

## Consultation: on the proposal to introduce an alternative route to acquiring additional practice rights for established Fellows

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 standards they can expect. We believe this provides a balanced approach.
2. Our regulated activity includes overseeing the education, qualification and practice standards of Chartered Legal Executives, CILEx Practitioners and others in our regulated community. In carrying out this work we focus education and training on requirements which ensure competence standards.
3. We are engaged in a review of our current education standard. We want to ensure that changes introduced following the Legal Education and Training Review ([LETR](#)) in 2013, are effective and continue to be fit for purpose. We also want to be certain that our education and training requirements reflect developments in the provision of legal services and our commitment to a diverse talent stream and enhanced social mobility.
4. This consultation seeks your views on the proposal to introduce an alternative route by which individuals, who have met the education, training and work experience requirements to achieve Fellow status, may be granted additional practice rights. In paragraph 9 of this document we have explained how we ensure that individuals have achieved the appropriate standard of competence for safe practice as a Fellow. In paragraphs 11-22 we set out our proposal for an alternative means to acquiring practice rights and why we consider the introduction of some flexibility in our education and training requirements, achieves positive outcomes and is capable of ensuring the maintenance of a high standard.
5. We welcome responses from our regulated community and other stakeholders, including consumers of legal services, education and training providers, other regulators, employers and other interested parties on our proposal.
6. This consultation will run for **12 weeks** from 31 May 2019, closing at 5pm on 23 August 2019.

### Background

7. In December 2018 we published a consultation paper on our proposals to reshape our education standards, simplify the pathways to authorisation and introduce a revised competence framework contextualised for specialist areas of practice. In the course of our work leading to these proposals we have also reviewed the

current requirements and opportunities for qualification and progression in the profession for existing Fellows.

8. This paper considers the introduction of an alternative route to granting additional practice rights to Fellows who hold a current practising certificate and work in a reserved area of activity. Our proposal would provide a choice for existing Fellows seeking authorisation to work in a reserved or regulated area: that is, to acquire additional rights to practice by either following the current authorisation process or to demonstrate competence in the practice area by way of independent objective assessment delivered by an assessment provider authorised and overseen by CILEx Regulation. We propose that these additional rights to practice would be treated as an extension of a Fellow's practising certificate.

### **Achieving the Fellow qualification**

9. To achieve Fellow status, a Chartered Legal Executive 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.
10. Having achieved Fellow status, an individual is not however permitted to work in a reserved area of activity or a regulated activity unless he or she is supervised by an authorised person. 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 solicitors and a CILEx Practitioner.
11. To be authorised to work unsupervised in a reserved or regulated area, our current regulations require a Fellow to qualify as a CILEx Practitioner. This means that a **Fellow** must 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.

## The rationale for change

12. There are several reasons why we consider the introduction of an alternative route to acquiring additional practice rights for Fellows is timely and necessary:

- Feedback obtained from the regulated community of CILEx Fellows and via CILEx, their professional body, identifies that Fellows seeking practice rights are faced with a regulatory process perceived as duplicative and cumbersome. We can see where that duplication can occur in the progression between Fellow and CILEx Practitioner (see paragraphs 9-11 above). This duplication of effort increases the cost of qualification and creates a barrier to onward qualification and progression in the profession.
- A lack of flexibility in how competence standards are met may hinder our strategic objective of strengthening the diversity of the profession and act as a disincentive to enter the profession.
- Prevailing government policy is focused on the promotion of competition, employability and the delivery of cost-effective regulation. The current requirements may be seen as insufficiently risk-based, in that significant risk is already properly managed through the requirements to achieve Fellow status, and does not need to be duplicated for the purposes of acquiring additional practice rights.
- We want to ensure a regulatory framework which is sufficiently flexible to meet the needs of a developing market. We want to be sure that access to legal services is not hindered by requirements and regulation which go beyond what is necessary to uphold standards and protect consumers. Other regulators such as the Solicitors Regulation Authority (SRA) and the Institute of Chartered Accountants in England and Wales (ICAEW) recognise specialist practice rights through training and independent object assessment. Examples include probate practice rights for accountants (through ICAEW and ACCA) and higher rights of audience for solicitors.
- It is consistent with our move to a new competence framework and the introduction of new competences with a sharper focus on behaviours and attitudes.

## The proposal

13. We propose that, as an alternative to seeking CILEx Practitioner status, 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 specialism:
  - i. Pass an assessment in the relevant specialist practice area; and
  - ii. Complete an application process evidencing requisite experience

- b) Fellows with at least 5 years of qualifying employment and less than 2 years' experience in the relevant specialism:
    - i. complete specified skill/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.
14. Relevant experience would be tested through the application process. There would be no change to the requirements for granting advocacy rights: Fellows would need to complete the advocacy training programme as currently required.

**Question 1: Do you agree with our proposal to introduce flexibility in how established Fellows demonstrate competence for the purposes of acquiring additional practice rights?**

**Question 2: Do you agree with the proposal outlined in a) and b) above?**

**Question 3: Would you include any further requirements to those listed in a) and b) above?**

**Please give reasons for your answer.**

### **The Assessment**

15. It is crucial that consumers, the regulator, the profession and other stakeholders have confidence in the assessment and this must drive the decisions to be made as to type of assessment, the standard applied to be assured of an individual's competence, and by who, and how it is delivered.
16. The choice of assessment must therefore be driven by the following minimum essential criteria:
- 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.
  - Fair – it is non-discriminatory.
  - Feasibility – affordable and efficient.
  - Acceptable to stakeholders.

17. The review that we have undertaken has led us to conclude with confidence that the assurance that a Fellow has acquired a breadth and depth of knowledge and skills to an appropriate standard for safe practice in a reserved or regulated area of practice can be robustly and reliably established through objective assessment. We therefore propose 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 as follows:

<b>Assessment type</b>	<b>Competence Assessed</b>	<b>Assessment description</b>	<b>Assessment conditions</b>
Multiple choice/single best answer/multiple response	<ul style="list-style-type: none"> <li>- Knowledge, understanding and application of law and practice</li> <li>- Client relationship</li> <li>- Conduct ethics and professionalism</li> </ul>	Assessment of applied technical knowledge	<ul style="list-style-type: none"> <li>- Closed book</li> <li>- Timed -1.5 hours</li> <li>- 45 questions</li> <li>- Computer-based</li> <li>- Electronically marked</li> </ul>
Written and oral practical skills test	<ul style="list-style-type: none"> <li>- Knowledge, understanding and application of law and practice</li> <li>- Client relationship</li> <li>- Conduct ethics and professionalism</li> <li>- Use of technology</li> <li>- Effective working practices</li> <li>- Communication</li> </ul>	<ul style="list-style-type: none"> <li>- Conduct interview with standardised client</li> <li>- Draft/critique legal document</li> <li>- Communicate finding to client in writing</li> </ul>	<ul style="list-style-type: none"> <li>- Timed – 2 hours</li> <li>- Access to online research tools</li> <li>- Completed on a computer</li> <li>- Marked manually</li> <li>- Specific assessment criteria for law and skills competences</li> </ul>

**Question 4: Do you agree with the proposed assessment methods for assessing competence bearing in mind that this will be available only to Fellows, i.e. those who have met the requirements set out in paragraph 9 above.**

**Question 5: If your answer to 5 is no, do you have an alternative option for assessing competence?**

**Please give reasons for your answers.**

18. We have reached this decision having 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.

19. The final assessment specification, including what candidates would be expected to demonstrate in the assessment and to what standard, would be drawn up by the assessment provider and subject to our approval.

### **The assessment provider**

20. We propose to appoint, through a tender process, a single assessment provider to write and deliver the assessments. We would not automatically rule out a provider which also delivers training, however, we would insist that robust measures be in place to ensure issues relating to conflicts of interest were properly managed and assessment integrity was not compromised. This would be established through the tender process. A detailed statement of requirements will be issued to bidders.

### **Question 6: Do you agree that provided stringent measures were in place, an assessment provider could also deliver training?**

#### **Please give reasons for your answer.**

21. We are confident that practice rights granted in the way outlined in this document offer a number of benefits and assurances of the maintenance of an appropriate standard of competence:
- An increase in Fellows with specialist practice rights will provide greater choice for consumers.
  - Flexibility in the requirements for acquiring specialist practice rights may encourage more applicants.
  - The assessment, although delivered by an authorised assessment provider, would be regulated by CILEx Regulation. This would enable input into the assessment and quality assurance of the assessment process.
  - Control of who is granted practice rights will remain with the regulator.
  - Ensures the application of a consistent standard when assessing competence.
  - In addition to assessing technical legal knowledge and skills, also enables the assessment of professional skills, including ethical judgements, consumer awareness and client care.
  - Opportunities to analyse, interpret and publish data on achievement and progression, including in relation to key demographics.

- Enables a shift in focus from time served inputs to competence at the point of authorisation.
- It would permit a good balance between the scrutiny of an individual applicant through the application form and an objective assessment of competence.
- Achieves an effective use of CILEx Regulation resource

**Question 7: Do you agree with the benefits and assurances which would be achieved in introducing this into our education and training framework? Do you see any disadvantages or threats to standards?**

**Please give reasons for your answers.**

### **Next steps**

22. This consultation is open for 12 weeks from **31 May 2019**, closing at 5pm on **23 August 2019**.

23. Once the consultation closes, subject to the responses, CILEx Regulation will make the required amendments to the regulatory arrangements and take the necessary steps to implement changes. We will consult for a period of 4 weeks on any required changes to the rules prior to seeking approval of the Legal Services Board.

### **How to respond**

24. 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., Collge House, Kempston, Bedford MK42 7AB.
  - By DX to CILEx Regulation, DX 124780 Kempston 2

### **Summary of questions**

**Question 1: Do you agree with our proposal to introduce flexibility in how established Fellows demonstrate competence for the purposes of acquiring additional practice rights?**

**Question 2: Do you agree with the proposal outlined in a) and b) above?**

**Question 3: Would you include any further requirements to those listed in a) and b) above?**

**Question 4: Do you agree with the proposed assessment methods for assessing competence bearing in mind that this will be available only to Fellows i.e. those who have met the requirements set out in paragraph 9 above.**

**Question 5: If your answer to 5 is no, do you have an alternative option for assessing competence?**

**Question 6: Do you agree that provided stringent measures were in place, an assessment provider could also deliver training?**

**Question 7: Do you agree with the benefits and assurances which would be achieved in introducing this into our education and training framework? Do you see any disadvantages or threats to standards?**