

**EXPLANATORY MEMORANDUM TO**  
**THE LEGAL SERVICES ACT 2007 (DESIGNATION AS A LICENSING**  
**AUTHORITY) ORDER 2019**

**2019 No. 166**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This Order designates the Chartered Institute of Legal Executives as a licensing authority for the following reserved legal activities; the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, and the administration of oaths. This will enable the Chartered Institute of Legal Executives to license bodies which are partly or wholly owned or controlled by non-lawyers as alternative business structures, providing legal services, or a mixture of legal and non-legal services.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.  
4.2 The territorial application of this instrument is England and Wales.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 The Legal Services Act 2007 (“the 2007 Act”) governs the regulation of legal services in England and Wales. Under the 2007 Act, only a person who is authorised by an approved regulator, or who is exempt from the requirement to be authorised, may carry on a reserved legal activity as defined in section 12 of that Act. Approved regulators are responsible for ensuring that the persons authorised by them act in a way that is consistent with the regulatory objectives set out in the 2007 Act. Part 2 of the 2007 Act established the Legal Services Board (“the LSB”) as the oversight

regulator with responsibility for approved regulators. The approved regulators and the reserved legal activities in relation to which they are designated are set out in Part 1 of Schedule 4 to the 2007 Act and in designation orders made under Schedule 4.

- 6.2 The Chartered Institute of Legal Executives is an approved regulator for the reserved legal activities of the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities and the administration of oaths. The Chartered Institute of Legal Executives has delegated its regulatory functions to CILEx Regulation. It is therefore CILEx Regulation which will use the powers granted by this Order.
- 6.3 Schedule 10 to the 2007 Act provides that an approved regulator may also apply to the LSB to become a licensing authority in relation to one or more reserved legal activity. On a recommendation from the LSB, an approved regulator can be designated by the Lord Chancellor as a licensing authority. Licensing authorities may authorise (license) bodies, known as alternative business structures, which are partly or wholly owned or controlled by non-lawyers to carry on reserved legal activities. Part 5 of the 2007 Act sets out arrangements under which licensing authorities may regulate such bodies.

## **7. Policy background**

### *What is being done and why?*

- 7.1 This Order will designate the Chartered Institute of Legal Executives as a licensing authority, able to licence and regulate alternative business structures under the 2007 Act, for the five reserved legal activities that it already regulates as an approved regulator. An alternative business structure is an entity where one or more of the owners or managers is a non-lawyer. They can attract external finance and management expertise and operate as a ‘one-stop’ shop, providing a mix of legal and other professional services in innovative ways.
- 7.2 The 2007 Act sets out eight regulatory objectives which all legal services regulators have a duty to promote. These include protecting and promoting the interests of consumers, improving access to justice, encouraging an independent, strong, diverse and effective legal profession and promoting competition in the provision of legal services. The Government believes that designating the Chartered Institute of Legal Executives as a licensing authority will assist in ensuring all the objectives are met.
- 7.3 The Lord Chancellor has agreed to make this Order on the recommendation of the LSB, which completed a detailed review of the proposed arrangements of CILEx Regulation, including a site visit, before making its recommendation. The LSB is satisfied that CILEx Regulation has suitable arrangements in place to meet the statutory requirements set out in Schedules 11 (licensing rules) and 13 (ownership of licensed bodies) to the 2007 Act.
- 7.4 The LSB also made a careful assessment of the capacity and capability of CILEx Regulation to licence new alternative business structures and regulate in the public and consumer interest, giving appropriate consideration to risk issues. The LSB is satisfied that the CILEx Regulation authorisation team has the experience, flexibility and capacity to undertake the regulation of both entities and alternative business structures. The LSB is further satisfied that CILEx Regulation will assess risk appropriately in its authorisation processes.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

9.1 This is a stand-alone Order which does not make any amendments to any other statutory instrument, so no question of consolidation arises.

## **10. Consultation outcome**

10.1 Before making its application to the LSB, CILEx Regulation consulted between 8 December 2015 and 18 March 2016, to seek views on whether to proceed with an application to be designated as a licensing authority<sup>1</sup>. At the same time, CILEx Regulation consulted over a 10 week period between 7 January 2016 and 18 March 2016, on draft licensing rules and associated changes to other related rules. Whilst there were limited comments on this consultation, there were no objections raised to CILEx Regulation proceeding with an application to the LSB.

## **11. Guidance**

11.1 No guidance is proposed in respect of this Order due to the straightforward nature and effect of this power.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because of the minimal impact on business and the public sector.

## **13. Regulating small business**

13.1 The legislation applies to activities that are undertaken by small businesses, as it will enable them to apply to CILEx Regulation to be licensed as an alternative business structure, so the only impact is a positive one. The advantages of an alternative business structure include being able to attract external finance and expertise.

## **14. Monitoring & review**

14.1 The approach to monitoring of this legislation is that the oversight regulator of the legal services sector, the Legal Services Board, will regularly monitor how CILEx Regulation uses these powers, and will review this if necessary.

## **15. Contact**

15.1 John Russell at the Ministry of Justice Telephone: 020 3334 3626 or email: [John.Russell2@justice.gov.uk](mailto:John.Russell2@justice.gov.uk) can be contacted with any queries on the instrument.

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<sup>1</sup> [https://www.cilexregulation.org.uk/~media/pdf\\_documents/cilex-regulation/consultations/closed-consultations/licensing-authority-application/consultation-response-analysis.pdf?la=en](https://www.cilexregulation.org.uk/~media/pdf_documents/cilex-regulation/consultations/closed-consultations/licensing-authority-application/consultation-response-analysis.pdf?la=en)

- 15.2 Amelia Wright, Deputy Director for Legal Services Policy at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lucy Frazer QC MP, Parliamentary Under Secretary of State at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.