

Application made by CILEx Regulation for approval of changes to the Professional Indemnity Insurance Minimum Wording

A. Introduction

1. This is an application seeking LSB approval of changes to the Professional Indemnity Insurance (PII) Minimum Wording.
2. We wish to revise the Minimum Wording in order to bring them in line with the expectations of the Insurance Act 2015 and to formalise some previously agreed changes with our Qualifying Insurers.
3. In support of this application we attach the following documents:

Annex 1: Tracked Minimum Wording changes;

Annex 2: Public consultation document;

Annex 3: Consultation response analysis;

B. Current regulatory arrangements

4. The Minimum Wording forms part of a framework of requirements intended to provide an appropriate level of protection to clients of CILEx Authorised Entities for when things go wrong.
5. The Minimum Wording has been designed to provide entities regulated by CILEx Regulation with cover against civil liability and professional negligence.
6. Currently all CILEx Authorised Entities must maintain professional indemnity insurance of £2 million to ensure that clients are compensated if the firm makes a mistake in a client matter (i.e. is negligent and the client loses out as a result). This PII must comply with the rules and terms and conditions prescribed by CILEx Regulation.
7. PII delivers an important degree of financial protection and is in the interest of all stakeholders, particularly consumers of legal services, for whom the security afforded by the arrangement is essential. PII is provided to entities authorised by CILEx Regulation through the open market and helps protect consumer interests whilst promoting the regulatory objectives set out in the Legal Services Act 2007.

C. Qualifying Insurers

8. In order to provide insurance to entities regulated by CILEx Regulation insurers must agree to become a Qualifying Insurer. Insurers will do this by committing themselves to the terms of the Qualifying Insurers Agreement (QIA), set out by CILEx Regulation.
9. The QIA requires Qualifying Insurers to have a credit rating from AM Best of at least B+ or, Standards & Poor's rating of at least Category BBB. Qualifying Insurers are also required to adopt the Minimum Wording as prescribed by CILEx Regulation and to offer a minimum level of cover of £2million. This minimum level of cover applies regardless of the actual wording of the policies issued.
10. In order to protect consumers and to ensure that there is a consistent level of insurance amongst entities regulated by CILEx Regulation the QIA has a 'difference in conditions' clause. This clause stipulates that where there is a dispute in connection with the cover, conditions, exclusions or limits of a policy, it will be specifically understood and agreed that the Minimum Wording shall take precedence over any cover, conditions, exclusions or limit which are less favourable to the insured entity or their clients.

D. Nature and effect of the proposed changes

Insurance Act and Minimum Wording

11. The Minimum Wording is the minimum terms of insurance that Qualifying Insurers are required to provide to entities regulated by CILEx Regulation.
12. This requires all entities to obtain insurance to at least the same level of cover; and to deal with all claims consistently. On this basis Qualifying Insurers are under an obligation to adopt this wording. This provides consistent protection for consumers who seek assistance from an entity regulated by CILEx Regulation.
13. Provided that the CILEx Minimum Wording is met entities have the freedom to choose or negotiate cover with Qualifying Insurers individually. This provides entities the opportunity to bargain for cover on the open market from a Qualifying Insurer of their choice. It also allows entities the flexibility to provide higher levels of protection, if they so wish.
14. The Insurance Act 2015 came into effect on the 12 August 2016 and made changes to the law on non-disclosure and misrepresentation in relation to commercial insurance contracts. Changes have already been made to the proposal form that applicant firms use.

15. Whilst it was possible for us to contract out of the Insurance Act, in line with other regulators we propose to adopt the non-consumer standard to ensure that firms meet a high standard when presenting any risk to an Insurer. This requires the firms to make a “fair presentation of the risks” to insurers and also requires disclosure of circumstances an insured *ought* to know.
16. The Insurance Act now requires a higher standard of disclosure on our firms when seeking insurance but this is in line with wider changes to the insurance market. The current position that insurers cannot avoid or repudiate cover for ‘non-disclosure’ or misrepresentation remains and, whilst insurers’ remedies under the Insurance Act are not available to them, the reimbursement provisions apply instead. By incorporating this with our Minimum Wording this will help in ensuring a consistency of approach to the provision of PII to the legal sector.
17. The proposed changes to the Minimum Wording to incorporate the Insurance Act can be found in blue at **Annex 1**.
18. We are also seeking to formalise changes previously agreed with our Qualifying Insurers in 2015 and 2017 to the original clauses within the Minimum Wording. These cover the deletion of the premium percent relating to run-off cover, which should be set by the market rather than imposed by the regulator, and when in run-off, the provision for insurers to pay the excess if not recoverable from the entity. This will bring the policy in line with those offered to SRA regulated firms and will provide a consistency in protection if firms change regulators.
19. The proposed changes to the Minimum Wording to incorporate these changes can be found in red at **Annex 1**.

The effect of the proposed changes

20. The proposal is to adopt changes to our Minimum Wording that ensure a consistency in the protection available to consumers. We will also be adopting a standard for disclosure that is applied across the legal sector. By bringing our PII requirements closer to those currently set for firms by other regulators, this will mean we are better placed to consider the future opportunities for firms and consumers that facilitating switching regulators may provide.

E. Statement in respect of the regulatory objectives

21. The impact of these proposals upon the regulatory objectives has been considered in broad terms throughout this application and throughout the consultation documentation. We have sought to balance the regulatory objectives of promoting competition in the market and access to justice on the one hand and protecting the interests of consumers on the other.

22. In terms of maintaining competition in the legal services market and promoting access to justice we believe that by adopting a similar approach as other regulators to the implementation of the Insurance Act and to provision of run-off cover this provides consistency of protection to consumers and enables a common approach across new methods of delivering legal services.
23. Otherwise we consider that the proposals will have a neutral impact upon the regulatory objectives.

F. Statement in respect of the better regulation principles

24. We consider that the proposals are in keeping with the better regulation principles and that our duty under section 28 of the Legal Services Act 2007 has been fulfilled.
25. We have been mindful in particular of the need to perform regulatory functions in a manner which is proportionate. We consider that changes proposed are in line with other regulators and so provides a consistent approach to both insurers and consumers.
26. In the context of transparency we have consulted publicly on our proposals and we have focused upon the key provisions which we consider necessary to address the particular areas.

G. Stakeholder engagement

27. During the course of the development of the proposals we engaged directly with the Qualifying Insurers. This was extremely helpful in providing clarity on our approach to entity regulation and to ABS firms, and how we assess and supervise our authorised entities.
28. Subsequently we undertook a public consultation in May 2017 (**Annex 2**). We approached our Qualifying Insurers directly for further feedback on the proposed changes. The sole respondents' comments can be seen in our consultation analysis document (**Annex 3**), which we have published on our website.
29. We also consulted on the changes to the CILEx PII Rules ahead of our Licensing application. These changes are being submitted separately as part of our Licensing application.

H. Statement in relation to the impact upon other approved regulators

30. We do not consider that these changes will impact upon areas regulated by other approved regulators.

I. Timetable for implementation

OCTOBER 2017	Implement new wording.
OCTOBER 2017	Communicate changes to Insurers & update website.

J. Contact details

31. The contact details for this application are as follows:

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