



**ORAL AND WRITTEN REPRESENTATIONS AND
EVIDENCE AND THE ALTERATION OF
RESERVED LEGAL ACTIVITIES**

**A RESPONSE BY THE INSTITUTE OF LEGAL
EXECUTIVES AND ILEX PROFESSIONAL
STANDARDS LIMITED**

**CONSULTATION BY THE LEGAL SERVICES
BOARD ON DEVELOPING RULES TO GOVERN
THE MAKING OF ORAL AND WRITTEN
REPRESENTATIONS AND THE GIVING OF
ORAL AND WRITTEN EVIDENCE TO THE
BOARD IN RELATION TO INVESTIGATIONS TO
ALTER THE SCOPE OF RESERVED LEGAL
ACTIVITIES**

DATE: 28 OCTOBER 2009

The Institute of Legal Executives

1. The Institute of Legal Executives (ILEX) is the professional and leadership body representing Legal Executive lawyers and has a membership of 22,000 students and practitioners. It is an Approved Regulator under the Legal Services Act 2007.
2. Alongside Barristers and Solicitors, Legal Executive lawyers are recognised under the Legal Services Act 2007 as qualified lawyers. Recent developments also mean that Legal Executive lawyers are eligible for prescribed judicial appointments, including eligibility as first tier judges of tribunals.
3. Fully qualified and experienced Legal Executives lawyers are able to undertake many of the legal activities that solicitors do. For example, they will have their own clients (with full conduct of cases) and they can undertake representation in court where appropriate.
4. Legal Executive lawyers must adhere to a code of conduct and, like solicitors, are required to continue training throughout their careers in order to keep themselves abreast of the latest developments in the law.
5. ILEX provides policy response to Government consultations in order to represent its members and the public interest.
6. This Response represents the joint views of the Institute of Legal Executives (ILEX) an Approved Regulator under the Legal Services Act 2007 (the Act) and its regulatory arm ILEX Professional Standards Limited (IPS). Views were shared and with no significant difference of opinion between the two organisations. Answers are set out below, to the questions in the consultations, where ILEX and IPS are able to offer a view.

Do you agree with the approach taken to making oral representations and giving oral evidence?

7. The scope of the Legal Services Act 2007 (the Act) is currently limited to the regulation of certain reserved legal activities. The Act also sets out a legal mechanism to extend or reduce the scope of reserved legal activities. This legal mechanism provides that the LSB must develop rules determining if and to what extent it should hear representations and take evidence from 'affected practitioners' or anyone who represents an 'affected practitioner'.
8. Section 24 of the Act provides that the LSB may recommend to the Lord Chancellor that a legal activity be added to the activities which are reserved legal activities and Section 26 enables the LSB to recommend that an activity should cease to be a reserved legal activity. The LSB must comply with the provisions in Schedule 6 which deals with the holding of an investigation to determine whether a

recommendation should be made in accordance with section 24 and section 26.

9. Before the LSB decides whether it is appropriate to hold a Section 24 or a Section 26 investigation, the LSB may seek the guidance of the Office of Fair Trading, the Consumer Panel and the Lord Chief Justice. The LSB has a 12 month period from receiving the advice, in which to carry out investigations and produce and publish a provisional report. The LSB then has a further 3 months from the date of publication of the provisional report, to produce a final report which must be copied to the Lord Chancellor and published.
10. In the paper, the LSB highlighted that schedule 6 of the Act allows them to make rules in relation to three specific stages in the above process:
 - a. Under Paragraph 12(2) of Schedule 6, to make rules in relation to representations made during the 12 month investigation period.
 - b. Under Paragraph 13(1) of Schedule 6, to make rules in relation to representations made in respect of the 'provisional report'.
 - c. Under Paragraph 14(2) of Schedule 6, to make rules in relation to further evidence given after the publication of the 'provisional report'.
11. The LSB has taken a very simple approach to developing rules governing the making of oral and written representations in relation to investigations to alter the scope of reserved legal activities. The process appears too brief considering the complexities that can arise like for example large numbers of 'affected practitioners'.
12. Representations and evidence must be received by the LSB within timescales specified within the rules or within such other time as the LSB may specify. The LSB should consider that it would be unreasonable to reduce timescales without good reason, especially if it proposed to extend the range of reserved legal activities. A reduction in timescales may prove unfair and limiting and without a good reason provided possibly contravene the principle of transparency within the Better Regulation Principles. A proposal to extend reserved legal activities could have a significant impact on consumers, Approved Regulators and regulated persons and therefore ample time to make representations is required.
13. The rules state that in respect of oral representations the LSB will not normally accept oral representations or oral evidence unless the particular circumstances of the 'representing person' or the complexity of the issue merit an exception to the normal process in individual cases.

14. The extension of reserved legal activities may prove more complex than anticipated in the rules and the LSB could be faced with dealing with mountains of conflicting evidence. For example, if the drafting of Wills was under consideration to become a reserved legal activity, there would be large numbers of individuals who would be 'affected practitioners'. Large numbers may wish to give both oral and written evidence and even research evidence. The rules as brief as they are, may not be adequate, as it has not identified within the rules, how the LSB would deal with a large number of 'affected practitioners' wanting to give oral evidence. It is not clear how the LSB would decide to hear one 'affected practitioners' oral representations over another's.
15. We understand the difficulties of oral evidence; however, oral evidence may be required to enable views to be fully articulated to the LSB. The paper includes an Initial Impact Assessment which includes an assessment of how the rules will affect race/disability/gender equalities and Human Rights. The LSB may want to reconsider how the exercise of its discretion not to allow oral representations, will affect these areas. The LSB may be open to judicial review if it fails to exercise its discretion appropriately.
16. Rule 12 states that 'where the hearing is held in private, the Board may admit such persons as it considers appropriate'. It is not clear within the rules whether 'such persons' are staff of the LSB, Board members etc who would be needed to facilitate the giving of oral evidence. We believe that the rule is too broad and it is necessary to define the type of person that would be admitted.
17. The LSB reserves the right to take account of the need to transcribe and verify oral submissions and to require the 'representing person' to pay for the cost of the transcription service. Bearing in mind the 'representing person' may be required to pay for the cost of this service the LSB will have to take a reasonable approach to whether transcription and verification processes are required or whether a summary report would suffice.
18. The LSB has also ruled that it may from time to time adjourn the hearing. The rule regarding adjournment is too brief. The LSB needs to set out the criteria against which a hearing may be adjourned.
19. Rule 17 states that the LSB at its sole discretion will pay reasonable costs of a 'representing person' for the purpose of facilitating the giving of oral evidence or the making of oral representations. It is logical that the LSB will wish to only pay reasonable costs, but at the same time the 'representing person' should only charge reasonable costs especially if the cost of the process is recouped through the levy on Approved Regulators. Some indication should be given of the circumstances in which payments will be made.

Bearing in mind the Regulatory Objectives, the Better Regulation Principles and the need to operate efficiently in relation to the Freedom of Information Act, please could you suggest improvements to the process.

20. The LSB is required to be transparent and consistent, under the Better Regulation Principles, and as such should provide some indication of the circumstances in which payments will be made by the LSB under Rule 17.

21. The LSB would be under an obligation not only to give good reasons for reducing the timescale for representations and evidence to be received by them, but also to be proportionate and consistent when making such a decision, in order to comply with Better Regulation Principles.

ILEX/IPS 28 October 2009