

# Consultation: on the proposed changes to the education standards applying to Chartered Legal Executives (Fellows) and CILEx Practitioners and related issues

## Introduction

1. CILEx Regulation is the independent regulator for Chartered Legal Executives (Fellows), other grades of CILEx membership, CILEx Practitioners and firms. We take a risk based and outcomes focused approach to regulation, by working constructively with our regulated community to ensure that they deliver the best outcomes for clients. We have set clear principles within our Code of Conduct and inform the public of the standards they can expect. We believe this provides a balanced approach.
2. This consultation sets out CILEx Regulation's proposed changes to the education standards which set out the knowledge and competency requirements for Chartered Legal Executives (Fellows) and CILEx Practitioners.
3. CILEx Regulation is proposing to redevelop its education standards, to create simplified pathways to authorisation. This includes the introduction of a revised competence framework which it is proposed will be contextualised for each area of practice.
4. CILEx Regulation has also proposed the introduction of both legal technology and emotional competence into the education standards.
5. This consultation seeks your views as to whether
  - the proposed pathways are the right pathways,
  - the identified technical knowledge for each pathway has the right content, and
  - the competence framework covers broadly the important competences for a qualified lawyer.

We are particularly interested in your view of the inclusion of legal technology and emotional competence within the competence framework.

6. We are also consulting on a number of related areas including:
  - Assessment of competence
  - Revising the definition of qualifying employment
  - Removal of the requirement for authorisation to serve 12 months in the Graduate grade of membership
  - An amendment to the exemptions policy to create parity between units completed within a non-qualifying law degree and a qualifying law degree
  - Removal of QASA from the CILEx Regulation rules in relation to criminal advocates and Associate Prosecutors
7. We welcome responses from our regulated community and other stakeholders; including consumers of legal services, education and training providers, other

regulators who may seek to rely on the standards, employers and other interested parties.

8. This consultation will run for **12 weeks**, from 6 December 2018, **closing at 5pm on 28 February 2019**.

## Background

9. CILEx Regulation (then ILEX Professional Standards), together with the Solicitors Regulation Authority and the Bar Standards Board sponsored the Legal Education and Training Review (LETR), which was published in 2013.
10. We incorporated many of the recommendations from that report into amendments made to the education and training requirements for Chartered Legal Executives (Fellows) at that time, including an outcomes-focused CPD scheme and assessment of competence prior to admission as a Chartered Legal Executive (Fellow).
11. Five years on, having since secured designation to authorise practitioners in all the reserved activities (except notarial activities) and to authorise law firms, and with the fast pace of change in the development of technologies for the legal sector, we consider that the time is right to propose changes to the education and training framework, incorporating the new rights where appropriate and streamlining our approach to individual authorisation.
12. We have also taken the time to propose other changes to the education and training requirements and the subjects of this consultation are set out below:

## Issues for consultation

- Revised Education Standards frameworks
- Assessment of competence for admission
- Qualifying Employment
- Removal of the requirement for authorisation to serve 12 months in the Graduate grade of membership
- Exemptions
- Replacing QASA

## Revised Education Standards frameworks

### Introduction

13. CILEx Regulation is proposing to redevelop its education standards in order to achieve the following objectives:

- Create simplified pathways to qualification for Chartered Legal Executives (Fellows) and CILEx Practitioners
- Introduce a revised competence framework which encompasses the general competencies for all Chartered Legal Executives (Fellows) and CILEx Practitioners into a single overarching framework, which also includes legal technology and emotional competence, but is contextualised for each specialism

### The proposed pathways

14. A summary document has been created to provide a general overview of the proposed education standards (**annex 11**). Each specialist standard has been contextualised into pathways.

15. CILEx Regulation is proposing the following pathways:

- Dispute Resolution (Civil Litigation)
- Criminal Law and Practice
- Family Law and Practice
- Immigration Law and Practice
- Property Transactions
- Wills and Probate
- Business Law and Practice
- Employment Law and Practice
- General Pathway

16. Each pathway is set out in a separate document which can be found **annexed** to this document.

17. The general pathway is designed to enable individuals whose work does not fit into the established pathways outlined above to be able to achieve Chartered Legal Executive (Fellow) status.

**Question 1: Do you agree that the pathways outlined above are the right pathways? Would you add any further pathways to those listed?**

**Please give reasons for your answer**

18. Each pathway is made up of 2 sections:

- Technical knowledge
- Competence requirements

### Technical Knowledge

19. This section of each pathway (see annex 1-9) sets out the minimum technical knowledge requirements, covering knowledge of law and legal practice which underpins the competence requirements for the given pathway

**Question 2: Please review the technical knowledge content of each pathway, do these cover the right areas of technical knowledge? Are there any gaps (both in terms of current needs and for the future)?**

**Please give reasons for your answer**

Competence requirements

20. The overarching competence framework for all Chartered Legal Executives (Fellows) and CILEx Practitioners is set out at **Annex 10**. For each pathway, this overarching framework has been contextualised for the specific area of legal practice.
21. For each pathway, this is set out in the Competence Requirements section of the pathway.
22. There are 2 notable additions to the education standards, which do not appear in the current standards: legal technology and emotional competence. These are discussed separately below.

**Question 3: Please review the competence requirements for each pathway, do these cover the right areas of competence? Are there any gaps (both in terms of current needs and for the future)?**

**Please give reasons for your answer**

Legal Technology

23. There is increasing interest in the legal sector around the use of legal technology to assist, and in some cases replace, human activity in legal processes. This technology falls into 3 broad areas:
- Document review,
  - Expertise, analysis, prediction and strategy
  - Legal research

There are also a further range of developments which do not fit neatly into a category and these are collectively considered as 'other developments'.

24. As part of this review, CILEx Regulation has commissioned research into the foreseeable impact of the development and implementation of new technologies on the legal sector generally and how lawyers may be trained and authorised to practise in the future.
25. It is clear from this research and other available information that the development and implementation of legal technology into the legal sector is not evenly spread. At present, concentration of technology tends to be in large firms and niche practices. Nor are these developments impacting all areas of practice at present.
26. Therefore, whilst developing the skills to be able to understand and utilise legal technology in practice is becoming more important, it is not yet sufficiently developed that this can be incorporated into all standards in the same way, nor can it be

incorporated at a granular level. The standards have been drafted to ensure that for each area of practice there is understanding of both the available technology for the area of practice together with an understanding of the ethical challenges posed by the introduction of technology into the legal sector. It is hoped that this provides sufficient guidance to education and training providers, whilst at the same time providing the necessary flexibility to the standards.

27. One recommendation from the research commissioned by CILEx Regulation related to the possibility of changes to the way in which lawyers are trained, refocusing teaching of legal knowledge from a linear approach to one reflecting the way in which legal technology is developed, e.g. using decision tree teaching. As an example, although the underpinning technical knowledge required would be the same, in contract law, rather than applying a linear approach to course delivery, starting with offer and acceptance, learners would start with a practical problem (e.g. breach of contract) and learn the legal rules through a answering a series of questions.

**Question 4: Do you agree that the use of legal technology, including the ethical implications regarding its introduction to legal services delivery should be added to the education standards? Is this covered in sufficient detail? If not, what additions could be made?**

**Do you agree that as lawyers of the future, working in a technology-centric practice will need to think and work differently and that teaching and assessment methods should adapt to reflect these changes?**

**Please give reasons for your answers**

#### Emotional Competence

28. As with legal technology, this area is of increasing interest to the legal profession. There is growing acknowledgement that emotional competence is an essential skill for lawyers at all stages of their career, and there is pressure to incorporate this into the regulatory standards to ensure that this element is adequately captured through the education and training routes for prospective lawyers. We agree that this should be included explicitly within the competence framework for lawyers and therefore, we have proposed this addition to the framework in 2 ways:

- In relation to the ability to adapt to the needs of the client
- Resilience of the individual

**Question 6: Do you agree that emotional competence should be included explicitly within the education standards? Is this covered in sufficient detail? If not, what additions could be made?**

**Please give reasons for your answer**

## **Assessment of competence**

29. Assessment of competence for admission as a Chartered Legal Executive (Fellow) or CILEx Practitioner is reserved to the regulator and is assessed by CILEx Regulation, through the submission of a portfolio of evidence which demonstrates competence.
30. As the responsibility for admission rests with CILEx Regulation, we will continue to apply the assessment of competence which enables admission to the profession, so that we continue to be assured that applicants for authorisation meet the required standard.

In the short term, CILEx Regulation is intending to retain the portfolio for first authorisation to enable the proposed changes to embed. In the longer term, CILEx Regulation is considering all options for the assessment of competence for admission to the profession.

31. Options include:

- Retaining the current portfolio approach
- Submission of a shorter portfolio in combination with a structured interview
- Online assessment using simulated exercises including role play, an in-basket and/or case-studies

32. CILEx Regulation is also considering a proposal to enable cross-qualification into additional rights of authorisation through a different assessment mechanism. This will be consulted upon separately in the new year.

**Question 6: Do you agree with the proposal to retain admission through submission and assessment of the portfolio in the short term? Do you support the continued use of the portfolio assessment for admission as a CILEx lawyer in the longer term?**

**Please give reasons for your answer.**

**Of the alternative mechanisms for assessment for authorisation, which option would you consider to be most appropriate? Do you have an alternative option for competence assessment?**

**Please give reasons for your answer**

## Qualifying Employment

33. Qualifying employment is the term applied by CILEx Regulation to the period of work experience required to be demonstrated by an applicant seeking admission as a Chartered Legal Executive (Fellow).
34. In order to be admitted, applicants are required to demonstrate at least 3 years qualifying employment.
35. Qualifying employment is defined in the Fellowship (Work Based Learning) Rules as follows:

*A person is in qualifying employment if he is employed either:*

- *by an authorised person in private practice;*
- *by an organisation where the employment is subject to supervision by an authorised person employed in duties of a legal nature by that organisation; and in either case*
- *the work under the terms of his employment is, for at least 20 hours per week, wholly of a legal nature.*

*An applicant for Fellowship will be regarded as being employed if:*

- *he is employed under a contract of service and is engaged on his employer's business for specified hours; or*
- *he is a partner in any firm or is an owner of any company; or*
- *at the discretion of CILEx Regulation, he is employed under a contract for services, whether he works as an independent contractor or provides services through an intervening agent.*

*Part-time employment may be accepted as qualifying employment, if the work undertaken provides the opportunity for practical expertise to be developed. Part-time employment is employment for less than 20 hours per week. CILEx Regulation shall have the power to determine that employment for less than 20 hours per week shall be regarded as part-time qualifying employment, where it decides it is appropriate to do so.*

*Unpaid work may be regarded as 'employment' for the purposes of these rules.*

36. Although this definition does not generally cause any difficulties, there have been instances where those whose work is split between legal and non-legal roles and/or work part-time hours may be perceived to be disadvantaged through the application of this rule.
37. CILEx Regulation has commissioned research into the application of the rule to determine whether it has the potential to be discriminatory and this work will inform CILEx Regulation's review of this element of authorisation.
38. Irrespective of whether the rule is found to have the potential to be discriminatory in its application. CILEx Regulation is reconsidering the definition of qualifying employment.

39. In particular, CILEx Regulation is interested in understanding stakeholder views on:

- a. Whether 3 years of qualifying employment is the right qualifying period?
- b. Whether an aggregated hours figure would work better to determine qualifying employment, rather than specifying a minimum number of hours per week. For example, if 3 years of qualifying employment is considered to be the correct amount required, should the required hours be 20 hours x 46 weeks x 3 years = 2760 hours
- c. Whether to remove the qualifying employment requirement on the basis that competence is evidenced through the Work Based Learning portfolio
- d. A relaxation of the current definition of qualifying employment, to one which creates the requirement to work within a legal environment for a specified period of time e.g. 3 years but without a specified hours requirement or the requirement that the work undertaken should be 'wholly legal' for a specified number of hours
- e. Retention of the current rule either in its current form or with one of the variations set out at paragraph 7 above.

**Question 7: Please select your preferred option from those listed below and state the reason for your choice:**

No.	Option	Please tick
1.	Retain current approach to qualifying employment – i.e. minimum 3 years, with at least 20 hours per week in wholly legal work. Some discretion to accept part-time work	
2.	Retain requirement for qualifying employment, defined as undertaking wholly legal work, but remove the requirement for a minimum of 3 years and replace with an overall aggregate figure of 2760 hours	
3.	Retain requirement for qualifying employment, defined as undertaking wholly legal work, but remove the requirement for a minimum of 3 years and replace with a different overall aggregate figure [please state hours and provide reason]	
4.	Replace current qualifying employment definition with a requirement to undertake legal work (undefined) for a specified period of time [please specify minimum time period e.g. 3 years]	
5.	Remove the requirement for qualifying employment on the basis that competence is assessed through the work based learning portfolio	

**Proposal to remove the requirement to serve 12 months in the Graduate grade of membership prior to admission as a Chartered Legal Executive**

40. In order to be admitted as a Chartered Legal Executive, individuals must first serve a 12-month period in the Graduate grade. This creates a link between the authorisation process and CILEx membership, which limits the ability of the professional body to review its membership grades as they are tied into the regulatory arrangements.. CILEx Regulation is proposing to remove this requirement.



41. To sever the link, it is proposed that the requirement to serve 12 months in the Graduate grade of membership be replaced with a requirement to have completed the academic requirements for admission, as defined through the education standards framework. This is a change to separate the regulatory arrangements from the membership requirements, but will not change the academic standards required to be achieved by prospective Chartered Legal Executives.

**Question 9: Do you agree with the proposal to remove reference to Graduate member status from the authorisation requirements and replace it with a requirement to have completed the required academic requirements for admission?**

**YES/NO**

**Please give reasons for your answer**

## **CILEx qualifications and exemptions**

42. Under the current regulatory arrangements, CILEx qualifications provide the basis for the assessment of technical knowledge. These qualifications are developed, implemented and administered through an Ofqual regulated Awarding Organisation, with CILEx Regulation overseeing the content and assessment process through a quality assurance arrangement. It is proposed that this will continue once the revised standards are in force.
43. CILEx Regulation recognises that individuals may have developed the required technical knowledge through alternative qualifications and these are recognised by way of exemption. Exemptions can come from holding a qualifying law degree, the CPE/GDL and the LPC or BPTC as well as other qualifications which may contain legal units but do not form part of a qualifying law degree.
44. Under the current arrangements, an individual with a qualifying law degree is provided with an exemption from all CILEx law units, with a requirement to complete 2 practice units and client care in order to have satisfied the academic requirements for admission as a Chartered Legal Executive (they must still complete qualifying employment, Work Based Learning and satisfy the fit and proper person test for admission). Similarly, an individual who has completed both a qualifying law degree and either the LPC or BPTC is deemed to have satisfied the academic requirements.
45. Recently there have been several cases of individuals who have sought to rely on law units completed within a different degree, which to all intents and purposes had the same content and assessment as if they had been part of the qualifying degree, but owing to an anomaly in the current exemptions process, were unable to rely on these units as providing an exemption to law units within the CILEx qualification.
46. CILEx Regulation is therefore proposing to amend the current exemptions policy to enable individuals to rely on law units within a non-qualifying law degree, where the syllabus and assessment is essentially the same to rely on these units to provide exemption from Level 6 law units.
47. The decision to exempt individuals from the academic requirements is currently undertaken by the Awarding Organisation, with quality assurance oversight of CILEx Regulation. However, CILEx Regulation considers that this may be insufficient to ensure that the minimum academic requirements for authorisation have been met by the individual and is therefore proposing to introduce a second stage into the exemptions policy so that the regulator has more direct control over the assessment of exemptions for admission to the profession.

### **Question 10: Do you agree with the proposal to amend the exemptions policy?**

**YES/NO**

**Please give reasons for your answer**

## **Quality Assurance Scheme for Advocates (QASA)**

48. In 2013, the Legal Services Board approved the introduction of the QASA by CILEx Regulation, the Bar Standards Board and the Solicitors Regulation Authority. QASA was designed to assure the quality of all criminal advocates through assessment of competence against one of four levels (depending on the complexity of the criminal advocacy undertaken).
49. CILEx Regulation's criminal advocates (including Associate Prosecutors employed by the Crown Prosecution Service (CPS)) do not have higher rights of audience and therefore all of its advocates fell within Level 1 of the scheme.
50. The assurance of competence at Level 1 was through completion of outcomes focused CPD against the QASA Level 1 standard. The completion of the CPD requirements was to be undertaken over a 5 year period against all the outcomes in order to maintain the necessary competence and so obtain reaccreditation to practise for the following 5 year period.
51. The assurance of competence for all advocates at CILEx Regulation is similar in nature to the proposed QASA scheme for Level 1 advocates. All advocates regulated by CILEx Regulation are required to focus a prescribed amount of their CPD each year on advocacy skills, in order to maintain their competence. Although not rigidly set against predetermined outcomes each year (as was the QASA scheme), the requirement each year is for criminal advocates to reflect and plan CPD which best meets their immediate needs and then act and evaluate the effectiveness of the undertaken CPD against the planned objectives. In this way CILEx Regulation's approach to assuring the ongoing competence of its advocates is similar to the now obsolete QASA. The Bar Standards Board has taken steps to remove the scheme from their rules and the Solicitors Regulation Authority is intending to take similar action in the new year.
52. Therefore, CILEx Regulation is proposing to remove the QASA from its rules and revert to the pre-existing CPD requirements in relation to criminal advocates.
53. In the longer term, CILEx Regulation is developing a risk-based practitioner matrix, which will be applied to all CILEx members. It will be used to determine the risk posed by each member, thereby enabling more sophisticated supervision of CILEx members including advocates.

**Question 11: Do you agree with the proposal to remove the QASA from the CILEx Regulation rules and instead revert to the outcomes focused CPD scheme, with emphasis on the prescribe outcomes to ensure ongoing competence of CILEx criminal advocates and Associate Prosecutors?**

**YES/NO**

**Please give reasons for your answer**

## Next steps

54. This consultation is open for 12 weeks, from 26 November 2018, closing at 5pm on 18 February 2019.
55. Once the consultation closes, subject to the responses, CILEx Regulation will make the required amendments to the regulatory arrangements and consult for a period of 4 weeks on the required changes to the rules, prior to submission to the Legal Services Board for approval of the changes required.

## How to respond

56. This response form has been provided for completion. Please send the response form to CILEx Regulation by one of the following methods:
  - By email to [consultations@cilexregulation.org.uk](mailto:consultations@cilexregulation.org.uk). Please mark your reply for the attention of Vicky Purtil, Director of Authorisation and Supervision.
  - By post to CILEx Regulation Ltd, College House, Kempston, Bedford MK42 7AB.
  - By DX to CILEx Regulation, DX 124780 Kempston 2.

## Summary of questions

**Question 1: Do you agree that the pathways outlined above are the right pathways? Would you add any further pathways to those listed?**

**Question 2: Please review the technical knowledge content of each pathway, do these cover the right areas of technical knowledge? Are there any gaps?**

**Question 3: Please review the competence requirements for each pathway, do these cover the right areas of competence? Are there any gaps?**

**Question 4: Do you agree that the use of legal technology, including the ethical implications regarding its introduction to legal services delivery should be added to the education standards? Is this covered in sufficient detail? If not, what additions could be made?**

**Do you agree that as lawyers of the future, working in a technology-centric practice will need to think and work differently and that teaching and assessment methods should adapt to reflect these changes?**

**Question 5: Do you agree that emotional competence should be included explicitly within the education standards? Is this covered in sufficient detail? If not, what additions could be made?**

**Question 6:**

**Do you agree with the proposal to retain admission through submission and assessment of the portfolio in the short term? Do you support the continued use of the portfolio assessment for admission as a CILEx lawyer in the longer term?**

**Please give reasons for your answer.**

**Of the alternative mechanisms for assessment for authorisation, which option would you consider to be most appropriate? Do you have an alternative option for competence assessment?**

**Question 7: Please select your preferred option from those listed below and state the reason for your choice:**

No.	Option	Please tick
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4.	Replace current qualifying employment definition with a requirement to undertake legal work (not defined) for a	

	specified period of time [please specify minimum time period e.g. 3 years]	
5.	Remove the requirement for qualifying employment on the basis that competence is assessed through the work based learning portfolio	

**Question 8: Do you agree with the proposal to remove reference to Graduate member status from the authorisation requirements?**

**Question 9: Do you agree with the proposal to amend the exemptions policy?**

**Question 10: Do you agree with the proposal to remove the QASA from the CILEx Regulation rules and instead revert to the outcomes focused CPD scheme, with emphasis on the prescribe outcomes to ensure ongoing competence of CILEx criminal advocates and Associate Prosecutors?**