

Section 69 Order: To modify the functions of the Chartered Institute of Legal Executives (CILEx)

Decision document relating to a consultation, under section 70 of the Legal Services Act 2007, on a recommendation and a proposed draft statutory order to the Lord Chancellor that an order be made under Section 69 of the Legal Services Act 2007 to modify the functions of CILEx.

19 September 2014

Contents

Introduction.....	3
Background	3
The consultation.....	5
Outcome of consultation.....	5
Changes to the consultation since the draft order.....	5
The Board's decision.....	6
Annex A - Recommendation to the Lord Chancellor and draft section 69 order which will be annexed to the recommendation	

Introduction

1. Between 24 June 2014 and 21 July 2014, the Legal Services Board (**the Board**) conducted a consultation exercise¹ inviting comments on a proposed recommendation and order under section 69 of the Act. The purpose of the order is to modify the functions of CILEx (**the Chartered Institute of Legal Executives**). The effect of the order is to enable ILEX Professional Standards Limited (**IPS**) to establish compensation arrangements and give it the power to intervene in a failing entity.
2. CILEx is an approved regulator under the Legal Services Act 2007 (**the Act**) for the reserved legal activities of the exercise of a right of audience, the conduct of litigation and the administration of oaths. It is also a designated qualifying regulator² for authorising and regulating those who provide immigration advice and immigration services. IPS is the body to which CILEx has delegated its regulatory functions.
3. In December 2013, the Legal Services Board (**the Board**) made a recommendation to the Lord Chancellor, that he make an order designating CILEx as an approved regulator for reserved instrument activities and probate activities. This recommendation was accepted by the Lord Chancellor on 6 March 2014 and an order making such a designation is expected to be made at the end of 2014.
4. Also in December 2013, the Board approved (under Part 3 of Schedule 4 to the Act) alterations to regulatory arrangements which allow IPS to authorise and regulate entities for the first time. The same regulatory arrangements will apply to the new reserved legal activities.
5. The ability for IPS to establish compensation arrangements and the power to intervene in a failing entity could not be approved since IPS needed a statutory power to make these arrangements.
6. This paper sets out the results of the consultation and the Board's decision.

Background

7. Section 69 of the Act allows the Lord Chancellor, on the recommendation of the Board, to make an order to modify, or make other provision relating to, the functions of an approved regulator or any other body other than the

¹ Available from the LSB website at:
http://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/2014/20140624_CILEx_S69_Draft_Order_Consultation.pdf

² Under schedule 18 of the Act, CILEx is a designated qualifying regulator for authorising its members to provide immigration advice and immigration services.

Board³. This can include modifying provisions made by or under any enactment, instrument or document⁴.

8. Any order made by the Lord Chancellor under section 69 of the Act must be made by statutory instrument⁵ and this must be through the affirmative procedure⁶, i.e. approved by both the House of Commons and the House of Lords, to become law.
9. Section 70 of the Act sets out the procedural requirements relating to a recommendation under section 69. Section 70(2) requires that before making a recommendation to the Lord Chancellor, the Board publishes a draft of the proposed recommendation and the proposed draft order.
10. Section 70(1) of the Act requires that the recommendation under section 69 may only be made with the consent of the approved regulator.

The consultation

11. The consultation invited representations on a proposed draft recommendation and proposed draft order that, if given effect, would modify the functions of CILEx. The modifications relate to the powers of CILEx as an approved regulator and a designated qualifying regulator as follows:
 - i) To allow CILEx to make compensation arrangements including rules or regulations on:
 - establishing and maintaining a compensation fund
 - specifying the circumstances in which a grant of compensation may be made
 - prescribing how a claim is to be made and the procedure for determining claims (including any minimum or maximum amount payable)
 - requiring CILEx authorised entities to make payments to any compensation fund.
 - ii) To apply provisions of Schedule 14 to the Act (a licensing authority's powers of intervention) so that they apply to CILEx in its capacity as an approved regulator and a designated qualifying regulator. This will mean that when necessary IPS will be able to intervene into a firm, taking control of a firm's assets (including client accounts) and management of client files so as to protect the interests of clients.

³ s69(1) and s69(2) of the Act

⁴ s69(6) of the Act

⁵ s204(1) of the Act

⁶ s206(4)(h) of the Act

12. Section 70(3) requires that the draft order is accompanied by a notice which states that representations about the proposals may be made to the Board within a specified period. Representations were invited to be made by 5pm on 21 July 2014.

Outcome of consultation

13. No representations were received on the consultation paper.

Changes to the draft order since consultation

14. After the consultation was completed, and in accordance with its usual process, the Ministry of Justice sought pre-clearance of the order from the Joint Committee on Statutory Instruments.

As a consequence of that review a number of minor amendments were made to the order as follows:

Article 1	“(including a limited liability partnership)” has been added to the definition of a CILEx authorised entity for clarity
Article 2(3)	In the first line now refers to “paragraph (2)” – in the consultation version this was “paragraph 2(a)”
Article 5 (1)	After approved regulator in the second line, inserted “under the Act and as a designated qualifying regulator under Part 5 of the Immigration and Asylum Act 1999” to provide clarity that the powers apply across areas of regulation
Article 5 (2)(b)	Added ‘or “relevant licensing authority”’ to indicate that CILEx can also be considered as such for the purposes of Schedule 14 to the Act (licensing authority’s powers of intervention)

The Board’s decision

15. Having considered the outcome to the consultation and the changes made to the order in the final clearance process, on 18 September 2014 the Board decided that it should proceed with the recommendation to the Lord Chancellor that the section 69 order be made.
16. The text of the final recommendation that will be made to the Lord Chancellor and the draft order that will be attached to it are at **Annex A**.

Impact assessment

17. Included in the consultation paper for comment was a draft impact assessment about which no comments were received in the consultation. After the consultation closed, there was further work on the impact assessment in order for it to be submitted to the Ministry of Justice Chief Economist for final approval. The final version approved by the Chief Economist will be published by the Ministry of Justice with the section 69 order that is laid before Parliament.

Recommendation to the Lord Chancellor and draft section 69 order which will be annexed to the recommendation

On 18 September 2014 the Legal Services Board (**the LSB**) decided to make a recommendation to the Lord Chancellor that he makes an order under section 69 of the Legal Services Act 2007 (**the Act**) to modify the functions of the Chartered Institute of Legal Executives (**CILEx**). A draft of the order is attached to this recommendation.

In accordance with the requirements of section 70(2) of the Act, the LSB published a draft of the proposed recommendation and draft order on 24 June 2014 and invited representations about the proposals to be made to the LSB by 21 July 2014. No representations were received.

In accordance with section 70(1) of the Act, the recommendation is made with the consent of the ILEX Professional Standards Limited (IPS) the body to which CILEx has delegated its regulatory functions.

Chief Executive, Legal Services Board

19 September 2014

DRAFT STATUTORY INSTRUMENTS

2014 No.

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Chartered Institute of Legal Executives) (Modification of Functions) Order 2014

Made

Coming into force in accordance with article 1(a)

The Lord Chancellor makes the following Order in exercise of the powers conferred by section 64(2), (3) and (4), section 69(1), (4) and (5), and section 204(3) of the Legal Services Act 2007⁽¹⁾.

In accordance with section 69(2) and (3) of that Act, this Order is made following a recommendation made by the Legal Services Board to which was annexed a draft Order in a form not materially different from this Order.

The Legal Services Board has made the recommendation with the consent required by section 70(1) of that Act and after complying with the requirements in section 70(2) to (5) of that Act.

In accordance with section 206(5) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—a) This Order may be cited as the Legal Services Act 2007 (Chartered Institute of Legal Executives) (Modification of Functions) Order 2014 and comes into force on the day after the day on which it is made.

(1) In this Order—

“the Act” means the Legal Services Act 2007;

“CILEx” means the Chartered Institute of Legal Executives⁽²⁾;

⁽¹⁾ 2007 c. 29.

⁽²⁾ The body known as the Institute of Legal Executives, which is designated as an approved regulator by paragraph 1 of Schedule 4 to the Legal Services Act 2007 (c. 29) (“the Act”) and by The Legal Services

“CILEx authorised entity” means a partnership (including a limited liability partnership), company or sole principal authorised by CILEx under the Act to —

- (a) carry on an activity which is a reserved legal activity; or
- (b) provide immigration advice or immigration services;

“sole principal” includes a person consisting of one individual who is authorised or is required to be authorised by CILEx and one or more other individuals who are not so authorised and are not required to be so authorised.

Compensation arrangements

2.—b) CILEx may make compensation arrangements⁽³⁾.

(1) Any such arrangements may include provision as to—

- (a) the circumstances in which grants or other payments may and may not be made;
- (b) the form and manner in which a compensation claim is to be made;
- (c) the procedure for determining compensation claims; and
- (d) the minimum and maximum amounts payable in respect of a compensation claim.

(2) Arrangements made by virtue of paragraph (2) may include in particular provision as to—

- (a) the nature of the loss or hardship in relation to which a compensation claim may and may not be made; and
- (b) the nature of any act or omission by a CILEx authorised entity or an employee of such an entity in relation to which a compensation claim may and may not be made.

(3) If CILEx decides—

- (a) not to make a grant or other payment in respect of a compensation claim or any part of a compensation claim; or
 - (b) to make a grant or other payment of less than the amount claimed,
- it must give reasons for its decision.

(4) CILEx may prepare and publish guidance as to the criteria it will apply in deciding whether to make a grant or other payment in respect of a compensation claim, or any part of a compensation claim.

(5) In this article “compensation claim” means a claim for a grant or other payment under compensation arrangements made by CILEx.

Compensation fund

3.—c) For the purpose of giving effect to compensation arrangements made under article 2, CILEx may make rules authorising it to establish and maintain a compensation fund (“the Fund”).

(1) Any such rules may in particular make provision—

- (a) requiring a CILEx authorised entity to contribute to the Fund by making periodical payments to CILEx; and
- (b) providing for different payments to be made by different descriptions of CILEx authorised entity.

(2) Any amount payable by virtue of such rules may be recovered as a debt due to CILEx.

(3) For the purposes of establishing and maintaining the Fund, CILEx may make rules authorising it to—

- (a) invest any money which forms part of the Fund in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000⁽⁴⁾ (as restricted by sections 4 and 5 of that Act);
- (b) borrow money; and
- (c) charge investments which form part of the Fund as security for borrowing by CILEx.

Act 2007 (Approved Regulators) Order 2011 (S.I. 2011/1118), became the Chartered Institute of Legal Executives on 30th January 2012 by virtue of a Royal Charter granted on 12th October 2011.

⁽³⁾ Section 21(2) of the Act defines compensation arrangements.

⁽⁴⁾ 2000 c. 29.

(4) In addition to the making of grants or other payments in accordance with any arrangements under article 2, CILEx may use the Fund to—

- (a) repay money borrowed by CILEx for the purposes of the Fund and pay interest on any money borrowed for that purpose;
- (b) pay any other costs, charges or expenses incurred by CILEx in connection with the Fund;
- (c) pay any costs or damages incurred by CILEx, its employees or agents as a result of proceedings against it or them for any act or omission of its or theirs in good faith and in the exercise or purported exercise of any power under this article or article 2.

Insurance

4. For the purpose of giving effect to any compensation arrangements made under article 2, CILEx may make rules authorising it to take out and maintain insurance with authorised insurers (within the meaning of section 64 of the Act).

Intervention arrangements

5.—d) Schedule 14 to the Act (licensing authority’s powers of intervention) applies in relation to CILEx in its capacity as an approved regulator under the Act and as a designated qualifying regulator under Part 5 of the Immigration and Asylum Act 1999⁽⁵⁾ and to CILEx authorised entities as it applies in relation to a licensing authority and licensed bodies, subject to the modifications in paragraph (2).

(1) Schedule 14 is to be read as if each reference to—

- (a) a “licensed body” was a reference to a “CILEx authorised entity”;
- (b) the “licensing authority” or the “relevant licensing authority” was a reference to “CILEx”; and
- (c) a “licence” was a reference to an “authorisation”.

Signed by authority of the Lord Chancellor

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

⁽⁵⁾ 1999 c. 33. Section 86A, which relates to designated qualifying regulators, was inserted by the Legal Services Act 2007, Schedule 18, paragraph 14. There are other amendments to Part 5 which are not relevant to this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision about the functions of the Chartered Institute of Legal Executives (CILEx). It modifies CILEx's functions both in its capacity as an approved regulator under the Legal Services Act 2007 and in its capacity as a designated qualifying regulator of immigration advice and immigration services under Part 5 of the Immigration and Asylum Act 1999 (c.33).

Article 2 enables CILEx to establish compensation arrangements, which are defined in section 21(2) of the Legal Services Act 2007 ("the Act"). Article 3 enables CILEx, by rules, to establish and maintain a compensation fund. Article 4 allows CILEx to make rules authorising it to take out and maintain a contract of insurance.

Article 5 applies Schedule 14 to the Act (licensing authority's powers of intervention), with modifications, to CILEx as an approved regulator and designated qualifying immigration regulator and to CILEx authorised entities. Schedule 14 contains provisions about the circumstances in which a licensing authority may intervene in a licensed body, and the powers that are exercisable upon intervention.

An impact assessment has been prepared for this instrument and can be found at www.legislation.gov.uk or obtained from the Head of Legal Services Policy, Law and Access to Justice Group, Ministry of Justice, 102 Petty France, London SW1H 9AJ.