EXPLANATORY MEMORANDUM TO

THE LEGAL SERVICES ACT 2007 (APPROVED REGULATOR) (No.2) ORDER 2014

2014 No. [DRAFT]

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 (CILEx) as an approved regulator to grant the following reserved legal activities: reserved instrument activities and probate activities. CILEx has established a subsidiary company; ILEX Professional Standards Limited (IPS), to which it has delegated its regulatory functions. This Order will enable IPS to regulate properly qualified and trained practitioners, including non-Alternative Business Structure practitioners, regardless of whether they are members of CILEx or not, for probate and reserved instrument activity, in line with its regulatory arrangements which have been approved by the Legal Services Board (LSB). Non members will be required to register with IPS but will not need to become a CILEx member.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This instrument is made under paragraph 17(1)(a) of Schedule 4 to the Act, which allows the Lord Chancellor to make an Order in accordance with a recommendation by the Legal Services Board (under paragraph 16(2) of Schedule 4) that an Order be made designating an applicant as an approved regulator in relation to a specified reserved legal activity or activities.

4.2 Schedule 4 to the Act provides for bodies wishing to authorise persons to carry out a reserved legal activity to apply to the Legal Services Board to become an approved regulator for the specified activity or activities. The approval procedure for such applications is set out in Schedule 4.

5. Territorial Extent and Application

5.1 The instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State, Shailesh Vara MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Legal Services Act 2007 (Approved Regulator) (No.2) Order 2014 are compatible with the Convention rights."

7. Policy Background

- ***What is being done and why***

7.1 The Chartered Institute of Legal Executives is already an approved regulator under the Legal Services Act 2007. CILEx is able to award rights to administer Oaths and rights of audience to Chartered Legal Executives. CILEx became an Approved Regulator for awarding rights of audience and rights to conduct litigation to Associate Prosecutor members in May 2011. Further, under Schedule 18 of the Act CILEx is a designated qualifying regulator for authorising members to provide immigration advice and services.

7.2 CILEx have advised that the work of Chartered Legal Executives today is indistinguishable from that of solicitors, but that the same rights to practice independently in their specialised areas has not applied to them. This Order will designate CILEx as an approved regulator in relation to the following reserved legal activities: reserved instrument activities and probate activities under Part 2 Schedule 4 of The Act. This will enable CILEx to authorise applicants and IPS to regulate practitioners that have successfully obtained probate activity and reserved instrument activity rights by qualification and competence.

7.3 Paragraph 5 of Schedule 2 to the Act defines reserved instrument activities as (a) preparing any instrument of transfer or charge for the purpose of the land Registration Act 2002; (b) making an application or lodging a document for registration under that Act; (c) preparing any other instrument relating to real or personal estate for the purposes of the law of England and Wales or instrument relating to court proceedings in England and Wales.

7.4 Paragraph 6 of Schedule 2 to the Act defines probate activities as the preparation of probate papers for the purposes of the law or in relation to any proceedings in England and Wales.

- ***Consolidation***

7.5 This is a standalone Order which does not make any amendments to any other SI, so no question of consolidation arises.

8. Consultation Outcome

8.1 CILEx has consulted on their proposals with the approved regulators and their respective regulatory bodies, consumer groups and representative bodies. There were a total of five consultations, three of which involved reference group meetings.

8.2 The 2007 Act provides that the LSB must, before making its final recommendation to the Lord Chancellor, seek the advice of statutory consultees (the Lord Chief Justice, the Office of Fair Trading and the Legal Services Consumer Panel) in accordance with paragraph 3 of Schedule 10.

8.3 In accordance with paragraph 9 of that Schedule the CILEx was given the opportunity to make representations about those responses. The consultation responses and the CILEx's representations are available on the LSB's website: http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/ips.htm.

8.4 The Lord Chief Justice expressed concerns that regulatory competition will have a detrimental affect on standards, that a variation in standards between regulators is inappropriate in principle, and that a variation in standards may bring about a drive to the bottom. The LSB were satisfied with CILEx's response to these concerns, which highlighted its risk based approach to entity regulation as expected by the LSB and The Act. CILEx also considers that the premise of The Act is that competition drives up standards and that there can be more than one regulator provided they can operate to standards required by The Act.

8.5 The Legal Services Consumer Panel was satisfied that the arrangements proposed are in line with other regulators.

8.6 The Office of Fair Trading considered that the proposals are likely to increase choice for consumers and professionals and potentially place competitive pressure on the pricing of these services and broaden access to justice.

9. Guidance

9.1 The LSB has issued rules on applications for approved regulator designation. These rules can be found at: http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Qualifying_Regulator_status/20110328_Rules_for_applications_Approved_Regulator_Qualifying_Regulator_designation_1_April.pdf.

10. Impact

10.1 There is no impact on charities or voluntary bodies, any business impact will relate to CILEx.

10.2 There will be no impact on the public sector.

10.3 An Impact Assessment has not been carried out for this Order as its provisions are consistent with the objectives of the 2007 Act and does not impose additional burdens on the private and voluntary sector.

11. Regulating small business

11.1 This Order does not apply to small business.

12. Monitoring and review

12.1 The LSB, in their role as oversight regulator, will monitor the arrangements in the same way as they already monitor the work of the other approved regulators who have previously been designated as such.

13. Contact

Please contact Jo Sawyers at the Ministry of Justice (tel: 020 3334 4270 or email: joanna.sawyers.1@justice.gsi.gov.uk) about any queries regarding this instrument.