



Jersey Financial
Services Commission

Consultation Paper No. 9 2020

**Consultation on fee rates and associated issues for:
Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008:
Fees for registered persons**

A consultation on proposals to change fee rates and structures.

Issued: November 2020

Consultation Paper

The Jersey Financial Services Commission (**JFSC**) invites comments on this Consultation Paper. Those who wish to do so, are invited to respond directly in writing to the JFSC.

The JFSC has also put in place arrangements with Jersey Finance for Jersey Finance to provide a coordinated response. Lisa Springate at Jersey Finance is co-ordinating this. Jersey Finance have asked us to advise those interested in pursuing this option, to provide comments to Jersey Finance by 17 December 2020.

Responses should be sent to:

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Alternatively, responses may be sent directly to the Jersey Financial Services Commission (**JFSC**) by 17 December 2020. If you require any assistance, clarification or wish to discuss any aspect of the proposals prior to formulating a response, it is of course appropriate to contact us.

The JFSC 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

AML/CFT	anti-money laundering / countering the financing of terrorism
Commission/JFSC	Jersey Financial Services Commission
Commission Law	Financial Services Commission (Jersey) Law 1998, as amended
DNFBP	designated non-financial businesses and professions (a term used to refer to persons registered under the Law)
the Law	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended

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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 -
- 1.1.2.1 details of the proposed fee;
 - 1.1.2.2 a request for comments on the level of the proposed fee; and
 - 1.1.2.3 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(2) of the Law provides that fees set by the JFSC are to be retained shall be set at such a level as is necessary that, in aggregate they:
- 1.1.3.1 Raise sufficient income to enable the JFSC to carry out its functions under the Law; and
 - 1.1.3.2 provide a reserve of such amount as the JFSC considers necessary for carrying out such functions.
- 1.1.4 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.
- 1.1.5 The JFSC considers that the Representative Bodies for the DNFBP sector are those listed at Appendix A; that each of the proposals within this consultation is reasonable; and that this consultation 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 2021.

1.3 Responding to the consultation

- 1.3.1 The JFSC invites comments from interested parties on the content of this consultation paper which should be received by either JFL, or by the JFSC, no later than 17 December 2020.

1.4 Next steps

- 1.4.1 During the course of this consultation the JFSC will be holding strategic discussions with the Representative Bodies regarding the options outlined in section 3, in order to explain the proposals and develop a shared understanding of the approach.
- 1.4.2 Following this consultation, the JFSC will publish feedback. The final fees notice will take effect on or before 1 January. Firms will be notified when they need to use the myJFSC portal to collect their invoices.

2 Proposals

2.1 Proposed fees

- 2.1.1 In order to raise sufficient income to carry out its functions under the Law; and to provide a reserve of such an amount as it considers necessary, the JFSC needs to raise approximately £750k in fees from the DNFBP sector in 2021.
- 2.1.2 This budgeted income of approximately £750k does not represent an increase in the overall fees levied, but rather a stable amount in fee income compared to that raised in 2020.
- 2.1.3 The JFSC is closely monitoring and managing its costs in light of the current situation and, as detailed at 2.2, has carefully managed costs in respect of its DNFBP supervision activities in recent years. While a robust focus on cost management and, where appropriate, reduction remains a priority for the JFSC, as for the businesses it supervises, the crucial work that the JFSC undertakes continues with minimal disruption and JFSC fees form a small part of the outgoings of the majority of supervised businesses.
- 2.1.4 The JFSC's funding targets are designed to ensure that it can deliver on its Strategic Roadmap 2020-23. A critical component of its Strategic Roadmap is the JFSC's contribution to the Island's successes in the forthcoming MONEYVAL assessment as well as the need for the JFSC to deliver stretching goals in respect of demonstrating even more effective supervision, embedding risk-focused choices throughout its work and strengthening its organisational resilience.
- 2.1.5 In order to achieve the budgeted income of approximately £750k, the JFSC has considered a number of approaches which are explained below (Section 3). The reason that the JFSC is outlining different approaches is that it believes that now, while we are not proposing over-inflationary increases to fees, is the best time to consider whether the current approach to raising fee income from the DNFBP sector is proportionate and sustainable, or whether there is an alternative which is more likely to impose the cost of regulation on those best placed to bear that increasing cost and those whose activities are most likely to drive regulatory activity.
- 2.1.6 The underlying concerns are that it is now evident that a cycle of capital investment is an unavoidable feature of regulation and that this is best funded in a stable way, even though the expenditure is incurred in a cyclically uneven way not consistent with the depreciation charge on past capital investment. Furthermore, as supervisory activity becomes more and more risk-focused, the resources involved in supervision are increasingly allocated by us in a more dynamic way.
- 2.1.7 Discussing structural change to the fee mechanism at this time facilitates transparency to industry of the impact of restructuring, given that the overall financing target is being kept stable in 2021.
- 2.1.8 This paper acknowledges that the option of remaining with the current approach is still available. However, it sets out options which create differentiated fee rates. The JFSC is open not only to written response but to direct engagement with representative bodies to refine and help choose between the options set out here.

- 2.1.9 This consultation is one of several planned consultations over the coming year in which representative bodies from all industry sectors will be invited to engage in strategic dialogue with the JFSC to ensure that there is proportionality across the fees paid by all sectors and that the mechanisms by which fees are levied are sustainable.
- 2.1.10 As stated within all recent consultations in respect of other regulatory fees, any firms that are experiencing financial constraints as a result of the Covid-19 outbreak that mean they are unable to pay increased fees as they fall due are encouraged to contact their supervisors at the earliest opportunity.

2.2 Supervisory effort and cost management

- 2.2.1 The volume of activity within the DNFBP sector has increased in recent years.
- 2.2.2 In line with the JFSC's assessment of risk, DNFBPs have generally received pooled supervision, being subject to regular, yet less intense engagement than other regulated sectors. This is reflected in the generally lower quantum of DNFBP fees by comparison to other regulated businesses which the JFSC also supervises for conduct and prudential matters.
- 2.2.3 Nevertheless, as the JFSC have focused efforts on financial crime supervision in the last two years the volume of DNFBP supervisory activity has increased. Some of the underlying reasons are articulated in the National Risk Assessment which sets out some of the complex considerations which go to make an assessment of the financial crime risks in the DNFBP sector. This pattern of increasing supervisory activity in relation to this sector will continue. Financial crime is a substantial and, arguably, growing threat. Global standards and expectations of the good practices expected of a highly developed international financial centre such as Jersey are, rightly, developing in response. The JFSC is involved in a detailed and complex range of initiatives to develop the Island's financial crime fighting capacity.
- 2.2.4 It is important to note that the JFSC have controlled the direct cost of its supervisory resource for the DNFBP sector in recent years, particularly at a senior level where it has carefully recruited when vacancies have arisen: overall reducing the costs of supervision. However, the intensifying expectations and requirements with regard to the regulatory model to apply is a greater driver of costs than any such savings. Consequently, we have to expect that supervisory costs will rise, even in the absence of inflationary cost drivers and it is desirable that these costs are funded in a resilient and proportionate way. This consultation seeks to identify the best way to structure the fees in order to achieve that, as well as advising on the 2021 financing target from the DNFBP sector.

2.3 Issues with current fees structure

- 2.3.1 The current charging mechanism for DNFBPs has two features which raises issues of sustainability, namely the fee cap, and the fee per employee.
- 2.3.2 The fee cap appears inherently unreasonable, simply reallocating costs from larger firms to smaller traders.
- 2.3.3 The number of employees is a reasonable proxy for the activities within each DNFBP and therefore the effort required for effective supervision as well as being a reasonable indicator of the strength of financial resources (and therefore ability to pay). Nevertheless the number of employees is increasingly vulnerable to changes in working practices.

- 2.3.4 In addition, the sole trader fee has been set at a level which reflects the subsidy from the small to the larger firms and could also be adjusted.

2.4 Inherent volatility within fee projections

- 2.4.1 Because of changes in licensees and their businesses, we may end up collecting more or less than our target budgeted fee income of approximately £750k for 2021 under any of the approaches outlined within Section 3.

2.5 Application fees

- 2.5.1 Under the current fees notices, the application fee for DNFBPs is a flat £100. This is not reflective of the supervisory effort required to properly assess applications and determine the JFSC's "no objection" or otherwise. It is proposed to amend the application fee to:

2.5.1.1 £150 for sole trader applications; and

2.5.1.2 £400 for all other applications.

2.6 Fees for alterations

- 2.6.1 There is a reasonable volume of activity where DNFBPs request changes in respect of their names and in respect of adding, amending, or removing licence conditions. These alterations do not currently incur a fee, however, do require supervisory effort in appraising the request, then determining and documenting the outcome.

- 2.6.2 It is proposed that a fee of £150 shall be paid by sole traders; and that a fee of £400 shall be paid by other registered persons who apply for an alteration so as to reflect all or any of the following:

2.6.2.1 a change of the name of the registered person;

2.6.2.2 the addition, alteration or removal of conditions pursuant to an application from the registered person.

2.7 Question regarding 2.6

2.7.1 Do you agree with the proposed fee in respect of alterations?

2.8

2.9 Question

2.9.1 Do you agree with the proposal to increase application fees?

3 Strategic options

3.1 Option 1 – increase fee rates within current mechanism

- 3.1.1 The approach that the JFSC has historically taken to achieve its budgeted income target is to increase the fee rates paid by DNFBPs in accordance with its published fees notice. The impact on increases to the fees paid by each fee payer is generally in proportion to other fee payers under this approach.
- 3.1.2 The only change to this mechanism has been through increases to the fee rates paid under each of its component parts including the proposed approach to the gradual removal of the fees cap which commenced in 2019. The JFSC considers a gradual move to the removal of fee caps an appropriate approach in light of the cap's effect on other fee payers.
- 3.1.3 In order to achieve the JFSC's budgeted income from DNFBP fees of approximately £750k, in 2021 an inflationary uplift of 0.9% to existing fee rates would be required, rounded to the nearest £5.
- 3.1.4 In line with the reasons summarised at 2.3 as well as the approach noted at 3.1.2 the fees cap would be increased to £27,500.
- 3.1.5 The impact of Option 1 is illustrated in the table below fees.

Fee/year & impact	2020	2021	'20-'21 £	'20-'21%
Base fee accountants and lawyers	1,700	1,715	15	1%
Base fee for other firms	850	860	10	1%
Sole trader fee	425	430	5	1%
Fee per employee	210	210	0	0%
Fees cap	22,000	27,500	5,500	25%

3.2 Option 2 – removing fee cap and using rolling average employees

- 3.2.1 As stated above, the JFSC considers that the fee cap is inherently unreasonable for smaller firms. An alternative approach that would achieve the approximately £750k of budgeted income for 2021 would be to remove the fee cap entirely.
- 3.2.2 Simultaneously, the JFSC proposes that the sensitivity of the current fees mechanism to employee numbers could be addressed by moving to use a five-year rolling average number of employees within the fee calculations.
- 3.2.3 One benefit of this approach is that, over time, it is anticipated that employee numbers will diminish as a product of technology and automation. The JFSC and the firms it supervises need to invest strategically in the evolution of the way that business is conducted and this will include adequately supervising the evolving ways of doing business which will continue to require significant ongoing investment in supervisory and regulatory technology.

3.2.4 By moving to this five-year rolling average, the JFSC considers that the fee income on which it plans its supervisory activities and investment in supervision will be more stable meaning that the JFSC can more effectively manage its income and expenditure while also reducing the need to regularly consult on significant fee rate increases. The JFSC would anticipate that within three-to-five years an alternative proxy for the scale of a DNFBP's activity may be required that will ensure the cost of regulation continues to be born proportionately including on those best placed to bear increasing costs and whose activities are most likely to drive regulatory activity.

3.2.5 The impact of Option 2 is illustrated in the table below:

Fee/year & impact	2020	2021	'20-'21 £	'20-'21%
Base fee accountants and lawyers	1,700	1,700	-	0%
Base fee for other firms	850	850	-	0%
Sole trader fee	425	400	(25)	-6%
Fee per employee	210	190	(-20)	-10%
Fees cap	22,000	n/a	n/a	n/a

3.3 Option 3 – introducing new fee bands

3.3.1 The third option the JFSC wishes to discuss with industry during this consultation is the introduction of new fee bands to replace the current charging mechanism. We would use the existing charging mechanism to place DNFBPs within fee brackets which would form the basis of their fee for 2021.

3.3.2 We would seek to work with the DNFBP sector to develop an alternative mechanism over the course of 2021 that would provide an alternative proxy for the level of risk and therefore supervisory effort in respect of DNFBPs which would continue to be compatible with this fee band approach. Such alternatives might include DNFBP income, or metrics derived from supervisory risk data collected from DNFBPs.

3.3.3 The table below illustrates potential fee bands based on the equivalent fee payable under the current mechanism, absent the fee cap, and 2020 fees rates:

Fee under current mechanism (without fees cap)	Fee band	Equivalent fee payable 2021
£425	1	£400
£850	2	£800
£851 to £1,999	3	£1,000
£2,000 to £2,999	4	£2,000
£3,000 to £3,999	5	£3,000
£4,000 to £4,999	6	£4,000
£5,000 to £9,999	7	£5,000
£10,000 to £14,999	8	£10,000
£15,000 to £19,999	9	£15,000

Fee under current mechanism (without fees cap)	Fee band	Equivalent fee payable 2021
£20,000 to £24,999	10	£20,000
£25,000 to £29,999	11	£25,000
£30,000 to £34,999	12	£30,000
£35,000 to £39,999	13	£35,000
£40,000 to £44,999	14	£40,000
£50,000 to £54,999	15	£50,000
£55,000 to £60,000	16	£55,000

3.4 Questions

- 3.4.1 Which of the Strategic Options do you agree would achieve the best outcome for the DNFBP sector while enabling the JFSC to achieve its budgeted 2021 DNFBP fee income?
- 3.4.2 Do you consider that there are alternative approaches to those summarised in this consultation?

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 Estate Agents Association
- › Jersey Society of Chartered and Certified Accountants
- › Law Society of Jersey