



## **ILEX PROFESSIONAL STANDARDS LTD**

### **CONSULTATION**

#### **PROPOSAL TO ALTER RIGHTS OF AUDIENCE CERTIFICATION RULES TO ENABLE ILEX ADVOCATES TO BECOME MANAGERS IN LEGAL PRACTICES**

#### **INTRODUCTION**

The Institute of Legal Executives (ILEX) is an approved regulator under the Legal Services Act 2007. In accordance with the requirements of the legislation 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 Legal Executives and other grades of member registered with ILEX.

IPS is making an application under the Legal Services Act 2007 to revise its Rights of Audience Certification Rules to enable Legal Executive Advocates to become managers in legal practices regulated under the Legal Services Act 2007.

IPS is consulting on the proposals. This consultation summarises the nature of the revisions and encloses a copy of proposed new rules.

**This Consultation will close on 15 October 2010.**

## **INTRODUCTION**

1. ILEX was designated as an authorised body for the purposes of granting rights of audience by the Institute of Legal Executives Order 1998 (SI 1998/1077). ILEX remains an authorised body for the purposes of granting rights of audience under the Legal Services Act.
2. ILEX is able to grant rights of audience to Fellows who qualify under the qualification arrangements in the lower courts. The Rights of Audience Certification Rules, at Annex 1, outline the rights that ILEX can grant. The rules only allow members who are employed to undertake the qualification and to exercise the rights of audience.
3. IPS proposes to make an application under the Legal Services Act to alter the Rights of Audience Certification Rules to enable managers in practices regulated under the Legal Services Act 2007 to qualify as Legal Executive Advocates. The proposal will also enable members who have already qualified as Legal Executive Advocates to continue to exercise the rights of audience if they became a manager in a legal practice.

## **PRESENT POSITION**

4. At present ILEX members qualifying as Legal Executive Advocates must be employed by:
  - a solicitor or a firm of solicitors in private practice; or
  - any corporation, undertaking, department or office (whether governmental, public, municipal, commercial or otherwise) and work under a solicitor, a barrister or an authorised litigator who is principally employed in duties of a legal nature by that corporation, undertaking, department or office; or
  - an authorised litigator.
5. It is now possible for ILEX members to become partners, members or directors in legal practices. They are referred to as 'managers' in this document, as defined at section 207 Legal Services Act 2007. An ILEX member cannot continue as a Legal Executive Advocate if they become a manager in a legal practice. This is because they do not meet the employment criteria set out above. Similarly an ILEX member who is a manager in a legal practice cannot seek to qualify as a Legal Executive Advocate. IPS believes that this position does not support the intention of the Legal Services Act 2007.

## PROPOSALS

6. IPS seeks to amend the Rights of Audience Certification Rules to enable a Legal Executive Advocate who becomes a manager in a legal practice to continue to exercise rights of audience. It also proposes that the Rules be amended to allow managers to qualify as Legal Executive Advocates.
7. It is proposed that the rules on employment be amended to state a member must:
  - be employed by or a manager in an organisation which is owned or managed by persons authorised to provide litigation services, or which is authorised to provide litigation services under the Legal Services Act 2007;

or

  - be employed by an organisation in which he works under the supervision or control of a person who is authorised to provide litigation services under the Legal Services Act 2007.
8. Extracts of the Rights of Audience Certification Rules appear at Annex 1. The rules show the amendments that will be made. It will be seen from Annex 1 that IPS wishes to alter Rules 1, 6, 7, 65, 71, 81 and 89 of its Rights of Audience Certification Rules. Each of these rules relates in part to a requirement under the Rules that Members or Fellows seeking to be granted rights of audience and Fellows wishing to continue to exercise rights of audience may only do so if they are employees.

## REASONING

9. The application is being made to enable ILEX Advocates to practice within the ambit of new practice structures introduced by the Legal Services Act 2007. The proposals will enable Advocates to become managers in Legal Disciplinary Practices and in the future in licensed bodies. It will not permit members to become independent advocates. Legal Executive Advocates may only be employed or managers in a legal practice.
10. The proposals also require that Legal Executive Advocates must be employed in an organisation which is authorised to provide litigation services under the Legal Services Act 2007.

### Question

1. **IPS seeks to enable Legal Executive Advocates to become managers in legal practices. Provide your comments on the proposals.**

## REGULATORY OBJECTIVES

11. IPS believes that its application complies with the regulatory objectives set out in the Legal Services Act 2007. In most instances it will have a neutral impact on the regulatory objectives compared to the current position. In other instances it will meet the regulatory objectives whereas it would not in the absence of the amendment.
12. Legal Executive Advocates will:
  - Continue to protect and promote the public and consumer interest through the Rights of Audience Conduct Rules which remain unchanged;
  - support the rule of law in the work they undertake;
  - help to improve access to justice by making available an alternative form of practitioner to consumers whereas in the absence of this amendment an ILEX member who is a manager in a legal practice cannot qualify or continue as a Legal Executive Advocate;
  - promote competition in the provision of services through the alternative model in which Legal Executive Advocates may practise;
  - encourage a strong, independent, diverse and effective legal profession through the Rights of Audience Conduct Rules;
  - help to increase the public's understanding of a citizens legal rights and duties through the services they will provide; and
  - promote and maintain adherence to the professional principles through the Rights of Audience Conduct Rules that Legal Executive Advocates must comply with.
13. IPS believes that its proposal to amend the rules is proportionate. The amendment seeks to enable Legal Executive Advocates to practise within the ambit of new structures proposed by the Legal Services Act 2007. It is targeted at that alone and does not seek to enable Legal Executive Advocates to qualify as independent practitioners.

### Question

2. **Do you have any comments on whether the proposed amendment will affect the regulatory objectives or professional principles? If so, set them out.**

## **CONSULTATION QUESTIONS**

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

- Q1.** IPS seeks to enable Legal Executive Advocates to become managers in legal practices. Provide your comments on the proposals.
  
- Q2.** Do you have any comments on whether the proposed amendment will affect the regulatory objectives or professional principles? If so, set them out.

## **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 [bbasra@ilexstandards.org.uk](mailto:bbasra@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 15 October 2010

# ANNEX 1

## RIGHTS OF AUDIENCE CERTIFICATION RULES (extract)

### DEFINITIONS

1. In these Rules, except where otherwise indicated:

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“manager” means a person who falls within the definition of a manager contained in section 207 of the Legal Services Act 2007;

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Words importing the male gender include the female gender and vice versa; and words importing the singular include the plural and vice versa.

### THE RIGHTS OF AUDIENCE CERTIFICATES

2. A Fellow of the Institute in good standing may apply to the Institute to be granted one or more of the following Advocacy Certificates:
  - (a) A Civil Proceedings Certificate;
  - (b) A Family Proceedings Certificate;
  - (c) A Criminal Proceedings Certificate.
3. The rights of audience exercisable by Fellows holding Rights of Audience Certificates are set out below:

#### ***Civil Proceedings Certificate***

- (a) To appear in open Court in the County Court in all actions, except family proceedings;
- (b) 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;
- (c) to appear before any tribunal under the supervision of the Council on Tribunals where the tribunal rules provide for a non-discretionary right of audience being available to barristers and solicitors;

- (d) 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.

The holding of a Civil Proceedings Certificate does not confer a right of audience in any proceedings for which a Family or Criminal Proceedings Certificate is required.

***Family Proceedings Certificate***

- (a) To appear in Court (including in open court) in all County Court family proceedings;
- (b) to appear before Justices or a District Judge (Magistrates' Court) in the Family Proceedings Courts;
- (c) 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.

The holding of a Family Proceedings Certificate does not confer a right of audience in any proceedings for which a Civil or Criminal Proceedings Certificate is required.

***Criminal Proceedings Certificate***

- (a) To appear before Justices or a District Judge (Magistrates' Court) in all adult Magistrates' Courts in relation to all matters within that Court's criminal jurisdiction;
- (b) to appear before Justices or a District Judge (Magistrates' Court) in all Youth Courts in relation to all matters within that Court's criminal jurisdiction;
- (c) to appear in the Crown Court or High Court before a judge in chambers to conduct bail applications;
- (d) 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 solicitor by whom he is employed or any other solicitor or Fellow in the same employment as him, appeared on behalf of the defendant in the Magistrates' Court or Youth Court;
- (e) 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.

The holding of a Criminal Proceedings Certificate does not confer a right of audience in any proceedings for which a Civil or Family Proceedings Certificate is required.

4. A person who is a Legal Executive Advocate when these Rules come into effect may exercise all the rights of audience appropriate to the Advocacy Certificate or Certificates he holds, as described in Rule 3 above.

## CERTIFICATES OF ELIGIBILITY

5. Members and Fellows of the Institute who wish to undertake an Advocacy Skills Course must make an application to the Advocacy Rights Committee for a Certificate of Eligibility.

6. A Member or Fellow who wishes to apply for a Certificate of Eligibility must:

- be employed by or be a manager in an organisation which is owned or managed by persons authorised to provide litigation services, or which is authorised to provide litigation services under the Legal Services Act 2007; or
- be employed by an organisation in which he works under the supervision of a person who is authorised to provide litigation services under the Legal Services Act 2007.

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7. An application for a Certificate of Eligibility must be supported by:

- ◆ Evidence of the applicant's knowledge of the law, the rules of evidence and the legal practice relevant to the Advocacy Skills Course he wishes to take and to the rights of audience he wishes to be granted in accordance with the Competence Criteria set out in the Knowledge and Experience Guidelines at Appendix 1;
- ◆ a record of the applicant's advocacy and litigation experience in accordance with the requirements set out in the Knowledge and Experience Guidelines at Appendix 1;
- ◆ a portfolio of cases in which the Applicant has been involved during the two years preceding his application, in accordance with the Portfolio Guidelines set out in Appendix 2;
- ◆ details of two referees, who are members of the legal profession, who can attest to the applicant's knowledge of civil, criminal or family law and practice (whichever is relevant) and his advocacy skills, and who are able to offer an informed opinion as to the applicant's suitability to be granted the rights of audience he wishes to be granted in accordance with the Competence Criteria set out in the Knowledge and Experience Guidelines at Appendix 1;
- ◆ a statement from the applicant's employer or the organisation in which the applicant is a manager confirming the details provided of his litigation and

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<#>any corporation, undertaking, department or office (whether governmental, public, municipal, commercial or otherwise) and work under a solicitor, a barrister or an authorised litigator who is principally employed in duties of a legal nature by that corporation, undertaking, department or office; or¶  
¶  
<#>an authorised litigator.¶

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advocacy experience and whether any rights of audience granted will be exercised.

8. An application for a Certificate of Eligibility shall be made on such a form as may be prescribed for the purpose by the Institute and shall be accompanied by such fee as may be fixed by the Institute from time to time.
9. The portfolio which forms part of the application for a Certificate of Eligibility will be sent to an external advisor. The external advisor will assess whether the portfolio meets the criteria set out in the Knowledge and Experience Guidelines at Appendix 1 and the Portfolio Guidelines at Appendix 2.
10. Where the external advisor decides that the portfolio is satisfactory and meets the criteria set out in the Knowledge and Experience Guidelines at Appendix 1 and the Portfolio Guidelines at Appendix 2 the Officer will refer the application to the Advocacy Rights Committee to consider.
11. Where the external advisor decides that the portfolio is not satisfactory and does not meet the criteria set out in the Knowledge and Experience Guidelines at Appendix 1 and/or the Portfolio Guidelines at Appendix 2 he will give reasons for his decision. The Officer will inform the applicant of the decision. The applicant may withdraw his application or make further representations and ask that the full application be referred to the Advocacy Rights Committee to consider.
12. The Advocacy Rights Committee will decide whether or not an application should be approved. In reaching its decision the Committee will consider all the information provided by the applicant, and may call the applicant for interview or call for information from any person or source it considers appropriate. The Committee may:
  - ◆ Approve the application, and indicate which of the Advocacy Skills Courses – civil proceedings, family proceedings or criminal proceedings – the applicant may take;
  - ◆ Refuse the application.
13. In making any assessment or decision required by these Rules the Advocacy Rights Committee shall have regard to the Knowledge and Experience Guidelines set out at Appendix 1 and the Portfolio Guidelines at Appendix 2 to these Rules.
14. The Officer will notify an applicant in writing of the decision of the Advocacy Rights Committee. Where the application has been approved the notification shall include the Certificate of Eligibility. Where the application is unsuccessful, the notification shall set out the Committee's reasons and any preconditions to the consideration of any subsequent application for a Certificate of Eligibility. Where an application has been unsuccessful the applicant may apply for reconsideration in accordance with Rules 18 and 19.

15. The Certificate of Eligibility will specify which of the Advocacy Skills Course options the applicant may take.

## CERTIFICATION

62. Upon successful completion of an Advocacy Skills Course a Fellow may apply for an Advocacy Certificate. A Member who has completed an Advocacy Skills Course may not make an application until he becomes a Fellow.
63. A Fellow may only apply for an Advocacy Certificate relating to the type of proceedings covered by the Advocacy Skills Course he has completed.
64. An application shall be made on a form prescribed by the Institute from time to time for this purpose and shall be accompanied by such fee as may be fixed by the Institute from time to time.
65. The Officer will process the application. The applicant shall be granted an Advocacy Certificate which is appropriate to the Advocacy Skills Course he has completed, provided the Officer is satisfied that the applicant:
- is a Fellow of good standing;
  - is employed by or is a manager in an organisation referred to in Rule 6 of these Certification Rules;
  - is the holder of a Certificate of Eligibility; and
  - has passed an Advocacy Skills Course.
66. Where the Officer has any doubt as to the suitability of the applicant to be awarded an Advocacy Certificate he may request additional information from the applicant and/or refer the application to the Advocacy Rights Committee for decision.
67. When considering an application for an Advocacy Certificate to be awarded the Advocacy Rights Committee will consider all the information before it and may request additional information from any person or source it considers appropriate. It may require or permit the applicant to attend for interview before reaching its decision.
68. If the Advocacy Rights Committee is satisfied that the applicant is a fit and proper person to be issued with a Certificate it shall grant the Certificate. If it is not satisfied, it must give its reasons and indicate any preconditions to the consideration of any subsequent application by the applicant.
69. The Officer will notify an applicant in writing of a decision whether his application for an Advocacy Certificate is successful. Where the application

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has been approved the notification shall include the Advocacy Certificate. Where the application is unsuccessful, the notification shall set out the reasons and any preconditions to the consideration of any subsequent application by the applicant for an Advocacy Certificate. The applicant may apply for reconsideration of his application in accordance with Rules 18 and 19.

70. A Fellow holding an Advocacy Certificate will be described as a Legal Executive Advocate.
71. A Legal Executive Advocate who ceases to be employed **by or to be a manager in an organisation referred to in Rule 6 of these Certification Rules** may not exercise any right of audience granted to him under these Rules.

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## RENEWAL OF CERTIFICATES

79. The first Advocacy Certificate issued to a Fellow, and the first Advocacy Certificate issued in respect of any additional proceedings, will be valid until either 1 June or 1 December, whichever is the earlier, after 12 months have elapsed from the date on which that Certificate was issued. Thereafter, any Advocacy Certificate will be valid for a period of 3 years.
80. Applications for renewal will be made on a form prescribed by the Institute from time to time for the purpose and shall be accompanied by such fee as may be fixed by the Institute from time to time.
81. An application for the first renewal of an Advocacy Certificate must be supported by:
- ◆ Confirmation that the applicant is employed by **or is a manager in an organisation referred to in Rule 6 of these Certification Rules;**
  - ◆ a record of the applicant's advocacy and litigation experience during the period since his Advocacy Certificate was granted;
  - ◆ a portfolio of cases in which the applicant has been involved during the period since his Advocacy Certificate was granted, in accordance with the Portfolio Guidelines set out in Appendix 2;
  - ◆ a statement from his employer **or the organisation in which he is a manager** confirming **the details provided of his litigation and advocacy experience and whether any rights of audience granted will be exercised in the future.**
82. The portfolio which forms part of the application for the first renewal of the Advocacy Certificate will be sent to an external advisor. The external advisor will assess the portfolio against the criteria set out in Appendices 2 and 3.

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83. Where the external advisor decides that the portfolio is satisfactory and shows that the applicant has applied the advocacy skills in the cases described in accordance with the Portfolio Guidelines in Appendix 2 and the Course Outcomes set out in Appendix 3 the Officer will refer the application to the Advocacy Rights Committee to consider.
84. Where the external advisor decides that the portfolio is not satisfactory and does not show that the applicant has applied the advocacy skills in the cases described in accordance with the Portfolio Guidelines set out in Appendix 2 and the Course Outcomes set out in Appendix 3 the external advisor shall give reasons for his decision. He shall indicate what action the applicant needs to take to provide a satisfactory portfolio. The Officer will inform the applicant of the decision. The applicant may withdraw his application or make further representations and ask that the full application be referred to the Advocacy Rights Committee to consider.
85. The Advocacy Rights Committee will decide whether or not an application should be approved. In reaching its decision the Committee will consider all the information provided by the applicant and may call the applicant for interview or call for further information from any person or source it considers appropriate. The Committee may approve the application or refuse it.
86. In making any assessment or decision required by these Rules the Advocacy Rights Committee shall have regard to the portfolio guidelines in Appendix 2 and the course outcomes in Appendix 3.
87. The Officer will notify an applicant in writing of the decision of the Advocacy Rights Committee. Where the application has been approved the notification shall include the Advocacy Certificate. Where the application is unsuccessful the notification shall set out the Committee's reasons and any preconditions to the consideration of any subsequent application for an Advocacy Certificate.
88. Where the application is unsuccessful an applicant may apply for reconsideration in accordance with Rules 18 and 19. The Advocacy Rights Committee will have the same powers available as at Rule 85 upon an application for reconsideration.
89. A Fellow making an application for renewal of his Advocacy Certificate, after the first renewal, must:

- ◆ be a Fellow of good standing;
- ◆ be an employee of or a manager in an organisation referred to in Rule 6 of these Certification Rules;
- ◆ provide a statement from his employer or the organisation in which he is a manager confirming whether any rights of audience granted will be exercised; and

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- ◆ have undertaken Continuing Professional Development (CPD) that meets the requirements set out in these Rules.
90. The Officer will process applications for renewal. Where the Officer is satisfied that the Fellow complies with the requirements set out in Rule 89, he will issue a new Advocacy Certificate.
  91. Where he has any doubt whether an Advocacy Certificate should be renewed, the Officer may request further information and/or refer the application to the Advocacy Rights Committee.
  92. Where an application for renewal is referred to it by the Officer, the Advocacy Rights Committee shall consider all the information before it and may request additional information from any person or source it considers appropriate, and may require the applicant to attend for interview before reaching its decision.
  93. If the Advocacy Rights Committee is satisfied that the Advocacy Certificate should be renewed, it shall direct the Officer to issue a Certificate. If it is not so satisfied, it must give its reasons and indicate any preconditions to the consideration of any subsequent application by the applicant.
  94. The Officer will notify an applicant in writing of the decision of the Advocacy Rights Committee. Where the application has been approved the notification shall include the Advocacy Certificate. Where the application is unsuccessful, the notification shall set out the Committee's reasons and any preconditions to the consideration of any subsequent application by the applicant to renew his Advocacy Certificate. Where the application is unsuccessful an applicant may apply for reconsideration in accordance with Rules 18 and 19.
  95. A Fellow may not exercise any rights of audience which may be granted under these Rules, unless he has a current Advocacy Certificate which is appropriate to the Advocacy Skills Course(s) he has completed.
  96. A Legal Executive Advocate who, for any reason, ceases to be a Fellow of the Institute shall automatically cease to be eligible to exercise any right of audience granted under these Rules and shall return his Certificate(s) to the Institute within 28 days of ceasing to be a Fellow.

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