EXPLANATORY MEMORANDUM TO

THE LEGAL SERVICES ACT 2007 (CHARTERED INSTITUTE OF LEGAL EXECUTIVES) (MODIFICATION OF FUNCTIONS) 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 The purpose of this instrument is to modify the functions of the Chartered Institute of Legal Executives ("CILEx") in relation to its regulatory arrangements, within the meaning of section 21 of the Legal Services Act 2007 ("the 2007 Act").

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

3.1 None.

4. Legislative Context

4.1 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. Part 2 of Schedule 4 allows for bodies to apply to the LSB to be recommended to the Lord Chancellor for designation as an approved regulator in relation to one or more of the reserved legal activities.

4.2 Section 69 of the 2007 Act, under which this Order is made, allows the Lord Chancellor to make an order modifying the functions of an approved regulator or other body. The purposes for which the LSB may make a recommendation to the Lord Chancellor to make an order are set out in section 69(3), and include (amongst other things) to allow the regulator to carry out its functions more effectively and efficiently. The LSB has issued a statement of policy setting out the circumstances in which it is likely to consider it appropriate to make such a

recommendation[1]. This Order also uses the powers in section 64, which lists some of the matters which can be included in a section 69 order.

5. Territorial Extent and Application

5.1 This 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 (Chartered Institute of Legal Executives) (Modification of Functions) Order 2014 are compatible with the Convention rights."

7. Policy background

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

7.1 CILEx is already an approved regulator under the 2007 Act for the reserved legal activities of the exercise of a right of audience, the administration of oaths and the conduct of litigation. Under Schedule 18 to the 2007 Act CILEx is also a designated qualifying regulator for immigration and advice and immigration services for the purposes of Part 5 of the Immigration and Asylum Act 1999. Also in progress at the same time as this instrument, though not directly linked, is a designation order which was laid before Parliament in draft on 23 June and is currently awaiting Parliamentary approval; if approved, it would make CILEx an approved regulator for reserved instrument activities (conveyancing) and probate.

7.2 In practice, the regulatory functions of CILEx are carried out by Ilex Professional Standards (IPS), a subsidiary company established by CILEx for this purpose, to ensure separation of its regulatory and representative functions.

7.3 This instrument modifies the functions of CILEx in three areas relating to its regulatory arrangements: compensation, insurance and intervention powers. It applies to CILEx in its capacity both as an approved regulator and as a designated qualifying regulator for immigration advice and services. Article 2 allows CILEx to make "compensation arrangements", as defined in section 21(2) of the 2007 Act, and makes other specific provision such as requiring CILEx to give reasons if it decides not to make a grant in respect of a compensation claim.

7.4 Article 3 also relates to compensation arrangements. It allows CILEx to make rules authorising it to establish and maintain a compensation fund, and requiring CILEx authorised entities to contribute to it. CILEx has set aside £1 million for the

[1] http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/Statement_of_Policy-s69_Orders.pdf

purpose of establishing the compensation fund and the intention is to use the fund to provide redress for clients of CILEx authorised entities who suffer loss due to dishonesty or a failure to account. The Compensation fund is a last resort after complainants have pursued complaints avenues with the entity and the Legal Ombudsman. Article 4 allows CILEx to make rules authorising it to take out and maintain insurance, for the purpose of giving effect to its compensation arrangements. This power will be used to allow CILEx to insure the compensation fund.

7.5 Article 5 relates to intervention powers. Schedule 14 to the 2007 Act gives statutory powers of intervention to licensing authorities, to intervene into the practices of those they regulate if certain conditions are met. The purpose of this is to ensure consumer protection; CILEx requires a power to intervene in the event of regulated entities demonstrating risks which require immediate action. Sections 69 and 64 of the 2007 Act allow the provisions of Schedule 14 to be applied, with modifications as necessary, to a body which is an approved regulator or a regulator of immigration advice and services. Article 5 provides for the application of Schedule 14 to CILEx as an approved regulator and designated qualifying immigration regulator, with the modifications listed in that article.

7.6 In November 2013 the LSB approved two applications for changes to regulatory arrangements from IPS in respect of the conduct of litigation and provision of immigration services. As a result of these changes and this instrument, CILEx will be able to authorise and regulate entities for the first time. This will enable chartered legal executives undertaking reserved legal activities to set up independent businesses for the reserved legal activities for which CILEx is designated. To date, chartered legal executives have only been able to work under the supervision of a solicitor.

- ***Consolidation***

7.7 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 There are procedural requirements relating to consultation in sections 69 and 70 of the 2007 Act. The Lord Chancellor may make an order only if the LSB has made a recommendation under section 69, annexing a draft order. Before making the recommendation to the Lord Chancellor, the LSB must publish the proposed recommendation and draft order and have regard to any representations made.

8.2 The LSB therefore consulted on a draft of this Order between 23 June and 21 July. No responses were received.

9. Guidance

9.1 No guidance is necessary in connection with this Order. The changes relate to the powers of the Chartered Institute of Legal Executives and Ilex Professional Standards (IPS) who carry out CILEx's regulatory functions. IPS will publicise these as necessary.

10. Impact

10.1 This statutory instrument has no impact on businesses, charities or voluntary bodies.

10.2 There will be no impact on the public sector.

10.3 An Impact Assessment has been prepared for this instrument and is attached to this memorandum. It will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 This instrument is not expected to have any disproportionate impact on small firms.

12. Monitoring & review

12.1 Under the 2007 Act, the LSB has oversight responsibility for all the approved regulators, including CILEx, and the LSB has a statutory duty to promote the regulatory objectives of the 2007 Act. As part of their ongoing work the LSB will monitor and review the effectiveness of this measure.

13. Contact

13.1 Please contact Jo Sawyers at the Ministry of Justice (tel: 0203 334 4270 or email: joanna.sawyers.1@justice.gsi.gov.uk) about any queries regarding this instrument.