



**APPLICATION TO THE LEGAL SERVICES BOARD TO
AMEND REGULATORY ARRANGEMENTS**

CONTINUING PROFESSIONAL DEVELOPMENT

**FINAL SUBMISSION
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Introduction

1. This is an application made by ILEX Professional Standards (IPS) to alter the Continuing Professional Development Regulations. These regulations govern the requirements for Continuing Professional Development (CPD) for members of the Chartered Institute of Legal Executives (CILEx) in the Associate, Graduate, Fellow, Legal Accounts Executive, Legal Accounts Member and Associate Prosecutor grades of membership. This application also seeks to make consequential amendments to the Rights of Audience Certification Rules and Associate Prosecutors Rights of Audience and Litigation Rules.
2. This application is made under part 3 of schedule 4 of the Act and the rules made by the Legal Services Board (LSB) under paragraphs 20(1) and 23(3) of part 3 of schedule 4 of the Act, which enables the LSB to approve alterations of Approved Regulators' regulatory arrangements.
3. The revised Continuing Professional Development Regulations, the Rights of Audience Certification Rules and the Associate Prosecutor Rights of Audience and Litigation Rules can be found at **Annex 1**.
4. The CPD Regulations seek to introduce a new scheme of CPD based on outputs with an input element. As the proposed CPD scheme is novel in the legal profession of England and Wales, IPS intends to phase in the new requirements to CILEx members over a 3 year period. This is to ensure that members fully understand how the new scheme operates and that they feel confident in the new approach. The Continuing Professional Development Regulations reflect the phased approach taken to implementation. As members are brought within the new scheme the old requirements will fall out of the rules.
5. IPS has taken the opportunity to simplify the Rights of Audience Certification Rules and the Associate Prosecutor Rights of Audience and

Litigation Certification Rules by removing reference to specific CPD requirements in them and incorporating this information into the Continuing Professional Development Regulations (Part C and Part D respectively). The aim of this revision is to incorporate the CPD scheme into central regulatory arrangements.

6. The existing CPD regulations require members of CILEx in the requisite grades to undertake a number of hours of CPD each year which is commensurate with their grade of membership.
7. IPS has developed a revised CPD scheme that:
 - removes the hours requirement, replacing this with a stipulation that all requisite members should identify at least 9 completed outcomes on their CPD record each year
 - ensures that CPD is achieved through a process of reflection on current and future practice
 - demonstrates that members have identified and carried out CPD which is relevant to them including evaluating the effectiveness of the CPD against the intended outcome
 - assists IPS in assuring the on-going competence and professionalism of CILEx members.
8. The proposed scheme will assist in assuring the competence of those CILEx members required to undertake CPD because the nature of the process will require members to utilise self-reflection to identify areas in which they need to develop or refresh their knowledge and skills as opposed to meeting a general hours requirement. This reflection will in turn enable CILEx members to plan, act and evaluate any CPD which they have undertaken as a result of that reflection, thereby assessing the value they gain from CPD activities.

9. The phased implementation of the revised scheme will operate as follows:

Membership Grade	CPD Year	Requirements
Fellows, Legal Accounts Executives and Associate Prosecutors	October 2013	Existing hours + Professionalism
	October 2014	9 CPD entries including professionalism
	October 2015	9 CPD entries including professionalism
Graduates and Legal Accounts Members	October 2013	Existing hours + Professionalism
	October 2014	Existing hours + Professionalism
	October 2015	9 CPD entries including professionalism
Associate Members	October 2013	Existing hours + Professionalism

10. Associate members of CILEx come from a wide variety of work backgrounds. Some are very experienced professionals who have decided not to continue with study, others have recently completed their CILEx Level 3 qualifications or equivalent and others are continuing with their Level 6 studies. Whilst appropriate for some members in this grade of membership, the cyclical approach to CPD required under the new scheme may not be the best approach for all of these members and it was an issue raised by CILEx in its response to the consultation. As a result, IPS intends to undertake further

research into the Associate membership grade during the phased implementation period. This will enable IPS to decide what would constitute the most appropriate CPD for them and acting accordingly.

11. The revised scheme has been developed over the last 18 months and has involved consultation with stakeholders as follows:

- 12 week consultation: which closed in September 2012
- CPD Pilot: open for 3 months between January 2013 and March 2013
- Education Reference Group: held in September 2012

12. The responses gained from the consultation and the Education Reference Group have been analysed and considered by IPS. The analysis can be found in **Annex 2** of this document.

13. The returned documentation received from the operation of the CPD pilot has been analysed and considered by IPS. The analysis can be found in **Annex 3** of this document.

14. An Equality Impact Assessment has been carried out to identify any potential adverse effects which the introduction of the new scheme may have on groups protected under the Equality Act 2010. This document can be found at **Annex 4**. IPS found that any potential adverse impact could be managed.

15. IPS has developed a scheme handbook which provides guidance to members on the CPD scheme. The scheme handbook has been included to provide context and supporting information to this application. It can be found at **Annex 5**.

16. The handbook which will be in operation during the phased implementation of the scheme can be viewed at **Annex 6**. The

handbook has been divided into sections and these reflect the different requirements for different grades of membership during the phased implementation of the scheme.

17. The documents provided at Annexes 2-6 are not intended to form part of the regulatory arrangements and therefore are not being submitted for approval. They are included as supporting documentation which outlines the development of the scheme and how it will work in practice.

Current Arrangements for CPD

18. CPD is compulsory for CILEx members in the Associate, Graduate, Fellow, Legal Accounts Executive, Legal Accounts Member and Associate Prosecutor grades of membership.

19. IPS' current definition of CPD is as follows:

'The systematic maintenance, improvement and extension of the professional and legal skills, and personal qualities, necessary for the execution of professional and legal duties, and compliance with the standards required by IPS of CILEx members throughout their working life.'

20. For CILEx members who are required to undertake CPD there is a minimum number of hours set, commensurate with the grade of membership as follows:

- Fellows, Legal Accounts Executives and Associate Prosecutors*
= 16 hours per annum
- Graduate Members and Legal Accounts Members
= 12 hours per annum
- Associate Members

= 8 hours per annum

*For Chartered Legal Executive Advocates, at least 5 hours should be focused on advocacy skills.

21. In 2013, IPS and CILEx changed the CPD year from 1 January - 31 December to 1 January 2013 - 30 September 2013. This change was approved by the LSB in January 2013 by exemption and took effect from 2 January 2013. As a result, for the 2013 CPD year, the hours requirement was reduced by a quarter to compensate for the reduced timeframe as follows:

- Fellows, Legal Accounts Executives and Associate Prosecutors
= 12 hours
- Graduate Members and Legal Accounts Members
= 9 hours
- Associate Members
= 6 hours

22. From the 2014 CPD year (which begins in October 2013), the CPD year will run on a 12 month cycle from 1 October to 30 September.

23. Additional stipulations regarding CPD include the following elements:

- At least 50% of the CPD hours undertaken each year should be in the member's chosen specialism.
- Fellows who are also Chartered Legal Executive Advocates must undertake at least 5 hours CPD in advocacy skills.
- An annual return must be submitted by members online by no later than 30 September.

24. Where a member has been absent from employment during the CPD year because of maternity or paternity leave, illness or unemployment for at least 6 months, they are exempt from the CPD requirements.

25. A member may apply for a dispensation from the requirement to submit their online CPD record by 30 September if they have been unable to meet their CPD requirements during the CPD year. The request for dispensation must be made at least 1 calendar month in advance of the deadline. The request for dispensation must include an explanation of the circumstances which have prevented compliance with the deadline and an action plan to enable compliance with the requirements within 3 months of the CPD year end; that is 31 December.

26. IPS checks members' compliance with CPD requirements annually. Where a member has failed to comply with their CPD requirements by 31 December, they lose their practising certificate and other membership benefits from 1 January of the new practising year. Their conduct will be investigated under the Investigation, Disciplinary and Appeals Rules and may be referred to the Professional Conduct Panel as a breach of the Continuing Professional Development Rules and the Code of Conduct.

27. IPS accepts a wide range of activities as CPD, including updates from CILEx Law School (formerly ILEX Tutorial College) which are written for the purpose, attendance at courses and seminars and reading relevant CILEx Journal articles.

The nature and reasons for the proposed changes

28. IPS established a CPD Working Group (the Working Group) in November 2011, to consider the purposes of CPD and to determine

how far the current CPD requirements for CILEx members fulfilled these purposes.

29. The Working Group considered research which has been carried out into the purposes that CPD should serve. The research included information from the Professional Associations Research Network (PARN) and the Legal Education and Training Review (LETR) Literature Review which was published in February 2012. The research also considered the way in which other professions in the UK approach CPD and the way in which CPD is conducted by legal professions in other jurisdictions.

30. From this work, IPS determined that the purpose of CPD should be:

- To keep all practitioners above a threshold standard
- To allow individuals to identify, pursue and develop their own learning interests
- To help professionals embrace the idea of lifelong learning
- To protect the interests of the public and the consumer

31. Having identified the purposes of CPD, IPS, through the Working Group, proposed a number of changes which are explored in detail below.

32. In summary, these changes are as follows:

- A new definition to reflect the revised purposes of CPD
- A change of emphasis in measurement of CPD from counting hours towards identification and participation in relevant CPD
- The removal of the requirement that at least 50% of CPD should be undertaken in the member's specialism and replaced with the requirement that all CPD should be relevant to the member's practice

- The introduction of a compulsory professionalism requirement which addresses ethical issues
- The introduction of a competency framework
- Changes to the requirements for Chartered Legal Executive Advocates (from 5 hours annual CPD in advocacy skills to 2 entries on advocacy skills)
- Changes to the requirements for Associate Prosecutors (from at least 8 hours annual CPD in advocacy skills, criminal practice, procedure or knowledge to at least 5 entries of 9 entries in advocacy skills, criminal practice, procedure or knowledge)
- A reduction in the number of entries required for members participating in the Work Based Learning application process for Fellowship from 9 entries to 5 entries for a maximum of 2 years.
- Changes to the exemption rules
- Introduction of sampling member records

33. These proposed changes have been the subject of a 12 week consultation which was open between June and September 2012 and a 3 month pilot which operated between January and March 2013. The scheme was also the subject of discussion at an Education Reference Group at IPS in September 2012.

A new definition of CPD

34. IPS determined that the purposes of CPD should include maintenance and improvement of knowledge, skills and competence and develop personal and professional qualities, including integrity, flexibility and openness to change.

35. These purposes will enable IPS to better assure consumers that CILEX members are both competent and professional.

36. In order to reflect these purposes in the definition of CPD and taking into account the responses received from the consultation on the matter, IPS has amended the definition as follows:

'To maintain, improve and extend the skills and qualities necessary for the proper performance of professional and legal duties and compliance required by IPS, so as to ensure confidence in the professionalism and competence of CILEx members.'

Measurement of CPD

37. The revised definition of the purpose of CPD, as set out above, emphasises the assurance of competence and professionalism in CILEx members required to undertake CPD.

38. IPS has considered a variety of CPD schemes undertaken in other legal professions around the world and in other professions, both in the UK and internationally, in order to identify the most effective methods of using CPD to enhance the competence of professionals.

39. CPD schemes can be measured in one of 2 ways; either by measuring how much time the professional spends undertaking CPD each year (the input) or by considering what the professional gained from undertaking CPD (the output).

40. Measuring how much time has been spent in training, without any consideration of whether the professional has learnt anything from the training or whether the learning had any impact on the practice of the professional is of limited benefit in assuring competence and professionalism.

41. Assessing the effect CPD has had/will have on an individual's practice is more likely to offer some assurance of the competence and

professionalism of the member. However, as a regulator, IPS must be able to confirm that members have complied with the requirements to undertake CPD and what they have gained from CPD activity.

42. Having considered this information, IPS determined that the most appropriate method for assuring competence and professionalism of members through CPD would be to adopt an approach which combined the benefits of the output approach with some assessment of input from the member.
43. Therefore, IPS proposes to remove the hours requirement from the CPD scheme. This will be replaced with a requirement to reflect on current and future practice and identify areas for development (expressed as an outcome) over the course of the CPD year. From this reflection, CILEx members will be required to plan at least 3 CPD activities. As the element of reflection on current and future practice will necessarily centre on the work in which the member is employed, it is proposed that the formal requirement to undertake 50% of CPD activities in subject specialism be removed.
44. Once the member has completed the activity, they will be required to evaluate the effectiveness of the CPD in meeting the predetermined outcome. Where the outcome has been met, the activity will be complete. Where the outcome has not been met, the activity will be complete, but may give rise to a new activity in order to satisfy the outcome.
45. A fundamental part of the new CPD scheme is that members will record what they have learnt from their CPD rather than simply meeting an hours requirement. This will ensure that members are maintaining and developing their knowledge and skills through the identification of learning needs. This method of approaching CPD is focused on reflective learning rather than on accruing hours. This

move away from an hours requirement has enabled IPS to consider what can be counted as CPD. Where there is a minimum hours requirement, it is hard to include 'on the job' learning as CPD. However, where the member is addressing outcomes and the scheme sets a minimum number of outcomes for the member to address, then the regulator is able to recognise 'on the job' or unplanned learning as a valid element of CPD provided the member can identify an outcome from the unplanned activity.

46. IPS has stated that all requisite CILEx members should complete at least 9 CPD entries onto their CPD record each year. This figure represents a new learning outcome approximately every 6 weeks, recognising that members continue to learn throughout the year. In addition, IPS has included a requirement that at least 5 entries each year must come from planned activities to ensure that the majority of CPD activities undertaken are not made up from unstructured workplace learning. The number of entries will be kept under review in the early years of operation of the new scheme.

47. In summary, IPS proposes that the CPD requirements for CILEx members be that every member:

- Reflect on current and future practice and identify at least 3 goals or outcomes which they would like to achieve during the CPD year
- Plan activities which they expect will meet the outcomes set
- Undertake the activity
- Evaluate the effectiveness of the activity in meeting the outcome and determine next steps where the activity has not met or only partially met the outcome

- Undertake a minimum of 9 entries in total, at least 3 of which should be activities planned at the beginning of the year and at least 5 activities should be recorded on the CPD record at the end of the CPD year. The remaining activities may be planned or unplanned.

Professionalism as a compulsory activity

48. Approved Regulators are required to act in accordance with the 8 regulatory objectives which are set out in the Legal Services Act 2007 (the Act). Section 1(1)(h) of the Act identifies one of these objectives as 'promoting and maintaining adherence to the professional principles.'

49. Section 1(3) of the Act identifies 5 professional principles:

- acting with integrity,
- maintenance of proper standards or work,
- acting in the best interests of the client,
- complying with their duty to the court, and
- keeping the affairs of their client confidential.

50. As the regulator of CILEx members, IPS recognises its obligation to ensure that each member of the profession adheres to the professional principles. One measurable contribution to the on-going assurance of such adherence is the introduction of a compulsory professionalism element within the CPD scheme.

51. IPS has defined professionalism as including the following areas:

- Professional ethics, including the Code of Conduct
- Business awareness
- Social awareness

- Client communication skills
- Dealing with challenging clients
- Equality and diversity
- Time management

52. An understanding of professionalism can help to ensure that consumers and the wider public are protected, through ensuring that members understand and respect both the public interest in the administration of justice and the interests of the client in addition to the interests of the provider of legal services. This may be increasingly important in the wake of the liberalisation of the legal services market and the introduction of outcomes focused regulation.

53. As there are few, if any, CPD modules which currently focus on professionalism, IPS has been working with CILEx Law School on the development of a module which will be available to all members to enable them to comply with this requirement. However, as the scheme does not prescribe any particular form of CPD, CILEx members will be able to choose alternative CPD which focuses on professionalism, provided they can demonstrate a learning outcome from the activity.

54. In addition, specific guidance has been developed and is contained within section 4 of the handbook included at **Annex 6**.

Other requirements

Requirements for Chartered Legal Executive Advocates

55. Chartered Legal Executive Advocates are currently required to undertake 5 hours of CPD in advocacy skills.

56. Under the proposals for changes to the CPD scheme, the measurement of CPD is no longer in hours. As a result, IPS has proposed that the

requirement be changed from 5 hours, to the identification of 2 activities, expressed as outcomes, which are related to advocacy skills. This is proportionate to the current requirement for 5 hours from a total 16 hours needed for a Chartered Legal Executive Advocate.

Removal of the exemption from CPD where the member has been absent from work

57. IPS has identified one of the purposes of CPD as assisting in the assurance of the on-going competence of members. Members who are away from work for an extended period of time may be unaware of changes and developments in their area of practice which have occurred during their absence. Therefore, these members pose an increased risk to consumers and the public upon their return to work.

58. As a result, IPS proposed that the exemption, open to members who have an extended period of absence from work owing to illness, maternity/paternity leave or unemployment, should be removed.

59. It was highlighted during the consultation that this has the potential to discriminate against some protected groups. The need to assure competence of members was balanced with the need to ensure that the revisions did not discriminate against members with protected characteristics. Therefore the requirement to undertake CPD during an extended period of absence may be substituted with attendance at a 'Return to Work' course undertaken within 2 months of the return. CILEx has indicated its willingness to be involved in the development of such a course.

Reduction in the number of entries required for Graduate members undertaking work based learning

60. IPS has recently developed an alternative method for application for Fellowship, which is based on the production of a portfolio of evidence to demonstrate meeting a series of 27 learning outcomes within 8 competencies.

61. There is considerable work required to complete the portfolio of evidence and applicants are required to reflect on their work and demonstrate how it meets each of the learning outcomes. IPS considered that the amount of work involved in producing the portfolio was significant and that therefore, for the 2 year period in which applicants would be compiling their portfolio of evidence, they would qualify for a reduction in the amount of CPD to be undertaken.

62. IPS has determined that the work undertaken during the work based learning exercise is 'on the job' learning and therefore that applicants need not demonstrate any unplanned learning as CPD through this period.

63. There is no minimum unplanned learning requirement under the proposed CPD scheme, therefore IPS determined that requisite members should complete at least 3 planned activities at the start of the CPD year and record 5 planned activities by the CPD year end. Therefore, IPS proposes to reduce the requirement for 9 entries of CPD each year to 5 entries for Graduate Members undertaking the work based learning portfolio. This reduction will be available to any member only for a maximum of 2 CPD years. After this time, Graduate members must revert to the 9 entries per annum requirement of all other requisite CILEx members.

Link to application for Practice Rights

64. IPS has submitted applications for rights to conduct probate activity and reserved instrument activity and the right to regulate entities.

Should these applications be successful, the CPD scheme will be broadened to approved managers and practitioners with practice rights and include members regulated to conduct probate, reserved instrument activities and become approved managers of entities. They will be required to undertake the same CPD as Fellows. The CPD principles outlined above will be applied to this group of members as well as to the compliance managers in IPS regulated entities.

Ensuring compliance with the new CPD scheme

65. All members who are required to undertake CPD are required to submit online an annual CPD return which confirms that they have complied with the CPD requirements and includes a list of the CPD activities they have undertaken.
66. Under the revised CPD scheme members will continue to submit an annual return online, which includes details for each of the 9 entries of the anticipated outcomes, the activity undertaken and the actual outcome of the CPD. This will enable IPS to ascertain whether activities have been planned, undertaken and evaluated in accordance with the principles of the new scheme.
67. In addition, IPS will introduce a procedure to sample the CPD records of members. A 2.5% random sample will be chosen each year. These members will be asked to submit documentary evidence which demonstrates that they have undertaken reflection, planning and evaluation of their CPD. This will support their CPD record, which is a summary of their CPD activity for the year. Of these, at least 10% will be contacted by telephone to discuss their CPD records and the learning gained from undertaking CPD activities. Some of these members will be chosen at random, others will be chosen on the basis of the sample.

68. The purpose of the random sample is to ensure that selected members who have submitted the return online have thought about the CPD they need to undertake and can provide evidence of reflection, activity and evaluation in accordance with the scheme.
69. The initial size of the random sample is intended to be 2.5%. However, IPS will review the effectiveness of this sample in its review of the scheme, which is planned to take place 3 years after the start of the new scheme.
70. A further sample will be chosen on the basis of risk (either because members have failed to complete CPD in previous years or because they have been subject to disciplinary action which could have been prevented through the use of effective CPD). This sample will be treated similarly to ensure compliance with the scheme.

Failure to comply with the scheme

71. IPS recognises that there will be circumstances in which a member cannot meet the CPD requirements within the CPD year. If a member believes they will be unable to meet the requirements, they can request a dispensation. This must be requested by 31 August of the CPD year and must include an outline of the circumstances which have led to the request and an action plan to bring the CPD up to date.
72. If a member – for example, a Graduate member undertaking work based learning - has not been granted a reduction, or has not completed all of the agreed, reduced amount or has not been granted a dispensation as outlined in paragraph 67, their membership will be suspended from 1 January of the following year and the member will not be entitled to use their designatory letters or exercise any practice

rights that they hold until their CPD has been brought up to date. Failure to comply with the CPD requirements will also be investigated under the Investigatory, Disciplinary and Appeals Rules.

The effect of the proposed changes

73. The current CPD scheme enables IPS to determine whether members have undertaken the required number of CPD hours. However, participation in CPD activities does not mean that the members have gained anything from their participation in the activities. As a result, this method of CPD measurement is little more than a formal 'tick-box' exercise, rather than members gaining value from their CPD which in turn assists in the assurance of the competence of members.

74. A central purpose of CPD is to assist in the on-going competence and professionalism of members. As a result, IPS is proposing to change the way in which members choose their CPD activities for the CPD year and will require members to evaluate the effectiveness of the CPD on their current and future practice. IPS considers that this method of CPD measurement will be better able to assist in the on-going competence of members and therefore will provide a better assurance to both consumers of legal services and the wider public that CILEX members are both competent and professional.

75. At the beginning of the CPD year, each member will reflect on their current practice and consider any areas in which they consider development would be beneficial. From this reflection, which includes law and legal practice, types of CPD which the member finds most effective and any other skills which the member may want to develop, the member can draw up at least 3 activities which will address the identified areas for development. By the end of the CPD year, members must complete at least 5 planned activities. The Reflection

and Planning tool has been designed to help with this and can be found in the CPD Handbook at page 9.

76. When planning CPD activity, the member should identify what they expect to get from planned CPD activity, which they express as a learning outcome. Guidance has been provided on how to develop a learning outcome. This can be found in the guidance and examples which are provided on the IPS website.

77. After each planned activity, the member will consider the activity in the context of what he expected to get from it (expressed as a learning outcome) in order to evaluate its effectiveness. They are also expected to reflect on whether the learning has been used in practice and, if so, how useful that learning was. Where the learning is yet to be used in practice, consideration must be given to the likely usefulness of the learning in future practice. The Evaluation of Activity tool (see page 12 of the CPD handbook) has been developed to assist with this part of the process.

78. In addition to planned CPD activities, IPS will, in future, accept learning which occurs 'on the job', for example where something has gone wrong or where a case presents a novel area of law or practice to the member. Members are able to count this activity as CPD provided they complete the Evaluation of Unplanned Learning Tool (see page 13 of the CPD handbook).

79. Under the new scheme, all members required to undertake CPD must make at least 9 entries (each entry reflecting an identified learning outcome) on their CPD record (a copy of this record can be found in the CPD handbook on page 14) and submit this via MyCILEx before the end of the CPD year on 30 September. IPS will check that each member has made at least 9 entries and has submitted their record by 30 September. Non-compliance will be investigated and further action

taken, where appropriate, in accordance with the Investigation, Disciplinary and Appeal Rules.

80. In addition, IPS intends to take a 2.5% random sample of members and request additional documentary evidence which supports their participation in the reflection, planning and evaluation phases of the CPD cycle. 10% of these members will be contacted by telephone to discuss their records and experience.

81. This information will provide the basis for the Annual Report on CPD. The Annual Report on CPD will be published by IPS and this will contain information on levels of compliance with the scheme, outcomes from the sampling of members CPD records and analysis of data from a sample of members required to undertake CPD. In addition, general feedback will be provided to members of the effectiveness of the CPD scheme through the CILEx Journal and other methods of communication with members.

82. Prior to making this application, IPS consulted on the proposed changes (between June 2012 and September 2012). In addition, IPS ran a pilot of the scheme (between January 2013 and March 2013). IPS also ran an Education Reference Group (in September 2012) which considered some of the key responses to the consultation. Analysis from these consultations is included at **Annexes 2 and 3**.

83. One aspect of the scheme which has been amended following the consultation is the proposal to remove the exemption from CPD for members who are away from work for more than 6 months in a single CPD year. This is discussed in the section on Equality Impact Assessment.

84. The proposed scheme was originally developed by IPS on the basis of research gathered on the operation of similar schemes both in other legal professions and other professions both in the UK and

internationally. IPS also considered the Literature Review and other information provided through participation in the Legal Education and Training Review.

85. The Legal Education and Training Review Final Report, published on 25 June 2013, identified the following elements as being best practice in CPD schemes (at paragraph 7.38).

- schemes need not, but may prescribe minimum hours across the board;
- sufficient identifiable hours/activities should be undertaken in the required areas (ethics and professionalism, and, as appropriate, equality and diversity, management and supervision). Sufficient in these contexts means appropriate at that time to the needs of the learner, his/her clients, and (where relevant) the employing organisation;
- CPD schemes should permit practitioners to use informal learning as evidence, provided that evidence of reflection and learning from the activity is demonstrated;
- a limit may be set on the amount or proportion of non-verifiable activity that counts;
- all completed CPD activity for the cycle should be recorded, not just the activity required to comply with any minimum requirement;
- regulators should support their regulated communities by providing initial training, guidance and tools to assist in maximising the value of the required CPD activity;
- provision should be made for random audit of annual CPD plans, and for effective trigger powers to review CPD across an entity where random audit highlights reasonable cause to investigate.

86. Key responses to the proposals received through the consultation were considered at the Education Reference Group. The scheme was refined

on the basis of responses received from the consultation and was then tested through the operation of the pilot to ensure that it would operate effectively once live.

87. The pilot operated between 1 January 2013 and 31 March 2013. The analysis of the pilot can be found at **Annex 3**. The pilot was conducted with participants from a range of areas of legal practice. Generally feedback was positive, although minor amendments have been made to the CPD Record to ensure that members provide complete information as to the relevance of their CPD to their work when they submit their annual return. It is clear that members require significant education on this very different approach to CPD. As a result, IPS has developed a phased implementation plan, which is designed to introduce this new approach to members in a structured way. There is more detail on the implementation plan in the 'next steps' section of the application.

88. The Law Society of Alberta uses a CPD scheme which is based on reflection and planning and their scheme has been in operation for over 4 years. The scheme was launched knowing that there would be a period of adjustment required for their members, in terms of assisting members to adapt to a different conceptual approach to CPD. IPS intends to adopt a similar approach to the new scheme, launching the changes over a period of time and at the same time working with members to enable them to develop understanding of reflection and evaluation of learning in the context of outcomes. This will contribute to their on-going competence in a way that the counting of CPD hours is not necessarily able to assure.

Equality Impact Assessment

89. Throughout the development of the scheme, IPS collated information to minimise the risk that an applicant with protected characteristics

would be disadvantaged through implementation of the new scheme. IPS has completed an Equality Impact Assessment (**Annex 4**) to consider this information. This is summarised below.

90. During the consultation process, which took place between June and September 2012, one matter was identified which raised an issue under the Equality Act 2010. The proposed scheme removes the exemption for CILEx members who have been away from work for longer than 6 months in a CPD year. This was proposed because members who have been absent from work may present a greater risk of reduced competence in their work than a member who has been in employment throughout the period particularly as IPS has an obligation to protect consumers and the public under its regulatory objectives.
91. The consultation identified that this may impact on a number of protected groups, including women on maternity leave and people with a disability who are away from work on long term sick leave. This was tested during the CPD pilot.
92. During the operation of the CPD pilot, data was collected in relation to gender, race, age and disability to ensure that the scheme did not adversely affect any of these groups without appropriate justification. No unintended consequences were identified from this data.
93. As a result of the data collected during the consultation, IPS has decided that it would be appropriate to accept the attendance on a 'Returners to Work' course as meeting CPD requirements for those members who have been away from work for more than 6 months, but who were unable to meet their CPD requirements in the usual way. It is considered that this compromise should ensure competence of this group of individuals in a proportionate manner whilst ensuring the interests of consumers are adequately protected.

Review of the success of the revised CPD scheme

94. The selection of 9 entries as the annual CPD requirement for all CILEx members will be kept under review. IPS will undertake a review after the scheme has been in operation for 3 years, to determine the effectiveness of this number of entries.

95. IPS will, at the same time, consider the effectiveness of replacing a 5 hours CPD requirement in advocacy skills training for all CILEx Advocates, with a requirement to make 2 entries on their CPD records which focus on advocacy skills.

96. IPS will also review the reduction in the number of entries required of Graduate members of CILEx who are participating in the Work Based Learning assessment scheme for Fellowship.

97. IPS has decided on an initial sample size of 2.5% of the CPD returns, selected randomly to ensure compliance with the scheme requirements. From the second year of the phased implementation, this will be kept under review to ensure that the sample size is sufficient to enable IPS to assess compliance and full engagement with the planning and reflection cycle. In addition, a questionnaire will be sent to a sample of CILEx members each year, to obtain more information on the operation of the scheme.

98. Finally it was suggested, by a consultee, that IPS develop success criteria, to enable monitoring of the success of the revised scheme. IPS has determined that the most effective way to do this will be to publish an annual report to include levels of compliance, outcomes from the sampling, analysis of data collected from a sample of members required to undertake the revised CPD.

99. In summary, IPS will:

- Publish an annual report which sets out the success of the scheme
- Undertake a 3 year review to consider the effectiveness of the sample size and also the effectiveness of the use of 9 entries across all grades of CILEx membership.

THE LEGAL SERVICES ACT 2007

The Regulatory Objectives

100. The Legal Services Act 2007 sets out eight objectives, which it is the duty of the approved regulators to promote. CILEx is an approved regulator under the Legal Services Act 2007. IPS' application for the revisions to the CPD scheme required of requisite CILEx members supports the regulatory objectives set out under the Legal Services Act 2007.

101. This section identifies how the regulatory objectives have been met.

Protecting and promoting the public interest and the interests of consumers

102. The proposed changes to the CPD scheme for members who are obliged to undertake CPD have been designed to promote and protect the interest of consumers and the public interest.

103. The public interest will be protected through the increased ability of IPS to assure the competence of CILEx members who follow the revised CPD process of reflection, planning, action and evaluation.

104. These members will be demonstrating that they have identified CPD activities which are relevant to their development as competent and professional practitioners. This will be achieved through the identification of areas for consolidation, refreshing or development based on a reflective process on current and future practice, which will enable the members to identify clear learning outcomes from their planned CPD activities and thereby enable them to evaluate the effectiveness of their learning in the context of their practice.

105. Ensuring knowledge, understanding and skills are up to date in the relevant area of practice is one method of assuring the competence of professionals. IPS is confident that this method of CPD selection and evaluation will enable improved assurance of the competence and professionalism of members.

Consumer Outcomes

106. The revisions to the CPD scheme will contribute to the assurance of competence and professionalism of CILEx members through the focus on reflection on current practice and the identification of gaps in current knowledge and skills and new areas for development. The selection of CPD activities which are designed to meet these goals, expressed as outcomes expected from the CPD activities, and the assessment through evaluation of the effectiveness of the CPD activity in meeting the outcomes, will encourage members to select the most appropriate CPD to keep relevant knowledge and skills up to date. In addition, the annual requirement to participate in a CPD activity which is focused on professionalism is designed to raise awareness of matters which should lead to an assurance of professionalism and may also lead to a reduction in complaints.

Increasing public understanding of the citizen's rights and duties

107. It is important that consumers have clarity and transparency about their rights and responsibilities. Empowered consumers making informed choices drive providers of legal services to deliver the range of quality, access and value that citizens should feel confident to demand. Consumers are not on the whole frequent consumers of legal services. Consumers do not need to - and will not - know of their legal rights and duties in all situations. IPS can encourage, with the engagement of its regulated community, a better understanding by consumers of rights and responsibilities and greater confidence about where to turn to identify them and their application in a particular situation. IPS' regulatory arrangements will ensure that providers are competent to advise citizens of their rights and responsibilities and routes of recourse where required, through the outcomes focused approach to planning and evaluating CPD and the inclusion of a compulsory professionalism component.

Promoting and maintaining adherence to the professional principles

108. The professional principles govern the behaviour of individual Authorised Persons. They firmly place a responsibility on Authorised Persons to act in a manner that is consistent with the status of belonging to a profession and are set out in the IPS Code of Conduct.

109. Under the revised CPD scheme, CILEx members who are obliged to undertake CPD will be required to participate in a CPD activity annually which is focused on professionalism. This provision will ensure that CILEx members remain focused on the need to behave in an ethical and professional manner at all times.

Promoting competition in the provision of services

110. The use of an outputs based CPD scheme is presently unique in the legal profession in England and Wales and will provide CILEx members with the unique selling point of undertaking CPD which seeks to assure competence and professionalism.

Encouraging an independent, strong, diverse and effective legal profession; supporting the rule of law and access to justice

111. The proposed changes to the CPD scheme are considered by IPS to have a neutral effect on these regulatory objectives.

BETTER REGULATION PRINCIPLES

112. The proposed revisions to the CILEx CPD scheme are consistent with the better regulation principles.

Proportionate

113. The proposed changes to the CPD scheme for CILEx members are proportionate.

114. In developing the revisions, IPS looked carefully at the different requirements for different membership grades and determined that once the need to complete a minimum number of hours was removed, the differential in grades of membership could also be removed. This is proportionate. CILEx members represent a range of career stages, from those who are completing the CILEx qualification who will be able to identify outcomes which relate more towards career development and study, while others who have an established career regardless of membership grade will be able to identify areas for development. Those members who are more senior in the profession will be able to identify wider opportunities for development including, for example,

mentoring more junior members and presenting and sharing their knowledge with others.

115. The new scheme is very broadly drafted and sufficiently flexible to be able to apply to all members of the profession whilst at the same time ensuring that all members required to undertake CPD take part in activities which are relevant to their own development in their area of practice.

116. The proposed CPD scheme is aimed at ensuring CILEx members required to undertake CPD are competent and professional in their work.

Accountable

117. The regulatory arrangements include suitable accountability arrangements. IPS will report annually on the operation of the CPD scheme. This will consider levels of compliance with the scheme, outcomes from the sampling of members CPD records and analysis of data from a sample of members required to undertake CPD.

118. Annual CPD returns will be submitted online and formal compliance with this requirement will be checked for every member required to undertake CPD. In addition, a 2.5% random sample and a sample chosen on the basis of risk will be selected for further analysis.

119. CILEx members chosen for sampling will be required to provide supporting documentary evidence that they have complied with the requirements to reflect, plan and evaluate their CPD activities, either by submission of the tools provided by IPS or equivalent documentation which supports this process (for example documents utilised by the member's employer). These documents will be examined by IPS and, of these members, 10% will be contacted by

telephone to discuss their CPD returns. This 10% will be chosen first on the basis of risk to ensure that the selection is appropriately targeted, with the remaining sample being selected at random.

120. On the basis of the outcomes from sampling in the early years of the operation of the CPD scheme, IPS intends to undertake a 3 year review of the scheme and make any changes as appropriate, including changes to the size of sample.

121. Where members are not compliant with the requirements of the new scheme, they may be subject to disciplinary action. IPS will be accountable through the annual reporting on the operation of the scheme.

Consistent

122. In its development of the revised CPD scheme, IPS has ensured that the scheme is consistent with the other developments at IPS which relate to the education and training of its members. These include the approach taken to new applications for Fellowship and the frameworks developed in conjunction with the application to obtain independent practice rights for CILEx members.

123. Each of these initiatives takes an outcomes based approach to education and training to ensure that all of our members are competent and professional and thereby better able to provide consumers with the best available representation.

124. The approach to CPD under the revised scheme is consistent across all membership grades required to undertake CPD and across all areas of practice. The scheme also provides consistency through assurance of on-going competence of members to the consumers and the public.

Transparent

125. IPS has taken a transparent approach to developing the revised CPD scheme. The public and consumers will be clear as to how requisite CILEx members select their CPD activities.
126. IPS has consulted key stakeholders on its regulatory arrangements: CILEx members, Approved Regulators, regulatory bodies, consumer groups and representative bodies. A copy of the consultation analysis and IPS comments upon responses appear at **Annex 2**. IPS conducted a 3 month pilot of the revised CPD scheme: analysis of the outcomes can be found at **Annex 3**. IPS also held an Education Reference Group meeting designed to seek direct feedback from consumer representatives and practitioners on its proposed changes to the CPD scheme. Relevant notes from this meeting can be found at **Annex 2**.
127. The expectations and recording documentation for the revised CPD scheme are set out in **Annex 5**. Consumers and the public will be able to view this information which will enable them to confirm that IPS is in the best possible position to assure the competence and professionalism of its members through the operation of its CPD scheme.

Targeted

128. IPS has developed a CPD scheme which is targeted to assure the competence and professionalism of those members who have reached at least the Associate Grade of membership (which means they have completed the Level 3 Professional Diploma in Law and Practice or equivalent). The new scheme is targeted at developing

identified competence areas and IPS action will be targeted at non-compliers with the scheme.

129. The incremental approach adopted by IPS for implementation of the scheme has also been introduced to on the basis of risk. In October 2013, it introduces an annual Professionalism requirement for all members obliged to undertake CPD. The full scheme will be rolled out to members from October 2014, starting with Authorised Persons before cascading to other grades of membership

Impact on other Regulators

130. The changes to the CPD scheme for CILEx members are not considered by IPS to impact on other regulators.

Next steps for implementation

131. Once the rule change has been approved, IPS will be ready to implement the changes. All scheme documentation is in place to deliver the new scheme.

132. The pilot confirmed IPS' view that the membership will need time to develop an understanding of the changes to the scheme in terms of understanding both the terminology and the different approach adopted under the new scheme. As a result, IPS intends to phase in the scheme over the next 3 years as follows:

133. Year 1: The CPD hours required of each membership grade will be the same as they are at present, i.e. 16 hours for Fellows Legal Accounts Executives and Associate Prosecutors, 12 hours for Graduate members and Legal Accounts Member and 8 hours for Associate

members. In addition, these members will undertake CPD in professionalism. This will not be hours based, but will ask members to evaluate their CPD on the basis of an identified learning outcome. It is intended that this will enable the membership to become familiar with the terminology and approach adopted in the new scheme in a controlled way.

134. Year 2: The full scheme will be introduced for Fellows Legal Accounts Executives and Associate Prosecutors. These members will be required to undertake 9 entries in total, of which at least 5 entries must be planned activities, including one entry on professionalism. They will be required to participate in the full CPD cycle (i.e. reflection, planning, action and evaluation) for each activity. Graduate members, Legal Accounts Members and Associates will be required to undertake their hours requirement and CPD in professionalism as set out for Year 1 above.

135. Year 3: Other affected grades of membership will be brought into the new scheme. At this point the scheme will be fully operational.

136. As explained above, IPS intends during this period to undertake further research into the Associate member grade and how the new scheme requirements will best operate for this grade of membership. This will include consultation with CILEx and Associate members to enable IPS to decide what would constitute the most appropriate CPD for them and develop the arrangements accordingly.

137. In order to be able to engage with and educate the membership on the new requirements, it is important that the scheme rules have been approved in principle, as the membership will be able to engage with the new scheme and understand both its context and how and when the changes will affect them.

138. Once the revised scheme has been approved, IPS and CILEx will engage with the CILEx membership through a range of media such as webinars, Branch visits and the CILEx Journal to ensure that the scheme is well publicised and there is clear understanding of what will be required under the new arrangements.

139. IPS intends to begin phased implementation of the new scheme with effect from 1 October 2013. IPS has identified the relevant resources required for implementation in terms of:

- Staffing: IPS already has a staff member dedicated to CPD
- IT: the changes to the online recording system will be minimal
- Documentation
- Provision of publicity and information on the new scheme to the membership

140. The issue of engagement and education of the membership will require both a substantial investment of resources and time to ensure that the changes are fully embedded and understood by the membership. In that way IPS will ensure that members are fully prepared for the changes once they come into effect.

Annexes

Annex 1: CPD Regulations

Annex 2: Analysis of CPD consultation

Annex 3: Analysis of CPD pilot

Annex 4: Equality Impact Assessment

Annex 5: CPD final Handbook and documentation

Annex 6: CPD interim Handbook and documentation