

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

SRA Higher Rights of Audience Regulations [2011]

[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

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

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

- *you* have achieved the standard of competence required of *higher courts* advocates;
- *you* demonstrate this competence through objective assessment;
- *you* maintain competence through relevant ongoing training; and
- *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*, *RELs* and *trainee solicitors*.

1. Interpretation and definitions

- (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].

- (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 *QLTR* together with all Recognised Jurisdictions as defined in the *QLTSR*, and from time to time published by *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"

has the meaning set out in the 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;

"QLTSR" or "SRA Qualified Lawyers Transfer Scheme Regulations"

means the SRA Qualified Lawyers Transfer Scheme Regulations 2010 and [2011];

"standards"

means the "Statement of standards for solicitor higher court advocates" issued by the SRA;

"these regulations"

means the SRA Higher Rights of Audience Regulations [2011];

"trainee solicitor"

means any person receiving workplace training with the express purpose of qualification as a *solicitor*, and "trainee" should be construed accordingly;

"us" and "we"

means the SRA and references to "our" should be construed accordingly;

"you" for the purpose of these regulations

means a solicitor or an REL, and references to "you" should be construed accordingly.

2. Rights of audience

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

- (1) 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 Principles* and outcomes of the SRA Code of Conduct [2011].

- (2) If you have been granted a *higher courts* qualification by the Law Society or us under the previous regulations, you shall be deemed to have been granted the equivalent qualification or qualifications under 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

- (1) When applying for a *higher courts advocacy qualification* you must

demonstrate to *us* that *you* are competent to undertake advocacy in the proceedings in relation to which *you* have applied by:

- (i) successfully completing assessments prescribed by *us*; or
 - (ii) having gained an equivalent qualification in a *comparable jurisdiction* or a jurisdiction listed in Article 1 of *the Establishment Directive* and undertaken any further step(s) as may be specified by *us* under regulation 5.
- (2) We will issue standards against which the competence of 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 *us*.

5. Qualification gained in another jurisdiction

- (1) *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 Establishment Directive*.
- (2) Each application will be considered by *us* on its merits and we may require *you* to undertake such steps as we may specify in order to gain the qualification.

6. Conversion provisions for barristers

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

If *you* are an *REL* who is granted a qualification listed in regulation 3(1), *you* shall keep that qualification upon being admitted as a *solicitor*.

8. Assessments

- (1) We shall:
 - (i) issue guidelines and *standards* for the provision of competence assessments in *higher courts* civil advocacy and *higher courts*

criminal advocacy;

- (ii) validate and authorise organisations to provide assessments; and
- (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

- (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

- (1) *You* shall make an application under *these regulations* in the manner prescribed by *us* and accompanied by the appropriate fee fixed from time to time.

Guidance note

An application of higher rights of audience should be made via *our* website.

- (2) *You* shall not apply for a *higher courts advocacy qualification* until one of the requirements of regulation 4 has been met.
- (3) When applying for a *higher courts advocacy qualification*, *you* may within 28 days of receiving notification of *our* decision ask for the decision to be reviewed.
- (4) *You* may not apply to *us* for a review of a decision by an assessment provider where *you* have failed an assessment.

11. Transitional arrangements

- (1)** If, at the time the Solicitors' Higher Rights of Audience Regulations 2010 came into force *you* had undertaken in part the requirements specified in regulation 5 of the Higher Courts Qualification Regulations 2000 (the development route) and have not been granted the Higher Courts (All Proceedings) Qualification, *you* may either:
- (i)** within 24 months of the coming into force of 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
 - (ii)** apply for a *higher courts advocacy qualification* in accordance with *these regulations*.
- (2)** If, at the time the Solicitors' Higher Rights of Audience Regulations 2010 came into force, *you* had applied to *us* under regulation 6 of the Higher Courts Qualification Regulations 2000 (the accreditation route) but have not been granted a higher courts advocacy qualification, *you* may either:
- (i)** within 24 months of the coming into force of 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
 - (ii)** withdraw *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*.
- (3)** 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.