

Application by the Institute of Legal Executives (ILEX) to become an Approved Regulator for rights to conduct litigation and rights of audience



July 2010

Background

The Institute of Legal Executives (ILEX) is an Approved Regulator under the Legal Services Act 2007 (the Act) for the purpose of awarding rights of audience to ILEX members and administration of oaths. It is also a qualifying regulator in respect of immigration advice and services.

Under the County Court (Rights of Audience) Direction 1978, rights of audience were extended to allow Legal Executives, under supervision, to undertake certain unopposed applications in the County Court and an application for judgment by consent. A Legal Executive may also appear in County Court arbitrations and before tribunals at the discretion of the court. This is under the general discretionary power of the court or tribunal.

In addition to the above rights, ILEX members are able to qualify as Legal Executive Advocates. This qualification enables ILEX members, under supervision, to exercise greater rights of audience. The rights of audience that ILEX can grant are split into civil, criminal and family proceedings.

This application, if granted, will allow ILEX to award certificates to Fellows to conduct litigation and rights of audience in civil and family proceedings. Fellows who have been awarded the certificates would be able to provide these services for an employer, independently or to a client on behalf of their employer. The difference between the rights sought in this application and ILEX's existing advocacy rights is that the Fellows that qualify with the Litigation and Rights of Audience qualification will be able to practise independently and provide advice to clients of their employers.

ILEX has concurrently submitted a separate application that seeks approval to allow it to award Associate Prosecutors the rights of audience and rights to conduct litigation from May 2011.

Structure of the application

The application is divided into five parts:

- Part I – provides information about ILEX and IPS
- Part II – provides information about ILEX members and their work
- Part III – sets out arguments to demonstrate compliance with the regulatory objectives and professional principles contained in the Legal Services Act 2007 and the Better Regulation Principles
- Part IV – explains the litigation and advocacy rights qualification scheme
- Part V – provides commentary on the regulatory scheme, including the Practice Management and Accounts Rules and support codes, rules and schemes.

Proposals

The rights sought by ILEX are:

Rights to Conduct Litigation	Rights of Audience
<p><i>Civil Proceedings</i> The Civil Proceedings Litigation Certificate will award the following rights:</p> <ul style="list-style-type: none"> • To conduct litigation in civil proceedings; and • To undertake rights of audience in the Judge’s room in the High Court and County Court in Civil proceedings, except family proceedings. 	<p><i>Civil Proceedings</i> Holders of the Civil Proceedings Litigation Certificate will be able to seek a Rights of Audience Certificate that awards the following additional rights:</p> <ul style="list-style-type: none"> • To appear in open Court in the County Court in all actions, except family proceedings; • To appear before magistrates, District Judges (Magistrates’ Courts) or Justices’ Legal Advisors in the Magistrates’ Courts in relation to all civil and enforcement matters; • To appear before any tribunal having jurisdiction in England and Wales, which is listed in Schedule 6 of the Tribunals, Courts and Enforcement Act 2007 where the tribunal rules provide for a non-discretionary right of audience being available to barristers, solicitors and ILEX advocates; and • 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.
<p><i>Family Proceedings</i> The Family Proceedings Litigation Certificate will award the following additional rights:</p> <ul style="list-style-type: none"> • To conduct litigation in all family proceedings; and • To appear in family proceedings in the Judge’s room in the High Court and County Court. 	<p><i>Family Proceedings</i> Holders of the Family Proceedings Litigation Certificate will be able to seek a Rights of Audience Certificate that awards the following additional rights:</p> <ul style="list-style-type: none"> • 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; and • 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.

Consultation responses

ILEX conducted a consultation on the proposals between 16 February 2010 and 3 April 2010.

Responses were received from two regulatory bodies, of which one indicated that they would not be submitting a response. Responses were received from six representative organisations, which included Approved Regulators and organisations set up to represent specific groups.

A response was received from a consumer body, which indicated that it was not in a position to comment due to other priorities.

The responses and an analysis are contained in Annex 14 of the application.

LSB timetable

Under the Act the Legal Services Board (LSB) has 12 months in which to make decision on a designation application (with the possibility of extending this to a maximum of 16 months). This application was received on 27 July 2010 and therefore we will make a decision by 26 July 2011 (or no later than 26 November 2011 if an extension notice is issued).

The LSB has an internal target of making a decision on whether to make a recommendation to the Lord Chancellor within 6 months of the application being deemed to be complete. This is of course dependent on what emerges from the detailed consideration of the application.