

Consultation on our proposals to consolidate the individual authorisation rules and on changes to our exemptions policy

Introduction

CILEx Regulation is the independent regulatory body of the Chartered Institute of Legal Executives. We regulate a wide range of individual legal professionals as well as law firms. In all our work we aim to protect the interests of consumers, promote high professional standards, and encourage a diverse and effective legal profession. We take a proportionate and constructive approach to regulation, providing ongoing supervision to maintain high standards and monitoring the continuing professional development of our regulated community.

This consultation sets out our proposals to:

- consolidate the rules for admission to Fellowship and CILEx Practitioner status
- amend our exemptions policy

Proposals to consolidate the authorisation rules

Background to these proposals

In 2013 CILEx Regulation (then ILEX Professional Standards), the Solicitors Regulation Authority and the Bar Standards Board published a review of legal training and education. Since then we have incorporated many of the review's recommendations into the education and training requirements for Chartered Legal Executives.

In 2018 we consulted on our education standards, including the knowledge and competency requirements for Chartered Legal Executives (Fellows) and CILEx Lawyers (Practitioners). The changes we are proposing here reflect the responses we received.

We have also seen significant changes to our remit since 2013. We are now able to authorise practitioners in all the reserved activities (except notarial activities) and to authorise law firms. In light of these changes, coupled with rapid technological change in the legal sector, we believe the time is right to change our education and training framework, incorporating the new rights and streamlining our approach to individual authorisation.

What we are proposing

We are proposing to streamline the authorisation process by unifying the rules for individual authorisation. This would mean that an applicant for Fellowship could select an integrated 'practice right' in one of probate, conveyancing, immigration or litigation.

As well as introducing an integrated approach to authorisation, our proposals would remove duplication and reduce repetition. When we compared the existing five sets of rules for Fellowship and the different types of CILEx Practitioner status, we identified many similarities. Where we found differences, they were simply in drafting, not in policy or process. The unified set of rules would remove this duplication.

We intend the new CILEx Lawyer Authorisation Rules to apply to individuals seeking Fellowship and/or authorisation as a CILEx Lawyer (Practitioner) for the first time. The proposal introduces the term 'CILEx Lawyer' to mean both Fellow/Chartered Legal Executive and CILEx Practitioner.

Responses to our consultation

The consultation responses we received on the rule changes supported:

- the proposed pathways
- the technical knowledge and competence requirements
- the inclusion of legal technology and emotional competence in the education standards

The responses we received to the relevant consultation questions are set out in Appendix 1. The new CILEx Lawyer Authorisation Rules (Appendix 2) reflect these responses.

Other changes to note

The mapping documents (Appendices 3-7) set out the changes made to the existing rules to create the new authorisation rules.

Replacing references to a 'Certificate of Fitness' with references to an 'Employer's Endorsement'

In the new CILEx Lawyer authorisation rules, references to a 'Certificate of Fitness' for Fellowship have been replaced with references to an 'Employer's Endorsement'. This reflects the current terminology used in the Fellowship application form.

Removal of the Graduate Grade of membership from the definition of Fellowship

Question 8 of the December consultation asked, 'Do you agree with the proposal to remove reference to Graduate member status from the authorisation requirements?' We noted overwhelming support for the proposal, and this has been implemented in the new CILEx Lawyer Authorisation Rules. Our analysis of the response is set out at Appendix 11.

Removing references to the Quality Assurance Scheme for Advocates (QASA)

Question 10 of the December consultation asked, '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 prescribed outcomes to ensure ongoing competence of CILEx criminal advocates and Associate Prosecutors?' We received support for this proposal (see Appendix 11). In response, the unified set of rules (Appendix 2) removes references to QASA in the Rights to Conduct Litigation and Rights of Audience Certification Rules.

We also propose removing references to QASA in the:

- Admissions and Licensing Committee Rules (Appendix 8)
- Rights of Audience Certification Rules (Appendix 9)
- Associate Prosecutor Rights of Audience Certification Rules (Appendix 10)

Replacing references to the Investigation, Disciplinary and Appeals Rules (IDAR) with references to the Enforcement Rules

We are proposing to replace references to the Investigation, Disciplinary and Appeals Rules (IDAR) with reference to the Enforcement Rules in the:

- Admissions and Licensing Committee Rules (Appendix 8)
- Rights of Audience Certification Rules (Appendix 9)
- Associate Prosecutor Rights of Audience Certification Rules (Appendix 10)

Replacing references to the CILEx Council with references to the CILEx Institute Board

The Admissions and Licensing Committee Rules (Appendix 8) have been amended to replace references to the 'CILEx Council' with the 'CILEx Institute Board'. This reflects changes to CILEx's governance arrangements.

Question 1: proposals to consolidate the authorisation rules

Do you agree that the proposed unified set of rules sets out the process relating to the authorisation process for Fellowship and CILEx Lawyer (Practitioner) status with sufficient clarity and detail?

Please answer yes or no and give reasons for your response.

Proposals to amend our exemptions policy

Introduction

Between December 2018 and February 2019 we consulted on amending the CILEx exemptions policy. Our proposed changes to the policy would introduce broader recognition of qualifications from a range of academic institutions. We also intend to introduce a CILEx Regulation exemptions policy (Appendix 12) to separate regulatory arrangements from CILEx's detailed operational exemptions policy (Appendix 13).

Background to these proposals

Under the current arrangements, CILEx qualifications provide the basis for our assessment of an applicant's 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. We propose that this arrangement continues.

The current arrangements also recognise that some applicants may have developed the required technical knowledge through different qualifications. These applicants may be eligible for exemptions. An exemption may apply if an applicant has a qualifying law degree, the CPE/GDL and the LPC or BPTC, or other qualifications which may contain legal units but do not form part of a qualifying law degree.

However, we have recently seen several instances of applicants seeking to rely on law units completed as part of a different degree, which had essentially the same content and assessment as those in a qualifying law degree, but which the exemptions policy prevented us from relying on.

What we are proposing

We are proposing to create a new CILEx Regulation exemptions policy (Appendix 12). This would enable us to ensure that applicants for authorisation have the right level of technical knowledge without setting out the detail of the process or the fees within the regulatory arrangements. The policy would be operated by CILEx Regulation. We will ensure that the CILEx policy meets the CILEx Regulation requirements in the same way as it does for CILEx Level 3 and Level 6 qualifications – that is, through the joint protocols.

The new CILEx Regulation exemptions policy would enable individuals to rely on law units within a non-qualifying law degree, where the syllabus and assessment is essentially the same, to provide exemption from CILEx Level 6 law units.

The new policy would also enable us to admit as a CILEx Lawyer an individual who holds a practising certificate with another legal services regulator without the need to repeat a similar application process. We believe this is proportionate and in line with the regulatory objectives and the better regulation principles.

Responses to our consultation

In the consultation we asked, 'Do you agree with the proposal to amend the exemptions policy?' We included this question to address specific issues raised by CILEx in relation to the situation outlined above, not to reconsider the ethos of exemptions more broadly. The change received overwhelming support and we intend to proceed with it.

Due to a lack of consensus in the results of the consultation, the definition of Qualifying Employment remains unchanged. We will issue another consultation after further consideration in this area.

As the consultation responses did not raise any significant concerns about the assessment process, we are not proposing to make changes to the current assessment processes for Fellowship or CILEx Lawyer status under the new rules.

Question 2: proposed changes to the exemptions policy

Do you agree that the draft CILEx Regulation Exemptions Policy achieves its objectives in that it enables modules from non-qualifying law degrees to be treated in the same way as a qualifying law degree?

Please answer yes or no and give reasons for your answer

Question 3: proposal to admit individuals authorised by another regulator

Do you agree that CILEx Regulation should admit holders of a practising certificate with an alternative legal services regulator without the requirement to duplicate assessment activity, provided they meet the admissions criteria?

Please answer yes or no and give reasons for your answer.

Summary of questions

Question 1: proposals to consolidate the authorisation rules

Do you agree that the proposed unified set of rules sets out the process relating to the authorisation process for Fellowship and CILEx Lawyer (Practitioner) status with sufficient clarity and detail?

Please answer yes or no and give reasons for your response.

Question 2: proposed changes to the exemptions policy

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Please answer yes or no and give reasons for your answer

Question 3: proposal to admit individuals authorised by another regulator

Do you agree that CILEx Regulation should admit holders of a practising certificate with an alternative legal services regulator without the requirement to duplicate assessment activity, provided they meet the admissions criteria?

Please answer yes or no and give reasons for your answer.

How to respond

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.

Please complete the response form and send it by:

- email to consultations@cilexregulation.org.uk marked for the attention of Danielle Ingle
- post to CILEx Regulation Ltd, College House, Kempston, Bedford MK42 7AB
- DX to CILEx, DX 124780 Kempston 2

Closing date

The consultation will run for four weeks, closing on 9 September 2019.