



**RULE CHANGE APPLICATION MADE BY ILEX PROFESSIONAL
STANDARDS LTD TO THE LEGAL SERVICES BOARD
UNDER SCHEDULE 4, PART 3, PARAGRAPH 20(1)
LEGAL SERVICES ACT 2007**

APPLICATION TO REVISE RIGHTS OF AUDIENCE CERTIFICATION RULES

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DETAILS OF PROPOSED APPLICATION

1. This application is submitted by ILEX Professional Standards Ltd (IPS), as the regulatory body for the Institute of Legal Executives (ILEX), an Approved Regulator under the Legal Services Act, to revise the Rights of Audience Certification Rules.

Nature and effect of existing arrangement

2. The Rights of Audience Certification Rules are the rules under which ILEX grants to ILEX Fellows rights of audience. They set out entry and qualification requirements.
3. The rules require that Graduate members and Fellows seeking to be granted rights of audience and Legal Executive Advocates wishing to continue to exercise rights of audience may only do so if they are employees. Employment covers working in solicitors' or litigators' firms, or in legal departments in other organisations managed by solicitors or litigators.
4. The Rules were not intended to enable Legal Executive Advocates to practise independently. However, they also prevent Graduate members and Fellows and Legal Executive Advocates from becoming Managers in legal practices, although that does not amount to independent practise.

Reasons for alteration

5. The Legal Services Act 2007 has introduced new business structures, referred to as Legal Disciplinary Practice and Alternative Business Structures.
6. The Solicitors Regulation Authority has taken the opportunity provided by the Act to remove the restriction on non-solicitors sharing ownership of solicitors' practices. This structure is referred to as a Legal Disciplinary Practice. As a result, it is now possible for Legal Executives to become partners or owners in solicitors' firms. A number have done so. The Act defines those, who share ownership of an organisation which is established to provide legal services, as Managers.
7. The effect of a person becoming a 'Manager' in a solicitor's firm or, in due course, in a company or other organisation providing legal services, is that they cease to meet the requirements of Rule 6 of ILEX's Rights of Audience Certification Rules, that they are employees, and to be able to fulfil the requirements of the other Rules which refer to employment. Therefore any Legal Executive Advocate who becomes a Manager in a Legal Disciplinary Practice is unable to continue to exercise their rights

of audience. Similarly an ILEX Manager in a firm is unable to qualify as a Legal Executive Advocate. It is submitted that this is not consistent with the intentions of the Legal Services Act.

Nature and effect of proposed alteration

8. IPS wishes to alter Rules 1, 6, 7, 64, 70, 80 and 88 of its Rights of Audience Certification Rules. The alterations are in consequence of changes brought about by the Legal Services Act 2007. Each of these rules sets out the requirement that Graduate members or Fellows seeking to be granted rights of audience and Legal Executive Advocates wishing to continue to exercise rights of audience may only do so if they are employees. The Rules prevent ILEX members who become Managers in Legal Disciplinary Practices and, in the future, in licensed bodies from seeking rights of audience or continuing as Legal Executive Advocates.
9. The Rules will be altered so that Graduate members and Fellows who are Managers in organisations which are owned or managed by persons authorised to provide litigation services or which are authorised to provide litigation services under the Legal Services Act 2007 can qualify as Legal Executive Advocates or continue to exercise rights of audience, as the case may be.
10. The definition of the organisations in which ILEX members can qualify or practise as advocates is limited to those authorised to provide litigation services. This ensures the environment in which they may do so is directly comparable with solicitors practices, as under the current rules ILEX advocates would not be able to practise or qualify as advocates in organisations where there were no authorised litigators practising.

DETAILS OF REGULATORY ARRANGEMENTS

11. It is submitted that the existing Rules do not take account of the new business structures introduced by the Legal Services Act 2007. They are unduly restrictive and prohibit ILEX members from making progress in their careers.
12. Legal Executive Advocates are suitably trained and subject to effective regulation by IPS. The change in practice structure, by including Legal Executive Advocates who become Managers in legal practices, will not affect their training and regulation.

Scope

13. The scope of the amendment is strictly limited. It will not enable Legal Executive Advocates to practise independently as Advocates. They will still need to be working in a solicitors' or other authorised litigators' firm or in an organisation which is authorised to provide litigation services. The alteration is required only to meet the circumstances which have been created by the lifting of the limitation on ownership of solicitors' practices and to enable Legal Executive Advocates to continue to exercise the rights of audience granted to them.

Impact

14. ILEX currently has 76 Legal Executive Advocates. Already one Legal Executive Advocate has had to cease exercising advocacy rights because he is now a Legal Executive partner in a Legal Disciplinary Practice. Other Legal Executive Advocates are being held back from becoming Managers because otherwise they will have to relinquish their advocacy rights.

The Alterations

15. A copy is attached at **Appendix 1** showing the alterations proposed to Rules 1, 6, 7, 64, 70, 80 and 88 of the Certification Rules.

IMPACT UPON REGULATORY OBJECTIVES

16. It is intended that the revisions to the Rights of Audience Certification Rules will meet the regulatory objectives, as applicable, and the professional principles set out in the Legal Services Act 2007, to no less extent than the existing Rules.

Protecting and promoting public interest

17. The employment criteria is a pre-condition to enrolment or continuation to practise as a Legal Executive Advocate. The proposed amendment will enable Managers in legal practices to enrol onto the rights of audience qualification course and continue as Legal Executive Advocates. They will still need to be working in legal practices. The revisions will not enable Legal Executive Advocates to practise independently. It is submitted therefore that the public interest will be protected to the same level as under the present rules.
18. Comments have been made that members will be able to work without adequate supervision if Legal Executive Advocates were able to practise as Managers in a legal practice. It is submitted that most members qualifying as Legal Executive Advocates have substantial experience; it is a pre-requisite to enrolment onto the advocacy

qualification scheme. The level of supervision being exercised by their firms will vary according to the practise of each firm and the experience of Legal Executive Advocates. As will be seen from the responses to the IPS consultation, Legal Executive Advocates recognise the importance of seeking guidance from senior colleagues when it is necessary to do so.

19. It is mandatory for firms to exercise appropriate supervision or undertake file reviews as part of their legal aid franchise requirements or as part of other accreditation schemes to which they may belong. It is also a requirement under the Solicitor's Code of Conduct that client matters are suitably supervised. It is submitted that those supervision or file review requirements will continue in respect of Legal Executive Advocates who become Managers as they do for other Managers in a practice, including ILEX members who may already be Managers.

Supporting the constitutional principle of the rule of law

20. All ILEX members are required to uphold the rule of law and impartial administration of justice. That is a requirement set out in the first principle in the Code of Conduct applicable to all ILEX members. It is repeated in the Rights of Audience Conduct Rules, which all Legal Executive Advocates must observe. The proposed revisions to the Rights of Audience Certification Rules will not affect this position.

Improving access to justice

21. Legal Executive Advocates are able to deal with clients' cases from start to finish. This can be important, particularly for vulnerable clients who build up a rapport with their legal advisors and are both insistent and reliant upon continuity of service. Preventing Legal Executive Advocates from continuing to undertake advocacy or preventing Graduate members and Fellows from seeking to qualify as Legal Executive Advocates because they are offered an opportunity by their firms to further their standing by becoming Managers will deny clients the continuity of service they could otherwise have benefited from. It is submitted that this will hinder the objective of improving access to justice for clients who do not want the involvement of another advocate in their case.
22. In such instances clients may choose not to seek legal assistance or not pursue a course of action where otherwise they may have done so. This inability of Graduate members and Fellows to become Legal Executive Advocates or continue to practise as such because they opted to become a Manager may deny clients' access to justice.

Protecting and promoting interests of consumers

23. The ILEX Code of Conduct and the Rights of Audience Conduct Rules have been drafted to ensure that consideration of clients' interests is at the forefront of the work of ILEX members and Legal Executive Advocates. ILEX members are expected to act in the best interests of their clients.
24. The ability of Graduate members and Fellows to qualify and continue to practise as Legal Executive Advocates if they become Managers in a legal practice will help them to continue to protect and promote the interests of consumers. They will have the best grasp and knowledge of a client's case and will be the most suitable advocate in many instances to undertake the advocacy in the case, often the aspect which clients perceive to be of the most importance. In such instances the Legal Executive Advocate can be the person best placed to protect and promote the interests of the consumer.
25. ILEX members are already able to become Managers in legal practices and continue to undertake advocacy in the chambers of the County Court and High Court. In particular ILEX members working in civil and family proceedings will be appearing as advocates in County Court chambers hearings on a regular basis. There is no restriction on them doing so if they become Managers. Preventing Legal Executive Advocates becoming Managers is inconsistent with that position and denies them the opportunity to protect and promote their clients' interests.

Promoting competition in the provision of services

26. It is submitted that preventing Graduate members and Fellows who become Managers in legal practices from enrolling onto the rights of audience qualification course or continuing to practise as Legal Executive Advocates will inhibit rather than promote competition in the provision of services.
27. ILEX members will not be able to compete with other members of the profession who can practise as advocates and be Managers at the same time. Even though the law permits ILEX members to become a Manager and to become an authorised Advocate, the current rules require them to make a choice to either become a Manager or qualify as a Legal Executive Advocate. Other practitioners are able to become both Advocate and Manager.
28. In other instances employers of ILEX members will be forced to decide whether to recognise the contribution Graduate members and Fellows make to their firms by either offering them the rights of audience qualification scheme or the opportunity to become a Manager, rather than both. This restricts the practice from organising

itself in a way which it deems appropriate, even though the organisational structure is a lawful one.

Encouraging an independent, strong, diverse and effective legal profession

29. The ILEX rights of audience route to qualification is different from the academic routes through which most other advocates qualify. Despite achieving, at least, the same standards of qualification as other advocates, Legal Executive Advocates bring different backgrounds and approaches to their work, which assists their firms to provide services to meet clients' needs. At the point of qualification or entry into ownership of a firm, they will have substantially more experience than other types of advocate. Their ability to be both advocates and Managers within their practices significantly supports compliance with this objective.

Increasing the public understanding of the citizen's legal rights and duties

30. The proposed revision will be neutral as far as this objective is concerned.

Promoting and maintaining adherence to the professional principles

31. The revisions to the Rights of Audience Certification Rules will not have an adverse impact on the professional principles.

Authorised persons should act with independence and integrity

32. The ILEX Code of Conduct and Rights of Audience Conduct Rules include the principle that members must ensure that their independence is not compromised. They must not act where there is a conflict of interest or a significant risk of a conflict occurring.

33. The Code of Conduct also includes the principle that members must act with integrity. It reiterates that ILEX members must maintain their integrity and uphold the respect and confidence placed in them and their profession by clients, the courts, the public, colleagues, employers and others.

34. The Rights of Audience Conduct Rules include specific instances where Legal Executive Advocates must consider whether they should cease to act for a client and circumstances which may affect their ability to act for clients.

35. ILEX members who become Managers will continue to act with independence and integrity to the same degree as they do at present and will be required to do so under the Code of Conduct and Rights of Audience Conduct Rules.

Authorised persons should maintain proper standards of work

36. The requirement that members must maintain proper standards of work is enshrined in the Code of Conduct. For example, there are the principles that members must maintain high standards of conduct, act in the best interests of their clients and act within their competence. The Rights of Audience Conduct Rules include rules which address the conduct of Legal Executive Advocates. They include that Legal Executive Advocates must ensure that they undertake advocacy effectively and only do so if the advocacy is within their competence.
37. The standard and quality of work undertaken by Legal Executive Advocates will not be affected if they become Managers in legal practices. They will continue to comply with the ILEX Code of Conduct and Rights of Audience Conduct Rules.
38. Legal practices have supervision and file review procedures that will continue to apply to Graduate members and Fellows enrolled on the rights of audience qualification scheme and Legal Executive Advocates once they become Managers. Many members of ILEX, including Legal Executive Advocates, are already heads of department or senior lawyers in practices. There is no evidence that the quality and standard of their legal work has been affected by their standing in the firm. Practices have promoted them to positions as senior lawyers, heads of department and now Managers in recognition of the quality and standard of their work and the contribution they make to the practice.

Authorised persons should act in the best interests of their clients

39. The requirement that ILEX members must act in the best interests of their clients is set out as a specific principle in the ILEX Code of Conduct. It reminds ILEX members that their clients' interests are paramount and work must be undertaken to a proper standard. The requirements are also set out in the Rights of Audience Conduct Rules.
40. If Managers are able to qualify or continue as Legal Executive Advocates they will be able to act in the best interests of their clients by offering clients the full range of services, including advocacy. If they are prevented from presenting cases in court they will not be able to act in the best interests of clients.

Persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice.

41. The Code of Conduct stipulates that members owe an overriding duty to the court. The Rights of Audience Conduct Rules also contain the principle. The proposed revision to the Rights of Audience Certification Rules will not affect this position.

The affairs of clients should be kept confidential

42. The Code of Conduct and Rights of Audience Conduct Rules both include that members must respect confidentiality and trust. The proposed revision to the Rights of Audience Certification Rules will not affect this position.

OBLIGATIONS UNDER S28 LEGAL SERVICES ACT 2007

43. This application is made by IPS in compliance with the duties imposed by s28 Legal Services Act 2007 on Approved Regulators. In revising the Rules IPS has had regard to the Better Regulation Principles.

Proportionate

44. IPS' proposal to enable Graduate members and Fellows to enrol onto the rights of audience scheme or practise as Legal Executive Advocates where they are Managers in legal practices is proportionate. It reflects developments made possible under the Legal Services Act 2007.

45. It is submitted that without the revisions ILEX members who are Managers who seek to qualify as Legal Executive Advocates are placed at a disadvantage compared to other ILEX members or other legal practitioners, who will be able to become Managers in legal practices but those wishing to become or continue as Legal Executive Advocates cannot. The restriction which the current rule imposes is disproportionate in the light of the practice models now permitted at law.

Accountable

46. The revised rules are made under the procedures provided in the Legal Services Act. The proposals are made following a consultation process. The application is made with the approval of ILEX and its members and is subject to scrutiny by the Legal Services Board.

Consistent

47. The revision to the Rules will enable IPS to take a consistent approach with all ILEX members seeking to qualify as Legal Executive Advocates regardless of whether they are Managers in a practice. The absence of the revision will mean that IPS will have

to discriminate against Managers by not allowing them to qualify as Legal Executive Advocates or continuing to hold the advocacy qualification.

Transparent

48. IPS has notified all interested stakeholders, including ILEX members, existing Legal Executive Advocates, approved regulators, the senior judiciary and consumer organisations of its proposals to revise the Rights of Audience Certification Rules. A consultation document was issued on the proposals and invited comment. It was directly mailed to stakeholders including consumer groups. Members of the senior judiciary were notified of the consultation by letters sent by the Chief Executive of ILEX.

49. The consultation responses are discussed below.

Targetted

50. The changes proposed in the application are targeted specifically at the anomaly which has been created in the Rights of Audience Certification Rules by changes in the law introduced by or resulting from the Legal Services Act 2007. They do not seek to change or extend the rights which may be exercised. They do not make it possible for ILEX advocates to practise independently outside litigation practices. They aim only to enable Legal Executive Advocates to continue to exercise rights they have earned whilst enjoying enhanced status within their firms.

CONSULTATION

51. As mentioned earlier IPS sent a consultation setting out its proposals to interested stakeholders. Direct notification was sent to Legal Executive Advocates. Sixteen Legal Executive Advocates made responses to the consultation. They all support the proposal to revise the Rights of Audience Certification Rules. Many Legal Executive Advocates commented that the present position prevented them from making progress in their careers, which was an anomaly, as they had often been selected by their firms to qualify as Legal Executive Advocates due to their experience and the contribution they make to the firm. Preventing them from becoming Managers denied their firm's the opportunity to further recognise the contribution they make to the practice and the seniority with which they are regarded.

52. A response was received from the Bar Council, which opposed the proposals. The Bar Council represents the interests of barristers. The Bar Council commented that

it did not consider that it was necessary or logical that an ILEX member could be both Manager and advocate and that it could remove a layer of supervision.

53. IPS responds that the qualification arrangements for Legal Executive Advocates ensure they are competent to exercise the rights of audience granted to them. This is assured the recognition of the qualification originally under the Courts and Legal Services Act and now the Legal Services Act.
54. Direct supervision by a solicitor is not a requirement under the rules. It is impractical in relation to advocacy. The regulators of authorised litigators, primarily the Solicitors Regulation Authority, prescribe the arrangements or supervision within litigation practices. Those arrangements permit Legal Executives to be managers, i.e., to share in the ownership of those firms in accordance with the Legal Services Act legislation. This represents that there exist appropriate and proportionate arrangements for the management of litigation services to secure the public interest.
55. Supervision, with all advocates, takes place in respect of the work taking place on files rather than the actual advocacy. Regulators rely on competence rules in respect of the actual advocacy. Graduate members and Fellows are required to have gained substantial experience of litigation and chambers advocacy/police station work before enrolling on the rights of audience qualification whereas other practitioners are able to undertake advocacy immediately upon qualification, at a point when they have limited experience. Legal Executive Advocates are required to recognise the importance of seeking guidance from senior colleagues when necessary.
56. The Bar Council also commented that it was necessary to evaluate the implications upon the public and consumer interests of removing the managerial and supervisory structures. IPS submits that its earlier comments confirm that the interests of consumers and the public will remain protected through the proposed amendments, whereas otherwise they may not.
57. No responses were received from consumer groups or other approved regulators or their regulatory bodies.
58. A copy of the consultation appears at **Annex 2** and a document appears at **Annex 3** which sets out each response to each question.

DESIRED OUTCOME

59. The desired outcome for IPS is to obtain approval for and implement the amendments to the new Rights of Audience Certification Rules to enable ILEX Advocates to become managers in litigation practices and to enable ILEX members who are Managers in litigation practices to have the opportunity to qualify as advocates.

IMPACT UPON OTHER APPROVED REGULATORS

60. When deciding to amend the Rules IPS was alert to the fact ILEX members seeking to qualify as Legal Executive Advocates or continuing to practise as Legal Executive Advocates must work in legal practices. Most will fall under the regulation of the Solicitors Regulation Authority. The proposed amendments will not have any impact upon the regulatory arrangements of the Solicitors Regulation Authority or other approved regulators.

PROPOSED IMPLEMENTATION PLAN

61. It is proposed that IPS will implement the new Rules as soon as approval is granted by the Legal Services Board.

62. IPS recognises the importance of bringing the new Rules to the attention of all ILEX members and other approved regulators. Notices will be given to members through the Legal Executive Journal, which is sent to all members each month. Direct notification can be sent to approved regulators.

EXPLANATORY MATERIAL

63. The proposed amendments are self explanatory. No further explanatory material is required in support of this application.

SUBMISSION

64. The LSB is asked to consider this application.

ANNEXES

1. Draft Rights of Audience Certification Rules
2. Consultation
3. Analysis of consultation responses