

To:	Board
Date of Meeting:	27 January 2011
Item:	Paper (11) 05

Title:	Application by Institute of Legal Executives Limited (ILEX) to extend the reserved legal activities for which it is an Approved Regulator
Workstream(s):	2D Developing excellence in legal services regulation
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Status:	Protect

Summary:
<p>ILEX submitted an application under Schedule 4, Parts 2 and 3 of the Legal Services Act 2007 (the Act) to extend its reserved legal activities and to make regulatory arrangements to enable it to designate Associate Prosecutors (AP) of the Crown Prosecution Service (CPS) with rights of audience and to conduct litigation, to be effective from 1 May 2011.</p> <p>This paper summarises the application, the issues that have been considered, our conclusions and our recommendations.</p>

Risks and mitigations	
Financial:	None.
FoIA:	None.
Legal:	A question was raised as to whether ILEX needs to be designated for litigation in order to regulate APs. This has been reviewed and we have concluded that they do need to be designated.
Reputational:	There have been objections in the past (both at the time that the provisions were being considered by Parliament and when ILEX consulted on its proposals) that this would lead to unqualified people exercising rights of audience. There is a risk that these objections could be raised again.
Resource:	None.

Consultation:	Yes	No	Who / why?
Board Members:	✓		Andrew Whittaker.
Consumer Panel:	✓		As required by Schedule 4, para 5 of the Act.

Others:

The Lord Chief Justice and the Office of Fair Trading, as required by Schedule 4, para 5 of the Act.

Recommendation(s):

The Board is invited to consider this paper and:

- (1) to approve the recommendation to the Lord Chancellor under s24 of the Act that ILEX be designated as an Approved Regulator (**AR**) for the reserved legal activity of the right to conduct litigation;
- (2) to approve in part the regulatory arrangements. The proposed arrangements restrict the application to APs of the CPS. A part approval is proposed so that the arrangements are limited to the range of activities currently permitted through the Director of Public Prosecutions Instructions rather than the full range of activities allowed under the Prosecution of Offences Act 1985 (amended by Criminal Justice and Immigration Act 2008) but not yet in force; and
- (3) to agree to delegate authority to approve the Decision Notice and the wording of the recommendation to the Lord Chancellor to the Chairman and Chief Executive.

The full application, the advice from the mandatory consultees and ILEX's response to that advice is available on the LSB website (link below) and paper copies are available at the LSB offices.

http://www.legalservicesboard.org.uk/what_we_do/regulation/ilex_application_award_rights.htm

LEGAL SERVICES BOARD

To: Board	
Date of Meeting: 27 January 2011	Item: Paper (11) 05

Application by ILEX to extend the reserved legal activities for which it is an AR

1. Recommendation

The Board is asked to consider this paper and:

- (1) to approve the recommendation to the Lord Chancellor under s24 of the Act that ILEX be designated as an AR for the reserved legal activity of the right to conduct litigation;
- (2) to approve in part the regulatory arrangements for APs. A part approval is proposed so that the arrangements are limited to the range of activities currently permitted through the Director of Public Prosecutions' Instructions rather than the full range of activities allowed under the Prosecution of Offences Act 1985 (amended by Criminal Justice and Immigration Act 2008) but not yet in force; and
- (3) to agree to delegate authority to approve the Decision Notice and the wording of the recommendation to the Lord Chancellor to the Chairman and Chief Executive.

2. Summary

- 2.1 We have completed a detailed review of the application, the advice from the mandatory consultees and ILEX's response to that advice and the information from a joint meeting with ILEX and the CPS. All of the information has been assessed against the LSB's rules and guidance on applications for designations for new reserved legal activities.
- 2.2 Our conclusion is that we are satisfied that the proposed entry and education requirements for APs would prevent unsuitable candidates being granted membership and that they have in place appropriate arrangements for investigation, discipline and sanction.
- 2.3 We are also satisfied that the process for accrediting and assessing training arrangements on a continuing basis will ensure that appropriate education standards will be achieved.
- 2.4 In terms of the supervision and monitoring of APs on an ongoing basis, we are satisfied that the arrangements for this specific category of membership are fit for purpose and proportionate at this time. In order to demonstrate that they are effective in practice we will require (under s55 of the Act) a report from ILEX on how they have actually met their supervision responsibility, such report to be provided by 30 June 2012.
- 2.5 The application seeks to permit ILEX to grant all the rights allowed for in the Prosecution of Offenders Act 1985 (as amended by the Criminal Justice and Immigration Act 2008) even though these have not yet all been taken up by the

Attorney General. We propose that in approving the application it is limited to the range of activities that APs are currently able to do under statute (Section 11, paras 11.26 to 11.29).

2.6 Overall, granting the application based the proposed regulatory arrangements is a low risk for the following reasons:

- ILEX will be placing reliance on the well established procedures of the CPS. CPS is itself subject to public scrutiny and also inspection by HMCPS Inspectorate (**HMCPSi**). The arrangements between CPS and ILEX are unique and in our view it is not unreasonable for ILEX to place reliance on CPS procedures where they (ILEX) are able to satisfy themselves that those procedures are fit for regulatory purposes and they receive regular and sufficient information to enable them to form their own view on standards and to take action if necessary.
- The proposed arrangements apply to a narrow group of members who all have to be employed by the CPS to exercise the rights that they are granted.
- All APs work under the supervision of a Crown Prosecutor who will be a barrister or solicitor. They have very limited scope and all decisions are made by the Crown Prosecutor who is an Authorised Person.
- The change will bring no significant difference to the way that APs are selected, trained and supervised. There is no evidence to suggest that the process that has been used to date has resulted in inappropriate people being appointed as APs, therefore granting this application will not increase the risk of this happening.

2.7 While we consider that there is a low risk to the Regulatory Objectives in approving this application for these very restricted circumstances, an application from ILEX to LSB to broaden the scope of the application of the Certification Rules through a change to regulatory arrangements would require as much analysis as if it were a new designation application (which could include seeking advice from mandatory consultees). Any such application will be brought to the full Board for consideration and decision (Section 12).

3. Authority for the decision

3.1 Under Schedule 4, Part 2 of the Act, bodies may apply to the LSB to become an AR of one or more reserved legal activities. Any such application must specify which of the six reserved legal activities the applicant wishes to regulate. Once satisfied that the application meets the requirements of our Rules for Approved Regulator Designation applications (the **designation rules**) and other rules (notably those on regulatory independence) and that the body has in place appropriate regulatory arrangements for the proposed activities, the LSB can approve the application and recommend to the Lord Chancellor that the applicant be designated as an AR for all or some of the reserved legal activities applied for.

3.2 An existing AR may apply to extend the list of reserved legal activities for which it is a regulator. Such applications must also satisfy the LSB designations rules (and others if appropriate) and demonstrate that the AR has in place (or will put in place) regulatory arrangements which will allow it to be an effective regulator for the extended activities.

3.3 Designation by the Lord Chancellor relates to the whole of the reserved legal activity. An applicant can restrict how the rights are granted through its own regulatory arrangements. Any subsequent change to the scope of the AR rules would be treated as a change to regulatory arrangements and decided by the LSB under Schedule 4, Part 3 of the Act.

4. The applicant

4.1 ILEX is a professional body which represents Legal Executives and other members. It was authorised to grant rights of audience to suitably qualified Fellows of ILEX under section 29 of the Courts and Legal Services Act 1998. It is now an AR under the Act for the reserved legal activities of the exercise of rights of audience and the administration of oaths. It is also a designated professional body for immigration advice and services under the Immigration and Asylum Act 1999.

4.2 In compliance with the requirements of the Act and LSB's Internal Governance Rules, ILEX has established a separate company to which it has delegated its regulatory activities to ensure that the regulatory functions are carried out independently from the leadership and representative functions. This company is called ILEX Professional Standards Limited (**IPS**). ILEX has delegated to IPS responsibility for complaints handling (conduct complaints), development of the Code of Conduct, oversight of professional standards (including the qualification regimes and regulatory structures), continuing professional development scheme and qualifying employment regulations.

4.3 This application has been submitted by IPS on behalf of ILEX. ILEX is used throughout this report to mean both the representative and regulatory arms.

5. Background

5.1 Section 7A(1) of the Prosecution of Offences Act 1985 (**POA**) gives the Director of Public Prosecutions (**DPP**) the power to designate certain non-lawyer employees of the CPS, known as APs, with the rights and powers of Crown Prosecutors. The range of activities that APs can undertake are limited by Instructions issued by the DPP under sections 7A(3) and (4) of POA. APs are court advocates dealing with the range of hearings in their remit and they also conduct a small amount of out of court legal work.

5.2 Since first designated in 1998 the range of activities has been extended on a number of occasions through revisions to the DPP's Instructions. The last amendment to the Instructions came into effect on 23 February 2009. The types of activity that APs can conduct fall within the descriptions of the reserved legal activities of exercising rights of audience and conduct of litigation, albeit in restricted situations.

5.3 The 2009 revision to the Instructions was the result of the Criminal Justice and Immigration Act 2008 (**the 2008 Act**) which allowed for a wider range of rights to be granted to APs. At the time concern was expressed and objections were raised on the grounds that APs were not legally qualified and were not subject to any professional Code of Conduct. To address this, agreement was reached that the DPP will continue to issue Instructions which set out the limits of the rights and

activities of APs, but from 1 May 2011 he will no longer be able to confer on designated persons any rights of audience and rights to conduct litigation. (s7A(8) POA, as amended by the 2008 Act).

- 5.4 It was also agreed that independent professional regulation of APs will be delivered through ILEX. To be a member of ILEX, the AP will have to successfully complete the relevant training course (which will be accredited and overseen on a continuing basis by ILEX) and will be required to adhere to the ILEX Code of Conduct. ILEX created a category of membership of AP.
- 5.5 ILEX and CPS entered into a Memorandum of Understanding (**MOU**) in October 2008 at which point APs could apply for membership to ILEX (though the DPP retained the right to designate APs). The MOU sets out the requirement for APs to be externally (to the CPS) regulated from 1 May 2011 and that until that time a voluntary arrangement would be in place whereby APs may become members of ILEX and regulated in accordance with ILEX's Code of Conduct and Guides to Good Practice (in addition to the CPS codes). Whilst a voluntary arrangement, paragraph 21 of the MOU states that "no CPS area will deploy an Associate Prosecutor whose application for membership is refused". In effect, therefore, the ability to work as an AP is already subject to approval by ILEX.
- 5.6 From 1 May 2011, ILEX will be responsible for granting the rights of audience and rights of litigation necessary for APs to continue to represent the CPS. Without ILEX authorisation of the individuals, the CPS will not be able to deploy APs.

6. The application

- 6.1 This application is to seek:
- a recommendation from the LSB to the Lord Chancellor that ILEX be designated as an AR for the conduct of litigation
 - approval of the regulatory arrangements relating to the conduct of litigation and rights of audience for APs.
- 6.2 While titled "application to become an approved regulator to award rights of audience and rights to conduct litigation to associate prosecutor members of ILEX", ILEX is already an AR for rights of audience and therefore the only matter for designation is the rights to conduct litigation. The LSB is responsible for the approval of those parts of the application relating to the regulatory arrangements.

7. Structure of the application

- 7.1 The application from ILEX is split into four sections:
1. Introduction, which covers:
 - the basis of the application
 - the history of ILEX and IPS
 - the CPS and the development of the role of APs

- the existing arrangements for the selection and work of APs, including Codes of Conduct, continuing professional development, supervision and regulation of conduct.
2. The Rights of Audience and Rights to Conduct Litigation sought by ILEX, which covers:
 - the two levels of AP and the extent of rights sought for each level
 - an analysis of why granting these rights supports the regulatory objectives of the Act and a statement to demonstrate that the scheme is consistent with the better regulation principles.
 3. The Qualification Scheme, which covers:
 - selection of trainee APs
 - application criteria and qualification schemes for levels 1 and 2 APs (including details of pre-work courses, assessment and certification)
 - ILEX oversight arrangements for the qualification scheme
 - role of external (to ILEX) advisors in overseeing delivery of the training by CPS.
 4. Conduct Rules, which includes the codes (both ILEX and CPS) with which APs must comply and disciplinary procedures.

A number of annexes are submitted in support of the application:

- ILEX and IPS organisation and governance documents
- Implementation plan
- Memorandum of Understanding between ILEX and CPS
- ILEX Code of Conduct, and Investigation, Disciplinary and Appeal rules
- CPS Code, Statement of Ethical Principles, National Standards of Advocacy, Disciplinary Policy, and recruitment guidance
- Course outlines and case studies.

7.2 The arrangements are set out in the draft Associate Prosecutor Rights of Audience and Litigation Certification Rules.

8. Completeness assessment of the application

- 8.1 The designation rules set out the information and evidence needed for LSB to consider an application. **Annex A** cross-references where in this application the required information is to be found. The full application was published on the LSB website on 10 August 2010.
- 8.2 The application contained all of the information needed except for *Indemnification and compensation arrangements* for which there was neither information nor an explanation as to why this is not relevant. In a meeting with ILEX and CPS (15 December 2010) it was confirmed by ILEX that the rules are not relevant because there are no clients of the CPS who could be exposed to risk of financial loss as a direct result of the actions of APs. We agree with this assessment.

9. Assessment against LSB Rules and Guidance

9.1 The application has been reviewed and assessed against the applicable rules and guidance and a summary of the conclusions is contained in Annex A. The issues identified are discussed in Section 11.

9.2 In assessing the application against the LSB's Rules and Guidance the following have been considered:

- the application and supporting documents
- the advice from the mandatory consultees and ILEX's response
- information provided in a meeting attended by both ILEX and CPS (15 December 2010)
- reports by HMCPSi on complaints handling and the quality of advocacy
- previous LSB comments on ILEX's regulatory capacity and capability.

9.3 Schedule 4, para 13(2) of the Act sets out the matters on which the Board must be satisfied when granting an application for designation. The following table summarises our conclusion against each of those matters:

Matter to be satisfied	Conclusion
Internal arrangements	<p>ILEX is an existing AR which has in place established and effective governance arrangements. No changes to these arrangements are needed as a result of this application.</p> <p>A new MOU is to be put in place between ILEX and CPS; ILEX have confirmed that the terms of the agreement will be agreed by 31 January 2011 (see paras 11.23-11.25).</p>
Competence and sufficiency of the resources to perform the role of approved regulator in relation to the reserved legal activity at that time	<p>ILEX has in place sufficient resources (both internal and external advisers) to allow it to be an effective regulator for this class of membership at this time.</p> <p>In order to demonstrate that the arrangements are effective in practise ILEX will be asked to prepare a report for the LSB summarising the regulatory activity (including supervision and monitoring) in the first year following designation (see paras 11.1-11.12).</p>
Regulatory arrangements make appropriate provision	<p>The proposed regulatory arrangements are appropriate. They cover:</p> <ul style="list-style-type: none"> • the scope of rights to be conferred (Annex A, line 4) • education and training at entry and on an ongoing basis (Annex A, line

	<p>5)</p> <ul style="list-style-type: none"> • code of professional conduct (Annex A, lines 2 and 6) • investigations (including complaints), discipline and appeals (paras 11.13-11.19, Annex A line 11) • arrangements to meet LSB's requirement on the independence of the regulatory function (Annex A, line 7).
Regulatory arrangements comply with the requirements for resolution of conflict (s52 and s54)	<p>ILEX is the only regulator for APs so there are no conflict issues.</p> <p>No conflicts have been identified between the CPS and ILEX Codes.</p>
Regulatory arrangements comply with the requirements for complaints handling (s112 and s145)	<p>APs will be covered by documented CPS complaints handling arrangements. ILEX has in place procedures for assessing conduct complaints.</p> <p>As the AP is representing the CPS, there is not a client relationship between them and one of the main groups of people with potential to have a grievance – victims and witnesses. As there is no client relationship, the Legal Ombudsman could not consider a complaint. There is a mechanism for such complaints to be referred to the Parliamentary and Health Ombudsman for independent review (paras 11.13-11.19).</p>
<p>The exercise of the regulatory functions is not prejudiced by the representative functions</p> <p>Decisions relating to the exercise of the regulatory functions are taken (as far as possible) independently from decisions relating to the exercise of the representative function</p>	<p>The LSB has been undertaking a major work stream on the internal governance arrangements for appointed representatives. LSB concluded in November 2010 that it was satisfied that the arrangements in place in ILEX comply with the Internal Governance Rules.</p>

10. The Mandatory Consultees

10.1 When considering an application to become an AR or to extend the reserved legal activities which an AR can regulate, the LSB is required to seek the advice of the Lord Chief Justice, Office of Fair Trading and the Legal Services Consumer Panel (collectively referred to as the **mandatory consultees**). In addition, the LSB can seek advice from a selected consultee, though no such advice has been sought in relation to this application.

- 10.2 Advice was received from each of the mandatory consultees and ILEX submitted a response within the required timescale.
- 10.3 A summary of the key points made by the mandatory consultees and ILEX's response is contained in **Annex B**.
- 10.4 Specific issues raised by the mandatory consultees are covered in the relevant section of this report.

11. Issues arising from the assessment of the application

Regulatory resources (capacity, monitoring and enforcement)

- 11.1 In making a recommendation for designation, the LSB has a duty to ensure that the applicant is "competent and have sufficient resources to perform the role of regulator in relation to the reserved legal activity at that time" (Schd 4, Part 2, para 13(2)(b)).
- 11.2 LSB has previously discussed with ILEX its capacity and competence to monitor and enforce compliance by its members with its Codes and Guidance.
- 11.3 The training and qualification arrangements that are accredited by ILEX will be subject to inspections by both officers of IPS and external advisers. Reports on these inspections will be presented to the Admissions and Licensing Committee which has overall responsibility for the scheme.
- 11.4 Beyond the consideration of complaints, there was no indication in the application that ILEX will be undertaking any proactive monitoring of the work of APs. Nor was there anything to explain what (if any) monitoring will be undertaken directly by ILEX in relation to APs. This was discussed with ILEX (and CPS) at the meeting on 15 December 2010.
- 11.5 ILEX confirmed that each AP must complete their own renewal application through which they collect individual data. APs are required to answer questions on whether they have been excluded or expelled by a professional body or had proceedings taken against them under s43 of Solicitors Act 1974; whether the member has had a bankruptcy order or county court judgement made against them or has entered into an individual voluntary arrangement; whether a complaint has been made against them either to their employer or the Legal Ombudsman. They must also complete the annual online continuing professional development records in compliance with the CPD regulations.
- 11.6 ILEX confirmed that its regulatory activity will be based on the monitoring and supervision that CPS undertakes. CPS has in place procedures for performance appraisals of staff, disciplinary procedures and complaints handling. It has also developed its own advocacy assurance framework. Although not supervising the CPS itself, ILEX will rely on CPS processes and reporting to identify any regulatory issues that need to be addressed.

- 11.7 There is external assessment of the performance of the CPS. HMCPsi was established as an independent body under the Crown Prosecution Service Act 2000. Reporting to the Attorney General it provides assurance on the effectiveness and efficiency of the CPS. To the extent that any HMCPsi report identifies issues relating to the professional standards and conduct of APs, ILEX will need to demonstrate that appropriate action is being taken to address the issues.
- 11.8 As an AR, ILEX is required to act in accordance with the Better Regulation Principles (proportionality, accountability, consistency, transparency and targeted). The relationship between ILEX and CPS is unique in legal services regulation. CPS is itself subject to scrutiny and reporting requirements and in our view it is not unreasonable for ILEX to place some reliance on CPS monitoring and supervision procedures. Additional monitoring would impose further cost for potentially little additional benefit.
- 11.9 While placing some reliance on well established CPS procedures may be a proportionate response, it does not absolve ILEX from the responsibility of proper regulation. They will need to ensure and be able to demonstrate that the procedures relied on are fit for regulatory purposes and that they receive sufficient information on which to form their own view on the standards of compliance with the ILEX Code of Conduct and relevant rules. They will also need to ensure that where they are not satisfied that the appropriate standards have been achieved that they can take remedial action.
- 11.10 We have also considered the following as relevant to our assessment on the adequacy of the regulatory arrangements:
- the proposed arrangements apply to a narrow group of members who all have to be employed by the CPS to exercise the rights that they are granted
 - all APs work under the supervision of a Crown Prosecutor who will be a barrister or solicitor. They have very limited scope and all decisions are made by the Crown Prosecutor who is an Authorised Person
 - the change will bring no significant difference to the way that APs are selected, trained and supervised. There is no evidence to suggest that the process that has been used to date has resulted in inappropriate people being appointed as APs, therefore granting this application will not increase the risk of this happening.
- 11.11 Our conclusion is that at this time ILEX has sufficient capability and capacity to regulate this specific class of membership. The arrangements between CPS and ILEX are unique and in our view it is not unreasonable for ILEX to place reliance on CPS procedures where they (ILEX) are able to satisfy themselves that those procedures are fit for regulatory purposes and they receive regular and sufficient information to enable them to form their own view on standards and to take action if necessary.
- 11.12 In order to ensure that there is transparency and accountability of the effectiveness of these arrangements, we propose to impose a requirement on ILEX under s55 of the Act to report to LSB by 30 June 2012 on how they have satisfied themselves that AP members of ILEX have met the requirements of the regulatory arrangements.

This should include commentary on the information that they have received, the assessment of the issues and risks that have been identified and how these have been addressed.

Complaint handling arrangements

- 11.13 Complaints about the “service” provided by APs would be considered by the CPS under its complaints handling arrangements. ILEX will consider complaints about conduct. No complaints have been made or referred to ILEX during the voluntary arrangement and CPS commented that it rarely receives complaints about individual prosecutors.
- 11.14 The advice from the Legal Services Consumer Panel (**LSCP**) noted that there is no independent complaints mechanism to consider complaints against APs, with particular reference to victims and witnesses who may be among the most vulnerable people to come into contact with APs. Following discussions with both ILEX and the Legal Ombudsman (which concluded that since the “client” that the AP is representing is the CPS and is therefore outside the scope of the Ombudsman), LSCP suggested that ILEX explore with the Legal Ombudsman the possibility of using the voluntary arrangements (ss163-166 of the Act).
- 11.15 We agree with ILEX’s analysis that means that voluntary arrangements cannot be used by virtue of s164(5), which states that if at the time the events complained of took place the individual complained about was an Authorised Person, the voluntary arrangements cannot be used. We also agree with the view that there is no client relationship between an AP and a victim or witness.
- 11.16 ILEX has noted that CPS has its own procedure for dealing with complaints made by victims and witnesses. There are four levels at which a complaint may be considered and escalated:
1. Considered by the local CPS manager
 2. Reviewed by a senior manager (Chief Crown Prosecutor, Area Business Manager or headquarters Director)
 3. Reviewed by the DPP (or Chief Executive or senior manager nominated on his behalf)
 4. If complainant remains dissatisfied with the way that the complaint has been handled, it can be referred to the Attorney General’s Office who will consider whether the complaints policy and guidance has been correctly applied.
- 11.17 CPS has confirmed that this process was introduced as part of the changes made following the HMCPSi report of March 2009¹ which made a number of observations about inconsistent and poor complaint handling within the CPS. One of the 12 recommendations of the report was that CPS considers introducing independent oversight into the complaints handling system (as is the case in Northern Ireland where Public Prosecutions Service has appointed an Independent Assessor of complaints once the internal PPS system has been exhausted). The introduction of Stage 4 of the CPS process was in response to this recommendation.

¹ **When things go wrong:** a thematic review of complaints handling by the Crown Prosecution Service. HMCPS Inspectorate, March 2009.

- 11.18 The Parliamentary and Health Ombudsman (**PHO**) is able to consider complaints referred to her by Members of Parliament from witness and victims. The CPS Annual Reports and Resource Accounts for 2008-09 and 2009-10 both record that the CPS was not the subject of any complaints to the PHO in those years.
- 11.19 On balance we are satisfied that the complaints arrangements are appropriate. There is a mechanism for aggrieved victims and witnesses to have a complaint properly considered and, if required, a mechanism for an independent assessment to take place by the PHO; this addresses the concern raised by the LSCP.

Quality assurance

- 11.20 Quality assurance is a key tool for regulators to demonstrate ongoing competence of Authorised Persons. In its advice, the LSCP suggested that ILEX should make a commitment to use the Quality Assurance for Advocates (**QAA**) Scheme for the whole of its regulated community. ILEX's response is that the CPS has developed an internal quality assurance scheme for all CPS advocates (including APs) which is a suitable alternative to the proposed QAA scheme.
- 11.21 ILEX was asked how it had validated this scheme. It responded that it had reviewed and concluded that it was reasonable but had not assessed it against a specific set of criteria.
- 11.22 At this stage the QAA scheme is still in development and so it is not unreasonable to place reliance on the CPS scheme. It is suggested that once the QAA scheme is agreed and implemented, ILEX is asked to demonstrate how the CPS scheme compares and, if appropriate, confirm what steps they will be taking to address any gaps.

Relationship between ILEX and CPS

- 11.23 Both ILEX and CPS recognise that the arrangements for authorising APs must not be seen as a veneer of regulation. They have established a good working relationship under a voluntary arrangement and demonstrated to LSB that they are committed to continuing to recognise the professionalism of APs.
- 11.24 The MOU is clearly an important document in terms of how the relationship between ILEX and CPS operates in practice. The current MOU was signed in 2008 when the voluntary arrangement was set up and both CPS and ILEX recognise that it needs to be updated. ILEX has committed to agreeing the terms of a new MOU by 31 January 2011.
- 11.25 The current MOU contains very limited provisions on the sharing of information between CPS and ILEX. If ILEX's primary regulatory focus is on the CPS' systems, controls and procedures, it will be important that they receive sufficient information to satisfy themselves that their regulatory requirements are being met. We would expect this to be documented in the MOU. In addition the MOU should make provision for ILEX to carry out its own inspections/reviews if the information provided indicates an issue that is not being addressed by the CPS.

Range of activities to be covered by the regulatory arrangements

- 11.26 The advice from the Lord Chief Justice noted that the draft Certification Rules in the application have been written to allow for any future extension of cases that APs are allowed to prosecute.
- 11.27 ILEX's application covers the full range of statutory activities that APs are able to undertake. Section 55 of the 2008 Act amends s7A of POA and allows APs to conduct criminal proceedings in magistrates courts of trials other than trials of either way offences or "offences which are punishable with imprisonment in the case of persons aged 21 or over".
- 11.28 A further provision permits the Attorney General to amend this, by statutory instrument, to remove the words "or offences punishable with imprisonment in the case of persons aged 21 or over". At the time that the 2008 Act was being considered, assurances were given that this would not be introduced before May 2011. CPS has confirmed that there is currently no plan to introduce this change.
- 11.29 Our view is that the Certification Rules should mirror the current scope currently permitted under the POA and that should the Attorney General decide to amend the scope this should lead to an application by ILEX to the LSB to change their regulatory arrangements. We recommend therefore that ILEX be required to amend Rule 4 (Level 2 Rights of Audience and Litigation Certificate in Criminal Proceedings) to reflect the current statutory position.

12. Future changes if designation granted by the Lord Chancellor

- 12.1 A designation by the Lord Chancellor under the Act relates to the whole of the reserved legal activity. Any restrictions on that activity are provided for by the regulatory arrangements of the AR. In this case, if this designation is granted then by their own rules ILEX will only be able to grant litigation rights to AP members. It would not, without a successful application to the LSB, be able to grant them to other classes of membership.
- 12.2 An AR must have regulatory arrangements which are appropriate for the activities to be regulated. As described above, we are satisfied that the arrangements are appropriate for this application. Any future proposal to extend the classes of membership to which ILEX could grant litigation rights would be a change to regulatory arrangements requiring LSB approval under Schedule 2, Part 3 of the Act. It would not require designation by the Lord Chancellor.
- 12.3 There is provision in the Act and our rules for us to seek advice from the mandatory consultees (and any other relevant person) on an application to change regulatory arrangements. Our current view is that we should use this provision in the event that ILEX submits an application to extend the right to grant litigation rights to other classes of membership (though each case would be considered individually at the time of submission).
- 12.4 Any such application will be subject to a full Board decision.

Assessment of compliance with guidance on the administrative information and evidence of regulatory arrangements required for applications

	What is required	Requirement	Information provided	Summary of provisions, comments and conclusion
1	A statement of the Reserved Legal Activity or Activities to which the Application relates	Sch. 4, paragraph 3(3)(a)	<ul style="list-style-type: none"> Paragraphs 1 & 2 of the application 	<p>Para 1 – “application to be designated by the Lord Chancellor to grant rights of audience and rights to conduct litigation to Associate Prosecutor members of ILEX”. Associate Prosecutor (AP) is a category of ILEX membership created in November 2008 for Crown Prosecution Service staff employed in the role of Associate Prosecutors.</p>
2	Details of the Applicant’s proposed Regulatory Arrangements	Sch. 4, paragraph 3(3)(b)	<ul style="list-style-type: none"> Selection process (by CPS) Part IV paras 2-13, and Part III paras 32-33; Ax19 Annexes contain CPS codes/requirements– Ax 16 and 17 Codes of conduct – CPS Ax 13, ILEX Ax 14 Discipline – CPS Ax 18, ILEX Ax 15; paras 5-8, Part IV; MOU between CPS & ILEX Ax 12 Qualifications and training – Part III, Ax 21-31; CPD Part III para 45; Part I paras 116 & 117 	<p>The application contains the following information to allow us to assess how APs are selected and trained, the standards of professional conduct that must demonstrate and the processes in place for dealing with those who do not meet the standards:</p> <ul style="list-style-type: none"> The CPS selection process for candidates – including the application requirements, the selection criteria and assessment The training programme for successful applicants – including course outlines and assessments and mentoring requirements (see also annex 1, line 5) The ILEX Code of Conduct, the CPS Code, the CPS Statement of Ethical Principles and the CPS National Standards of Advocacy. Collectively these documents set out the standards of conduct and behaviour that APs will need to maintain. Though the CPS documents are not formally part of the regulatory arrangements (and therefore are not approved by the LSB) they have been taken into consideration to confirm that they requirements do not conflict with any of the requirements of the ILEX Code. Disciplinary arrangements – the ILEX Investigation, Disciplinary and Appeal Rules describe the process that will be followed where a member fails to meet ILEX requirements. These rules include the following: <ul style="list-style-type: none"> The appointment and powers of a Professional Conduct Panel to consider cases; a Panel will always consist of a lay majority A requirement for applicants for membership and existing members to make declarations on standards of conduct Provisions on the investigation of complaints and potential misconduct The procedure and powers of the Disciplinary Tribunal The procedure and powers of the Appeal Panel; the 3 person Appeal Panel will have a lay majority. <p>There was no information on indemnification or compensation or explanation of why this is not relevant. In discussion with ILEX, they confirmed that since there are no clients of APs who are at risk of financial loss arising from the actions of the AP, it not necessary to put in place</p>

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				<p>compensation and indemnification arrangements. We agree with this analysis and have not required any further information from ILEX on this matter.</p> <p>Overall we are satisfied that the regulatory arrangements are appropriate.</p>
3	Such explanatory material (including material about the Applicant's constitution and activities) as the Applicant considers is likely to be needed for the purposes of Part 2 of Schedule 4	Sch. 4, paragraph 3(3)(c)	<ul style="list-style-type: none"> • Memorandum and Articles of Association for ILEX (Ax1) and CPS (Ax5) • Business Plans for ILEX (Ax3) and CPS (Ax9) • ILEX Annual Report (Ax4) • ILEX and IPS protocols and Service Level Agreements (SLA) (Ax7) • ILEX council members list (Ax2) • IPS Board Members list (Ax6) • Associate Prosecutors Rights of Audience and Litigation Certification Rules • Memorandum of Understanding between ILEX and CPs (Ax 12) • 	<p>These documents set out governance arrangements and plans for ILEX, its regulatory arm IPS and the protocols/SLAs between the two. (Additional information has been provided on CPS, the employers of the class of membership of ILEX).</p> <p>The Associate Prosecutor rights of audience and rights to conduct litigation certification rules set out the role and responsibilities of the Admissions and Licensing Committee in relation to the AP qualification scheme which includes: applying and monitoring the rules; granting and renewal of certificates; approval of course and assessment materials; receive reports on inspections of courses and the moderation of qualification course assessments; receive an Annual Report from CPS on course provision; make recommendations on course development.</p> <p>No issues have been identified from the review of the ILEX Memorandum and Articles of Association, Business Plan, Annual Report, protocols/SLAs between ILEX and IPS and the Certification Rules.</p> <p>A Memorandum of understanding between ILEX and CPS was signed in October 2008 covering the following issues</p> <ul style="list-style-type: none"> • Descriptions of ILEX, CPS and APs • Arrangements for voluntary membership until 1 May 2011 • Application and annual renewal process • Fees • Cessation of membership • Accreditation by ILEX of the CPS APs' Training Programme • Requirement that all APs be bound by and adhere to the ILEX Code of Conduct and Guides to Good Practice • Responsibilities and process for complaints handling • Exchange of information and liaison meetings • Review of the MOU. <p>The MOU reflects the fact that at the time it was entered into the arrangement was a voluntary one and is not adequate for the arrangements past 1 May 2011 when APs will become authorised persons regulated by ILEX. It provides for very limited information to be passed to ILEX from CPS – it is insufficient for ILEX to be able to form a view as to the standards of compliance being</p>

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				<p>achieved by its AP members. Direct supervision by ILEX is limited to the information collected in the annual renewal process and the annual CPD returns. It is not unreasonable for ILEX to rely on the information from CPS to as the means of forming a view on the standards of compliance, but they must have sufficient information to form that judgement and be able to take action if issues are identified that are not addressed by the CPS.</p> <p>ILEX and CPS acknowledge that in its current form the MOU is not appropriate given the changed nature of the relationship. Both parties have committed to a thorough review of the MOU by 31 January 2011.</p>
4	<p>Authorised Persons. Details of the</p> <ul style="list-style-type: none"> • authority which the Applicant proposes to give persons to carry on activities which are RLA • nature of the persons to whom <i>each aspect of</i> the authority is to be given 	Sch. 4, paragraph 3(5)(a)	<ul style="list-style-type: none"> • Specific to APs of CPS – Part II para 1 • Specifications in Appendix to Certification Rules 	<p><i>Authority to be given</i></p> <p>If successful, ILEX will have the authority to grant rights of audience and rights to conduct litigation to APs of CPS. This will allow APs to continue (as they have since 1998) to undertake advocacy in magistrates courts and certain litigation activities. Appendix 1 of the draft Certification Rules sets out the specification against which AP applicants will be assessed.</p> <p>There will be two levels of AP with different Advocacy Rights: Level 1 APs will have the following advocacy rights:</p> <ul style="list-style-type: none"> • To appear before Justices or a District judge in the magistrates court (including the youth court) to prosecute all proceedings against all adult and youth offenders including bail applications where the CPS is the prosecuting authority except trials, Newton Hearings, Special Reasons Hearings, contested Preventative Civil Orders and contested Binding Over Proceedings • To appear in the Crown Court before a Judge to conduct a bail application where the CPS is the prosecuting authority. <p>Level 2 APs will have the following additional rights:</p> <ul style="list-style-type: none"> • To appear before Justices or a District Judge in the magistrates courts (including the youth court) to prosecute all proceedings against adult and youth offenders (including bail applications) where the CPS is the prosecuting authority except for trials of either way offences. <p>Both Level 1 and Level 2 APs will have the following litigation rights in relation to cases within their remit:</p> <ul style="list-style-type: none"> • Review a prosecution case by applying the Code for Crown Prosecutors • Other casework functions necessary to progress prosecution cases. <p>These rights are wider than those currently permitted by S7A(2) of POA (as amended) which sets out the range of cases in which an AP can act. S7A(2)(a)(ii) allows for the conduct of criminal</p>

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				<p>proceedings in the magistrates courts “other than trials of offences triable either way of offences which are punishable with imprisonment in the cases of persons aged 21 or over” [emphasis added]. S7A(11) allows for the Attorney General to make an order to amend s7A(2)(a)(ii) so as to omit the words “or offences punishable with imprisonment in the cases of persons aged 21 or over”. Though no such order has been made (and CPS stated in a meeting that there are currently no plans to do so), the rules that ILEX propose are written on the basis that the order will be made.</p> <p>Our view is that we should not approve this part of the application but instead require ILEX to amend the Certification Rules so that they are consistent with the current statutory scope.</p> <p><i>Persons who will be granted the rights</i> Applicants for vacancies for APs will be CPS employees who will need to meet the selection criteria, go through a selection process and then commence the qualification scheme. On successful completion of the qualification scheme, an application is made to ILEX for membership as an AP; they cannot be deployed by the CPS until that membership has been granted.</p> <p>We are satisfied these arrangements are appropriate.</p>
5	Regulations (however they may be described) as to the education and training which persons must receive, and any other requirements which must be met by or in respect of them, in order for them to be authorised	Sch. 4, paragraph 3(5)(b)	<ul style="list-style-type: none"> • Part III of the application • Annexes 21 to 31 	<p>Part III of the applications sets out the qualification scheme and covers selection criteria, pre-course work, mentors, course work and assessment. Annexes 21 – 31 set out the course outlines for each element of Level 1 and Level 2 qualifications.</p> <p>The introduction of external validation of training and assessment was one of the key factors in the decision to allow for an extension in rights that APs are able to exercise in the 2008 Act.</p> <p>ILEX has in place arrangements for the accreditation of the training and assessment programmes completed by their members. For other members, this training or assessment is normally delivered by external providers. In the case of APs the training is delivered by the CPS itself.</p> <p>The Certification Rules specify (in Appendices 3 and 6) the course outcomes for both Level 1 and Level 2 courses. The assessment criteria for each level are also included.</p> <p>In assessing the application, we have not given detailed consideration to the course content but have considered the process ILEX will be adopting to accredit the course. ILEX will adopt a similar approach to assessing cases and assessments as are used for other training and assessment regimes that they accredit. As a course provider, CPS will be required to submit an annual report on how the course has been delivered in the preceding twelve months</p>

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				<p>and on candidates' performance. External advisors and officers of IPS will carry out and report on inspection visits to ensure that resources are appropriate and quality is maintained. The External Advisors will moderate assessment materials and review a sample of advocacy on the course in order to monitor assessment standards. Some inspection visits have been completed under the voluntary arrangement.</p> <p>All reports will be considered by the ILEX Licensing and Admissions Committee which will be responsible for monitoring and maintenance of standards of assessment of the qualification scheme and the application of the Certification Rules.</p> <p>An external advisor will be appointed to advise the Committee on issues relating to advocacy and litigation skills, course delivery and assessment standards. The external advisors will be required to have qualifications in law and legal practice; experience of criminal proceedings and advocacy; and experience of teaching and assessing advocacy skills.</p> <p>Continuing professional development (CPD) requirements are set out in Rules 70-74. The requirement is for 16 hours per annum of which at least 8 hours must be on advocacy skills training, criminal practice procedure or knowledge.</p> <p>We are satisfied that these arrangements are appropriate.</p>
6	Rules (however they may be described) as to the conduct required of persons in carrying on any activity by virtue of the authority	Sch. 4, paragraph 3(5)(c)	<ul style="list-style-type: none"> • ILEX Code of Conduct • Part IV CPS Codes on Ethical Principles and National Standard of advocacy. Code for Crown Prosecutors (Axs 13,16,17) • CPD requirements Part III para 45 • Supervision of APs – Part I paras 93 – 97 	<p>Associate Prosecutors are bound by and must adhere to the ILEX Code of Conduct.</p> <p>In addition (though not forming part of the regulatory arrangements) they must observe and adhere to the CPS Code of Ethical Principles, The National Standards of Advocacy and the Code for Crown Prosecutors.</p> <p>We are satisfied that APs are subject to appropriate regulation on the standards of conduct.</p> <p>Associate prosecutors are all supervised by experienced Crown Prosecutors who are responsible for ensuring that APs are sufficiently experienced to prepare and present the cases allocated to them. When deployed to deal with cases they will have instructions from a Crown Prosecutor which will normally be in writing and endorsed on the case file (where oral instructions are given these must be noted by the AP and endorsed on the file. If the instructions are not clear, the AP is responsible for seeking clarification from the Crown Prosecutor. If an issue arises during the proceedings which the AP cannot deal with, they must seek an adjournment in order to take further instructions from a Crown Prosecutor. A Crown Prosecutor is always available to provide guidance and assistance should issues arise while at court that require legal input.</p>

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7	Appropriate internal governance arrangements in place at the time the order takes effect. Including the Applicant's: <ul style="list-style-type: none"> • Regulatory functions would not be prejudiced by its rep functions. • Regulatory decisions are independent from its rep functions. 	Sch.4, paragraph 13(2)(a), 13(3)(a), 13(3)(b)	<ul style="list-style-type: none"> • Part I paras 21 – 29 IPS • Ax 7 ILEX and IPS protocols and SLAs 	<p>The LSB has been undertaking a major work stream on the internal governance arrangements for appointed representatives. LSB concluded in November 2010 that it was satisfied that the arrangements in place in ILEX comply with the internal governance rules.</p> <p>No further assessment has been made at this time.</p>
8	Sufficient resources (including regulatory capacity, monitoring and enforcement) to perform the role of Approved Regulator in relation to the RLA	Sch. 4, paragraph 13(2)(b)	<ul style="list-style-type: none"> • ILEX (Ax3) and IPS (Ax9) Business Plans • Implementation Plan (Ax10) 	<p>The application includes an implementation plan which sets out at a high level the oversight and management arrangements that will be put in place. The includes the establishment of the Admissions and Licensing Committee (which will have responsibilities wider than the AP class of membership); recruitment of external advisers on advocacy and litigation to provide advice and perform reviews of the education and training arrangements; and formal approval of the CPS course and assessment material.</p> <p>The plan appears to be appropriate in terms of setting up the arrangements.</p> <p>Section 11 (paras 11.1 to 11.12) provides commentary and conclusions on the arrangements for the ongoing supervision APs.</p> <p>ILEX Investigation, Disciplinary and Appeal rules will be used where cases are referred to them for investigation. These rules have been in place throughout the voluntary arrangement and ILEX has confirmed that there have been no instances where these rules have been used against an AP.</p> <p>We are satisfied that the disciplinary arrangements are appropriate.</p>
9	Assessment of the application's outcomes against the Regulatory Objectives and Better Regulation Principles	Sch. 4, paragraph 13(2)(c)	<ul style="list-style-type: none"> • Part II, paras 19 to 61 	<p><i>Regulatory Objectives</i></p> <p>ILEX has submitted an analysis of the impact on the regulatory objectives if this application were to be granted. No negative impacts have been identified. The points given in support of each objective include the following:</p> <p><i>Protecting and promoting the public and consumer interest</i></p> <ul style="list-style-type: none"> • APs are suitably qualified and trained • Codes setting out professional standards are imposed and mechanisms in place for dealing with non-compliance

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				<ul style="list-style-type: none"> • Proper application of the CPS codes ensures strong and evidentially sound case are brought to court. <p><i>Supporting the constitutional principle of the rule of law</i></p> <ul style="list-style-type: none"> • ILEX would provide an independent mechanism for investigating complaints that an AP has not observed relevant codes setting out standards of behaviour which include the requirement to comply with the law and uphold the administration of justice. <p><i>Access to justice</i></p> <ul style="list-style-type: none"> • CPS will be able to continue to deploy APs so contributing to the efficient operation of the criminal justice system • APs will increase and improve victim and witness care by applying CPS published policies consistently and effectively. <p><i>Promoting competition</i></p> <ul style="list-style-type: none"> • CPS will have available an alternative source of suitably trained and authorised advocates. <p><i>Independent, strong, diverse and effective legal profession</i></p> <ul style="list-style-type: none"> • Independent regulation of APs – CPS can only deploy APs who are members of ILEX • New level of advocacy and litigation has encouraged diverse range of advocates employed by the CPS and this could continue. <p><i>Increasing public understanding of citizens’ legal rights and duties</i></p> <ul style="list-style-type: none"> • APs must observe CPS published policies on the treatment of victims and witnesses. <p><i>Professional principles</i></p> <ul style="list-style-type: none"> • APs must achieve and maintain compliance with the ILEX Code of Conduct. The CPS Codes with which they must also comply contain specific provisions on the duty of confidentiality. <p>There is an acceptable analysis against the regulatory objectives.</p> <p><i>Better Regulation Principles</i></p> <ul style="list-style-type: none"> • A proportionate qualification route which will ensure APs are competent to undertake the work that they are authorised to do • ILEX will be accountable, through the Admissions and Licensing Committee, for the administration and the application of the Rules • ILEX is adopting an approach which is consistent with other categories of membership (qualification course and assessment, continuing professional development, independent assessment and external moderation, common disciplinary arrangements) • The consultation process has ensured that there was transparency when developing the proposals. Once implemented there will be a suitable level of independent involvement in setting standards

	What is required	Requirement	Information provided	Summary of provisions, comments and conclusion
				<ul style="list-style-type: none"> The scheme is targeted at assessing and developing the skills and knowledge necessary to be an AP. The regulatory arrangements are targeted at the risks.
10	Compliance with the requirement imposed by sections 52 and 54 (resolution of regulatory conflict)	Sch. 4, paragraph 13(2)(d)	<ul style="list-style-type: none"> Part I, paras 29 - 31 	<p>There is no other AR who authorises Associate Prosecutors so there is no conflict between ARs.</p> <p>No conflicts between the CPS and ILEX Codes have been identified.</p>
11	Compliance with the requirements imposed by sections 112 and 145 (requirements imposed in relation to the handling of complaints and ombudsman scheme)	Sch. 4, paragraph 13(2)(e)	<ul style="list-style-type: none"> Part I, paras 122 – 125; Ax12 MOU between ILEX and CPS 	<p>The ILEX complaints process and disciplinary arrangements are appropriate for dealing with individual conduct complaints.</p> <p>The LSCP raised concerns about the lack of independent complaints mechanism for victims and witnesses. The CPS has in place a comprehensive complaints process and the Parliamentary and Health Ombudsman can consider complaints against the CPS. This addresses the concern raised by the LSCP (Section 11, paras 11.13 to 11.19).</p> <p>We are satisfied that the complaints arrangements are appropriate.</p>
12	Consultation and consideration of stakeholders' responses	Na	<ul style="list-style-type: none"> Ax20 – Consultation and responses 	<p>A Consultation Paper was published between 17 February 2010 and 6 April 2010. 9 responses were received (2 approved regulators, 5 representative bodies and 2 independent bodies) and the responses have been individually analysed in the application, including ILEX responses to the points made. A mixed response was received.</p> <p>The Law Society welcomed the fact that APs would be subject to external regulation and were content with the proposed regulatory system. The Solicitors Regulation Authority were also largely supportive and made specific comments on the need for buy-in from mentors (<i>ILEX response: trial within the CPS has not identified any instances of lack of co-operation</i>) and that ILEX should be able to require APs to attend specific training courses where development needs were identified (<i>ILEX response: Disciplinary Panel has this power</i>). The Bar Standards Board were similarly supportive, commenting on the need for ILEX to satisfy itself that standards are met at all levels (<i>ILEX response: recognise the importance of monitoring and inspection</i>) and that ultimately the CPS quality assurance scheme should be consistent with the Quality Assurance for Advocates scheme that is being developed (<i>ILEX response: aware that consistent standards will be needed</i>).</p> <p>Those opposing the proposals included the Bar Council, the Young Barristers Committee and the Criminal Bar Association. The common themes from these responses included the “de-lawyering” of the magistrates and youth courts, the potential for people with no legal or academic qualification to be designated and the risk of individual APs acting outside their scope or competence. Many of the points made had been raised when the Criminal Justice and</p>

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				<p>Immigration Act 2008 was being considered.</p> <p>ILEX response is that the aim of the scheme is not to remove people from the system but to allow suitably qualified and trained people to exercise the rights in specific circumstances. The proposed arrangements will provide suitable knowledge and skills training for the role of AP. They acknowledge that at the point that an individual is selected for AP training they may not have formal legal qualifications but contend that the courses are designed to deliver that information and test understanding through assessments. They note that the courses are targeted to give the individuals the information for the role rather than a wider range of potentially unnecessary skills. In terms of acting beyond competence, ILEX notes that it is a requirement of the Code of Conduct that an AP only take on cases for which they are competent.</p> <p>ILEX has adequately addressed all of the key points that were made in the consultation responses.</p>
13	Applicant has incorporated LSB's expectations		<ul style="list-style-type: none"> The application contained limited information on how they will monitor APs 	<p>During the assessment of the application we have explored with ILEX how they will monitor APs. We are satisfied that the proposed arrangements (which seek to place reliance on information from CPS' own monitoring activity) are appropriate for this specific class of ILEX membership (Section 11 paras 11.1 to 11.12).</p> <p>ILEX will be asked to report to LSB on how effective this has been in practice.</p>

Advice from Mandatory Consultees and ILEX response

The key points made by the Mandatory consultees and ILEX response (where appropriate) to each are as follows:

Issue	Response
The Office of Fair Trading	
<p>OFT concluded that they could find no evidence or theory to suggest that the continued supply of Associate Prosecutors or the regulatory rules proposed by ILEX would (or would be likely to) prevent, restrict or distort competition.</p> <p>Within the parameters outlined in the application, by allowing APs these rights may strengthen competition, with APs acting as an alternative supply to solicitors and barristers in routine cases prosecuted by the CPS in the magistrates courts thus broadening access to justice.</p>	<p>ILEX agrees with the view that if granted, these extended rights would not prevent, restrict or distort competition.</p> <p>APs will broaden access to justice by continuing to make available to CPs an alternative supply of services.</p>
The Legal Services Consumer Panel	
<p>Overall the LSCP support the application which ensure a wider pool of competent advocates is available to the Crown Prosecution Service and add to the diversity of the profession which itself will increase consumers access to appropriate legal services.</p> <p>The LSCP raised three specific issues:</p> <p><i>Relationship between the proposed regulatory arrangements and Quality Assurance for Advocates (QAA)</i></p> <p>The LCSP note that that there are parallels between the proposals for APs and the QAA initiative and that any risk of regulatory overlap brings the risk of confusion, inconsistent levels of protection and unnecessary cost. LSCP recognise that this applications and the QAA initiative are working to different timetables but believe it would be desirable to see a public commitment to transition to QAA within the shortest possible timeframe.</p> <p><i>Complaints</i></p> <p>The proposal is that CPS will consider all complaints about APs internally and, if necessary, refer any disciplinary action to ILEX. The LSCP view is that this approach confuses complaint-handling and discipline.</p> <p>LSCP note that the proposals appear to be inconsistent with the spirit of the Legal Services Act which gives consumers the right to complain to the Legal Ombudsman. IPS expressed the view that since the CPS is technically the client, any complaint should</p>	<p>The QAA scheme developed as a mechanism of assuring the quality of defence advocates and its mandatory application is in respect of those providing services funded by the Legal Services Commission.</p> <p>CPS has developed an internal scheme currently being rolled out to all CPS advocates which is an equally suitable alternative to the QAA scheme. For APs to be subject to the QAA scheme there are wider implications for the other CPS prosecutors.</p> <p>APs provide litigation and advocacy services to the CPS. Therefore CPS is the client and would not be within the scope of the Legal Ombudsman (LeO).</p> <p>ILEX's view (which is shared by LeO) is that witnesses and victims are not clients of the CPS and therefore are not within the scope of LeO.</p> <p>ILEX have considered the provisions in the Act for the establishment of a voluntary scheme and concluded</p>

<p>be dealt with by internal investigation. The Legal Ombudsman’s view was that since a complaint about a prosecutor would not be from a client of the lawyer concerned, then it would fall outside the terms of the Act.</p> <p>LCSP’s view is that this is “wholly unsatisfactory”. An AP comes into contact with the public (especially victims and witnesses) and this may give rise to a complaint which should be dealt with by an independent and impartial body if the matter cannot be resolved at the first tier (in this case CPS). LSCP suggest that IPS and the Legal Ombudsman explore how independent resolution can be achieved, perhaps using the voluntary jurisdiction provisions within the Act.</p> <p>LSCP welcomes the proposal to involve lay representation in all stages of decision making and adjudication, and particularly all decisions about complaints will be taken by bodies with a lay majority.</p> <p><i>Training – client care skills</i> LSCP note that the training on communication and negotiation covers conduct of proceedings but that APs should also demonstrate that they have the necessary client care skills for dealings with victims and witnesses.</p>	<p>that this is not possible since s164(4) restricts voluntary schemes to circumstances where services have been provided to the complainant and APs do not provide services to members of the public. ILEX also make reference to s164(5) which requires that at the time of the act or omission complained of there was no activity in relation to which the person was an authorised person (this would not be met because APs will be authorised persons). A further element that precludes the establishment of a voluntary scheme is the definition of “legal services” for the purposes of this section which refers to definition of legal activity in s12; ILEX view is that APs are not providing legal services/activities to witnesses and victims.</p> <p>ILEX submits that there are suitable arrangements in place to allow witnesses and victims who are aggrieved to make a complaint. The Victim’s Code, Prosecutors Pledge and the Witness Charter all set out standards that can be expected. There is a procedure for dealing with complaints which can ultimately lead to a referral to the Attorney General’s office. In some circumstances complaints can also be made to the Parliamentary and Health Service Ombudsman whose jurisdiction includes consideration of complaints that a criminal justice agency has failed to provide the service set out in the Victim’s Code.</p> <p>The CPS and police have joint witness care units who are responsible for maintaining contact and providing information to witnesses and victims. Consequently, contact between APs and witnesses and victims is limited to court hearings. Level 1 APs will be dealing with straightforward guilty pleas where witnesses are not required and victims not required to participate in hearings. Level 2 APs will encounter witnesses and victims in summary offences which do not carry a term of imprisonment.</p> <p>Communication and negotiation competencies are assessed when recruiting candidates at both levels. Also assessed are reasoning and decision making which include balancing the needs of the public, police, victims, witnesses and defendants.</p> <p>The Level 2 Foundation Course covers professional duties and responsibilities of APs and a session on witness care and potential witness problems. These are suitable to train and assess soft skills.</p>
<p>The Lord Chief Justice</p>	
<p>The LCJ view was that the application appears unlikely to have an adverse impact on the courts in England and Wales on the basis that there is no extension on what is currently permitted by statute.</p>	

The LCJ noted that the proposed regulatory arrangements (the Certification Rules) have been written to allow for any future extension of cases that APs were allowed to prosecute (including cases which are punishable with a term of imprisonment). LCJ note that if any further extension is considered, they must be subject to full and proper consultation with the judiciary and other interested parties.

S7A of the Prosecution of Offences Act 1985, as amended by s55 of the Criminal Justice and Immigration Act 2008 allows Associate Prosecutors to conduct criminal proceedings in the magistrates courts other than trials of offences triable either way or offences which are punishable with imprisonment in the case of persons aged 21 or over.

Section 7A(12) makes provision for the Attorney General to amend the section so as to delete the words "or offences which are punishable with imprisonment in the case of persons aged 21 or over". This would be achieved by statutory instrument laid before and approved by resolution of each House of Parliament. When the Act was being considered, the Attorney General assured the House of Lords that no such amendment would be brought before 1 May 2011. The CPS has no intention at present to seek this extension of powers.

This application includes these additional rights. The proposed qualification courses and assessment are intended to be sufficient to cover these rights if granted at a later stage.

The Parliamentary procedure ensures that the decision to extend the rights which the DPP may permit Associate Prosecutors to exercise to include imprisonable offences will be subject to public scrutiny. ILEX agrees that it will consult on proposals for training and assessment should the extension be sought and granted by Parliament in the future.