation of AML/CFT supervisory resources going forward.
- 2.4.4 Further information about the finances of the JFSC can be found in its Annual Reports as well as in our business plan presentations, the next of which will be held in February 2019.

2.4.5 The JFSC is unable to comment on the composition of Guernsey fees.

2.4.6 The JFSC is grateful for all feedback received.

Appendix A – List of respondents to the CP

Name of Respondent	Type of Business
Jersey Society of Chartered and Certified Accountants	Trade Body
PricewaterhouseCoopers CI LLP	Accountancy firm
Anonymous respondent (by telephone)	Accountancy firm
Anonymous respondent (via JFL)	Accountancy firm
Anonymous respondent (via JFL)	Law firm

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 2019

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	<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</p>

	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 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 2019; 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 2019;
 - (ii) 30 June 2019;
 - (iii) 30 September 2019; and
 - (iv) 31 December 2019.

3.3 The annual fee is subject to a fee cap of £17,590.

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 2019, 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 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.

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	£352	Not applicable
All other firms	£1,406	Plus: £175 per relevant employee calculated in accordance with this notice (the total annual fee is capped at £17,590)

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**

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 2019

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;
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.

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:
- (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.
- 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:
- (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.
- 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 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:

- (c) in full, on or before 31 March 2019; 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 2019;
 - (vi) 30 June 2019;
 - (vii) 30 September 2019; and
 - (viii) 31 December 2019.

3.3 The annual fee is subject to a fee cap of £17,590.

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 2019, 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 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.

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	£352	Not applicable
All other firms	£703	Plus: £175 per relevant employee calculated in accordance with this notice (the total annual fee is capped at £17,590)