

Consultation No. 8 2021

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 2021

Consultation

We invite comments on this consultation. Those who wish to do so, are invited to respond directly in writing.

We have also put in place arrangements with Jersey Finance so they can 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 by 24 December 2021

Responses should be sent to:

Lisa Springate

Jersey Finance Limited

4th Floor

Sir Walter Raleigh House

48-50 Esplanade

St Helier

Jersey

JE2 3QB

Direct Line: +44 (0) 1534 836029

Office Line: +44 (0) 1534 836000

Email: lisa.springate@jerseyfinance.je

Alternatively, responses may be sent directly to us by 24 December 2021. 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.

Our contact is:

JFSC Finance team

Jersey Financial Services Commission

PO Box 267

14-18 Castle Street

St Helier

Jersey

JE4 8TP

Telephone: +44 (0) 1534 822000

Email: fscaccountsteam@jerseyfsc.org

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

JFL's policy (unless otherwise requested or agreed) to collate all responses and share them verbatim with us 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 Jersey Financial Services Commission (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 us under the Law.
- 1.1.2 Article 20 of the Law allows us to charge fees to persons subject to the Law and Article 21(6) of the Law requires that before we 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 us 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 us to carry out our functions under the Law; and
 - 1.1.3.2 provide a reserve of such amount as we consider necessary for carrying out such functions.
- 1.1.4 Article 21(7) of the Law provides that should we and a Representative Body be unable to agree a fee that we must request the Bailiff to appoint three Jurats to consider if the fee proposed is unreasonable.
- 1.1.5 We consider 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 2022.

1.3 Responding to the consultation

- 1.3.1 We invite comments from interested parties on the content of this consultation paper which should be received by either JFL, or us, no later than 24 December 2021.

1.4 Next steps

- 1.4.1 During the course of this consultation we 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, we will publish feedback. The final fees notice will take effect on or before 1 January 2022. Businesses will be notified when they need to use myJFSC to collect their invoices.

2 Proposals

2.1 Proposed fees

- 2.1.1 In order to raise sufficient income to carry out our functions under the Law; and to provide a reserve of such an amount as we consider necessary, we need to raise approximately £810k in fees from the DNFBP sector in 2022.
- 2.1.2 This budgeted income of approximately £810k represents an increase of 5% above RPI in the overall fees levied. As detailed below all possible measures have been taken to minimise the increases in fees, however, with the expanding remit and enhancements in requirements across all sectors not all of the increase could be absorbed internally.
- 2.1.3 We are closely monitoring and managing its costs in light of the current situation and, as detailed at 2.2, have 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 us, as for the businesses it supervises, the crucial work that we undertake continues with minimal disruption and our fees form a small part of the outgoings of the majority of supervised businesses.
- 2.1.4 Our funding targets are designed to ensure that it can deliver on our Strategic Framework 2021-24. A critical component of its Strategic Framework is our contribution to the Island's successes in the forthcoming MONEYVAL assessment as well as the need for us to deliver stretching goals in respect of demonstrating even more effective supervision, embedding risk-focused choices throughout our work and strengthening our organisational resilience.
- 2.1.5 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 our 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 we also supervise for conduct and prudential matters.
- 2.2.3 Nevertheless, as we have focused efforts on financial crime supervision 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. We are 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 we have controlled the direct cost of our supervisory resource for the DNFBP sector in recent years, particularly at a senior level where it has carefully recruited when vacancies have arisen. However, the intensifying expectations and requirements with regard to the regulatory model to apply is a greater driver of costs than any savings to date. Consequently, that supervisory costs have risen, even in the absence of inflationary cost drivers and it is desirable that these costs are funded in a resilient and proportionate way.

3 DNFBP's fee proposals

3.1 Proposed changes to fee rates

- 3.1.1 We propose to increase the fee rates by 8.5%, being the most recently published Jersey RPI plus 5%, rounded to the nearest £5.
- 3.1.2 In accordance with clause 2.3.4 of the Feedback on Consultation No 9 2020, we propose to increasing the fees cap to £40,000
- 3.1.3 The draft fees notice reflecting the proposals can be found in Appendix B.
- 3.1.4 Because of changes in licensees and their business levels, we may end up collecting more or less than our budgeted level of fee income of approximately £810k for 2022.

3.2 Question

- 3.2.1 Do you agree with the proposals relating to DNFBP's?

3.3 Proposed removal of instalment payments

- 3.3.1 Currently businesses with an annual fee above £1,000, can opt to settle this on a quarterly basis.
- 3.3.2 The uptake of this option over the last several years represents a small proportion of the overall population, while the cost of administering it is not commensurate and would require further increases in fees to support.

3.4 Question

- 3.4.1 Do you agree with the proposals to remove the instalment payments?

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

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 2022

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;
average	in respect of the calculation of the average number of relevant employees on the relevant date(s) means the arithmetic mean of each number rounded to the nearest 0.25 of a person;
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;
due date	means the due date for payment of any fee specified within this Notice of Fees or otherwise the due date for payment specified within an invoice for fees issued by the JFSC;
JFSC/Commission	means the Jersey Financial Services Commission
relevant date(s)	means the last working day of each of the five previous years immediately preceding the calendar year to which the fee relates; where there are fewer than five relevant dates for the purpose of a calculation within the Schedule, the averages calculated will be of each relevant date that is available for the calculation until there are sufficient relevant dates to perform the calculation as specified;

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:</p> <ul style="list-style-type: none"> (i) 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 (ii) 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) 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 in full, on or before 31 March;
- 3.3 The annual fee is subject to a fee cap of £30,000.

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 to us 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, an administration fee of £100 will be charged on 1 April, 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 £160 shall be payable in respect of an application by a sole trader intending to carry on business within the scope of this notice of fees.
- 5.2 An application fee of £435 shall be payable in respect of an application by any other person, or persons, intending to carry on business within the scope of this notice of fees.
- 5.3 The application fee is due at the time of application and is non-refundable.

6 Amendment fee

- 6.1 A fee of £160 shall be paid by a sole trader who applies for an alteration so as to reflect all or any of the following:
 - 6.1.1 A change of the name of the registered person; or
 - 6.1.2 The addition, alteration or removal of conditions pursuant to an application from the registered person.
- 6.2 A fee of £435 shall be paid by any registered person who is not a sole trader who applies for an alteration so as to reflect all or any of the following:
 - 6.2.1 A change of the name of the registered person; or
 - 6.2.2 The addition, alteration or removal of conditions pursuant to an application from the registered person.

7 Late filing fees

- 7.1 If a registered person fails to file or deliver any document to us 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 us prior written notice of the reasons for the late filing or delivery of a document and we have 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	£435	Not applicable
All other firms	£1,845	Plus: £205 multiplied by an average of the number of relevant employees (calculated in accordance with this notice) on each of the relevant dates (the total annual fee is capped at £40,000)

Appendix B - 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 2022

1 Interpretation

1.1 In this notice, unless the context otherwise requires –

average	in respect of the calculation of the average number of relevant employees on the relevant date(s) means the arithmetic mean of each number rounded to the nearest 0.25 of a person;
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;
due date	means the due date for payment of any fee specified within this Notice of Fees or otherwise the due date for payment specified within an invoice for fees issued by the JFSC;
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(s)	means the last working day of each of the five previous years immediately preceding the calendar year to which the fee relates; where there are fewer than five relevant dates for the purpose of a calculation within the Schedule, the averages calculated will be of each relevant date that is available for the calculation until there are sufficient relevant dates to perform the calculation as specified;
relevant employee	means an individual who:

	<p>(a) works under a contract of employment or any other contract of service;</p> <p>(b) practises alone or with others under the terms of a partnership agreement; or</p> <p>(c) is otherwise engaged within the business of a registered person,</p> <p>in all cases where:</p> <p>(i) 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</p> <p>(ii) 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	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 in full, on or before 31 March;
- 3.3 The annual fee is subject to a fee cap of £30,000.

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 to us 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, an administration fee of £100 will be charged on 1 April, 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 £160 shall be payable in respect of an application by a sole trader intending to carry on business within the scope of this notice of fees.
- 5.2 An application fee of £435 shall be payable in respect of an application by any other person, or persons, intending to carry on business within the scope of this notice of fees.
- 5.3 The application fee is due at the time of application and is non-refundable.

6 Amendment fee

- 6.1 A fee of £160 shall be paid by a sole trader who applies for an alteration so as to reflect all or any of the following:
 - 6.1.1 A change of the name of the registered person; or
 - 6.1.2 The addition, alteration or removal of conditions pursuant to an application from the registered person.
- 6.2 A fee of £435 shall be paid by any registered person who is not a sole trader who applies for an alteration so as to reflect all or any of the following:
 - 6.2.1 A change of the name of the registered person; or
 - 6.2.2 The addition, alteration or removal of conditions pursuant to an application from the registered person.

7 Late filing fees

- 7.1 If a registered person fails to file or deliver any document to us 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 us prior written notice of the reasons for the late filing or delivery of a document and we have 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	£435	Not applicable
All other firms	£920	Plus: £205 multiplied by an average of the number of relevant employees (calculated in accordance with this notice) on each of the relevant dates (the total annual fee is capped at £40,000)