



June 2020

**APPLICATION TO THE LEGAL SERVICES BOARD TO INTRODUCE A NEW SET  
OF RULES RELATING TO THE GRANTING OF PRACTICE RIGHTS  
CERTIFICATES TO CHARTERED LEGAL EXECUTIVES**

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**Professional Standards For Specialist Lawyers**



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## Introduction and background

1. This is an application to amend existing regulatory arrangements relating to the grant of Practice Rights Certificates to Chartered Legal Executives (also referred to as Fellows). This proposal is an outcome of our ongoing review of the CILEx Regulation education standards, pathways to qualification and opportunities for progression for existing Fellows.
2. The amendment proposed is to introduce a new additional set of Rules ('the new rules') which provide for the grant of practice rights in specified areas of practice to Chartered Legal Executives. The new rules are not intended to replace the existing rules but provide an additional approach to obtaining additional practice rights for Fellows. The new rules are at **Annex 1**.
3. Chartered Legal Executives (Fellows) are authorised persons under the Legal Services Act 2007 and hold a practising certificate. To achieve Fellow status, an individual must have met the following requirements:
  - **knowledge** - completed the academic stage of training: CILEx Level 3 qualifications which are set and assessed at 'A' level standard and CILEx Level 6 qualifications which are set and assessed at university degree standard. (A fast track route is available to graduates with a qualifying law degree); and
  - **experience** -undertaken a minimum of three years' [qualifying employment](#); and
  - **skill** - demonstrated competence in the [work-based learning outcomes](#) - a competence- based assessment requiring a demonstration of 27 learning outcomes.

Further explanation of the approach to qualifying as a Chartered Legal Executive and onward authorisation for additional practice rights is set out at **Annex 2**.

4. The rights granted to Fellows are limited to the administration of oaths. Many Fellows practice in one or more of the reserved or regulated areas of activity but may only do so under supervision of a lawyer holding a practising certificate in the relevant reserved or regulated area. Reserved areas of work include litigation, probate and conveyancing. Immigration is a regulated area of work. An authorised person is

someone who has been given permission by a legal regulator to carry out reserved legal work. This would include a solicitor and a CILEx Practitioner.

5. To be authorised to work unsupervised in a reserved or regulated area, our current regulations require a Fellow to qualify as a CILEx Practitioner (see **Annex 2** for more information). This means that a Fellow must also demonstrate:
  - **knowledge** - achievement in CILEx level 6 examinations or equivalent or through five portfolios covering a range of matters handled in their casework; and
  - **Experience** - five years working in the legal sector of which at least two years are in the specialist field; and
  - **Skill** - in the practice area by way of one, or a combination of a logbook and portfolio of evidence demonstrating the learning outcomes have been met; or completion of a specified course.
  
6. Feedback over time from our regulated community has been that these requirements are onerous, duplicate some of the requirements which have to be met to achieve Fellow status, and that they act as a barrier to career progression. This was also expressed formally in the consultation responses (see paragraphs 24 - 29).
  
7. Our proposal retains the existing route and Rules relating to acquiring additional practice rights (i.e that described in paragraph 5). The new rules, which will subsist alongside the existing rules, will provide an additional, alternative route, to acquiring practice rights. Thus, a choice is provided for existing Fellows seeking authorisation to work in a reserved or regulated area: that is to:
  - a. acquire additional rights to practice by following the existing authorisation process; or
  - b. demonstrate competence in the practice area by way of independent objective assessment delivered by an assessment provider authorised and overseen by CILEx Regulation as provided for by the new rules.

8. The rights granted under the new rules will be available only to Fellows. The new rules make no change to existing requirements which must be met to achieve Fellow status.

### **Details of the new arrangements**

9. The new rules provide that additional practice rights be granted to a Fellow who meets the following requirements:
  - a) Fellows with at least 5 years of qualifying employment and at least 2 years' experience in the relevant practice area:
    - i. Pass an assessment in the relevant practice area; and
    - ii. Complete an application process evidencing requisite experience in the practice area.
  - b) Fellows with at least 5 years of qualifying employment and less than 2 years' experience in the relevant practice area:
    - i. complete specified skills/knowledge training programme in the specialist practice area; and
    - ii. pass an assessment in the relevant specialist practice area; and
    - iii. complete an application process evidencing requisite experience.
10. Relevant experience would be assessed by CILEx Regulation through the application process (Rule 7(b) and 8(c)). There would be no change to the requirements for granting rights of audience and advocacy rights: a Fellow intending to conduct Family Litigation, Civil Litigation and/or Criminal Litigation must also apply for and be granted the relevant certificate or certificates relating to rights of audience and advocacy pursuant to the Rights To Conduct Litigation and the Rights of Audience Certification Rules. (Rule 9). The rules have been mapped to the existing rules and these are attached to the application.
11. The introduction of an alternative method of acquiring additional practice rights is aligned to our strategic objective of strengthening the diversity of the profession and accessibility to legal services. It provides an alternative route to onward qualification and progression in the profession and may incentivise Fellows to acquire additional practice rights (see paragraphs 24 - 29 consultation responses). Furthermore, it is aligned with LSB guidance including:

- i. Shift in focus from a time served model as a means of ensuring competence at the point of authorisation
- ii. Provides flexibility in meeting the needs of a developing market
- iii. Risk is properly managed through the requirements to achieve Fellow status and does not need to be duplicated.

12. In reaching this decision we reviewed assessment methods adopted by other professional and regulatory bodies which, like us, place the protection of the consumer at the heart of their regulatory framework. This includes the Solicitors Regulation Authority, the General Medical Council, the Royal College of General Practitioners, the New York State Bar, Chartered Institute of Management Accountants (CIMA), Royal College of Psychiatrists and Royal College of Surgeons (Edinburgh), Association of Certified Chartered Accountants, Institute of Chartered Accountants in England and Wales, and the General Dental Council.

13. Other regulators such as the SRA and ICAEW are recognising additional rights which fit with a more dynamic professional landscape and which provides consumer choice and consumer safety. For example, the Probate Practice Rights qualification awarded through ICAEW which was authorised by the LSB in 2014 is achieved through attendance on a short course, passing an assessment and the completion of a simple application form. No specified period of probate practice experience is required. The Association of Certified Chartered Accountant (ACCA) was designated by the LSB as an Approved Regulator and Licensing Authority for the reserved legal activity of probate in 2018.

### **The Regulatory Objectives**

14. The following table sets out how the new rules impact on the Regulatory Objectives:

	<b>Regulatory Objective</b>	<b>Impact</b>	<b>Explanation</b>
RO1	Protecting and promoting the public interest	Promotes	<ul style="list-style-type: none"> <li>• The grant of a practice rights certificate under the new rules is only available to Fellows. The achievement of Fellow status</li> </ul>

			<p>meets the requirements of a rigorous and robust education qualification framework which ensures competence and suitability to practice.</p> <ul style="list-style-type: none"> <li>• The introduction of greater flexibility in acquiring practice rights we hope will enhance the diversity of the profession because it offers choice, a clear route to progression and is less focused on time served.</li> <li>• Public confidence is maintained because the decision as to who is granted additional practice rights will remain with CILEx Regulation.</li> <li>• Public confidence is maintained because the training course and assessment will be delivered only by a provider authorised by CILEx Regulation (and which will be subject to CILEx Regulation quality assurance through annual reporting).</li> </ul>
RO2	Supporting the constitutional principles of the rule of law	Neutral	
RO3	Improving access to justice	Promotes	<ul style="list-style-type: none"> <li>• An increase in Fellows with additional practice rights will provide greater choice for consumers and improved access to justice.</li> <li>• The possibility of a more diverse profession will improve access to justice.</li> <li>• The requirements for independent objective assessment will assure a Fellow's knowledge and skills to an appropriate standard in the practice area and provides a more focussed regulation.</li> </ul>

			<ul style="list-style-type: none"> <li>Flexibility in the current model for granting practice rights reflects developments in other regulated professions.</li> </ul>
RO4	Protecting and promoting the interests of consumers	Promotes	<ul style="list-style-type: none"> <li>Objective assessment by a single provider will ensure the application of a consistent standard when assessing competence</li> <li>In addition to assessing technical legal knowledge and skills, also enables the assessment of professional skills, including ethical judgements, consumer awareness and client care.</li> </ul>
RO5	Promoting competition in the provision of services	Promotes	<ul style="list-style-type: none"> <li>An increase in Fellows with specialist practice rights will provide greater choice for consumers.<sup>1</sup></li> </ul>
RO6	Encouraging an independent, strong, diverse and effective legal profession	Promotes	<ul style="list-style-type: none"> <li>Opportunities to analyse, interpret and publish data on achievement and progression, including in relation to key demographics.</li> <li>Choice in how to acquire specialist practice rights may encourage more applicants.</li> <li>See also EIA at <b>Annex 6</b>.</li> </ul>
RO7	Increasing public understanding of the citizens' legal rights and duties	Neutral	
RO8	Promoting and maintaining adherence (by authorised persons) to the professional principles	Promotes	<ul style="list-style-type: none"> <li>The rights granted under the new rules will be available only to Fellows.</li> <li>Holders of practice rights under these rules will be subject to CILEx Regulation and the Code of Conduct.</li> </ul>

<sup>1</sup> Research carried out by the Legal Services Consumer Panel in 2017 shows that specialism and local offices are important drivers for consumers.

[http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/How\\_consumers\\_are\\_choosing\\_Final\\_2017.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/How_consumers_are_choosing_Final_2017.pdf)

## Better Regulation Principles

15. The proposal meets the principles of Better Regulation as follows:

Principle	Explanation
Transparent	<ul style="list-style-type: none"> <li>• Provides a balance between the scrutiny of an individual applicant through the application form and an objective assessment of competence.</li> <li>• Published assessment blueprint will provide transparency as to assessed knowledge and skills.</li> <li>• Data collection provides opportunities to analyse, interpret and publish data on achievement and progression, including in relation to key demographics.</li> </ul>
Accountable	<ul style="list-style-type: none"> <li>• Control of who is granted practice rights will remain with the regulator.</li> <li>• Assessment provider must be authorised by CILEx Regulation and be subject to its quality assurance through annual reporting.</li> </ul>
Proportionate	<ul style="list-style-type: none"> <li>• Focus is on competence at the point of authorisation.</li> <li>• Rights only granted to individual who have met the rigorous and robust requirements for Fellowship.</li> </ul>
Consistent	<ul style="list-style-type: none"> <li>• Ensures the application of a consistent standard when assessing competence.</li> </ul>
Targeted	<ul style="list-style-type: none"> <li>• In addition to assessing technical legal knowledge and skills, also enables the assessment of professional skills, including ethical judgements, consumer awareness and client care.</li> <li>• Focus is on competence at the point of authorisation</li> </ul>

16. There is no need for transitional arrangements: the existing route to acquiring practice rights in a reserved or regulated area will remain in force. This means that there will be a choice for Fellows wishing to acquire additional practice rights in the

future and it will not impact on those Fellows who may be part way through seeking practice rights via the existing route. The rights granted by the new rules will mirror the rights granted under the existing rules. The new rules apply only to Fellows and will have no impact on another Approved Regulator or authorised individual.

## **The Assessment**

17. It is crucial that the regulator, the profession and consumers have confidence in the means of assessing competence for safe practice and this must drive the decisions to be made as to type of assessment, the standard applied, and who, and how it is delivered.
  
18. Assessment methods used in high stakes professional exams have developed in the last 20 years, enabled by advances in technology and enhanced assessment literacy. In its work towards introducing a Medical Licensing Assessment intended to test doctors' readiness to practice, the GMC commissioned research on good practice in the assessment of professionalism, ethics and patient safety and how changing technology may shape different assessment approaches.<sup>2</sup> The research found examples of good practice in all types of assessment, including in the use of technology assisted simulations and the use of virtual patients. We have drawn on this research in the initial decisions we have made as to the form of assessment.
  
19. Our choice of assessment method has been driven by the following essential criteria for high effective assessment<sup>3</sup>:
  - Validity - it must measure what it is intended to measure and the inferences and decisions that are made (i.e. the competence of a passing/failing candidate) on the basis of the assessment can be justified. This is achieved by making sure that assessment questions align to the relevant competences.
  - Reliability - the results provide confidence that repeated or equivalent assessments would provide consistent results about a candidate's level of achievement. Reliability is essential to the defensibility of the pass mark and outcome for candidates

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<sup>2</sup> [Best Practice in the Assessment of Competence: A Literature Review, September 2018](#)

<sup>3</sup> [Norcini J, Anderson B, Bollela V et al. \(2011\) Criteria for good assessment: Consensus statement and recommendations from the Ottawa 2010 Conference. Medical Teacher, 33: 206-214](#)

- Fair – it is non-discriminatory
- Acceptable to stakeholders
- Has an educational effect on individuals – it motivates them to do well
- Feasibility – affordable and efficient

20. It is proposed that competence in the practice area be assessed by a combination of:

- computer-based single best answer/multiple response questions; and
- written/oral practical skills test

21. The final assessment specification, including an assessment blueprint and standard setting methods<sup>4</sup>, will be drawn up by the assessment provider and approved by CILEx Regulation whose quality assurance of the assessment will be achieved through annual reporting required of the provider. An initial proposal for the assessment of competence for acquired practice rights is set out in **Annex 3**.

### **The assessment provider**

22. The assessment and training course will be delivered only by a provider authorised by CILEx Regulation. We propose to appoint, through a tender process, a single assessment provider to write and deliver the assessments. We will require robust measures to be in place to ensure issues relating to conflicts of interest are properly managed and assessment integrity is not compromised. This would be established through the tender process.

23. CILEx Regulation has sought initial expressions of interest from several providers of legal education and assessment and has received positive responses from most institutions that have been approached.

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<sup>4</sup> The standard will define the minimum pass level – a mark which separates competent candidates from those who are not. To ensure the pass mark is defensible and reliable and only competent candidates pass, it is important that the pass mark is not arbitrarily set. Which standard setting method is used depends on the assessment. For the MCQ stage for example, the Angoff Method could be applied. This is widely used in assessments which determine competency for licensure. The pass mark is set according to the judgement of experts as to how many just competent candidates would answer the questions correctly.

24. A detailed statement of requirements will be issued to bidders, however in brief, a bidder will be expected to show how they meet the following criteria:

- Organisational capacity to write and deliver assessments (and training) in the specified practice areas, including geographical coverage.
- Organisational capability to write, deliver and assess in the specified practice areas.
- Policies and processes which ensure the integrity and security of the assessment (including where training in the practice area is also delivered).
- Policies and processes to assure the quality of the assessment (and training), including checks for validity, reliability, accuracy, and bias.
- Transparency on funding model and costs.
- Clear and fair policies and processes for complaints, appeals and requests for reasonable adjustments.
- Appropriate, and GDPR compliant mechanisms for collecting data, storing and destroying data and analysing data for the purposes of standard setting and analysing performance.
- Policies and processes to identify and manage actual and potential conflicts of interest.

## **Consultation**

25. Our decision to introduce this additional route was prompted by feedback received over time from stakeholders and initiatives introduced by other regulators. We consulted on this proposal between 31 May 2019 and 23 August 2019. The consultation was launched on our website [here](#). A copy is attached to this application (**Annex 4**).

26. We received 3 responses of which one was from CILEx which included feedback on the proposals from 133 of its members (**Annex 5**). All responses agreed with our proposal to introduce flexibility in how established Fellows demonstrate competence for the purposes of acquiring additional practice rights. CILEx said that “Flexibility is at the heart of the CILEx route and . . . [is] essential to preserve.... In particular, flexibility is necessary to accommodate the diverse range of working environments and qualification pathways that our members will have...”

27. Whilst CILEx did state in their response that they would like more detail on cost and how relevant experience would be assessed, they reported that a majority (60.9%) of their membership who responded said that they were very likely or likely to apply for practice rights under the proposed new rules. CILEx also reported that 55.6% of their members who responded directly to them who had already considered applying for practice rights but hadn't yet done so, would prefer the route proposed in the new rules; 20.37% said they would prefer the existing route and 24.07% said they did not know.

28. Comments from those who expressed support for the proposal include:

- Offers a more flexible option
- Seems more straight-forward;
- “This could be done in a timeframe that would suite me personally and professionally and allow me to showcase the skills I have developed in a better way”;
- “Rather than needing to refer back to files at work to prove various assessment points, I will be tested on my knowledge and skills, in the way I use them on a daily basis”; and
- “Exam based is better as I don't have enough time to complete the portfolios alongside work”.

29. No objections were raised to the proposal or to a single provider of an approved course and the assessment, provided robust measures and practices were in place to assure the integrity of the assessment. We said in the consultation document that we would address this in the tender process.

30. Concern was expressed that the mechanism for assessing periods of relevant experience [rules 7(b) and 8(c)] should not duplicate the existing requirements to complete a portfolio of evidence. We agree entirely with this concern. We will not require applicants applying for practice rights under the new rules to complete a portfolio, we will assess whether or not they have met the qualifying employment requirements through the application form. We propose that an applicant that has

been a Fellow for at least 2 years will satisfy the requirements for 5 years of qualifying employment. A reference provided by the employer supporting the application will confirm 2 years of relevant experience in the practice area for which the practice right is sought.

## **Implementation**

31. Subject to Legal Services Board Approval, we would like to introduce the new rules in 2021. This would give sufficient time to complete the outstanding work:
  - a. Tender for a training and assessment provider. We have prepared a tender document and intend to work towards a date for the appointment of a provider of October 2020;
  - b. Work with the training and assessment provider to approve training course model and outcomes and assessment blueprint. We expect this work to be completed by January 2021;
  - c. Publish assessment blueprint February 2021
  
32. Once the assessment provider has been appointed and the work outlined at 31 b & c above has been completed, CRL will make a further application to the Legal Services Board to have the full scheme approved and the rules brought into full effect.

## **Review and monitoring of the new rules**

The desired outcome of the introduction of the alternative route to additional authorisation is to encourage more CILEx Fellows (Chartered Legal Executives) to apply for additional practice rights. We believe that this alternative route will provide more choice for the consumer by expanding the pool of authorised persons able to deliver reserved legal activities to consumers.

Whilst there is an existing route to authorisation, many Fellows are deterred from making an application owing to the duplication of the requirements to achieve Fellowship. This is articulated in the CILEx response to the consultation (see **Annex 4**).

In order to determine the effectiveness of the route, CILEx Regulation intends to monitor the applications received for practice rights both through this route and the existing route to qualification biennially, with the first review being undertaken in early 2023. This will enable

CILEx Regulation to understand the demographics of the applicants pursuing each of the routes to additional authorisation and to monitor the impact on equality and diversity of applicants through each route, as well as the impact on diversity of CILEx Fellows with practice rights as a whole, see **Annex 6** for more information). CILEx Regulation will continue to monitor E&D data annually on all applicants for authorisation via the Admissions and Licensing Committee Annual Report, which is published as an appendix to the CILEx Regulation Annual Report.

As set out earlier in the application document, CILEx Regulation will also undertake an annual review of the delivery of the training and assessment by the authorised training provider to ensure that the assessments are valid, reliable, fair, feasible and accessible.

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