

INSTITUTE OF LEGAL EXECUTIVES

**APPLICATION TO BECOME APPROVED REGULATOR
TO AWARD RIGHTS OF AUDIENCE AND RIGHTS TO
CONDUCT LITIGATION
TO ASSOCIATE PROSECUTOR MEMBERS OF ILEX**

19 JULY 2010

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PART I

INTRODUCTION

PART I – INTRODUCTION

THE APPLICATION

1. The Institute of Legal Executives (ILEX), an approved regulator under the Legal Services Act, makes an application to be designated by the Lord Chancellor to grant rights of audience and rights to conduct litigation to Associate Prosecutor members of ILEX under Part 2 of Schedule 4 Legal Services Act 2007. The Application is made in accordance with rules issued by the Legal Services Board under Part 2 of Schedule 4 of the Legal Services Act 2007.
2. Associate Prosecutor is a category of ILEX membership created by ILEX in November 2008 for Crown Prosecution Service (CPS) staff employed in the role of Associate Prosecutor.
3. Associate Prosecutors are prosecution advocates who, since 1998, have derived their rights of audience and rights to conduct litigation from the Director of Public Prosecutions (the Director) through formal statutory designation, under section 7A (1) of the Prosecution of Offences Act 1985.
4. However, section 7A (8) of the Prosecution of Offences Act 1985¹, inserted by section 55 of the Criminal Justice and Immigration Act 2008, states that from 1 May 2011 the Director will no longer be able to confer on designated persons any rights of audience or rights to conduct litigation.
5. If this application is successful, from 1 May 2011 ILEX will assume from the Director the function of awarding Associate Prosecutor members the rights of audience and rights to conduct litigation necessary to exercise the rights and powers of a Crown Prosecutor as permitted by section 7A of the Prosecution of Offences Act 1985.
6. The rights of audience sought by ILEX for Associate Prosecutors that are the subject of this application are split into two levels. The levels correspond with the level of experience and training of Associate Prosecutors and the authority granted by the Director to prosecute cases on his behalf.
7. Associate Prosecutors holding the **Level 1** Rights of Audience and Litigation Certificate in Criminal Proceedings will be permitted to appear before Justices or a District Judge in the magistrates' courts (including the youth court) to prosecute all adult and youth offenders where the CPS is the prosecuting authority except in trials, Newton Hearings, Special Reasons Hearings, Contested Preventative Civil Orders, and Contested Binding Over proceedings; and appear in the magistrates, youth and Crown Court before a judge to conduct a bail application where the CPS is the prosecuting authority.

¹ Section 7A (8) of the Prosecution of Offences Act 1985 states – as from 1 May 2011 nothing in this section will confer on persons designated under this section (a) any rights of audience, or (b) any right to conduct litigation, for the purposes of Part 3 of the Legal Services Act 2007 (reserved legal activities)

8. Associate Prosecutors holding the **Level 2** Rights of Audience and Litigation Certificate will have the same advocacy rights as holders of the Level 1 certificate but also be permitted to prosecute trials in the magistrates' courts (including the youth courts) in summary only offences.
9. The litigation rights sought for Associate Prosecutors will permit them to conduct out of court casework functions in cases where the CPS is the prosecuting authority and where the case falls within their statutory remit² to prosecute. This includes the review of a prosecution case by applying the Code for Crown Prosecutors, selection of witnesses in trials in the magistrates' courts and youth court, disclosure of unused material in magistrates' courts and youth court trials and amendment of a charge or summons.
10. This Application is made in accordance with Part 2 of Schedule 4 of the Legal Services Act 2007 (LSA). ILEX is an approved regulator under the LSA. ILEX believes that its Application to grant rights to conduct litigation and rights of audience to Associate Prosecutors will meet the regulatory objectives and professional principles in the LSA.
11. This Application seeks to establish that:
 - An Associate Prosecutor member of ILEX qualified in accordance with the proposed regulations will have the education, training and experience needed to exercise the rights of audience and rights to conduct litigation set out in this application;
 - ILEX has in place rules of conduct which it is able to enforce against Associate Prosecutors who are members of ILEX; and
 - ILEX will be able to ensure that rights which are granted will be exercised in accordance with the requirements of relevant legislation.
12. **Part II** of this Application sets out the rights sought and outlines how the application will support the regulatory objectives and professional principles. It also provides a commentary on the rights sought and outlines how the application meets the Better Regulation Principles. **Part III** of this Application describes and provides commentary on the Rights of Audience and Litigation qualification scheme, and **Part IV** of this application describes the conduct rules applicable to Associate Prosecutors. The Associate Prosecutor Rights of Audience and Litigation Certification Rules and supporting appendices appear in the separate document.

THE INSTITUTE OF LEGAL EXECUTIVES (ILEX)

13. ILEX is the professional body which represents Legal Executives and other members, including Associate Prosecutors and enhances their role and standing in the legal profession. It is a company limited by guarantee, not having a capital divided into shares.

² The statutory remit of an Associate Prosecutor is set out at section 7A of the Prosecution of Offences Act 1985

14. It was a body authorised to grant Rights of Audience to suitably qualified Fellows, under section 29 of the Courts and Legal Services Act, by virtue of the Institute of Legal Executives Order 1998 (SI 1998/1077), which came into force on 23 April 1998. It is now an approved regulator under the Legal Services Act 2007 for the purposes of awarding rights of audience to ILEX members and the power to administer Oaths and a designated qualifying regulator in respect of immigration advice and services.
15. ILEX is the successor to the Solicitors Managing Clerks Association which was founded in 1892, incorporated in 1928 and adopted its current title of Institute of Legal Executives in 1963. The Memorandum and Articles of Association of ILEX appear at **annex 1** of this Application. ILEX's primary objects are, amongst others, to provide an organisation for those who are registered or studying with ILEX who provide legal services; to provide for the education, training and development of knowledge and skills for Fellows, paralegals, legal assistants and other support staff who wish to become experts in the law; to advance and protect the status and interests of Fellows and those who wish to become experts in the law; to promote professional unity, co-operation and mutual assistance amongst those who are employed in the legal profession or engaged in legal work; to promote and secure professional standards of conduct amongst Fellows and those who are registered with ILEX, by publishing codes of conduct, guides to good practice and the protocol between ILEX and its regulatory body, ILEX Professional Standards Ltd, and regulating the membership through that body to ensure compliance with those standards; and to promote public interest and fair access to justice and the professions.
16. ILEX is governed by its Council, which is responsible for determining its policy. Council comprises Fellows engaged in legal work, who are elected to represent constituencies throughout England and Wales. There are 27 constituency places on Council and 6 places for Fellows who are co-opted onto the Council. A list of the current council members appears at **annex 2**. Council currently meets six times each year. Council members are responsible for ensuring that the affairs of ILEX are conducted diligently, legally and honestly.
17. The ILEX Council has adopted, and maintains, a three year Business Plan which defines the strategic and policy direction that the ILEX group will follow. It provides a focus for ILEX staff to enable them to deliver to targets. The current business plan, which covers the period 2010 to 2012, appears at **annex 3**.
18. ILEX's current strategic aims include the following:
 - To ensure its professional qualification remains relevant to the needs of law firms, legal departments, employers and clients, and that it is delivered to meet national standards.
 - To develop its role as a natural home for all those seeking education, training or qualification relevant to their role in the legal environment.
 - To make itself more relevant to its members through the services it provides and by seeking new professional opportunities for members.

- To develop its role in the public interest as an efficient and respected professional association and regulator of legal services.
 - To increase accessibility and diversity amongst the legal profession.
 - To enhance its focus on customer service.
19. ILEX has in place policies, which apply to Council members and employees, designed to ensure compliance with best practice in relation to the ethical management of ILEX including matters such as discrimination, freedom of information and data protection. The policies include the Code of Conduct, Whistleblowers policy and the Equality and Diversity Policy, under which a Group Single Equality and Diversity Scheme and Action Plan is published.
20. Each year the annual accounts of the ILEX group are subject to an audit. A copy of the 2009 annual report and statement from the auditors appears at **annex 4**.

ILEX PROFESSIONAL STANDARDS LTD

21. ILEX is recognised as an approved regulator under the Legal Services Act 2007 (the LSA). In accordance with the provisions of the LSA ILEX has established a subsidiary company to which it has delegated its regulatory activities to ensure that its regulatory functions are carried out independently from its leadership and representative functions. The subsidiary company is called ILEX Professional Standards Ltd (IPS).
22. ILEX Council has delegated to IPS responsibility for complaints handling, development of the Code of Conduct and oversight of professional standards including its qualification schemes and regulatory structures. IPS is also responsible for the continuing professional development scheme and ILEX's qualifying employment requirements. IPS will regulate in the public interest in accordance with its Memorandum and Articles of Association, which appear at **annex 5**.
23. IPS was incorporated in October 2008. It is governed by a Board of Directors comprising 4 Lay Members and 3 Fellows of ILEX. The Chair of the Board is a Lay Member. A list of the current Board members appears at **annex 6**.
24. Protocols have been agreed between ILEX and IPS to facilitate good working relationships between the two companies and to ensure the requirements of the LSA regarding independent regulation of ILEX members are met. The protocols recognise that each company has its own obligations and priorities and that the best results for the public and ILEX members will be achieved by collaboration. The protocols are supported by a Service Level Agreement. A copy of the protocols and service level agreement appear at **annex 7**.
25. IPS is committed to openness and accountability. It has developed a number of documents setting out how the Board will work and the standards it aims to

achieve. The documents are the Code of Conduct for Board members, reserved matters and standing orders. Copies of these documents appear at **annex 8**. IPS also maintains a risk management document, which is reviewed on a regular basis both by the IPS Board and IPS staff.

26. The Board is accountable to ILEX, ILEX members and the Legal Services Board. It has set out its strategy for the next three years and has developed a business plan against which performance can be assessed. Copies of these appear at **annex 9**. It also evaluates the performance of itself and IPS each year, including appraisal of Board members. During 2010, IPS will publish its first annual report to bring all these matters together.
27. The IPS strategy links with the vision statement adopted by the ILEX Group. IPS is committed to underpinning the rule of law and the administration of justice and to acting in accordance with the regulatory objectives and professional principles set out in the Legal Services Act. The strategy commits IPS to:
 - maintain an independent approach in its work
 - develop an understanding of the needs of those to whom ILEX members provide legal services
 - work closely with ILEX to support professional development and sustain good professional practice
 - be a proportionate regulator which targets risk
 - demonstrate good governance and achieve value for money in all it does.
28. The Board has divided its responsibilities into six work streams. The strategy sets out key aims for each of the six work stream areas. The work streams are governance and process; education and standards; registration and accreditation; fitness to practise; communications and partnership; and performance and risk. Each member of the board has special responsibility for one of these areas, with the chair focusing on overall strategy, finance and relations with the professional leadership side.

REGULATORY CONFLICT

29. The protocols set out arrangements for resolving any conflict that may arise between ILEX and IPS. They set out arrangements for the sharing of information and consultation.
30. Disputes which arise between the Companies, whether in relation to the protocols or otherwise are resolved by discussions involving the Chief Executives of ILEX and IPS, the President for the time being of ILEX and the Chairman of the IPS Board. Where a dispute is unresolved it may be referred to an independent external facilitator. Nothing in the protocols prevents either company from referring a dispute which cannot be settled between them to the Legal Services Board to be resolved. At least 5 working days notice will be given to the other company if either company intends to refer a dispute to the Legal Services Board

31. ILEX and IPS believe that these arrangements offer a suitable and proportionate mechanism for dealing with regulatory conflicts.

APPROVED REGULATOR ROLE

32. IPS has scoped out a plan for the implementation of the associate prosecutor rights qualification scheme. A copy of the implementation plan appears at **annex 10**.
33. The plan sets out the activities that will need to be undertaken to implement the qualification scheme and the proposed timescale for each activity. Each activity has been subdivided to show in detail the work that will be involved.
34. Annexed to the implementation plan is a document setting out the resources that IPS will require to implement and administer the scheme. Wherever possible IPS will make use of existing resources and the expertise of staff who have experience of implementing and administering the present rights of audience scheme. It is envisaged that the level of work that will be required can be incorporated within existing roles of IPS staff.
35. The implementation plan includes a financial forecast outlining the projected income and costs for running the scheme. They also include costs of recruiting committee members and external advisors which will be one off costs. These costs will be shared between the various schemes that ILEX has for practice rights (such as litigation and probate rights).
36. Under the protocol between ILEX and IPS, ILEX agrees that it will make available such resources as are reasonably required and are appropriate to enable IPS to carry out its regulatory functions. The ILEX Chief Executive and President have received and agreed the implementation business plan. It is expected that the scheme will be self financing.

Membership of ILEX

37. ILEX members register in grades of membership appropriate to their level of qualification and experience. ILEX introduced new membership grades in September 2009. The new grades are Student member; Affiliate (level 2 or level 3 qualification or three years legal experience); Associate (level 3 or qualifying law degree); Graduate member (level 3 and 6 qualification or passed the LPC or BVC); and Fellow. A separate grade of Associate Prosecutor was created in November 2008 for Associate Prosecutor employees of the CPS.
38. In July 2010 there were 21,498 members registered with ILEX. Of those, 7,481 were Fellows. 463 members are registered in the Associate Prosecutor grade of which 21 are also Fellows of ILEX.
39. Only Fellows are full corporate members of ILEX and entitled to the benefits and privileges conferred by membership.

40. Since ILEX became an authorised body for the purposes of awarding rights of audience to its members there have been approximately 67 Fellows of ILEX who have qualified as Legal Executive Advocates authorised to appear in criminal, civil or family proceedings.

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

41. ILEX has in place a scheme of Continuing Professional Development (CPD). CPD is important to maintaining competence and to developing the ever-changing skills needed by legal practitioners. ILEX monitors compliance with the CPD requirements. A failure to comply may lead to disciplinary action by IPS.
42. Associate Prosecutor members are required to undertake 16 hours CPD each year. All ILEX Fellows, except Retired Fellows, are required to undertake 16 hours CPD each calendar year, Graduate Members are required to undertake 12 hours CPD each calendar year and Associate members are required to undertake 8 hours CPD each calendar year. Half of the CPD must be relevant to the area of law in which the member practices and the other half may be gained in an area of law or practice relevant to their professional development or which may be outside of their specialism.
43. Legal Executive Advocates are required to undertake 5 hours advocacy skills training each year which may be part of the 16 hours required for their general Fellowship.

CROWN PROSECUTION SERVICE

44. The CPS is the government department responsible for prosecuting criminal cases investigated by the police in England and Wales. It was created by the Prosecution of Offences Act 1985³ (POA) and commenced operation across England and Wales in 1986.
45. The POA established the Director of Public Prosecutions as head of the CPS. The Director is Keir Starmer QC. The Director is superintended by the Attorney General, who is accountable to Parliament for the Service.
46. Under the POA the Director has the power to designate any member of staff holding a General Qualification⁴ as a Crown Prosecutor. Crown Prosecutors have the powers of the Director to institute and conduct proceedings under the direction of the Director. Only solicitors and barristers may be employed by the CPS as Crown Prosecutors.
47. The CPS operates through 42 geographical Areas in England and Wales, divided into 15 regional Groups. These Areas correspond with the boundaries of 43 police

³ enacted on 23 May 1985

⁴ within the meaning of section 71 of the Courts and Legal Services Act 1990

forces in England and Wales with the London Area covering the operational boundaries of both City of London and Metropolitan Police Forces. Each Area is headed by a Chief Crown Prosecutor who is responsible for prosecutions within the Area.

48. The CPS protects the public by prosecuting cases firmly and fairly, and by doing so in an open, transparent and independent way. Its duty is to serve communities and to do justice in every case.
49. The role of the CPS prosecutor is to:
 - engage with their communities to inform their work and address their concerns;
 - advise and assist the police and other investigating agencies pre-charge;
 - address offending and out-of-court disposals where appropriate;
 - decide the charges in all but the most routine cases;
 - take the views of victims into account;
 - take decisions independently of any improper influence;
 - recover assets from criminals;
 - ensure that witnesses are able to give their best evidence;
 - present their own cases in court; and
 - help the court to pass an appropriate sentence.
50. In 2009/10, the CPS completed 1,467,980 defendant cases in the magistrates' courts (including the youth courts) and 142,768 in the Crown Court.
51. As at 31 March 2010 the CPS employed 8,768 staff, of which 463 were Associate Prosecutors and 3,126 were Crown Prosecutors (including Crown Prosecutors employed in management roles).

Associate Prosecutors

52. Section 7A (1) POA gives the Director the power to designate employees of the CPS who are not Crown Prosecutors the rights and powers of a Crown Prosecutor in a range of proceedings in the magistrates' courts. Persons designated by the Director are known as Associate Prosecutors (between November 1998 and May 2008 they were known as Designated Caseworkers).
53. Associate Prosecutors were first introduced by the CPS in November 1998. The full powers that an Associate Prosecutor may exercise are set out in section 7A POA and controlled by the CPS using written Instructions, issued by the Director under section 7A (3) and (4) POA.
54. The role of an Associate Prosecutor is that of a court advocate dealing with the range of hearings within their remit. They also conduct a small amount of out of court legal work.

Deployment of Associate Prosecutors

55. The deployment of Associate Prosecutors as advocates was piloted by the CPS in 1998 and evaluated by Her Majesty's Crown Prosecution Service Inspectorate (known then as the CPS Inspectorate). After a successful pilot phase, Associate Prosecutors were introduced by the CPS across all Areas in November 1999.

56. The number of Associate Prosecutors recruited and trained by the CPS has increased slowly over the last 10 years. As of 31 March 2010, the CPS employed 463 Associate Prosecutors across the 42 CPS Areas.
57. Between 1 April 2009 and 31 March 2010, Associate Prosecutors conducted 100,705 half day magistrates' courts sessions, equating to 27.9% of all magistrates' courts sessions in which the CPS was the prosecuting authority.

Directors Instructions

58. Instructions issued by the Director, under sections 7A (3) and (4) of the Prosecution of Offences Act 1985, limit the range of statutory powers that an Associate Prosecutor may exercise, including the range of hearings they may appear in. A copy of the current Instructions issued by the Director is at **annex 11**.
59. The first Director's Instructions were published on 2 November 1998 with the introduction of Associate Prosecutors in the pilot Areas. The most recent Director's Instructions were published on 23 February 2009.

The 1998 Remit

60. Associate Prosecutors were originally limited by Director's Instructions to presenting mainly guilty plea cases in Early First Hearings and road traffic courts. They were also able to prove offences in the absence of the accused where no response had been made to a summons.
61. The Director's Instructions gave Associate Prosecutors a limited out of court function in the formal review of a prosecution case.
62. Director's Instructions also gave Associate Prosecutors the power to amend a charge or summons in court where the amendment was minor e.g. to change a date if incorrect; and to withdraw a charge or summons in a road traffic offence involving the production of documents by the defendant where the defendant had produced the documents to the court.

2004 Extended Remit

63. On 1 April 2004, Associate Prosecutor powers were extended through a revision to the Director's Instructions. The extension permitted Associate Prosecutors to undertake a wider range of hearings in the magistrates' courts and, for the first time, hearings in the youth courts, including:
 - Early Administrative Hearings;
 - Cases where a youth was charged with an adult and a guilty plea was anticipated;
 - All cases, including cases in the Youth Court, after a guilty plea where the court had ordered a pre-sentence report;
 - Proofs in absence in summary only cases in the Magistrates Court and cases in the Youth Court except where witnesses were warned to attend;
 - Applications for the removal of a driving disqualification; and
 - Hearings under section 35(1) of the Road Traffic Offenders Act 1988 where a defendant faced disqualification from driving due to the accumulation of penalty

points and argued that disqualification would cause grave or exceptional hardship.

64. No changes were made to Associate Prosecutors' out of court review powers.
65. All Associate Prosecutors were trained in the new powers before being permitted by the CPS to exercise them.

2006 Extended Remit

66. On 1 January 2006, the Director's Instructions were amended allowing Associate Prosecutors to conduct a wider range of proceedings, namely, all criminal proceedings in the magistrates' courts (including the youth court) except:

- offences triable only at the Crown Court;
- either way offences in relation to which the defendant had, at a previous hearing, elected to be tried at the Crown Court or in which the magistrates had decided, at a previous hearing, that Crown Court trial would be more suitable;
- offences in relation to which a notice of transfer had been given under section 4 of the Criminal Justice Act 1987 or section 53 of the Criminal Justice Act 1991;
- trials;
- Special Reasons hearings; and
- Newton hearings.

67. This extension of powers was significant because it permitted Associate Prosecutors to deal with contested applications for bail in adult cases and contested case management hearings for the first time.

68. No changes were made to Associate Prosecutor out of court review powers.

69. All Associate Prosecutors were trained in the new powers before being permitted to exercise them by the CPS.

2008 Extended Remit

70. On 28 July 2008, following the statutory amendment to section 7A POA⁵, the Director's Instructions were amended allowing Associate Prosecutors to undertake proceedings previously excluded by statute. These included:

- bail applications in Indictable Only offences;
- committals to the Crown Court under section 6(2) of the Magistrates' Courts Act 1980 (paper committals);
- uncontested applications for a specified preventative civil order (limited to Anti-Social Behaviour Orders, Football Banning Orders, Drinking Banning Orders; Parenting Orders and Restraining Orders); and
- the conduct of proceedings in connection with the discharge of functions assigned to the Director by the Attorney General under section 2 of the Dogs Act 1871.

71. No changes were made to Associate Prosecutors out of court review powers.

⁵ Amended by section 55 of the Criminal Justice and Immigration Act 2008

72. All Associate Prosecutors were trained in the new powers before being permitted to exercise them by the CPS.

2009 Extended Remit

73. On 23 February 2009, Associate Prosecutor powers were extended so that specially selected and experienced Associate Prosecutors, known as Level 2 Associate Prosecutors, having completed the Associate Prosecutor Higher Qualification Programme could undertake the following contested hearings:

- summary trials in summary only non-imprisonable offences;
- Newton hearings in summary only non-imprisonable offences;
- Special Reasons hearings;
- contested bind over proceedings; and
- contested specified preventative civil orders.

74. Level 2 Associate Prosecutors were given the power to amend a charge or summons during a trial, and to withdraw a charge relating to a road traffic offence requiring the production of documents during the course of a trial where the defendant produced the documents.

75. Level 2 Associate Prosecutors were also permitted to withdraw or offer no evidence in court in relation to any charge where they formed the opinion that there was no longer sufficient evidence to support the charge and the trial would continue in relation to another charge (or charges) before the court.

ASSOCIATE PROSECUTOR MEMBERSHIP OF ILEX

76. In January 2008, recognising that ILEX was a suitable body to independently regulate Associate Prosecutors, the CPS commenced discussion with ILEX to agree a process for existing and new CPS Associate Prosecutors to become members of ILEX and subject to its regulatory framework.

77. Agreement was reached in October 2008, ratified by Sir Ken Macdonald QC on behalf of the CPS and by Mark Bishop, President of ILEX, describing the arrangements under which Associate Prosecutors would become members of ILEX. The details were set out in a Memorandum of Understanding, a copy of which appears at **annex 12**.

78. In November 2008, a new membership grade of Associate Prosecutor was formally created by ILEX. To register as an Associate Prosecutor member of ILEX an applicant was required to be designated by the Director as an Associate Prosecutor, have successfully completed the CPS Associate Prosecutor Qualification Programme and be of good standing.

79. As of July 2010 there were 463 Associate Prosecutor members registered with ILEX of which 21 were also ILEX Fellows.

SELECTION OF ASSOCIATE PROSECUTORS

80. Selection of Associate Prosecutors is managed by the CPS. Applicants for the Associate Prosecutor role are selected through a robust process involving production of a written application, a short-listing process, a presentation and an interview. Details of the process are provided at **Part III** of this application.
81. Applicants are required to demonstrate that they meet the criteria and satisfy the person competencies for the role, including having experience of casework within the criminal justice system or of lay presentation, and having a working knowledge of criminal law and its application, magistrates' courts procedure and the criminal justice system, or having a specified legal qualification as an alternative to casework experience. Applicants normally gain experience of casework within the criminal justice system through employment as CPS caseworkers where they gain legal experience through observing and assisting advocates in the full range of magistrates' courts, Crown Court and appellate court proceedings.
82. Once selected, applicants must undertake an intensive CPS internal training programme which involves studying a comprehensive Resource Pack through distance learning, attending a Foundation Course, Trial Preparation Course, Youth Course and an Advocacy Skills Course. Applicants must also pass independent assessments of competence.
83. Associate Prosecutors are employed by the CPS at Level B2, the equivalent of Higher Executive Officer (HEO) across other government departments.

THE WORK OF ASSOCIATE PROSECUTORS

84. An Associate Prosecutor will only appear as a prosecuting advocate in cases where the CPS is the prosecuting authority, and as permitted by the Director through Instructions. Associate Prosecutors do not have the statutory right to appear as defence advocates in any legal proceedings.

Nature and range of cases

85. A newly qualified Associate Prosecutor will generally be deployed in court to deal with straightforward road traffic cases and guilty pleas. The number of cases that an Associate Prosecutor will deal with in court will vary depending upon their level of experience and the nature of the cases listed.
86. An experienced Associate Prosecutor will be deployed by the CPS to deal with the full range of proceedings permitted by the Director through Instructions. In a busy city centre court an Associate Prosecutor might deal with a mixture of summary, either-way and indictable only offences. The types of hearings and offences range from guilty pleas in a criminal damage or shoplifting case to a full bail application in a possession of class A drugs case or a serious assault case.

87. An Associate Prosecutor will deal with routine pre-trial case management hearings and is trained to comply with the Criminal Procedure Rules. An Associate Prosecutor will also deal with sentencing hearings requiring the opening of the facts and assist the court on sentencing matters should the court call upon the prosecution. Associate Prosecutors will have access to an on-line Sentencing Manual that consists of relevant sentencing guidelines or guideline cases; gives details of statutory limitations and maximum sentences; identifies potential aggravating and mitigating factors for a given offence; and highlights relevant ancillary orders, or other provisions relevant to sentence.
88. An experienced Associate Prosecutor will deal with cases where the police have charged a defendant during the night and held them in custody pending first appearance at the magistrates' court. The offences in these cases may range from basic low level public order to serious violence. In serious cases a bail application may be made requiring an Associate Prosecutor to open the facts and provide objections to bail.
89. All cases prosecuted by an Associate Prosecutor will be reviewed by a Crown Prosecutor unless the case falls within the Associate Prosecutor's out of court review powers. If an Associate Prosecutor believes that a review or instructions from a Crown Prosecutor are not clear they must speak with a Crown Prosecutor to discuss the issue and take further instructions. If issues arise during court proceedings that an Associate Prosecutor cannot deal with, for example, a defendant offers a plea to a lesser offence, an Associate Prosecutor must seek an adjournment to take instructions from a Crown Prosecutor. Associate Prosecutors will also have access to extensive legal guidance available through the CPS Infonet providing legal and procedural advice, including relevant case law.

Number of court sessions

90. An Associate Prosecutor's primary function is advocacy. They will conduct on average 6 half-day magistrates' courts sessions each week. The actual number of sessions undertaken will vary depending on the level of experience and ability of an Associate Prosecutor, and the nature of the cases listed. Unlike a defence advocate, an Associate Prosecutor will deal with all the cases listed before the court when deployed to prosecute a court session.
91. An Associate Prosecutor will be given sufficient time to prepare the cases. Preparation of cases on the morning of court may take place where the cases require minimal preparation, for example road traffic document offences, or where there is minimal documentation and there are no complications of fact or law.

Other responsibilities

92. When not in court, an Associate Prosecutor may be required to undertake a range of administrative casework functions that require no rights of audience or rights to conduct litigation and as such may be carried out by any employee of the CPS. These include drafting general correspondence, preparing instructions to counsel and service of evidence and unused material. These functions are administrative in nature and conducted under the supervision and direction of a Crown Prosecutor.

SUPERVISION OF ASSOCIATE PROSECUTORS

93. Written Guidance on deployment and supervision of Associate Prosecutors is issued by the CPS to Chief Crown Prosecutors identifying those types of hearings that an Associate Prosecutor, should not be deployed to conduct even though they are legally permitted by statute and Director's Instructions to do so, because they involve legally complex, technical or sensitive issues. This Guidance is kept under continuous review.
94. Chief Crown Prosecutors are personally accountable for the deployment and supervision of the Associate Prosecutors in their Area. It is their responsibility to consider the appropriate level of supervision required for an individual Associate Prosecutor and ensure they operate within the Director's Instructions.
95. The day to day work of an Associate Prosecutor is supervised by experienced Crown Prosecutors. Crown Prosecutors are responsible for ensuring that the Associate Prosecutors under their direct supervision have adequate time to prepare for court during their normal working hours. They will decide whether an Associate Prosecutor is experienced enough to prepare and present cases having regard to the level of their training and experience. A Crown Prosecutor will be familiar with the types of cases listed during a court session. A suitably experienced Crown Prosecutor will always be available to provide guidance and assistance whilst an Associate Prosecutor is at court should an issue arise that requires legal input.
96. Where an Associate Prosecutor is deployed to deal with routine hearings, such as pre-trial case management hearings, they will have instructions from a Crown Prosecutor. Instructions should be in writing and endorsed on the case file or in a suitable document attached to the file. Where oral instructions are given, the Associate Prosecutor should endorse these on file.
97. Where an Associate Prosecutor expresses any concern in relation to inadequate preparation time or instructions from a suitably experienced lawyer, the Crown Prosecutor manager must reconsider the decision as to who should deal with the case at court.

THE CODE FOR CROWN PROSECUTORS

98. The Prosecution of Offences Act 1985 requires the Director to issue a Code for Crown Prosecutors giving guidance on the general principles to be applied in determining, in any case, whether proceedings for an offence should be instituted or, where proceedings have been instituted, whether they should be discontinued, what charges should be preferred and what representations should be made by the prosecution about the mode of trial suitable for a case. Associate Prosecutors will apply this Code in exercising some of their litigation functions.

99. The Code was recently updated and published in February 2010. It reflects the responsibilities for Crown Prosecutors to advise the police on charges. The Code is attached at **annex 13**.
100. Before advising on charges a Crown Prosecutor must review each case against the Code for Crown Prosecutors. The Code sets out the principles the CPS applies when carrying out its work. Those principles are whether:
- There is enough evidence to provide a realistic prospect of conviction against each defendant on each charge; and, if so,
 - A prosecution is needed under the public interest.
101. There are two tests: the Full Code Test and the Threshold Test. Director's Instructions allow Associate Prosecutors to apply the Code for Crown Prosecutors and use the Full Code Test when reviewing cases. The CPS sought the opinion of First Treasury Counsel, who advised that these are litigation functions. The rights sought under this application include these litigation functions.

The Full Code Test

102. The Full Code Test must be applied wherever possible. It has two stages: evidential stage and public interest stage. A case must pass both stages.
103. The evidential stage is the first stage in the decision to prosecute. Prosecutors must be satisfied that there is sufficient evidence to provide a "realistic prospect of conviction" against each suspect on each charge. They must consider whether the evidence can be used and whether it is reliable. They must also consider what the defence case may be and how it is likely to affect the prospects of a conviction.
104. A "realistic prospect of conviction" is an objective test. It means that an impartial and reasonable jury or a bench of magistrates, properly directed and acting in accordance with the law, will be more likely than not to convict the defendant of the charge alleged.
105. If the case does not pass the evidential stage it must not proceed regardless of how important or serious it may be. If the case passes the evidential stage it must proceed to the second stage.
106. At the second stage Crown Prosecutors or Associate Prosecutors must decide whether the prosecution is in the public interest. Each case must be considered on its own facts and merits. Prosecutors must decide the importance of each public interest factor in the circumstances of each case and go on to make an overall assessment. It is quite possible that one factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and for those factors to be put to the court for consideration when sentence is passed. A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour.

The Threshold Test

107. The Threshold Test is applied to cases where the suspect presents a substantial bail risk if released and not all the evidence is available at the time when he or she must be released from custody unless charged.
108. Under this test a Prosecutor must first determine whether there is at least a reasonable suspicion that the suspect has committed an offence; and secondly if there is, the prosecutor must be satisfied that there are reasonable grounds for believing that the continuing investigation will provide further evidence, within a reasonable period of time, so that the evidence taken together is capable of establishing a realistic prospect of conviction in accordance with the Full Code test.
109. In reaching a decision under the second part of the Threshold Test, the prosecutor must consider:
 - the nature, extent and admissibility of any likely further evidence and the impact it will have on the case;
 - the charges that all the evidence will support;
 - the reasons why the evidence is not already available;
 - the time required to obtain the further evidence and whether any consequential delay is reasonable in all the circumstances:
110. If both parts of the Threshold test are satisfied, prosecutors must apply the public interest of the Full Code test based on the information available at the time.
111. The evidence gathered must be regularly assessed to ensure the charge is still appropriate and that continued objection to bail is justified. The Full Code Test must be applied as soon as reasonably practicable and in any event before the expiry of any applicable custody time limit or extended custody time limit.

CONTINUING PROFESSIONAL DEVELOPMENT

112. Since 1 October 2005, all Associate Prosecutors have been required by the CPS to complete 16 hours of Continuing Professional Development (CPD) each year, mirroring the requirements of their solicitor colleagues. Barristers must complete 14 hours of CPD each year.
113. The completion of 16 CPD hours each calendar year is also a requirement of Associate Prosecutor membership of ILEX. At least 8 hours must be relevant to criminal practice, procedure, advocacy skills or legal knowledge.
114. CPD is acknowledged by ILEX and the CPS as a continuous process of personal growth, to improve the capability and realise the full potential of professional practitioners. It is also important to maintaining public confidence in the profession and to developing the ever changing skills and knowledge needed by advocates.

115. Associate Prosecutors obtain CPD hours by attending a range of courses provided by the CPS, including face to face training and completion of e-learning modules provided through the CPS Prosecution College. CPD may also be obtained by attendance at certified external events including conferences and training events.
116. Compliance with the requirement to complete 16 hours CPD each year will be monitored by ILEX from January 2010 through random sampling. A failure to comply with the full CPD requirements will lead to a referral of the conduct of the Associate Prosecutor to IPS and will be dealt with as a misconduct matter.
117. Failure to comply with CPD will also be referred to the Admissions and Licensing Committee. The Admissions and Licensing Committee will consider whether the Associate Prosecutor can continue to hold a Level 1 or Level 2 Certificate.

REGULATION OF CONDUCT

118. IPS has in place arrangements for regulating the conduct of ILEX members set out in its Investigation, Disciplinary and Appeal Rules. It has established a Professional Conduct Panel to consider complaints or concerns about members' conduct in relation to the legal profession, and the Disciplinary Tribunal to consider cases of alleged misconduct. The Disciplinary Tribunal has the power to exclude persons from membership, or to reprimand or fine them and, where appropriate, to award costs to be paid.

Codes of Conduct

119. ILEX members, including Associate Prosecutor members, are required to abide by the Code of Conduct published by IPS. Associate Prosecutor members must also comply with the Director's Instructions to Associate Prosecutors, Guidance to Chief Crown Prosecutors Concerning Deployment and Supervision and the Statement of Ethical Principles for the Public Prosecutor. They should also have regard to the CPS Code of Conduct and the CPS National Standards of Advocacy.
120. The ILEX Code of Conduct and Investigation, Disciplinary and Appeals Rules are included at **Annexes 14 and 15** of this Application. The Director's Instructions, Guidance to Chief Crown Prosecutors Concerning Deployment and Supervision, Statement of Ethical Principles for the Public Prosecutor, CPS Code of Conduct and the CPS National Standards of Advocacy are included at **Annex 11, 13, 16 and 17**.
121. Those members of ILEX who have qualified as Legal Executive Advocates are required to comply with the ILEX Advocacy Code which was approved by the Lord Chancellor in accordance with section 29 and Schedule 4 Courts and Legal Services Act 1990. The ILEX Advocacy Code is aimed at the conduct of employed advocates providing advocacy services for clients of employing firms. The ILEX Advocacy Code is not applicable to Associate Prosecutors who undertake work on behalf of the CPS. Associate Prosecutors will instead comply with the CPS National Standards of Advocacy, CPS Statement of Ethical Principles and supporting codes.

Complaints against Associate Prosecutors

122. The Memorandum of Understanding between ILEX and the CPS sets out the arrangements for dealing with complaints against an Associate Prosecutor.
123. Where a complaint is made to IPS about the conduct of an Associate Prosecutor the Memorandum confirms that IPS will investigate the complaint in accordance with its Investigation, Disciplinary and Appeal Rules.
124. Complaints that are made directly to the CPS about an Associate Prosecutor will be dealt with in accordance with the CPS Disciplinary Policy which appears at **annex 18**. In appropriate circumstances the CPS will notify IPS about any complaints. In determining whether to notify IPS of the complaint or conduct issue, the relevant Chief Crown Prosecutor will take into consideration the seriousness of the matter, the particular facts and the duties and obligations of an Associate Prosecutor set out in the IPS Code of Conduct. The Chief Crown Prosecutor will furnish IPS with relevant information.

IPS complaints handling

125. IPS investigates complaints under the procedures set out in its Investigation, Disciplinary and Appeals Rules. The Rules incorporate lay involvement in all stages of decision making and adjudication.
126. Although ILEX is not generally subject to the formal jurisdiction of the Legal Services Ombudsman, it has benefited from constructive engagement with her Office. The Ombudsman has formal jurisdiction over complaints handling by ILEX in respect of its Legal Executive Advocates. Whilst her office continues this jurisdiction would also extend to Associate Prosecutors authorised as advocates by ILEX. By 2011, it is likely that oversight of complaints handling by Approved Regulators will have passed to the Legal Services Board. No reference has been made to the Ombudsman of any complaint made against an ILEX Advocate.
127. Since ILEX became authorised to grant advocacy rights, the Ombudsman's Office has carried out two informal inspections of ILEX's case handling arrangements. Both reports commented favourably on the way in which ILEX handles complaints against its members. Any action points identified in the reports have been addressed.
128. IPS has introduced a mechanism to receive feedback from members and complainants about how ILEX handled their case. The feedback mechanism has proved effective in assisting IPS to identify and implement changes to its complaints handling procedures.
129. Part of the remit of the Professional Conduct Panel is to consider applications from prospective Students, or members seeking enrolment into the Associate Prosecutor, Membership or Fellowship grades, where the applicant has made a declaration of prior conduct, including any convictions. All members of ILEX are required to make declarations of 'prior conduct' at the time they renew their annual subscription. IPS has the power to determine what further action, if any, should be taken in relation to applications or declarations. Declarations of previous convictions are for the most part subject to the provisions of the Rehabilitation of Offenders Act 1974.

However, ILEX is an exempt body under the provisions of the POA so far as its Fellows are concerned and may therefore require Fellows to declare spent convictions, and take action in regard to such declarations.

130. The CPS also undertakes thorough character and security checks before deploying new staff in posts. This includes confirming identity and requiring applicants to complete a Character Enquiry Form and obtaining National Identification Service clearance. The CPS is covered by Article 3(a) Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and consequently all applicants are required to disclose all convictions including those that are spent. The CPS will decide whether the conduct and behaviour of staff makes them unsuitable for employment at the CPS. Applicants convicted of serious offences will not normally be considered for employment with the CPS.

PART II

THE RIGHTS OF AUDIENCE AND RIGHTS TO CONDUCT LITIGATION SOUGHT BY ILEX

PART II – THE RIGHTS OF AUDIENCE AND RIGHTS TO CONDUCT LITIGATION SOUGHT BY ILEX

THE RIGHTS

1. In this application ILEX seeks rights of audience and rights to conduct litigation for Associate Prosecutors. It is intended that the rights will be awarded by ILEX to Associate Prosecutors from 1 May 2011.
2. The rights of audience sought by ILEX will enable qualified Associate Prosecutors to undertake advocacy in criminal proceedings in magistrates' courts, a function they have been carrying out since 1998.
3. The rights to conduct litigation will allow Associate Prosecutors to exercise the powers of a Crown Prosecutor in the conduct of cases outside of court, including a review involving the consideration of the merits of a case and deciding whether it is appropriate to proceed with the case, and other prosecution casework functions necessary to progress cases that fall within an Associate Prosecutor's statutory remit.
4. Associate Prosecutor members of ILEX will be authorised to exercise these rights whilst they are employed by the CPS as Associate Prosecutors and only after successfully completing the requisite qualification programmes. The rights sought by ILEX are set out below.
5. The rights will be granted by means of two separate certificates: Level 1 and Level 2. New Associate Prosecutors will be awarded a Level 1 Rights of Audience and Litigation Certificate in Criminal Proceedings upon completion of the Qualification Programme. Experienced Level 1 Associate Prosecutors will be eligible to apply to complete a Higher Qualification Programme leading to the award of a Level 2 Rights of Audience and Litigation Certificate in Criminal Proceedings.

ADVOCACY RIGHTS

Level 1 Rights of Audience and Litigation Certificate in Criminal Proceedings

6. An Associate Prosecutor qualified to hold the Level 1 Rights of Audience and Litigation Certificate in Criminal Proceedings will be permitted to exercise the following advocacy rights:
 - to appear before Justices or a District Judge in the magistrates' courts (including the youth court) to prosecute all proceedings against all adult and youth offenders, including bail applications and applications in relation to bail, 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.

Level 2 Rights of Audience and Litigation Certificate in Criminal Proceedings

7. An Associate Prosecutor holding the Level 2 Rights of Audience and Litigation Certificate in Criminal Proceedings will be permitted to exercise the following additional advocacy rights:

- to appear before Justices or a District Judge in the magistrates' courts (including the youth court) to prosecute all proceedings against all adult and youth offenders, including bail applications and applications in relation to bail, where the CPS is the prosecuting authority except trials of either-way offences.

LITIGATION RIGHTS

8. Holders of the Level 1 and Level 2 Rights of Audience and Litigation Certificate in Criminal Proceedings will be awarded rights to exercise the powers of a Crown Prosecutor to conduct a case, namely:

- review of a prosecution case by applying the Code for Crown Prosecutors; and
- other casework functions necessary to progress prosecution cases that fall within an Associate Prosecutor's statutory remit, namely –
 - to decide appropriate bail conditions and objections to bail in magistrates' courts and youth court proceedings;
 - to decide whether to discontinue a case in proceedings in the magistrates' courts and youth courts;
 - to make disclosure decisions in proceedings in the magistrates' courts and youth courts;
 - to decide witnesses to give live evidence, to serve statements under section 9 of the Criminal Justice Act 1967, to tender to the defence and any evidence which can be adduced by way of a section 10 admission, and drafting such admissions, in magistrates' courts and youth court trials and other contested hearings;
 - to decide the appropriateness of pleas and bases of plea in magistrates' courts and youth court proceedings;
 - to amend a charge or summons, prefer a new charge or drop a charge in magistrates' courts and youth court proceedings; and
 - to decide whether to apply, vary or discharge a civil preventative order in magistrates' courts and youth court proceedings.

9. The litigation rights sought by ILEX for Associate Prosecutors will enable ILEX, as the regulator, and the CPS, as the prosecuting authority, to enhance Associate Prosecutors' out of court litigation functions to include areas of work not currently specified in the Director's Instructions but in which they are trained. Section 7A POA permits Associate Prosecutors to exercise these functions.

10. Before issuing revised Director's Instructions the CPS will satisfy ILEX that Associate Prosecutors will only undertake litigation that is appropriate to the rights awarded and their education, training and experience.

11. The CPS will consult with ILEX before extending Associate Prosecutors litigation powers beyond those specified in the current Director's Instructions. Any amendment of the Director's Instructions that would widen Associate Prosecutors' litigation remit will be supported by appropriate legal and advocacy skills training accredited by ILEX.

RATIONALE

12. The rights sought by ILEX for Associate Prosecutors have been split into two levels so that Associate Prosecutors can qualify on an incremental basis.

13. The rights of audience awarded under both the Level 1 and Level 2 certificates are the rights which Parliament has determined can be exercised by Associate Prosecutors, set out in section 7A POA.

14. The litigation rights that will be awarded under the Level 1 certificate cover the out of court review powers that Associate Prosecutors have been exercising successfully since 1998 and any other prosecution casework function necessary to progress a case that falls within the Associate Prosecutor statutory remit.

15. Authorising ILEX to award rights to Associate Prosecutor members after 1 May 2011 will allow the continued exercise of advocacy and litigation rights that have been exercised since their introduction.

FORMULATION

16. When introduced in 1998, Associate Prosecutor powers were limited by the Director to mainly straightforward guilty pleas and road traffic hearings. As Associate Prosecutors have grown in confidence, the powers they may exercise have increased incrementally through amendments to the Instructions issued by the Director.

17. The contribution made by Associate Prosecutors to an efficient and effective criminal justice system is significant and was recognised by Parliament during the debates leading to the Criminal Justice and Immigration Act 2008. Continued exercise of rights of audience and rights to litigate by Associate Prosecutors is essential to the continued effective administration of justice by the CPS.

18. The proposals in this application build upon the positive contribution that Associate Prosecutors have made to the criminal justice system by introducing a regulatory scheme for the award and exercise of those rights. This will enable the CPS to continue to select new staff for qualification as Associate Prosecutors by professionalising the role and making it an attractive option for skilled individuals seeking a career in the law.

THE LEGAL SERVICES ACT 2007

The Regulatory Objectives

19. The LSA sets out eight objectives to be pursued by those engaged in the regulation of legal services. ILEX is an approved regulator under the LSA. ILEX submits that its application for rights of audience and litigation for Associate Prosecutors supports the regulatory objectives set out under the LSA.

20. The regulatory objectives are:

- Protecting and promoting the public interest;
- Supporting the constitutional principle of the rule of law;
- Improving access to justice;
- Protecting and promoting the interests of consumers;
- Promoting competition in the provision of services provided by authorised persons;
- Encouraging an independent, strong, diverse and effective legal profession;
- Increasing public understanding of the citizen's legal rights and duties;
- Promoting and maintaining adherence to the professional principles which are that:
 - authorised persons should act with independence and integrity;
 - authorised persons should maintain proper standards of work;
 - authorised persons should act in the best interests of their clients;
 - persons who exercise a right of audience or conduct litigation should comply with their duty to the court to act with independence in the interests of justice; and
 - that the affairs of clients should be kept confidential.

21. Awarding ILEX the authority to grant Associate Prosecutors rights of audience and rights to conduct litigation will benefit the CPS and wider criminal justice system through:

- widening the choice of service providers available to the CPS;
- making best use of an already skilled, suitably qualified and experienced workforce;
- cost effective and proportionate deployment of magistrates' courts advocates;
- increasing public confidence in the Associate Prosecutor role through independent regulation and accountability; and
- enhancing confidence of the legal profession, including the courts, in the work of Associate Prosecutors.

Protecting and promoting the public interest and the interests of consumers

22. The award of litigation and advocacy rights to Associate Prosecutors will protect and promote the CPS aims of improving public confidence in the fairness and effectiveness of the criminal justice system and the effectiveness and efficiency of the criminal justice system in bringing offenders to justice. This will be done through the following:

- The scheme proposed in this Application will ensure that Associate Prosecutors will be suitably qualified and trained in litigation and advocacy rights before they are authorised to practise by ILEX.
- There will be suitable controls on eligibility exercised by the CPS to ensure that only suitable persons will be selected to undertake the Associate Prosecutors' qualification and to conduct prosecution advocacy and litigation.

- IPS' Code of Conduct and the CPS Code of Conduct, Statement of Ethical Principles and National Standards of Advocacy place suitable and appropriate conduct requirements upon Associate Prosecutors to ensure there is adequate protection available for the public in ensuring that the CPS is an effective and independent prosecuting authority and in maintaining the confidence of criminal justice system partners.
- The Investigation, Disciplinary and Appeal Rules assist IPS' ability to govern the conduct of Associate Prosecutors and enforce the codes applicable to Associate Prosecutors.

23. Parliament recognised the value that a wider choice of advocates would bring to the CPS through the introduction of Associate Prosecutors in 1998. The statutory extension of Associate Prosecutor powers in 2008⁶ confirmed their position as effective advocates within a modern, effective and independent criminal prosecution service.

Supporting the constitutional principle of the rule of law

24. The conduct rules applicable to Associate Prosecutors as members of ILEX and employees of the CPS will ensure that they will always act to support the constitutional principle of the rule of law.

25. As Civil Servants, Associate Prosecutors have a duty to comply with the law and to uphold the administration of justice. This duty is expressly reaffirmed in the Civil Service Code.

26. When appearing as an advocate, an Associate Prosecutor must conduct prosecutions fairly and in accordance with the common law duty of any prosecutor (*R v Banks [1916] 2 KB 621*), and must comply with the principles in the Code for Crown Prosecutors. These duties include ensuring that cases are conducted fairly, independently, objectively and effectively.

27. Associate Prosecutors must also comply with the Statement of Ethical Principles. The duties it places on Associate Prosecutors include:

- a) assisting the court in the administration of justice and not deliberately, knowingly or recklessly misleading the court;
- b) not doing anything likely to diminish public confidence in the administration of justice or otherwise bring it into disrepute; and
- c) not engage in conduct which is dishonest or otherwise discreditable to another advocate.

28. The ILEX regulatory scheme provides a new and fully independent assurance that Associate Prosecutors will support the principle of the rule of law by providing an independent route of complaint to deal with any allegations that an Associate Prosecutor did not support the principle.

Improving access to justice

⁶ section 55 of the Criminal Justice and Immigration Act 2008

29. The introduction of Associate Prosecutors in 1998 extended the choice of advocate and litigator available to the CPS. The award of advocacy and litigation rights to Associate Prosecutors by ILEX from 1 May 2011 will enable the CPS to continue to deploy in appropriate cases a wide range of suitably skilled, qualified and effective prosecutors providing an efficient service to the public.
30. Crown Prosecutors and Associate Prosecutors undertake the majority of magistrates' courts sessions where the CPS is the prosecuting authority. The CPS also instructs external solicitors or self employed barristers, known as agents, to conduct a small proportion of magistrates' courts sessions. Between 1 April 2009 and 31 March 2010, Associate Prosecutors conducted 27.9% of magistrates' courts sessions. Crown Prosecutors conducted 57.3% and agents conducted 14.8%.
31. The training provided by the CPS to Associate Prosecutors ensures they have the knowledge and skills to deal with the advocacy and litigation that falls within their remit. Associate Prosecutors quickly become experienced in magistrates' courts cases because of the frequency of their deployment in court.
32. Associate Prosecutors, as employees of the CPS and members of ILEX, will increase and improve victim and witness care through their knowledge and understanding of victim issues. They will apply the CPS published policy on victims and witnesses consistently and effectively.
33. Associate Prosecutors increase public confidence in efficient, effective and proportionate prosecutions by applying the Code for Crown Prosecutors when reviewing a case. The proper application of the Code for Crown Prosecutors ensures that strong and evidentially sound cases are brought to court.
34. The deployment of Associate Prosecutors in court frees up Crown Prosecutors to focus on other areas of work that require their specialist legal input, including case preparation and pre-charge advice to the police. Increasing the amount of time that Crown Prosecutors can spend on case preparation reduces delays in the criminal justice system, and reduces ineffective and cracked trials by ensuring that trials are ready to proceed with victims and witnesses warned to attend and preliminary legal and administrative issues dealt with effectively and, where there is not a realistic prospect of conviction, ensuring that cases are discontinued at an early stage.

Promoting competition in the provision of services provided by authorised persons

35. Only qualified solicitors and barristers may be appointed as Crown Prosecutors. Therefore, the introduction of Associate Prosecutors in 1998 made available to the CPS an alternative source of suitably trained and authorised advocates who could undertake prosecutions and review files.
36. The increased use of Crown Prosecutors and Associate Prosecutors as advocates in the magistrates' courts ensures the efficient and proportionate use of public funds. Associate Prosecutors provide a good quality service to the courts ensuring that cases are progressed by applying the Criminal Procedure Rules. Associate Prosecutors will also develop specialist knowledge of the law and procedure in magistrates' courts cases because of the frequency of their deployment in court.

37. CPS caseworkers provide essential support to Crown Prosecutors in the preparation of magistrates' courts and Crown Court case files for trial, and other hearings, and help ensure smooth communication with other members of the criminal justice system. Therefore, Associate Prosecutors who were CPS caseworkers before qualifying as Associate Prosecutors will already possess a good understanding of the law, court procedure and the prosecution process through their previous criminal casework experience, increasing their effectiveness.
38. In February 2009, the CPS introduced a qualification scheme allowing specially selected and trained Associate Prosecutors, known as Level 2 Associate Prosecutors, to conduct a limited range of trials and other similar contested hearings. The use of Level 2 Associate Prosecutors in this area of work has enabled experienced Associate Prosecutors, selected as being suitable by the CPS, to exercise enhanced rights thereby further extending the choice of advocate available to the CPS. To date 28 Associate Prosecutors are qualified to Level 2.
39. The value of Associate Prosecutors has been recognised during various reviews:
- The Public Accounts Committee⁷ and the National Audit Office⁸ recommended their further use to achieve a more efficient and effective running of the magistrates' court.
 - Her Majesty's Crown Prosecution Service Inspectorate (HMCPPI) regularly acknowledge the high standard of Associate Prosecutors during the programme of CPS Area inspections. HMCPPI received positive feedback about the quality of Associate Prosecutors' (then known as Designated Caseworkers) performance which was confirmed by observations reported in various reports, including the 2007 CPS Gwent Area Inspection Report, the CPS Hertfordshire Area Inspection Report 2007 and the CPS Bedfordshire Area Inspection Report 2007. Each provided positive feedback from a number of court users on the high standard of Associate Prosecutors' preparation and presentation.

Encouraging an independent, strong, diverse and effective legal profession

40. The Memorandum of Understanding agreed between ILEX and the CPS in October 2008 introduced an independent scheme of regulation for Associate Prosecutors. Under those arrangements, a person will become an Associate Prosecutor member of ILEX upon successful completion of the Associate Prosecutor Qualification Scheme and only when designated by the CPS as an Associate Prosecutor.
41. Regulation of Associate Prosecutors by ILEX will develop strong and independent legal practitioners specialising in criminal prosecutions in the summary jurisdiction. The regulatory regime comprises compliance with the ILEX Code of Conduct and the requirement that Associate Prosecutors comply with the CPS Code of Conduct, the Director's Instructions to Associate Prosecutors, the Statement of Ethical Principles and CPS National Standards of Advocacy. There is in place a complaints handling scheme that will address any breaches of the Codes by Associate Prosecutors.

⁷ Public Accounts Committee report (61st 05/06)

⁸ National Audit Officer report "Crown Prosecution Service – effective use of magistrates' courts hearings" (15 February 2006)

42. Since 1998, Associate Prosecutors have provided an efficient and effective service to the CPS and the courts. The value added by Associate Prosecutors to the CPS has resulted in extensions of their powers in 2004, 2006, 2008 and 2009. The CPS has increased the number of persons it employs as Associate Prosecutors in recognition of the effective and valuable service they provide.

43. The introduction of a new level of advocacy and litigation service providers to the CPS has helped to encourage a diverse range of advocates at the CPS.

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

44. The CPS has published policies on the treatment of victims and witnesses. Associate Prosecutors apply these policies consistently ensuring that all witnesses will be treated fairly and with respect according to their needs irrespective of race, religion, background, gender, age, sexuality or any disability.

45. Associate Prosecutors contribute to improving public confidence in the criminal justice system through the effective and efficient prosecution of cases in the magistrates' courts.

Promoting and maintaining adherence to the professional principles

46. Associate Prosecutors are required to act in accordance with the ILEX Code of Conduct. They must also comply with the CPS Code of Conduct, Statement of Ethical Principles and CPS National Standards of Advocacy. These rules require them to conduct cases fairly, independently, objectively and effectively. Associate Prosecutors have a duty to comply with the law and uphold the administration of justice.

47. Under the Code of Conduct Associate Prosecutors owe a duty to preserve confidentiality. All Associate Prosecutors in the course of their employment sign the Official Secrets Act and agree not to disclose information acquired through official duties to any unauthorised person or authority. The CPS Code of Conduct states that Associate Prosecutors must not inappropriately disclose or misuse confidential information relating to individuals involved in a case or organisations working with the CPS.

48. The ILEX Code also requires that they maintain proper standards of work and only act in cases within their competence.

BETTER REGULATION PRINCIPLES

49. ILEX submits that its proposed scheme is consistent with the better regulation principles.

Proportionate

50. The application proposes a proportionate route to qualification as a Level 1 and Level 2 Associate Prosecutor. In developing its qualification structures ILEX assessed what skills and knowledge a Associate Prosecutor would require to enable them to undertake litigation and advocacy work falling within their remit at Level 1 and Level 2. It built

upon the current qualification scheme developed by the CPS. That approach assisted in developing a proportionate qualification and entry scheme.

51. ILEX's proposed qualification scheme is aimed at ensuring Associate Prosecutors are competent for the work they will be authorised to undertake.

Accountable

52. The proposed scheme includes suitable accountability arrangements. ILEX, through IPS, will be accountable through its Admissions and Licensing Committee for the administration and application of the scheme rules. The Committee will be responsible for producing an annual report of its work to the IPS Board.

53. The CPS will be accountable to IPS for application of the scheme rules. IPS will monitor application through inspection and monitoring arrangements for courses.

Consistent

54. The approach to the qualification scheme is consistent with that currently in place at the CPS for the Associate Prosecutor qualification, building upon it where appropriate.

55. The qualification proposal is also consistent with the rights of audience qualification scheme, for which ILEX is already an approved regulator. That scheme requires members to complete a qualification course and assessment. The proposed litigation rights qualification has adopted the same approach of initial assessment at entry stage followed by a qualification scheme aimed at developing the skills of ILEX members.

56. Also the qualification and assessments standards are set out clearly and will be monitored by independent assessment and external moderation.

Transparent

57. ILEX has taken a transparent approach to developing the qualification and regulatory scheme. IPS has consulted key stakeholders on its proposed scheme. The consultation was sent to approved regulators and their respective regulatory bodies, consumer groups and representative bodies including CPS stakeholders. Notifications were sent to ILEX members through the Legal Executive Journal and IPS website.

58. IPS received 9 responses to its consultation. The consultation responses have been analysed to determine whether any amendments were required to its proposals. Some amendments were made in response to feedback received from consultees. A copy of the consultation paper, responses and analysis appears at **annex 20**.

59. The qualification content and assessment standards are clearly stated in the application. IPS has ensured that there is a suitable level of independent involvement in maintaining those standards. Candidate results will be subject to scrutiny by IPS, providing a further level of scrutiny and assurance of transparency.

Targeted

60. ILEX has developed a qualification scheme which has been targeted at assessing and developing the skills and knowledge required by Associate Prosecutors to undertake advocacy and litigation at Level 1 and Level 2.

61. Similarly the regulatory structure has been developed by targeting itself at the risks that can arise and which require to be addressed.

PART III

QUALIFICATION SCHEME

PART III – QUALIFICATION SCHEME

INTRODUCTION

1. The qualification scheme under which CPS employees will be selected and qualify as Associate Prosecutors is summarised below. The Certification Rules and the supporting Appendices 1 to 7 set out in detail the eligibility and qualification criteria.

SELECTION OF TRAINEE ASSOCIATE PROSECUTORS

2. CPS Areas will identify vacancies for posts of Associate Prosecutors according to business need. Vacancies will be advertised by the CPS and any employee who meets the selection criteria may apply. In exceptional cases vacancies may be advertised externally.
3. Applicants will undergo a rigorous selection process, at the conclusion of which suitable applicants will be selected to undergo the Associate Prosecutor qualification programme. A person will not be entitled to exercise the rights and powers of an Associate Prosecutor until they have successfully completed the qualification process and become an Associate Prosecutor member of ILEX.
4. The selection process is summarised below. It involves the following stages:
 - Completion of an application form;
 - Application form shortlist;
 - Case study presentation; and
 - Interview.
5. The process has been designed to test the skills required in the person specification for an Associate Prosecutor role. Each aspect of the selection process will assess competencies of applicants. The CPS guidance for conducting Associate Prosecutor recruitment, which appears at **annex 19**, outlines the competencies tested at each stage of the recruitment process. Copies of the person specifications for level 1 and level 2 posts appear at **appendix 1 to the Certification Rules**.
6. Applicants are marked using a scale of 1 to 5 with 1 being 'not met' and 5 being 'consistently met including providing detailed relevant evidence across the criteria that are measured'. Applicants are expected to achieve at least a score of 3 against each competency which denotes that applicants 'provided relevant information and that minimum standards are evidenced across most criteria that are measured'.

APPLICATIONS FOR LEVEL1 ASSOCIATE PROSECUTOR

7. All applicants will complete a written application from which they will be short listed. At the shortlist stage applicants will be marked as to whether their application displays examples and evidence of how they meet the competence criteria for the post. The competencies assessed at this stage are Leadership, Communication and Negotiation, Reasoning and Decision Making, and Specialist Skills, Knowledge and Experience. Applicants who are short listed at the application form stage will proceed to the case study presentation and interview stages.

8. At the case study stage, applicants will be provided with a case study setting out a basic scenario that they may encounter as an Associate Prosecutor. Applicants will be asked to read the case study and prepare it as if they were to prosecute it in court as an Associate Prosecutor. For example, the case study may involve an application to amend a charge. The applicant will be required to consider any applications to be made to the court and further information they may require before appearing in court, and then to present the case as a guilty plea.
9. The case study stage will test the competencies of Specialist Skills and Knowledge as well as the skills of Reasoning and Decision Making, Communication and Negotiation, and Equality and Diversity Awareness and Management. These skills are tested through requiring applicants to make an application in a mock court set up.
10. After the presentation candidates will be asked questions on the presentation by a selection panel. Questions may cover the Code for Crown Prosecutors used for reviewing cases, CPS policy on victims and witnesses, use of special measures, the remit of Associate Prosecutors and dealing with unrepresented defendants.
11. The presentation will be assessed by the selection panel using a standardised assessment sheet determining whether the applicant meets the required standard. The assessment form and an example of a case study that may be used for this part of the selection process appear at **annex 21**.
12. Applicants will then proceed to an interview stage. During the interview stage applicants will be asked questions designed to test each competency from the person specification. The interview will assess the competencies of Leadership, Achieving Results, Planning and Organising and Continuous Self Development. The CPS has developed standard questions that can be used by selection panels.
13. The selection panel will comprise a job sponsor and two other CPS employees. The panel will select suitable candidates at the conclusion of the process to undergo the Associate Prosecutor training. The selection process will ensure that suitable candidates have the relevant skills to become Associate Prosecutors.

LEVEL 1 QUALIFICATION SCHEME

14. Trainee Associate Prosecutors will undergo a rigorous training process to ensure that they have the knowledge and skills to undertake the Associate Prosecutor role. It will include attendance at training courses and pre-course work which will include observational experience.

Pre-course work

15. Each trainee Associate Prosecutor will have a mentor appointed to work with them. The mentor will be either an experienced Associate Prosecutor or a Crown Prosecutor. The trainee Associate Prosecutor will have access to the mentor for the purposes of seeking guidance throughout the qualification process and after deployment. They will also shadow the mentor, and other experienced Crown Prosecutors, for the purposes of observing them at court. Trainee Associate Prosecutors will be provided with a list of hearings that they should observe before commencing the training courses. A copy

of the observation grid appears at **appendix 2 to the Certification Rules**. It is expected that trainees will spend at least one full day per week carrying out observations. Wherever possible they will observe their mentor. The observations and mentoring arrangements will provide trainee Associate Prosecutors with experience of the types of cases that they will conduct upon qualification as an Associate Prosecutor and will assist them with the qualification courses. The observations will take place over a period of up to 12 weeks.

16. The trainee also is required to download the Associate Prosecutor Manual from the CPS Infonet, which is aimed at developing their knowledge. Trainees must complete this self-study manual prior to attendance on the first face to face course (the Foundation Course). The manual will cover the role of Associate Prosecutors, review powers and the law, practice and procedure relating to the offences and types of cases that Associate Prosecutors will encounter. It is expected that trainees will require at least 20 hours to read and study the manual. A copy of the index to the manual appears at **annex 22**. The manual will act as a reference guide for Associate Prosecutors upon qualification. In addition they will have access to the CPS Infonet which contains up to date case law, legislation and procedural rules. Associate Prosecutors also receive bulletins through the Infonet which update them on developments in law and procedure.

Foundation course

17. Approximately one month after selection trainee Associate Prosecutors will attend the five day Foundation Course, which is designed to develop further their knowledge of the law and procedure for the offences they will encounter as a qualified Associate Prosecutor and of evidential matters. The course will build upon the self-study manual and will include reference to relevant case law, as appropriate.
18. The Foundation Course will meet the course outcomes which appear at **appendix 3 to the Certification Rules**. A draft course outline showing how the course outcomes are met appears at **annex 23**. During the course trainee Associate Prosecutors' knowledge of law and procedure will be tested. The test will be conducted by multiple choice assessment and will cover the range of the syllabus. Test results will be used to identify areas where trainees need to develop their knowledge.
19. After completing the Foundation Course, trainee Associate Prosecutors will return to their CPS Areas and continue undertaking observations and maintaining contact with their mentor.

Trial preparation course

20. Applicants will then undertake a Trial Preparation Course which is aimed at training them to exercise the litigation rights that they will be awarded. The course will develop the practical knowledge and skills that Associate Prosecutors will require to undertake summary trial preparation. It will also provide trainee Associate Prosecutors with the practical skills and knowledge they will require to review and assess charges and summonses and to decide upon and draft amendments thereto or take decisions to discontinue charges. The Trial Preparation Course will meet the course outcomes which appear at **appendix 3 to the Certification Rules**. A draft course outline appears at **annex 24**.

21. The course will conclude with a practical assessment. During the assessment trainee Associate Prosecutors may be asked to identify how the evidence available on a case may affect the charges and be expected to suggest an amendment or new charges. Trainee Associate Prosecutors may be asked to make a decision about which witnesses to call, serve and tender and whether any applications should be made. The assessment criteria appear at **appendix 4 to the Certification Rules**.

Advocacy Skills Course

22. Trainees will then undertake the Advocacy Skills Course which will conclude with an assessment of advocacy skills. Trainees will receive the assessment materials the night before the assessment. They will be given adequate time to prepare for the assessment. This approach reflects actual practice.

23. The Advocacy Skills Course will meet the course outcomes which appear at **appendix 3 to the Certification Rules**. They include the development of advocacy skills and the skills needed to exercise litigation rights, which include case analysis skills. A draft course outline showing how the course outcomes are met appears at **annex 25**. The applicant must meet the assessment criteria which appear at **appendix 4 to the Certification Rules**.

24. Upon successful completion of this course and assessment the trainee will have completed the qualification process and will make an application to ILEX to be registered as an Associate Prosecutor member.

Bail Application course

25. Approximately 4 to 6 weeks after designation the Associate Prosecutor will undertake the Bail Course. The course will meet the course outcomes which appear at **appendix 3 to the Certification Rules**. The Bail Course is designed to develop the ability of Associate Prosecutors to represent the CPS in adult bail hearings. A draft course outlines for the bail course appears at **annexes 27**.

26. The Bail Course will involve an assessment. The assessment criteria appear at **appendix 4 to the Certification Rules**. Prior to attendance on the bail courses Associate Prosecutors will observe bail hearings. A copy of the observation grid appears at **appendix 2 to the Certification Rules**.

Youth Court Courses

27. Associate prosecutors will also undertake the Youth Court courses. The courses will meet the course outcomes which appear at **appendix 3 to the Certification Rules**. The Youth Course will develop the skills required by Associate Prosecutors to prosecute cases in the youth courts. The Youth Bail course will train Associate Prosecutors how to deal with bail applications in relation to youths.

28. The Youth Court Course and Youth Bail course will also involve assessments. The assessment criteria appear at **appendix 4 to the Certification Rules**.

29. A draft course outline showing how the Youth Course outcomes could be met appears at **annex 26** and a draft course outline for the Youth Court Bail course appears at **annex 28**.

Certification

30. Applicants who successfully complete the Foundation Course, Trial Preparation Course, and Advocacy Skills Course will be able to apply to ILEX to register as an Associate Prosecutor member. Their application will be approved provided they are of good standing, will be employed by the CPS in an Associate Prosecutor role and have successfully completed the Associate Prosecutor qualification process. Applications will be processed by ILEX officers. An applicant may not be deployed by the CPS as an Associate Prosecutor until they have been successfully enrolled with ILEX.
31. The CPS may not deploy an Associate Prosecutor to undertake bail work until they have completed the bail course. The CPS may not deploy an Associate Prosecutor to appear in the Youth Court or undertake youth bail work until they have completed the Youth Court course and Youth Bail course.

APPLICATION FOR LEVEL 2 ASSOCIATE PROSECUTOR

32. Experienced Level 1 Associate Prosecutors may apply to become Level 2 Associate Prosecutors. CPS Areas will determine vacancies for Level 2 Associate Prosecutor posts according to business need.
33. The selection of Level 2 Associate Prosecutors will follow the same format as the application, presentation and interview process for Level 1 Associate Prosecutors, except that applicants will be assessed against the competencies and criteria for Level 2 Associate Prosecutors.
34. The written application process will test the competencies of Leadership, Communication and Negotiation, Reasoning and Decision Making, and Specialist Skills, Knowledge and Experience. The presentation exercise will test the competencies of Leadership, Communication and Negotiation, Reasoning and Decision Making, and Specialist Skills, Knowledge and Experience. At the presentation stage applicants will be asked to present a case to the panel. This may include a remand application and contested bail application. The applications will test advocacy skills, judgement and analytical skills of applicants. A copy of a sample case study appears at **annex 29**. The interview will test all the competencies tested at the application and presentation stage as well as those relating to competency of Achieving Results, Planning and Organising, Diversity Awareness and Management, and Continuous Self-Development.
35. Upon selection applicants will complete the Level 2 qualification process. The Level 2 qualification process will follow a similar format to the Level 1 qualification. Associate Prosecutors will be assigned to a mentor who will usually be an experienced Crown Prosecutor. The Associate Prosecutor will have access to the mentor for the purposes of seeking guidance from them. They will also shadow their mentor and other experienced Crown Prosecutors for the purposes of observing the cases that appear in their observation grid, a copy of which appears at **appendix 5 to the Certification Rules**. Observations will take place over approximately a 10 week period. Associate Prosecutors are required to reflect upon the cases that they observe and complete a reflective learning log. These activities will develop the experience of Associate Prosecutors in the range of work that they will undertake at Level 2.

36. Associate Prosecutors will attend an induction day during which the qualification programme, e-learning modules and assessment format will be explained to them. During this day they will also be provided with their reflective learning journal, a copy of which appears at **appendix 5 to the Certification Rules**.

LEVEL 2 QUALIFICATION SCHEME

Pre-course work

37. Associate Prosecutors will study the e-learning modules which cover the course of the trial, questioning skills, hearsay, examination in chief and competence and compellability of witnesses.

Level 2 Foundation Course

38. Approximately one month after the induction day Associate Prosecutors will attend the Foundation Course, which is designed to develop their knowledge of the offences they will encounter in their roles and of evidence. The course materials used for the Foundation Course will act as a reference point for Associate Prosecutors in their roles.

39. The course will meet the course outcomes which appear at **appendix 6 to the Certification Rules**. A draft course outline showing how the course outcomes are met appears at **annex 30**. During the course Associate Prosecutors will be tested on their knowledge of law and procedure. The testing process will act as an aide to identifying areas where an Associate Prosecutor needs to develop their knowledge. Tests will take place by a multiple choice test and by a case analysis exercise.

40. After completing the first course Associate Prosecutors will return to their CPS Areas and continue undertaking observations and maintaining contact with their mentor.

Level 2 Advocacy Skills Course

41. Approximately one month after completion of the first course Associate Prosecutors will return to undertake the Level 2 Advocacy Skills Course which will conclude with an independent assessment of advocacy skills.

42. The Advocacy Skills Course will meet the course outcomes which appear at **appendix 6 to the Certification Rules**. A draft course outline showing how the course outcomes are met appears at **annex 31**. This course is aimed at developing the trial skills of Associate Prosecutors and will cover delivering an opening speech and examination of witnesses in chief and in cross-examination. The applicant will be assessed against the assessment criteria which appear at **appendix 7 to the Certification Rules**.

43. Upon successful completion of the courses and assessment the Associate Prosecutor will have qualified as a Level 2 Associate Prosecutor. The Associate Prosecutor will apply to ILEX for the Level 2 certificate.

44. Level 1 and Level 2 Associate Prosecutors will continue to be designated as Associate Prosecutors as long as they continue to be deployed as such and remain registered as Associate Prosecutor members of ILEX.

CONTINUING PROFESSIONAL DEVELOPMENT

45. Each year Associate Prosecutors must undertake at least 16 hours CPD. The CPD year runs from January to December. Associate Prosecutors must undertake at least 8 hours of CPD in criminal practice, procedure, knowledge or advocacy skills training. ILEX will monitor compliance with CPD.

COMMENTARY ON THE QUALIFICATION SCHEME

Admissions and Licensing Committee

46. ILEX will establish an Admissions and Licensing Committee which will have oversight over the Associate Prosecutor qualification scheme. This Committee will also have oversight over other schemes proposed by ILEX.

47. The Committee will be a committee of ILEX Professional Standards Ltd (IPS), carrying out functions of a regulatory nature, and will report to the IPS Board. The reporting line will ensure that there is a direct line of accountability between the Committee and the IPS Board. The Committee will make an annual report to the IPS Board.

48. The Admissions and Licensing Committee will be responsible for monitoring and maintenance of standards of assessment and the general overview of the qualification scheme. It will be responsible for the application of the Certification Rules. The Rules have been adopted by the IPS Board and by ILEX Council, as the approved regulator. The Committee will be able to delegate to the IPS Officers responsibility for approving course material. The Officers will be able to refer back to the Committee any matter which they are unable to determine or approve. The Officers will be required to report to the Committee on all decisions made under the delegated procedure.

49. The Committee will comprise two ILEX Fellows and three independent members. One of the Committee members will be a member of the IPS Board, with responsibility for registration and accreditation matters. One of the ILEX Fellows will be a contentious law practitioner and the other a non-contentious law practitioner. ILEX Council members will not be eligible to serve on the Committee due to conflicts of interest. At least one of the independent members will be appointed on the basis of their knowledge and experience of consumer issues. Appointments of committee members will be made by the IPS Board. IPS will commence recruitment of Committee members immediately to ensure that the Committee is in place by May 2011.

50. The Committee will receive expert advice from an External Advisor on issues relating to advocacy and litigation skills, course delivery and assessment standards. The External Advisor will have qualifications in law and legal practice and experience of criminal proceedings and of advocacy. The External Advisor will also need to have experience of teaching and assessing advocacy skills.

51. Terms of reference for the Admissions and Licensing Committee and the External Advisors are set out in the Certification Rules of this Application.

Selection criteria

52. The person specification and selection criteria will thoroughly test the suitability of candidates to qualify for training as Level 1 or Level 2 Associate Prosecutors. The selection process effectively involves three levels at which suitability will be tested: application, presentation and interview.
53. During the process applicants will show how they meet the person specification for the post and provide examples in support of their application. Accordingly, applicants' prior experience will be assessed at the beginning of the qualification process.
54. Applicants will rely upon observation experience at the first stage of the qualification because they do not have any rights to undertake advocacy on behalf of the CPS until qualified as Associate Prosecutors.

The Qualification Process

55. The qualification process is set out simply and follows a logical process. Applicants will begin by developing their experience of the range of cases they will encounter through their observations and contact with their mentor. The observation of hearings will enable applicants to gain experience of cases and discuss them during the courses in context of the types of proceedings they may encounter.
56. The time spent on observations will be substantial and will enable trainee Associate Prosecutors to build upon their experience. Trainee Level 1 Associate Prosecutors will undertake observations for up to a 12 week period and trainee Level 2 Associate Prosecutors will undertake observations for approximately a 10 week period.

Knowledge

57. Applicants will develop their knowledge of law (including relevant case law), procedure and evidence through the Foundation Course. The course material for this course is extensive and will cover all the offences that an Associate Prosecutor is likely to encounter. The Foundation Course and the pre-course and observation work will develop knowledge of evidence and procedure. Subsequent courses will reinforce that knowledge in the context of practical skills training. The tests conducted during the level 1 and level 2 Foundation Courses will identify areas where trainees need to develop their knowledge. Trainees will be able to address these knowledge gaps during the courses and during the observation and mentoring periods.
58. The Trial Preparation Course will develop the competence of Associate Prosecutors to exercise litigation functions that fall within their remit. The Advocacy Skills Course and Youth Course will teach and assess knowledge and procedure in the context of advocacy skills in magistrates' and youth courts. Associate Prosecutors will then receive training on how to deal with bail applications and complete a specific course covering bail proceedings in the youth courts. The bail courses will teach and assess knowledge of bail matters in the context of practical advocacy exercises. ILEX believes that these issues will be tested more practically and to an appropriate depth, in the context of the exercise of advocacy skills, as compared with separate examinations.
59. It is recognised that some applicants for the Associate Prosecutor role may have knowledge of law and procedure through studying, for example, law degrees and legal practice qualifications. Other applicants will have gained extensive practical experience

of law and procedure from working in the legal field. The CPS will ensure all applicants receive the same training in legal knowledge and procedure, thereby ensuring that all Associate Prosecutors possess the required level of knowledge of law and procedure before deployment.

60. After qualification, the course materials will act as reference materials for Associate Prosecutors. In addition they will be able to seek advice and assistance, if required, from mentors, course tutors and supervising Crown Prosecutors.

Practical skills courses

61. The skills courses for both Level 1 and Level 2 Associate Prosecutors will cover the teaching of both litigation and advocacy skills appropriate to the rights that will be granted under each certificate. In addition applicants will benefit from a specific course on how to deal with youth offenders and youth bail hearings. Each course will incorporate informal presentations and formal assessment of trial preparation skills, advocacy skills, evidence and ethics on the final days. Applicants will receive regular feedback during the informal presentations.

62. At the end of the Level 1 courses applicants will be able to use case analysis techniques, exercise review powers and be able to amend and withdraw charges where necessary. They will also be able to outline the facts of cases clearly and effectively, prepare and present coherent submissions to the courts, apply relevant communication skills and techniques, and understand the ethics, etiquette and conventions of advocacy in magistrates' and youth courts.

63. Applicants undertaking the Level 1 course will be formally assessed by means of applications relevant to the rights they may exercise based on case studies. Ethics, professional conduct and knowledge of law and procedure will be assessed within the case study scenarios. The case study scenarios will also test the litigation skills of applicants through their ability to endorse files and decide whether to withdraw or amend charges. Trainees will receive the assessment materials the night before the day of the assessment. They will be given adequate time to prepare for the assessment. This approach reflects actual practice.

64. The assessment may include applications to proceed in the absence of a defendant, plea before venue hearings, bail applications, applications to amend or withdraw a charge, or dealing with the previous convictions of a defendant. The case studies may include a motoring offence and an either way offence and will be different to case studies used during the course. The use of multiple cases will enable the assessment to reflect a mini-court list where applicants move from one case to another.

65. During the Advocacy Skills Course assessment two course tutors will act as defendants and two tutors will act as District Judges. An independent external organisation will undertake the actual assessment. The independent assessor will use the assessment criteria to determine whether applicants meet the standards expected of Associate Prosecutors.

66. The Level 2 Advocacy Skills Course will ensure that Associate Prosecutors are able to prepare a case for trial, undertake an opening speech, examine witnesses both in chief and in cross-examination, deal with unexpected situations and conduct a trial.

67. During the course of the assessment applicants will represent the CPS in a mock trial which again is externally assessed. Applicants will be expected to open the trial, examine a witness in chief, cross-examine the defendant who will be a course tutor, and deal with unexpected occurrences during the course of the mock trial.
68. Unexpected occurrences may include a witness being unable to understand a question, a defendant responding with a question or the defendant asserting a fact in closing which was not established in evidence. The procedure will test the ability of applicants to react to the situation, think on their feet and deal with the matter.
69. Course and assessment materials will be subject to scrutiny by External Advisors appointed by ILEX to ensure they are consistent with the course outcomes and the assessment criteria set out at **appendices 4 and 7 of the Certification Rules**. The CPS will ensure its course materials and teaching methods will be effective in ensuring applicants achieve the intended Course Delivery or Outcomes set by ILEX, which appear at **appendices 3 and 6 to the Certification Rules**.
70. The External Advisors will also be responsible for inspection of courses and moderation of standards of assessment applied by the assessors. Inspections may be carried out with an ILEX Officer. They will observe applicants when they are being formally assessed. An external organisation may be responsible for assessing candidates but assessment standards will be moderated by External Advisors reviewing recordings of applicants' performances. The applicant assessment which is reviewed will cover a representative range of performance. External Advisors will be required to have regard to the Course Delivery and Outcomes at **appendices 3 and 6 to the Certification Rules** and the Assessment Criteria at **appendices 4 and 7 to the Certification Rules** when undertaking inspections and carrying out moderations.
71. The assessment criteria and standards are provided in **appendices 4 and 7 to the Certification Rules**. On the Trial Preparation Course trainee Associate Prosecutors must be assessed as competent in at least two main criteria and three aspects of another criterion.
72. On the Level 1 Advocacy Skills Course candidates must be assessed as "good" or "competent" in at least 8 of the 10 aspects of the assessment. On the Level 2 Advocacy Skills Course candidates must be assessed as "good" or "satisfactory" in each of the 4 core areas and in at least 12 of the 15 other areas.
73. Draft course outlines are set out at **annexes 22 to 28 and 30 to 31** to this Application. They demonstrate the way in which the courses can be built around the course outcomes. They reflect the course delivery, outcomes and assessment criteria contained in **appendices 3, 4, 6 and 7 to the Certification Rules**. They are not definitive as there may prove to be alternative ways in which the outcomes for the course can be achieved and therefore are not included as part of the Certification Rules.

Bail Application Course

74. Level 1 Associate Prosecutors will complete a course on bail applications shortly after deployment. The course will develop their knowledge of law and procedure of bail

hearings in magistrates' courts. By the end of the course Associate Prosecutors will be able to present identified objections to bail on behalf of the CPS in a fair, clear and structured manner. They will also be able to deal with breach of bail hearings, defence arguments in relation to bail and understand how to deal with appeals against grant of bail. The course will conclude with skills assessments.

Youth Courses

75. Level 1 Associate Prosecutors will also undertake a Youth Course and a second course on Youth Bail. The courses will develop the knowledge of law and procedure of youth court hearings and of bail hearings youth courts. By the end of the courses Associate Prosecutors will be able to present identified objections to bail on behalf of the CPS in a fair, clear and structured manner in relation to youths. They will also be able to deal with breach of bail hearings, defence arguments in relation to bail and understand how to deal with appeals against grant of bail in relation to youths. The courses will conclude with skills assessments.

76. On the Youth Course trainee Associate Prosecutors must be assessed as competent in three criteria, two aspects of a fourth criterion and one aspect of a fifth criterion.

Assessment of Advocacy Skills Post-Qualification

77. Post assessment monitoring of Associate Prosecutors will be carried out through a variety of methods. The work of Associate Prosecutors will be monitored by a supervising Crown Prosecutor who will assess their advocacy skills with reference to the CPS National Standards of Advocacy.

78. In addition under IPS general Code of Conduct and CPS Statement of Ethical Principles, Associate Prosecutors may only undertake work that they are competent to undertake.

79. Furthermore, the training and assessment incorporated in the Advocacy Skills Course will have established that they are competent advocates and litigators and there will be an annual requirement imposed as to Continuing Professional Development training in Advocacy.

80. In addition the CPS has developed its own assessment processes. These are the CPS Core Quality Standards. The CPS has appointed assessors who may assess the advocacy of any CPS advocate against these quality standards. Further CPS local unit heads will conduct at least one advocacy assessment each year of all advocates against the CPS National Standards of Advocacy. These ongoing assessments identify areas where Associate Prosecutors may need to develop themselves.

Course Providers

81. The CPS will deliver the Associate Prosecutor qualification courses. ILEX will retain ultimate responsibility for maintaining standards through the reporting and monitoring procedures established under the Rules.

82. External Advisors and Officers of IPS will carry out inspection visits of courses, as necessary; to ensure that resources are appropriate to the course and the quality of course provision is maintained. Reports of inspection visits will be provided to the Admissions and Licensing Committee. The Reports will include feedback from

candidates who have attended the courses. Inspection visits may take place on final course days when assessment of candidates is being carried out.

83. The Admissions and Licensing Committee will receive annual reports from the CPS, as course provider, on how the course has progressed during the preceding 12 months and on candidates' performance. As indicated above, the External Advisors will moderate assessment materials prepared by the course provider and will review samples of applicants' advocacy on the course in order to monitor assessment standards applied by the assessment provider.

PART IV

CONDUCT RULES

PART IV – CONDUCT RULES

1. All members of ILEX, including Associate Prosecutors, will be required to comply with the ILEX Code of Conduct. Associate Prosecutors must also comply with the CPS National Standards of Advocacy and the CPS Statement of Ethical Principles. Copies of these documents appear at **annexes 17 and 18**.
2. The ILEX Code of Conduct places general duties upon members to act in the best interests of clients, with integrity and recognise their overriding duty to the court. The Code also confirms the duty upon Associate Prosecutor members of ILEX to comply with appropriate other Codes. These will be the CPS National Standards of Advocacy and the CPS Statement of Ethical Principles.
3. The Statement of Ethical Principles for the Public Prosecutor places the same obligations upon Associate Prosecutors as are placed upon other prosecution advocates. It lays down the standards of conduct and practice expected of prosecutors working for the CPS. It recognises the duties upon advocates to act impartially, within their competence and within the framework of the law. It also confirms the responsibility to preserve confidentiality, not to act in a conflict of interest situation and to act in accordance with the Director's Instructions. A breach of the ethical principles is dealt with as a disciplinary matter in accordance with the CPS Disciplinary Policy which appears at **annex 19**.
4. The CPS National Standards of Advocacy set out standards that the CPS expects from prosecution advocates so that it can serve the public and uphold justice. The standards act as prompts for prosecution advocates. They require advocates to act fearlessly, transparently, in accordance with the Criminal Procedure Rules and to recognise their overriding objective to deal with cases justly and to the courts. The standards confirm the responsibility of Associate Prosecutors to act within the ILEX Code and other CPS policies and procedures. They specifically set out the responsibilities of Associate Prosecutors in planning and preparing cases, and undertaking advocacy both in writing and in the courts.

Disciplinary Proceedings

5. A Memorandum of Understanding has been agreed between ILEX and the CPS which appears at **annex 12**. Amongst other matters the Memorandum sets out the arrangements agreed between the two organisations for dealing with complaints made against an Associate Prosecutor. The Memorandum recognises that complaints may be made about the conduct of an Associate Prosecutor to the CPS or to ILEX. It sets out arrangements for the sharing of information between ILEX and the CPS, as appropriate, about the complaints each body may receive.
6. The CPS will be able to deal with complaints it receives in accordance with its disciplinary policy which appears at **annex 19**. The policy sets out the procedure that the CPS will follow. The CPS will report the outcome of its investigation to IPS where appropriate. IPS will then decide what action to take against an Associate Prosecutor.
7. Any complaint or referral made about the conduct of an Associate Prosecutors to IPS will be dealt with through the normal disciplinary procedures. Those

procedures are set out at **Annex 15** and are the Investigation, Disciplinary and Appeal Rules (IDAR).

8. A complaint made to IPS which results in the exclusion of an Associate Prosecutor from membership of ILEX will lead to the Associate Prosecutor losing their rights to conduct litigation or exercise rights of audience. The CPS will not be able to deploy them as an Associate Prosecutor.