

Solicitors' Compensation Fund (Foreign Lawyers' Contributions) Rules 1991

Client Protection Directorate

Last amended 6 April 2001

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Rules dated 8th October 1991 made by the Council of the Law Society with the concurrence of the Master of the Rolls under Schedule 14 paragraph 7(3) of the Courts and Legal Services Act 1990 to provide, in appropriate circumstances, for reduced or nil contributions to the Solicitors' Compensation Fund by registered foreign lawyers, registered European lawyers, and solicitors who were formerly registered European lawyers.

Part I – Interpretation

...In these rules, except where the context otherwise requires:

- (a) “the Act” means the Courts and Legal Services Act 1990;
- (b) “annual contribution” has the meaning given in Schedule 14 paragraph 7 of the Act;
- (c) “the Council” means the Council of the Law Society;
- (d) “initial contribution” has the meaning given in Schedule 14 paragraph 7 of the Act;
- (da) “partnership” and “partner” refer to an unincorporated partnership, and not to a limited liability partnership;
- (db) “practising certificate year” means that period of twelve months starting on any 1st November in respect of which the Law Society issues practising certificates to solicitors, and registers registered foreign lawyers and registered European lawyers;
- (dc) “practising year”, in relation to an individual, means any practising certificate year during all or part of which he or she:
 - (i) was entitled to practise as a member of a legal profession by virtue of which he or she (in that or a later practising certificate year) first became registered in the register of European lawyers; or
 - (ii) was or is a registered European lawyer (or should have been registered as such); or
 - (iii) held or holds (or should have held) a practising certificate as a solicitor, having at one time been a registered European lawyer;
- (e) “recognised body” has the meaning given in section 9 of the Administration of Justice Act 1985;
- (ea) “registered European lawyer” means an individual registered with the Law Society under regulation 17 of the European Communities (Lawyer’s Practice) Regulations 2000 and “register of European lawyers” is to be interpreted accordingly;
- (f) “registered foreign lawyer” has the meaning given in section 89 of the Act and “register of foreign lawyers” is to be interpreted accordingly; and
- (g) “special levy” has the meaning given in Schedule 14 paragraph 7 of the Act.

Part II – Registered foreign lawyers

Rule 1A – Reduced or nil Compensation Fund contributions for RFLs

On an application for initial registration or renewal of registration in the register of foreign lawyers, the initial or annual contribution or special levy determined by the Council under Schedule 14 paragraph 7(1) and (2) of the Act shall have effect subject to the reductions and exemptions set out in rules 2 to 4 below.

Rule 2 – Remission of annual contribution for RFLs not holding clients' money

Where a registered foreign lawyer has not, at any time during the period specified in the application for renewal of his or her registration, either:

- (i) practised as a partner in a partnership with a solicitor or registered European lawyer which held or received clients' money; or
- (ii) been a director or member of or a beneficial owner of any share in a recognised body which held or received clients' money; or
- (iii) been a director or member of or a beneficial owner of any share in a body corporate which directly or indirectly owned the whole or any part of a recognised body which held or received clients' money;

the registered foreign lawyer shall not be required to make an annual contribution.

Rule 3 – Reduced annual contribution for RFLs mainly practising overseas

Where a registered foreign lawyer is required to pay an annual contribution, but has, during the period specified in his or her renewal of registration, mainly practised from an office or offices outside England and Wales, that annual contribution shall be reduced to a sum equal to the initial contribution payable by a foreign lawyer under Schedule 14 paragraph 7(1) of the Act on an application for registration in the register of foreign lawyers.

Rule 4 – Discretion to reduce or remit annual contribution or special levy

Where a registered foreign lawyer who would, apart from this rule, be required to pay an annual contribution or special levy, claims, and the Council agrees, that he or she is so covered in respect of dishonesty or failure to account, whether by a compensation fund other than the Solicitors' Compensation Fund, or by an indemnity fund other than the Solicitors' Indemnity Fund, or by compulsory insurance, that there is a substantial reduction in the risk to the Solicitors' Compensation Fund in respect of his or her practice in comparison with the risk presented by a solicitor practising in a like manner, the Council may reduce that annual contribution or special levy to such amount as the Council thinks fit or to zero.

Part III – Registered European lawyers and former registered European lawyers

Rule 4A – Reduced or nil Compensation Fund contributions for RELs and former RELs

- (a) The initial contribution determined by the Council under Schedule 14 paragraph 7(1) of the Act as payable on an application for:
- (i) initial registration in the register of European lawyers; or
 - (ii) the issue of a first practising certificate to a solicitor who was at one time a registered European lawyer; and
- (b) the annual contribution or special levy determined by the Council under Schedule 14 paragraph 7(2) of the Act as payable on an application for:
- (i) renewal of registration in the register of European lawyers; or
 - (ii) the issue of a second or subsequent practising certificate to a solicitor who was at one time a registered European lawyer;

shall have effect subject to the reductions and exemptions set out in rules 4B to 4I below.

Rule 4B – Reduction for RELs, and former RELs, not holding clients' money

If, on an application for:

- (a) renewal of registration in the register of European lawyers;
- (b) the issue of a first practising certificate to a solicitor who was at one time a registered European lawyer; or
- (c) the issue of a second or subsequent practising certificate to a solicitor who was at one time a registered European lawyer;

the applicant has not at any time during the period specified in the application:

- (i) held or received clients' money; or
- (ii) been a director or member of or a beneficial owner of any share in a recognised body which held or received clients' money; or
- (iii) been a director or member of or a beneficial owner of any share in a body corporate which directly or indirectly owned the whole or any part of a recognised body which held or received clients' money;

the annual contribution payable in cases (a) and (c) above, or the initial contribution payable in case (b) above, shall, if the Council has specified a reduced or nil annual contribution for solicitors under Schedule 2 paragraph 2(3B)(a) or (b) of the Solicitors Act 1974, be the same as that reduced or nil annual contribution (subject to any exemption or further reduction under rules 4D to 4I below).

Rule 4C – Initial contribution for RELs

The initial contribution payable on the initial registration of a registered European lawyer shall be the same as the annual contribution payable under Schedule 2 paragraph 2 of the Solicitors Act 1974 by a solicitor who has not held or received clients' money during the period specified in his or her application and who is applying for his or her fourth, fifth or sixth practising certificate (subject to any exemption under rules 4F to 4H below).

Rule 4D – Exemption for RELs, and former RELs, in practising years 2 and 3

If, on an application for:

- (a) renewal of registration in the register of European lawyers, the registration will take effect in the applicant's second or third practising year;
- (b) the issue of a first practising certificate to a solicitor who was at one time a registered European lawyer, the certificate will be issued in the applicant's second or third practising year; or
- (c) the issue of a second or subsequent practising certificate to a solicitor who was at one time a registered European lawyer, the certificate will be issued in the applicant's second or third practising year;

no annual contribution or special levy shall be payable in cases (a) or (c) above, and no initial contribution shall be payable in case (b) above.

Rule 4E – Reduction for RELs, and former RELs, in practising years 4, 5 and 6

If on an application for:

- (a) renewal of registration in the register of European lawyers, the registration will take effect in the applicant's fourth, fifth or sixth practising year;
- (b) the issue of a first practising certificate to a solicitor who was at one time a registered European lawyer, the certificate will be issued in the applicant's fourth, fifth or sixth practising year; or
- (c) the issue of a second or subsequent practising certificate to a solicitor who was at one time a registered European lawyer, the certificate will be issued in the applicant's fourth, fifth or sixth practising year;

any annual contribution or special levy payable in cases (a) or (c) above, and any initial contribution payable in case (b) above, shall be one-half the amount which would otherwise be payable under Schedule 14 paragraph 7(1) or (2) of the Act or rule 4B above (subject to any exemption or further reduction under rules 4F to 4I below).

Rule 4F – Exemption for Crown Prosecutors

If, on an application for:

- (a) initial registration or renewal of registration in the register of European lawyers;
or

- (b) the issue of a first or subsequent practising certificate to a solicitor who was at any time a registered European lawyer;

the applicant will be a Crown Prosecutor on the date the registration takes effect or the date the certificate is issued, no initial or annual contribution or special levy shall be payable.

Rule 4G – Reduction or exemption for RELs with cover under home rules

If an applicant for registration or renewal of registration in the register of European lawyers would, apart from this rule, be required to pay an initial or annual contribution or a special levy, and proves to the satisfaction of the Council that by way of a compensation or indemnity fund, or indemnity insurance, under the rules of his or her home jurisdiction there is cover for his or her practice in the United Kingdom completely equivalent, or partially equivalent, to the cover provided by the Solicitors' Compensation Fund in respect of dishonesty and failure to account, the Council shall exempt him or her from any such contributions and levies, or specify an appropriate percentage reduction as the case may be, provided that:

- (a) exemption will not be granted if the applicant will be in partnership with a solicitor on the date the registration takes effect;
- (b) the Council may specify a nil percentage reduction on the basis that the reduction in risk to the Solicitors' Compensation Fund is de minimis;
- (c) a percentage reduction will not be granted to an applicant for initial registration in respect of an initial contribution payable under rule 4C above; and
- (d) if a registered European lawyer has been granted exemption under this rule, no grant shall be made out of the Solicitors' Compensation Fund:
 - (i) under section 36(2)(a) of the Solicitors Act 1974 in respect of any act or default of the registered European lawyer or his or her employee unless, in the case of an employee, the employee is:
 - (A) a solicitor; or
 - (B) the employee of a partnership which includes at least one person who is not exempted on the basis of this rule;
 - (ii) under section 36(2)(b) of the Solicitors Act 1974 in respect of any act or default of the registered European lawyer; or
 - (iii) under section 36(2)(c) of the Solicitors Act 1974 to the registered European lawyer.

Rule 4H – Exemption for RFLs transferring to become RELs

If, on an application for initial registration in the register of European lawyers, the registration will take effect in the course of a practising certificate year during which the applicant was a registered foreign lawyer, no initial contribution shall be payable.

Rule 4I – Exemption for RELs transferring to become solicitors

If, on an application for the issue of the first practising certificate to a solicitor, the certificate will be issued in the course of a practising certificate year during which the applicant was a registered European lawyer, no initial contribution shall be payable.

Part IV – General

Rule 5 – Decision on matters to be determined under these rules

The decision of the Council on any matter to be determined under these rules shall be final.

Rule 6 – Commencement

These rules shall come into force on 1st January 1992.

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