

EXPLANATORY MEMORANDUM TO
THE SOLICITORS' (NON-CONTENTIOUS BUSINESS) REMUNERATION
(AMENDMENT) ORDER 2012

2012 No. 171

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the Instrument**
 - 2.1 This Order extends the application of the Solicitors' (Non-Contentious Business) Remuneration Order 2009 ("the 2009 Order") (S.I. 2009/1931) to bodies ("licensed bodies") that are wholly or partly owned or controlled by non-lawyers and are licensed by the Law Society under Part 5 of the Legal Services Act 2007 to provide legal services, or a mixture of legal and other services, to the public.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1. None.
4. **Legislative Context**
 - 4.1 Part 5 of the Legal Services Act 2007 sets out arrangements under which "approved regulators" can be designated as licensing authorities for the purpose of licensing and regulating licensed bodies. The Legal Services Act 2007 (Designation as a Licensing Authority) (No 2) Order 2011 (S.I. 2011/2866) ("the Designation Order") designates the Law Society as such a licensing authority.
 - 4.2 Part 3 of the Solicitors Act 1974 ("the 1974 Act") contains a system of regulation in relation to the remuneration of solicitors. Section 56 of that Act is one aspect of this framework, and allows for orders to be made by a committee (the "Remuneration Committee", see paragraph 8.1 below) prescribing the general principles to be applied when determining the remuneration of solicitors in respect of non-contentious business. Part 3 of the 1974 Act is extended to apply to solicitors' firms ("recognised bodies") and registered European lawyers.
 - 4.3 This instrument is made under section 56 of the 1974 Act, as further extended by Schedule 1 to the Designation Order. This extension has the effect of giving the Remuneration Committee the power to make orders in relation to the remuneration of licensed bodies in respect of such of its non-contentious business as is regulated by the Law Society in accordance with a licence issued under Part 5 of the Legal Services Act 2007.

5. Territorial Extent and Application

5.1 The instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to the 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 2009 Order sets out the principles to be applied when determining the remuneration of solicitors in respect of non-contentious business. The purpose of this instrument is to extend the 2009 Order so that it also applies to the non-contentious legal services business of licensed bodies.

7.2 The extension effected by this Order aligns with the general policy intention behind the Designation Order, which is to ensure that the regulation of licensed bodies in relation to their provision of legal services is carried on in a similar manner, and is subject to a similar legislative framework, as currently exists for solicitors, registered European lawyers and recognised bodies.

7.3 This Order therefore provides that the principles applying to the remuneration of all solicitors' firms (both licensed bodies and recognised bodies) in relation to non-contentious business regulated by the Law Society are the same. This will help to ensure that consumers are not confused by differing regulatory arrangements for ostensibly similar firms and that they receive commensurate protection in every case.

- *Consolidation*

7.4 This is the second instrument to amend the 2009 Order. The first (the Solicitors' (Non-Contentious Business) Remuneration (Amendment) Order 2010 (S.I. 2010/2262)) reflected changes to the complaints handling arrangements for legal professionals which came into force on 6 October 2010. There are no plans to consolidate these instruments.

8. Consultation Outcome

8.1 This Order is made under section 56 of the 1974 Act by a committee comprising the Lord Chancellor; the Lord Chief Justice; the Master of the Rolls; the President of the Law Society; the President of the Worcestershire Law Society; a member of the Legal Services Board; and the Chief Land Registrar.

8.2 In accordance with section 56(3) of the 1974 Act, the Lord Chancellor sought the views of the Law Society and the other committee members on a draft of this instrument. In addition, the Solicitors Regulation Authority, as the Law

Society's regulatory arm, has had the opportunity to consider and comment the draft instrument. No consultees had any comments on the substance of the draft Order.

9. Guidance

- 9.1 The Law Society will issue an update to the profession about the changes made by this instrument.

10. Impact

- 10.1 There is no impact on charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An impact assessment has not been carried out for this Order as its provisions are consistent with the policy of the Legal Services Act 2007 and do not impose additional burdens on the private and voluntary sector. A full regulatory impact assessment was prepared for the Legal Services Bill in November 2006 and can be found at <http://www.dca.gov.uk/risk/ria-legal-services.pdf>. A supplementary memorandum was published in June 2007 and can be found at <http://www.justice.gov.uk/docs/RIA-supplement-v021.pdf>. A further full regulatory impact assessment, together with a detailed equality impact assessment, was prepared in relation to the commencement of Part 5 of the Legal Services Act 2007, and this can be found at <http://www.legislation.gov.uk/ukxi/2011/2196/introduction/made>.

11. Regulating small business

- 11.1 This instrument maintains the existing principles in relation to solicitors' costs for non-contentious business that have been in force since 1994. Therefore, there is no change to the effect on small business.

12. Monitoring and review

- 12.1 The Solicitors Regulation Authority and the Legal Services Board (the oversight regulator for legal services) have agreed a review programme for the Law Society's/Solicitor Regulation Authority's licensing arrangements and their impact, which will continue for the first two years following the Law Society's designation as a licensing authority.
- 12.2 The committee established under section 56 of the 1974 Act has the power to make a new Order at any time, should any issues arise which require such an approach.

13. Contact

Please contact Heather Atkinson at the Ministry of Justice (tel: 020 3334 4204 or email: heather.atkinson@justice.gsi.gov.uk) about any queries regarding this instrument.