

Application made by the Solicitors Regulation Authority Board to the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act for the approval of the Quality Assurance Scheme for Advocates (Crime) Notification Regulations [2012]

Proposal

1. It is proposed that the Quality Assurance Scheme for Advocates (Crime) Notification Regulations [2012] (the Regulations) and the SRA Handbook Glossary (Amendment) Rules [2012] are approved.
2. The purpose of the Regulations is to require advocates to notify the SRA of their intention to enter the Quality Assurance Scheme for Advocates (Crime) (QASA or the Scheme).
3. The Regulations do not alter or amend any existing Regulations or provisions.

Nature and effect of the Quality Assurance Scheme for Advocates (Crime) Notification Regulations

4. Since 2009 the SRA has with the Bar Standards Board (BSB) and Ilex Professional Standards (IPS) been working through the Joint Advocacy Group (JAG) on the development of a quality assurance scheme for advocates. JAG will shortly undertake a fourth and final consultation on the proposals for the Scheme, the main elements of which (registration and assessment of advocates for accreditation and reaccreditation) are due to commence at the end of 2012. Prior to that the SRA intends to launch a preliminary stage of the Scheme which will require advocates who will be required to enter the scheme to provide the SRA with notification of their intention to do so.
5. As the Scheme will be the subject of a fourth and final consultation later in 2012, separate Regulations are required to govern the requirements for Notification. The main application for approval of the Scheme, including the QASA Regulations, will be made to the Legal Services Board later in 2012.
6. The Scheme is intended to provide a means of quality assuring the competence of advocates undertaking work in the criminal courts. Clients and consumers, those instructing and those who are required to make decisions in proceedings are dependent upon competent advocacy for the effective administration of justice. It is essential that all those who are involved in the litigation process can have confidence in the standard of advocacy and the advocates. The Scheme is based on a common set of standards against which all advocates will be assessed regardless of their original education and training pathway to qualification. The standards will apply across four levels of advocacy with Level 1 reflecting advocacy in the Magistrates Courts and Level 4 reflecting advocacy in the most serious and complex Crown Court cases. Advocates will be assessed to obtain their accreditation within the Scheme and thereafter will have to seek reaccreditation once every five years. Advocates will be able to move through the levels by demonstrating through assessment that they meet the requirements for accreditation at the higher level.
7. At the present time there is no equivalent to the Scheme in place within any of the regulators within JAG. The live elements of the Scheme will launch at the end of 2012

when through a process of phased implementation, advocates will be required to register with their regulator to gain provisional accreditation at their self-assessed level and will then be required to acquire their full accreditation through assessment. The phasing of implementation will be divided into three stages based on groupings of circuits on which advocates work. As each phase commences, advocates will be given three months in which to register and obtain their provisional accreditation and then a further period in which to go on and obtain full accreditation. Prior to that, to assist with planning for implementation and to provide further data for the Equality Impact Assessment, the SRA will require those members of its regulated community who will be required to enter the Scheme to complete the notification process.

8. Notification will involve the advocate providing three key pieces of information:

- Confirmation of their intention to enter the scheme
- An indication of the level at which they intend to enter the scheme
- An indication of the circuit on which they undertake most of their criminal advocacy work

This information will be combined with data already held by the SRA (whether the advocate has higher rights of audience, advocate's address and equality and diversity data) to provide a comprehensive set of data about the numbers who will be entering the Scheme, in which phases and at which levels. This will assist with final planning for implementation and will enable the SRA to identify e.g. where we are more likely to need external assessors to support advocates who may find it difficult to access judicial evaluation and where we may need to ensure more frequent availability of assessment organisations.

9. The Regulations will require advocates to complete the notification process by 21 September 2012 (or as soon as they intend to practise criminal advocacy, whichever is the later). This will provide advocates with a period of just over two months to complete the notification process. The SRA process will be online and as above, we have focussed on asking advocates to respond to those questions on which we currently have limited information; we will then map this to data which we already hold. The notification process should in most cases take no more than a few minutes. The process will be fully supported by guidance.

10. Advocates who are absent from the workplace during the period up to 21 September 2012 will still be able to notify us thereafter.

11. The Regulations will be repealed by the coming into force of the Scheme regulations later this year. Once the Scheme regulations are in force, advocates will enter the scheme through registration or qualification and data will be obtained at that time.

12. The SRA Handbook Glossary (Amendment) Rules [2012] amend the SRA Handbook Glossary to introduce new terms that appear in the Regulations.

Statement in respect of the Regulatory Objectives

Protecting and promoting the public interest

13. QASA will ensure that advocates undertaking work in the criminal courts at all levels are competent to practise. The preliminary notification process will enable the SRA to acquire information about those who will be joining the scheme to support the long-term promotion of this regulatory objective.

Protecting and promoting the interests of consumers

14. QASA will give consumers increased confidence and assurance that those who undertake advocacy on their behalf are competent to do so. The notification process is a preliminary step to achieving that by providing the SRA with accurate and up to date information about those who will be joining the scheme and the level at which they intend to work.

Encouraging an independent, strong, diverse and effective legal profession

15. The notification process will provide an opportunity to gather data on our advocates and where they work. As the Scheme is implemented and developed, the data gathered through the notification process can be used to understand the impact of the Scheme in different areas, on different individuals and to understand issues affecting the movement and progression of advocates from one level of the Scheme to another.
16. We therefore consider that the notification process will support our objective of encouraging an independent, strong, diverse and effective legal profession.

Statement in respect of the Better Regulation Principles

Proportionality

17. Compliance with the notification requirements will be a simple and quick process which will contribute significantly to our understanding of the profile of criminal advocates amongst our regulated community.

Accountability

18. The SRA will be accountable for QASA by putting robust monitoring, evaluation and review processes in place, this will include our commitment to monitoring under the Equality Impact Assessment. The data gathered through the notification process will assist greatly in this process.

Consistency

19. Each of the three regulators involved in the development of QASA are introducing notification requirements so that all advocates who will be affected by the Scheme will be required to provide information about their intention to enter, the proposed level at which they will enter and the circuit on which they undertake most of their work.

Transparency

20. The Better Regulation Commission considers it to be best practice to consult stakeholders before proposals are developed to ensure stakeholders' views and expertise are taken into account. The QASA proposals have to date been the subject of three formal consultations as well as significant stakeholder engagement activity and will be the subject of a fourth and final consultation during 2012. The requirement to be part of the Scheme in order to conduct criminal advocacy was consulted on within this activity.

Targeted

21. The notification process is specifically targeted at those advocates who will need to enter the Scheme.

Stakeholder engagement

22. JAG has issued three consultation papers to date (October 2009-January 2010, August 2010-November 2010 and August 2011-November 2011) and will issue a fourth during 2012. Prior to the JAG consultations there had been others on the subject of a quality assurance scheme for advocates issued by the Legal Services Commission.
23. Stakeholder engagement has continued to be an important factor in the development of the scheme:
- QASA Forum held at The Law Society in July 2011
 - A range of workshops on specific proposals on the levels in November-December 2011
 - Coverage in the Chair of the SRA Board's column in the Law Society's Gazette
 - Attendance at a range of conferences and events arranged by stakeholders
 - Presentations have been made to the black and minority ethnic groups represented at Lord Ouseley's External Implementation Group
 - Meetings with the MoJ and CPS
 - Attendance at a series of events for The Law Society's Advocacy Section in May-June 2012
 - Webinars on aspects of the scheme (including one on 5 July 2012 to coincide with the coming into force of these Regulations)

Annexes:

- (1) [Draft] SRA Quality Assurance Scheme for Advocates (Crime) Notification Regulations [2012]
- (2) [Draft] SRA Handbook Glossary (Amendment) Rules [2012]

SRA contact for matters relating to this Application:

Mandy Gill
Education and Training Unit
SRA, Ipsley Court, Berrington Close, Redditch B98 0TD

Email: mandy.gill@sra.org.uk ; Mobile: 07876 884740

Annex (1)

[Draft] SRA Quality Assurance Scheme for Advocates (Crime) Notification Regulations [2012]

Preamble

Authority: Made on [insert date] by the Solicitors Regulation Authority Board under sections 2, 31, 79 and 80 of the Solicitors Act 1974 with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007

Date: These regulations came into force on [insert date]

Regulating: The practice of criminal advocacy in England and Wales.

Overview

Outcomes-focused regulation concentrates on providing positive outcomes which when achieved will benefit and protect *clients* and the public.

The Quality Assurance Scheme for Advocates (Crime), developed by the Joint Advocacy Group comprising the Bar Standards Board, ILEX Professional Standards and the *SRA*, is designed so that all advocates in the criminal courts will have undergone a process of accreditation to ensure they are only dealing with cases within their competence and that they are subject to assessment of and monitoring of their performance against agreed criteria. The *SRA* will introduce regulations to implement the Scheme *in full*. However, as an interim measure whilst further consultation is undertaken, these regulations ensure that all those wishing to conduct *criminal advocacy* will have notified the *SRA*.

The Principles

These regulations form part of the Handbook, in which the 10 mandatory *Principles* are all-pervasive. They apply to all those *we* regulate and to all aspects of practice.

Part 1: Interpretation

Regulation 1: Interpretation and definitions

- 1.1 The SRA Handbook Glossary 2012 shall apply and, unless the context otherwise requires:
 - a) all italicised terms shall be defined; and
 - b) all terms shall be interpreted,in accordance with the *Glossary*.

Part 2: Notification Provisions

Regulation 2: Notification requirements

- 2.1 If *you* undertake *criminal advocacy after the coming into force of these regulations, you must notify the SRA in the manner prescribed by the SRA by 21 September 2012 or before you undertake any criminal advocacy, whichever is the later.*

Regulation 3: Commencement

- 3.1 These regulations shall come into force on [2 July 2012 or on the date of the approval of the Legal Services Board, whichever is the later].

Annex (2)

[Draft] SRA Handbook Glossary (Amendment) Rules [2012]

Rules dated [XX] made by the Solicitors Regulation Authority Board.

Made under Part I, Part II, section 79 and 80 of, and paragraph 6B of Schedule 1 to, the Solicitors Act 1974 and section 9 and 9A of, and paragraphs 14A, 14B and 32 to 34 of Schedule 2 to, the Administration of Justice Act 1985 and section 21(2), 83 and Schedule 11 to and paragraph 6 of Schedule 14 to, the Legal Services Act 2007 and paragraphs 2 and 3 of Schedule 14 to the Courts and Legal Services Act 1990.

Subject to the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007 and coming into force on [2 July 2012]

Rule 1

Rule 2 of the SRA Handbook Glossary Rules 2012 shall be amended as follows:

- (a) after the definition of “**CPE**” insert:

“criminal advocacy

means advocacy in all hearings arising out of a police or Serious Fraud Office investigation, prosecuted in the criminal courts by the Crown Prosecution Service or the Serious Fraud Office.”

- (b) after the definition of “**SRA Principles**” insert:

“SRA Quality Assurance Scheme for Advocates (Crime) Notification Regulations

means the SRA Quality Assurance Scheme for Advocates (Crime) Notification Regulations 2012.”

- (c) in the definition of “**you**”, delete “and” at the end of (vii) and insert after (viii):

“and

(ix) for the purposes of the *SRA Quality Assurance Scheme for Advocates (Crime) Notification Regulations* means a *solicitor* or an *REL*,”

Rule 2

These amendment rules come into force on the [2 July 2012 or on the date of the approval of the Legal Services Board, whichever is the later].