

## Closed Consultation

### Arrangements for SRA regulation of CILEX members

- The consultation period ended on **22 November 2023**.
- You can [download the consultation paper \[#download\]](#) or read it below.

#### Next steps

- [Download analysis of responses to the consultation \[#download\]](#)
- [Download all consultation responses \[#download\]](#)

### About this consultation

CILEX – the professional body for more than 17,000 CILEX lawyers, paralegals and other legal professionals in England and Wales – is currently consulting on whether to redelegate its regulatory functions from CILEX Regulation Limited (CRL) to the Solicitors Regulation Authority (SRA).

In this parallel consultation we are seeking views on proposed changes to our regulatory arrangements to enable us to regulate CILEX members in the event that CILEX decides to proceed with redelegation.

This consultation summarises the model we have proposed to CILEX for the future regulation of its members. It invites views on the key changes we would make to our Standards and Regulations and our processes to bring authorised CILEX members (primarily Chartered Legal Executives and CILEX Practitioners) within the scope of SRA regulation as 'authorised CILEX lawyers'. These include:

- A Code of Conduct for individual authorised CILEX lawyers. This is intended to deliver high professional standards and to maintain a clear separate identity for authorised CILEX lawyers as regulated legal professionals.
- Education and authorisation rules setting out how authorised CILEX lawyers will be authorised to provide reserved legal services and immigration services on the basis of their specific expertise. These are largely based on the current CILEX and CRL rules and will maintain a clear separate career path for CILEX members.

We also set out how we will approach investigation and enforcement where there is a report that an authorised CILEX lawyer has breached our regulatory requirements.

The majority of CILEX members already work in SRA-regulated firms, and we set out how we will use our existing enforcement powers and the new powers that would be delegated to us in relation to authorised CILEX lawyers.

The consultation also summarises the consequential and ancillary changes we would make to our other rules and regulations. It explains our proposed approach to regulating the authorised CILEX-ACCA Probate practitioners and entities and the Crown Prosecution Service (CPS) Associate Prosecutors currently regulated by CRL. And it discusses and invites views on the regulatory and equality impacts flowing from our proposals.

Following CILEX's decision to consult on redelegating its regulatory functions to us, we look forward to engaging with CRL during the consultation process. We want to understand better how CRL currently regulates authorised CILEX members, and any implications that may have for our proposals. If CILEX decides to proceed with redelegation we will seek to work with CRL to arrange appropriate transition arrangements that protect the interests of CILEX members and the public.

This SRA consultation is independent of CILEX's consultation and does not pre-judge its outcome. If CILEX decides against redelegation of regulation after its consultation, the proposals in this SRA consultation will fall away.

This consultation runs from 31 August 2023 until 22 November 2023.

After this consultation closes, our Board will consider the responses and decide on the way forward in the context of the outcome of the CILEX consultation.

If CILEX decides to redelegate its regulatory functions to us, and our Board decides to proceed with the proposals set out in this consultation, we and CILEX will then need to seek Legal Services Board (LSB) approval of our respective regulatory arrangements.

We will also work with the Law Society to arrange the necessary changes to our Articles of Association to enable us to take on the regulation of authorised CILEX lawyers.

We would therefore not expect to be in a position to take on these new functions until summer 2024 at the earliest.

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## **Introduction**

The SRA is the regulator of solicitors and law firms in England and Wales. We work to protect members of the public and support the rule of law and the administration of justice. We do this by overseeing all education and training requirements necessary to practise as a solicitor, licensing individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance with these standards.

We are the largest regulator of legal services in England and Wales, covering around 90% of the regulated market.

## **Our rationale for change**

In July 2022, the Chair of CILEX wrote to our Board Chair inviting us to engage in formal discussions on the potential to redelegate the regulation of CILEX members from CRL to the SRA.

Our Board considered CILEX's invitation and agreed that SRA regulation of CILEX members and entities had the potential to support the regulatory objectives set out in the Legal Services Act 2007 (the Act) and to offer benefits to consumers of legal services and the wider public.

We therefore agreed to work with CILEX to undertake the necessary due diligence and explore the development of a workable regulatory model. To avoid cross-subsidy between solicitors and CILEX members, CILEX agreed to underwrite the cost of this work, and (if applicable) the cost of transition to the new model.

In July 2023 we formally [proposed a regulatory model](https://www.cilex.org.uk/wp-content/uploads/SRA-Response-to-Case-for-Change.pdf) for the SRA regulation of CILEX members and entities to the Board of CILEX. The CILEX Board has agreed in principle to take forward this proposal, subject to consultation, and we are therefore consulting on proposed changes to our regulatory arrangements that we would need to have in place. This consultation is running in parallel with CILEX's consultation on its proposal to redelegate the regulation of CILEX members from CRL to the SRA. Our consultation and the CILEX consultation are independent, and neither pre-judges the outcome of the other.

## **Benefits**

The current legal sector regulatory landscape for England and Wales is complex and fragmented. There are eight frontline regulators of very different scales – with regulated communities ranging from more than 200,000 individuals to fewer than 700 – and with different powers, responsibilities and ways of working. There is also overlap and duplication between regulators. For example, as the largest regulator in the sector, we regulate most law firms and everyone who works in those firms. That includes many authorised lawyers other than solicitors, who are thus effectively regulated both by us and by their professional

regulator. Around 75% of authorised CILEX lawyers and other CILEX professionals currently work in SRA-regulated firms.

This duplication and overlapping regulation creates confusion, making it hard for people to understand and navigate the system. It also adds costs through duplicated governance, staff and services. With the regulators funded by the professions, these costs are likely to be passed on to users of legal services.

This, and the fragmentation of the landscape, also make it more challenging for legal regulators to respond quickly and effectively to new and evolving challenges, such as tackling money laundering and economic crime. And to adapt proactively to new challenges and changes in legal services, such as the growth of unregulated or technology-enabled services.

The regulatory objectives in the Act require us and the other legal regulators to give due regard to objectives, including:

- improving access to justice
- promoting competition in the provision of legal services
- protecting and promoting the interests of consumers and the wider public interest.

With primary legislation to simplify the system of legal regulation in England and Wales unlikely in the foreseeable future, we consider organic, well managed regulatory consolidation to be helpful in addressing the challenges facing the regulation of the sector.

The potential benefits of the SRA taking on the regulation of authorised CILEX members include:

1. Supporting public confidence by simplifying the regulatory landscape to make it easier for consumers to understand and access regulated services, supporting consumer choice and access to justice.
2. Enhancing public protection by bringing the regulation of solicitors and authorised CILEX lawyers together, to maintain and enforce standards for two of the key groups of lawyers in consistent ways.
3. Bringing efficiencies through reducing regulatory duplication for those authorised CILEX lawyers who work in SRA-regulated firms. This includes around 75% of all CILEX professionals .
4. Improving consumer protection by replacing as far as possible the current limited compensation arrangements for clients of CILEX entities with the SRA's Compensation Fund arrangements, without requiring any cross subsidy from solicitors.
5. Providing new opportunities to address the regulation of new and emerging forms of legal services in an integrated way across both professions.

These benefits are discussed further in the draft regulatory impact assessment included in this consultation paper.

## **Risks and mitigation**

The proposed redelegation of regulation is a significant step which carries potential risks. We recognise that it may raise questions both for CILEX members and for the solicitors and firms we already regulate.

This consultation sets out our view of the key risks relating to our proposals, and how we propose to mitigate those risks. We briefly summarise the key points here.

### **Impact on the CILEX profession**

It is for CILEX to set out and consult on its assessment of the overall implications of this change for CILEX members, and to reach a view on whether it brings the benefits and meets the requirements set out in its Case for Change.

This consultation focuses on our proposed regulatory arrangements in the event of redelegation. We invite CILEX members and other interested stakeholders to give us their

views on our proposals. We have set out our current view of the key impacts of this change, including potential positive, neutral and cost implications for authorised CILEX lawyers, in the draft regulatory impact assessment.

### **Impact on the solicitors' profession**

We do not expect these changes to affect the identity of the solicitors' profession or the way it is regulated. Our proposals maintain a distinct entry route to authorisation as a legal professional for CILEX members, and a separate Code of Conduct as our basis for regulating those members.

The existing pathway into the solicitors profession – the Solicitors Qualifying Examination (SQE) – and our Principles and Codes of Conduct for solicitors and SRA firms will remain separate from those for authorised CILEX lawyers.

This consultation paper discusses how we propose to use our communications work to reinforce the separate identities of the solicitors' and CILEX professions.

### **Impact on our resources and current functions**

Whilst our new role would offer synergies and cost savings as we use common processes to regulate solicitors and authorised CILEX lawyers where possible, we would ensure there is no cross subsidy between the regulation of the two professions.

The cost of regulating authorised CILEX lawyers will be fully recovered from the practising certificate fees of the CILEX members and entities we authorise. Given this and the relatively low number of regulatory reports and investigations currently involving authorised CILEX lawyers, we do not expect a new role as their regulator to affect our capacity to carry out our existing regulatory role.

We will continue to engage on these issues with the Law Society and we encourage solicitors and SRA-regulated firms to respond to this consultation.

### **Proposed arrangements for the regulation of authorised CILEX members and entities**

In this section of the consultation, we explain the changes we intend to make to each aspect of our regulatory model to bring authorised CILEX members and entities within the scope of SRA regulation.

We invite views on drafts of our key new and amended rules and material, which are in annexes to this consultation:

- Annex One - SRA CILEX Code of Conduct for authorised CILEX lawyers
- Annex Two - education and authorisation
- Annex Three - investigation and enforcement
- Annex Four - ancillary changes and transitional arrangements.

And we highlight key policy issues and questions relating to the proposed changes.

## **Governance**

### **Policy intention**

Governance of the regulatory model will be founded on the decision of CILEX, as the Approved Regulator, to delegate the regulation of authorised CILEX members and entities to the SRA. The delegation will be based on the existing scope of delegation of regulatory functions as specified in CILEX's Scheme of Delegation as amended from time to time.

The SRA Board will exercise the regulatory functions relating to authorised CILEX members and entities that are currently exercised by the CRL Board as specified within CILEX's Scheme of Delegation, as amended from time to time.

We will put in place appropriate engagement and oversight mechanisms to ensure that our Board and our organisation are well aware of the issues and risks facing authorised CILEX lawyers, and to enable open communication between us, CILEX itself and the CILEX regulated community.

Our annual reporting and accounting arrangements will deal separately with the regulation of solicitors and authorised CILEX lawyers. This will maintain financial transparency to ensure that each profession appropriately funds the costs of its regulation. Our arrangements will also support clear branding and messaging about the status of authorised CILEX lawyers as distinct legal professionals.

### **Proposed regulatory arrangements**

The governance arrangements will be supported by appropriate formal protocols between CILEX and the SRA setting out both parties' roles and responsibilities under the LSB's Internal Governance Rules (IGRs). These will include a Dispute Resolution Protocol. An annual review process will be established to allow both parties to declare ongoing compliance with the IGRs.

**Question 1:** Do you have any comments on the proposed approach to governance arrangements? If so, please explain.

## **Regulatory standards**

### **Policy intention**

#### **Individuals**

##### **Who will be regulated?**

At present all individual members of CILEX, including students and paralegals as well as those authorised to provide reserved legal services and immigration services, are required to follow the [CILEX Code of Conduct](https://cilexregulation.org.uk/code-of-conduct/) [https://cilexregulation.org.uk/code-of-conduct/]. CRL handles concerns about potential breaches of the Code by any CILEX member and takes regulatory action in respect of such breaches where appropriate.

Initially we propose to regulate (as 'authorised CILEX lawyers') only those individual CILEX members who require authorisation to provide specified legal services without supervision. These include:

- Chartered Legal Executives, all of whom are authorised to administer oaths
- CILEX members who have authorised additional practising rights in one or more areas of law – these include CILEX Conveyancing Practitioners, CILEX Probate Practitioners, CILEX Immigration Practitioners, and CILEX Practitioners with Litigation rights in civil, criminal and/or family law
- CILEX-ACCA Probate Practitioners
- Crown Prosecution Service (CPS) Associate Prosecutors.

The current CILEX consultation proposes changes to the CILEX Charter which would introduce a 'Chartered Lawyer' membership grade for these individuals. Our consultation and draft rules refer to the current CILEX membership grades. If we proceed with the proposals set out in this consultation, we will amend our draft rules as needed to reflect future changes to CILEX's Charter.

We are not currently proposing to continue the approach taken by CRL to the regulation of CILEX's non-authorised members directly as individuals.

We are not currently proposing to take on the function of regulating CILEX's non-authorised members directly as individuals. CILEX's non-authorised members are not on any public register, and the sanctions imposed by CRL attach to their membership status and not to any regulated status or rights to practice.

CILEX is consulting on changes to its membership structure and proposals to establish a more formal status for CILEX Paralegals through the Professional Paralegal Register. Once the outcome of that consultation is known, we will take forward a programme of work in consultation with CILEX to ensure appropriate regulatory arrangements are in place for non-authorized members of CILEX, in accordance with the regulatory objectives set out in the Act and on a fair and sustainable basis. It will be for CILEX as the representative membership body to deal with breaches of the requirements of membership.

We have powers under section 43 of the Solicitors Act 1974 to restrict the work of individuals who are not solicitors but work in or for solicitors or SRA firms, as around 75% of both authorised and non-authorized CILEX members do. We will continue to use these powers to manage risks to the regulatory objectives where appropriate. In taking forward our work in this area we would look to ensure that any regulatory overlap and duplication that exists under the current regulatory regime is addressed.

#### **What standards will apply to authorised CILEX lawyers?**

The Core Principles in the existing CILEX Code of Conduct are already closely aligned with the [SRA Principles](https://higher-rights.sra.org.uk/solicitors/standards-regulations/principles/) [https://higher-rights.sra.org.uk/solicitors/standards-regulations/principles/] for solicitors and firms. We propose to maintain these, with minimal drafting amendments. We will also maintain a separate Code of Conduct for individual authorised CILEX lawyers. This will be closely aligned to the standards that apply to solicitors, with differences which recognise the different scope and context of their practice. Our intended approach is set out under 'proposed regulatory arrangements' below.

This approach will promote greater consistency in the regulation of authorised legal professionals, particularly given that most authorised CILEX lawyers work in SRA-regulated firms. We expect it will also be clearer for consumers of legal services, reducing the potential for confusion around expectations and regulatory action.

We have published an [infographic](#) [#download] summarising our proposed approach to regulatory standards for individual CILEX members.

#### **CILEX entities**

As of June 2023, there are 19 firms listed on the [CRL Firms Directory](https://cilexregulation.org.uk/law-firms/) [https://cilexregulation.org.uk/law-firms/] as authorised CILEX entities (not including CILEX-ACCA Probate entities which are discussed below). Seven of these firms are already eligible for authorisation as SRA firms, because their owners and managers include solicitors or non-authorized individuals. We propose to passport these CILEX entities over as SRA-regulated firms. This means that our existing regulatory requirements will apply to them, including our consumer protection arrangements. We will work with CILEX and the firms involved to support them through this transition.

The remaining 12 CILEX entities listed on the CRL Firms Directory are owned and managed only by CILEX Fellows and/or Practitioners. We will amend our authorisation rules so we can authorise them as 'authorised CILEX bodies' enabling them to retain their existing ownership and management arrangements (without the need for a solicitor or non-authorized owner/manager). For these firms (and for 'passported' SRA firms whose owners and managers do not include a solicitor), their authorisation to provide reserved legal services will be based on the specialist practising rights of the authorised CILEX lawyers who own and manage them.

Most of our existing regulatory requirements, including the Code of Conduct for Firms and the Transparency Rules, will then apply to authorised CILEX bodies as they do to other SRA firms. However, in order to extend our current consumer protection arrangements to clients of these firms we will need amendments to our legislative framework.

As discussed in 'consumer protection' below, we will therefore work with CILEX to put in place suitable arrangements for these entities in the transition period until the necessary legislative changes are in place. This will help us to meet our aim of ensuring that consistent

consumer protection arrangements apply to all the firms we regulate, whether they are led by solicitors or CILEX members.

### **CILEX-ACCA Probate entities**

There are currently around 40 CILEX-ACCA Probate entities – separate limited companies which are set up by accountancy practices authorised and regulated by the Association of Chartered Certified Accountants (ACCA). The company is authorised by CRL to provide reserved non-contentious probate services solely as an ancillary activity to the accountancy work of the related ACCA practice. These probate services cannot contribute more than 20% of the fee income of the ACCA accountancy practice.

CRL took on regulation of these probate services in 2021 following ACCA's decision to give up its role as an approved regulator of legal services. CILEX-ACCA entities have a separate [register \[https://cilexregulation.org.uk/crl-acca-probate/\]](https://cilexregulation.org.uk/crl-acca-probate/) and are regulated under a separate CILEX-ACCA Handbook. This includes tailored client protection rules, including Professional Indemnity Insurance (PII) and fidelity guarantee insurance requirements. The entities are not allowed to hold client money and are supervised by ACCA for AML purposes.

Given the specific and niche context in which these firms operate and the arrangements that apply to them, we propose to retain a separate regime for these entities, with their own register and handbook. The LSB agreed when CRL took on regulation of these entities that it is appropriate to retain a separate regime for them. We will apply a standardised and consistent approach to the regulation of ACCA probate firms as far as possible. And will seek to align our guidance for these entities and the other firms we regulate so far as appropriate. while recognising the necessary distinctions that arise from different professional identities.

We have published an [infographic \[#download\]](#) summarising our proposed approach to regulatory standards for CILEX and CILEX-ACCA entities.

## **Proposed regulatory arrangements**

### **Individuals**

The draft 'SRA Principles and Code of Conduct for authorised CILEX lawyers' (referred to in this consultation as the 'SRA CILEX Code of Conduct') is at Annex One to this consultation paper.

The Principles are materially the same as the core principles in the current CILEX Code of Conduct. This preserves a consistent approach to principles of professional conduct across the grades of CILEX membership, authorised and non-authorised, to support CILEX members as they develop in their professional roles.

The introduction to the draft Code highlights that if the Principles come into conflict, those which safeguard the wider public interest take precedence over an individual client's interests; this is not explicit in the current CILEX Code of Conduct.

The draft SRA CILEX Code of Conduct applies the Principles to the practice of authorised CILEX lawyers in a way that is aligned to our [Code of Conduct for Solicitors \[https://higher-rights.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/\]](https://higher-rights.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/). This reflects the fact that we will aim to regulate solicitors and authorised CILEX lawyers to similar high professional standards in the relevant areas of law in which they practise. And that the majority of authorised CILEX lawyers will be working in an SRA-regulated firm, and to existing SRA standards.

The draft SRA CILEX Code of Conduct reflects the fact that the practice rights of authorised CILEX lawyers are restricted in respect of certain legal services. For instance, the draft Code provides that authorised CILEX lawyers:

- must not act in matters where they do not have rights or authorisation to act
- must explain to clients their professional status and their SRA authorisation

- must not hold out an undertaking to be a solicitor's undertaking.

The draft SRA CILEX Code of Conduct also includes some requirements that are in the current CILEX Code of Conduct, but not in the Code of Conduct for Solicitors. For instance, the SRA CILEX Code of Conduct requires authorised CILEX lawyers to assist consumers and clients to access justice and the full range of legal services, and to provide each client with equal opportunity to secure a favourable outcome. We have retained these standards, which are not reflected in the Code of Conduct for Solicitors. (The SRA Principles include a specific requirement to encourage equality, diversity and inclusion, while the core principles in the CILEX Code of Conduct do not but do require CILEX members to treat everyone fairly and without prejudice).

The draft SRA CILEX Code of Conduct requires authorised CILEX lawyers to follow the same requirements as solicitors in respect of:

- treating colleagues fairly and with respect
- conduct in proceedings before courts, tribunals and enquiries
- reporting information and potential concerns to us
- identifying clients, managing conflicts of interest and preserving client confidentiality
- referring clients to other businesses, including information about financial and other interests
- transparency, client information and publicity.

The introduction to the draft SRA CILEX Code of Conduct confirms that authorised CILEX lawyers will be regulated in respect of conduct outside the workplace. This is where that conduct touches upon the practice of their profession in a way that is demonstrably relevant. This is the approach we take to solicitors' conduct.

Some of the requirements in the draft SRA CILEX Code of Conduct are more specific and detailed than their equivalents in the current CILEX Code of Conduct. This includes areas such as duties to the court, referrals and separate businesses, and reporting obligations. This reflects our approach to equivalent provisions in the Code of Conduct for Solicitors.

We will update our guidance for those we regulate on how to comply with our requirements, to confirm our expectations in respect of authorised CILEX lawyers. The updated guidance will make clear that we will take an equivalent approach to key regulatory issues, for example conduct in litigation or sexual harassment. We will also update our guidance on wider issues, such as our approach to enforcement and the publication of regulatory decisions. And we will ensure that authorised CILEX lawyers are aware of all our relevant guidance.

Our drafting approach to the SRA CILEX Code of Conduct means its requirements look different to the 'outcomes' non-authorised CILEX members are expected to meet for ongoing membership under the existing CILEX Code of Conduct.

As with our current Standards and Regulations for solicitors, we will be able to take enforcement action for a breach of a Principle where relevant, without needing to establish a breach of any of the more detailed requirements in the Code of Conduct, and vice versa.

Some individual authorised CILEX lawyers provide unreserved legal services to the public outside an authorised firm. These individuals will also have to comply with our [Transparency Rules](https://higher-rights.sra.org.uk/solicitors/standards-regulations/transparency-rules/) [https://higher-rights.sra.org.uk/solicitors/standards-regulations/transparency-rules/] which require the publication of information about complaints processes, regulatory status, and (for some areas of law) costs and services provided – see 'consumer information' below.

We will extend our [Overseas Rules](https://higher-rights.sra.org.uk/solicitors/standards-regulations/overseas-cross-border-practice-rules/) [https://higher-rights.sra.org.uk/solicitors/standards-regulations/overseas-cross-border-practice-rules/] to apply to any authorised CILEX lawyers who have established to provide legal services outside England and Wales. For example, as an overseas representative or a branch or subsidiary of an authorised firm. The rules are a modified version of the SRA Principles, reflecting the fact that detailed regulatory requirements are less appropriate where services are being provided outside England and Wales.



**Question 2:** Do you agree with the proposed approach of maintaining a separate SRA CILEX Code of Conduct for authorised CILEX lawyers?

**Question 3:** Do you have any comments on our proposed approach to aligning standards for authorised CILEX lawyers and solicitors in the draft SRA CILEX Code of Conduct?

**Question 4:** Do you have any other comments on the draft SRA CILEX Code of Conduct? If so, please explain.

**Question 5:** Do you have any other comments on the proposed approach to the regulation of individual authorised CILEX lawyers?

**Question 6:** Do you have any comments on the proposal that our Overseas Rules will apply to any authorised CILEX lawyers established to provide legal services outside England and Wales?

#### **CILEX entities**

Our legislative framework and Authorisation of Firms Rules already enable us to passport across by reauthorising those entities that are authorised by CILEX:

- as a recognised body where the entity's owners and managers include a solicitor, or
- as a licensed body where the owners and managers include a non-authorised person (for example, a non-authorised CILEX member).

As discussed under 'policy intentions' above, we are proposing to amend the Authorisation of Firms Rules so that we can also reauthorise as 'authorised CILEX bodies' those entities that are owned and managed only by authorised CILEX members.

Entities currently authorised by CILEX that are reauthorised as SRA-regulated firms (of whatever type) will have to comply with our Standards and Regulations in the same way as other SRA firms. We will record each firm's approved Compliance Manager as the SRA firm's compliance officer for legal practice (COLP) and compliance officer for finance and administration (COFA) unless the firm applies to appoint someone else. We will support the relevant people to become familiar with our regulatory requirements.

We will make consequential changes to our Standards and Regulations as required to reflect the regulation of individual authorised CILEX lawyers and former CILEX entities. We raise some specific consultation questions about such changes in relation to firms, and our proposed policy position, in the relevant sections of this consultation. These include:

- the [Indemnity Insurance Rules](https://higher-rights.sra.org.uk/solicitors/standards-regulations/indemnity-insurance-rules/) [https://higher-rights.sra.org.uk/solicitors/standards-regulations/indemnity-insurance-rules/] which set minimum requirements for the PII held by SRA firms (see 'client protection' below)
- the [Transparency Rules](https://higher-rights.sra.org.uk/solicitors/standards-regulations/transparency-rules/) [https://higher-rights.sra.org.uk/solicitors/standards-regulations/transparency-rules/] which require firms and some individuals to publish specified information about costs, complaints and regulatory status (see 'consumer information' below)
- the [Accounts Rules](https://higher-rights.sra.org.uk/solicitors/standards-regulations/accounts-rules/) [https://higher-rights.sra.org.uk/solicitors/standards-regulations/accounts-rules/] which set out our requirements for firms which receive or deal with money belonging to clients (see 'other regulatory issues' below)
- the [Financial Services Rules](https://higher-rights.sra.org.uk/solicitors/standards-regulations/financial-services-scope-rules/) [https://higher-rights.sra.org.uk/solicitors/standards-regulations/financial-services-scope-rules/] allowing SRA-regulated firms to carry on some regulated financial services activities under the scope of our regulation ('other regulatory issues' below).

We will also amend or expand upon our current guidance to make clear the regulatory obligations of authorised CILEX lawyers and former CILEX entities. This will include changes to our [enforcement strategy](https://higher-rights.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/) [https://higher-rights.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/](see 'investigation and enforcement' below).

**Question 7:** Do you agree with the proposed approach of reauthorising CILEX entities as SRA firms or as 'authorised CILEX bodies' depending on who owns and manages them?

**Question 8:** Do you have any other comments on the proposed overall approach to the regulation of firms currently authorised by CILEX (other than CILEX-ACCA Probate entities)?

#### **CILEX-ACCA Probate entities**

The CILEX-ACCA Probate Handbook sets out the current regulatory framework for CILEX-ACCA Probate entities. It covers eligibility, approval and practice rights, includes the CILEX-ACCA Code of Conduct, and sets out other regulatory requirements including around continuing professional development, complaints handling and transparency.

We will maintain the requirements currently set out in the CILEX Regulation-ACCA Probate Handbook in their entirety and regulate CILEX-ACCA Probate entities against those requirements. This will mean that we regulate these entities (passported across through reauthorisation as SRA-ACCA Probate firms):

- in respect of their reserved probate activities only
- under a separate set of rules from those applying to other SRA firms (including former CILEX entities) providing probate activities.

This reflects the limited scope of existing CRL regulation for these entities, as discussed above.

**Question 9:** Do you agree with the proposed approach of maintaining the current regulatory requirements for CILEX-ACCA Probate entities?

## **Education and authorisation**

### **Policy intention**

Our proposed approach to education and authorisation requirements for authorised CILEX lawyers is set out in detail at Annex Two to this consultation. This annex also sets out the key differences between our proposals and CRL's current arrangements.

This section of the consultation paper summarises the key proposals and highlights some issues on which we specifically invite feedback in the consultation.

### **Education**

We will maintain a clear separate route to becoming an authorised legal professional for CILEX members in accordance with the provisions of the CILEX Charter. This includes recognising the role CILEX holds in developing and delivering educational awards which lead to authorisation as a Chartered Legal Executive and the obtaining of specialist practice rights.

We will recognise the CILEX Professional Qualification, as leading to authorisation as a Chartered Legal Executive with practice rights, reflecting the current accreditation conferred by CRL. We will also continue to recognise those who qualify through legacy educational awards previously approved by CRL. And we will work with CILEX to ensure that appropriate routes exist to allow Chartered Legal Executives who qualified under the legacy route without practice rights to obtain them.

We will work with CILEX over time to consider any case for amending these arrangements. And to establish a suitable framework for the accreditation and quality assurance of new qualifications leading to authorisation as a Chartered Legal Executive or CILEX Practitioner, including Apprenticeships.

We will need to agree with the Institute for Apprenticeships and Technical Education that we will become the external quality assurance body for the CILEX Chartered Legal Executive and Litigation and Advocacy apprenticeships. CILEX will remain as the end-point assessment organisation for these apprenticeships.

We propose to apply the same approach to oversight of continuing competence as we currently apply to solicitors. Our [action plan on ongoing competence](https://higher-rights.sra.org.uk/sra/research-publications/ongoing-competence-lsb/) [https://higher-rights.sra.org.uk/sra/research-publications/ongoing-competence-lsb/] sets out how we ensure that solicitors comply with their responsibilities to stay up to date and competent throughout their careers. It covers:

- how we set standards of competence
- how we identify areas where competence may need to be improved through proactive regulatory work, which includes checks on a sample basis
- how we respond to concerns about standards of competence across the profession, in relation to individuals or on a thematic basis.

We will evolve our action plan to include authorised CILEX lawyers and reflect their practice. We do not propose to take on CRL's existing mechanisms for routinely auditing Continuing Professional Development (CPD) records on an annual basis. We recognise that where CILEX conducts routine CPD checks as part of its membership function, CILEX will share with us any information arising from these checks that may raise regulatory issues. We will consider such information in accordance with our existing regulatory processes including whether enforcement action is required.

### **Authorisation**

We will authorise Chartered Legal Executives, CILEX Practitioners, CILEX-ACCA Probate practitioners and CPS Associate Prosecutors as authorised CILEX lawyers.

Our processes will reflect the CILEX Charter requirement to be a Fellow of CILEX in order to hold the protected title of Chartered Legal Executive, as well as the need for character and suitability checks.

Individuals who are already authorised by CRL will not need to reapply to us for authorisation.

Since CILEX members do not qualify and practise in the same way as solicitors, we will set up appropriate processes to manage the differences. In particular, to authorise Chartered Legal Executives, CILEX Practitioners and CILEX-ACCA Probate practitioners for specific areas of practice. We will also maintain the existing authorisation arrangements for CPS Associate Prosecutors and will engage with the CPS on any future changes to these arrangements.

As discussed in 'regulatory standards' above, we will passport across by reauthorising CILEX entities whose owners and managers include a solicitor or a non-authorised person. And we will amend our Authorisation of Firms Rules so that we can authorise existing and, going forwards, new CILEX entities wholly owned and managed by authorised CILEX lawyers, as authorised CILEX bodies.

Where the owners and managers of a former CILEX entity do not include a solicitor, the entity will only be authorised to provide (1) those reserved legal services and/or immigration services for which its owners and managers hold specialist practising rights, and (2) unreserved legal services.

We will retain a separate authorisation process and register for CILEX-ACCA Probate entities as set out in 'regulatory standards' above.

### **Decisions on authorisation**

We use trained staff and adjudicators as decision-makers for authorisation purposes and will take this approach for decisions and appeals relating to the authorisation of individuals as authorised CILEX lawyers.

Our authorisation officers can make any first instance decision relating to authorisation applications under our Schedule of Delegation. Where appropriate, the matter may be referred to a more senior member of staff or an adjudicator.

Where necessary we will use external advisers to assess, for example, work experience portfolios. These advisers will not make authorisation decisions but will make recommendations to our decision makers.

An application to become an authorised CILEX lawyer will involve character and suitability declarations and a Disclosure and Barring Service (DBS) check. This is in addition to any checks or declarations required by CILEX for membership purposes.

We may decide to grant or refuse an application for authorisation as an authorised CILEX lawyer. We will refuse an application if we are not satisfied that the applicant has met our education and training requirements or our character and suitability requirements.

If an application raises a character and suitability issue that we consider poses a risk which can be mitigated by controls, we will consider whether it is appropriate to grant authorisation while imposing conditions on the applicant's scope of practice.

### **Reviews**

Where we decide to refuse to authorise an individual solicitor or a firm, the applicant can ask for an internal review of the first instance decision on the grounds that:

- the decision process was materially flawed, or
- there is new information that would have affected the decision if it had been considered.

A review is not an opportunity for the same arguments to be presented to a different decision maker in the hope they may take a different view.

Reviews are considered by an adjudicator or panel of adjudicators, depending on who took the first instance decision. Reviews are usually conducted on the papers rather than at a hearing, but the reviewer has discretion to invite the applicant to be interviewed.

The same review rights will be available to individuals and firms applying for authorisation as an authorised CILEX lawyer or an authorised CILEX body.

### **Appeals**

There are also statutory external rights of appeal to the High Court or the Solicitors Disciplinary Tribunal for most of our current authorisation decisions. These appeals deal with cases where the applicant essentially disagrees with our judgement about what the outcome of an application should be, and wants the arguments reconsidered by a different decision maker, rather than cases where there is a specific concern about flawed process or new information.

Under the current legislative framework, these rights of appeal will not be available to those seeking authorisation as an authorised CILEX lawyer or an authorised CILEX body (a firm owned and managed only by authorised CILEX lawyers).

As discussed in 'consumer protection' below, we intend to work with CILEX and others to obtain a statutory instrument to ensure consistent consumer protection arrangements across all the firms we regulate. This would also offer a legislative opportunity to provide CILEX members with the same external rights of appeal as those seeking authorisation as a solicitor or SRA-regulated firm.

As an interim measure, we propose to provide those seeking authorisation as an authorised CILEX lawyer or an authorised CILEX body with rights to an internal appeal where they disagree with our judgement about what the outcome of an application should be. The appeal will be conducted by a panel of adjudicators by way of a hearing, which will usually be held in private. The outcome may be to uphold our decision, to vary it or to reverse it.

As we understand it, this interim approach is similar in effect to [CRL's current process for appeals](https://cilexregulation.org.uk/appeals/) [https://cilexregulation.org.uk/appeals/], against authorisation decisions which provides an

initial appeal to the Admission and Licensing Committee and a stage 2 appeal to a CRL's Appeals Panel.

### **Fees**

Individuals and firms seeking authorisation from us pay an initial application or authorisation fee, and then ongoing practising or regulatory fees if their application is approved.

We will set individual authorisation and practising fees in due course, in accordance with the estimated cost of regulating authorised CILEX lawyers. Our overall view is that we expect that the ongoing cost of the regulation element of the practising certificate fees to authorised CILEX lawyers will not be higher than its present level. This does not take into account transition costs, which CILEX has agreed to fund and therefore would only where absolutely necessary be recovered through the initial year's practising certificate fees.

However, as discussed in the draft regulatory impact assessment in this consultation we are not able to forecast with confidence the 'steady state' future cost of regulation without access to more detailed information held by CRL.

A firm seeking authorisation for the first time as a recognised body will pay a £200 application fee, and a licensed body will pay a £2,000 application fee and a fee of £150 for each person requiring SRA approval.

### **Proposed regulatory arrangements**

Annex Two includes the following draft rules and material:

- new draft rules for the authorisation of individual authorised CILEX lawyers, known as the SRA Authorisation of CILEX Lawyers Regulations (Annex 2.1)
- proposed amendments to our Authorisation of Firms Rules (AFRs) for the authorisation of entities owned and managed only by authorised CILEX lawyers, as authorised CILEX bodies (Annex 2.2)
- information on our proposals for other connected rules and regulations related to authorisation and education (Annex 2.3).

Draft amendments to our Application, Notice, Review and Appeal Rules (ANRARs) are at Annex 4.1.

These rules are intended to reflect the requirements set out in existing CRL education and authorisation rules, such as the Handbooks for those seeking specialist Practising Rights. Our detailed education requirements will be set out in accompanying prescribed statements or forms that we will publish from time to time. Initially these will incorporate the existing CRL requirements.

As discussed above, we will maintain the current regulatory arrangements for CILEX-ACCA Probate practitioners and entities and will accordingly make consequential changes to the rules currently set out in the CILEX-ACCA Probate Handbook.

The current CILEX and CRL arrangements for education and authorisation provide many routes to authorisation, underpinned by a variety of rules, regulations, handbooks and guidance. In our draft rules we have sought to consolidate the rules and documentation relating to these routes as far as possible, to clarify the options available without changing the underlying authorisation requirements. We recognise this is a complex and technical area, and we welcome feedback in response to this consultation on the approach we have taken.

### **Issues relating to qualifying experience**

In preparing this consultation we have identified several issues relating to the assessment of qualifying experience for authorisation as an authorised CILEX lawyer. We invite views on our proposed approach to these issues:



1. CRL's [authorisation rules \(PDF 20 Pages, 370KB\)](https://cilexregulation.org.uk/wp-content/uploads/2021/06/Practitioner-Authorisation-Rules-with-QASA-amends-June-2021-Annex-2.pdf) [https://cilexregulation.org.uk/wp-content/uploads/2021/06/Practitioner-Authorisation-Rules-with-QASA-amends-June-2021-Annex-2.pdf] state that time spent on a Legal Practice Course (LPC) in connection with training as a solicitor will be treated as qualifying experience. The LPC is now a legacy training route to qualification as a solicitor and is being replaced by the SQE. We will not treat participation in an SQE preparatory course as equivalent to the LPC, because SQE preparatory courses are not regulated by us. We will consider the interface between solicitor training and qualifying experience for authorisation as an authorised CILEX lawyer as part of our future consideration of the education requirements for authorised CILEX lawyers.
2. CRL also [requires](https://cilexregulation.org.uk/i-am-an-applicant/management-skills/) [https://cilexregulation.org.uk/i-am-an-applicant/management-skills/] evidence of certain skills and experience relating to practice management as part of the process of authorising individuals as managers of CILEX entities. We do not currently scrutinise practice management skills in detail as part of the approval process for managers of SRA firms. And we do not intend to do this when authorising individuals who are authorised CILEX lawyers as managers of SRA firms (including authorised CILEX bodies owned and managed only by authorised CILEX lawyers) in future. However, we require all individuals we regulate to maintain their competence, and have the requisite knowledge and skills, for the role they carry out. And we will keep this issue under review as part of our wider work on continuing competence and business skills.
3. CRL's [rules](https://cilexregulation.org.uk/i-am-an-applicant/management-skills/) [https://cilexregulation.org.uk/i-am-an-applicant/management-skills/] on qualifying experience allow sign-off by an authorised person or, at the regulator's discretion, anyone else who supervises or employs the candidate. In our draft rules we have removed this discretion. The qualifying experience requirements for solicitors require sign-off by an authorised person, and we consider this an important safeguard. It means that anyone vouching for an individual's qualifying experience will be held to standards of integrity by one of the legal regulators.

We will make transitional arrangements if necessary to ensure that people currently working towards authorisation as an authorised CILEX lawyer are not unfairly disadvantaged by this change. For the future, our waiver rules provide us with an avenue to consider any case where sign-off by an authorised person is not possible and there is an acceptable alternative way of signing off qualifying experience.

**Question 10:** Do you agree with our proposed overall approach to the education and authorisation requirements for individual authorised CILEX lawyers and for authorised CILEX bodies?

**Question 11:** Do you agree with our proposed approach to continuing professional competence for authorised CILEX lawyers?

**Question 12:** Do you have any comments on the issues relating to qualifying experience discussed in this consultation paper? If so, please explain.

**Question 13:** Do you have any comments on other specific issues relating to our approach to education and authorisation requirements? If so, please explain.

**Question 14:** Do you have any other comments on the draft rules in Annex Two to the consultation? If so, please explain.

## Registers

### Policy intention

CILEX Practitioners and Chartered Legal Executives are listed on the [CILEX Authorised Practitioners Directory](https://crlportal.cilexgroup.org.uk/CRL-Directory) [https://crlportal.cilexgroup.org.uk/CRL-Directory] which is published by CRL and shows the regulated legal services that each member is authorised to provide. We will take on the ownership and publication of this register (to be retitled the Authorised CILEX Lawyers Register) and will explore with CILEX the scope to present it to the public alongside the Solicitors Register in a way that supports improved consumer understanding and choice as to those authorised to provide legal services. The register will also include details of any

regulatory action that we have taken in relation to authorised CILEX lawyers, such as placing conditions on a practising certificate or disciplinary action.

CILEX entities reauthorised as SRA firms or authorised CILEX bodies will be listed as such on our [Solicitors Register](https://higher-rights.sra.org.uk/consumers/register/) [https://higher-rights.sra.org.uk/consumers/register/]. Where relevant this will show the scope of firms' authorisation in line with the practising rights of the authorised CILEX lawyers who own and manage them.

We will also take on ownership and publication of the separate register of [CILEX-ACCA Probate entities](https://cilexregulation.org.uk/cilex-accaprobate-entity-price-and-service-transparency-regulations/) [https://cilexregulation.org.uk/cilex-accaprobate-entity-price-and-service-transparency-regulations/], currently published by CRL.

We will liaise with the CPS on future arrangements for publishing information about CPS Associate Prosecutors.

It will remain CILEX's responsibility to keep records of non-authorised CILEX members such as paralegals and students, and of non-practising CILEX members, and to publish these where applicable.

### **Proposed regulatory arrangements**

We will amend our [Roll, Registers and Publication Regulations](https://higher-rights.sra.org.uk/solicitors/standards-regulations/roll-registers-publication-regulations/) [https://higher-rights.sra.org.uk/solicitors/standards-regulations/roll-registers-publication-regulations/] to cover the Authorised CILEX Lawyers Register and set out the information it will hold about each individual. This will reflect the content of the current register published by CRL, but we will consider whether any changes could support improved consumer understanding and choice. We will also amend the rules as necessary to cover information about authorised CILEX bodies and CILEX-ACCA Probate entities.

**Question 15:** Do you have any comments on our proposed approach to registers and regulatory information for individual authorised CILEX lawyers, for authorised CILEX bodies and/or for CILEX-ACCA Probate entities? If so, please explain.

## **Investigation and enforcement**

### **Policy intention**

Our proposed approach to the investigation and enforcement of authorised CILEX lawyers is set out in detail at Annex Three to this consultation, with drafts of the relevant rules and other material. This section of the consultation paper summarises the key proposals and highlights issues on which we specifically invite feedback in the consultation.

### **Processes**

We will handle any reports about authorised CILEX lawyers, using broadly the same processes as for reports about solicitors and other individuals and firms we currently regulate (triage, assessment, investigation, notice and decision).

### **Disciplinary powers and sanctions**

We will take on [CRL's disciplinary powers](https://cilexregulation.org.uk/complaints/disciplinary-panels-and-tribunals/) [https://cilexregulation.org.uk/complaints/disciplinary-panels-and-tribunals/] to investigate, reprimand, fine, and where necessary control and restrict the practice of authorised CILEX lawyers. We will also adopt our existing powers, to issue advice and warnings, to impose fixed fines or interim controls, for authorised CILEX lawyers. Where a CRL sanction has the same effect as an SRA sanction but we and CRL currently use different terms for them (for instance, 'rebuke' and 'reprimand'), we propose to use the SRA term.

The powers and controls available to us in respect of authorised CILEX lawyers are set out in a draft new Appendix B to our Enforcement Strategy, which is at Annex 3.2 to this consultation paper. They include:



- accepting an Undertaking where an authorised CILEX lawyer agrees to take action to prevent a repeat of misconduct
- issuing a Rebuke
- imposing Conditions on the practice of an authorised CILEX lawyer
- imposing a Financial Penalty of up to £50 million (in line with current CRL arrangements) set in accordance with our [guidance on our approach](https://higher-rights.sra.org.uk/solicitors/guidance/financial-penalties/) [https://higher-rights.sra.org.uk/solicitors/guidance/financial-penalties/] to financial penalties
- imposing a fixed penalty of up to £1,500 for some lower-level breaches of our rules (such as a failure to comply with a routine request for information, to publish information under our Transparency Rules or to ensure appropriate approval or notification of role-holders in a firm)
- making an Interim Order to suspend or restrict an authorised CILEX lawyer's membership and/or authorisation
- excluding an authorised CILEX lawyer from CILEX membership and from authorisation.

The enforcement powers listed above will sit alongside our existing powers over non-solicitors working within SRA firms as employees or managers. We highlight other significant provisions in the draft rules in 'proposed regulatory arrangements' below.

We are conscious of the need to avoid unnecessary duplication in the use of (1) our existing powers in relation to non-solicitor employees for breach of the SRA Code of Conduct for Firms, and (2) our new powers in respect of authorised CILEX lawyers.

In order to address this, we propose that where the same standards apply, our primary grounds for action will be in relation to the individual's status as an authorised CILEX lawyer. We will retain and continue to use in relation to authorised CILEX lawyers where appropriate:

- our statutory power to make, or ask the Solicitors Disciplinary Tribunal (SDT) to make, orders preventing non-solicitors from working or holding roles in SRA firms (Under s.43 of the Solicitors Act 1974 and s.99 of the Legal Services Act 2007)
- our powers to remove or limit our approval of individuals, including authorised CILEX lawyers, managing or controlling SRA firms.

#### **Decisions on enforcement**

We use trained staff and adjudicators as decision-makers for most disciplinary decisions in accordance with a [published schedule of delegations](https://higher-rights.sra.org.uk/sra/decision-making/schedule-delegation/) [https://higher-rights.sra.org.uk/sra/decision-making/schedule-delegation/]. First instance decisions will be taken by an appropriate staff member (such as a case officer or manager in a relevant operational team) or by an adjudicator or panel of adjudicators.

We will take the same approach for all equivalent matters relating to authorised CILEX lawyers and will update our Schedule of Delegation accordingly.

For solicitors and certain SRA firms (recognised bodies) we [refer certain cases for prosecution at a hearing before the SDT](https://higher-rights.sra.org.uk/sra/news/sra-sdt-statement-2023/) [https://higher-rights.sra.org.uk/sra/news/sra-sdt-statement-2023/]. However, we do not have powers to refer authorised CILEX lawyers or authorised CILEX bodies to the SDT, except when using our current powers as outlined above.

So our powers to refer individuals and firms for first instance hearings before the SDT would not extend to referring authorised CILEX lawyers in that capacity (as opposed to for example, by virtue of their employment in an SRA firm or when seeking a statutory order restricting their practice), or to CILEX entities without solicitor members (that are not reauthorised as recognised bodies under our rules).

We propose to adopt for those individuals and entities the procedure that we currently apply to licensed bodies, for which the route to the SDT is also not available. This is to hold a hearing (in private unless the panel considers otherwise) where:

- there are material disputes of fact which cannot be determined without a hearing in which the parties are cross-examined, or
- there is an exceptional public interest in matters being ventilated in public.



We consider that a hearing should always be held where the recommendation is that the sanction will be cessation or suspension of the authorised CILEX lawyer's membership.

Our current fining powers for SRA firms that are recognised bodies require us to refer cases where the likely financial penalty exceeds £25,000 to an SDT hearing. But for firms that are licensed bodies we have the power to issue fines of up to £250 million for the firm and £50 million for individuals working within it.

As with licensed bodies, we would not expect to hold a hearing in every case where the likely financial penalty for an authorised CILEX lawyer exceeds £25,000. We would only hold a hearing in cases that meet the criteria above for a hearing.

Where we hold a hearing, we will manage it in accordance with our Regulatory and Disciplinary Procedure Rules (RDPRs) and published [guidance \[https://higher-rights.sra.org.uk/solicitors/guidance/sra-approach-to-hearings/\]](https://higher-rights.sra.org.uk/solicitors/guidance/sra-approach-to-hearings/).

## Reviews

As with our first instance decisions on authorisation (see 'Education and authorisation' above), solicitors and SRA firms can ask for an internal review of a first instance enforcement decision on the grounds that:

- the decision process was materially flawed, or
- there is new information that would have affected the decision if it had been considered.

A review is not an opportunity for the same arguments to be presented to a different decision maker in the hope they may take a different view.

Reviews are considered by an adjudicator or panel of adjudicators, depending on who took the first instance decision. Reviews are usually conducted on the papers rather than at a hearing, but the reviewer has discretion to invite the respondent to be interviewed.

The same review rights will be available to authorised CILEX lawyers and authorised CILEX bodies.

## Appeals

As with our decisions on authorisation, solicitors and SRA firms have statutory rights of external appeal to the SDT against our enforcement decisions. These appeals deal with cases where the respondent essentially disagrees with our judgement about what the outcome of a case should be, or the nature or level of any sanction, and wants the arguments reconsidered by a different decision maker. Similarly, respondents can appeal a first instance enforcement decision taken by the SDT to the High Court.

These statutory external rights of appeal against enforcement decisions will not be available to authorised CILEX lawyers or authorised CILEX bodies. As discussed in 'education and authorisation' above, we intend to work with CILEX to seek a statutory instrument which could give CILEX members the same external rights of appeal as solicitors and SRA firms. This would cover decisions on enforcement as well as authorisation.

As an interim measure, we propose to provide authorised CILEX lawyers and authorised CILEX bodies with rights to an internal appeal where they disagree with our judgement about what the outcome of an enforcement case should be. The appeal will be conducted by a panel of adjudicators by way of a hearing, which will usually be held in private. The outcome may be to uphold our decision, to vary it or to reverse it.

As with authorisation, our understanding is that this interim arrangement will be similar in effect to CRL's current processes for appeals about enforcement decisions.

Certain CRL licensing decisions can be [appealed \[https://www.legislation.gov.uk/uksi/2020/301/made/data.xht?view=snippet&wrap=true\]](https://www.legislation.gov.uk/uksi/2020/301/made/data.xht?view=snippet&wrap=true) to the First Tier Tribunal (FTT). For SRA licensed bodies, our legislation provides a right of appeal to the SDT.

We propose that we engage with the SDT and the FTT during this consultation to ensure we understand all relevant considerations before deciding the most appropriate appeal route for CILEX entities that are reauthorised as SRA licensed bodies.

### **Publication of decisions**

We usually publish information about decisions to impose a sanction or control on a regulated individual or firm, in the public interest. Our approach is set out in our [guidance \[https://higher-rights.sra.org.uk/solicitors/guidance/disciplinary-publishing-regulatory-disciplinary-decisions/\]](https://higher-rights.sra.org.uk/solicitors/guidance/disciplinary-publishing-regulatory-disciplinary-decisions/). We will apply the same approach when publishing information about enforcement decisions relating to authorised CILEX lawyers and will update our guidance accordingly. Our overall approach to publishing decisions is similar to CRL's [Publication Policy \(PDF 10 Pages, 312KB\) \[https://cilexregulation.org.uk/wp-content/uploads/2018/12/IDAR-Annex-3.pdf\]](https://cilexregulation.org.uk/wp-content/uploads/2018/12/IDAR-Annex-3.pdf).

### **Costs**

CRL has similar powers to ours to claim costs in regard to proceedings, and its Appeals Panel has powers to make ancillary orders including orders for costs. Where we are able we intend to recover our costs relating to contested matters involving authorised CILEX lawyers and bodies, as well as matters that are resolved by agreement. Where a matter is contested we will use the fee schedule currently used for the SDT.

### **Proposed regulatory arrangements**

We will amend our RDPRs and our ANRARs to provide for the investigation of concerns about authorised CILEX lawyers and the entities in which they work. We will also expand our Enforcement Strategy to set out our approach to dealing with breaches of our requirements by authorised CILEX lawyers. Draft amended RDPRs and ANRARs are at Annexes 3.1 and 4.1 to this consultation paper.

The draft rules seek to deliver the policy intentions described above. Other provisions in the draft rules include:

- we will be able to use interim orders to suspend an individual's practising rights pending the outcome of an investigation or disciplinary proceedings
- we will be able to apply conditions on an individual's practice during an investigation, and will consider whether the controls should continue to apply or varied at the conclusion of that matter
- where we decide that an individual authorised CILEX lawyer should lose their practising rights, the administrative mechanism for this will be that CILEX terminates their membership.

Annex Three discusses in more detail the approach we have taken in the draft rules and how it compares with CRL's current arrangements.

**Question 16:** Do you agree with our proposal to use trained staff, adjudicators and (where appropriate) panels of adjudicators to take investigation and enforcement decisions about individual authorised CILEX lawyers?

**Question 17:** Do you agree with our approach to enforcement for authorised CILEX lawyers and bodies, and how we have aligned it with solicitors and SRA authorised firms?

**Question 18:** Do you agree that it is appropriate for matters that could for example, result in the removal of practising right to be dealt with by way of hearing?

**Question 19:** Do you have any other comments on the draft rules and Enforcement Strategy material in Annex Three? If so, please explain.

### **Client protection**

#### **Policy intention**

Our key client protection arrangements in relation to law firms include:

- setting requirements for firms to hold PII
- intervening in firms to protect clients' monies and interests
- handling claims for compensation for loss arising from ethical failures (including theft of client money, failure to account and failure to put in place PII).

As discussed under 'regulatory standards' above, CILEX entities will be reauthorised as SRA firms based on the specialist practising rights of the CILEX members who manage them. This would mean that our client protection requirements will generally apply to those entities in the same way as to other SRA-regulated firms, with some exceptions as set out below.

## **PII**

Our [PII requirements for SRA firms](https://higher-rights.sra.org.uk/solicitors/standards-regulations/indemnity-insurance-rules/) include requirements for minimum coverage per claim (£2m for traditional partnerships and sole practitioners and £3m for incorporated firms) and six years of run-off cover.

CRL has [minimum PII requirements](https://cilexregulation.org.uk/entity/professional-indemnity-insurance/#:~:text=The%20CILEX%20Regulation%20Transparency%20Rules,are%20covered%20by%20your%20PII.) which are broadly similar to ours, but with a minimum level of cover of £2m for all CILEX entities. Those incorporated CILEX entities that are reauthorised as SRA firms, including as authorised CILEX bodies, would therefore need to obtain minimum PII coverage of £3m rather than £2m per claim. We understand most CILEX entities are incorporated, so would need to increase their minimum coverage from £2m to £3m per claim.

PII protection for CILEX-ACCA Probate entities is provided by the ACCA-regulated accountancy practice to which an entity is linked. CRL does not set separate PII requirements for CILEX-ACCA Probate entities. As discussed in 'regulatory standards' above, we propose to maintain the current regulatory requirements for CILEX-ACCA entities so would not require them to obtain additional PII cover under our regulatory arrangements.

## **Interventions**

Our [intervention regime](https://higher-rights.sra.org.uk/solicitors/enforcement/intervention-reasons-costs/) is essentially the same as the regime that currently applies to CILEX entities. This covers serving notice, taking possession of files and money, tracing clients, and returning money held on trust and papers. If CILEX redelegates its intervention powers to the SRA, we will handle any required intervention in the same way as for other SRA firms. We have published [guidance](https://higher-rights.sra.org.uk/solicitors/guidance/consumer-intervening-protect-clients/) on how we approach decisions on whether to intervene in a firm.

## **Compensation arrangements**

The [SRA Compensation Fund](https://higher-rights.sra.org.uk/consumers/compensation-fund/) provides discretionary compensation to clients of a firm who suffer loss because of ethical failures by a firm (such as misuse of client money), or because a firm has failed to put in place the insurance arrangements we require. CRL has its own [compensation arrangements](https://cilexregulation.org.uk/law-firms/cilex-compensation-arrangements/), which provide more limited cover for these types of loss.

In particular, the CRL arrangements are only available in respect of those legal services that CRL has specifically authorised a firm to offer, and therefore do not cover any unreserved activities they may carry out. The CRL arrangements are also unavailable to clients of CILEX-ACCA Probate entities, which are required by ACCA to have fidelity guarantee insurance which covers fraud or dishonesty in respect of money held in trust by the firm.

If we reauthorise CILEX entities as SRA firms, then firms that are authorised:

- as a recognised body because their owners and managers include at least one solicitor, or
- as a licensed body because their owners and managers include at least one person who is not an authorised lawyer

would fall within the current definition of a 'defaulting practitioner' in the [SRA Compensation Fund Rules](https://higher-rights.sra.org.uk/solicitors/standards-regulations/compensation-fund-rules/) (<https://higher-rights.sra.org.uk/solicitors/standards-regulations/compensation-fund-rules/>). So their clients and others that engage with the firm would benefit from the wider consumer protection provided by our Compensation Fund.

However, those authorised CILEX bodies that are owned and managed only by authorised CILEX lawyers would not currently fall within these categories. Further, the statutory framework for our current rules only permits the collection of funds and payment of grants in relation to firms in these categories. Authorised CILEX bodies will therefore need to be brought within scope of our Compensation Fund via a statutory instrument (under s.69 of the Legal Services Act 2007), which requires LSB and UK Government support.

The same issue applies to those authorised CILEX lawyers who practise as self-employed practitioners offering unreserved legal services outside of an authorised firm. Clients of solicitors who work on a self-employed 'freelance' basis (carrying on reserved or unreserved activities) outside an authorised firm have access to the SRA Compensation Fund. But clients of an authorised CILEX lawyer in the same circumstances cannot currently access the CRL compensation arrangements and would not be able to access the existing SRA Compensation Fund.

We propose to work with CILEX, the LSB and the Government to pursue a statutory instrument that would give the clients of (1) authorised CILEX bodies and (2) self-employed authorised CILEX lawyers, access to the SRA Compensation Fund.

However, due to the legislative process we cannot guarantee this would be in place by the point at which we take on the regulation of authorised CILEX lawyers. We will therefore work with CILEX to arrange appropriate transitional arrangements until the necessary statutory instrument is in place. This would include CILEX underwriting the arrangements by maintaining access to the current compensation arrangements for clients of the affected former CILEX entities until we can provide access to the SRA Compensation Fund.

Alternative approaches for these firms could include:

- changing the firm's management and ownership structure so its clients can access the SRA Compensation Fund – for instance by appointing a director who is a non-authorised person or a solicitor
- transferring to the jurisdiction of another approved legal regulator which could offer alternative appropriate consumer protection arrangements.

If appropriate transitional arrangements cannot be put in place, the fallback option would be to impose restrictions on the handling of client money by these entities, to reduce the risk of loss to consumers. Where appropriate, firms could consider the use of a Third Party Managed Account for transactional services. However, we appreciate this could have significant implications for the firms affected.

**Question 20:** Do you agree we should provide access to the SRA Compensation Fund for clients of former CILEX entities where the entity is authorised on the same basis as existing SRA firms (as its owners and managers include at least one solicitor or non-authorised person)?

**Question 21:** Do you agree we should work with others to pursue a statutory instrument to enable access to the SRA Compensation Fund for clients of (1) authorised CILEX bodies owned and managed only by authorised CILEX lawyers, and (2) authorised CILEX lawyers providing unreserved services outside an authorised firm?

**Question 22:** Do you have any comments on the options for transitional consumer protection arrangements for authorised CILEX bodies? Please explain.

As noted above, CILEX-ACCA Probate entities do not have access to the CRL Compensation Fund because ACCA requires their linked accountancy practice to make separate consumer protection arrangements for losses caused by ethical failures. Since we propose to maintain the existing regulatory arrangements for these entities, they will not be covered by the SRA Compensation Fund.

## Proposed regulatory arrangements

### PII

Our PII requirements for SRA firms are based on Minimum Terms and Conditions (MTCs) set out in our [Indemnity Insurance Rules \[https://higher-rights.sra.org.uk/solicitors/standards-regulations/indemnity-insurance-rules/\]](https://higher-rights.sra.org.uk/solicitors/standards-regulations/indemnity-insurance-rules/). We do not propose to amend these Rules, so they will apply in their current form to those CILEX entities (other than CILEX-ACCA Probate entities) that we reauthorise as SRA firms.

**Question 23:** Do you have any comments on the proposal to require CILEX entities reauthorised as SRA firms (other than CILEX-ACCA Probate entities) to comply with our MTCs, including the minimum £3m PII coverage per claim for incorporated firms? If so, please explain.

### Interventions

We rely on our [statutory powers \[https://higher-rights.sra.org.uk/solicitors/enforcement/intervention-reasons-costs/#grounds\]](https://higher-rights.sra.org.uk/solicitors/enforcement/intervention-reasons-costs/#grounds) to intervene in SRA-regulated firms and do not make rules covering our intervention work. We will continue to take this approach, relying on delegated powers from CILEX (obtained in 2014 through an order under s.69 of the Act) to intervene in authorised CILEX bodies owned and managed only by authorised CILEX lawyers.

**Question 24:** Do you have any comments on our proposal to apply our current intervention regime to CILEX entities which are reauthorised as SRA firms or authorised CILEX bodies? If so, please explain.

### Compensation arrangements

We discuss the options for future regulatory arrangements under 'policy intention' above and invite views on these options in consultation questions 20-22 above.

## Anti-money laundering (AML)

### Policy intention

Under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, the Law Society and CILEX are the respective professional body supervisors for those regulated by them. Therefore AML supervision will pass from CRL to us along with other regulatory responsibilities for authorised CILEX lawyers. This is subject to any changes flowing from the 2023 UK Government consultation on future arrangements for AML supervision.

We will therefore supervise the [statutory AML requirements \[https://higher-rights.sra.org.uk/solicitors/resources-archived/money-laundering/aml-regulations-apply/\]](https://higher-rights.sra.org.uk/solicitors/resources-archived/money-laundering/aml-regulations-apply/) that apply to authorised CILEX lawyers, and to CILEX entities moving to SRA authorisation, in the same way and with the same processes as we supervise SRA firms and solicitors. This will enable consistent handling and reporting of AML issues as they affect solicitors, other SRA-regulated individuals, authorised firms and authorised CILEX lawyers.

We currently supervise over six thousand firms for the purpose of AML requirements while CRL supervises fewer than 30 firms and individuals. We take a risk-based and proactive approach to AML supervision and have recently increased the resource we allocate to this work, including guidance and resources to help those we regulate to assess and manage AML risks. We will support authorised CILEX lawyers and CILEX entities that transfer to SRA

regulation so that they are aware of their AML obligations and our guidance on how we supervise compliance.

We will not take on AML supervision responsibility for CILEX-ACCA Probate entities since this function is exercised by ACCA for each entity as part of its supervision of the relevant linked ACCA accountancy practice.

### **Proposed regulatory arrangements**

The AML requirements and supervisory framework are set out in legislation and will not change as a result of our proposals.

**Question 25:** Do you have any comments on our proposal to apply our established approach to AML supervision for authorised CILEX lawyers and for CILEX entities reauthorised as SRA firms? If so, please explain.

## **Consumer information**

### **Policy intention**

As set out in 'regulatory standards' above, our [Transparency Rules \[https://higher-rights.sra.org.uk/solicitors/standards-regulations/transparency-rules/\]](https://higher-rights.sra.org.uk/solicitors/standards-regulations/transparency-rules/) will apply to current CILEX entities that are reauthorised as SRA firms. CRL has its own Transparency Rules covering broadly similar themes to ours. Key differences between CRL's transparency requirements and ours are that:

- the CRL Transparency Rules only apply to firms offering conveyancing, probate and immigration, and (via the CILEX-ACCA Handbook) to CILEX-ACCA Probate entities
- the SRA requirements on information about complaints and regulatory status apply to all SRA firms and to individuals providing legal services outside an authorised firm, and our requirements on costs information apply to all those firms or individuals offering any of a specified list of legal services. The areas of law covered by these requirements are (for individual consumers) conveyancing, non-contested probate, immigration applications and appeals, summary road traffic offences, Employment Tribunal claims for unfair or wrongful dismissal, (for businesses) claims for unfair or wrongful dismissal, debt recovery up to £100,000 and licensing applications.

Our proposed approach would therefore mean that:

- all former CILEX entities reauthorised as SRA firms or authorised CILEX bodies will have to publish information about their regulatory status and complaints procedures, while at the moment they need only do this if they provide conveyancing, probate and/or immigration services
- they will also need to include the SRA clickable logo in a prominent place on their website. We will adapt the website material to which the clickable logo points as necessary to reflect any special arrangements for client protection, as discussed in the 'client protection' section of this consultation
- any firm offering any of the services falling within the scope of our costs requirements will have to publish costs information about those services
- individual authorised CILEX lawyers providing unreserved legal services outside an authorised firm will have to publish information about their regulatory status, their complaints procedures, and their costs and services in any areas of law they offer that are covered by our costs requirements.

We consider that these requirements are important in order to promote consumer and public understanding of the regulatory status of providers and the associated consumer protections. They will also give consumers more information about the costs and services offered in specified areas of law by a wider range of providers, including authorised CILEX lawyers. This will help people to shop around and find the right provider for their needs.

If these proposals go ahead, we will support those CILEX entities reauthorised as SRA firms to comply with these requirements.

In our draft Business Plan for 2023-24, we have said we propose to consult on changes to our transparency requirements to better support consumer choice and comparison. Any resulting changes to our current transparency requirements for solicitors and SRA authorised firms will also apply to authorised CILEX lawyers in due course as appropriate.

CRL's transparency requirements for CILEX-ACCA Probate entities are set out in the CILEX-ACCA Handbook. As discussed above, we intend to retain the current regulatory requirements for these entities. For simplicity, we propose to retain the current CRL transparency requirements for this cohort of firms rather than requiring them to follow our Transparency Rules. As noted above, the current CRL rules cover broadly similar themes to ours. We will reconsider our approach to transparency requirements for CILEX-ACCA Probate entities in the light of the outcome of our planned work on changes to our consumer information rules.

### **Proposed regulatory arrangements**

We will make consequential changes to the SRA Transparency Rules to confirm that they apply to authorised CILEX lawyers providing unreserved legal services outside an authorised firm.

**Question 26:** Do you have any comments on our proposed approach to consumer information requirements for CILEX entities which are reauthorised as SRA firms? If so, please explain.

**Question 27:** Do you have any comments on our proposed approach to consumer information requirements for authorised CILEX lawyers providing unreserved legal services outside an authorised firm? If so, please explain.

### **Communications**

Authorised CILEX lawyers will be included in our outreach, communications, research and diversity data collection work, and our annual reporting. This will include our work in Wales. We will establish a dedicated area on our website with relevant information for the profession and the public.

Our communications, website and branding relating to authorised CILEX lawyers will:

- maintain and promote the distinct identity of CILEX members and the CILEX route into the profession
- explain how authorised CILEX lawyers are regulated by the SRA and set out what this means for the different types of CILEX member
- use the phrase 'SRA regulating authorised CILEX lawyers' as a strapline where appropriate to raise awareness of our role in respect of authorised CILEX members
- include in our suite of corporate reporting a report on the regulation of authorised CILEX lawyers as a discrete category to allow comparison of data across the professions
- confirm that authorised CILEX lawyers have the same competence as solicitors in areas where they have practising rights, and that this flows from their training and qualifications as well as ongoing competence requirements.

As set out in 'Registers' above, we will take on the ownership and publication of the Authorised CILEX Lawyers Register and will present it to the public alongside the Solicitors Register in a way that supports improved consumer understanding and choice.

**Question 28:** Do you have any comments on our proposed approach to communications and reporting relating to authorised CILEX lawyers? If so, please explain.

### **Other regulatory issues**

#### **SRA Accounts Rules**

The SRA [Accounts Rules](https://higher-rights.sra.org.uk/solicitors/standards-regulations/accounts-rules/) [https://higher-rights.sra.org.uk/solicitors/standards-regulations/accounts-rules/] apply to SRA authorised firms, their managers and all employees. The rules will therefore apply to former CILEX entities that are permitted to hold and control client money once they are reauthorised by us as SRA firms or authorised CILEX bodies.

### Official appointments

The CRL [Accounts Rules \(PDF 16 Pages, 206KB\)](https://cilexregulation.org.uk/wp-content/uploads/2018/11/CILEX-Accounts-Rules.pdf) [https://cilexregulation.org.uk/wp-content/uploads/2018/11/CILEX-Accounts-Rules.pdf] require any CILEX authorised person proposing to act as a liquidator, trustee in bankruptcy, Court of Protection deputy or trustee of an occupational pension scheme (all known as 'official appointments') to:

- obtain authorisation from CRL before doing so; and
- comply with any conditions that CRL may attach to any authorisation.

Such official appointments usually carry their own regulatory requirements, which are not set by the legal services regulators. We do not require solicitors or others working in an SRA authorised firm to obtain prior authorisation from us if they intend to act in any of the official capacities mentioned above.

We rely on the requirements – in terms of core competences, character and suitability – that apply to solicitors at the point of authorisation, as well as obligations of ongoing competence. We propose to apply the same approach to authorised CILEX lawyers.

If an authorised CILEX lawyer working in an SRA firm or a CILEX authorised body obtains an official appointment that requires handling client money (either via a client account or by operating the client's own account), they will be subject to the relevant SRA rules. These include our Principles, the SRA Codes of Conduct and our Accounts Rules.

Consequently we do not think it is necessary to retain a requirement for authorised CILEX lawyers to be separately authorised to take up an official appointment. As with solicitors, if there are concerns about an individual's suitability to hold an official appointment, this can be managed through conditions on how they practise.

**Question 29:** Do you think there are any good reasons to maintain CRL's requirement for an authorised CILEX lawyer to be authorised separately to take up one or more of these official roles? If so, please explain.

### Third-party managed accounts (TPMAs)

The CRL Accounts Rules allow CILEX firms to use a TPMA as an alternative way to hold client funds, provided that CRL approves this and grants a waiver. In 2022 CRL consulted on a proposal to bar CILEX firms from holding client money and replace the existing CRL 'client account' arrangements with a TPMA.

SRA authorised firms can use a TPMA without our approval. The SRA Accounts Rules set out the requirements firms need to comply with if using a TPMA (see Rule 11). Firms are still obliged to protect client money and assets and would need to make sure that both the decision to use a TPMA, and the TPMA they use, is appropriate in each individual case. The firm would also be expected to make sure that the TPMA provider is regulated by the Financial Conduct Authority and that there is access to the appropriate financial services compensation schemes.

We consider that our approach provides a safe and appropriate mechanism for the use of TPMAs by law firms. This approach will apply to any CILEX entities we reauthorise as SRA firms or authorised CILEX bodies, as they will be subject to the SRA Accounts Rules.

**Question 30:** Are there good reasons why CILEX entities reauthorised as SRA firms should need to obtain our approval on a case by case basis to use a TPMA? If so, please explain.

### Regulated financial services activities



We are a designated professional body (DPB) under Part 20 of the Financial Services and Markets Act 2000 (FSMA) and have rules that govern the carrying on of regulated financial services activities by SRA firms (the SRA Financial Services (Scope) Rules) and the SRA Financial Services (Conduct of Business) Rules). These allow SRA firms to carry on regulated financial services activities, such as arranging a contract of insurance or providing debt counselling, under the scope of our regulation if they comply with our rules and if the activity '*...arises out of, or is complementary to, the provision of a particular professional service to a particular client...*' (s.332(4) of FSMA).

Firms that carry on regulated financial services activities under the scope of our regulation are referred to as exempt professional firms (EPF) and do not need separate authorisation from the Financial Conduct Authority (FCA).

CILEX, as the approved regulator, is not currently a DPB and so CILEX entities can only carry on regulated financial services activities if they are authorised by the FCA.

As a DPB we have overseen firms carrying on regulated financial services activities for a number of years, and we consider that our financial services rules provide an appropriate framework for ensuring that clients' interests are adequately protected.

So we do not propose to prohibit CILEX entities that are reauthorised as SRA firms, including authorised CILEX bodies, from carrying on regulated financial services activities that are complementary to their legal practice. These entities will therefore benefit from the statutory Part 20 exemption as an EPF if they determine they are in a position to do so.

However, if we have good reason to consider that a CILEX entity reauthorised as an SRA firm is not suitable to carry on regulated financial services, we can prevent it from doing so through conditions on authorisation on a case by case basis.

As is the case for solicitors practising on their own (freelancers), an authorised CILEX lawyer working outside of an authorised entity will not be permitted to carry on regulated financial services activities or claims management activities.

**Question 31:** Do you have any comments on our proposed approach to allow CILEX entities to carry on regulated financial services activities as an exempt professional firm? If so, please explain.

### **Authorised CILEX lawyers in non-commercial bodies (including not for profit bodies)**

The SRA Code of Conduct for Firms and our other rules for firms, such as our Accounts Rules and Indemnity Insurance Rules, do not apply to non-commercial bodies. We therefore have separate arrangements requiring solicitors working in such bodies:

- if they hold client money in their name, to comply (and make sure the body that they work in complies) with our prescribed terms. These terms set out, for example, what client money is and how it should be managed. Clients of the solicitor have access to the SRA Compensation Fund.
- if they provide reserved legal activities, to make sure the body that they work in takes out and maintains indemnity insurance that provides 'adequate and appropriate' cover for all the services the solicitor provides.

Authorised CILEX lawyers working in a body not authorised by the SRA will not be able to provide reserved legal activities and will not be able to hold client money in their own name. The requirements we apply to solicitors working in non-commercial bodies will therefore not be needed.

**Question 32:** Do you have any comments about our proposed approach to authorised CILEX lawyers working in a non-commercial body? If so, please explain.

### **Ancillary changes and transitional arrangements**

## **Ancillary changes**

If CILEX proceeds with the re-delegation of regulation to us, we will need to make ancillary changes to various other Standards and Regulations to reflect this change. A table setting out the changes we expect to make is at Annex Four to this consultation.

## **Transitional arrangements**

If re-delegation goes ahead, we will work with CRL to agree appropriate arrangements for the transition of all:

- authorisation applications
- investigations and disciplinary proceedings
- other regulatory casework

that are live at the point of transfer.

In respect of enforcement cases, subject to discussion with CILEX and CRL we consider that an appropriate approach would be:

- unless a hearing is part heard or a matter referred for a hearing before a CRL panel, all new sanction decisions will be made under our new rules
- we will allow appropriate lead-in time to ensure that wherever possible, currently listed and part heard hearings can complete under the current regime
- we will take on the investigation of all cases that are ongoing and will review them to ensure that any charges appropriately protect the public interest.

**Question 33:** Do you have any comments about our proposed ancillary changes and/or our proposed approach to transitional arrangements? If so, please explain.

## **Impact assessments**

This section of the consultation sets out our assessment of the regulatory and equality impacts of the proposed changes to our regulatory arrangements. We invite views on these draft assessments.

## **Draft regulatory impact assessment**

### **Overview**

This draft regulatory impact assessment sets out our view of the likely impact of our proposals on stakeholders. It also outlines how we will evaluate the impact of our proposals if CILEX decides to re-delegate regulation from CRL to the SRA.

As discussed in the introduction to this consultation paper and in more detail below, we consider that our proposal has potential to benefit the public and consumers of legal services and advance the regulatory objectives set out in the Act in a number of ways.

In other respects we expect the impact of our proposals to be broadly neutral for stakeholders including regulated CILEX and SRA practitioners, the public and consumers. We have not identified any potential negative impacts or material risks for the public or consumers. But we are inviting views and evidence on potential impacts as part of this consultation.

### **Analysis**

Those most likely to be affected by the proposals are CILEX members (particularly authorised members), CILEX regulated entities, solicitors and firms regulated by the SRA, consumers of legal services, and the wider public. The identified impacts are set out below as (a) positive impacts; (b) neutral impacts; and (c) uncertain cost impacts at this stage.

Our evaluation of potential regulatory risks and benefits is focused on the regulatory objectives and principles of good regulation in the Act. Our analysis of these risks and benefits takes into account publicly available data and documentation from CILEX (including the 2022 Case for Change) and CRL, as well as data and documentation produced by the SRA and other organisations.

The proposed redelegation of regulatory powers is a novel issue in legal regulation, and we have only had access to CRL information that is in the public domain. We are asking stakeholders to provide further evidence and views in response to this consultation.

If CILEX decides to proceed with redelegation, we will take any further evidence into account in finalising our regulatory impact assessment, and where relevant in our future regulatory arrangements.

## **Positive impacts**

### **Improving access to justice, protecting and promoting public interest and the interest of consumers**

As summarised in the introduction to the consultation paper, we have identified the following key benefits of the proposed changes.

1. Supporting public confidence by simplifying the regulatory landscape to make it easier for consumers to understand and access regulated services, supporting consumer choice and access to justice.

Our proposals will help consumers and the public understand that solicitors, authorised CILEX lawyers and the firms we authorise are regulated to robust and consistent standards of conduct. At the same time, we will ensure that solicitors and authorised CILEX lawyers maintain clear and distinct identities as professions with their own education and qualification arrangements.

We will take on publication of the register of authorised CILEX lawyers and present it alongside the Solicitors Register, making it simpler for potential clients and the wider public to review the regulated status of individuals and firms and check what legal services they are authorised to provide.

The same transparency requirements – covering costs, services, complaints and regulated information – and accounts rules will apply where relevant to solicitors, authorised CILEX lawyers and the authorised firms in which they work. This will further promote transparency, consistency and public confidence.

2. Enhancing public protection by bringing the regulation of solicitors and authorised CILEX lawyers together, to maintain and enforce standards for two of the key groups of lawyers in consistent ways.

We will regulate authorised CILEX lawyers against the proposed new SRA CILEX Principles and SRA Code of Conduct for authorised CILEX lawyers. These are founded on the core principles in the current CILEX Code of Conduct. The new Code of Conduct makes clearer how the standards required of authorised CILEX lawyers align with the standards that apply to solicitors, whilst recognising the different scope and context of their practice.

As set out in our consultation, our other regulatory requirements including our Transparency Rules and Accounts Rules will apply to firms currently authorised by CILEX and reauthorised by the SRA, and to individual authorised CILEX lawyers where appropriate. We will provide guidance and support to help CILEX members to adopt unfamiliar requirements.

We will use our existing authorisation and enforcement processes to regulate authorised CILEX lawyers, enhancing consistency.

We expect that these arrangements will benefit authorised CILEX lawyers as well as consumers and the public, by promoting public confidence in the robust regulatory arrangements that apply to them.

3. Bringing efficiencies through reducing regulatory duplication for those authorised CILEX lawyers who work in SRA-regulated firms.

We already have powers to control the work of individuals other than solicitors in SRA-authorized firms. This includes around 75% of authorised CILEX professionals, who are therefore currently subject to regulation both by us and CRL. Our proposed approach to enforcement integrates our existing enforcement powers and those that would be delegated to us by CILEX, further simplifying the regulatory landscape and enabling efficiency savings.

4. Improving consumer protection by replacing as far as possible the current limited compensation arrangements for clients of CILEX entities with the SRA's Compensation Fund arrangements, without requiring any cross subsidy from solicitors:

The CRL Compensation Fund provides more limited consumer protection than the equivalent SRA Fund. Where we can reauthorise CILEX entities under our current rules, we will be able to provide clients of those firms with access to the SRA Compensation Fund. Our powers do not currently allow us to provide this enhanced protection to clients of authorised CILEX bodies owned and managed only by authorised CILEX lawyers, or to Authorised CILEX Lawyers providing unreserved services outside of a regulated entity. The 'consumer protection' section of the consultation paper sets out how we propose to address this issue.

5. Providing new opportunities to address the regulation of new and emerging forms of legal services in an integrated way across both professions/

A more consistent and joined-up regulatory framework for solicitors, authorised CILEX lawyers and the authorised firms in which they work will provide a sound basis for the management of new and emerging risks, for instance relating to AML and the use of technology.

### **Encouraging a strong, diverse and effective legal profession**

The proposed changes also have potential to support improved equality, inclusion and diversity across legal services. This is further considered in the equality impact assessment that accompanies this regulatory impact assessment.

### **Neutral impacts**

We expect the proposals to be broadly neutral in terms of the regulatory burden on individual authorised CILEX lawyers. Those who are already authorised will not need to seek reauthorisation. The regulatory standards we are proposing for authorised CILEX lawyers are closely aligned to the core principles and standards in the current CILEX Code of Conduct. Where regulatory standards or requirements do change as a result of our proposals, we will provide guidance and support (including through our ethics helpline) to help individuals understand and comply with our rules.

In terms of the cost burden on authorised CILEX lawyers, we expect to achieve efficiency savings in a range of governance and operational areas. And based on the information available to us, our overall view is that we should be able to provide steady-state regulation of authorised CILEX lawyers at a cost similar to, and potentially lower than, the current arrangements.

Therefore we expect that the ongoing cost of regulation to Authorised CILEX Lawyers, in terms of the regulation element of their practising certificate fees (and not taking into account transition costs), will not be higher than its present level.

However, we are not able to forecast with confidence the 'steady state' future cost of regulation without access to more detailed information held by CRL, in respect of specific costs relating to the various components of the current regulatory approach. If CILEX decides that we should take on the regulation of authorised CILEX lawyers, we will need access to this information. This is to satisfy our Board that – where it is proposed to continue to use the resources and mechanisms already in place under the current regulatory model – these can support and promote the regulatory objectives in a way that our Board would consider appropriate. We will assess this with our Board as an early priority.

We do not expect these proposals to affect the identity of the solicitors' profession or the way it is regulated. Our proposals maintain a distinct entry route to authorisation as a legal professional for CILEX members, and a separate Code of Conduct as our basis for regulating those members. The existing pathway into the solicitors profession – the Solicitors Qualifying Examination – and our Principles and Codes of Conduct for solicitors and SRA firms will remain separate from those for authorised CILEX lawyers.

Given the relatively low number of regulatory reports and investigations currently involving authorised CILEX lawyers, we do not expect our new role as their regulator to affect our capacity to carry out our existing regulatory role. And while our new role will offer synergies and cost savings as we use common processes to regulate solicitors and authorised CILEX lawyers where possible, we will ensure there is no cross subsidy between the regulation of solicitors on one hand and authorised CILEX lawyers on the other.

### **Uncertain cost and other impacts**

We are inviting views in the consultation on aspects of our proposals that could have cost or other impacts on authorised CILEX lawyers or on entities currently authorised by CILEX. These include:

- our PII rules require incorporated SRA firms to hold PII with a minimum coverage of £3m per claim, rather than the £2m required by CRL. This requirement would apply to any incorporated CILEX entity we reauthorise, except CILEX-ACCA Probate entities which will retain their current PII requirements
- we do not currently have powers to provide access to the SRA Compensation Fund to clients of (1) individual authorised CILEX lawyers working outside an authorised firm, or (2) authorised CILEX bodies owned and managed only by authorised CILEX lawyers. We are inviting views on our proposed approach to this issue
- our consumer information requirements will apply to all CILEX entities reauthorised as SRA firms (except CILEX-ACCA Probate entities which will retain their current requirements), and to individual authorised CILEX lawyers providing unreserved services outside an authorised firm.

We have set out the potential implications of these proposals for CILEX entities and authorised CILEX lawyers in this consultation paper and have invited evidence and views. We will take responses into account in our final regulatory impact assessment, and (where relevant) in our future regulatory arrangements.

### **Evaluation**

If CILEX proceeds with the redelegation of the regulation of authorised CILEX lawyers from CRL to the SRA, we will put in place formal evaluations of the consequential changes to our regulatory arrangements. These will gather and analyse evidence of the actual impact of our arrangements on affected stakeholders. We will publish the outcome of our evaluations, and report on any changes we have made to our work as a result of the findings. If analysis suggests that changes to our rules or other regulatory arrangements are needed to support the regulatory objectives, we will bring forward proposals for change.

Question 34: Do you have any comments on our draft regulatory impact assessment? If so, please explain.

### **Draft equality impact assessment**

## Overview

CRL and the SRA are both subject to the regulatory objective in the Act to encourage an independent, strong, diverse and effective legal profession. Both have incorporated equality and diversity considerations in their Codes of Conduct for those they regulate. And both regulators work within the [LSB's framework \[https://legalservicesboard.org.uk/our-work/ongoing-work/encouraging-and-promoting-a-diverse-legal-services-sector\]](https://legalservicesboard.org.uk/our-work/ongoing-work/encouraging-and-promoting-a-diverse-legal-services-sector) to encourage and promote a diverse legal services sector, which includes data collection and publication requirements, diversity outcomes and criteria for good regulatory performance on equality matters.

The redelegation of regulation will enable a consistent and joined-up approach to EDI issues relating to solicitors and authorised CILEX lawyers, led by the SRA's dedicated equality, diversity and inclusion team.

This draft equality impact assessment is based on a comparison between the equality and diversity data collected and published by CRL and the SRA for 2021. This seeks to identify possible differences or similarities in the characteristics of the respective regulated populations, which could have implications if the SRA takes on the regulation of authorised CILEX lawyers and CILEX entities.

There are some gaps and overlaps in the available data. The analysis focuses on CRL data for authorised CILEX members, and on SRA data for solicitors and others working in SRA-regulated firms.

Our initial analysis of CRL and SRA data sets has identified some common equality issues in respect of the two regulated populations. These include under-representation of women and professionals of a Black, Asian and minority ethnic origin in senior roles, and under-reporting of disability across both professions.

However, we have found little or no comparative data for some equality characteristics and other key groupings, including transgender people, religion and belief, sexual orientation, marriage and civil partnership, pregnancy and maternity, caring responsibilities, and socio-economic background. And we have found limited comparable data about the characteristics of consumers using solicitors and authorised CILEX lawyers, or on the diversity of firm ownership.

CRL diversity reporting has also highlighted concerns among CILEX's membership that they are seen as 'lesser lawyers' by some other legal professionals. Our proposals could help to address this by promoting public confidence in the robust regulatory arrangements that apply to authorised CILEX lawyers, as discussed in the draft regulatory impact assessment.

We have not identified any potential negative equality impacts or material risks for the public or consumers. We are inviting views and evidence on equality impacts arising from our proposals as part of this consultation.

## Analysis

### Age

SRA data indicated that 49% of solicitors were under 40 years old, and 27% between 40-49 years old. 69.4% of solicitor-partners were between 40 and 59 years old.

In comparison, there was a relatively even distribution for Chartered Legal Executive Fellows across most of the age categories, with only around 28% under 40 years old. 15.3% of Chartered Legal Executive partners were under 40 years old, compared with 12.5% of solicitor partners. 18.1% of solicitor partners were 60 or older, compared with 15.9% of Chartered Legal Executive partners

### Sex

There were higher percentages of female than male legal professionals across the CILEX and SRA datasets, but there were lower percentages of women at partner level than for the

general professional populations:

- 77% of Chartered Legal Executive Fellows and 58% of solicitors were female
- 68% of Chartered Legal Executive Partners and 34% of solicitor partners were female.

The data on SRA-regulated firms indicated that the largest firms have a smaller proportion of female solicitors than other firms.

### **Disability**

3.8% of Chartered Legal Executives, 5% of solicitors other than partners and 4% of solicitor-partners in SRA-regulated firms reported a disability. This compares with the 14% of the UK workforce reporting a disability. The data on SRA-regulated firms indicated that the largest law firms have a smaller proportion of disabled lawyers than other firms.

CILEX diversity data demonstrated an increasing number of members using 'prefer not to say', or a blank response. This was particularly noticeable for disability and caring. The CRL diversity report (2021) suggested that this might be due to a change in reporting methods, or because their members were becoming less likely to declare a protected characteristic.

Data from SRA-regulated firms (covering authorised and non-authorised staff, including CILEX members) has recently evidenced a slight decrease in the use of 'prefer not to say' across almost all categories, but there has been a slight increase in those using 'prefer not to say' when asked about disability.

### **Ethnicity**

18% of solicitors and 9% of Chartered Legal Executives were from ethnic minority groups. White men and women formed the highest proportion of solicitors (40% and 41% respectively), followed by ethnic minority women (11%). 70% of Chartered Legal Executives were white women. CRL's 2021 Diversity Report suggested that a higher proportion of those from minority ethnic compared to those from white backgrounds were using the CILEX route to become solicitors.

### **Schooling**

A key difference between the available data on authorised CILEX members on the one hand, and lawyers (other than partners) in SRA-regulated firms on the other, is the percentage of those who went to a non-selective state school.

18% of lawyers (other than partners) in SRA-regulated firms went to a fee-paying school without a bursary. 19% went to a state school that used selection. 22% of solicitor partners in SRA-regulated firms went to a fee-paying school without a bursary or to a state school that used selection. The data on SRA-regulated firms indicated that the largest firms had the greatest proportion of lawyers from a professional socio-economical background and who went to fee-paying schools.

Diversity data on CILEX authorised members showed that only 5.8% of Chartered Legal Executive Partners, 4.9% of Chartered Legal Executives - Other, 6.1% of CILEX Solicitor-Partners, 7.6% of CILEX Solicitor - Assistants, and 6.8% of CILEX Solicitor Other went to a fee-paying school without a bursary. Only 14.1% of Chartered Legal Executive - Partners, 12.3% of Chartered Legal Executives - Other, 9.7% of CILEX Solicitor - Assistant, and 15.9% of CILEX Solicitor - Other went to a state school using selection. However, 24.4% of CILEX solicitor-partners had been to a state school using selection.

### **Perceptions of other legal professionals**

A key equality, diversity and inclusion concern raised by the CILEX membership is that 'they are looked down on by some other legal professionals who consider them to be lesser lawyers'. It has been stated that this 'creates detriment, impedes career progression and cannot be ignored' (CRL diversity report, 2021).

## Evaluation

If CILEX proceeds with the redelegation of the regulation of authorised CILEX lawyers from CRL to the SRA we will monitor, and seek views on, and report on the equality impact of the consequent changes to our regulatory arrangements.

**Question 35:** Do you have any comments on our draft equality impact assessment? If so, please explain.

## Consultation questions in full

We are keen to hear your views on our proposals. A list of our consultation questions is below.

1. Do you have any comments on the proposed approach to governance arrangements? If so, please explain.
2. Do you agree with the proposed approach of maintaining a separate SRA CILEX Code of Conduct for authorised CILEX lawyers?
3. Do you have any comments on our proposed approach to aligning standards for authorised CILEX lawyers and solicitors in the draft SRA CILEX Code of Conduct?
4. Do you have any other comments on the draft SRA CILEX Code of Conduct? If so, please explain.
5. Do you have any other comments on the proposed approach to the regulation of individual authorised CILEX lawyers?
6. Do you have any comments on the proposal that our Overseas Rules will apply to any authorised CILEX lawyers established to provide legal services outside England and Wales?
7. Do you agree with the proposed approach of reauthorising CILEX entities as SRA firms or as 'authorised CILEX bodies' depending on who owns and manages them?
8. Do you have any other comments on the proposed overall approach to the regulation of firms currently authorised by CILEX (other than CILEX-ACCA Probate entities)?
9. Do you agree with the proposed approach of maintaining the current regulatory requirements for CILEX-ACCA Probate entities?
10. Do you agree with our proposed overall approach to the education and authorisation requirements for individual authorised CILEX lawyers and for authorised CILEX bodies?
11. Do you agree with our proposed approach to continuing professional competence for authorised CILEX lawyers?
12. Do you have any comments on the issues relating to qualifying experience discussed in this consultation paper? If so, please explain.
13. Do you have any comments on other specific issues relating to our approach to education and authorisation requirements? If so, please explain.
14. Do you have any other comments on the draft rules in Annex Two to the consultation? If so, please explain.
15. Do you have any comments on our proposed approach to registers and regulatory information for individual authorised CILEX lawyers, for authorised CILEX bodies and/or for CILEX-ACCA Probate entities? If so, please explain.
16. Do you agree with our proposal to use trained staff, adjudicators and (where appropriate) panels of adjudicators to take investigation and enforcement decisions about individual authorised CILEX lawyers?
17. Do you agree with our approach to enforcement for authorised CILEX lawyers and bodies, and how we have aligned it with solicitors and SRA-authorised firms?
18. Do you agree that it is appropriate for matters that could for example, result in the removal of practising right to be dealt with by way of hearing?
19. Do you have any other comments on the draft rules and Enforcement Strategy material in Annex Three? If so, please explain.
20. Do you agree we should provide access to the SRA Compensation Fund for clients of former CILEX entities where the entity is authorised on the same basis as existing SRA firms (as its owners and managers include at least one solicitor or non-authorised person)?
21. Do you agree we should work with others to pursue a statutory instrument to enable access to the SRA Compensation Fund for clients of (1) authorised CILEX bodies owned





- and managed only by authorised CILEX lawyers, and (2) authorised CILEX lawyers providing unreserved services outside an authorised firm?
22. Do you have any comments on the options for transitional consumer protection arrangements for authorised CILEX bodies? Please explain.
  23. Do you have any comments on the proposal to require CILEX entities reauthorised as SRA firms (other than CILEX-ACCA Probate entities) to comply with our MTCs, including the minimum £3m PII coverage per claim for incorporated firms? If so, please explain.
  24. Do you have any comments on our proposal to apply our current intervention regime to CILEX entities which are reauthorised as SRA firms or authorised CILEX bodies? If so, please explain.
  25. Do you have any comments on our proposal to apply our established approach to AML supervision for authorised CILEX lawyers and for CILEX entities reauthorised as SRA firms? If so, please explain.
  26. Do you have any comments on our proposed approach to consumer information requirements for CILEX entities which are reauthorised as SRA firms? If so, please explain.
  27. Do you have any comments on our proposed approach to consumer information requirements for authorised CILEX lawyers providing unreserved legal services outside an authorised firm? If so, please explain.
  28. Do you have any comments on our proposed approach to communications and reporting relating to authorised CILEX lawyers? If so, please explain.
  29. Do you think there are any good reasons to maintain CRL's requirement for an authorised CILEX lawyer to be authorised separately to take up one or more of these official roles? If so, please explain.
  30. Are there good reasons why CILEX entities reauthorised as SRA firms should need to obtain our approval on a case by case basis to use a TPMA? If so, please explain.
  31. Do you have any comments on our proposed approach to allow CILEX entities to carry on regulated financial services activities as an exempt professional firm? If so, please explain.
  32. Do you have any comments about our proposed approach to authorised CILEX lawyers working in a non-commercial body? If so, please explain.
  33. Do you have any comments about our proposed ancillary changes and/or our proposed approach to transitional arrangements? If so, please explain.
  34. Do you have any comments on our draft regulatory impact assessment? If so, please explain.
  35. Do you have any comments on our draft equality impact assessment? If so, please explain.

## Downloads

- [Consultation paper: Arrangements for SRA regulation of CILEX members \(PDF 50 pages, 431KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/arrangements-for-sra-regulation-of-cilex-members-consultation.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/arrangements-for-sra-regulation-of-cilex-members-consultation.pdf]
- [Annex 1: SRA CILEX Principles and Code of Conduct \(PDF 9 pages, 183KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/annex-1---sra-code-of-conduct-for-cilex-lawyers.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/annex-1---sra-code-of-conduct-for-cilex-lawyers.pdf]
- [Annex 2: Education and authorisation - technical notes \(PDF 3 pages, 131KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/annex-2---education-and-authorisation-rules-and-material.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/annex-2---education-and-authorisation-rules-and-material.pdf]
- [Annex 2.1: Authorisation of CILEX Lawyers Regulations \(PDF 8 pages, 246KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/annex-2.1---sra-authorisation-of-cilex-lawyers-regulations.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/annex-2.1---sra-authorisation-of-cilex-lawyers-regulations.pdf]
- [Annex 2.2: Authorisation of Firms Rules \(amendments\) \(PDF 2 pages, 172KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/annex-2.2---authorisation-of-firms-amendment-rules.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/annex-2.2---authorisation-of-firms-amendment-rules.pdf]
- [Annex 2.3: Approach to other CILEX education, training and authorisation amendments \(PDF 2 pages, 134KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/annex-2.3---other-regulatory-arrangements.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/annex-2.3---other-regulatory-arrangements.pdf]
- [Annex 3: Investigation and enforcement - technical notes \(PDF 6 pages, 234KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/annex-3---investigation-and-enforcement-rules-and-material.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/annex-3---investigation-and-enforcement-rules-and-material.pdf]
- [Annex 3.1: Regulatory and Disciplinary Procedure Rules \(amendments\) \(PDF 9 pages, 34KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/annex-3.1---regulatory-) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/annex-3.1---regulatory-



- [and-disciplinary-procedure-rules.pdf](#)
- [Annex 3.2: New Appendix B to Enforcement Strategy \(PDF 6 pages, 220KB\)](#) [<https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/annex-3.2---sanctions-and-controls.pdf>]
- [Annex 4: Cover note for annexes 4.1 and 4.2 \(PDF 1 pages, 110KB\)](#) [<https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/annex-4---ancillary-changes-and-transitional-arrangements.pdf>]
- [Annex 4.1: SRA Application, Notice, Review and Appeal Rules \(amendments\) \(PDF pages, 326KB\)](#) [<https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/annex-4.1---sra-application-notice-review-and-appeal-rules.pdf>]
- [Annex 4.2: Consequential amendments to SRA Standards and Regulations and Glossary \(PDF 3 pages, 175KB\)](#) [<https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/annex-4.2---consequential-amendments-to-the-sra-standards-and-regulations.pdf>]
- [Infographic: Summary of proposed approach to authorisation of individuals and firms \(PDF 1 page, 68KB\)](#) [<https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/cilex-authorisation-individuals-and-firms.pdf>]
- [Consultation response: Arrangements for SRA regulation of CILEX members \(PDF 29 pages, 355KB\)](#) [<https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/arrangements-sra-regulation-cilex-members-consultation-response.pdf>]
- [All consultation responses \(PDF 201 pages, 3.14MB\)](#) [<https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/arrangements-sra-regulation-cilex-members-consultation-responses.pdf>]

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