

## Draft SRA Higher Rights of Audience Regulations [2011] (Annex F8)

### **Solicitors' Higher Rights of Audience Regulations 2010** [SRA Higher Rights of Audience Regulations \[2011\]](#)

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Made on the first day of April by the Solicitors Regulation Authority with the approval of the Secretary of State under section 27 of the Courts and Legal Services Act 1990 [link: http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=Courts+and+Legal+Services+Act+1990&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=2065498&PageNumber=1&SortAlpha=0](http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=Courts+and+Legal+Services+Act+1990&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=2065498&PageNumber=1&SortAlpha=0) and section 2 of the Solicitors Act 1974 [link: http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=Solicitors+Act+1974&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=2188768&PageNumber=1&SortAlpha=0](http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=Solicitors+Act+1974&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=2188768&PageNumber=1&SortAlpha=0).

**[Authority:** [Made on the \[DD day of MM YYYY\] by the Solicitors Regulation Authority Board under section 2 of the Solicitors Act 1974 with the approval of the Legal Services Board under section 83 of, and paragraph 19 of Schedule 4 to, the Legal Services Act 2007](#)

**Date:** [These regulations came into force on \[1 October 2011\]](#)

**Replacing:** [Solicitors' Higher Rights of Audience Regulations 2010](#)

**Regulating:** [The qualifications that solicitors and RELs require to exercise rights of audience in the higher courts in England and Wales\]](#)

### **Introduction**

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[These regulations aim to ensure that \*solicitors\* and \*RELs\* who want to exercise rights of audience in the higher courts of England and Wales are competent to do so.](#)

[Solicitors and RELs are granted rights of audience in all courts upon qualification/registration but cannot exercise those rights in the higher courts until they have complied with additional requirements. We are required to set the education and training requirements which you must comply with in order for these rights to be used. These regulations describe the qualifications available, where rights can be transferred, and set out the process for becoming eligible to exercise rights of audience in the higher courts.](#)

[The intention is to give the public confidence that \*solicitor higher court\* advocates have met appropriate standards and adhere to the relevant \*Principles\*.](#)

[The \*Principles\* are all pervasive, and apply all the time. Outcomes relevant to these regulations are listed beneath the \*Principles\*.](#)

The following *Principles* will be of particular relevance in the context of exercising rights of audience in the higher courts.

You must:

1. uphold the rule of law and the proper administration of justice;
2. act with integrity;
3. not allow *your* independence to be compromised;
4. act in the best interests of each *client*;
5. provide a proper standard of service to *your clients*;
6. behave in a way that maintains the trust the public places in *you* and in the provision of legal services;
7. comply with *your* legal and regulatory obligations and deal with *your regulators* and ombudsmen in an open, timely and co-operative manner.

## **Outcomes**

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The desired outcomes which apply to *these regulations* are that:

- o *you* have achieved the standard of competence required of *higher courts* advocates;
- o *you* demonstrate this competence through objective assessment;
- o *you* maintain competence through relevant ongoing training; and
- o *clients*, the judiciary and the wider public, will have confidence that this has been demonstrated.

You must achieve, and where relevant continue to meet, these outcomes.

These outcomes, and the regulations that flow from them, apply to admitted *solicitors*, *REs* and *trainee solicitors*.

## **1. Introduction-Interpretation and definitions**

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~~1.1 The purpose of *these regulations* is to ensure that *solicitors* and *REs* wishing to exercise rights of audience in the higher courts of England and Wales are competent to undertake advocacy in those proceedings in which they may exercise rights of audience in accordance with *these regulations*.~~

~~1.2 *these regulations* will come into force on such date as the SRA may determine, on which date The Higher Courts Qualification Regulations 2000 ("the 2000 regulations") shall cease to have effect.~~

(1) Words and phrases not expressly defined in *these regulations*, unless the context otherwise requires, bear the same meaning as they bear in the Solicitors Act 1974 and in Chapter 14 of the Solicitors' Code of Conduct [2011].

1.3(2) In *these regulations*:

"*barrister*"

means a person called to the bar by one

[of the Inns of Court and who has completed pupillage and is authorised by the General Council of the Bar to practise as a barrister;](#)

**"comparable jurisdiction"**

includes Scotland, Northern Ireland, Republic of Ireland and those jurisdictions listed in paragraphs 1 and 2 of the Schedule to the ~~Qualified Lawyers Transfer Regulations 1990~~ [QLTR](#) together with all Recognised Jurisdictions as defined in the ~~Qualified Lawyers Transfer Scheme Regulations~~ [QLTSR](#), and from time to time published by ~~the~~ [SRA](#)us:

**"CPD" or "continuing professional development" and "CPD year"**

[have the meanings set out in the SRA Training Regulations \[2011\]: Part 3 – CPD Regulations;](#)

**"higher courts"**

[means the Crown Court, High Court, Court of Appeal and Supreme Court in England and Wales;](#)

**"higher courts advocacy qualification"**

means, subject to regulation 6, one of the qualifications referred to in regulation 3 to exercise extended rights of audience in the higher courts;

**"LPC" or "Legal Practice Course" (LPC)**

~~and "continuing professional development" have~~ [has](#) the meaning set out in the ~~Training Regulations 1990~~ [SRA Training Regulations \[2011\]: Part 1 – Qualifications Regulations;](#)

**"previous regulations"**

means either the Higher Courts Qualification Regulations 1992, the Higher Courts Qualification Regulations 1998, or the Higher Courts Qualification Regulations 2000, [or the Solicitors' Higher Rights of Audience Regulations 2010;](#)

**"QLTR" or "Qualified Lawyers Transfer Regulations"**

[means the Qualified Lawyers Transfer Regulations 1990 and 2009;](#)

<b>"REL" registered European lawyer)</b>	means an individual registered with the SRA under Regulation 17 of the European Communities (Lawyer's Practice) Regulations 2000;
<b>"SRA"</b>	means the Solicitors Regulation Authority.
<b><u>"QLTSR" or "SRA Qualified Lawyers Transfer Scheme Regulations"</u></b>	means the SRA Qualified Lawyers Transfer Scheme Regulations 2010 and [2011];
<b>"standards"</b>	means the "Statement of standards for solicitor higher court advocates" issued by the SRA; <del>and appended to these regulations.</del>
<b><u>"these regulations"</u></b>	means the SRA Higher Rights of Audience Regulations [2011];
<b><u>"trainee solicitor"</u></b>	means any person receiving workplace training with the express purpose of qualification as a <i>solicitor</i> , and " <i>trainee</i> " should be construed accordingly;
<b><u>"us" and "we"</u></b>	means the SRA and references to " <i>our</i> " should be construed accordingly;
<b><u>"you" for the purpose of these regulations</u></b>	means a solicitor or an REL, and references to " <i>your</i> " should be construed accordingly.

## 2. Rights of audience

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- 2.1** A solicitor is authorised by the SRA to exercise rights of audience in the higher courts subject to the provisions of Rule 20.01(1)(a)(ii) of the Solicitors' Code of Conduct 2007 as amended.
- 2.2** An REL is authorised by the SRA to exercise rights of audience in the higher courts subject to the provisions of Rule 20.01(2)(a)(ii) of the Solicitors' Code of Conduct 2007 as amended.

Subject to the provisions of *these regulations* you may be authorised by us to exercise rights of audience in the *higher courts*.

## Guidance note

As a solicitor or REL you already have full rights of audience in Tribunals, Coroners Courts, Magistrates Courts, County Courts and European Courts. An application for higher rights of audience allows you to also appear, subject to which qualification you obtain, in proceedings in the Crown Court, High Court, Court of Appeal and Supreme Court.

### 3. Qualifications to exercise extended rights of audience

**3.1(1)** ~~The SRA may grant one or both of the following qualifications to a solicitor or REL who meets the requirements of these regulations:~~ if you meet the requirements of these regulations, we may grant one or both of the following qualifications, which authorise you to conduct advocacy in the higher courts:

- **Higher Courts (Civil Advocacy) Qualification** which entitles the *solicitor* or *REL* to exercise rights of audience in all civil proceedings in the *higher courts*, including judicial review proceedings in any court arising from any criminal cause;
- **Higher Courts (Criminal Advocacy) Qualification** which entitles the *solicitor* or *REL* to exercise rights of audience in all criminal proceedings in the *higher courts* and judicial review proceedings in any *court* arising from any criminal cause;

subject always to ~~the rules and principles~~ the Principles and outcomes of the *Solicitors'* SRA Code of Conduct 2007 [2011].

**3.2(2)** ~~These solicitors and RELs who~~ if you have been granted a *higher courts* qualification by the Law Society or ~~the SRA~~ us under the previous regulations, you shall be deemed to have been granted the equivalent qualification or qualifications under ~~paragraph 3.1 above~~ regulation 3(1) above.

## Guidance note

If you have been granted a higher courts advocacy qualification under the previous regulations, you are not required to re-apply under these regulations.

### 4. Qualifying to exercise extended rights of audience

**4.1(1)** ~~solicitors and RELs~~ When applying for a *higher courts advocacy qualification* you must demonstrate to us that ~~they~~ you are competent to undertake advocacy in the proceedings in relation to which ~~they~~ you have applied by:

**4.1.1(i)** successfully completing assessments prescribed by ~~the SRA~~ us; or

**4.1.2(ii)** having gained an equivalent qualification in a *comparable jurisdiction* or a jurisdiction listed in Article 1 of ~~the EC Parliament and Council~~

~~Directive 98/5/EC~~ the *Establishment Directive* and undertaken any further step(s) as may be specified by ~~the SRA~~ [us](#) under regulation 5.

**4.2(2)** ~~The SRA~~ [We](#) will issue standards against which the competence of ~~solicitors and RELs~~ [those](#) applying for a *higher courts advocacy qualification* and exercising those rights of audience conferred by the qualification awarded will be assessed. The *standards* will be appended to, but do not form part of *these regulations* and may be amended from time to time by ~~the SRA~~ [us](#).

## 5. Qualification gained in another jurisdiction

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**5.1(1)** ~~A solicitor or REL~~ [You](#) may apply for a qualification to exercise rights of audience in all proceedings in the *higher courts* relying on qualification(s) gained in any *comparable jurisdiction* or a jurisdiction listed in Article 1 of ~~the EC Parliament and Council Directive 98/5/EC~~ [the Establishment Directive](#).

**5.2(2)** Each application will be considered by ~~the SRA~~ [us](#) on its merits ~~by the SRA~~ [which and we](#) may require ~~the applicant~~ [you](#) to undertake such steps as ~~it~~ [we](#) may specify in order to gain the qualification.

## 6. Exemptions under section 31C of the Courts and Legal Services Act 1990 [Conversion provisions for barristers](#)

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~~With respect to his or her entitlement to exercise a right of audience before a court in proceedings of a particular description, a solicitor or REL who is a person to whom, in respect of that court and that description of proceedings, section 31C of the Courts and Legal Services Act 1990~~ [f link: http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=Courts+and+Legal+Services+Act+1990&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=2065498&PageNumber=1&SortAlpha=0](http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=Courts+and+Legal+Services+Act+1990&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=2065498&PageNumber=1&SortAlpha=0) applies, shall have a *higher courts advocacy qualification* in respect of that entitlement. [In accordance with paragraph 86 of Schedule 19 of the LSA, a barrister with existing higher rights of audience will automatically be awarded the solicitors' higher rights of audience when applying to the roll.](#)

### [Guidance note](#)

[You will be required to declare when applying to be admitted to the roll that you were formerly a barrister with higher rights of audience and that you have no disciplinary proceedings in progress against you.](#)

## 7. Conversion provision for RELs

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~~Any~~ [if you are an](#) REL who is granted a qualification listed in regulation ~~3.1~~ [3\(1\)](#), [you](#) shall keep that qualification upon being admitted as a *solicitor*.

## 8. Assessments

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**8.1(1)** ~~The SRA~~ [We](#) shall:

**8.1.1(i)** issue guidelines and *standards* for the provision of competence assessments in *higher courts* civil advocacy and *higher courts* criminal advocacy;

**8.1.2(ii)** validate and authorise organisations to provide assessments; and

**8.1.3(iii)** monitor the provision of assessments.

### **Guidance note**

You are not required to undertake any training before taking the assessments, but you may decide that you need to undertake additional training, which will be offered by assessment organisations. Whether or not you require additional training is a decision for you.

In satisfying the *standards* you will need to comply with the relevant legislation and procedures in force at the time.

You can apply for the qualification in either civil or criminal proceedings.

Assessment providers will offer assessments that cover the generic standards in evidence, ethics, advocacy and equality and diversity as well as specific standards in either civil or criminal proceedings. If you wish to obtain the qualification in both proceedings you must take both assessments.

A *trainee* may undertake the assessments but will not be permitted to exercise the rights until admission as a *solicitor*.

## **9. Continuing professional development**

~~*Solicitors* or registered European lawyers who have gained a higher courts advocacy qualification under regulation 3.1 and 5.1 of *these regulations*, or who are exercising any right of audience in the higher courts by virtue of any exemption they have under Regulation 6, are subject to the continuing professional development requirements in the Training Regulations 1990. They must, in complying with these requirements, undertake at least five hours continuing professional development relating to the provision of advocacy services in the higher courts in each of the first five continuing professional development years following the grant of the qualification or (in the case of *solicitors* or registered European lawyers who exercise any right of audience in the higher courts by virtue of any exemption under regulation 5.1 ) the date of their first exercise of the right.~~

- (1)** If you have gained a *higher courts advocacy qualification* under regulation 3(1), you must undertake at least five hours of CPD relating to the provision of advocacy services in the *higher courts* in each of the first five CPD years following the grant of the qualification.
- (2)** If you have gained a *higher courts advocacy qualification* under regulation 5(1) or are exercising any right of audience in the *higher courts* by virtue of any exemption you have under regulation 6, you must undertake at least five hours of CPD relating to the provision of advocacy services in the *higher*

[courts](#) in each of the first five *CPD years* following the date of *your first exercise of the right*.

### **Guidance note**

The requirements in regulation 9(1) and 9(2) are not an additional requirement to that required by the [SRA Training Regulations \[2011\]: Part 3 - CPD Regulations](#).

This requirement commences the *CPD year* following the year in which the qualification is awarded or from the date *you first undertake advocacy in the higher courts* if qualifying via a comparable qualification. It is up to *you* to decide what *your training needs* are in relation to the *advocacy services you provide*.

Therefore, the training may be *advocacy training, training on new procedures or on substantive law* if relevant to *higher court practice*.

## **10. Applications and reviews**

**10.1(1)** ~~An application under *these regulations* *You* shall be made by a solicitor or REL, shall be made~~ make an application under [these regulations](#) on the form in the manner prescribed by ~~the SRA~~ [us](#) and shall be accompanied by the appropriate fee fixed from time to time ~~by the SRA~~.

### **Guidance note**

An application of higher rights of audience should be made via [our website](#).

**10.2(2)** ~~A solicitor or REL~~ *You* shall not apply for a *higher courts advocacy qualification* until one of the requirements of regulation 4 has been met.

**10.3(3)** ~~A solicitor or REL~~ *When* applying for a *higher courts advocacy qualification*, *you* may within 28 days of receiving notification of ~~the SRA's~~ [our](#) decision ask for the decision to be reviewed.

**10.4(4)** ~~A solicitor or REL~~ *You* may not apply to ~~the SRA~~ [us](#) for a review of a decision by an assessment provider ~~that he or she has~~ [where you have](#) failed an assessment.

## **11. Transitional arrangements**

**11.1(1)** ~~A solicitor or REL who at the date on which *these regulations* come~~ [if, at the time the Solicitors' Higher Rights of Audience Regulations 2010 came](#) into force ~~has~~ [you had](#) undertaken in part the requirements specified in regulation 5 of the Higher Courts Qualification Regulations 2000 (the development route) and ~~who has~~ [have](#) not been granted the Higher Courts (All Proceedings) Qualification, *you* may either:

- (a)(i)** within 24 months of the coming into force of ~~these regulations~~ [the Solicitors' Higher Rights of Audience Regulations 2010](#), complete the requirements set out in regulations 5(1)(a) and 5(1)(b) of the Higher Courts Qualification Regulations 2000, which will be treated as meeting the requirements of regulation 4 of *these regulations*, and



may be granted both the Higher Courts (Civil Advocacy) Qualification and the Higher Courts (Criminal Advocacy) Qualification; or

- ~~(b)~~ **(ii)** apply for a *higher courts advocacy qualification* in accordance with *these regulations*.

~~11.2(2)~~ **11.2(2)** A solicitor or REL who at the date on which ~~these regulations come into force~~, if, at the time the Solicitors' Higher Rights of Audience Regulations 2010 came into force, ~~you had~~ has applied to ~~the SRA~~ us under regulation 6 of the Higher Courts Qualification Regulations 2000 (the accreditation route) but ~~has~~ have not been granted a higher courts advocacy qualification, you may either:

- ~~(a)~~ **(i)** within 24 months of the coming into force of ~~these~~ the Solicitors' Higher Rights of Audience Regulations 2010 regulations complete the requirements set out in regulations 4(1)(b) and 6 of the Higher Courts Qualification Regulations 2000, which will be treated as meeting the requirements of regulation 4 of *these regulations*, and may be granted one of or both the Higher Courts (Civil Advocacy) Qualification and the Higher Courts (Criminal Advocacy) Qualification; or

- ~~(b)~~ **(ii)** ~~may~~ withdraw ~~his or her~~ your application under the Higher Courts Qualification Regulations 2000 and apply for one of or both the Higher Courts (Civil Advocacy) Qualification and the Higher Courts (Criminal Advocacy) Qualification in accordance with *these regulations*.

~~11.3~~ **11.3** A solicitor or REL who at the date on which ~~these regulations come into force~~ has applied to the SRA under regulation 7 of the Higher Courts Qualification Regulations 2000 (the exemption route) but has not been granted a higher courts advocacy qualification, either:

- ~~(a)~~ will be treated as meeting the requirements of regulation 4 of ~~these regulations~~, provided he or she complies within 12 months of the coming into force of ~~these regulations~~ with regulation 7(1) of the Higher Courts Qualification Regulations 2000, and may be granted one of or both the Higher Courts (Civil Advocacy) Qualification and the Higher Courts (Criminal Advocacy) Qualification; or

- ~~(b)~~ may withdraw his or her application under the Higher Courts Qualification Regulations 2000 and apply for one of or both the Higher Courts (Civil Advocacy) Qualification and the Higher Courts (Criminal Advocacy) Qualification in accordance with *these regulations*.

~~11.4(3)~~ **11.4(3)** The SRA ~~has~~ We have the power to waive in writing any of the provisions of regulation 11 and to place conditions on and to revoke such waiver.