

## **Application by the Institute of Legal Executives (ILEX) to become an approved regulator to award rights of probate to members of ILEX**



**August 2010**

### *Background*

The Institute of Legal Executives (ILEX) is an Approved Regulator under the Legal Services Act 2007 (the Act) for the purpose of awarding rights of audience to ILEX members and administration of oaths. It is also a qualifying regulator in respect of immigration advice and services.

ILEX is not presently an approved regulator for probate services – a reserved legal activity – and cannot authorise its members to carry out probate work independently. However, while there is no formal authority for ILEX members to carry out probate work, members can provide advice under the authority of a solicitor. Many ILEX members therefore have experience of providing probate advice under the supervision of a solicitor's firm.

This application, if granted, will allow ILEX to give authorisation to its members to deliver independent probate services. ILEX considers that the rights being sought are appropriate, as in practice its members already play an important role in delivering probate services in solicitors' offices, and consequently carry out the full range of probate business. ILEX also believes that many Legal Executives are well placed to use their expertise as independent probate practitioners and therefore most likely to seek authorisation from ILEX. ILEX would, they believe, by granting these rights, potentially widen the numbers of probate service providers, which would benefit consumers.

The rights to undertake probate activity will be obtained by members through a qualification structure. Process of enrolment into the scheme will entail members having to demonstrate they have the necessary knowledge and experience to exercise their new rights, through externally assessed portfolios of five cases to demonstrate their legal and procedural knowledge.

The qualification scheme will be open to all members of ILEX. Those not members of ILEX but who seek to become authorised probate practitioners will be able to apply to ILEX to become Probate Associate Members subject to the same rules as other ILEX members.

In providing a regulatory framework for ILEX members who wish to undertake probate business, ILEX has developed a Code of Practice that will apply to all members who work in independent practice. While, ILEX has not yet developed entity based rules, members will be required to outline their proposed practice structure, include a business plan and an accounting structure outline, practice management policies, client care, file handling procedures, equal opportunities statements and so on. Probate practitioners in independent practice will be required to submit annual accounting reports to ILEX. ILEX may also monitor and inspect practices.

### *Proposals*

As referred to above, probate practitioners will be able to apply to ILEX for authorisation to provide probate services in independent practice.

The authorisation being sought by ILEX means that its qualifying members will become exempt from the prohibition in section 14 of the Legal Services Act and entitled in accordance with section 13 of the Act, to take instructions for reward to draw or prepare papers on which to found or oppose a grant of probate or a grant of letters of administration.

### *Structure of the application*

The main part of the application consists of:

- **Part I – ILEX, IPS and ILEX members** – Proposes case for ILEX becoming an approved regulator for probate rights, describes ILEX Professional Services Ltd, ILEX Membership, Education and Training, Context of Legal Executives currently undertaking probate activity and the current and future regulatory framework including new codes and rules for members wishing to work in independent practice.
- **Part II – Probate Rights, Regulatory Objectives and Better Regulation Principles** - Describes the probate rights sought, briefly outlines the practice certificate and the entitlement it confers, sets out how the proposals from ILEX will promote the regulatory objectives and better regulation principles.
- **Part III The Certification Scheme** – describes the application process for the probate application process, qualifying membership requirements, the eligibility criteria, structures and practice management criteria and requirements and the certification regime and administration.
- **Annexes** – 14 annexes to support the application.

### *Consultation*

ILEX consulted on these proposals between 16 February 2010 and 3 April 2010. There were four responses where comments were offered (two from representative bodies, one from a regulatory body and one from an ILEX member). Responses were also received from three bodies who indicated that they would not be in a position to make a response. The responses and an analysis are contained in Annex 14 of the application.

### *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 21 July 2010 and therefore we will make a decision by 20 July 2011 (or no later than 20 November 2011 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 6 months of the application being deemed to be complete.