

**EXPLANATORY MEMORANDUM TO**  
**THE LEGAL SERVICES ACT 2007 (LEVY) (No. 2) (AMENDMENT) RULES 2014**  
**2014 No. 1185**

1. This explanatory memorandum has been prepared by the Legal Services Board and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 This instrument amends the Legal Services Act 2007 (Levy) (No.2) Rules 2010 (S.I. 2010/2911) (“the 2010 Rules”) to change how the Legal Services Board (“LSB”) calculates the levy which it charges on the bodies which it regulates (“leviable bodies”) and to specify the circumstances in which the Association of Chartered Certified Accountants (“ACCA”) and the Institute of Chartered Accountants in Scotland (“ICAS”) become leviable bodies.
  - 2.2 It also addresses two defects in the 2010 Rules identified by the Joint Committee on Statutory Instruments in its 16<sup>th</sup> Report of Session 2010-11: first, it specifies that, in calculating the levy, the LSB can only use estimated expenditure when actual expenditure figures are not available; and, second, it clarifies that interest must (not may) be charged by the LSB in the event of any late payment of the levy by a leviable body.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 The Legal Services Act 2007 (“the 2007 Act”) sets out the framework for the regulation of legal services in England and Wales. It establishes the LSB and the Office for Legal Complaints (“OLC”) and provides for the appointment of board members and staff. The LSB’s functions include the recovery of the expenditure associated with the carrying on of its regulatory functions and those of the OLC, both in respect of the establishment of those bodies, and in respect of their ongoing operational expenditure.
  - 4.2 Section 173 of the 2007 Act provides for the imposition of a levy to meet the ongoing costs incurred by the LSB, the OLC and the Lord Chancellor associated with the carrying on of the LSB’s regulatory functions and the OLC’s complaints resolution functions. Section 173(1) requires the LSB, by order, to make rules providing for the imposition of a levy on leviable bodies corresponding to the leviable expenditure of the LSB, OLC and Lord Chancellor. Section 173(3)

requires the LSB, before making the levy rules, to be satisfied that the apportionment of the levy as between the leviable bodies will be in accordance with fair principles, and 173(4) ensures that the rules can only be made with the consent of the Lord Chancellor. The 2010 Rules were made under these provisions.

- 4.3 This instrument is made under the same provisions. In accordance with the 2007 Act, the LSB complied with the consultation requirements and satisfied itself that (as amended by this instrument) the apportionment of the levy as between different leviable bodies would be in accordance with fair principles.

## **5. Territorial Extent and Application**

- 5.1 This instrument applies to England and Wales only.

## **6. European Convention on Human Rights**

- 6.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- ***What is being done and why***

- 7.1 The 2007 Act reformed the way in which legal services were regulated in England and Wales. Its aims were to simplify the existing regulatory framework by establishing an oversight regulator, the LSB, and to improve consumer confidence and the way in which complaints are dealt with by establishing an independent complaints handling body, the OLC. The 2007 Act also prescribed the principle that the costs of oversight regulation and complaints handling should be met by the profession itself, with the expenditure of the LSB and OLC being met by a levy on the approved regulators. Sections 173 to 175 of the Act required the LSB to make rules providing for the imposition of a levy on leviable bodies to raise an amount to cover the expenditure of the LSB and the OLC under the Act. The 2010 Rules were made by the LSB under these sections.

- 7.2 However, when it made the 2010 Rules, the LSB undertook to review the rules in 2013/14 to determine whether they were appropriate and in line with better regulation principles. Having done so, the LSB considers that the 2010 Rules should be amended as provided in this instrument.

- ***Amendments in respect of “initial period”***

- 7.3 Rule 3(2) of the 2010 Rules prescribes that, where a body becomes a leviable body during a 12-month period, it is not required to contribute to the levy during the remainder of that 12-month period (the “initial period”). The LSB does not

consider it proportionate that a new leviable body makes no contribution in respect of the initial period. Accordingly, Rule 4(a) of this instrument amends Rule 3(2)(a) of the 2010 Rules to make a fixed sum of £3000 payable by a new leviable body in respect of that initial period.

7.4 Rule 5 of this instrument makes an amendment to Rule 4 of the 2010 Rules: it reduces the total amount of leviable Board expenditure by any amount payable in respect of the initial period.

7.5 ICAS and ACCA are approved regulators by virtue of the Legal Services Act 2007 (Approved Regulators) Order 2009 (S.I 2009/3233) but are not leviable bodies for the purposes of the 2010 Rules because the LSB has not yet approved their regulatory arrangements in respect of reserved legal activities under Part 2 of Schedule 4 to the 2007 Act. Rule 3(c) of this instrument inserts new paragraphs (6) and (7) into rule 2 of the 2010 Rules to specify that, if those regulatory arrangements are approved, ICAS and ACCA will become leviable bodies.

• ***Amendments to modify the basis on which the levy is calculated***

7.6 Rule 5 of the 2010 Rules prescribes that each leviable body is required to pay a proportion of the OLC's leviable expenditure based on the number of service complaints made to the leviable body in the period 1<sup>st</sup> January 2007 to 31<sup>st</sup> December 2009. The LSB has always considered the use of a historic period less than ideal but that it served as an adequate proxy until the OLC had been operating for a long enough period to be able to base the charges on actual data.

7.7 As that data is now available, Rule 6(b) of this instrument amends Rule 5(2) of the 2010 Rules to base the relevant proportion on the number of service complaints in respect of the leviable body accepted by the OLC in the preceding three years, as a proportion of the total number of service complaints in respect of all leviable bodies accepted by the OLC in the course of the same period. Rule 5(6) of the 2010 Rules is consequently amended by Rule 6(c) of this instrument to define a "service complaint" as a complaint within the jurisdiction of the ombudsman scheme as described in Part 6 of the 2007 Act, rather than as a complaint made to the relevant regulator of the leviable body in the period 1<sup>st</sup> January 2007 to 31<sup>st</sup> December 2009.

7.8 The LSB, in conjunction with the OLC, has also considered whether all approved regulators should pay a minimum contribution to the OLC's costs on the basis that the OLC has been set up for the benefit of all approved regulators, irrespective of whether they actually have any complaints registered against them. The LSB concluded that it was proportionate that they do so. Accordingly, Rule 6 of the instrument amends Rule 5 of the 2010 Rules to provide for the charge of a minimum fixed sum of £5000 on each leviable body in respect of each leviable period.

7.9 The LSB estimates that the fixed sum of £5000 is approximately the cost to the OLC of dealing with three complaints. Accordingly, and to prevent a disproportionate increase in the amount of levy imposed on smaller regulators, Rule 6(b) of the instrument adds Rule 5(2A) to the 2010 Rules to provide that, in calculating the number of service complaints accepted by the OLC (for the purpose of determining the relevant proportion), three service complaints received in respect of each leviable body will be excluded.

7.10 Rule 6 of the 2010 Rules required each leviable body to provide the LSB with specified information for the purposes of determining the amount of levy payable by each leviable body. Rule 7 of this instrument amends the information to be provided that is specified in Rule 6(2)(b) of the 2010 Rules to the number of service complaints relating to each leviable body that have been accepted by the OLC in respect of the new reference period (i.e. the preceding three years). As this is a rolling period, the information for any given year will have to be provided more than once and, accordingly, Rule 6(5) of the 2010 Rules is deleted.

- ***Amendments proposed to address defective drafting***

7.11 The Joint Committee on Statutory Instruments in its 16<sup>th</sup> Report of Session 2010-11 identified two instances of defective drafting in the 2010 Rules.

7.12 First, the Joint Committee considered that Rule 2 of the 2010 Rules, which provides that the LSB “may include estimated expenditure” when calculating the amount of the levy to be imposed on a leviable body, amounted to “an unclear provision, a possible interpretation of which would involve conferring an unauthorised discretionary power”. To address this, this instrument amends Rule 2 of the 2010 Rules to specify that, in calculating the levy, the LSB can only use estimated expenditure when actual expenditure figures are not available.

7.13 Second, the Joint Committee considered that Rule 8 of the 2010 Rules, which provided that “if payment is not made by a leviable body in accordance with the requirements of rule 7, the Board is entitled to charge interest on any amount unpaid ...” was defective because it suggested some kind of discretionary power. To address this, this instrument amends Rule 8 in line with the wording of section 174(7)(c) of the 2007 Act to clarify that interest *will* be charged.

- ***Consolidation***

7.14 This instrument amends the 2010 Rules for the first time. The LSB does not intend to consolidate the legislation. An informal consolidated text is available to the public for free on the LSB’s website: [www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk).

## **8. Consultation outcome**

8.1 The LSB has carried out a full consultation on these amendments to the 2010 Rules. It published a consultation document on 18 December 2013, which ran for nine weeks and consulted a range of bodies including regulators and other interested parties. This document consulted on the policy surrounding the changes to the 2010 Rules and contained a draft instrument and an informal consolidated text of the 2010 Rules, as proposed to be amended.

8.2 Respondents to the consultation generally agreed that, as far as practicable, the 'polluter should pay' principle should apply to recovering both the costs of the LSB and OLC. With the latter this is easier to assess based on the proposed methodology of the actual number of complaints received, which could be allocated to each regulator. There was some concern that a simple 'headcount' for the LSB's costs may not accurately reflect the resource expended on each approved regulator but a recognition that this was the best proxy available at present that met the better regulation principles.

## **9. Guidance**

9.1 The approved regulators have been consulted in respect of the amendments made to the 2010 Rules by this instrument and no guidance is therefore being provided.

## **10. Impact**

10.1 No separate Impact Assessment is required, given the nature of this instrument and that no impact on the private or voluntary sector is foreseen.

## **11. Regulating small business**

11.1 This instrument modifies how the levy is to be apportioned among the leviable bodies. Under section 51 of the 2007 Act, a permitted purpose for which a practising fee may be payable by a person includes the payment of a levy imposed on an approved regulator. The effect of this is that the levy imposed under s.173, as modified by this instrument, may be met by practising fees charged on individuals and bodies. The principle behind this was established and considered under the 2007 Act and, in developing those wider proposals, the regulation of small businesses was considered in detail.

## **12. Monitoring & review**

12.1 The levy rules relate to the apportionment of leviable expenditure for the ongoing costs of the LSB and OLC. The levy arrangements would be reviewed if there was evidence that they were having a disproportionate affect on approved regulators to the extent of not meeting better regulation principles.

### **13. Contact**

13.1 Edwin Josephs at the LSB Tel: 020 7271 0084 or email: [edwin.josephs@legalservicesboard.org.uk](mailto:edwin.josephs@legalservicesboard.org.uk) can answer any queries regarding the instrument.