

Consultation on CILEx Regulation licensing authority appeal arrangements

**Decision document relating to a recommendation and
Order to be made under Section 80 of the Legal Services
Act 2007**

31 January 2019

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Introduction

1. In June 2018, the Legal Services Board (LSB) granted an application submitted by the CILEx Regulation under Part 1 of Schedule 10 to the Legal Services Act 2007 (the Act), seeking a recommendation to the Lord Chancellor that an order be made designating the Chartered Institute of Legal Executives (CILEx) as a licensing authority. The regulatory functions of CILEx are delegated to CILEx Regulation.¹ On 11 July 2018 the Lord Chancellor accepted those recommendations.
2. In order to be designated as a licensing authority, there must be in place an appellate body to hear and determine appeals about the decisions of the licensing authority. Section 80 of the Act is the mechanism through which the Lord Chancellor may by order establish a body to hear and determine such appeals. Such an order can only be made on the recommendation of the LSB. Section 81 of the Act sets out the procedural requirements for such orders and includes a requirement for the LSB to consult on both the proposed recommendation and the proposed draft order.
3. The LSB's policy position is that there should be a single appellate body to hear all appeals on licensing authority decisions and that that body should be the General Regulatory Chamber of the First-tier Tribunal (FTT).² CILEx Regulation has selected the FTT as its appellate body for appeals against licensing decisions.
4. In accordance with the procedure in section 81 of the Act, on 19 October 2018 the LSB published a consultation document containing a proposed recommendation and order and invited interested parties to make representations on them.³ We also published a draft Justice Impact Test (JIT) prepared by the Ministry of Justice and CILEx Regulation with the consultation.
5. Respondents were invited to comment on three matters:
 - a. Whether there were any comments on the draft order

¹ See: CILEX Regulation licensing authority application
https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/CILEx_Regulation_Licensing_Authority_application.htm

² See: Alternative business structures: appeal arrangements
http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20110509_absappeals_decision_doc.pdf

³ See: Consultation on Section 80 order on licensing authority appeal arrangements for CILEx Regulation
http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/index.htm

- b. whether the draft order delivered the policy intention of allowing the FTT to be established to hear and determine appeals from decisions made by the CILEx Regulation in its capacity as a licensing authority
 - c. whether there were any comments on the draft JIT.
6. This was the sixth time that the LSB had consulted on such orders which are technical in nature, being directly linked to the designation orders for licensing authorities. CILEx Regulation had also consulted on the policy decision to use the FTT. The consultation was open for more than 14 weeks.
7. This paper summarises the LSB's decision and the next steps.

Outcome of consultation

8. Only one representation was made. This was from CILEx which said that it supported the proposals outlined in the consultation and did not have any comments on the draft section 80 Order or the draft justice impact test. CILEx said the proposed approach was consistent with the approach taken by the majority of other approved regulators that have been designated as licencing authorities. The response has been published on the LSB website.⁴

Next Steps

9. As no comments have been made on the draft order or draft recommendation, the LSB has concluded that it should proceed with the recommendation and the order in the form consulted on and which are reproduced in Annex A.

Annexes

- A. Recommendation letter to the Lord Chancellor
- B. Draft order
- C. Justice Impact Test

⁴ The response is available at:

https://www.legalservicesboard.org.uk/what_we_do/consultations/open/pdf/2018/CILEx_Consultation_Response_-_LSB_Section_80_Order.pdf

Annex A –recommendation by the LSB to the Lord Chancellor

Recommendation under section 80 of the Legal Services Act 2007: Appeal arrangements for licensing decisions of the Chartered Institute of Legal Executives

In accordance with the process specified by the Legal Services Act 2007 (**the Act**), at its meeting on 23 January 2019 the Legal Services Board decided to make a recommendation to the Lord Chancellor that he make an order under section 80 of the Act. The Order is to establish the First-tier Tribunal as the appellate body to hear and determine appeals from decisions made by the Chartered Institute of Legal Executives (CILEx) when acting in its capacity as a licensing authority (should it be designated as such). A draft of the order, as drafted by your officials, is attached to this recommendation.

In accordance with the requirements of section 81(2) of the Act, the Board published a draft of the proposed recommendation and draft order on 19 October 2018 and invited representations about the proposals to be made to the Board by 16 November 2018. The Board has had regard to the representations duly made.

In accordance with section 81(1) of the Act, the recommendation is made with the consent of CILEx Regulation and HM Courts and Tribunal Service.

Yours Sincerely

[Chair]

Enc

Annex B – Draft S.80 Order

Draft Order laid before Parliament under section 206(4) and (5) of the Legal Services Act 2007, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Chartered Institute of Legal Executives) (Appeals from Licensing Authority Decisions) Order 2018

Made - - - - - ***

Coming into force in accordance with article 1- -

The Lord Chancellor, in exercise of the powers conferred by sections 80(1)(b), (4) and (5) and 204(3) and (4) of the Legal Services Act 2007(5), makes the following Order.

In accordance with section 80(3) of that Act, this Order is made following a recommendation made by the Legal Services Board to which was annexed a draft order in a form not materially different from this Order.

The Legal Services Board has made its recommendation under section 80 of that Act with the consents required by section 81(1) of that Act and after complying with the requirements in section 81(2) to (5) of that Act.

A draft of this Order has been approved by resolution of each House of Parliament pursuant to section 206(4) and (5) of the Legal Services Act 2007.

Citation and commencement

—a. This Order may be cited as the Legal Services Act 2007 (Chartered Institute of Legal Executives) (Appeals from Licensing Authority Decisions) Order 2018.

Except as provided under paragraph (3), this Order comes into force on [date] [the day after the day on which it is made].

Articles 4 and 5 of this Order—

do not have effect unless an order is made designating CILEx as a licensing authority under Part 1 of Schedule 10 to the 2007 Act in relation to one or more reserved legal activities; and

where such an order is made, come into force at the same time as that order.

Interpretation

In this Order—

“the 2007 Act” means the Legal Services Act 2007;

“CILEx” means the Chartered Institute of Legal Executives.

Application

This Order applies to appeals from decisions made by CILEx in its capacity as a licensing authority.

Appeals to be made to the First-tier Tribunal

—b. The First-tier Tribunal may hear and determine appeals from decisions made by CILEx which are appealable under any provision of—

Part 5 of the 2007 Act; or
CILEx’s licensing rules(6).

The First-tier Tribunal may suspend the effect of a decision of CILEx (whether or not the decision has already taken effect) while an appeal against that decision has been brought and has not yet been finally determined or withdrawn.

The First-tier Tribunal may, in relation to appeals from decisions which are appealable under the licensing rules—

affirm CILEx’s decision in whole or in part;

quash CILEx’s decision in whole or in part;

substitute for all or part of CILEx’s decision another decision of a kind that CILEx could have taken; or

remit the matter to CILEx (generally, or for determination in accordance with a finding made or direction given by the First-tier Tribunal).

Modifications to the 2007 Act

The Schedule to this Order (which modifies provisions of the 2007 Act) has effect.

Signed by authority of the Lord Chancellor

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

SCHEDULE

Article 5

Modifications to the 2007 Act

Modifications to section 96 of the 2007 Act

1. Section 96 of the 2007 Act (appeals against financial penalties) has effect in relation to a penalty imposed by CILEx as if—

in subsection (1), “, before the end of such period as may be prescribed by rules made by the Board,” were omitted;

subsections (6) and (7) were omitted; and

for subsection (8) there were substituted—

“(8) Except as provided by this section or Part 1 of the Tribunals, Courts and Enforcement Act 2007, the validity of a penalty is not to be questioned by any legal proceedings whatever.”.

Modifications to Schedule 13 to the 2007 Act

—c. Schedule 13 (ownership of licensed bodies) to the 2007 Act has effect in relation to decisions of CILEx with the following modifications.

Paragraph 18 (appeal from decision to approve notified interest subject to conditions) has effect as if—

in sub-paragraph (1), “before the end of the prescribed period” were omitted;

sub-paragraphs (3) and (4) were omitted; and

in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

Paragraph 20 (appeal from decision to object to a notified interest) has effect as if—

in sub-paragraph (1), “before the end of the prescribed period” were omitted;

sub-paragraphs (3) and (4) were omitted; and

(b) Section 83 of the 2007 Act defines and makes other provisions relating to licensing rules. By reason of article 4, the First-tier Tribunal is the “relevant appellate body” as defined in section 111 of the 2007 Act.

in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

Paragraph 29 (appeal from decision to approve a notifiable interest subject to conditions) has effect as if—

in sub-paragraph (1), “before the end of the prescribed period” were omitted;

sub-paragraphs (3) and (4) were omitted; and

in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

Paragraph 32 (appeal from decision to object to acquisition of a notifiable interest) has effect as if—

in sub-paragraph (1), “before the end of the prescribed period” were omitted;

sub-paragraphs (3) and (4) were omitted; and

in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

Paragraph 34 (appeal from decision to impose conditions (or further conditions) on existing restricted interest) has effect as if—

in sub-paragraph (1), “before the end of the prescribed period” were omitted;

sub-paragraphs (3) and (4) were omitted; and

in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

Paragraph 37 (appeal from decision to object to existing restricted interest) has effect as if—

in sub-paragraph (1), “before the end of the prescribed period” were omitted;

sub-paragraphs (4) and (5) were omitted; and

in sub-paragraph (6), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

Paragraph 47 (notifying the Board of objection or condition as to a person’s holding of a restricted interest) has effect as if, in sub-paragraph (4), for “to the High Court” there were substituted “under Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

Paragraph 48 (notifying the Board of approval of the holding of a restricted interest by a person included in the Board's list of persons subject to objections and conditions) has effect as if, in sub-paragraph (3), for “to the High Court” there were substituted “under Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

Paragraph 50 (appeal from decision to notify the Board where share limit or voting limit breached) has effect as if—

in sub-paragraph (1), “before the end of the prescribed period” were omitted;

sub-paragraphs (3) and (4) were omitted; and

in sub-paragraph (5), after “an appeal under this paragraph” there were inserted “or Part 1 of the Tribunals, Courts and Enforcement Act 2007”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision under section 80 of the Legal Services Act 2007 (c. 29) (“the 2007 Act”) for the First-tier Tribunal to hear and determine appeals from decisions made by the Chartered Institute of Legal Executives (“CILEx”) in its capacity as a licensing authority. Licensing authorities regulate licensed bodies under the provisions of Part 5 of the 2007 Act (alternative business structures). The decisions are those which are appealable under Part 5 of the 2007 Act or under CILEx’s licensing rules. Section 83 of the 2007 Act defines licensing rules as rules about the licensing and regulation of licensed bodies. A separate order will designate CILEx as a licensing authority.

Article 4 provides for such appeals to be heard and determined by the First-tier Tribunal and sets out the powers of the First-tier Tribunal in relation to an appeal under the licensing rules. The 2007 Act provides for the grounds of appeal and the First-tier Tribunal's powers in relation to an appeal under Part 5 of the 2007 Act.

Certain provisions of the 2007 Act are modified by article 5 of, and the Schedule to, this Order in relation to appeals against decisions of CILEx. The modifications take account of the provision in Part 1 of the Tribunals, Courts and Enforcement Act 2007 (c. 15) for appeals from the First-tier Tribunal to go to the Upper Tribunal.

An impact assessment has not been produced for this Order as no, or no significant, impact on the private, voluntary or public sector is foreseen.

Annex C: Justice impact test



Ministry of
JUSTICE

Justice impact test form

Before you complete this form, please read the Justice Impact Test Guidance, and ensure that the content has been discussed with your analytical, finance and legal departments. It is available at: <https://www.gov.uk/government/publications/justice-impact-test>

Please answer as many questions as possible on this form before you contact the Ministry of Justice (MoJ). If exact figures are not yet known, please provide your best estimates along with any evidence and assumptions you have based these on. When submitting this form, allow at least 20 working days for a response. If there are considered to be no impacts arising from your proposals, MoJ will agree this with you and no further correspondence will be required. However, if MoJ identifies a potential impact, you will be contacted to discuss and agree an estimate of costs including funding arrangements for the additional costs. In both cases, the outcome must be included in the Impact Assessment accompanying your final proposals.



1. Your contact details

Name

Department / office / business area

Telephone number

Email address

By when would you like a response?

2. General information

2.1. Please provide contact details of your lead analyst for the cost appraisal, and the Ministry of Justice policy/operational lead if known.

2.2. In brief, what is your proposal? (no more than half a page please)

CILEx Regulation is seeking to become a Licensing Authority for ABS entities and will require an appellate jurisdiction for certain regulatory decisions relating to the authorisation of ABS entities before CILEx Regulation (on behalf of the Chartered Institute of Legal Executives) can be designated as a Licensing Authority.

CILEx Regulation wishes to create a new appellate jurisdiction for the First Tier Tribunal of the General Regulatory Chamber relating to appeals under the Legal Services Act 2007. This relates to decisions about whether to authorise ABS entities, whether to approve owners and managers as suitable, whether to impose conditions on authorisation and whether to withdraw authorisations etc. The statutory appeals process comes from Schedule 11 of the Act.

2.3. Please specify the/any relevant legislation/Bill

An order under s80 of the Legal Services Act 2007 to create an appellate body for certain regulatory decisions relating to ABS entities once the Chartered Institute of Legal Executives becomes a Licensing Authority under Part 5 of that Act.

2.4. Please advise when the changes are expected to be introduced, and when MoJ are likely to be impacted.

TBC – estimated around January 2018?? (then see below)

2.5. If introducing a new offence, sanction or penalty, which of the following groups will the proposal affect? (Tick all that apply)

- Individuals
- Private Institutions (e.g. Businesses)
- Public Institutions (e.g. Government Departments)

2.6. What is your proposal intended to achieve, and in what timescale?

The proposal is seeking to create an appellate jurisdiction for the First Tier Tribunal of the General Regulatory Chamber for certain regulatory decisions relating to the authorisation of ABS entities by the Chartered Institute of Legal Executives under the Legal Services Act 2007. This should be in place by around January 2018 subject to LSB approval (TBC – depending on legislation being in force by then)

2.7. Which geographical area/s will this proposal affect? (Tick all that apply). Please note that, with the exception of tribunals, MoJ administers the justice system in England and Wales only. Please contact the Scotland Office or Northern Ireland Office if you anticipate your proposal will have an impact on courts or prisons in those jurisdictions.

- England
- Wales
- Scotland
- Northern Ireland
- Other (Please Specify)

2.8. What public commitments have been given, when were they made, and to whom? If not, are any commitments expected to be made prior to publishing an impact assessment?

CILEx Regulation will be proposing this policy within its application to the LSB to be designated as an ABS Licensing Authority. An appellate jurisdiction must be established before CILEx Regulation (acting on behalf of the CILEx) can be designated as a Licensing Authority.

2.9. What are the options under consideration and how does this change what happens now?

Only one option under consideration.

2.10. If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

N/A

2.11. Who will be affected by the new sanction/penalty?

Licensed Bodies - no more than two appeals in the first five years.

3. Criminal Offences and Civil Penalties and Sanctions

3.1. Which of the following are you creating/amending? (Tick all that apply)

- Civil Sanctions
- Fixed Penalties
- Civil Orders
- Criminal Sanctions
- Criminal Offences
- Other (Please Specify)

3.2. If you are creating a criminal offence, is it:

- Summary Only
- Triable Either Way
- Indictable Only

3.3. What is the anticipated number of cases per year? Please provide details of any evidence of assumptions on which estimates are based.

N/A

3.4. What proportion of offenders will be tried in the Crown Court and what proportion will be tried in the Magistrates' Court?

N/A

3.5. Please state the maximum associated fine and/or custodial penalties. In the case of offences involving penalties of a fine and custody or both, then please indicate and justify the likelihood of receiving a custodial sentence upon conviction.

N/A

3.6. Please provide details of any proxy or current offences and/or penalties on which the proposed penalties are based.

N/A

3.7. Please provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed in line with the guidance available at <https://www.gov.uk/government/publications/making-new-criminal-offences>

N/A

4. HM Courts & Tribunals Service

Estimating the change to caseload of the Courts and Tribunals Service

4.1. Do you expect there to be a change in Court or Tribunals process or an increase/decrease in applications/cases to HM Courts and Tribunals Service through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases going through the court system as a whole, explain any changes in process and outline the evidence and sources that support these estimates.

We do not believe that there would be any change in process or increase in applications, as we estimate that there will be no more than 2 appeals within the first five years. This number of appeals is based on the modest forecast we have for new Licensed Bodies, which will be within our Business plan.

4.2. Please confirm if the courts would be under any duty to inform any regulatory authorities of any convictions made under this offence.

No

Yes (please provide details)

Appeal Rights

- 4.3. Does your proposal create a new right of appeal or expand an existing jurisdiction in the Unified Tribunals System or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service)?

Yes, this proposal will create a new appeal to the FTT. We expect that the appeals will be handled in a similar way to those that are already in place for the other Approved Regulators and Licensing Authorities under the Legal Services Act 2007.

- 4.4. Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with the Ministry of Justice?

We would suggest that the new appeal rights are incorporated into the jurisdiction of the General Regulatory Chamber of the First Tier Tribunal.

Alternative Dispute Resolution

- 4.5. Has the use of alternative dispute resolution (ADR) procedures (including mediation) been considered? If not, why not?

No as this is not an appropriate alternative for appeals against regulatory decisions.

Prosecution and Enforcement

- 4.6. If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please state who will do so.

N/A

- 4.7. Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

No

HMCTS Procedural Rules, Sentencing and Penalty Guidelines

- 4.8. Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

No

- 4.9. Will the proposals require sentencing and/or penalty guidelines to be amended?

No

5. Legal Aid

5.1. Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case please provide supporting evidence.

- Criminal
- Civil (including Family)
- Asylum
- Legal aid not available (please provide supporting evidence)

No

5.2. If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

N/A

6. Prisons and Offender Management Services

Impact on HM Prison Services

6.1. Will the proposals result in an increase in the number of offenders being committed to custody (including on remand) or probation (and community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and its source.

No

6.2. Does the proposal create or edit an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison/probation service? If so, please provide details, including the expected impact on probationary services.

No

7. Summary

7.1. Volumes and Costs (please lengthen if necessary):

Who will be affected by this proposal in MoJ? (details from information provided above)	Volumes (please provide numeric estimates or ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated costs (£)
Criminal Offences and Sanctions	N/A		

Who will be affected by this proposal in MoJ? (details from information provided above)	Volumes (please provide numeric estimates or ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated costs (£)
Civil Penalties	N/A		
HM Courts & Tribunals Services	2 within first 5 years	Tribunal Hearing	
Legal Aid	N/A		

7.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine):

Offence	Maximum Penalty	No. of prosecutions brought per annum	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given	Estimated costs (£)
N/A					

Please be aware that your department may be required to meet any costs incurred by the MoJ as a result of any changes/additional work that is created by the introduction of this proposal.

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