

Application made by the Solicitors Regulation Authority Board to the Legal Services Board under Part 3 of Schedule 4 of the Legal Services Act for the approval of amendments to the SRA Higher Rights of Audience Regulations 2011

Proposed Alteration

1. It is proposed that the SRA Higher Rights of Audience Regulations 2011 are amended to remove the right of lawyers who cannot benefit from Directive 2005/36 to have their work experience in their home jurisdiction assessed by the SRA to determine whether they met the standards of the Higher Rights of Audience qualification.

Nature and effect of the existing SRA Higher Rights of Audience Regulations 2011

2. The existing Regulations allow internationally qualified lawyers who have gained admission via QLTR or QLTS to apply to the SRA to have their advocacy experience in their home jurisdiction assessed and for the SRA to determine whether this experience is equivalent to the outcomes which the SRA expects to be met by the Higher Rights of Audience assessments.

Nature and effect of the amendments to the SRA Higher Rights of Audience Regulations 2011 on LPC course requirements

3. The proposed amendment removes the right of international (non-Directive 2005/36) candidates to have their international qualification/experience assessed. This will mean that, for the vast majority of applicants¹, the higher rights qualification can only be gained by passing the higher rights of audience assessments authorised by the SRA.

Rationale for amending the SRA Higher Rights of Audience Regulations 2011

4. The SRA wants to amend this policy in order to align the Higher Rights of Audience Regulations with:
 - The original policy intentions behind the Higher Rights of Audience Regulations which had not been accurately reflected in the Regulations

¹ Lawyers who benefit from Directive 2005/36 (Recognition of Professional Qualifications) will still be able to have their experience assessed in line with the Directive.

- The approach taken to international qualifications in the QLTS (i.e. all international applicants under the QLTS must undertake assessments rather than rely on work experience).
 - The needs of the Quality Assurance Scheme for Advocates (QASA) by ensuring that all those with higher rights of audience have achieved the same standard.
5. In addition, whilst the Regulations were under review it became evident that they should specifically refer to the rights of some applicants under Directive 2005/36 (Recognition of Professional Qualifications). These are not new rights, they are simply rights which have not been specifically referenced in the Regulations up until this point.

Statement in respect of the Regulatory Objectives

Protecting and promoting the public interest

6. This policy will ensure that, so far as EU law allows, the Higher Rights of Audience qualification will ensure that every applicant has met a minimum competency standard by passing the Higher Rights of Audience assessments.
7. This policy will therefore promote this regulatory objective.

Supporting the constitutional principle of the rule of law

8. The Higher Rights of Audience qualification ensures that all applicants are competent in court practice and procedure.
9. This policy will support this regulatory objective.

Improving access to justice

10. We do not consider that this policy will impact on access to justice.

Protecting and promoting the interests of consumers

11. Consumers need to know that any solicitor which they choose to instruct has met certain basic standards. This change in policy helps assure consumers that every solicitor who has the Higher Rights qualification has achieved the requisite level of skill and knowledge for advocacy.
12. We therefore consider that this policy will protect and promote the interests of consumers.

Promoting competition in the provision of services

13. This policy may have a small and unquantifiable impact on the provision of services as it will prevent those with higher rights in another jurisdiction from using those rights to practise in the higher courts here. However, the policy change will impact on a small number of applicants and is in any case balanced by the need to ensure that court advocates are competent in both the law and practice of England and Wales.
14. This policy is therefore neutral in relation to this objective.

Encouraging an independent, strong, diverse and effective legal profession

15. The requirement for all applicants to take the Higher Rights assessments is fundamental to the SRA ensuring that the profession is strong and effective in terms of court advocacy.
16. Therefore, this policy change would have a positive impact in terms of this objective.

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

17. This policy change is neutral in relation to this objective.

Promoting and maintaining adherence to the professional principles

18. This policy change has particular relevance to professional principle (3)(d) namely:

"that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice,"
19. This change ensures that all candidates aware of the English and Welsh obligations to the court as opposed to those of their home jurisdiction.
20. Therefore, the policy will have a positive impact on this objective.

Statement in respect of the Better Regulation Principles

Proportionality

21. The policy is proportionate as it simply puts the same requirements on international candidates as are put on domestic candidates. As it is unlikely that any other court system operates in exactly the same way as that of England and Wales, and because of the importance to the consumer and to court administration for advocacy to run smoothly, this is a proportionate measure to introduce.

Accountability

22. There is too little data on which to analyse whether this change has any impact on applicants. However, we will monitor any feedback we receive.

Consistency

23. This change is motivated by the need to have consistency in our outcomes-focussed approach to assessment. Our policy throughout has been to ensure that all candidates have met the same outcomes through the SRA assessments in order to ensure fairness and consistency.

Transparency

24. The policy will be clearly set out in the new Regulations and will result in a much more coherent and transparent approach to the assessment of higher rights.

Targeted

25. This policy change is to close a particular loophole, and is therefore targeted.

Statement in relation to desired outcomes

26. The SRA seeks to ensure:

- A fair, transparent and consistent approach to the assessment of the Higher Rights of Audience standards
- Consistency with other policy areas (e.g. QLTS and QASA)

27. These outcomes will be achieved once this policy change is implemented.

Statement in relation to impact on other Approved Regulators

28. This policy has no discernable impact on any of the other Approved Regulators.

Implementation timetable

March 2012	Application for approval of the Commencement and Amendment Regulations submitted to LSB
1 April 2012	Policy implemented in Edition 3 of the SRA Handbook

Stakeholder engagement

29. The SRA conducted a consultation during the Summer of 2011 on its proposals. A summary of responses is at Annex A.

Further explanatory information

Annex A Summary of responses to Higher Rights of Audience consultation

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