

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

A. Introduction

1. This is an application seeking LSB approval of changes to the CILEx Professional Indemnity Insurance Minimum Wording (Minimum Wording).
2. We wish to revise these rules in order to allow for the outcome sought by the SRA in changes to their Indemnity Insurance Rules which were granted by the Legal Services Board on 28 September 2017. These were:

Removal of the six years of run-off cover required under the SRA's existing Indemnity Insurance Rules by introducing a new rule which states that run-off cover will not apply where the insured firm becomes regulated by another approved regulator that has signed a bilateral protocol with the SRA.

3. If this outcome is to be achieved, then we need to change our Minimum Wording to allow for a firm having previously been regulated by another approved regulator.
4. In support of this application we attach the following documents:

Annex 1: Tracked Minimum Wording changes;

B. Current regulatory arrangements

5. The CILEx Professional Indemnity Insurance (PII) Rules form part of a framework of requirements intended to provide an appropriate level of protection to clients of CILEx Authorised Entities (i.e. law firms authorised by CILEx Regulation) for when things go wrong.
6. The CILEx PII Rules and Minimum Wording have been designed to provide entities regulated by CILEx Regulation with cover against civil liability and professional negligence.

7. 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.
8. 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 Act.

C. Qualifying Insurers

9. 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.
10. 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.
11. 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

12. As stated above we wish to make these changes to allow for the outcome sought by the SRA in changes to their Indemnity Insurance Rules which were granted by the Legal Services Board on 28 September 2017. These were:

Removal of the six years of run-off cover required under the SRA's existing Indemnity Insurance Rules by introducing a new rule which states that run-off cover will not apply where the insured firm becomes regulated by another approved regulator that has signed a bilateral protocol with the SRA.

13. By revising our own Minimum Wording, this will allow removal of a barrier to firms wishing to switch regulators, which is broadly approved of by the LSB subject to there being no consumer detriment.

The nature of the proposed changes

14. We are therefore proposing to revise the Minimum Wording to:

- a) Allow for firms to switch regulator to or from CILEx Regulation without the need for additional run-off cover;
- b) Allow for firms to maintain any existing PII cover whilst transferring regulator as long as it complies with our minimum terms; and
- c) Ensure that the run-off cover required for CILEx Authorised Entities no longer trading will cover any period of trading that was under another regulator;

15. We are proposing that these changes only apply to those firms regulated by those Approved Regulators where we have in place an agreed protocol relating to practices switching between Approved Regulators.

16. We believe that this is important in ensuring that both Approved Regulators are able to share all appropriate information on which to base their assessment of risk to the consumer.

17. Having a detailed protocol to cover the transfer of regulation for a firm between CILEx Regulation and another Approved Regulator is important in ensuring that all consumer protections continue in place during the transfer and that the consumers are informed of any consequences of the firm switching regulator.

18. The Minimum Wording is the minimum terms of insurance that Qualifying Insurers are required to provide to entities regulated by CILEx Regulation.

19. 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.

20. Provided that the 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.

21. The proposed changes to the Minimum Wording to incorporate the changes outlined in section 18 above can be found in red at **annex 1**.

We have also corrected some identified typos, provided some additional definitions and rearranged the definitions into alphabetical order.

The effect of the proposed changes

22. The proposal is to adopt changes to our Minimum Wording that ensure a consistency in the protection available to consumers, whilst allowing firms to have the option on who regulates the services they provide without the automatic requirement for run-off cover to be in place.
23. By making these changes to our Minimum Wording, this will mean we are better placed to consider the future opportunities for firms and consumers that facilitating that switching regulators may provide.

E. Statement in respect of the regulatory objectives

24. The impact of these proposals upon the regulatory objectives has been considered in broad terms throughout this application. 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.
25. In terms of increasing competition in the legal services market and promoting access to justice, we believe that by adopting these changes to our Minimum wording it facilitates choice for firms of whom they seek to regulate them. That therefore enables a common approach across new methods of delivering legal services, whilst looking to ensure that protection remains in place for all consumers.
26. Otherwise we consider that the proposals will have a neutral impact upon the regulatory objectives.

F. Statement in respect of the better regulation principles

27. We consider that the proposal is in keeping with the better regulation principles and that our duty under section 28 of the Legal Services Act 2007 has been fulfilled.
28. 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 intention of other regulators in facilitating a choice for firms of whom their regulator is, and so provides a consistent approach to both insurers and consumers.
29. In the context of transparency, whilst we have not consulted publicly on our proposal, we have been mindful that the principle of regulatory

switching has been consulted on and there is a desire to facilitate choice for firms of whom their regulator is.

G. Stakeholder engagement

30. During the course of the development of the proposal we engaged with our insurance adviser to discuss the issues we were seeking to address and how we could frame the wording to both allow firms to have a choice of regulator and the ensure that the public was fully protected.
31. As this amendment to our minimum wording was being driven by the changes to the SRA PII Rules, we relied upon the public consultation they had carried out which included the insurance community. If the insurance companies had accepted the principle behind the rule change that the SRA had implemented, prior to the annual PII renewal date, then we have presumed that they will accept the change proposed to facilitate the actions encouraged by the SRA.

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

32. We do not consider that these changes will impact directly upon areas regulated by other approved regulators.
33. However it will facilitate the intentions behind the SRA rule changes in allowing firms to switch from one regulator to another without the requirement for putting run-off cover in place.

I. Timetable for implementation

JULY 2018	Implement new wording
JULY 2018	Communicate changes & update website

J. Contact details

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

David Pope, Entity Authorisation and Client Protection Manager;
CILEx Regulation, Kempston Manor, Manor Drive, Kempston, Bedford,
Bedfordshire, MK42 7AB;
david.pope@cilexregulation.org.uk