

2010 No. 2911

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Levy) (No.2) Rules 2010

<i>Made</i> - - - -	<i>5th December 2010</i>
<i>Laid before Parliament</i>	<i>8th December 2010</i>
<i>Coming into force</i> - -	<i>1st January 2011</i>

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)(b), (d) and (e) 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.

General

Citation, commencement and interpretation

- 1.—(1) These Rules may be cited as the Legal Services Act 2007 (Levy) (No.2) Rules 2010.
- (2) These Rules come into force on 1st January 2011.
- (3) In these Rules “the 2007 Act” means the Legal Services Act 2007(b).
- (4) In these Rules any reference, in relation to the imposition of a levy, to—
 - (a) the leviable Board expenditure; or
 - (b) the leviable OLC expenditure,

is a reference to such expenditure in relation to the 12 month period in respect of which the levy is imposed.

Annual levy

Levy imposed under these Rules

- 2.—(1) A levy is to be imposed on leviable bodies in respect of the 12 month period ending with 31st March 2011 and in respect of each successive 12 month period.
- (2) The levy is for the purpose of raising an amount corresponding to the aggregate of—

(a) 2007 c. 29.
(b) “Leviable body”, “leviable Board expenditure” and “leviable OLC expenditure” are defined in section 173 of the Legal Services Act 2007. “The Board” and “the OLC” are respectively defined in sections 2 and 114 of that Act.

- (a) the leviable Board expenditure; and
 - (b) the leviable OLC expenditure.
- (3) The expenditure referred to in paragraph (2)(a) or (b) may include—
- (a) estimated expenditure; and
 - (b) such amount as is necessary to make good any shortfall in respect of a levy previously imposed.
- (4) For the purposes of paragraph (3)(b)—
- (a) the reference to a levy previously imposed is to a levy imposed under these Rules or under the Legal Services Act 2007 (Levy) Rules 2010(a); and
 - (b) the reference to shortfall, in respect of any such levy, is to the difference between the amount to be raised by way of that levy and the amount actually received by the Board.
- (5) The Board must obtain the Lord Chancellor’s agreement to the amount to be raised by way of the levy in respect of each 12 month period.

Amount payable by each leviable body

Determining the amount of the levy for each leviable body

3.—(1) The amount that each leviable body must pay to the Board in respect of the levy imposed in respect of any 12 month period is to be determined by adding together the amounts determined for that body under rules 4 and 5 (subject to paragraphs (2) and (3)).

(2) Where a body becomes a leviable body in the course of any 12 month period (“the initial period”)—

- (a) no amount is payable by the leviable body under paragraph (1) in respect of the initial period; and
- (b) the amount that the leviable body must pay to the Board in respect of each subsequent 12 month period is the amount determined for that body under rule 4 only; but
- (c) if the leviable body is the subject of a determination under rule 4(3) or 5(3) in respect of any 12 month period, the amount that the body must pay to the Board under paragraph (1) is—
 - (i) where the determination is in respect of the initial period, any amount determined for that body under rule 4(4)(a) or 5(4)(a) (or the aggregate of such amounts); and
 - (ii) where the determination is made in respect of any subsequent 12 month period, the amount determined for that body under rule 4, together with the amount (if any) determined for that body under rule 5(4)(a).

(3) The amount that a body would otherwise be required to pay under paragraph (1) is to be proportionately reduced where—

- (a) before the end of any 12 month period, the body ceases to be a leviable body because its designation as an approved regulator is cancelled by an order under section 45 (cancellation of designation as approved regulator) of the 2007 Act; and
- (b) the order is made in relation to all the reserved legal activities in relation to which the body was an approved regulator.

(4) The Board must notify each leviable body of the imposition of the levy, stating—

- (a) the amount determined for that body; and
- (b) the deadline for payment determined in accordance with rule 7.

(5) The leviable body must pay to the Board the amount stated in the notice.

(a) S.I. 2010/213.

Apportionment of leviable Board expenditure

4.—(1) Subject to paragraphs (3) to (5), the amount payable by a leviable body under this rule is an amount equal to the relevant proportion of leviable Board expenditure.

(2) For these purposes—

- (a) the relevant proportion is the number at the specified date of persons authorised by the leviable body to carry on one or more reserved legal activities, as a proportion of the total number at that date of persons authorised by all leviable bodies to carry on one or more such activities; and
- (b) the specified date is 1st April of the 12 month period in respect of which the levy is imposed.

(3) Paragraphs (4) and (5) apply where the Board determines on reasonable grounds that—

- (a) anything done, or not done, by a leviable body has given rise to an additional amount of leviable Board expenditure; and
- (b) as a result, the amount of leviable Board expenditure attributable to that body is materially disproportionate to the amount attributable to any other leviable body (apart from one in respect of whom a determination under this paragraph has also been made).

(4) The total amount of leviable Board expenditure to be used in applying the calculation described in paragraph (1) is to be reduced as follows—

- (a) in relation to each leviable body which is the subject of a determination under paragraph (3), the Board must determine the additional amount of leviable Board expenditure referred to in paragraph (3)(a); and
- (b) the amount so determined (or the aggregate of such amounts) is to be deducted from the total amount of the leviable Board expenditure which would otherwise be used for the purposes of the calculation described in paragraph (1).

(5) The amount payable by each leviable body which is the subject of a determination under paragraph (3) is the aggregate of the amounts determined for that body under paragraphs (1) and (4)(a).

Apportionment of leviable OLC expenditure

5.—(1) Subject to paragraphs (3) to (5), the amount payable by a leviable body under this rule is an amount equal to the relevant proportion of leviable OLC expenditure.

(2) For these purposes—

- (a) the relevant proportion is the number of service complaints received in the course of the reference period by the leviable body in its former regulatory capacity, as a proportion of the total number of service complaints received in the course of that period by all leviable bodies in their former regulatory capacities; and
- (b) the reference period is the three year period ending on 31st December 2009.

(3) Paragraphs (4) and (5) apply where the Board determines on reasonable grounds that—

- (a) anything done, or not done, by a leviable body has given rise to an additional amount of leviable OLC expenditure; and
- (b) as a result, the amount of leviable OLC expenditure attributable to that body is materially disproportionate to the amount attributable to any other leviable body (apart from one in respect of whom a determination under this paragraph has also been made).

(4) The total amount of leviable OLC expenditure to be used in applying the calculation described in paragraph (1) is to be reduced as follows—

- (a) in relation to each leviable body which is the subject of a determination under paragraph (3), the Board must determine the additional amount of leviable OLC expenditure referred to in paragraph (3)(a); and

- (b) the amount so determined (or the aggregate of such amounts) is to be deducted from the total amount of leviable OLC expenditure which would otherwise be used for the purposes of the calculation described in paragraph (1).

(5) The amount payable by each leviable body which is the subject of a determination under paragraph (3) is the aggregate of the amounts determined for that body under paragraphs (1) and (4)(a).

(6) In this rule—

“the 1990 Act” means the Courts and Legal Services Act 1990 Act(a);

“former regulatory capacity”, in relation to a leviable body, means the capacity in which before 1st January 2010 the body in question regulated persons who, before that date, fell within one or more of paragraphs (a) to (f)—

- (a) any person with any right of audience before a court in relation to any proceedings which was granted, or is deemed to have been granted, by the body in question under sections 27(2) (rights of audience) or 31 (barristers or solicitors) of the 1990 Act(b);
- (b) any person with any right to conduct litigation in relation to any proceedings which was granted, or is deemed to have been granted, by the body in question under sections 28(2)(a) (rights to conduct litigation) or 31 of the 1990 Act(c);
- (c) any person providing probate services by virtue of an exemption under section 55 (preparation of probate papers etc: exemption from section 23(1) of the Solicitors Act 1974(d)) of the 1990 Act(e) which was granted by the body in question;
- (d) any person practising as a duly certificated notary in accordance with rules made by the body in question under section 57 (notaries) of the 1990 Act(f) (and for these purposes, “duly certificated notary” has the meaning given in paragraph 12 of Schedule 5 to the 2007 Act);
- (e) any person who is authorised by, or registered with, the body in question and who is an authorised person within the meaning of section 113 (administration of oaths and taking of affidavits) of the 1990 Act(g); or
- (f) any person licensed or otherwise authorised by the body in question to carry on conveyancing services within the meaning of section 119 of the 1990 Act; and

“service complaint” means a complaint received before 1st January 2010 by a leviable body in its former regulatory capacity, being a complaint—

- (g) that was made by, or on behalf of, a consumer;
- (h) that relates to an act or omission of any person at a time when that person—
 - (i) was regulated by the body in question, or
 - (ii) was not so regulated but was a manager or employee of a person who was so regulated; and
- (i) that was eligible to be dealt with under arrangements made by the body in question for the determination of consumer complaints.

(a) 1990 c. 41.

(b) Section 27(2)(a) was amended by paragraph 6(2) of Schedule 6 to the Access to Justice Act 1999 (c. 22). The section was repealed by paragraph 84(g) of Schedule 21 to the Legal Services Act 2007. Section 31 was substituted by section 36 of the Access to Justice Act 1999. The section was repealed by paragraph 84(g) of Schedule 21 to the Legal Services Act 2007.

(c) Section 28(2)(a) was amended by paragraph 7(2) of Schedule 6 to the Access to Justice Act 1999. The section was repealed by paragraph 84(e) of Schedule 21 to the Legal Services Act 2007.

(d) 1974 c. 47. Section 23 was repealed by paragraph 26 of Schedule 16 to the Legal Services Act 2007.

(e) Section 55 was amended by S.I. 2003/1887. The section was repealed by paragraph 88 of Schedule 21 to the Legal Services Act 2007.

(f) Section 57 was amended by Part 2 of Schedule 15 to the Access to Justice Act 1999.

(g) Section 113 was amended by Part 2 of Schedule 15 to the Access to Justice Act 1999 and S.I. 2003/1887. The section was repealed by paragraph 96 of Schedule 21 to the Legal Services Act 2007.

Duty to provide information

Duty to provide information required to calculate the levy

6.—(1) For the purpose of enabling the Board to determine the amount payable by a leviable body in respect of any 12 month period, each leviable body must provide the Board with the information required by paragraphs (2) and (3).

(2) The information to be provided is—

- (a) for the purposes of rule 4, a statement of the number of persons who were authorised by the leviable body at 1st April of the 12 month period in question; and
- (b) for the purposes of rule 5, a statement of the number of service complaints received in the course of the reference period by the leviable body in question in its former regulatory capacity (and for this purpose “reference period” and “former regulatory capacity” have the meaning given in rule 5).

(3) Any statement provided under paragraph (2) must contain or be accompanied by such information as will enable the Board, or such person as the Board may appoint, to be satisfied that the numbers stated are correct.

(4) The information must be provided—

- (a) before the end of the period of one month starting with 1st April of the 12 month period in respect of which the levy is to be imposed; or
- (b) on or before such later date as may be agreed in writing between the Board and the leviable body.

(5) The information referred to in paragraph (2)(b) does not have to be provided more than once.

Arrangements for payment

Making payment

7.—(1) Subject to paragraph (2), the amount of levy that a leviable body is required to pay to the Board under rule 3 must be paid in full by the leviable body no later than—

- (a) 31st March of the 12 month period to which the levy relates; or
- (b) the end of the period of 28 days that starts with the date of the notice given to the leviable body under rule 3(4),

whichever is the later.

(2) Where a cancellation order in relation to any body has been made as described in rule 3(3), the reduced amount determined for that body under rule 3(3) is immediately payable with effect from the date of the cancellation order.

Interest payable on late payment

8. 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 at the rate which is for the time being specified in section 17(1) of the Judgments Act 1838(a) in relation to a judgment debt.

(a) 1838 c. 110. A relevant amendment was made by S.I. 1993/564.

Made by the Legal Services Board on 30th November 2010

*David Edmonds CBE
Terence Connor
Stephen Green
Bill Moyes
Barbara Saunders OBE
Nicole Smith
Andrew Whittaker
David Wolfe
Chris Kenny*

I consent
Signed by authority of the Lord Chancellor

5th December 2010

J Djanogly
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules impose a levy under sections 173 and 174 of the Legal Services Act 2007 (c. 29).

Rule 2 provides that a levy is to be imposed in relation to the 12 month period ending with 31st March 2011 and in relation to each successive 12 month period. Each levy is to cover the leviable expenditure of the Legal Services Board (“the Board”), and leviable expenditure of the Office for Legal Complaints (“the OLC”), in respect of the period in respect of which the levy is imposed. There is no levy in respect of leviable Lord Chancellor expenditure, as none has been incurred in the relevant period.

Rules 3 to 5 specify the procedure for determining the amount of levy that each leviable body must pay in respect of each 12 month period and the procedure for notifying each body of the amount due. Rule 3 provides that that amount is to be determined for a leviable body by adding together the amounts determined under rules 4 and 5. Rules 3(2) and (3) provide for adjustments to be made in certain circumstances to the amount payable by a leviable body.

Under rule 4, each leviable body is required to pay a proportion of leviable Board expenditure which is based on the number at the specified date of the persons authorised by it to carry on reserved legal activities. The proportion of leviable OLC expenditure which a leviable body is required to pay under rule 5 is based on the number of service complaints made to the body in the period starting on 1st January 2007 and ending on 31st December 2009. Rules 4 and 5 also provide for adjustments of the amounts payable in order to take account of materially disproportionate levels of expenditure that are attributable to any particular leviable body.

Rule 6 requires leviable bodies to provide the Board with the information necessary for it to calculate the proportions described in rules 4 and 5. Rule 7 requires that, except in certain specified cases, the levy must be paid in full no later than 31st March of the 12 month period to which it relates. Interest is payable under rule 8 in the event of any late payment.

An impact assessment in relation to the levy is available from the Legal Services Board, Victoria House, Southampton Row, London WC1B 4AD or at www.legalservicesboard.org.uk.

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STATUTORY INSTRUMENTS

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The Legal Services Act 2007 (Levy) (No.2) Rules 2010

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