

Review of the levy rules

Decision document on the proposed amendments to the levy rules made under sections 173-174 of the Legal Services Act 2007

April 2014

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Executive summary

1. Following a review of the current levy rules there were four areas where the Legal Services Board was proposing to make amendments:

Legal Services Board (LSB) leviable expenditure

- a minimum contribution of £3,000 for all approved regulators who have approved regulatory arrangements

Office for Legal Complaints (OLC) leviable expenditure

- to use a three-year reference period initially ending 31 March 2014 to calculate the average number of complaints and the end date being rolled forward one year for each levy period.
- using actual data captured by the OLC to determine the levy payable by each approved regulator instead of historic complaint information to recoup their leviable expenditure – currently the costs of the Legal Ombudsman
- a minimum contribution of £5,000 for OLC leviable expenditure for all approved regulators who have approved regulatory arrangements

2. Having considered the consultation responses the LSB has on balance concluded that there were no substantive points of argument or reasoning that warranted a change to the proposals as detailed above. This document responds to and provides clarification of the issues that were raised by respondents.
3. The LSB was not proposing to make any additional changes to the rules except to correct two drafting points following feedback from the Joint Committee on Statutory Instruments. We received no comments on these technical drafting amendments.
4. Approved regulators will pay their contribution to the levy under the current rules, which will remain in place until 31 March 2014. The amended levy rules, if they receive the consent of the Lord Chancellor, will apply for the 2014/15 collection year and will remain in force unless subsequently amended.

Introduction

5. The LSB is required by Part 7 of the Legal Services Act 2007 (the Act), specifically sections 173-174, to meet all its, and the OLC's^a leviable expenditure through a levy on the approved regulators. The LSB has made rules for all leviable expenditure, as defined in the Act, and took this opportunity to review these rules to determine whether they were still appropriate and in line with the '*better regulation principles*'- (**transparent, accountable, proportionate, consistent, targeted**).
6. The current rules are enshrined in legislation and can be found at: <http://www.legislation.gov.uk/ukxi/2010/2911/resources>
7. Section 174(4) of Part 7 of the Act allows for different parts of the levy to be payable at different rates and, consistent with the current rules, the LSB proposes to continue this distinction so that the methodology for recouping its costs will be different to the one used to recover the leviable expenditure of the OLC.
8. When the LSB made the current rules at the end of 2010, it undertook to review the rules in 2013/14. The consultation was as a result of this review.
9. The updated rules contained in this document, if consented to by the Lord Chancellor, will be effective from 1 April 2014 and be in force until updated.
10. A draft statutory instrument detailing the changes in the rules is included in **Annex A**. It has been reviewed by lawyers from the Ministry of Justice in preparation for the usual parliamentary scrutiny process.
11. This consultation exclusively concerned the methodology for recouping leviable expenditure of the LSB and the OLC from leviable bodies^b.

^a Section 115(3) of the Act provides for the Office for Legal Complaints to operate its ombudsman scheme under a different name. The ombudsman scheme is referred to as 'Legal Ombudsman' and is used throughout this document for the purposes of this consultation.

^b Section 173(5)(b) of the Act also includes as a leviable body 'the person designated under section 51(1) of the Compensation Act 2006 (c.29) (the Regulator in relation to claims management services). If a person is so designated then the levy rules and apportionment will be subject to a further amendment.

Responses to consultation

12. This section of the paper sets out a summary of the range of responses that we received to each question we posed in the consultation paper and sets out the final position the LSB and the OLC have reached as a result of these responses.
13. We received seven responses. A list of these respondents is set out at Annex 1. Full copies of the responses are on the LSB's website http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/Submissions_Received_To_The_Consultation_On_The_Review_Of_The_Levy_Rules.htm
14. **Question 1- Do respondents agree that a 'do nothing approach' (that is not to change the current methodology for recouping the expenditure of the LSB) is the correct option at this time?**
15. The Bar Council *takes the view that a system of recovery based on the total number of APs across a regulated sector is proportionate, fair and transparent. It agrees that it would, however, be disproportionate to enforce the payment of a minimum fee on all ARs, irrespective of whether they regulate any persons. On this basis the Bar Council supports the 'do nothing approach'.*
16. The Chartered Institute of Legal Executives and ILEX Professional Standards Limited (CILEx/IPS) responded *that the current methodology for recouping the expenditure of the LSB is at present working well. However as time progresses the LSB should have sufficient data available to them to make the calculation more sophisticated and reflective of the performance of the regulator and the LSB has to be aware that the 'do nothing approach', presents a risk that there may be a disproportionate effect on some regulators with large membership numbers whose members represent a lower regulatory risk and which do not take as much LSB time compared to a small membership based regulator whose members represent a higher regulatory risk and which takes more LSB time. We believe that the proposed changes may be suitable for the present time, however a more sophisticated model for the calculation of recouping expenditure may be necessary in the future, for example a formula based on usage.*
17. The Association of Chartered Certified Accountants (ACCA) stated that: *we acknowledge the claim that there may not be a practical basis on which a risk-based approach to apportionment of costs could be implemented. Nevertheless, it should be acknowledged that there are several factors that affect the demands placed upon the LSB by different approved regulators. Different legal activities attract different levels of risk. Furthermore, some of the approved regulators only authorise (or intend to authorise) their members to perform a single reserved legal activity. (In the case of probate, this is considered to be low risk. Therefore, we believe that the lesser risk attaching to the limited activities of some approved regulators is a factor that should not be ignored.*

18. The response from the Tunbridge Wells, Tonbridge and District Law Society (TWT&DLS) also *agrees with the proposal that there is no evidence in the Consultation to favour a change to the current calculation of the proportion of the LSB Leviable Expenditure payable by each Approved Regulator.*
19. Some of the other responses explored whether risk measures exist to determine a better method.

LSB's position

20. The LSB has considered the responses and although it sympathises with the views expressed by CILEx/IPS and ACCA, it still shares the view of the Law Society stated previously, *'we do not think there is a practical basis on which a risk based approach could be implemented at present. It is impossible to find an objective measure for the damage which would be done if particular Approved Regulators took actions which were inappropriate in terms of the Act'*.
21. As stated previously the LSB would not discount looking at other approaches as long as the benefits of a more sophisticated approach, offering sufficient clarity and certainty of expectation for regulators, were not outweighed by disproportionate costs to approved regulators or the LSB of administering that approach. To date no one has identified an alternative approach that meets this criterion.
- 22. Question 2- Do respondents agree that levying a fixed fee for new approved regulators (or ICAS and ACCA) who have regulatory arrangements approved during a year (1 April to 31 March) is a proportionate approach?**
23. The Bar Council referred to their 2009 response to the levy rules consultation where they *expressed mild concern relating to costs borne by the LSB in relation to preparing for new leviable bodies being brought under its umbrella and what resources are necessary to be able to regulate an AR, regardless of whether or not they have anybody carrying out reserved legal services. Ongoing running costs are not necessarily related to the number of APs [authorised persons]. It was therefore suggested that there must be a cost associated with being an AR that is incurred by the LSB and which, whether the AR has any regulated persons or not, should be passed to the AR to pay. The Bar Council asked that this be considered with care. The Bar Council feels that the proposed levy for new ARs (or ICAS or ACCA) who have regulatory arrangements approved during a year (1 April to 31 March) is a proportionate approach, although it would perhaps be more proportionate in the case of those existing ARs to apply the levy to any application for amendment to their regulatory rules, regardless of whether or not it is successful.*
24. CILEx/IPS state that they *believe that the levy on new approved regulators is proportionate as there is no fee paid for rule change applications and these regulators pay no other levy which may otherwise cover costs of such work at the*

LSB. Otherwise the obligation falls on the rest of the legal sector to cover the LSB's time working on such regulatory approvals.

25. *TWT&DLS view is that if the LSB is not engaged in any supervisory work in connection with an Approved Regulator then no charge should be levied. The Committee agrees with the proposal that a basic charge should be made where an Approved Regulator has regulatory responsibilities in respect of any authorised persons. The amount of any such basic charge should reflect the reasonable management costs to the LSB.*
26. *The Intellectual Property Regulation Board (IPREG) states that there should be a minimum contribution towards the costs of the LSB for all approved regulators who have approved regulatory arrangements whether or not they have any authorised persons (which is in the control of the approved regulator). We do not accept the argument that the LSB has "very little direct interaction" as a ground for not requiring a contribution to the levy. The LSB still all its statutory duties and retains an oversight responsibility in relation to all the organisations falling within this category. In relation to a possible fee for "new" bodies authorised in the relevant year we have no view either way.*
27. *ACCA state, in principle, we would agree with the proposal suggested under paragraph 23 of the consultation document - that in the year in which an approved regulator has its regulatory arrangements approved, it would be charged a fixed fee levy for that year e.g. £3,000. Our understanding is that this amount is irrespective of the number of individuals authorised during that first year.*
28. *No organisation disagreed with the proposal although there was some question as to how the figure of £3,000 had been arrived at.*

LSB's position

29. *Currently if any new organisation or indeed ACCA or the Institute of Chartered Accountants of Scotland (ICAS) has regulatory arrangements approved during the course of the year there would not be required to contribute to that year's levy collection.*
30. *The amendment proposed by the LSB would be that any new organisation (or ACCA or ICAS) would need to contribute £3,000 for the first levy collection, in which they have regulatory arrangements approved and then in subsequently years would be subject to the normal rules of 'the number of authorised persons that they regulate as at 1 April'.*
31. *The £3,000 figure was a nominal fee and equated to a regulator having approximately 120 authorised persons for the whole year (or 240 for half a year etc.) as explained in paragraph 23 of the consultation document.*

32. The LSB was never proposing that anymore or any less than this figure would be levied on an organisation that has regulatory arrangement approved during their first year as per the stated understanding of the ACCA.

33. Question 3 - Do respondents agree that using an average of complaints for a three year period, initially ending 31 March 2014, is the most appropriate methodology for recouping the leviable expenditure of the OLC?

34. The Bar Council responded *that they have formerly taken the stance that the costs of the OLC should be borne by the 'proven polluter', not on the basis of unproved service complaints. The consultation uses the expression "accepted complaints", but no definition is provided as to what this means in practise. Does this mean a proven complaint or one which has passed an initial assessment before a full investigation? The Bar Council supports the targeted approach of using actual numbers, but would appreciate clarification as to what they are actual numbers of. Using an average of three years' data in order to 'smooth out' any sudden or one-off peak in complaints is a welcome proposal, as is the continuous rolling-over of the referencing period.*

35. CILEx, IPREG, TWT&DLS all agreed *with the proposal that using an average of complaints for a three year period, initially ending 31 March 2014, is the most appropriate methodology for recouping the OLC Leviable Expenditure.*

36. CIPA disagreed and *considers that a three year period is not appropriate. CIPA considers that it should be possible to use the statistics as they accumulate and as they have already been accumulated by the Approved Regulators before the inception of the LSB. If all available historical data is used, any temporary swings in risk will be smoothed out. It is certainly considered that a three year period is too short as it allows unusual years to skew the general trends.*

LSB's position

37. The 'accepted complaints' are those, which the Legal Ombudsman determine fall within their jurisdiction in accordance with the definitions given in the Act. Whilst the LSB understands their concern about 'proven' cases - the Legal Ombudsman incurs costs as soon as the complaint is accepted for investigation.

38. Indeed, in analysing whether there is a case to answer there is some general assessment work undertaken- and these are part of the general Legal Ombudsman costs that the proposed rules seek a contribution for from all approved regulators who come under their jurisdiction.

39. In 2009 the LSB analysed the data that was historically collected by approved regulators and found that there was a huge discrepancy in what was collected, how complaints were counted (if at all) and the quality of the records. The LSB determined that using historical data of this kind would not be an approach consistent with the *better regulation principles*.

40. The LSB agrees with the majority of the respondents that using actual complaint data over a rolling three year period, the first period being the three years ending 31 March 2014, is the best proxy for 'charging the polluter'.
41. **Question 4 - Do respondents agree that all approved regulators who have regulatory arrangements approved, should pay a minimum contribution of £5,000 towards the costs of the Legal Ombudsman and the balance would then be apportioned as in question 3?**
42. The Bar Council stated that *the assertion in the consultation paper is that the Legal Ombudsman exists for the benefit of the ARs, irrespective of whether or not they actually have any complaints registered against them. The benefit in question must surely be that each AR is not responsible for investigating complaints made against their own APs. The wider benefit is, of course, to the consumer. The consultation paper is not entirely clear as to whether, as at question 2, the proposal relates to those who have regulatory arrangements approved in the course of a particular year, or just have regulatory arrangements at all. It is also unclear how the figure of £5,000 has been reached. Notwithstanding that, the Bar Council supports the idea that those ARs with regulated persons should contribute a minimum amount towards the costs of the Legal Ombudsman. The rationale for apportioning the remaining costs appears sound. Again, it is not entirely clear how the value of the minimum contribution has been reached. The Bar Council would also request that this fixed sum is revisited in a future consultation or review where further data is available.*
43. CILEx/IPS responded stating, *we note the impact of this proposal, where some regulators, including CILEx, even if they have no complaints will have to pay the initial £5,000. If this approach is implemented we hope to achieve full collaborative working relationship with LeO. However, we believe that it is important for consideration to be given to the risk of disproportionate effects of this approach. CILEx has had an average of 0 complaints in the 3 year period ending 30/09/2013. Therefore the OLC estimated levy for CILEx is £0. However, the obligation to pay a fixed fee sum of £5,000 each year means CILEx would have to pay a minimum of £5,000 per annum. This formula based on actual figures of complaints is better than being based on estimates and thus leads to a more consistent methodology. Regulators with none or less than three complaints per annum will have to pay the minimum fee of £5,000 towards the Legal Ombudsman costs. As the organisation had been set up for the benefit of all regulators, the payment of this fixed sum can be seen as a fair and proportionate approach.*
44. TWT&DLS stated that *the Committee agrees with the proposal that all Approved Regulators with newly approved regulatory arrangements should pay a minimum contribution towards the OLC Leviable Expenditure and that such sum should be on account of the general calculation of contributions thereafter.*

45. CIPA stated that just the number of complaints should be used.
46. CLSB was unhappy that their fee would increase and didn't agree that this was proportionate citing the effect: *the CLSB considers that the proposal is neither fair nor proportionate, that it lacks transparency and is against the Principles of Better Regulation as: It penalises success e.g. low complaint rates in the case of the CLSB. It is discriminatory as it financially penalises the smallest of the ARs.*
47. The CLSB was also concerned that *its had kept its regulatory fee at the same level for three consecutive years so as not to price Costs Lawyers out of regulation. The proposal will potentially do just that. As the LSB is well aware, there are many challenges making the current climate financially difficult for practitioners e.g. austerity, changes to legal aid... The proposal does not reflect well on the LSB/OLC/LeO, particularly when Costs Lawyers have created no LeO complaints since 31 October 2011... Any increase in costs will ultimately have to be passed on to Costs Lawyer consumers which we consider both unfair and unjustified. It is divisive in that it serves to put more pressure on the sustainability of the smaller regulators. The method behind how the £5,000 minimum payment was arrived at was not explained, it appears to be a figure plucked from the air. This lack of transparency is not acceptable.*
48. IPREG *does not support the proposal that there should be a minimum contribution of £5,000 towards the cost of the Legal Ombudsman. We support the view that "the polluter pays" and, in any event, the minimum contribution is de minimis in relation to the overall budget.*
49. The ACCA responded *the set-up costs of the Legal Ombudsman were incurred some years ago, and it would appear unreasonable to seek to recover those costs from those approved regulators that had no authorised members during the intervening period (since 2010). Consistent with the LSB's conclusions referred to under 2 above, a fixed fee of £5,000 to be paid by all approved regulators annually would be disproportionate, and contrary to the better regulation principles. Furthermore, where authorised persons engage only in legal activities that are considered to be relatively low risk, it may be argued that they (and their governing bodies) derive little benefit from the establishment of the Legal Ombudsman service. Therefore, should the fixed fee be payable by all those approved regulators that have regulatory arrangements approved, regardless of the demands placed on the Legal Ombudsman service by members of those approved regulators, a claim may still be made that the arrangements are disproportionate and not appropriately targeted.*

LSB's position

50. The original set up costs of the Legal Ombudsman were recovered in full by March 2012. Although the Legal Ombudsman was set up for the benefit for all approved regulators the LSB determined that for these one off establishment costs it would ignore any approved regulator which accounted for less than 0.1%

of the total number of complaints. The effect of this decision was that all of the set up costs were borne by just three approved regulators, the Law Society, the Bar Council and the Council for Licensed Conveyancers. All approved regulators were expected to contribute to the running costs of the Legal Ombudsman.

51. In terms of how the £5,000 figure was calculated, the LSB accepts that it could have been more explicit in this. It was taken from the likely 2014/15 OLC budget figure net of case fee income (£13.15m) divided by the current number of cases (8171) to get an approximate cost per case and then multiplied by three as per paragraph 36 of the consultation document.
52. CILEx is an approved regulator that would be subject to the minimum fee and the LSB concurs with their conclusion.
53. Even though IPREG were not in favour of a fixed fee they acknowledge that £5,000 is a de minimis figure in relation to the OLC budget.
54. The LSB does not consider that a minimum contribution of £5,000 would impact the current regulatory fee charged by CLSB as it notes that the CLSB have allowed more than £28,000 in their practising certificate fee budget for LSB and OLC levies in 2013/14^c. This is significantly greater than the levies payable under the proposals in the consultation (approximately £19,000).
55. The Bar Council in its response highlighted that costs that would fall to an approved regulator if it was obliged to investigate its own service complaints and the wider benefits to the consumer of just having one organisation to contact to resolve a complaint.
56. All approved regulators are required to ensure that their authorised persons have the necessary signposting to the Legal Ombudsman's service when contracting with clients and consumers.
57. The Legal Ombudsman incurs various costs to help consumers in deciding whether it is appropriate to pursue a formal complaint for example website and publications. The Legal Ombudsman also incurs costs in its initial assessment unit.
58. It also has costs in interacting with all approved regulators for example in providing information, running regulator forums and responding to general questions and requests for guidance.
59. For all of these reasons the LSB considers that it is proportionate to charge each approved regulator, who has approved regulatory arrangements, a minimum fee of £5,000 each year as a contribution to the costs of the Legal Ombudsman.

^c http://www.legalservicesboard.org.uk/Projects/pdf/application_to_LSB_130913.pdf

Next steps

60. It is anticipated that the final draft of the Statutory Instrument will be presented to the Lord Chancellor in April, as the Lord Chancellor needs to consent to the changes to the rules.
61. Pending Lord Chancellor approval, the Statutory Instrument will go through the Parliamentary process with the intention that it will come into force on for the 2014/15 levy collection year.
62. The levy will be collected in full by 31 March of the financial year to which it relates.
63. We acknowledge that these proposals may need to be refined in future years in the light of ongoing experience but have concluded that they represent the fairest and most proportionate methodology to recoup the costs of both the LSB and the Legal Ombudsman for the period beginning 1 April 2014.

Glossary of terms

ACCA	Association of Chartered Certified Accountants. Approved regulator in relation to reserved probate activities
AR or approved regulator	A body which is designated as an approved regulator by Parts 1 or 2 of schedule 4, and whose regulatory arrangements are approved for the purposes of the LSA and which may authorise persons to carry on any activity which is a reserved legal activity in respect of which it is a relevant AR
AP or Authorised Person	A person authorised to carry out a reserved legal activity
BSB	Bar Standards Board – the independent Regulatory Arm of the Bar Council
BAR	The General Council of the Bar – the representative body for Barristers
CILEx	Chartered Institute of Legal Executives - representative body for Legal Executives
CLC	Council for Licensed Conveyancers – the regulator for Licensed Conveyancers
CIPA	Chartered Institute of Patent Attorneys- representative body for Patent Attorneys
Consultation	The process of collecting feedback and opinion on a policy proposal
Consumer Panel	The panel of persons established and maintained by the Board in accordance with Section 8 of the LSA (2007) to provide independent advice to the Legal Services Board about the interests of users of legal services
CLSB	Costs Lawyers Standards Board- regulates costs lawyers under delegated authority of the Association of Costs Lawyers
Faculty Office	The approved regulator for Notaries
ICAEW	Institute of Chartered Accountants of England and Wales – the representative body for Chartered Accountants in England and Wales
ICAS	Institute of Chartered Accountants of Scotland – the approved regulator in relation to reserved probate activities
Impact Assessment	An assessment of the likely impact of a policy on cost, benefits, risks and the likely or actual effect on people in respect to diversity
ITMA	Institute of Trade Mark Attorneys – representative body for Trade Mark Attorneys
IPREG	Intellectual Property Regulation Board – undertakes the regulation of Patent and Trade Mark Attorneys
LSB or the Board	Legal Services Board – the independent body responsible for overseeing the regulation of lawyers in England and Wales
Legal Ombudsman	Legal Ombudsman - The single organisation for all consumer legal complaints

Levy	The LSB is required by the Legal Services Act (2007) to meet all its, and the Legal Ombudsman's costs through a levy on the Approved Regulators.
LSA or the Act	Legal Services Act 2007
MoU	Memorandum of Understanding - A document describing an agreement between parties
OLC	Office for Legal Complaints. NPDB established by the Legal Services Act to establish an independent Legal Ombudsman Service
Principles of Better Regulation	The five principles of better regulation, being proportional, accountable, consistent, transparent and targeted
Regulatory Objectives	<p>There are eight regulatory objectives for the LSB that are set out in the Legal Services Act (2007):</p> <ul style="list-style-type: none"> • protecting and promoting the public interest • supporting the constitutional principle of the rule of law improving access to justice • protecting and promoting the interests of consumers promoting competition in the provision of services in the legal sector • encouraging an independent, strong, diverse and effective legal profession • increasing public understanding of citizens legal rights and duties • promoting and maintaining adherence to the professional principles of independence and integrity; proper standards of work; observing the best interests of the client and the duty to the court; and maintaining client confidentiality.
Regulatory Rules	Set out the regulatory arrangements that Approved Regulators must comply with in order to be designated as approved regulators for specific reserved activity.
Reserved Legal Activity	Legal services within the scope of regulation by the Approved Regulators
SRA	Solicitors Regulation Authority - Independent regulatory body of the Law Society
Statutory Instrument	A form of legislation which allow the provisions of an Act of Parliament to be brought into force or altered without Parliament having to pass a new Act.

Annex 1 – List of respondents to the consultation paper

- Association of Chartered Certified Accountants
- General Council of the Bar
- Chartered Institute of Legal Executives and ILEX Professional Standards Limited
- Chartered Institute of Patent Attorneys
- Cost Lawyers Standards Board
- Intellectual Property Regulation Board
- Tunbridge Wells, Tonbridge and District Law Society

Annex 2 – Draft statutory instrument

STATUTORY INSTRUMENTS

2014 No. []

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Levy) (No. 2) (Amendment) Rules 2014

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	2nd July 2014

The Legal Services Board with the consent of the Lord Chancellor makes the following Rules in exercise of the powers conferred by sections 173, 174 and 204(2), (3) and (4)(b) of the Legal Services Act 2007^(a).

In accordance with section 173(3) of that Act, the Legal Services Board has satisfied itself that the apportionment of the levy as between different leviable bodies is in accordance with fair principles.

The Legal Services Board has complied with the consultation requirements in section 205 of that Act.

Citation and commencement

1. These Rules may be cited as the Legal Services Act 2007 (Levy) (No. 2) (Amendment) Rules 2014 and come into force on 2nd July 2014.

Amendments to the Legal Services Act 2007 (Levy) (No.2) Rules 2010

2. The Legal Services Act 2007 (Levy) (No. 2) Rules 2010^(b) are amended in accordance with rules 3 to 8 below.

3. In rule 2 (Levy imposed under these Rules)—

- (a) in paragraph (1), for “A” substitute “Subject to paragraph (6), a”;
- (b) in paragraph (3)(a), after “estimated expenditure” insert “in so far as actual expenditure figures are not available to the Board”;
- (c) after paragraph (5), insert—

“(6) The levy is not to be imposed on a leviable body to whom this paragraph applies until its regulatory arrangements in respect of reserved legal activities are approved by the Board under Part 3 of Schedule 4 to the 2007 Act.

(7) Paragraph (6) applies to—

- (a) the Institute of Chartered Accountants of Scotland; and

^(a) 2007 c. 29.

^(b) S.I. 2010/2911.

(b) the Association of Chartered Certified Accountants.”.

4. In rule 3 (Determining the amount of the levy for each leviable body)—

- (a) in paragraph (2), after “becomes a leviable body” insert “or a leviable body to whom rule 2(6) applies has its regulatory arrangements in respect of reserved legal activities approved by the Board under Part 3 of Schedule 4 to the 2007 Act”;
- (b) in paragraph (2)(a), for “no amount” substitute “£3000”.

5. In rule 4 (Apportionment of leviable Board expenditure)—

- (a) in paragraph (1), for “(5)” substitute “(6)”;
- (b) after paragraph (5), insert—

“(6) The total amount of leviable Board expenditure to be used in applying the calculation under paragraph (1) is to be reduced by any amount payable by a leviable body under rule 3(2)(a).”.

6. In rule 5 (Apportionment of leviable OLC expenditure)—

- (a) in paragraph (1), after “is” insert “£5000 plus”;
- (b) for paragraph (2), substitute—

“(2) For these purposes—

 - (a) subject to paragraph (2A), “the relevant proportion” in relation to a leviable body is the number of service complaints in respect of that leviable body accepted in the course of the reference period by the OLC, as a proportion of the total number of service complaints in respect of all leviable bodies accepted in the course of that period by the OLC; and
 - (b) “the reference period” is the three year period ending on 31st March prior to the 12 month period in respect of which the levy is imposed.

(2A) For the purposes of paragraph (2)(a), the number of service complaints in respect of the leviable body accepted in the course of the reference period by the OLC shall be reduced by three.”;
- (c) for paragraph (6), substitute—

“(6) In this rule, “service complaint” means a complaint which is within the jurisdiction of the ombudsman scheme as provided for in Part 6 of the 2007 Act.”.

7. In rule 6 (Duty to provide information required to calculate the levy)—

- (a) for paragraph (2)(b), substitute—

“(b) for the purposes of rule 5, a statement of the number of service complaints accepted in the course of the reference period by the OLC (and for this purpose “reference period” has the meaning given in rule 5).”;
- (b) omit paragraph (5).

8. In rule 8 (Interest payable on late payment), for “the Board is entitled to charge interest on any amount unpaid”, substitute “the unpaid balance from time to time carries interest”.

Made by the Legal Services Board at its meeting on [date]

I consent
Signed by authority of the Lord Chancellor

Date

Name
[Minister]
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Legal Services Act 2007 (Levy) (No. 2) Rules 2010 (S.I. 2010/2911) (“the 2010 Rules”) made under sections 173, 174 and 204 of the Legal Services Act 2007 (“the Act”) which provide for the imposition of a levy on certain leviable bodies by the Legal Services Board (“the Board”).

Rule 3 amends rule 2 of the 2010 Rules to specify that the levy will not be imposed on the Institute of Chartered Accountants of Scotland and the Association of Chartered Certified Accountants until their regulatory arrangements are approved by the Board. Rule 2 is also amended to specify that estimated expenditure can be used by the Board in determining leviable expenditure where actual expenditure figures are not available.

Rule 4 amends rule 3 of the 2010 Rules to make a fixed-rate levy of £3000 payable to the Board in any initial period of 12 months after a body becomes a leviable body, and to specify when the Institute of Chartered Accountants of Scotland and the Association of Chartered Certified Accountants are to pay that sum, in the event that alterations to their regulatory arrangements are approved.

Rule 5 amends rule 4 of the 2010 Rules to provide that the total amount of leviable Board expenditure to be taken into account in calculating the levy for each body is to be reduced by any amount payable in respect of an initial 12 month period under rule 3.

Rules 6 and 7 amend rules 5 and 6 of the 2010 Rules such that the leviable OLC expenditure payable by each leviable body comprises a fixed-rate levy of £5000 plus an amount apportioned according to the number of complaints in respect of that leviable body accepted during the previous three years by the Legal Ombudsman. For the purposes of this calculation the number of complaints is to be reduced by three.

Rule 8 amends rule 8 of the 2010 Rules to clarify that in the event of late payment any unpaid balance carries interest.

An impact assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.