

**RULE CHANGE APPLICATION MADE BY ILEX PROFESSIONAL
STANDARDS LTD TO THE LEGAL SERVICES BOARD
UNDER SCHEDULE 4, PART 3, PARAGRAPH 20(1)
LEGAL SERVICES ACT 2007**

**APPLICATION TO REVISE RIGHTS OF AUDIENCE CERTIFICATION RULES
TO ENABLE DECISION MAKING BY IPS OFFICERS**

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INTRODUCTION

1. IPS has established, in January 2011, an Admissions and Licensing Committee (the Committee) to comply with the Internal Governance Rules of the Legal Services Board (LSB). The Committee replaced and undertakes the roles of the Advocacy Rights and Qualifying Employment Committees.
2. IPS seeks to revise the Rights of Audience Certification Rules to enable decisions to be made in certain instances by the IPS officers. Those decisions are currently made by the Admissions and Licensing Committee. The revision is only sought in respect of decisions regarding the rights of audience qualification scheme. No application is made at present in respect of decisions relating to qualifying employment applications.

DETAILS OF PROPOSED ALTERATION AND REGULATORY ARRANGEMENTS

Nature and effect of existing arrangement

3. The Committee is responsible, amongst other areas, for the scheme by which ILEX members gain rights of audience. The scheme is set out in the Rights of Audience Certification Rules. The Committee considers applications to enrol onto the qualification scheme, to renew advocacy certificates and applications made by course providers to deliver the advocacy qualification courses. The Committee is responsible for the oversight of standards of course delivery and assessment.
4. Under the Rights of Audience Certification Rules the IPS Officers may grant advocacy certificates to ILEX members upon successful completion of the advocacy qualification and renew advocacy certificates other than on the first renewal. The Officers of IPS have exercised these functions since the commencement of the present scheme.

Nature and effect of proposed alteration

5. IPS seeks by this application to amend the Rights of Audience Certification Rules to enable the IPS officers to make decisions in respect of matters additional to those they can currently make.
6. It is proposed that the IPS officers should be able to make decisions to:

- Approve applications for Certificates of Eligibility made by Graduate members and Fellows seeking to enrol onto the rights of audience qualification scheme;
 - Approve applications to renew first advocacy certificates; and
 - Approve applications made by course providers to deliver the advocacy rights courses.
7. Each area where IPS proposes to revise the Rights of Audience Certification Rules is discussed below. The discussion includes an explanation why IPS wishes to make the alteration.

Applications for certificates of eligibility

8. The rights of audience qualification scheme is open only to Graduate members and Fellows of ILEX, hereinafter referred to as applicants. Applicants must make an application for a Certificate of Eligibility. As part of the application they must outline their litigation and advocacy experience and provide portfolios of 8 cases they have handled to evidence their litigation and advocacy experience.
9. The portfolios are assessed by external advisors against criteria set out in the Knowledge and Experience Guidelines and the Portfolio Guidelines contained in the Rights of Audience Certification Rules. The external advisors have been appointed on the basis of their academic and legal practice experience. They advise whether applicants have met the criteria contained in the Rights of Audience Certification Rules.
10. Applications, including the advice of the external advisors, are then referred to the Admissions and Licensing Committee. The Committee determines whether applicants may be granted Certificates of Eligibility. The Committee has usually agreed with the advice of the external advisor and approved applications where the external advisor has assessed that the portfolios meet the criteria in the Rights of Audience Certification Rules. The Committee considers in greater detail whether or not to approve applications where some doubt has been expressed by the external advisor as to whether or not the criteria are met in the portfolios or where the applicant seeks an exemption from the examination requirements.

11. By this application IPS seeks to amend Rule 10 of the Rights of Audience Certification Rules to enable the IPS officers to be able to approve applications for Certificates of Eligibility where the External Advisors have advised that an applicant's portfolios successfully meet the criteria in the Knowledge and Experience Guidelines and the Portfolio Guidelines. The Officer will consider the full application. They may find that the application as a whole raises some doubts as to whether the criteria have been met. Where there is any doubt whether an application should be approved the Officer will refer the application to the Committee for determination. IPS therefore seeks an amendment to Rule 12 to state that the Committee considers applications for Certificates of Eligibility referred to it, rather than all applications.
12. The amendments sought to the Rules will permit the Officer only to approve applications where the full application meets the criteria. In determining whether an application can be approved the Officer will apply the following criteria:
 - The applicant has passed the Level 6 examinations necessary for the certificate sought. Where the applicant seeks an exemption from the examination requirements the application will be referred to the Committee. The examination requirements are set out in the Knowledge and Experience Guidelines in the Rights of Audience Certification Rules.
 - The applicant's litigation and advocacy/police station experience meets the knowledge and experience criteria set out in the Rights of Audience Certification Rules.
 - The case portfolios have all been assessed by the External Advisors as meeting the knowledge and experience requirements.
 - Satisfactory references have been obtained from two referees. References will be satisfactory where the referees can attest to the applicant's knowledge of civil, criminal or family law and practice (whichever is relevant) and their advocacy skills, and are able to offer an informed opinion as to the applicant's suitability to exercise the rights of audience they wish to be granted in accordance with the competence criteria set out in the Knowledge and Experience Guidelines in the Rights of Audience Certification Rules.
13. As a result of the above amendments consequential amendments are sought to Rules 13 and 14 and to Rules 74 to 77 of the Rights of Audience Certification Rules. Rules 13 and 14 now refer to the Officer as well as the Committee.

14. Rules 74 to 77 relate to applications for additional Certificates of Eligibility. A Legal Executive Advocate may seek to obtain rights of audience in more than one practice area. IPS proposes that the Committee should continue to consider these applications. The amendments clarify the position.
15. Consequential amendments are also sought to the appendices to the rules to reflect that the Officer will also take the issues into account.

Applications for renewal of first advocacy certificate

16. Under the rights of audience scheme Legal Executive Advocates must renew their first advocacy certificate after one year. At the first renewal of certificates applicants are required to provide portfolios of 3 cases where they have exercised their new advocacy rights.
17. As with applications for Certificates of Eligibility, the portfolios are assessed by the external advisors against criteria set out in Knowledge and Experience Guidelines and the Portfolio Guidelines in the Rights of Audience Certification Rules. The external advisors advise whether applicants' portfolios have met the criteria in the Rights of Audience Certification Rules.
18. Applications, including the advice of the external advisors, are then referred to the Committee. The Committee determines whether the applicant's certificate may be renewed. In practice the Committee has issued a Certificate where the external advisor has assessed that an applicant's portfolios meet the criteria contained in the Rights of Audience Certification Rules.
19. By this application IPS seeks to amend Rule 86 of the Rights of Audience Certification Rules so that an IPS officer will be able to decide whether to renew an advocacy certificate where the external advisors have advised that an applicant's portfolios successfully meet the criteria in the Knowledge and Experience Guidelines and the Portfolio Guidelines. Where the Officer has any doubt about whether a certificate may be granted the application will be referred to the Committee for determination.
20. The criteria to be applied by the Officer in determining whether an application can be approved are those set out at Rule 86 the Rights of Audience Certification Rules. They are:

- The applicant's litigation and advocacy experience meets the knowledge and experience criteria set out in the Rights of Audience Certification Rules.
 - The case portfolios have all been marked as meeting the knowledge and experience criteria for the renewal of certificates.
21. Consequential amendments are sought to Rules 88 and 89 to refer to Officers as well as the Committee. Consequential amendments are also sought to Rule 100. Rule 100 states that applications to renew a lapsed certificate will be dealt with in the same way as an application to renew a first advocacy certificate. The above amendments will permit the Officer to approve applications to renew a lapsed certificate where the criteria are met.

Applications made by course providers

22. Under the rights of audience scheme applicants must complete an advocacy course in the area of practice in which they seek advocacy rights. Courses are delivered by accredited course providers.
23. Course providers seeking accreditation are required to make an application. In their application they must demonstrate how their proposal will meet the course outcomes and assessment criteria which are set out in the Rights of Audience Certification Rules. The Rights of Audience Certification Rules also include other criteria that course providers must meet. These include details about location, venue, tutors and study programmes.
24. The application as a whole is assessed against the criteria by the external advisors. The external advisors advise whether course providers have met the criteria in the Rights of Audience Certification Rules.
25. Applications, including the assessment of the external advisors, are then referred to the Committee. The Committee determines whether a course provider may be accredited. In practice the Committee has agreed with the advice of the external advisor and approved applications where the criteria are met.
26. After a course provider has been accredited the IPS staff and external advisors inspect course provision. The inspection visits provide an opportunity to ensure that course providers meet the criteria and standards expected of them. The external advisors also moderate assessments undertaken by course providers to

ensure that the standards are met and applied consistently. These mechanisms provide assurances about the quality of course provision and standards of assessment.

27. By this application IPS seeks to amend Rules 51, 52 and 59 to enable decisions to grant accreditation to course providers to be made by an IPS Officer. Where the Officer has any doubt about an application they must refer it to the Committee.
28. Under the rules an application can be approved where the external advisor has advised that the application meets the criteria in the Rights of Audience Certification Rules. The criteria to be met to enable applications to be approved by the IPS Officer are those set out in the Rules. Under the criteria applications can be approved where:
 - The external advisor has assessed that the proposed courses will meet the course outcomes and assessment criteria set out in the Rights of Audience Certification Rules.
 - The course provider has a suitable venue, including teaching and study accommodation and other facilities, for the purposes of delivering the courses;
 - The proposed resources to support teaching and study, including library and research facilities, are suitable for the purposes of delivering the courses;
 - The proposed candidate numbers and proposed tutor/candidate ratios are suitable for delivering skills courses and allow candidates sufficient interaction and opportunity to practise advocacy and obtain feedback from tutors;
 - The teaching and assessment experience of the applicant organisation and of those who are to deliver the courses are suitable for delivering and assessing skills based courses;
 - The course structure proposed, including teaching/study time, will meet the course outcomes set out in the Rights of Audience Certification Rules;
 - The proposed course content will meet the course outcomes set out in the Rights of Audience Certification Rules;
 - The proposed course duration is sufficient to meet the course outcomes set out in the Rights of Audience Certification Rules
 - The course materials are suitable for the purposes of delivering the course outcomes set out in the Rights of Audience Certification Rules;
 - There are adequate candidate support and feed-back arrangements in place;
 - There are arrangements for candidates to make appeals against course assessments;

- The arrangements for assessing candidates meet the course assessment criteria set out in the Rights of Audience Certification Rules; and
- The health and safety and equal opportunities policies adopted by the applicant organisation meet applicable requirements.

Other amendments

29. The above amendments have led to re-numbering of the Rights of Audience Certification Rules. Amendments have been made to Rules to ensure that they refer to the correct Rule number.

IPS Officers

30. The IPS officers have been responsible for the rights of audience qualification since the commencement of the original scheme in 1999. The officers have built up considerable expertise in assessing course providers and determining whether applicants meet appropriate standards for entry onto the course or to continue to practise as advocates.
31. IPS staff undertake an initial assessment of applicant and course provider applications. Where the staff member takes the view that further information is required to support an application, it is obtained by them before applications are referred to the external advisors. Applicants are able to and do seek guidance from the IPS Officers where required.
32. The Officers form part of the inspection teams in respect of course providers. They are therefore familiar with the standards of course provision expected of course providers.
33. IPS believes that the experience and expertise that IPS Officers have built up of dealing with course providers and applicants provides them with suitable skills and experience to approve course provider applications and ILEX member applications. In most instances applications will have been considered and vetted by another IPS staff member and the external advisor before the Officer makes a determination to approve an application. This provides an added assurance that the application has been thoroughly considered at a number of instances.

34. IPS has determined that the Officers must be accountable for their decisions. Accountability will be achieved by requiring the Officers to report on decisions they have made to the Admissions and Licensing Committee. New Rules 18 and 19 are set out in the Rights of Audience Certification Rules to this effect. IPS seeks approval of these rules.
35. IPS has considered whether it would be necessary to include a right of appeal against a decision made by the Officer. As the Officer may only approve applications it has determined that applicants do not require a right of appeal. The current route by which an applicant can seek reconsideration of a Committee decision remains within the rules.

Reasons for application

36. IPS seeks to introduce decision making at Officer level for a number of reasons. These are discussed below. Further representations appear in other sections later in this application.
37. IPS believes that the Officers are suitably placed and experienced to make such decisions. The Officers have substantial experience of the scheme and of other similar matters. The IPS team have gained experience of undertaking initial assessments of applications and provide initial advice to applicants as to whether their applications meet the requirements of the Rights of Audience Certification Rules. This process has also saved the time and expense of the external advisors, particularly where applicants need to undertake further work in respect of their applications.
38. Enabling the Officers to make decisions to approve applications will enable decisions to be made quicker than under the present arrangements where applications are placed on hold until the next available Committee meeting. In particular it will enable applicants wishing to undertake the course to enrol onto courses rather than miss courses which take place before the Committee has considered their application. This has occurred in a few instances. In other cases candidates have undertaken courses at short notice. Earlier decision making will enable candidates and course providers to plan more effectively than is currently possible.
39. The proposal will be cost effective compared to requiring each of the Committee members to read all applications, including those where it is clear that they can be

approved. The Committee will be able to appropriately focus its attention to those applications where there is some doubt or discussion is required at a meeting of the Committee.

REGULATORY OBJECTIVES

40. IPS believes that its proposal complies with the regulatory objectives set out in the Legal Services Act 2007 for the reasons set out below. In many instances the proposed delegation will have a neutral impact upon the objectives.

Protecting and promoting the public interest and the interests of consumers

41. The public and consumer interest will continue to be promoted and protected under IPS' proposals in the same manner as it is under the current arrangements. Under these proposals the IPS officers will apply the same criteria when approving applications as are presently applied by the committee. Where the IPS officers have any doubt whether an application meets the criteria it will be referred to the Committee for consideration.
42. The criteria appear in the Rights of Audience Certification Rules. They contain adequate provisions to ensure the public and consumer interest is protected in determining whether to authorise an applicant to undertake the qualification course or continue to exercise advocacy rights or authorise a course provider. Those criteria were agreed under the arrangements set out in the Courts and Legal Services Act 1990 at that time. They were subject to considerable scrutiny by the Legal Services Consultative Panel before being approved.

Supporting the constitutional principle of the rule of law

43. There is a neutral impact upon this objective. The Rights of Audience Conduct Rules contain provisions aimed at supporting the rule of law. No amendments are sought to those Rules.
44. The decisions will be made to approve applications by Officers of IPS, who will report on decisions to the Admissions and Licensing Committee. This is a Committee of IPS and will report to the IPS Board. The arrangements will ensure that there is suitable scrutiny and separation of regulatory decision making.

Improving access to justice

45. There will be no impact on this objective by the proposals made in this application save that decision making will be made more efficiently than under the present arrangements. Approval of applicants and course providers will continue to improve the provision of access to justice for consumers to the same extent as the present arrangements, except that quicker decision making will improve access to services provided by Legal Executive Advocates.

Promoting competition in the provision of services

46. The proposals will have no impact upon this objective. As under the present arrangements approval will only be given to those applicants who meet the relevant criteria set out in the Rights of Audience Certification Rules.
47. Where an applicant meets the criteria they may be able to deliver qualification courses, undertake qualification courses or exercise advocacy sooner than under present arrangements where applications are referred to the next available Committee meeting. Reducing the timescale will promote competition in the provision of advocacy services by Legal Executive Advocates more quicker than under present arrangements.

Encourage an independent, strong, diverse and effective legal profession

48. There is no impact on the objective of encouraging a strong, independent, diverse and effective legal profession by the proposals made in this application.

Increasing the public's understanding of a citizen's legal rights and duties

49. There is no impact on the objective of increasing the public's understanding of a citizens legal rights and duties.

Promoting and maintaining adherence to the professional principles

50. The proposals in this application have no impact upon the professional principles. The requirements that authorised persons should act with independence and integrity, maintain proper standards of work, act in the best interests of their clients and persons who exercise a right of audience should comply with their duty to the court to act with independence in the interests of justice are contained within the Rights of Audience Conduct Rules. No amendment is sought to those Rules.

OBLIGATIONS UNDER S28 LEGAL SERVICES ACT 2007 - BETTER REGULATION PRINCIPLES

51. In developing its proposals IPS has taken into account the Better Regulation Principles. Each principle is discussed below.

Proportionate

52. The proposals contained within this application will allow approvals of applications to be made by the most suitable decision maker. The proposal is therefore proportionate to the decision being made.
53. In particular approval of applications for Certificates of Eligibility will enable applicants to undertake an advocacy skills course and assessment process. It is submitted that decisions made by the Officer at this stage are proportionate to the application being made, which is to undertake the qualification course.
54. Approving applications to renew first advocacy certificates is also proportionate. The applicant will have already been assessed as competent during the advocacy skills assessments and have exercised the new rights for at least one year.
55. Similarly there is considerable scrutiny of course providers after approval and on an ongoing basis. This includes approval of their course and assessment materials after accreditation, inspection of courses and moderation of standards of assessment. Inspection teams involve IPS Officers. Therefore it is both proportionate and consistent for the Officers to also consider applications for accreditation.

Accountable

56. The IPS Officers will be accountable for decisions they make. They will be required to report decisions they have made to the Admissions and Licensing Committee. Reporting will be expected to take place to the next available meeting after a decision is made.

57. IPS has experience of using such reporting arrangements as part of the delegated decisions Officers are able to make under the Investigation, Disciplinary and Appeal Rules. Those arrangements have worked well and, if necessary, the Panel established under those Rules has asked for further information about decisions. The Admissions and Licensing Committee will be able to similarly seek information in respect of decisions to meet its responsibilities.

Consistent

58. If the application is agreed it will provide better consistency with other applications that the Officer may approve under the Rules. The Officer is already able to approve applications to renew advocacy certificates which are not first renewals and approve applications for first advocacy certificates.
59. This proposal will enable the Officer to grant other applications being applications to enrol onto the qualification scheme, applications to renew advocacy certificates for the first time and applications by course providers to deliver courses.

Targeted

60. The amendments that IPS seeks to make are targeted. IPS considered which decisions it would be appropriate for the Officer to make. It has targeted its proposals accordingly. In particular the Officer may only approve applications which meet all the criteria. Where there is any doubt as to whether an application meets the criteria the Officer must refer it to the Committee for determination.

Transparent / consultation

61. IPS consulted on its proposals. This provided ILEX members and stakeholders with an opportunity to comment on the proposals. The consultation was sent out to regulatory bodies, professional bodies and consumer organisations. It was also posted on the IPS website. The responses have been analysed. A copy of the consultation appears at **Annex 2** and the responses and analysis appear at **Annex 3**. The analysis is contained at the response labelled Annex 3(1). The response at annex labelled Annex 3(2) repeats the comments made by the first respondent. IPS has not therefore made a separate reply to it.

62. Decision making by the Officers will be transparent. Decisions made by Officers will be reported through the governance procedures established in the rights of audience scheme.

DESIRED OUTCOME

63. The desired outcome for IPS is to obtain approval for and implement the amendments to the Rights of Audience Certification Rules to enable the IPS Officers to approve applications where the criteria have been met.
64. The Admissions and Licensing Committee is required to produce an annual report of its work to the IPS Board. The Committee will be asked to use that opportunity to review the effectiveness of the arrangements whereby the Officers approve applications.
65. Furthermore, the Officers will be required to report to each meeting of the Committee any decisions they have made. That arrangement will enable the Committee to maintain regular oversight of decisions made by the Officer. It will be possible for the Committee to seek information in relation to decisions made by the Officers. This arrangement will also assist the Committee in any comment it may wish to make to the IPS in respect of the arrangements.

IMPACT UPON OTHER APPROVED REGULATORS

66. The proposed arrangements apply only to the ILEX rights of audience qualification scheme. There will be no impact on other approved regulators except that Legal Executive Advocates work in organisations regulated by other approved regulators.

PROPOSED IMPLEMENTATION PLAN

67. It is proposed that IPS will implement the new Rules as soon as approval is granted by the Legal Services Board.

EXPLANATORY MATERIAL

68. The proposed amendments are self explanatory. No further explanatory material is required in support of this application.

SUBMISSION

69. The LSB is asked to consider this application.

ANNEXES

1. Draft Rights of Audience Certification Rules
2. Consultation document
3. Analysis of consultation responses