

# The Levy: funding legal services

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*Response to consultation*

October 2009

## The Levy: funding legal services

1. The Legal Services Board (the “**Board**”) has today submitted to the Ministry of Justice (the “**MoJ**”), for Lord Chancellor approval, the final form of the statutory instrument it proposes to constitute its rules to provide for the imposition of a levy to raise an amount to meet the establishment costs of the Board and the Office for Legal Complaints (the “**OLC**”) and the Board’s operating costs for its first financial year ending 31 March 2010.
2. These rules are made in accordance with Section 173 of the Legal Services Act 2007 and are being submitted to the MoJ after a consultation process which involved:
  - the publication of an initial consultation document on 9 April 2009. This consultation ran for 12 weeks and focussed on the policy surrounding the rules but not the form of the statutory instrument itself. Copies of the responses to this consultation are available on the Board’s website;
  - the publication of a decision document and a consultation on the form of the statutory instrument on 11 September 2009. This consultation ran for 4 weeks reflecting the fact the policy surrounding the statutory instrument had already been consulted upon and that a draft of the statutory instrument had already been informally shared with key stakeholders. This consultation closed on 9 October 2009.
3. Six responses were received to this final consultation all of which generally supported the form of the statutory instrument. Copies of these responses are available on the Board’s website. A summary of the issues raised, and the Board’s response, is set out below:
  - the Council for Licensed Conveyancers, ILEX, the Bar Council and the Law Society all questioned the Board’s decision to exclude the two new approved regulators, the Association of Chartered Certified Accountants and the Institute of Chartered Accountants for Scotland, from this initial levy. Despite these concerns, the Board believes it is correct to exclude both these bodies because, though they will be designated as approved regulators, neither of them currently regulates any authorised persons and it is not anticipated that they will be in a position to do so until sometime after the March 2010. These two bodies will be included in the rules for the ongoing levy which the Board will consult on separately;
  - both the Law Society and the Tunbridge Wells, Tonbridge and District Law Society raised concerns about the amount of interest that would be due on any late payment. The rules provide that late payments attract interest at the rate of statutory interest prescribed under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998. Whilst noting these concerns, the Board’s view is that part of the function of an interest provision is to encourage prompt payment and Parliament, through statute, has decided on a level of interest that is proportionate to that aim;

- the Master of Faculties raised an issue in relation to Rule 8.3. This rule provides that an approved regulator's statement of authorised persons "must contain or be accompanied by such information as will enable the Board or such person as the Board may appoint, to confirm the numbers stated". The point that the Master of Faculties raised is that there is no indication in the rule as to the nature of the information the Board may require. The Board acknowledges this concern, but believes that this rule's wide scope is required because the nature of the information is likely to be different depending on circumstances including the identity of the approved regulator. In being provided with such information the Board will always have regard to the principles that its regulatory activities should be transparent, accountable, proportionate, consistent and targeted; and
  - the Law Society raised the point that in Rule 5 it may be desirable to make clear that the term "persons who are authorised" relates only to individuals not entities. The Board acknowledges that going forward this will be an important distinction to make but it does not consider it an issue for current purposes because as at 1<sup>st</sup> April 2009 (the relevant date for calculating authorised persons for the purpose of the rules) no entities were being regulated.
4. Having considered these responses, the Board has decided not to amend the form of the statutory instrument it consulted upon. The final form of the statutory instrument submitted to MoJ is therefore attached to this document. Once the Lord Chancellor has given his approval, the statutory instrument will go through the Parliamentary process with the intention that it will come into force on 1 January 2010 when the Board takes up its full powers.
  5. The Board would like to thank all respondents for their constructive engagement in this consultation process and looks forward to engaging again with all stakeholders when it begins its consultation on the levy for ongoing LSB and OLC operating costs in early 2010.

# Form of statutory instrument

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## STATUTORY INSTRUMENTS

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**2009 No.**

### **LEGAL SERVICES, ENGLAND AND WALES**

#### **The Legal Services Act 2007 (Levy) Rules 2009**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</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(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.

#### *General*

#### **Citation and commencement**

- 1.—(1) These Rules may be cited as the Legal Services Act 2007 (Levy) Rules 2009.
- (2) These Rules come into force on [date].

#### **Interpretation**

2. In these Rules—

“the 2007 Act” means the Legal Services Act 2007;

“approved regulator”, “authorised person”, “consumer”, “manager”, “person” and “reserved legal activity” have the same meaning as in the 2007 Act;

“the Board” means the Legal Services Board;

“leviable Board expenditure” has the meaning given in section 173(6) of the 2007 Act;

“leviable body” means a body designated as an approved regulator by Part 1 of Schedule 4 to the 2007 Act, as that Part had effect on the day on which the Act was passed;

“leviable Lord Chancellor expenditure” is to be construed in accordance with section 173(9) and (10) of the 2007 Act;

“leviable OLC expenditure” is to be construed in accordance with section 173(7) and (8) of the 2007 Act;

“the OLC” means the Office for Legal Complaints;

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(a) 2007 c.29.

“service complaint” means a complaint made to a leviable body which—

- (a) is made by, or on behalf of, a consumer;
- (b) relates to an act or omission of any person which occurred at a time when that person—
  - (i) was authorised by the leviable body to carry on one or more reserved legal activities, or
  - (ii) was not so authorised but was a manager or employee of a person who was so authorised; and
- (c) is eligible to be dealt with under arrangements made by the leviable body for the determination of consumer complaints.

### **The scope of the levy imposed by these Rules**

**3.—**(1) These Rules provide for the imposition of a levy on each leviable body for the purpose of raising an amount corresponding to the aggregate of the expenditure referred to in paragraphs (2), (3) and (4).

(2) The expenditure referred to in this paragraph is such of the following as is incurred in connection with the establishment of the Board—

- (a) leviable Board expenditure; and
- (b) leviable Lord Chancellor expenditure.

(3) The expenditure referred to in this paragraph is such of the following as is incurred in connection with the establishment of the OLC—

- (a) leviable OLC expenditure; and
- (b) leviable Lord Chancellor expenditure.

(4) The expenditure referred to in this paragraph is leviable Board expenditure which—

- (a) is incurred in respect of the financial year referred to in paragraph 25(6)(a) of Schedule 1 to the 2007 Act; and
- (b) does not fall within paragraph (2)(a).

(5) Estimated expenditure may be taken into account for the purposes of determining the amount of any expenditure for the purposes of these Rules.

(6) The Board must obtain the Lord Chancellor’s agreement to the amount to be raised by way of the levy under these Rules.

(7) Nothing in these Rules affects the power in section 173 of the 2007 Act to raise any amount which—

- (a) does not fall within paragraph (2), (3) or (4); or
- (b) may be required on account of any discrepancy between the amount to be raised by way of the levy under these Rules and the amount actually received by the Board (for example, when actual expenditure and receipts exceed estimates made under paragraph (5)).

*Amount payable by each leviable body*

### **Determining the amount of the levy for each leviable body**

**4.—**(1) The amount of levy that each leviable body must pay to the Board is to be determined by adding together the amounts determined under rules 5, 6 and 7 in relation to that leviable body.

(2) 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 9,

and the leviable body must pay that amount to the Board.

### **Amount of levy: establishment costs of the Board**

**5.—**(1) The amount determined under this rule in relation to any leviable body is the relevant proportion of the expenditure referred to in rule 3(2).

(2) To determine the “relevant proportion”, take the numbers as at 1st April 2009 of—

- (a) the persons who are authorised by the leviable body to carry on one or more reserved legal activities; and
  - (b) the persons who are authorised by all leviable bodies to carry on one or more such activities,
- and calculate what proportion the number of the persons referred to in sub-paragraph (a) bears to the number of the persons referred to in sub-paragraph (b).

#### **Amount of levy: establishment costs of the OLC**

**6.**—(1) Subject to paragraph (3), the amount determined under this rule in relation to any leviable body is the relevant proportion of the expenditure referred to in rule 3(3).

(2) To determine the “relevant proportion”, take the numbers of—

- (a) the service complaints received by the leviable body in the course of the three year period ending on 31st December 2008; and
  - (b) the service complaints received by all leviable bodies in the course of the same three year period,
- and calculate what proportion the number of service complaints referred to in sub-paragraph (a) bears to the number of service complaints referred to in sub-paragraph (b).

(3) No amount is payable under this paragraph if the relevant proportion of service complaints received by the leviable body is less than 0.1%.

#### **Amount of levy: running costs of the Board for the financial year ending in 2010**

**7.**—(1) The amount determined under this rule in relation to any leviable body is the relevant proportion of the expenditure referred to in rule 3(4).

(2) For these purposes, the “relevant proportion” is to be determined in the manner specified in rule 5(2).

#### **Duty to provide information required to calculate the levy**

**8.**—(1) For the purpose of enabling the calculations described in rules 5, 6 and 7 to be carried out, each leviable body must provide the Board with the information required by paragraphs (2) and (3).

(2) The leviable body must provide—

- (a) a statement of the number as at 1st April 2009 of all persons authorised by the leviable body to carry on one or more reserved legal activities; and
- (b) a statement of the number of service complaints received by the leviable body in the course of the three year period ending on 31st December 2008.

(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 confirm the numbers stated.

(4) The information must be provided no later than the end of the period of one month starting with the date on which these Rules come into force.

#### *Arrangements for payment*

#### **Making payment**

**9.** Subject to rule 10, the amount of levy that a leviable body is required to pay to the Board under rule 4 must be paid in full by the leviable body no later than—

- (a) 31st March 2010; or
- (b) if later, the end of the period of 28 days starting with the date of the notice given to the leviable body in accordance with rule 4(2).

#### **Agreement to delay part of payment**

**10.**—(1) A leviable body may enter into a written agreement with the Board to delay payment of part of the amount of the levy.

(2) No agreement under paragraph (1) may provide for a delay in payment of any amount that exceeds the aggregate of—

- (a) 66 per cent. of the amount determined for the leviable body under rule 5 (“amount A”); and
- (b) 66 per cent. of the amount determined for the leviable body under rule 6 (“amount B”).

(3) Each agreement must—

- (a) specify the percentage of either or both of amount A and amount B which is to be subject to a delay in payment under the agreement;
- (b) specify the minimum percentage of amount A, and of amount B, which the leviable body must pay no later than 31st March 2011; and
- (c) provide that the leviable body must pay any outstanding balance of either or both amounts no later than 31st March 2012.

(4) Where the percentage of amount A, or of amount B, which is specified under paragraph (3)(a) is 34 per cent. or more, the minimum payment specified under paragraph (3)(b) in relation to that amount must be at least 33 per cent.

(5) Nothing in this rule affects the liability of the leviable body to pay the remainder of the amount of the levy in accordance with the deadline for payment determined in accordance with rule 9.

### **Interest payable on late payment**

**11.** If payment is not made by a leviable body in accordance with the requirements of rules 9 and 10, the Board is entitled to charge interest on amounts unpaid at the rate of statutory interest prescribed under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998**(b)**.

Signed by authority of the Legal Services Board

*Name*  
*Chairman of the Legal Services Board*

Date

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

These Rules impose a levy under sections 173 and 174 of the Legal Services Act 2007 (c.29). The levy covers the establishment costs of the Legal Services Board (“the Board”), the establishment costs of the Office for Legal Complaints (“the OLC”) and the running costs of the Board for the first financial year after its establishment (the financial year ending with 31st March 2010).

Rule 3 sets out the scope of the levy. The total amount to be raised is to cover expenditure incurred on establishing the Board and the OLC and on the Board’s first year running costs.

Rules 4 to 8 specify the procedure for determining the amount of levy that each leviable body must pay once the Board has notified it of the amount due. That amount is determined for each leviable body by adding together a proportion of the categories of expenditure referred to in rule 3 and that proportion is determined under rules 5, 6 and 7. In relation to the Board’s establishment and first year running costs, rules 5 and 7 provide for a leviable body to pay an amount according to its proportionate share of the persons authorised by all leviable bodies to carry on reserved legal activities. In relation to the OLC’s establishment costs, rule 6 provides for a leviable body to pay an amount according to its proportionate share of the service complaints received by all leviable bodies over a specified period. Rule 8 requires leviable bodies to provide the Board with the information necessary to calculate these proportions.

Rule 9 requires that the levy must be paid in full no later than 31st March 2010 or, if later, 28 days after the date of the notice to the leviable body under rule 4. Rule 10 states that this requirement does not apply if the Board and the leviable body agree in writing that the leviable body may delay payment of part of the amount due, subject to certain limits specified in that rule. Interest is payable under rule 11 in the event of any late payment.

