

# Application by ILEX Professional Standards Ltd for CILEx to be designated as an approved regulator to award probate and reserved instrument practice rights



**April 2013**

## *Background*

The Chartered Institute of Legal Executives (CILEx) is an Approved Regulator under the Legal Services Act 2007 (the Act). In accordance with the Act, CILEx's regulatory functions are carried out separately by ILEX Professional Standards Ltd (IPS). This application is for designation as an approved regulator to award probate and reserved instrument practice rights, made under Part 2 of Schedule 4 to the Act.

This application, if granted, will allow IPS to authorise individuals and entities to undertake:

- *probate activities*, that is, to prepare papers on which to found and oppose a grant of probate or letter of administration; and
- *reserved instrument activities*, that is, to prepare any instrument of transfer or charge for the purposes of the Land Registration Act 2002, make an application or lodge a document for registration under that Act, and prepare any other instrument relating to real or personal estate for the purposes of the law of England and Wales or instrument relating to court proceedings in England and Wales.

## *Proposals*

According to IPS, many CILEx members already undertake probate and reserved instrument activity work as part of their daily practice as employees of authorised persons. Although IPS currently only authorises practitioners who are CILEx members, this application would enable suitably competent practitioners, who may or may not be members of CILEx, to become authorised persons. Non-members would be required to register with IPS but not to become a CILEx member.

IPS proposes to authorise applicants seeking probate activity and reserved instrument activity rights by competence (which it characterises as knowledge, skills and experience). Applicants who can demonstrate that they have the competencies set by IPS will be able to qualify as authorised persons, referred to by IPS as Probate Practitioners and Conveyancing Practitioners. An authorised person will be able carry out the reserved legal activity for which they are authorised in an entity regulated either by IPS or by another legal services approved regulator.

This designation application has been made together with rules change applications to extend CILEx's powers to authorise and regulate for rights to conduct litigation and rights of audience, and for immigration advice and services.

This is the second application to the Legal Services Board (LSB) for CILEx to become an approved regulator for probate activities. The previous application was withdrawn in July 2011.

## *Structure of the application*

The application is divided into eleven parts as outlined below.

The formal regulatory arrangements (the Scheme Rules) are provided in a separate document. The application and scheme rules are supported by 35 annexes listed at the end of this synopsis.

- **Part 1 – Introduction:** the rights sought and an explanation of the regulatory approach.
- **Part 2 – CILEx, IPS & CILEx Members:** information about CILEx and IPS (page 12-18); education and training arrangements (page 18-21); the work and regulation of CILEx members (page 21-25).
- **Part 3 – The Regulatory Objectives and Better Regulation Principles:** regulatory arrangements and outcomes-focused regulation; how the regulatory objectives and professional principles (page 29-40) and the better regulation principles (page 40-43) are to be delivered by the IPS regulatory scheme.
- **Part 4 – The Probate and Conveyancing Qualification Schemes:** competence-based approach to the award of practice rights (page 46-48); accounts and practice management (page 48-49); qualification and authorisation processes (page 49-57); governance of the authorisation scheme (page 57-59).
- **Part 5 – Entity Regulation:** risk-based and outcomes-focused approach to authorisation and regulation of entities (page 63-71); applying risk-based regulation, and addressing governance, capacity and capability (page 72-89); the application, monitoring, and enforcement processes (page 90-116); risk assessment processes IPS will apply in its risk framework (page 117-131).
- **Part 6 – Outcomes-Focused Regulation:** using the framework of regulation focusing on outcomes (page 134-139); the Code of Conduct and core principles (page 139-158); equality and diversity (page 158-160).
- **Part 7 – Complaints Handling:** framework for complaints handling in line with the requirements and guidance of the Act, the LSB, the Legal Ombudsman and the Provision of Services Regulations 2009 (page 162-168).
- **Part 8 – Enforcement:** arrangements for regulatory enforcement to advance positive behaviours and to provide credible deterrence against negative behaviours (page 170-178).
- **Part 9 – Indemnity Arrangements:** the professional indemnity insurance (PII) scheme (page 180-185); Qualifying Insurer's Agreement, minimum wording and PII rules (page 185-189); indemnity arrangements and the regulatory objectives (page 189-190).
- **Part 10 – Compensation Arrangements:** how the compensation fund will work and be managed (page 192-194); escrow and client money (page 194-196); compensation arrangements and the regulatory objectives (page 196).
- **Part 11 – Delivery of the Scheme:** existing capability and structure (page 198-201); future structure and demand for rights and regulation (page 201-217); activity and resources for implementation and delivery (page 217-222).

### *Consultation*

IPS sent consultations on these proposals to the approved regulators and their respective regulatory bodies, consumer groups and representative bodies. It asked CILEx members for their views through its website, direct mailings and the trade journal, and held a series of reference group meetings to seek direct feedback.

There were five consultations, three of which involved reference group meetings. Most consultations received a number of responses in the low teens, many of which were 'form' responses from CILEx members, and included responses from at least one approved regulator, the Legal Ombudsman and the Legal Services Consumer Panel. The reference groups were made up of similarly small numbers. Copies of consultation responses, IPS comments on those responses and summaries of feedback from the reference groups are provided in annexes 25 to 32.

## Timetable

Under the Act the Legal Services Board (LSB) has 12 months in which to make decision on a designation application (with the possibility of extending this to a maximum of 16 months). This application was received on 25 March 2013 and therefore we will make a decision by 24 March 2014 (or no later than 24 July 2014 if an extension notice is issued).

The LSB has an internal target of making a decision on whether to make a recommendation to the Lord Chancellor within six months of the application being deemed to be complete.

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