

ANNEX 2

CONSULTATION DOCUMENT

ILEX PROFESSIONAL STANDARDS LTD

CONSULTATION

**PROPOSAL TO ALTER RIGHTS OF AUDIENCE CERTIFICATION RULES TO
ENABLE ILEX ADVOCATES TO BECOME MANAGERS IN LEGAL
PRACTICES**

INTRODUCTION

The Institute of Legal Executives (ILEX) is an approved regulator under the Legal Services Act 2007. In accordance with the requirements of the legislation it has separated out its regulatory and representative functions. The regulatory functions have been delegated to ILEX Professional Standards Ltd (IPS). IPS is the regulatory body for Legal Executives and other grades of member registered with ILEX.

IPS is making an application under the Legal Services Act 2007 to revise its Rights of Audience Certification Rules to enable Legal Executive Advocates to become managers in legal practices regulated under the Legal Services Act 2007.

IPS is consulting on the proposals. This consultation summarises the nature of the revisions and encloses a copy of proposed new rules.

This Consultation will close on 15 October 2010

INTRODUCTION

1. ILEX was designated as an authorised body for the purposes of granting rights of audience by the Institute of Legal Executives Order 1998 (SI 1998/1077). ILEX remains an authorised body for the purposes of granting rights of audience under the Legal Services Act.
2. ILEX is able to grant rights of audience to Fellows who qualify under the qualification arrangements in the lower courts. The Rights of Audience Certification Rules, at Annex 1, outline the rights that ILEX can grant. The rules only allow members who are employed to undertake the qualification and to exercise the rights of audience.
3. IPS proposes to make an application under the Legal Services Act to alter the Rights of Audience Certification Rules to enable managers in practices regulated under the Legal Services Act 2007 to qualify as Legal Executive Advocates. The proposal will also enable members who have already qualified as Legal Executive Advocates to continue to exercise the rights of audience if they became a manager in a legal practice.

PRESENT POSITION

4. At present ILEX members qualifying as Legal Executive Advocates must be employed by:
 - a solicitor or a firm of solicitors in private practice; or
 - any corporation, undertaking, department or office (whether governmental, public, municipal, commercial or otherwise) and work under a solicitor, a barrister or an authorised litigator who is principally employed in duties of a legal nature by that corporation, undertaking, department or office; or
 - an authorised litigator.
5. It is now possible for ILEX members to become partners, members or directors in legal practices. They are referred to as 'managers' in this document, as defined at section 207 Legal Services Act 2007. An ILEX member cannot continue as a Legal Executive Advocate if they become a manager in a legal practice. This is because they do not meet the employment criteria set out above. Similarly an ILEX member who is a manager in a legal practice cannot seek to qualify as a Legal Executive

Advocate. IPS believes that this position does not support the intention of the Legal Services Act 2007.

PROPOSALS

6. IPS seeks to amend the Rights of Audience Certification Rules to enable a Legal Executive Advocate who becomes a manager in a legal practice to continue to exercise rights of audience. It also proposes that the Rules be amended to allow managers to qualify as Legal Executive Advocates.
7. It is proposed that the rules on employment be amended to state a member must:
 - be employed by or a manager in an organisation which is owned or managed by persons authorised to provide litigation services, or which is authorised to provide litigation services under the Legal Services Act 2007;

or

 - be employed by an organisation in which he works under the supervision or control of a person who is authorised to provide litigation services under the Legal Services Act 2007.
8. Extracts of the Rights of Audience Certification Rules appear at Annex 1. The rules show the amendments that will be made. It will be seen from Annex 1 that IPS wishes to alter Rules 1, 6, 7, 65, 71, 81 and 89 of its Rights of Audience Certification Rules. Each of these rules relates in part to a requirement under the Rules that Members or Fellows seeking to be granted rights of audience and Fellows wishing to continue to exercise rights of audience may only do so if they are employees.

REASONING

9. The application is being made to enable ILEX Advocates to practice within the ambit of new practice structures introduced by the Legal Services Act 2007. The proposals will enable Advocates to become managers in Legal Disciplinary Practices and in the future in licensed bodies. It will not permit members to become independent advocates. Legal Executive Advocates may only be employed or managers in a legal practice.

10. The proposals also require that Legal Executive Advocates must be employed in an organisation which is authorised to provide litigation services under the Legal Services Act 2007.

Question

- 1. IPS seeks to enable Legal Executive Advocates to become managers in legal practices. Provide your comments on the proposals.**

REGULATORY OBJECTIVES

11. IPS believes that its application complies with the regulatory objectives set out in the Legal Services Act 2007. In most instances it will have a neutral impact on the regulatory objectives compared to the current position. In other instances it will meet the regulatory objectives whereas it would not in the absence of the amendment.
12. Legal Executive Advocates will:
 - Continue to protect and promote the public and consumer interest through the Rights of Audience Conduct Rules which remain unchanged;
 - support the rule of law in the work they undertake;
 - help to improve access to justice by making available an alternative form of practitioner to consumers whereas in the absence of this amendment an ILEX member who is a manager in a legal practice cannot qualify or continue as a Legal Executive Advocate;
 - promote competition in the provision of services through the alternative model in which Legal Executive Advocates may practise;
 - encourage a strong, independent, diverse and effective legal profession through the Rights of Audience Conduct Rules;
 - help to increase the public's understanding of a citizen's legal rights and duties through the services they will provide; and
 - promote and maintain adherence to the professional principles through the Rights of Audience Conduct Rules that Legal Executive Advocates must comply with.
13. IPS believes that its proposal to amend the rules is proportionate. The amendment seeks to enable Legal Executive Advocates to practise within the ambit of new structures proposed by the Legal Services Act 2007. It is targeted at that alone and does not seek to enable Legal Executive Advocates to qualify as independent practitioners.

Question

- 2. Do you have any comments on whether the proposed amendment will affect the regulatory objectives or professional principles? If so, set them out.**

CONSULTATION QUESTIONS

The questions are listed below. Please provide your responses on the attached response form providing reasons for your answers.

- Q1.** IPS seeks to enable Legal Executive Advocates to become managers in legal practices. Provide your comments on the proposals.

- Q2.** Do you have any comments on whether the proposed amendment will affect the regulatory objectives or professional principles? If so, set them out.

HOW TO RESPOND

A response form has been produced for completion. Please send the response form to IPS through one of the following methods:

- Email to bbasra@ilexstandards.org.uk

- By post to ILEX Professional Standards Ltd, Kempston Manor, Kempston, Bedford MK42 7AB

- By DX to ILEX Professional Standards Ltd, DX 124780 Kempston 2

SUBMISSION DEADLINE

The deadline for the submission of responses is 15 October 2010