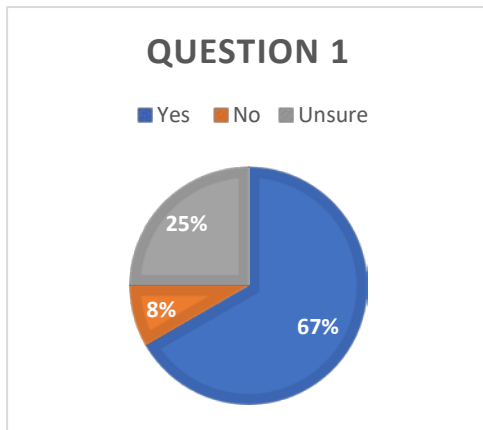


## APPENDIX 1: ANALYSIS OF EDUCATION STANDARDS CONSULTATION QUESTIONS 1-5

*Note: Not all respondents answered all questions.*

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



There is general support for the pathways outlined in the consultation (only 8% of responses did not support the proposed changes).

*'We consider the proposed pathways to cover a sufficient cross section of the common specialist practice area and welcome the inclusion of a general pathway to include those whose role does not fit into one of the more specific pathways.'*

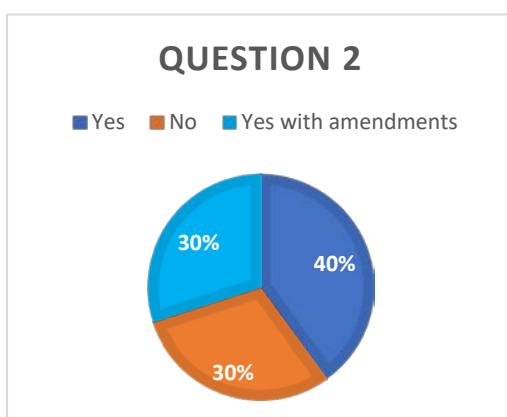
Some suggestions were made for possible additions, including;

- Commercial
- Regulation
- Consumer protection
- Intellectual property
- Immigration

It was noted that these pathways could be adopted through the General Pathway.

A respondent stated that it did not agree that the education standards should extend beyond the reserved legal activities defined in the Legal Services Act 2007. It also expressed a view that the standards should not extend into areas such as business awareness and self-development. CILEx Regulation has responded to these concerns at the end of this document.

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



The responses indicate that the technical knowledge for each pathway is broadly covering the correct areas. There have been some specific inclusions, which CILEx Regulation will add to the statements.

*'We agree with the tailored technical knowledge content of each of the pathways and have not identified any gaps.'*

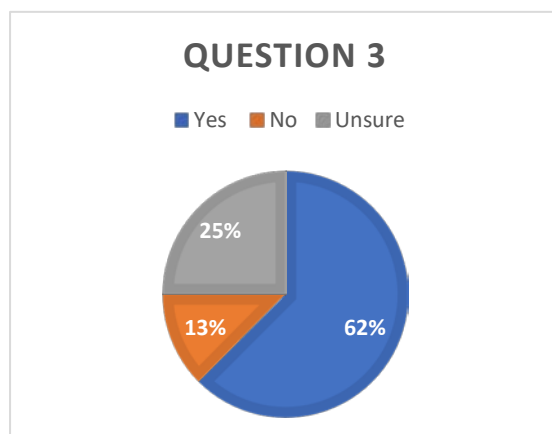
There are some comments that indicate the proposed standards are reducing the minimum requirements for authorisation.

*'Generally, the Education Standards will change the base technical knowledge of a CILEx Fellow under the new Education Standards. The consultation documentation appears to remove some substantive law from the standards which are currently a core requirement under the current pathway to qualification because of the need to complete the level 3 diploma (or qualifying law degree). There appears to be a shift to requiring students to demonstrate technical knowledge in areas of practice only rather than substantive law. A professional assessment should be the minimum necessary for safe practice and there may be objective justification for such a change but that justification has not been made explicit and we therefore cannot comment on whether we agree to that element of the consultation.'*

CILEx Regulation has set out *minimum* requirements for authorisation in a specialist area, rather than replicating the current requirements for authorisation as a Chartered Legal Executive, which cover broader areas of law and legal practice than would be required for practice in their specialist area. The minimum statement will not prevent qualifications from extending beyond the minimum knowledge requirements, but the standard is intended to set out only the minimum knowledge of law and legal practice for the area of specialisation and the wider competencies for a legal professional. Equally, other comments indicate that the statement of technical knowledge has too much content.

CILEx indicated that it considers that the detail should sit outside of the standard and there is merit in this proposal. Therefore, CILEx Regulation will create a separate document for each area of practice in addition to the Annexes consulted upon here, which sets out the outcomes only and a supporting document which sets out the more detailed requirements, essential for authorisation in a separate guidance document. As both documents will include material essential to the standard, both will be regulatory arrangements. These will be created prior to submission to the Legal Services Board for approval but will not materially change the content in the annexes to the rules.

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



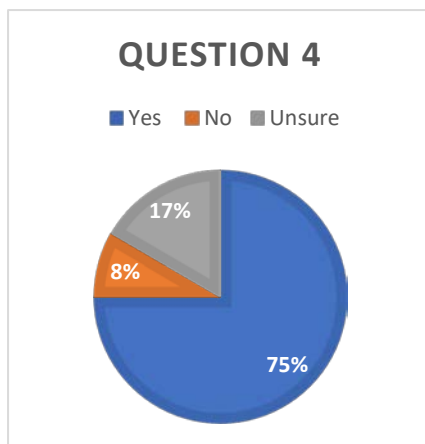
Again, these have been generally accepted as broadly in the right areas, with some additions required. These changes will be incorporated into the standards, prior to submission of the rule change and adopting a similar approach to that set out above in relation to technical knowledge.

*'The competence requirements would seem appropriate and exhaustive –so no further comments here.'*

In its response, CILEx considered that the competences went beyond minimum requirements for authorisation. However, these competency requirements are either in the current standard, or proposed extensions to those current competencies within the standard (see general comments responses at the end of the document for more information). These competence requirements are considered to be the minimum for all practitioners, with the technical knowledge overlaid for the area of specialism.

- overarching outcomes for the specialism, and
- detailed guidance on content

**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?**



Responses to this question were overwhelmingly supportive and therefore CILEx Regulation considers it to be essential to include legal technology within the standard, both in terms of understanding what is possible and the ethical implications of the use of technological developments.

*Yes, do agree the use of legal technology should be added to the standards. It's very forward thinking to equip future legal professionals with the knowledge and skills required.*

*We agree that the use of technology, including the ethical implications regarding its introduction to legal services delivery, should be added to the education standards.*

There was a proposal to consider the creation of a discrete legal pathway through the standards. This may be possible using the General pathway to qualification. However, CILEx Regulation considers it essential for all future lawyers to have some understanding of the technology available and the ethical issues that the use of technology may pose. Therefore, it intends to introduce this as part of the competence requirements for all Chartered Legal Executives.

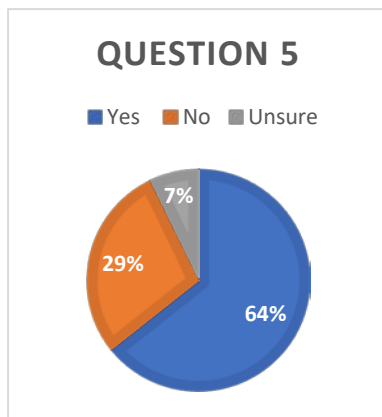
CILEx recognised the need for future lawyers to understand the issues posed by legal technology but noted that this is fast-changing and recommended that CILEx Regulation make reference in its standards to the external competence in Legal Technology.

**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?**

There was limited commentary in relation to this question, no clear direction and as it is not directly related to the development of the standard itself, CILEx Regulation will not make a recommendation in this area.

The LSCP was supportive of the inclusion of legal technology in the education standards and the competence framework was the most appropriate place for its inclusion. As legal technology develops, the LSCP noted that it would be important for lawyers to be able to quality assure technology and raise issues with the software developer as needed.

**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?**



Those that agreed with the inclusion of this element, were particularly keen to see its introduction within the standard.

*Yes, emotional competence should be included within the standards. Again, this is forward thinking and should help to build self-aware, resilient legal professionals for the future where the competence is part of a framework that must be delivered on and not just an optional addition delivered on the job.*

*As researchers in the area of wellbeing and emotion within the legal profession, we are extremely pleased to see CILEx Regulation acknowledging the importance of emotional competence within legal practice and are in favour of it being explicitly included within the education standards.*

*we are delighted that CILEx Regulation are acknowledging the importance of emotional competence in legal practice and are proposing to explicitly include this in the education standards*

Those against its inclusion, stated (for example):

*No it should not form part of the standards. It is a soft skill that should be provided as an addition to the core qualification to practice law. It should be a benefit of the training, not part of the competence.*

*No, I do not agree – emotional competence is a very difficult area to define and assess and I cannot view that an appropriate assessment method would provide any value.*

We have received an offer from the Open University to work with us on the incorporation of this into the education standards in addition to the recommendations they have made and we will work with them to ensure that we have appropriately captured this element.

The LSCP was supportive of the inclusion of emotional competence as an essential skill to ensure that lawyers are able to adapt to consumers' varying needs and to assist with the emotional resilience of practitioners.

### General comments

In addition to the answers to the questions we asked, we also received some general commentary. These issues are addressed below:

- **In the proposed standards, all learners study a common programme at the first level of study**

The standards as proposed are not intended to preclude the addition of specialist pathways at an earlier stage within the qualifications and training offered by CILEx and CILEx Law School. They cover the minimum requirements for authorisation as an authorised person.

- **Submission of separate portfolios of experience capturing evidence of their Qualifying Employment and Work-Based Learning and then post qualification as a Fellow and Chartered Legal Executive a further assessment process to obtain Practice Rights should be streamlined to avoid duplication**

The standards as drafted do not propose assessment methods beyond the short-term consideration to retain the portfolio as the central mechanism for assessment of competence. Assessment will be considered once the education standards have been finalised.

➤ **Perceived weighting towards private practice**

CILEx Regulation has an obligation to ensure that it regulates in the interests of consumers and therefore must ensure that an individual admitted as a Chartered Legal Executive, as an authorised person, is competent to practice in their specialist area. It is accepted that some individuals may work outside of private practice and that these individuals may operate in situations where the protection required for the consumer is more limited, such as an individual working in-house, where the client is likely to have lower asymmetry of information with their legal representative. However, the standards must, by their nature ensure that the protections afforded protect the consumers in whichever setting they work. In our experience as a regulator, self-employed authorised persons, who are otherwise unsupervised require at least the same level of minimum competence prior to authorisation.

This would accord with the LSB's statutory guidance referred to in the CILEx response, which does not restrict education and training requirements to the reserved activities (although it does apply to those authorised to carry out those activities). It states:

*Education and training is one of a number of tools available to regulators to manage risk and support the delivery of the regulatory objectives set out in the Act. This has particular relevance to the need to protect and promote the interests of consumers and to encourage an independent, strong, diverse and effective legal profession.*

Our role in defining education and training requirements is (inter alia) to ensure the protection of the consumer and therefore, CILEx Regulation considers it appropriate that it defines the minimum legal knowledge required for the selected specialism of the individual, irrespective of whether that specialism is a reserved legal activity but in the context of the protection of the consumer.

**27 March 2019**