



September 2021

**APPLICATION TO THE LEGAL SERVICES BOARD TO REMOVE REFERENCE TO THE QUALITY ASSURANCE SCHEME FOR ADVOCATES (QASA) FROM VARIOUS RULES AND TO REPLACE THE QASA ELEMENTS WITH ADDITIONAL COMPETENCY REQUIREMENTS, PARTICULARLY FOCUSED ON YOUTH COURT ADVOCACY**

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Professional Standards For Specialist Lawyers

## **A. Summary and overview**

1. This is an application to amend existing regulatory arrangements relating to the authorisation requirements and certificate renewal process for individuals with extended rights of audience for criminal proceedings.
2. This application seeks to remove reference to the Quality Assurance Scheme for Advocates (QASA) from our rules and to replace the QASA elements with additional competency requirements, particularly focused on Youth Court advocacy.
3. The proposed changes will not harm the consumer interest. It is intended that the interests of vulnerable consumers will be promoted through these changes with additional focus on advocacy in the Youth Court prior to authorisation as part of the criminal advocacy skills course and mandatory CPD requirements at the first-year certificate renewal.

## B. The nature and effect of the existing arrangements

4. CILEx Regulation can authorise individuals to practise as CILEX Advocates, CILEX Practitioners and Associate Prosecutors with extended rights of audience for criminal proceedings.
5. There are 3 qualification routes relevant to this application which have developed over time and the diagram below summarises these.



### CILEX Advocates for criminal proceedings (green route)

6. The first route is available to Chartered Legal Executives who seek authorisation as a CILEX Advocate for criminal proceedings. For this, applicants must put together an application demonstrating their experience in litigation and advocacy to obtain a certificate of eligibility. Once the applicant has a certificate of eligibility, they must attend and successfully complete an advocacy skills course. The advocacy skills course offers training and assessment of advocacy skills for criminal proceedings. Following authorisation as a CILEX Advocate for criminal proceedings, the individual can undertake advocacy in a variety of different criminal proceedings including the adult magistrates' Court and the Youth Court.
7. CILEX Advocates for criminal proceedings are required to renew their advocacy certificate 12 months after it is issued, on either 1 June or 1 December whichever is soonest. For the renewal, CILEX Advocates for criminal proceedings must provide 3 portfolios demonstrating their use of the newly acquired rights of audience and these are assessed by an external advisor. Following successful completion of the renewal application, the Rights of Audience Certification Rules currently state that the CILEX Advocate's certificate is then valid indefinitely and subject to membership renewal and reaccreditation in line with the provision of the QASA scheme.

### Associate Prosecutors (blue route)

8. Associate Prosecutors are recruited by the Crown Prosecution Service (CPS) in accordance with the selection process outlined in the Associate Prosecutor Rights of Audience and Litigation Certification Rules. The CPS recruits for two levels of Associate Prosecutors: Associate Prosecutor Level 1 (AP1) and Associate Prosecutor Level 2 (AP2).
9. The rights exercisable by AP1s and AP2s are different and therefore the role offered to the individual by the CPS will dictate the nature of advocacy training and assessment they are required to complete prior to authorisation with rights of audience. This approach is proportionate as the training and assessment focuses on the nature of work and type of advocacy the individual will be undertaking in practice as either an AP1 or an AP2.
10. The training and assessment of Associate Prosecutors is delivered by the CPS and CILEx Regulation monitors this through regular observation of the courses by our external advisor and through annual reports.
11. Once authorised as an Associate Prosecutor, an individual's advocacy certificate is valid indefinitely subject to membership renewal and assessment of competence against the standards set by the QASA scheme.

### CILEX Practitioners for Litigation & Advocacy for criminal proceedings (navy route)

12. The third route is available to Chartered Legal Executives who seek authorisation as a CILEX Litigator & Advocate for criminal proceedings (CILEX Practitioner for criminal proceedings). Initially, applicants must put together an application demonstrating their experience in litigation and advocacy to obtain a certificate of eligibility. Once the applicant has a certificate of eligibility, they must attend and successfully complete an advocacy skills course. The advocacy skills course offers training and assessment of advocacy skills for criminal proceedings. Following authorisation as a CILEX Practitioner for criminal proceedings, the individual can conduct litigation without supervision and undertake advocacy in a variety of different criminal proceedings including the adult magistrates' Court and the Youth Court.
13. CILEX Practitioners for criminal proceedings are required to renew their advocacy certificate 12 months after it is issued, on either 1 June or 1 December whichever is soonest. For the renewal, CILEX Practitioners for criminal proceedings must provide 3 portfolios demonstrating their use of the newly acquired rights of audience and these are assessed by an external advisor. Following successful completion of the renewal application, the CILEX Practitioner's certificate is then valid indefinitely and subject to membership renewal and reaccreditation in line with the provision of the QASA scheme.

### The QASA scheme

14. For each of the routes, the rules were amended to incorporate reference to the QASA scheme.
15. The QASA scheme was developed by the three main regulators of advocacy – CILEx Regulation, the Solicitors Regulation Authority (SRA) and the Bar Standards Board (BSB). It was developed to respond to the changing legal landscape coupled with competition and commercial imperatives which put pressure on the provision of good

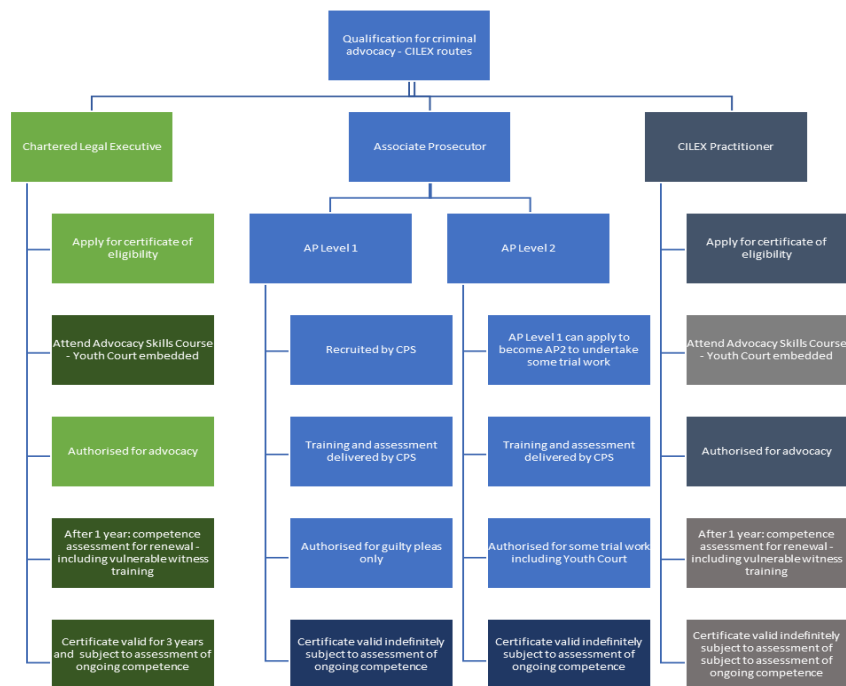
quality advocacy. The economic climate, both generally and in terms of legal aid, created a concern that advocates may accept instructions outside of their competence.

16. Advocacy is a vital part of an effective justice system. Members of the public involved in litigation rely upon advocacy for the proper presentation of their case. Those who are involved in decision making rely on advocacy for the proper administration of justice. For defendants reliant on effective advocacy in the criminal courts the stakes are high: loss of liberty may be an outcome. QASA was intended to ensure that all advocates in criminal courts would undergo a process of accreditation so that they only deal with cases within their competence and subject to assessment and monitoring of their performance against a common set of agreed standards.
17. Since the Rules were approved to introduce QASA, the SRA and BSB have subsequently introduced alternative provisions to meet the objectives of QASA. CILEx Regulation is seeking to make similar changes to our rules.

## C. Summary of changes to the regulatory arrangements

18. We are proposing to change the Rights of Audience Certification Rules, Practitioner Authorisation Rules, Associate Prosecutor Rights of Audience and Litigation Certification Rules and Admissions and Licensing Committee Rules. Full details of the proposed alterations can be found at **section F**.

The diagram below shows the proposed amendments to the qualification routes. The sections of the routes that have been amended are highlighted in a different colour.



19. Subject to approval, the revised rules will reflect that the QASA scheme is no longer operational but, at the same time, will continue to ensure that high standards in criminal advocacy are upheld by CILEX Advocates for criminal proceedings, CILEX Practitioners for criminal proceedings and Associate Prosecutors.
20. CILEX Advocates for criminal proceedings are not authorised for the conduct of litigation and therefore must work under the supervision of someone who is an authorised person for the conduct of litigation to exercise their extended rights of audience. Should the proposed changes be approved, in addition to monitoring CPD compliance, CILEX Regulation will require CILEX Advocates to apply to renew their advocacy certificate every 3 years following the first-year certificate renewal to ensure that they are working under appropriate supervisory arrangements for litigation.
21. CILEX Practitioners for criminal proceedings are authorised for both the conduct of litigation and granted extended rights of audience for criminal proceedings. As such, their certificate would be valid indefinitely following the first-year certificate renewal, subject to monitoring through an annual mandatory requirement to undertake advocacy focused CPD.
22. In addition to the removal of references to the QASA scheme, the proposed new rules will embed additional competencies for Youth Court advocacy into the criminal

advocacy skills course. All CILEX Advocates for criminal proceedings and CILEX Practitioners for criminal proceedings must complete an advocacy skills course prior to authorisation.

23. Individuals seeking authorisation as an AP2 receive training on Youth Court advocacy as part of the training and assessment required for authorisation under the current arrangements and this will continue.
24. The amended rules will also implement a new mandatory CPD requirement for CILEX Advocates for criminal proceedings and CILEX Practitioners for criminal proceedings as part of the first-year renewal. The focus here will be on vulnerable witness handling and CILEX Advocates for criminal proceedings and CILEX Practitioners for criminal proceedings will need to complete suitable training in this area to meet the requirements for renewal.

## D. Regulatory objectives

25. The following table sets out how the amended rules impact on the Regulatory Objectives:

	<b>Regulatory Objective</b>	<b>Impact</b>	<b>Explanation</b>
RO1	Protecting and promoting the public interest	Promotes	<ul style="list-style-type: none"> <li>Public confidence is maintained because the advocacy skills training course and assessment will be delivered only by a provider authorised by CILEx Regulation (and which will be subject to CILEx Regulation quality assurance through annual reporting).</li> <li>Public confidence is maintained because the decision as to who is granted an advocacy certificate will remain with CILEx Regulation.</li> <li>Public confidence is maintained because CILEX Advocates for criminal proceedings will be required to undertake training relating to the handling of vulnerable witnesses and will be better equipped for this work.</li> <li>The proposed amendments continue to protect and promote the interests of consumers and the public interest as they are designed to focus on ongoing competence to practice criminal advocacy, particularly in the Youth Court.</li> <li>The revised scheme provides a mechanism to measure whether applicants meet these competencies and thereby ensure that they can deliver legal services to consumers, particularly those with vulnerabilities, with the required skills.</li> </ul>
RO2	Supporting the constitutional principles of the rule of law	Neutral	



RO3	Improving access to justice	Neutral	
RO4	Protecting and promoting the interests of consumers	Promotes	<ul style="list-style-type: none"> <li>• The requirement for mandatory vulnerable witness training will promote awareness of consumer protection.</li> <li>• Certificate renewal intervals allow CILEx Regulation to supervise CILEX Advocates for criminal proceedings in a same way as CILEX Advocates for civil and family proceedings.</li> <li>• Introducing additional competencies relating to the Youth Court will better prepare CILEX Advocates for this work.</li> </ul>
RO5	Promoting competition in the provision of services	Neutral	
RO6	Encouraging an independent, strong, diverse and effective legal profession	Promotes	<ul style="list-style-type: none"> <li>• The diversity of CILEX members increases the possibility and opportunity available to delivering legal advice and services to different consumers, while meeting appropriate standards of experience and skills.</li> <li>• This will further increase the diversity of the legal workforce bringing it closer to the diversity of the population.</li> <li>• This is supplemented by the changes to the competence requirements, and in combination, will increase effectiveness and access to legal services via better qualified CILEX Authorised persons.</li> </ul>
RO7	Increasing public understanding of the citizens' legal rights and duties	Neutral	
RO8	Promoting and maintaining adherence (by authorised persons) to the professional principles	Promotes	<ul style="list-style-type: none"> <li>• CILEX Advocates and Associate Prosecutors will be subject to CILEx Regulation and the Code of Conduct.</li> </ul>

			<ul style="list-style-type: none"><li>• The professional principles govern the behaviour of individual Authorised persons.</li><li>• They firmly place a responsibility on Authorised Persons to act in a manner that is consistent with the status of belonging to a profession and are set out in the Code of Conduct.</li></ul>
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## E. Better regulation principles

26. The proposal meets the principles of Better Regulation as follows:

Principle	Explanation
Transparent	<ul style="list-style-type: none"><li>• We have taken a transparent approach to this change by alerting our members directly about the consultation, seeking their and other stakeholder views.</li><li>• The consultation was published on the CILEx Regulation website, and we are pleased we received a response from the CPS and individual CILEX Advocates to our consultation. The consultation responses can be found at <b>Annex 6</b>.</li></ul>
Accountable	<ul style="list-style-type: none"><li>• Assessment provider must be authorised by CILEx Regulation and be subject to its quality assurance through annual reporting.</li><li>• The rules will be published so that consumers and the public can understand the requirements for authorisation and certificate renewal.</li></ul>
Proportionate	<ul style="list-style-type: none"><li>• Reverting to the previous arrangements for certificate renewal, every 3 years following the initial renewal, will align the requirements for CILEX Advocates for criminal proceedings with the existing rules for CILEX Advocates for civil and family proceedings.</li><li>• CILEX Advocates for criminal proceedings who have already completed the initial certificate renewal will not be mandated to undertake vulnerable witness training for future certificate renewal, but it will be encouraged if they are undertaking advocacy in the Youth Court.</li></ul>
Consistent	<ul style="list-style-type: none"><li>• By removing QASA from the rules and introducing competencies for Youth Court advocacy, CILEX regulated individuals will be regulated in a similar way to other authorised individuals with criminal rights of audience.</li></ul>
Targeted	<ul style="list-style-type: none"><li>• This change to our regulatory arrangements is directed at authorised individuals for criminal proceedings.</li></ul>

27. The new arrangements will be applicable to all individuals who are authorised with extended rights of audience from criminal proceedings at the point they come into effect.

28. For CILEX Advocates for criminal proceedings who have been authorised but not yet completed the first renewal, CILEx Regulation will strongly encourage these individuals to undertake the CPD training for handling vulnerable witnesses but this will not be a mandatory requirement for the renewal.

29. CILEx Regulation will communicate with other existing CILEX Advocates and Associate Prosecutors individually to explain how the amendments apply to them.

## F. Alterations

### Detail of each proposed alteration

#### Rights of Audience Certification Rules

30. We are proposing to amend the Rights of Audience Certification Rules as follows:

- a. Remove all references to the QASA scheme and revert to the pre-existing renewal requirements for criminal advocates (highlighted in tracked changes throughout the document).

The QASA scheme has not been implemented and therefore needs to be removed from the rules. To ensure continued competence and uphold standards, CILEx Regulation is proposing to require CILEX Advocates for criminal proceedings authorised under these rules to renew their certificate every 3 years following the first-year renewal.

- b. Introduce additional competencies in relation to the Youth Court. This is supported by the [research](#) undertaken by CILEx Regulation and the BSB.

These competencies will be covered in the training that CILEX Advocates for criminal proceedings receive prior to authorisation and will show the differences between advocacy in the Youth Court and adult magistrates' Court advocacy.

- c. Introduce mandatory CPD in relation to handling of vulnerable witnesses as part of the first Advocacy Certificate renewal for criminal advocates.

The proposed introduction of prescribed CPD for the first-year certificate renewal will ensure all CILEX Advocates for criminal proceedings receive additional training on the handling of vulnerable witnesses, which will be particularly relevant for any Youth Court advocacy that they undertake.

- d. To extend the definition of Graduate member of CILEX for the purposes of these Rules to include individuals who have successfully completed the academic stage of the CILEX Professional Qualification.

This is to allow for any membership title changes that may be made by CILEX in the future.

31. The new Rights of Audience Certification Rules are at **Annex 1**. The amendments shown in tracked changes can be found at **Annex 1a**.

#### Practitioner Authorisation Rules

32. We are proposing to introduce mandatory CPD in relation to handling of vulnerable witnesses as part of the first Advocacy Certificate renewal for criminal advocates authorised under the Practitioner Authorisation Rules. This is the only change required to the new Rules for Practitioner authorisation.

The proposed introduction of prescribed CPD for the first-year certificate renewal will ensure all CILEX Practitioners for criminal proceedings receive additional training on the handling of vulnerable witnesses, which will be particularly relevant for any Youth Court advocacy that they undertake.

33. The new Practitioner Authorisation Rules are at **Annex 2**. The amendments shown in tracked changes can be found at **Annex 2a**.

#### Associate Prosecutor Rights of Audience and Litigation Certification Rules

34. We are proposing to amend the Associate Prosecutor Rights of Audience and Litigation Certification Rules as follows:

- a. Remove all references to the QASA scheme

The QASA scheme has not been implemented and therefore needs to be removed from the rules.

- b. Replace 'Investigation, Disciplinary and Appeals Rules (IDAR)' with 'Enforcement Rules'.

This is to recognise the change of rules that apply here. IDAR was replaced by the Enforcement Rules and therefore these rules require updating to reflect this.

35. The new Associate Prosecutor Rights of Audience and Litigation Certification Rules are at **Annex 3**. The amendments shown in tracked changes can be found at **Annex 3a**.

#### Admissions and Licensing Committee Rules

36. We are proposing to amend the Admissions and Licensing Committee Rules as follows:

- a. Remove all references to the QASA scheme

The QASA scheme has not been implemented and therefore needs to be removed from the rules.

- b. Replace 'Investigation, Disciplinary and Appeals Rules (IDAR)' with 'Enforcement Rules'.

This is to recognise the change of rules that apply here. IDAR was replaced by the Enforcement Rules and therefore these rules require updating to reflect this.

37. The new Admissions and Licensing Committee Rules are at **Annex 4**. The amendments shown in tracked changes can be found at **Annex 4a**.

#### Right to Conduct Litigation and Rights of Audience Certification Rules

38. We are proposing to amend the Rights to Conduct Litigation and Rights of Audience Certification Rules as follows:

- a. Remove all references to the QASA scheme and revert to the pre-existing renewal requirements for criminal practitioners (highlighted in tracked changes throughout the document).

The QASA scheme has not been implemented and therefore needs to be removed from the rules.

- b. Replace 'Investigation, Disciplinary and Appeals Rules (IDAR)' with 'Enforcement Rules'.

This is to recognise the change of rules that apply here. IDAR was replaced by the Enforcement Rules and therefore these rules require updating to reflect this.

39. The new Rights to Conduct Litigation and Rights of Audience Certification Rules are at **Annex 5**. The amendments shown in tracked changes can be found at **Annex 5a**.

#### Criminal Litigation & Advocacy Practice Rights Handbook

40. We are proposing to amend the Criminal Litigation & Advocacy Practice Rights Handbook as follows:

- a. Remove all references to the QASA scheme (sections to be removed highlighted throughout the document).
- b. The Handbook includes the Rights to Conduct Litigation & Rights of Audience Certification Rules and the Admissions and Licensing Committee Rules as appendices and these will be updated following and subject to approval of the proposed changes.

41. The new Criminal Litigation & Advocacy Practice Rights Handbook (without Rules appendices) is at **Annex 6**. The handbook amendments highlighted can be found at **Annex 6a**.

#### **Rationale, intent, purpose, and effect of proposed alterations**

##### Rationale

42. As the QASA scheme has not been implemented by the SRA or BSB, CILEx Regulation is required to remove references to the QASA scheme from the rules and revert to previous provisions for criminal advocacy certificate renewal.
43. In addition to reviewing the renewal requirements, CILEx Regulation has considered the process for awarding rights of audience to CILEX Advocates for criminal proceedings and particularly for those Advocates working in the Youth Court. Our research indicates that almost 80% of CILEX Advocates for criminal proceedings are undertaking some advocacy in the Youth Court.
44. Advocacy undertaken in the Youth Court requires a different approach from adult court proceedings and therefore it is necessary that some of the training given to individuals attending the criminal advocacy skills course should focus on these differences.

##### Intent

45. The intention is to ensure that all newly qualified CILEX Advocates for criminal proceedings are competent to undertake advocacy in both adult magistrates' courts and the Youth Court.

46. It is intended that the requirement for all CILEX Advocates for criminal proceedings to undertake CPD training on handling vulnerable witnesses at first renewal should promote continued confidence and competence that CILEX Advocates will be suitably prepared for these situations.
47. The encouragement of existing CILEX Advocates for criminal proceedings and Associate Prosecutors to undertake the CPD training for handling vulnerable witnesses will further enhance these initial mandated requirements.

#### Purpose

48. This rule change will remove all reference to the now defunct QASA scheme and replace it with a similar approach to qualification and renewal, as was envisaged by the QASA scheme.
49. We have taken the opportunity as part of the revisions to ensure that CILEX Advocates for criminal proceedings are competent to deliver effective advocacy in all courts for which they have rights thereby protecting the interests of all consumers, including the most vulnerable.

#### Effect

50. Following approval of these proposed changes, the revised rules will reflect the fact that the QASA scheme is no longer operational but, at the same time, will ensure that the highest possible standards in criminal advocacy can be achieved by CILEX Advocates for criminal proceedings and Associate Prosecutors.



**G. The gap or defect in existing regulatory arrangements that the alteration is intended to remedy**

51. As the QASA scheme has not been implemented by the SRA or BSB, CILEx Regulation is required to remove references to the QASA scheme from the rules and introduce alternative provisions for criminal advocacy certificate renewal.
52. The nature of the advocacy CPD that CILEX Advocates for criminal proceedings undertake is not currently prescribed. The introduction of mandatory training for handling vulnerable witnesses, particularly for the Youth Court, will offer a targeted focus on an important area of criminal advocacy. Youth Court advocacy is very different from the advocacy undertaken in the adult magistrates' Court and requires an alternative approach. CILEX authorised individuals need to understand this and requiring them to complete training on the Youth Court both as part of the advocacy skills course prior to authorisation and again as part of the first-year renewal will ensure this.

## **H. Implementation**

53. Subject to Legal Services Board approval, we would like to introduce the new rules immediately.
54. The new arrangements will be applicable to all individuals who are authorised with extended rights of audience from criminal proceedings at the point they come into effect.
55. For CILEX Advocates for criminal proceedings who have been authorised but have not completed the first renewal before the new provisions come into effect, transitional arrangements will be required. For the transition, the existing arrangements for first certificate renewal will apply however, CILEx Regulation will strongly encourage these individuals to undertake the CPD training for handling vulnerable witnesses but this will not be a mandatory requirement for the renewal.
56. CILEx Regulation will communicate with other existing CILEX Advocates and Associate Prosecutors individually to explain how the amendments apply to them for future certificate renewals.

## **I. Impact on other regulated persons/approved regulators**

57. The removal of QASA from the rules will have no impact on the wider regulated community or other Approved Regulators.
58. The proposal to revert to the pre-existing renewal requirements for CILEX Advocates for criminal proceedings will only impact on that group of authorised individuals. The QASA scheme required reaccreditation every 5 years. This change will have no impact on another Approved Regulator or other authorised individuals.
59. The new rules regarding mandatory CPD for handling vulnerable witnesses will apply only to new CILEX Advocates for criminal proceedings and will have no impact on another Approved Regulator or authorised individual.
60. CILEx Regulation has held initial discussions with the SRA and BSB in relation to competency in the Youth Court and we will continue to engage collaboratively to ensure the best outcomes for vulnerable consumers.

## J. Consultation and Engagement

61. We consulted on our proposal to amend the Rights of Audience Certification Rules to remove reference to the QASA scheme and to replace the QASA elements with additional competency requirements.
62. We canvassed our criminal advocates in February 2021 to determine the number undertaking advocacy in the Youth Court. Full details of the responses to this survey have been presented alongside the responses to this consultation (**Annex 7 and Annex 8**).
63. As a result of that survey, in addition to the removal of reference to QASA from our Rules, we focused on enhancing our Rules in relation to competency to undertake Youth Court advocacy.
64. Our consultation asked whether any issues were foreseen with the proposed changes to the rules and implementation of additional competency requirements for CILEX Advocates. The targeted consultation ran for 4 weeks between 18th June and 16th July 2021. The consultation was emailed to every CILEX Advocate for criminal proceedings and launched on our website [here](#). A copy is attached to this application (**Annex 9**).
65. In relation to the proposed changes in the consultation we:
  - engaged directly with CILEX Advocates for criminal proceedings and the CPS for their views, as well as being published on our website;
  - engaged with the accredited course provider for the criminal advocacy skills course; and
  - asked the external advisor for criminal advocacy applications to review the changes.
66. We received 33 responses from CILEX Advocates for criminal proceedings in relation to the Youth Court survey. Of those surveyed, 79% indicated that they undertook advocacy in the Youth Court and gave details as to how they ensured their competency for this work.
67. The respondents to the survey that indicated they were undertaking advocacy in the Youth Court stated that this was relatively infrequently with most commenting that they were in the Youth Court once a month or a few times a year. When responding to the question, '*How do you ensure you remain competent to advocate in Youth Court proceedings?*', most respondents said they used CPD courses and updates.
68. We received 7 responses in total, of which 6 responses were from individuals (mainly those who are authorised as CILEX Advocates for criminal proceedings. 1 respondent was a Chartered Legal Executive working in criminal practice). The seventh response was from the CPS.
69. Comments from those who expressed support for the proposal include:
  - 'I think the proposed changes are sensible. Youth court advocacy and being able to deal with vulnerable witnesses are two highly important skills and its right to update the competency framework I think'.

- ‘Regarding the removal of references to QASA, then clearly there is no objection to that and that is entirely sensible’.

70. While the respondents did not raise any concerns with the proposed changes, some of the responses queried how the changes may affect those who are already authorised as CILEX Advocates for criminal proceedings. CILEx Regulation has contacted each respondent individually to confirm:

- The renewal process for CILEX Advocates holding a criminal proceedings certificate will align with the approach used for CILEX Advocates holding civil and family certificates. As a result, criminal proceedings certificates will be subject to renewal every 3 years.
- The requirement for CILEX Advocates for criminal proceedings to complete vulnerable witness training will be at the first renewal stage, which takes places 12 months after initial authorisation. CILEX Advocates who have already completed the first renewal will be encouraged to undertake vulnerable witness training if they are working in the Youth Court however this will not be mandatory for future certificate renewal.

71. In addition to responses from individuals, CILEx Regulation received a response from the CPS in relation to the proposed changes to the Associate Prosecutor Rights of Audience and Litigation Rules.

72. While supportive of the removal of QASA from the Rules, the CPS queried whether the vulnerable witness training would be mandatory for Associate Prosecutors. Associate Prosecutors have two levels of authorisation: AP1 and AP2. In the response, the CPS outlined the difference between AP1 and AP2 authorisation and the type of work undertaken by the different grades.

73. The CPS confirmed that AP1 Associate Prosecutors do not have rights of audience to conduct trials and therefore felt training relating to the handling of vulnerable witnesses in a trial setting would not be appropriate. The AP2 Associate Prosecutors, however, are designated to deal with trials of summary, non-imprisonable matters and, while the likelihood of dealing with vulnerable witnesses in these matters is low, the CPS agreed there may be value in the AP2 Associate Prosecutors undertaking training that highlights general issues around vulnerability and would raise awareness with this group.

74. In the response, the CPS also confirmed that an Associate Prosecutor Youth Court Refresher course is being developed and that the details of this would be shared with CILEx Regulation at the appropriate time. This complements the training that AP2s receive on authorisation in relation to Youth Court work.

75. In the consultation, the proposed changes to the Associate Prosecutor Rights of Audience and Litigation Rules related to the removal of QASA and did not suggest implementing additional training requirements. This is because AP2 training already covers Youth Court advocacy as a separate element. Based on the response from the CPS, CILEx Regulation noted the commitment to ongoing training and development and support the CPS encouraging AP2 Associate Prosecutors to undertake training focusing on vulnerability or vulnerable witnesses as part of their annual CPD requirements.

## K. Impact Assessment

76. No equality, consumer or regulatory impact issues have been raised with CILEX Regulation through the consultation process.
77. An Equality Impact Assessment (**Annex 10**) was carried out which identified that there is no adverse impact on persons with any of the protected characteristics as defined under the Equality Act 2010 from the proposed changes to remove references to the QASA scheme from the rules or to embed additional Youth Court competencies into the criminal advocacy skills course.
78. Based on the information we collect in relation to CILEX Advocates, CILEX Practitioners and Associate Prosecutors, these groups reflect diversity in relation to the protected characteristics and the authorisation process will largely remain unchanged through the proposed new rules.
79. CILEX Regulation has worked with the trainer for the criminal advocacy skills course and the external advisor for criminal applications to update and streamline the advocacy skills course to incorporate the competencies for the Youth Court and there will be no additional cost to the applicant for this. The course fee, including assessment, is currently £1,725 excluding VAT and has remained unchanged for many years.
80. CILEX Regulation can accredit multiple providers to deliver the advocacy skills course however, there has been little interest for this owing to the small number of applicants going through the relevant application schemes. We have been in correspondence with a provider who has expressed an interest in potentially delivering the advocacy skills courses, but this is at an early stage. If CILEX Regulation receives further applications which meet the requirements and enable us to accredit multiple providers to deliver the courses then value for money to the applicant will be considered during the accreditation process.
81. The Equality Impact Assessment for the proposed introduction of mandatory CPD requirements for the first-year certificate renewal did however highlight some potentially negative impacts. These relate to the cost of training required for the first-year certificate renewal for individuals, and it was identified that this may impact on the following groups: pregnancy/maternity leave and sex (gender).
82. CILEX Regulation has considered whether the cost of vulnerable witness handling training will negatively impact on any protected group and consider this to be of neutral impact. We have researched the options for training and believe there is no adverse regulatory impact. While the requirement for vulnerable witness handling training may appear to increase the cost for renewal, there are several options available at different price points for training of this nature.
83. CILEX members can apply to the [CILEX Foundation](#) for support with funding of training and development opportunities if they have experienced hardship and find themselves unable to fund the mandatory training.
84. In addition, owing to the nature of the CILEX CPD Regulations, individuals can use 1 activity to achieve more than 1 CPD outcome so it is likely that the vulnerable witness handling training will represent more than just the prescribed advocacy CPD required for a given year and may also cover a larger proportion of the full CPD year obligation.

85. The priority is the protection of vulnerable people and the introduction of prescribed mandatory CPD aims to ensure that CILEX regulated individuals keep that are the forefront. The Code of Conduct also requires competence for services provided.
86. Having considered the options, CILEx Regulation considers that the proposed approach delivers a proportionate, safe and cost-effective model with which to ensure competence of CILEX regulated individuals in undertaking criminal advocacy in the Youth Court, whilst providing consumer protection.
87. We envisage a positive consumer and regulatory impact because we believe the proposals will protect the consumer and the public better through regular certificate renewal intervals and increased focus on maintaining competency in the Youth Court.

## L. Evaluation and Monitoring

88. In recognition of the Legal Services Board's work in relation to ongoing competence, CILEx Regulation recognise that reverting to the pre-QASA renewal requirements for CILEX Advocates for criminal proceedings and CILEX Practitioners for criminal proceedings would not go far enough to ensure standards are maintained. We believe that the introduction of additional competencies relating to Youth Court advocacy within the criminal advocacy skills course training and a mandatory requirement to complete CPD training for handling vulnerable witnesses as part of the first-year certificate renewal will emphasize and promote the need to review and focus on competency to carry out this work.
89. The first-year certificate renewal for CILEX Advocates for criminal proceedings and CILEX Practitioners for criminal proceedings already requires individuals to submit 3 portfolios demonstrating the use of their newly acquired rights of audience and these are assessed by an external advisor to ensure a consistent standard across the criminal advocates. Following the initial renewal, and during the time between any subsequent renewals, CILEx Regulation continues to monitor CILEX criminal advocates (CILEX Advocates for criminal proceedings, CILEX Practitioners for criminal proceedings and Associate Prosecutors) through an annual prescribed CPD requirement that at least 2 CPD outcomes focus on developing skills required for advocacy.
90. Should the proposed changes be approved, CILEx Regulation will create some additional website resources for advocates relating to the Youth Court so that they can be signposted to relevant resources and organisations in order to keep their knowledge and skills up to date. It is proposed that these resources will be similar to those CILEx Regulation has [published in relation to work in the Coroners' Court](#).
91. To determine the effectiveness of the new Youth Court competencies that will be integrated into the advocacy skills course training, CILEx Regulation will arrange for the course to be observed by an external advisor and will also ask for candidate feedback.
92. CILEx Regulation will continue to undertake an annual review of the delivery of the advocacy skills course and the assessment by any accredited course provider.
93. CILEx Regulation will monitor the CPD completed by CILEX Advocates and Associate Prosecutors through sampling of records, and we will ask for evidence of completion of vulnerable witness training at the first-year certificate renewal.
94. CILEx Regulation will monitor complaints received about individuals authorised with criminal rights of audience.
95. In addition, CILEx Regulation will keep the proposed arrangements under review in relation to the Legal Services Board's continued work in relation to ongoing competence. We also remain committed to working with other Approved Regulators to ensure that consistent standards are operating across the sector for all criminal advocates.



**M. Any draft guide or policy that will support implementation of the alterations**

96. CILEx Regulation will add to the website resources that are available for CPD. We will work to provide specific guidance on training for the Youth Court alongside Coroners' Court guidance that we are currently developing with the BSB and SRA as part of separate project.

**CONTACT DETAILS:**

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I am working from home until further notice. You can contact me via email, Teams or telephone 01234 845 770. Thank you.