

Consultation - changes to the Professional Indemnity Insurance (PII) Scheme Rules and Minimum Wording to cover The Insurance Act 2015 and Alternative Business Structures (ABS)

1. CILEx Regulation is the independent regulator of specialist lawyers and was established as a regulatory body by The Chartered Institute of Legal Executives (CILEx), an approved regulator under the Legal Services Act 2007 (the Act). CILEx Regulation is the regulatory body for Chartered Legal Executives, other grades of CILEx membership, CILEx Practitioners and entities.
2. This consultation deals with a number of changes that are required to bring the CILEx PII Rules and Minimum Wording up to date ahead of the proposed application by CILEx Regulation on behalf of CILEx to become a Licensing Authority in 2017.
3. The Insurance Act 2015 came into effect on the 12 August 2016 and made changes to the law on non-disclosure and misrepresentation in relation to commercial insurance contracts. Whilst changes have already been made to our PII proposal form, we are proposing to amend the Minimum Wording to bring them in line with the expectations of the Insurance Act. We are also seeking to formalise changes previously agreed with our Qualifying Insurers to our Minimum Wording. These are intended to maintain protection for consumers.
4. Whilst we consulted on changes to extend CILEx PII Rules to cover Alternative Business Structures (ABS) in 2016, we believe it is appropriate for these changes to be referred to again for completeness.
5. This consultation will run for 4 weeks, closing on 2 June 2017. This shorter period than normal reflects the requirement to comply with the Insurance Act and that we have already engaged with insurers in 2015 and 2017 on the other proposed changes.

Background: why are we proposing change?

6. Since 5 January 2015 CILEx Regulation is able to regulate entities whose owners and managers comprise authorised persons. This has meant that for the first time members of CILEx can set up their own law firm and provide services which had previously been reserved to other lawyers.
7. All entities authorised and regulated by CILEx Regulation must have Professional Indemnity Insurance (PII) in place that complies with the rules and terms and conditions prescribed by CILEx Regulation.
8. The CILEx PII Rules and Minimum Wording have been designed to provide entities regulated by CILEx Regulation with cover against civil liability and professional negligence.
9. PII delivers an important degree of financial protection and is in the interest of all stakeholders, particularly consumers of legal services, for whom the security afforded by the arrangement is essential. PII is provided to entities authorised by CILEx Regulation through the open market and helps protect consumer interests whilst promoting the regulatory objectives set out in the Act.
10. CILEx Regulation is making an application for CILEx to become a Licensing Authority under the Act. This will allow CILEx Regulation to regulate and grant a license to a Licensing Body, also commonly known as an Alternative Business Structure (ABS). The application to become a Licensing Authority will be made to the Legal Services Board (LSB) under the Act.
11. CILEx Regulation will only seek to regulate ABS where the legal services delivery is self-contained within a subsidiary company created for the purpose, as this structure creates fewer risks in relation to regulation of ABS and the related insurance needs. In addition our target market will not be those new ABS that seek to be funded through financial investment from Venture Capitalists. This is seen as a prudent approach for our Qualifying Insurers.
12. CILEx Regulation has previously consulted on its intention to extend the operation of the CILEx PII scheme rules to ABS.

Qualifying Insurers

13. In order to provide insurance to entities regulated by CILEx Regulation insurers must agree to become a Qualifying Insurer. Insurers will do this by committing themselves to the terms of the Qualifying Insurers Agreement (QIA), set out by CILEx Regulation.
14. The QIA requires Qualifying Insurers to have a credit rating from AM Best of at least B+ or, Standards & Poor's rating of at least Category

BBB. Qualifying Insurers are also required to adopt the Minimum Wording as prescribed by CILEx Regulation and to offer a minimum level of cover of £2million. This minimum level of cover applies regardless of the actual wording of the policies issued.

15. In order to protect consumers and to ensure that there is a consistent level of insurance amongst entities regulated by CILEx Regulation the QIA has a 'difference in conditions' clause. This clause stipulates that where there is a dispute in connection with the cover, conditions, exclusions or limits of a policy, it will be specifically understood and agreed that the Minimum Wording shall take precedence over any cover, conditions, exclusions or limit which are less favourable to the insured entity or their clients.

Our proposals

16. We are proposing to revise the rules and minimum wording to account for the following areas:

Insurance Act and CILEx Minimum Wording

17. The Minimum Wording is the minimum terms of insurance that Qualifying Insurers are required to provide to entities regulated by CILEx Regulation.
18. The CILEx Minimum Wording requires all entities regulated by CILEx Regulation to obtain insurance to at least the same level of cover; and to deal with all claims consistently. On this basis Qualifying Insurers are under an obligation to adopt this wording. This provides consistent protection for consumers who seek assistance from an entity regulated by CILEx Regulation.
19. Provided that the CILEx Minimum Wording is met entities have the freedom to choose or negotiate cover with Qualifying Insurers individually. This provides entities the opportunity to bargain for cover on the open market from a Qualifying Insurer of their choice. It also allows entities the flexibility to provide higher levels of protection, if they so wish.
20. The Insurance Act 2015 came into effect on the 12 August 2016 and made changes to the law on non-disclosure and misrepresentation in relation to commercial insurance contracts. Changes have already been made to the proposal form that applicant firms use.
21. Whilst it was possible for us to contract out of the Insurance Act, in line with other regulators we propose to adopt the non-consumer standard to ensure that firms meet a high standard when presenting any risk to an Insurer. This requires the firms to make a "fair presentation of the

risks” to insurers and also requires disclosure of circumstances an insured *ought* to know.

22. The Insurance Act will now require a higher standard of disclosure on our firms when seeking insurance but this is in line with wider changes to the insurance market. The current position that insurers cannot avoid or repudiate cover for ‘non-disclosure’ or misrepresentation remains and, whilst insurers’ remedies under the Act are not available to them, the reimbursement provisions apply instead. It will help in ensuring a consistency of approach to the provision of PII to the legal sector.
23. The proposed changes to the Minimum Wording to incorporate the Insurance Act can be found in blue at **annex 1**.
24. We are also seeking to formalise changes previously agreed with our Qualifying Insurers in 2015 and 2017 to the original clauses within the Minimum Wording. These cover the deletion of the premium percent relating to run-off cover, and when in run-off, the provision for insurers to pay the excess if not recoverable from the entity.
25. The proposed changes to the Minimum Wording to incorporate these changes can be found in red at annex 1.

CILEx PII Rules

26. These rules have been drafted to impose obligations on entities regulated by CILEx Regulation to comply with PII requirements. These obligations include that an entity is unable to practise unless PII is in place and this cover must remain in place throughout all of the time that an entity is authorised and regulated by CILEx Regulation.
27. The CILEx PII Rules also require an entity regulated by CILEx Regulation to only obtain PII from a CILEx Regulation Qualifying Insurer.
28. CILEx Regulation intends to extend the operation of its existing PII scheme rules to ABS. CILEx Regulation considers that there is no need for different levels of protection for ABS and non-ABS. Extension of the current scheme is in consumers' interests and avoids uncertainty amongst consumers as to the level of protection afforded to them.
29. A single scheme of PII will also provide clarity to regulated entities.
30. The changes that are intended to be made to the CILEx PII Rules are to extend the definition of Authorised Entity to include ABS. In addition a slight amendment has been made to Rule 9 to ensure that Compliance Managers comply with these rules.
31. The proposed CILEx PII Rules are at annex 2.

Consultation questions

The questions are listed below. Please provide your responses on the response form provided.

Q1. Do you agree that the Minimum Wording should adopt the non-consumer standard of non-disclosure in line with other regulators?

If not, please state why.

Q2. Do you have any further comments regarding the changes proposed under the Insurance Act?

Q3. Do you have any comments about the further changes to the Minimum Wording as proposed?

Q4. Do you have any comments on the proposal to extend the PII scheme rules to ABS?

How to respond

A response form has been provided for completion. Please send the response form to CILEx Regulation through one of the following methods:

- By email to consultations@cilexregulation.org.uk. Mark it for the attention of David Pope.
- By post to CILEx Regulation Ltd, Kempston Manor, Kempston, Bedford MK42 7AB.
- By DX to CILEx, DX 124780 Kempston 2.

Submission deadline

The deadline for the submission of responses is 2 June 2017.