

CONSULTATION

PROPOSAL TO SEEK PRACTICE RIGHTS AND QUALIFICATION ARRANGEMENTS FOR RIGHTS

INTRODUCTION

The Chartered Institute of Legal Executives (CILEx) is an approved regulator under the Legal Services Act 2007. In accordance with the requirements of the Act it has separated out its regulatory and representative functions. The regulatory functions have been delegated to ILEX Professional Standards Ltd (IPS). IPS is the regulatory body for Chartered Legal Executives and other grades of CILEx member.

IPS is making applications under the Legal Services Act 2007 for CILEx to become an approved regulator for awarding reserved legal activity rights. The rights sought are rights to conduct litigation, to undertake reserved instrument activities and probate activities. It is also making an application to introduce regulatory arrangements, including authorisation processes, for immigration advisors.

This consultation document outlines the rights sought and IPS's proposals for the arrangements by which applicants will obtain those rights. We welcome your views on our proposals.

This consultation will close on 19th October 2012

INTRODUCTION

1. IPS is making applications under the Legal Services Act 2007 (the Act) for CILEx to become an approved regulator for awarding reserved legal activity rights to suitably qualified persons. The rights sought are rights to conduct litigation, to undertake reserved instrument activities and probate activities.
2. IPS also seeks to introduce regulatory arrangements for immigration practitioners authorised by it to provide immigration advice and services. Immigration advice and services are referred to as regulated activities under the Act.
3. This consultation sets out the reserved or regulated legal activity rights sought and the competence requirements which applicants will need to meet to become authorised to exercise those rights. It also sets out standards of competence that authorised persons will need to demonstrate if they are managers or compliance officers in entities regulated by IPS, through which legal services are delivered.
4. Each legal activity sought is dealt with individually below.

RIGHTS TO CONDUCT LITIGATION AND RIGHTS OF AUDIENCE

5. CILEx became an approved regulator for the purpose of awarding rights to conduct litigation to Associate Prosecutor members in April 2011. We seek to extend that designation to Fellows of CILEx.
6. CILEx is also an approved regulator for the purpose of awarding rights of audience to Fellows of CILEx. We seek to extend that designation to Litigators who are in independent practice.

Rights to conduct litigation

7. We propose that suitably qualified Fellows of CILEx would become authorised persons for conducting litigation. This will enable Fellows to issue litigation proceedings and to commence, prosecute and defend such proceedings and to perform ancillary functions in relation to such proceedings.
8. CILEx members are specialist practitioners. Therefore the litigation rights sought have been split into three certificates: civil litigation; criminal litigation; and family litigation. Members will seek the litigation rights for the area in which they seek to practise. It will be possible for members to obtain litigation rights in more than one area, provided they meet the criteria for each litigation area. Members holding litigation rights will be referred to as Litigators.
9. The litigation rights sought are framed as follows:

Civil Proceedings:

- To conduct litigation in civil proceedings.

Criminal Proceedings:

- To conduct litigation in criminal proceedings

Family Proceedings:

- To conduct litigation in family proceedings.

Rights of audience

10. We envisage that litigators will need to exercise rights of audience in cases where they exercise litigation rights. CILEx already is an approved regulator for the purpose of awarding rights of audience. Those rights are limited to members who are employed or partners in legal practices. The application for litigation rights therefore proposes to extend the business models through which rights of audience can be exercised to include independent practice but no application is being made to extend the rights that may be exercised.
11. In civil and family proceedings we propose to split the rights of audience between Judge's room hearings (commonly referred to as Chambers hearings) and open court rights.
12. CILEx members are able to undertake advocacy in Judge's Room hearings (referred to as Chambers hearings) in the High Court and county courts as employees of legal practices. The award of these rights with the civil and family litigation certificate will enable members to exercise the same rights they may already do so, provided they are assessed by IPS as competent to do so.
13. Litigators may choose whether to obtain open court rights. The rights sought are those that can be exercised by Chartered Legal Executive Advocates under the existing CILEx rights of audience qualification.
14. In criminal proceedings there are no chambers hearings and therefore the application seeks only for litigators the open court rights that CILEx is already authorised to grant to members.
15. The right of audience are framed as follows:

Civil Proceedings (judge in chambers):

- To exercise rights of audience in the judge's room in the High Court and County Court in civil proceedings except family proceedings.

Civil Proceedings (open court):

- To appear in open court in the County Court in all actions, except family proceedings;
- To appear before Justices or a District Judge (Magistrates Court) in the Magistrates Courts in relation to all matters originating by complaint or

application, including applications under the licensing, betting and gaming legislation;

- To appear before any tribunal under the supervision of the Administrative Justice and Tribunals Council where the tribunal rules provide for a non-discretionary right of audience being available to barristers and solicitors;
- To appear before Coroners Courts in respect of all matters determined by those courts and to exercise rights of audience similar to those exercised by solicitors and barristers.

Criminal Proceedings:

- To appear before Justices Clerks, Justices or a District Judge (Magistrates' Court) in all adult Magistrates' Courts in relation to all matters within that Court's criminal jurisdiction;
- To appear before Justices Clerks, Justices or a District Judge (Magistrates' Court) in all Youth Courts in relation to all matters within that Court's criminal jurisdiction;
- To appear in the Crown Court or High Court before a judge in chambers to conduct bail applications;
- To appear in the Crown Court on appeal from the Magistrates' Court, the Youth Court or on committal of an adult for sentence or to be dealt with, if he, or any approved person in the same employment as him, appeared on behalf of the defendant in the Magistrates' Court or Youth Court;
- To appear before Coroners' Courts in respect of all matters determined by those Courts and to exercise rights of audience similar to those exercised by solicitors and barristers.

Family Proceedings (judge in chambers):

- To exercise rights of audience in family proceedings in the judge's room in the High Court and County Court.

Family proceedings (open court):

- To appear in court (including open court) in all County Court family proceedings;
- To appear before Justices or a District Judge (Magistrates Court) in the Family Proceedings Court;
- To appear before Coroners Courts in respect of all matters determined by those courts, and to exercise rights of audience similar to those exercised by solicitors or barristers.

Reasoning

16. The rights to conduct litigation seek to mirror the rights that CILEx members are already able to exercise, albeit as employees. Many CILEx members will be

issuing and responding to proceedings in the natural course of the litigation work that they undertake. They will be experienced and suitably qualified to exercise those rights.

17. The application, if approved, would allow CILEx members to continue to undertake the litigation that they do already, although they would be able to practise independently, if they so wished. There will be some members, given the new practice structures envisaged by the Legal Services Act, who will qualify as litigators but would not wish to practise independently, but in entity with others or as the Head of Legal Practice in an entity regulated by another approved regulator.
18. Members who undertake litigation work in civil and family proceedings regularly exercise rights of audience in chambers proceedings as employees. This invariably involves case management conferences, telephone conferences and directions appointments. We seek to award the same chambers rights to Litigators which they already exercise as employees. However, as part of these proposals members will be required to undergo training and assessment before being authorised to exercise the rights. This will provide an assurance of competence.
19. We believe that it is important for litigators to be able to exercise rights of audience. The absence of rights of audience would require litigators to instruct other lawyers in all instances where advocacy is required. We believe that such a business model would not be sustainable and would lead to consumers incurring additional costs of a second practitioner, in instances where litigators would be competent to exercise rights of audience.

Questions

1. **IPS seeks rights to conduct litigation split between civil, criminal and family proceedings. Do you agree with the rights sought and the proposed split between the rights? If not, please set out your reasons.**
2. **IPS seeks rights of audience for its Litigators. The rights have been split between chambers and open court rights for civil and family proceedings and are open court rights in criminal proceedings.**
 - a. **Do you agree that the civil and family rights be split between chambers and open court rights? If not, please set out your reasons.**
 - b. **Do you agree that Litigators be able to exercise the open court rights that CILEx is already authorised to award? If not, set out your reasons.**

PROBATE RIGHTS

20. We seek to grant suitably qualified members of CILEx and applicants, who are not CILEx members but who can demonstrate they meet relevant criteria, probate practice rights. They will be known as probate practitioners.
21. The rights sought are to prepare any probate papers for the purposes of the law of England and Wales or in relation to any proceedings in England and Wales. Probate papers mean any papers on which to found or oppose a grant of probate or a grant of letters of administration.

Reasoning

22. The probate rights seek to mirror the rights that CILEx members are already able to exercise, albeit as employees. Members employed in this area will be undertaking the whole range of services from will drafting to applications for probate and estate administration. While CILEx members are unable to make applications for probate the other areas of this practice are not reserved legal activities. However, we seek to ensure applicants are experienced and suitably qualified to exercise those rights, if they propose to do so. We believe that this assurance of competence is important for the purpose of protecting consumers.
23. The awarding of rights would allow probate practitioners to exercise the rights as employees, including as the Head of Legal Practice in an entity regulated by another regulator, or to practise independently, in an entity regulated by IPS.
24. We have not limited the rights to Fellows. We seek to regulate members by activity based on competence rather than by title. Therefore we take the approach that applicants who can demonstrate that they have the required competencies will be authorised to exercise these practice rights, regardless of title. In reaching this assessment we have considered the broader knowledge that Fellows would possess through completion of the CILEx qualification. We have drawn from that the knowledge requirements relevant to probate practice and reflected them in our competencies, which are set out later in this document.

Question

3. **IPS seeks probate practice rights. Do you agree that an application be made for CILEx to become an approved regulator for granting probate rights? Please set out your reasons for your response.**
4. **IPS seeks to authorise suitably competent applicants to carry out probate activities. Do you agree with the proposal to regulate by competence? Please set out your reasons for your response.**

RESERVED INSTRUMENT (CONVEYANCING) RIGHTS

25. We seek to grant suitably qualified members of CILEx and applicants, who are not CILEx members but who can demonstrate they meet the relevant criteria, with a Reserved Instrument Activity Certificate.
26. Reserved instrument activities are commonly referred to as conveyancing rights. The Certificate will enable authorised persons to:
 - prepare any instrument of transfer or charge for the purposes of the Land Registration Act 2002;
 - make an application or lodge a document for registration under that Act;
 - prepare any other instrument relating to real or personal estate for the purposes of the law of England and Wales or instrument relating to court proceedings in England and Wales.
27. Instrument includes a contract for the sale or other disposition of land (except a contract to grant a short lease), but does not include a will or other testamentary instrument; an agreement not intended to be executed as a deed, other than a contract that is included by virtue of the preceding provisions; a letter or power of attorney; or a transfer of stock containing no trust or limitation of the transfer.
28. Applicants who obtain reserved instrument activity rights will be known as conveyancing practitioners.

Reasoning

29. The conveyancing rights seek to mirror the rights that CILEx members are already able to exercise, albeit as employees. Applicants will be experienced and suitably qualified to exercise those rights.
30. The award of rights would allow conveyancing practitioners to exercise the rights as employees, including as the Head of Legal Practice in an entity regulated by another regulator, or to practise independently, in an entity regulated by IPS.
31. We have not limited the rights to Fellows. We seek to regulate members by activity based on competence rather than by title. Therefore we take the approach that applicants who can demonstrate that they have the required competencies will be authorised to exercise these practice rights, regardless of title. In reaching this assessment we have considered the broader knowledge that Fellows would possess through completion of the CILEx qualification. We have drawn from that the knowledge requirements relevant to conveyancing practice and reflected them in our competencies, which are set out later in this document.

Questions

5. **IPS seeks reserved instrument practice rights. Do you agree that an application be made for CILEx to become an approved regulator for granting reserved instrument rights? Please set out your reasons for your response.**
6. **IPS seeks to authorise suitably competent applicants to carry out reserved instrument activities. Do you agree with the proposal to regulate by competence? Please set out your reasons for your response.**

IMMIGRATION ADVICE AND IMMIGRATION SERVICES

32. Under the Legal Services Act CILEx is a designated qualifying regulator for the purpose of regulating CILEx members to provide immigration advice and immigration services. We maintain a record of practitioners authorised to provide immigration advice and services.
33. We propose to develop a formal scheme for the assessment and accreditation of immigration practitioners. We also propose to regulate the practices of immigration practitioners who practise independently. The register of immigration practitioners is currently closed to new practitioners. We propose to open the register to new practitioners once our assessment and accreditation arrangements for practitioners and entities are in place.

Reasoning

34. We believe that it is important for the purposes of protecting the public and consumers to ensure that immigration practitioners appearing on its register have been assessed as competent to exercise those rights. We also believe that we have an obligation to assess competence in compliance with the regulatory objectives set out in the Legal Services Act.

Question

7. **IPS seeks to develop competence arrangements for immigration practitioners. Do you agree that an application be made to introduce formal competence arrangements for immigration practitioners? Please set out your reasons for your response.**

QUALIFICATION SCHEME

35. We propose that there will be an extensive and thorough assessment of competence before applicants will be authorised to exercise the practice rights set out above. We have developed competence criteria for each practice area.
36. This section sets out details specific to each practice area. It then addresses the aspects of qualification relevant to all practice areas.

Rights to conduct litigation

37. Litigation rights will be available to Fellows of CILEx and to applicants who can demonstrate they have the knowledge, skills and experience comparable to a Fellow in the relevant litigation area in which rights are sought. Fellows will have completed the academic stages of the CILEx qualification scheme which include study both at level 3 (A level standard) and level 6 (Honours Degree standard) and have met the qualifying employment requirements.
38. We have developed knowledge, skills and experience guidelines for each practice area. The criteria for civil, criminal and family litigation and advocacy appear at **appendices 1 to 3**.

Rights of audience

39. The existing rights of audience scheme is limited to Fellows of CILEx. We do not propose to change that position. Litigators seeking rights of audience will be required to complete the same qualification and assessment as the rights of audience scheme, except that it has been split between chambers and open court rights in civil and family proceedings.
40. The knowledge, skills and experience guidelines for each advocacy practice area appear at **appendices 1 to 3**.

Probate rights

41. The probate practice rights will be available to CILEx members and to other applicants who have demonstrated that they meet the knowledge, skills and experience required for those practice areas. The criteria appear at **appendix 4**.
42. Our knowledge, skills and experience for probate rights include requirements which will ensure IPS regulated probate practitioners are competent to draft wills and undertake all the steps necessary to administer the estate of a deceased person from obtaining grant of probate until final distribution or winding up. We recognise that these are not reserved legal activities. However, we take the view that it is necessary for the protection of the public and consumers to ensure practitioners are competent to deliver the range of services they seek to provide.

Reserved instrument (conveyancing) rights

43. The conveyancing practice rights will be available to CILEx members and to other applicants who have demonstrated that they meet the knowledge, skills and experience required for those practice areas. The criteria appear at **appendix 5**. As with probate the competencies reflect the whole area of practice and are not restricted to reserved instruments.

Immigration rights

44. The immigration practice rights will be available to Fellows of CILEx who have demonstrated that they meet the knowledge, skills and experience required for those practice areas. The criteria appear at **appendix 6**.
45. CILEx was a designated professional body under the Immigration and Asylum Act 1999. Under that Act any member of CILEx could be authorised to provide immigration advice and services. However, under the Legal Services Act designation is limited to Fellows. The IPS register therefore includes non-Fellows. IPS will put in place transitional arrangements to ensure continuity of regulation is provided for practitioners.

Demonstrating knowledge

46. The criteria for each practice right set out the knowledge that applicants must demonstrate. The guidelines set out that applicants must have passed the Level 6 examinations relevant to the law and, where relevant, practice area for the rights sought.
47. Applicants must also have passed the Level 6 Client Care and Legal Research units.
48. We recognise that applicants may have obtained comparable qualifications or have significant experience that has provided them with knowledge comparable to that obtained from the relevant Level 6 subject. In those instances it will be possible for applicants to rely on the comparable experience, demonstrated through portfolios of 5 cases they have handled, or alternative qualifications.

Demonstrating skills

49. We have considered how applicants will evidence their skills for the practice rights they seek. Applicants will be required to produce a log of evidence demonstrating how they meet the skills set out for in the appendices to this document.
50. We propose to take a different approach for rights of audience. Applicants will be required to complete a qualification course and pass an assessment of advocacy skills. This approach will match that in place for the existing rights of

audience qualification. Chartered Legal Executive Advocates, holding the relevant certificate, or applicants who have successfully completed and passed a course that delivered the same outcomes as the CILEx advocacy training course, will not be required to undertake the rights of audience qualification.

Demonstrating experience

51. All applicants will be required to have at least 2 years' experience in the practice area in which they seek rights.
52. We have considered how applicants will demonstrate this experience. Applicants will be asked to provide general information about their experience. This will include an outline of the nature and range of work they have undertaken, details of their typical caseload and its complexity, the amount of time they spend on that work and any supervisory arrangements under which they work. Applicants will also be required to produce 3 portfolios to evidence their experience.
53. We propose to appoint advisors, who will be experts in relevant practice areas, to assess the knowledge, skills and experience of applicants.

Qualification courses

54. Where an assessment of an application identifies a gap in an applicant's knowledge, skills and/or experience applicants will be able to undertake relevant training and assessment or gain suitable experience, as appropriate. Independent course providers will be able provide courses that provide appropriate training in such instances. Applicants will need to ensure that courses will deliver the outcomes identified in their applications.
55. Providers of rights of audience courses must be accredited in accordance with the Rights of Audience Certification Rules.

Authorisation

56. All applicants will be required to provide details of two referees. The referees will be asked to comment on the ability of the applicant to exercise the practice rights. They will also be asked to comment upon the member's legal knowledge and experience.
57. Once an applicant has been assessed as meeting the knowledge, skills and experience requirements they will be awarded a certificate for the relevant practice area.

Questions

8. **IPS has set out knowledge, skills and experience requirements which applicants must meet to obtain practice rights. Do you agree with the criteria? If not, please set out your reasons.**
9. **Applicants will be required to demonstrate their knowledge through completing the relevant Level 6 examination or alternative qualification. Do you agree with this proposal? If not, set out your reasons.**
10. **Applicants who do not hold the relevant examination but have experience that has developed their knowledge will be able to make an application based on 5 portfolios of cases which demonstrate their knowledge. Do you agree with this proposal? If not, set out your reasons.**
11. **IPS has developed skills criteria for each practice area. Do you agree that applicants should demonstrate skills through a log of evidence matched against the skills criteria? If not, set out your reasons.**
12. **Applicants will be required to demonstrate their experience through 3 portfolios of cases they have handled. Do you agree with this proposal? If not, set out your reasons.**
13. **Applicants seeking rights of audience will be required to undertake a rights of audience qualification course. Do you agree with this proposal? If not, set out your reasons.**

INDEPENDENT PRACTICE

58. We seek to regulate entities through which reserved legal services will be delivered. We will require all practitioners who seek to become authorised persons to undertake some training in accounts and practice management. We have developed criteria for these areas which appear at **appendices 7 and 8**.
59. We have split the criteria into four levels: levels 1, 2a, 2b and 2c. The level 1 competencies must be met by all CILEx practitioners. We take the view that it is important that all practitioners should have some understanding of practice management and accounting principles. This is because they will be working with and applying these procedures in their daily practice.
60. Entities will nominate members who are the Head of Legal Practice and Head of Finance and Administration. We believe that these office holders should have

sufficient knowledge and skills to carry out those roles. We recognise the public interest in ensuring practitioners are equipped to manage a practice and run the financial aspects of the business.

61. These office holders will therefore be required to undertake additional training and assessment to level 1, unless they have completed an alternative qualification which delivers the same knowledge and skills. This criteria has been split into those that all office holders must possess (level 2a) and those that are only required by the HoLP (level 2b) or HoFA (level 2c), in accordance with the role they will undertake. In developing these criteria and levels we have considered the roles that the HoLP and HoFA will perform and the required competencies.
62. Practitioners will be required to undertake an assessment in accounts so that their competence to handle financial issues is formally assured. Our proposed assessment criteria for accounts appear at **appendix 8**.

Questions

- 14. Do you agree that practitioners should demonstrate competence in practice management? If not, set out your reasons.**
- 15. Do you agree with the proposed practice management criteria? If not, please set out your reasons.**
- 16. Do you agree that practitioners should demonstrate competence in accounts which should be assessed? If not, state what they should do to demonstrate their knowledge of and competence to deal with accounts matters.**
- 17. Do you agree with the proposed accounts competencies and the assessment criteria? If not, please set out your reasons.**

VALIDITY OF CERTIFICATES AND CPD

63. Certificates will remain valid indefinitely. However, practitioners holding practice rights will be required to make an annual declaration to IPS about their conduct and to pay an annual regulatory fee.
64. In addition applicants will be required to ensure they remain competent to exercise the reserved or regulated legal activities for which they are authorised. IPS has separately reviewed its CPD scheme and is consulting upon those proposals. Practitioners will be required to comply with that CPD scheme.

Questions

- 18. Do you agree that practice rights Certificates should remain valid indefinitely? If not, state why.**

CONSULTATION QUESTIONS

The questions are listed below. Please provide your responses on the attached response form providing reasons for your answers.

- Q1.** IPS seeks rights to conduct litigation split between civil, criminal and family proceedings. Do you agree with the rights sought and the proposed split between the rights? If not, please set out your reasons.
- Q2.** IPS seeks rights of audience for its Litigators. The rights have been split between chambers and open court rights for civil and family proceedings and are open court rights in criminal proceedings.
- a. Do you agree that the civil and family rights be split between chambers and open court rights? If not, please set out your reasons.
- b. Do you agree that Litigators be able to exercise the open court rights that CILEx is already authorised to award? If not, set out your reasons.
- Q3.** IPS seeks probate practice rights. Do you agree that an application be made for CILEx to become an approved regulator for granting probate rights? Please set out your reasons for your response.
- Q4.** IPS seeks to authorise suitably competent applicants to carry out probate activities. Do you agree with the proposal to regulate by competence? Please set out your reasons for your response.
- Q5.** IPS seeks reserved instrument practice rights. Do you agree that an application be made for CILEx to become an approved regulator for granting reserved instrument rights? Please set out your reasons for your response.
- Q6.** IPS seeks to authorise suitably competent applicants to carry out reserved instrument activities. Do you agree with the proposal to regulate by competence? Please set out your reasons for your response.
- Q7.** IPS seeks to develop competence arrangements for immigration practitioners. Do you agree that an application be made to introduce formal competence arrangements for immigration practitioners? Please set out your reasons for your response.
- Q8.** IPS has set out knowledge, skills and experience requirements which applicants must meet to obtain practice rights. Do you agree with the criteria? If not, please set out your reasons.
- Q9.** Applicants will be required to demonstrate their knowledge through completing the relevant Level 6 examination or alternative qualification. Do you agree with this proposal? If not, set out your reasons

- Q10.** Applicants who do not hold the relevant examination but have experience that has developed their knowledge will be able to make an application based on 5 portfolios of cases which demonstrate their knowledge. Do you agree with this proposal? If not, set out your reasons.
- Q11.** IPS has developed skills criteria for each practice area. Do you agree that applicants should demonstrate skills through a log of evidence matched against the skills criteria? If not, set out your reasons.
- Q12.** Applicants will be required to demonstrate their experience through 3 portfolios of cases they have handled. Do you agree with this proposal? If not, set out your reasons.
- Q13.** Applicants seeking rights of audience will be required to undertake a rights of audience qualification course. Do you agree with this proposal? If not, set out your reasons.
- Q14.** Do you agree that practitioners should demonstrate competence in practice management? If not, set out your reasons.
- Q15.** Do you agree with the proposed practice management criteria? If not, please set out your reasons.
- Q16.** Do you agree that practitioners should demonstrate competence in accounts which should be assessed? If not, state what they should do to demonstrate their knowledge of and competence to deal with accounts matters.
- Q17.** Do you agree with the proposed accounts competencies and the assessment criteria? If not, please set out your reasons.
- Q18.** Do you agree that practice rights Certificates should remain valid indefinitely? If not, state why.

HOW TO RESPOND

A response form has been produced for completion. Please send the response form to IPS through one of the following methods:

- Email to ipsconsultations@ilexstandards.org.uk
- By post to ILEX Professional Standards Ltd, Kempston Manor, Kempston, Bedford MK42 7AB
- By DX to ILEX Professional Standards Ltd, DX 124780 Kempston 2

SUBMISSION DEADLINE

The deadline for the submission of responses is 19 October 2012