

**EXPLANATORY MEMORANDUM TO**  
**THE SOLICITORS ACT 1974 AND ADMINISTRATION OF JUSTICE ACT 1985**  
**(AMENDMENT) ORDER 2022**

**2022 No. 701**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The Law Society can issue a financial penalty up to £2,000 to solicitors and employees of solicitors, sole solicitor’s practices and traditional law firms. This power is exercised by the Solicitors Regulation Authority (SRA) as the regulator of solicitors and law firms in England and Wales.
- 2.2 The Statutory Instrument seeks to increase the maximum amount of penalty the Law Society, as delegated to the Solicitors Regulation Authority, can issue to traditional law firms, sole solicitor’s practices and solicitors and employees of solicitors from £2,000 to £25,000.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This is the first time that the powers set out in section 44D(10) of the Solicitors Act 1974 and paragraph 14B(10) of Schedule 2 to the Administration of Justice Act 1985 to change the amount set out in section 44D(2)(b) of the Solicitors Act 1974 and paragraph 14B(2)(b) of Schedule 2 to the Administration of Justice Act 1985 have been used.
- 3.2 The Order amends primary legislation, specifically section 44D of the Solicitors Act 1974 and paragraph 14B of Schedule 2 to the Administration of Justice Act 1985.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

**5. European Convention on Human Rights**

- 5.1 The Lord Chancellor has made the following statement regarding Human Rights:  
“In my view the provisions of the Solicitors Act 1974 and Administration of Justice Act 1985 (Amendment) Order 2022 are compatible with the Convention rights.”

**6. Legislative Context**

- 6.1 Under section 44D(1) and (2)(b) of the Solicitors Act 1974, the Law Society may direct a solicitor or an employee of a solicitor to pay a penalty up to £2,000 where the

solicitor or employee has failed to comply with a requirement or rule imposed on them or where a solicitor has committed professional misconduct. Under paragraph 14B(1) and (2)(b) of Schedule 2 to the Administration of Justice Act 1985, the Law Society can direct a traditional law firm, a manager or employee of a law firm, a sole solicitor or employee in a sole solicitor's practice to pay a penalty up to £2,000 where there has been a failure to comply with a requirement or rule imposed on them.

- 6.2 The Solicitors Regulation Authority exercises this power as the regulator of solicitors and law firms in England and Wales.
- 6.3 A case may be referred to the Solicitors Disciplinary Tribunal which is an independent Tribunal that has the power to issue unlimited financial penalties as well as, for example, further powers to strike the name of a solicitor off the roll and suspend a solicitor from practice.
- 6.4 The power to amend the amount set out in primary legislation by order is contained in section 44D(10) of the Solicitors Act 1974 and paragraph 14B(10) of Schedule 2 of the Administration of Justice Act 1985. Section 44D(11) of the Solicitors Act 1974 and paragraph 14B(11) of Schedule 2 to the Administration of Justice Act 1985 requires that the Lord Chancellor consult the Law Society before making an order.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Government intends to amend section 44D(2)(b) of the Solicitors Act 1974 and paragraph 14B(2)(b) of Schedule 2 to the Administration of Justice Act 1985, which gives the Law Society of England and Wales the power, to direct a penalty of up to £2,000 to be paid by a solicitor, employee of a solicitor, a traditional law firm, or a manager or employee of a law firm, or a solicitor or employee in a sole solicitor's practice.
- 7.2 The Law Society's fining powers are delegated to the Solicitors Regulation Authority as the regulator of solicitors and law firms in England and Wales. For the purposes of this Memorandum, the Law Society's power to issue a financial penalty will be referred to as the Solicitors Regulation Authority's power.
- 7.3 The purpose of this instrument is to raise the statutory limit from £2,000 to £25,000.

### *Explanations*

#### What did any law do before the changes to be made by this instrument?

- 7.4 The maximum amount the Solicitors Regulation Authority could direct a traditional law firm, sole solicitor's practice or solicitor (including relevant employees and managers of solicitors, firms and sole solicitor's practices) was limited in statute to £2,000. Cases that may result in a penalty of over £2,000 would be referred to the Solicitors Disciplinary Tribunal, an independent tribunal. The Authority's decisions can be appealed to the Solicitors Disciplinary Tribunal. The Solicitors Disciplinary Tribunal, by contrast to the Solicitors Regulation Authority, can also strike off and suspend solicitors.

#### Why is it being changed?

- 7.5 The Law Society's, as delegated to the Solicitors Regulation Authority, maximum fine amount has not changed since 2009. The Solicitors Regulation Authority

consulted in November 2021 on increasing this amount, to be able to set credible deterrents and enforce straightforward cases faster. Since then, questions have recently been raised in the media and Parliament about how the Government could further support the Solicitors Regulation Authority in upholding the sanctions regime, which has shone a light on the its enforcement powers. The Lord Chancellor sought the views of The Law Society, Solicitors Regulation Authority and Legal Services Board on increasing the limit on the Solicitors Regulation Authority's financial penalties in line with the proposals in its consultation.

- 7.6 The key reason for the change is that a maximum fine amount of £2,000 is too low to represent a credible deterrent to professional misconduct and breaches of relevant rules and requirements. While the Solicitors Disciplinary Tribunal, which deals with serious and complex cases, is not limited in how much it can fine, the cases seen by the Tribunal are on average resolved in 2.5 years, whereas the Solicitors Regulation Authority's internal disciplinary procedure takes on average 1.2 years. Tribunal procedures are inherently more time-consuming, the referral itself constituting a further stage which increases the time taken to resolve a case. Further, analysis of the Solicitors Disciplinary Tribunal's fine data shows that most cases warranting a financial penalty of £25,000 and under are resolved by agreed outcome, which suggests that cases warranting financial penalties of up to £25,000 are, for the most part, straightforward, and should therefore be dealt with by the Solicitors Regulation Authority's internal procedure.
- 7.7 Further, the £2,000 limit, and its inconsistency with the powers the Solicitors Regulation Authority has for alternative business structures, as well as with other regulators' powers, has been criticised by oversight bodies such as the Office for Professional Body Anti-Money Laundering Supervision, in its response to the Solicitors Regulation Authority's consultation on financial penalties and in its 2020/21 'Anti-Money Laundering Supervision by the Legal and Accountancy Professional Body Supervisors: Progress and themes from our 2020/21 supervisory assessments' report<sup>1</sup>. Raising the fine limit to £25,000 would constitute a first step towards establishing parity between the powers the Solicitors Regulation Authority has for traditional firms and alternative business structures.

*What will it now do?*

- 7.8 The increase of the Solicitors Regulation Authority's internal power to issue financial penalties of up to £25,000 will enable swifter and more effective enforcement of low-complexity cases of misconduct.
- 7.9 The order will amend section 44D(2)(b) to allow the Law Society, as delegated to the Solicitors Regulation Authority, to direct a solicitor or employee of a solicitor to pay a penalty not exceeding £25,000 where there has been professional misconduct by a solicitor, or where a solicitor or employee of a solicitor has breached a rule or requirement imposed on them by the Solicitors Act 1947 or rules made by the Law Society. It will also amend paragraph 14B(2)(b) of Schedule 2 to the Administration of Justice Act 1985 to allow the Law Society, as delegated to the Solicitors Regulation Authority, to direct a law firm or its managers or employees, or a solicitor or employee in a sole solicitor's practice to pay a penalty not exceeding £25,000 where

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<sup>1</sup> [OPBAS: Progress and themes from our 2020/21 supervisory assessments \(fca.org.uk\)](https://www.fca.org.uk/opa/opa-reports/opa-reports-2020-21/opa-reports-2020-21-supervisory-assessments)

there has been a failure to comply with a requirement imposed by the Administration of Justice Act 1985 or any relevant rules made by the Law Society.

- 7.10 This change is without prejudice to the right consumers have to make complaints directly to the Solicitors Disciplinary Tribunal, which may be referred back to the Solicitors Regulation Authority by the Tribunal, and to existing rights of appeal of a decision made by the Solicitors Regulation Authority to the Solicitors Disciplinary Tribunal.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 There is no plan to consolidate.

## **10. Consultation outcome**

- 10.1 In November 2021, the Solicitors Regulation Authority consulted on increasing their maximum financial penalty from £2,000 to £25,000 for traditional law firms and solicitors, which requires secondary legislation made by order of the Lord Chancellor to be brought into effect.
- 10.2 Section 44(D)(11) of the Solicitors Act 1974 requires that before making an order to modify the amount set out in legislation, the Lord Chancellor must consult the Law Society. As the Law Society has delegated its regulatory functions to the Solicitors Regulation Authority, the Lord Chancellor sought the views of the Law Society and the Solicitors Regulation Authority through consultation letters and official-level engagement. The Lord Chancellor also consulted the Legal Services Board in the same way, as the Legal Services Board is the oversight regulatory body and will be responsible for approving any guidance the Solicitors Regulation Authority may make to support the increase in their powers to issue financial penalties.
- 10.3 The Solicitors Regulation Authority and the Legal Services Board strongly supported the proposal to increase the Solicitors Regulation Authority's power to issue financial penalties. The Board argued in favour of an even stronger increase, arguing that to some firms, £25,000 may still be seen as the cost of doing business. The Law Society's response expressed concerns about such an increase, and recommended a more moderate increase to a maximum of £5,000, to £7,500. The Law Society considered that the Solicitors Regulation Authority's enforcement work was not transparent enough, and expressed concern at the level of costs solicitors may face in Solicitors Regulation Authority proceedings.
- 10.4 In their response, the Solicitors Regulation Authority acknowledged that greater fining powers should warrant greater transparency and mentioned that the body has launched a consultation on how it can improve transparency. The Legal Services Board also noted that, as oversight regulator, the Board is conducting a review of regulatory enforcement processes, and that the Solicitors Regulation Authority has expressed an appetite to engage with the Legal Services Board in this exercise, to further develop best practice. The Solicitors Regulation Authority also noted that they are engaging with the Solicitors Disciplinary Tribunal to further hone the SRA's understanding of when a case should be referred to the Tribunal.

- 10.5 The Law Society’s response also stated that the proposed increase to fining powers would make inroads into the Solicitors Disciplinary Tribunal’s role. Analysis of the likely impact of such an increase on the Tribunal’s activity is provided at section 11.3.

## **11. Guidance**

- 11.1 No guidance will be published to accompany this Instrument.

## **12. Impact**

- 12.1 On the basis of available data, there is no, or no significant, impact on business, charities or voluntary bodies. The activities carried out by public sector bodies will not change as a result of the instrument; a number of cases which were previously dealt with by the Solicitors Disciplinary Tribunal will just be handled by the Solicitors Regulation Authority. The potential costs to the Solicitors Regulation Authority of updating its guidance on financial penalties are estimated to be too low to result in a knock-on impact to businesses, as the Solicitors Regulation Authority had already decided to review its guidance on financial penalties, regardless of an uplift in its fining powers.
- 12.2 There is no, or no significant, impact on the public sector as, as set out above, costs to the SRA are likely to be low.
- 12.3 The impact of the measure on the Solicitors Disciplinary Tribunal’s caseload has also been considered. The Solicitors Disciplinary Tribunal has a breadth of activities which the SRA cannot carry out, which include striking off and suspending solicitors. Based on historic data of the SDT’s activity, including rebukes, strike-offs, suspensions and cases that do not result in a fine, if cases above £25,000 were to be transferred to the SRA, the SDT would retain on average 74% of its activity.
- 12.4 A full Impact Assessment has not been prepared for this instrument because there is minimal or no impact expected for businesses as a result of this instrument.
- 12.5 A full equalities statement is available on request.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the right. Hon. Dominic Raab MP has made the following statement:
- “The instrument does not include a statutory review clause as the change is technical and minimal”.

## **15. Contact**

- 15.1 Hélène Sherratt at the Ministry of Justice (email: [helene.sherratt@justice.gov.uk](mailto:helene.sherratt@justice.gov.uk)) can be contacted with any queries regarding the instrument.
- 15.2 John Heavens, Deputy Director for Legal Services Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 The right. Hon. Dominic Raab MP, Deputy Prime Minister, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.