

ANALYSIS OF CONSULTATION RESPONSES – RECOGNITION OF ALTERNATIVE LEGAL QUALIFICATIONS AND APPROVED TRAINING PROVIDER POLICIES

Introduction:

The consultations were open for 4 weeks between 18 January 2021 and 16 February 2021.

They were circulated to a range of personal contacts who work within legal education and were also circulated via the CHULS group, which represents the Heads of Law Schools in the UK.

There were 4 respondents to the consultation and an additional individual responded to state that they had nothing to add to the proposals and therefore did not respond.

Consultation responses:

Training Provider	2
CILEx	1
CILEx members	
Other	2

Approved qualification route for training providers

Do you agree with the proposal for CILEx Regulation to create an approved qualification route for training providers?

Yes	4
No	0

All respondents agreed with the proposal to approve training providers to deliver qualifications which meet the CILEx Regulation education standards. Therefore CILEx Regulation intends to proceed with this proposal.

A number of additional comments were received in relation to the details of the proposal which are set out below.

Additional comments

Respondent 1:

The “Assessment Delivery” section (at page 12) sets out CILEx expectations with regards to assessments being conducted appropriately etc.

The “Required documents, policies and procedures to support the application” (at page 26) states that an organisation chart should be provided “that identifies individuals responsible for training and those responsible for assessment **to ensure that those involved in training are also not involved in the assessment of competence of candidates**”.

This is not made clear in the “Assessment Delivery” section, and would be contrary to the current practice of all higher education providers, where the module leader/tutors deliver the module (i.e. the training) and also the assessments.

We would therefore ask for a reconsideration of this proposal. If this proposal is not changed, it does not mean that higher education providers could not accommodate this

separation between training and assessment, but it would quite likely lead to increased costs of delivery.

CILEx Regulation accepts that this is usual practice in HEIs and therefore will remove this requirement from the requirements on the basis that this is only for delivery of knowledge and skills requirements and that there will be independent assessment of experience and competence requirements by CILEx Regulation.

Respondent 2:

I agree with this proposal as it will complement CILEx's application to introduce three routes for recognition of prior legal qualifications. I am particularly pleased to see that the assessment methodology referred to in the handbook is based on the assessment provider using assessments that can be measured by reference to them being valid, reliable, fair, feasible and acceptable.

When determining the Capacity and Capability of the training provider I would suggest that the relevant handbook makes it clearer that the training provider has the appropriate level of *academic and practice related* experience to deliver legal knowledge and skills qualifications.

So far as the Technical Knowledge requirements referred to in the handbook, for my area of specialism (criminal litigation and advocacy) I would recommend that for Stage 1 - introduction to criminal practice, that *accomplice liability* and *appeals from the magistrates' court* are added to the list of topics to be covered. I also wonder whether *principles of lawful search, detention, questioning and identification procedures* should be added to the existing principles of lawful arrest and *some rules and principles of the law of evidence* should also be added?

CILEx Regulation will make the proposed amendments relating to capacity and capability and the additional technical knowledge elements for criminal law and practice if they are not covered in the technical knowledge requirements for the Level 6 element (as the outline of knowledge here covers only the stage 1 & 2 requirements for practitioners).

Respondent 3:

We feel that it is important that all relevant qualifications should be able to be approved by various regulatory bodies as long as they meet the relevant criteria and standards and to avoid potential duplication in learning for delegates.

We assume that existing qualifications already approved by CILEx e.g. CILEx Legal Executive Advocate qualifications will automatically be part of the list of approved qualifications as well as other qualifications which are due to become regulated by CILEx e.g. ACCA Probate and Estate Administration qualification. In this regard it will be important for all providers and learners to be aware of the full list of approved qualifications so that they can determine if they wish to apply for other qualifications to become approved.

The number of learners undertaking such a qualification with a provider is likely to have an impact upon a provider's decision as to whether to apply for accreditation of their qualification or not, as the process for gaining approval is quite onerous in terms of the amount of documentation which is required to be submitted to CILEx as part of the approval process. In this regard, providers with only small learner numbers may decide not to seek accreditation for their qualifications. This may lead to an anomalous situation where the same qualification with one provider will be CILEx approved but

not with another provider. This assumes that there will not be an opportunity for learners to seek approval on an independent basis for qualifications they have completed with a non-accredited provider, even if it covers all the necessary criteria and quality standards and is on the approved list but with a different provider. If this is the case, then this may have a negative impact upon learner choices.

In addition, thought needs to be given to learners who have already achieved the recognised qualification before its approval by CILEx. Will learners be able to 'retrospectively' claim that qualification as prior learning even if it was achieved before the approval by CILEx?

CILEx Regulation... Upon publication, we will include all approved qualifications' providers including those who currently deliver other training and assessments outside of the education and standards set out in this policy. We have amended the policy to ensure that all qualifications that map to the education standards are able to be recognised on a case-by-case basis. This is reflected in the recognition of approved qualifications handbook and policy.

Respondent 4:

CILEx believes access to justice and public protection to be of vital importance. Qualifications form a key part of giving the public confidence that the legal professionals they are dealing with have the required knowledge and skills to do what they need them to. We see the creation of an approved qualification route for providers as assisting with the development of a diverse legal profession that reflects the communities it serves; an aim that we are firmly committed to achieving.

We believe a qualification approval process should act as a single, standardised check that maintains a sharp focus on the key elements needed to protect the public. We make some comments in the answer to the next question as to how we believe this focus can be sharpened.

We support the creation of a robust and transparent approval process that ensures providers have the requisite expertise and experience to deliver high quality qualifications on a consistent basis. As a professional body and awarding organisation for the legal profession, we are experienced in delivering a range of qualifications and training solutions to ensure our members attain and maintain competence in their chosen fields. The creation of a robust and transparent approval process for all providers will foster public confidence by signalling that all holders of an approved qualification have demonstrated an agreed level of competence.

The Policy

We welcome the broad areas of coverage contained within the proposed policy. It is imperative that a provider has both the capacity and the capability to deliver the legal knowledge and skills qualifications required. As stated above, we believe qualifications play a fundamental part in protecting the public, provided that they are fit for purpose and awarded by credible organisations. The importance of skills should not be underestimated and the most valuable qualifications are those that require the more than just the acquisition of knowledge.

We would challenge the inclusion of a set size for qualifications as a requisite within the approval process. Whilst a guide is helpful to learners and providers, there are too many variables for Guided Learning Hours to be anything other than an indicator and as such, GLH is effectively an arbitrary number. Prescribing the input hours is also at odds with a competence-based route to authorisation. We recommend that the approval process be sharpened and focused on outcomes, with no unnecessary distractions such as learning inputs. The key factor is that the requirements of the

standard are covered; innovative design and delivery can affect learning hours so there must be no artificial barriers to innovation as an unintended consequence of over-prescription in an area where it is not required and adds nothing substantive.

We welcome the recognition that assessment expertise sits with providers, making them best placed to determine the most appropriate assessment method. We agree with the criteria as set out in the policy, although we have some concerns over the potential conflicts that could arise from balancing acceptability to stakeholders with criteria relating to quality and fairness of assessment. We will elaborate on this in more detail in the handbook section below.

We are pleased to see the proposal to approve the overall approach to quality assurance rather than at individual qualification holder level. We believe this strikes the right balance between regulatory oversight and achieving effective assurance outcomes. A strong approach to quality assurance has robust systems and controls underpinning the qualification process. There are many ways to achieve effective quality assurance and the suggested approach will allow providers to adopt the one(s) that are most appropriate for their delivery model.

We welcome the recognition that providers may already be subject to a range of regulatory arrangements and the development of an approach that seeks to avoid unnecessary duplication. An effective approach will dovetail with existing regulatory frameworks and focus on aspects they do not cover.

We do not believe the proposed annual reporting requirements to be an effective mechanism for ongoing assurance. We recommend an alternative approach that comprises an annual declaration followed by more detailed, targeted activity; we explain this in more detail in our response to the handbook below. At a policy level, we are disappointed that annual reporting makes no mention of skills, only technical knowledge requirements. Both have been afforded due recognition elsewhere in the process and it is imperative this continues through the annual reporting mechanism. Public confidence and protection will be achieved through holders of the qualification being able to do what they purport to be able to, not just have the underpinning knowledge to do so. Evidencing the ability to do, not just know, must come right from the beginning as part of the qualification itself. The qualification provider must be able to assess that effectively on a consistent basis and this should form part of ongoing reporting just as much as meeting the technical knowledge requirements. A more rounded approach will look at how the provider is meeting both the technical knowledge and skills requirements over time.

The Handbook

With regard to the size of the qualification, we can see no explanation as to why size has been prescribed, nor how the precise numbers have been reached. Notwithstanding we do not feel it is appropriate to assign a required size to the qualifications that are being brought forward for approval, it would be helpful to have an explanation for the split between the size of the core and the pathways.

Prescribing a minimum size in terms of inputs is somewhat at odds with a competence-based approach to authorisation. Competence is achieved when the required outcomes have been met and the approval process should focus on the provider evidencing how the chosen assessment method will enable a learner to do this. The content of the standards is key, and the inclusion of a minimum size is a distraction at best, and a dangerous shift in focus from the outcomes at worst. Providers can be asked to give a GLH as part of the application as a guide to help learners and stakeholders but we recommend that it does not form part of the approval decision.

We propose that some guidance be given as to the weighting to be applied to the 'applicable to stakeholders' criterion on p11 of the handbook. While not denying this is important, it does not recognize the range of stakeholders with diverse views, nor account for circumstances where meeting it may come at the expense of the other criteria. As we have mentioned, we believe public protection to be paramount and want to ensure that the other essential criteria, which go further to guaranteeing that protection, are not diluted by its inclusion. If a conflict were to arise between this and any of the other criteria, it would be helpful to understand the order of precedence.

We have some concerns that the risk management requirements for providers not already subject to qualifications regulation appear to be light on detail and not set at the same level as those of education regulators. We would expect all providers to be required to demonstrate a thorough approach to risk management, that includes identification, management, monitoring and not merely mitigation as set out here. Consistent requirements should be set out for all providers for such a crucial area of operation; this is the case for the other areas covered by other qualification regulators and we would ask that the same standards be applied to risk. As with all the overarching operational areas, effective risk management is an integral part of a robust and trusted qualification offer.

As mentioned above, we do not believe that a prescriptive annual report is an effective monitoring mechanism for any provider of an approved qualification. Instead, we would like to propose an alternative model based around an annual declaration with follow up activity. Each year, a formal declaration would be made that the provider continues to meet the requirements upon which approval was granted. Any significant changes that would have a material effect on the operation of the qualification and/or the provider would be specified and explained, including mitigations where appropriate. In this model, the annual declaration would be followed up by an in-depth discussion on a mutually agreed area, a quality assurance visit or an audit. We believe this approach would strike the right balance between an outcome focused approach, and an effective use of time and resource.

Notwithstanding our comment above as to the ineffectiveness of such a report as a quality assurance mechanism, we note that some of the criteria appear to make little sense for the new approved qualification process. We assume they have been included by mistake, and recommend they be removed for the following reasons:

- *Proposed changes to the range of law, practice and professional skills units*
- *Proposed changes to the syllabus or assessment criteria of any law, practice or professional skills unit*

The education standards are divided into core and specialist areas and do not use the nomenclature of law, practice and professional skills units. This terminology appears to relate to an existing CILEx qualification and is thus inappropriate for inclusion here.

- *Proposed changes to the criteria or process for awarding exemptions*
- *Evaluation of the numbers receiving an exemption from some or all of the CILEx qualifications*

Exemptions are not mentioned anywhere else in the handbook so we assume this has been included in error. The second point is commercial information that would be neither appropriate nor relevant for a provider other than CILEx to include in an annual report. Again, we assume this has been included in error.

CILEx Regulation: *The minimum size of the technical knowledge requirements for training providers is there to provide a minimum guide for the size of the modules required to create sufficient knowledge and understanding of the specialist area of practice. The size is the same as the current knowledge requirements within the Day One Outcomes and CILEx Practitioner*

requirements. The acquisition of knowledge is one aspect of the new education standards and competence will be assessed centrally by CILEx Regulation. Therefore, CILEx Regulation does not intend to change this aspect of the requirements. The focus of the approved training provider process is focused on technical knowledge only as experience and competence will be assessed centrally by the regulator. The annual reporting process mirrors the current arrangements in place and whilst recognizing the comments made, CILEx Regulation does not intend to amend these arrangements at present. The approach will remain under review and will be evaluated as part of the wider evaluation to be undertaken once the education standards have been in force for a period of time.

In relation to the inclusion of reference to changes to law, practice and professional skills units, the terminology will be updated to reflect a wider range of qualifications which may be acceptable. However, not all approved qualifications will reflect the integrated competence-based approach of the CPQ. The approval process is designed only to meet the technical knowledge requirements and any proposed changes to module delivery through an approved qualification would be relevant information in relation to the continued approval of any qualification.

The exemptions information has not been included in error. It is important for CILEx Regulation to understand the exemptions which have been awarded by any qualifications provider and this will be a continuing requirement under the proposals. The reference to CILEx has been replaced in this section by approved qualification provider.

Do you agree with the proposal for CILEx Regulation to provide **recognition against legal qualifications held by applicants to become Chartered Legal Executives?**

Yes	3
No	1

Additional comments

Respondent 1:

All three of the proposed routes for recognition of prior legal qualifications (CILEx Regulation Approved Qualification, Alternative Approved Regulator and the Completed Apprenticeship route) will enable candidates to demonstrate that they have met all of the knowledge, skills, experience and competence elements required by the CILEx Regulation education standards. In turn this will help to provide a joined up, appropriate and flexible range of ways to qualify. I also believe this will encourage greater equality, diversity and inclusion to a wider range of people who want to qualify as a member of CILEx and more generally benefit the profile of the legal profession.

Respondent 2:

We believe that it is important that qualifications are portable, and learners should not be required to prove their competence/experience time and time again in order to satisfy different regulatory bodies. As long as the criteria and standards are met then achievement of specific knowledge or skills should not have to be repeatedly assessed.

Please see comments on the associated training provider consultation regarding learner choice and retrospectively gaining recognition for legal qualifications achieved.

In addition, thought needs to be given to whether learners can independently seek recognition for qualifications which are not on the approved list.

CILEx does not agree with the proposal as it adds unnecessary duplication to the application process. CILEx, as a professional body, awarding organisation and EPAO for the CLE Apprenticeship, already undertakes such work to provide exemptions against its own qualifications. With the required systems, processes and expertise already in operation, we can continue to fulfil this function and do not believe there is a need for CILEx Regulation to undertake this recognition work in addition.

Professional bodies and awarding organisations have a long-established history of providing such qualification recognition and the expertise required already exists within their staffing. CILEx is the single body that can carry out all of the required checks and analysis within its existing membership and awarding operating models and expertise. This will prevent unnecessary duplication of process, effort, delay and added cost. Utilising existing systems to develop an effective gateway is a smart and efficient alternative to the proposed model and we welcome the opportunity to work with CILEx Regulation to take this forward.

We note that the proposed policy relies on a paper-based application process and does not appear to make use of any technological solutions. This appears to be the opposite of an intuitive, user-friendly process and does not take account of any difficulties applicants might be facing as a result of the current pandemic. We would expect to see more agility in the process, for example a move away from certified copies of qualification certificates to direct confirmation of achievement from the approved qualification provider.

We believe that the CLE Apprenticeship model can be used as a blueprint for any and all applications. We see this as the most efficient operating model, whereby CILEx confirm the qualification requirements have been met, enabling CILEx Regulation to complete the remainder of the authorization process without any duplication. Respective roles and responsibilities would be clear, appropriate separation would be in place, but applicants would experience a seamless process.

CILEx Regulation: *It would be inappropriate for one approved qualifications provider to approve the exemptions from another approved training provider. In relation to the remaining recognitions, these relate to applicants who can entirely satisfy the regulatory arrangements to enable CRL to authorize them. This is a regulatory function and not appropriate for the professional body to be involved with. The process for recognition of qualifications against the CILEx Professional Qualification remain with CILEx.*