

Application by the Institute of Legal Executives (ILEX) to become an approved regulator to award rights of audience and rights to conduct litigation to Associate Prosecutor member of ILEX



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.

Since 1998, the Director of Public Prosecutions (DPP) has been able to designate suitably trained employees of the Crown Prosecution Service (CPS), known as Associate Prosecutors, with the rights and powers of a Crown Prosecutor in a range of proceedings in the magistrates courts. Once designated, Associate Prosecutors are given responsibility for reviewing and presenting a range of straightforward cases in the magistrates court. They are also able to conduct a small amount of out of court work. As at 31 March 2010 the CPS employed 463 Associate Prosecutors.

From May 2011, the DPP will no longer be able to confer on designated persons any rights of audience or rights to conduct litigation and all Associate Prosecutors must be subject to regulation by an approved regulator. In October 2008, ILEX and the CPS entered into a Memorandum of Understanding under which Associate Prosecutors would become members of ILEX and subject to ILEX's regulatory framework. A new class of membership was created in November 2008 and there are currently 463 associate prosecutor members of ILEX of whom 21 are Fellows.

This application, if granted, will allow ILEX to award Associate Prosecutors the rights of audience and rights to conduct litigation from May 2011.

Proposals

ILEX are proposing 2 levels of Associate Prosecutor:

Level 1 Associate Prosecutors will be permitted to appear before Justices or a District Judge in a magistrates court, including youth court, to prosecute all adult and youth offenders where the CPS is the prosecuting authority (except in trials, Newton Hearings, Special Reasons Hearings, Contested Preventative Civil Orders and Contested Binding Over proceedings). They will also be permitted to appear in the magistrates, youth and Crown Court before a judge to conduct a bail application where the CPS is the prosecuting authority.

Level 2 Associate Prosecutors will have the same advocacy rights as Level 1 and will also be permitted to prosecute trials in the magistrates courts (including youth courts) in summary only offences. Experienced Level 1 Associate Prosecutors may apply for the Level 2 qualification.

The litigation rights will permit Associate Prosecutors to conduct out of court case work functions in cases where the CPS is the prosecuting authority and where the case falls within their statutory remit (set out in section 7A of the Prosecution of Offences Act 1985).

Structure of the application

The main part of the application consists of:

- **Part I Introduction** – describes ILEX, ILEX Professional Standards Limited, CPS and Associate Prosecutors (selection, work and supervision)
- **Part II The rights to conduct litigation and rights of audience sought by ILEX** – describes the rights applied for, how they are compatible with the Regulatory Objectives under the Act and the Better Regulation Principles
- **Part III The Qualification Scheme** – describes the selection process for Associate Prosecutors, the qualification requirements (including pre-course work, courses to be undertaken and post-qualification assessment of advocacy skills) and continuing professional development requirements. Case studies and outlines of the courses are contained in Annexes 21 to 31
- **Part IV Conduct Rules** – all Associate Prosecutors will be required to comply with the ILEX Code of Conduct (Annex 14). They are also bound by the Code for Crown Prosecutors (Annex 13) and must follow the CPS Statement of Ethical Principles (Annex 16) and the CPS National Standards for Advocacy (Annex 17). Both ILEX and CPS have in place disciplinary arrangements to deal with complaint and conduct issues (Annexes 15 & 18)

Consultation

ILEX consulted on these proposals between 17 February 2010 and 6 April 2010. 9 responses were received (2 from regulatory bodies, 5 from representative bodies and 2 from independent bodies). The responses and an analysis are contained in Annex 20 of the application.

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.