

REPORT TO: CILEX REGULATION BOARD

FOR: DECISION

DATE: 18 JULY 2017

REPORT TITLE: REQUEST FROM CPS TO AMEND ASSOCIATE PROSECUTOR ADVOCACY COURSE AND RULES

SUBMITTED BY: VICTORIA PURTILL, DIRECTOR OF AUTHORISATION AND SUPERVISION

PURPOSE OF REPORT:

1. This paper seeks Board approval for changes to be made to the Associate Prosecutor Rules, requested by the Crown Prosecution Service (CPS).

BACKGROUND:

2. CILEx Regulation is responsible for the regulation of Associate Prosecutors employed by the CPS to undertake some criminal prosecutions in the Magistrates' Courts.
3. Associate Prosecutors are qualified to one of two levels. Level 1 Associate Prosecutors are able to undertake prosecutions only for cases where the defendant has pleaded guilty, as well as undertaking related work such as bail hearings. Level 2 Associate Prosecutors are able to undertake trials. The changes proposed affect only Level 1 authorisation.
4. At the time that the Associate Prosecutor role was established, the proposal was to create an advocate without full rights of audience to prosecute the large number of guilty pleas and low level criminal cases then proceeding through the Magistrates Courts, enabling Crown Prosecutors more time to deal with the more complex criminal prosecutions.
5. However, owing to the changes in the criminal justice system, which mean that more cases heard in the Magistrates Courts are more complex and therefore require a Crown Prosecutor, coupled with the use of the Police to prosecute uncontested road traffic offences, the CPS is no longer actively recruiting Associate Prosecutors. It does however use the designation and qualification to enable trainee solicitors to gain rights of audience in the Magistrates Courts prior to their qualification as a solicitor, which enables them to gain valuable advocacy experience prior to admission. Since 2012, 27 trainee solicitors have undertaken the Level 1 Associate Prosecutor courses and assessments and a further 10 trainee solicitors will start their training in January 2018.

6. These changes have led the CPS to review the content of the qualification and they have requested minor amendments to the rules to remove road traffic and exceptional hardship from the training and assessment.

ANALYSIS AND FINDINGS:

7. A review of the rules has led to a recommendation that the following changes be made, in order to ensure that the Level 1 Associate Prosecutor training and assessment continues to reflect current working practice and is fit for purpose:
 - Removal from the Level 1 qualification of the reference to the course length, currently stipulated at 5 days
 - Removal from the Level 1 qualification of reference to Road Traffic prosecutions, exceptional hardship arguments and questioning for the advocacy course. Level 1 Associate Prosecutors will still cover questioning as it is still part of the Bail course in relation to breach of bail hearings.
8. CILEx Regulation has consulted with the external adviser to the Associate Prosecutor qualification, in order to assess the potential impact of the changes. He gave in principle support for the changes to the qualification, subject to 2 clarifications:
 - That the e-learning materials will retain the law in relation to road traffic offences on the basis that trainee solicitors would not otherwise be exposed to this law
 - What matters would be assessed in place of mitigating circumstances currently assessed using road traffic law, and
 - That he be able to review the assessment materials once prepared, if the rule changes are approved
9. The CPS has confirmed that the e-learning will continue to cover road traffic law and has clarified that the mitigating circumstances assessment will be replaced with case studies in relation to allocation and sentencing. It continues to be a requirement under the rules that the external adviser should periodically review the course and assessment materials.
10. The Admissions and Licensing Committee has oversight of the Associate Prosecutor qualification and training requirements. It reviewed and recommended to the Board the request to make these rule changes at its meeting on 31 May 2017.
11. A short, targeted consultation (see **Annex 1 – see [CRL Board](#) Sharepoint – go to Calendar/18 July 2017/CRL Board meeting**) is currently in progress with the CILEx Criminal Advocates and is available on the CILEx Regulation website. The Legal Services Consumer Panel has been notified by email that this consultation is open. This is due to close on 17 July 2017. An oral update will be provided to the Board in relation to any responses received.

12. Subject to any adverse comments to the changes from the consultation, as the changes are minor, an application will be made to the Legal Services Board under the exemption direction.

RECOMMENDATIONS:

13. The Board is asked to approve the amendments to the Associate Prosecutor rules, see **Annex 2 in [CRL Board](#)** Sharepoint).

IMPACT ASSESSMENT:

Public/Consumer	
Consumer	No direct impact
Public interest	No direct impact
Environment	No direct impact
Regulated Community	
Cost of Regulation	No direct impact
Equality and Diversity	No direct impact
Us	
Reputation/Brand	No direct impact
Resources:	No direct impact
Operations:	No direct impact
Risk:	No direct impact
Finance:	No direct impact
Legal:	No direct impact
IT:	No direct impact

ANNEXES:

Annex 1: Consultation to amend Associate Prosecutor Rules (see Board Sharepoint)
Annex 2: Associate Prosecutor Rules (see Board Sharepoint)