



### Summary of decision

The purpose of this summary sheet is to provide a high level and accessible overview of the Legal Services Board's ("LSB") decision. Readers are recommended to read the formal decision notice below for further detail. **This summary is not and should not be taken as a formal part of the LSB's decision notice under the Legal Services Act 2007 (the "Act").**

The LSB's decision is to grant in full the application from the Solicitors Regulation Authority ("SRA") to make changes to its regulatory arrangements under the SRA Authorisation of Individuals (Higher Rights of Audience) (Amendment) Regulations 2020 in respect of when individuals can attempt the higher courts advocacy qualification.

The Rules will amend the SRA Authorisation of Individuals Regulations to confirm that the higher courts advocacy qualification can only be attempted after the date an individual has been admitted as a solicitor or registered as a Registered European Lawyer.

Following assessment of the SRA application, the LSB concluded that the changes do not meet the refusal criteria in the Act. Consequently, the LSB considers that there is no reason to refuse this application.

## **Decision notice**

### **The Solicitors Regulation Authority rule change application for approval of alterations to its regulatory arrangements relating to rights of audience in the higher courts.**

1. The Legal Services Board (“LSB”) has granted an application from the Solicitors Regulation Authority (“SRA”) for approval to changes to its regulatory arrangements to require that the higher courts advocacy qualification only be obtained after admission as a solicitor.
2. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (“the Act”) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Law Society is an approved regulator, and the SRA is the regulatory arm to which the Law Society has delegated its regulatory functions.
3. This decision notice sets out the decision taken, including a description of the changes. The notes at page 5 of this notice explain the statutory basis for the decision.

## **Chronology**

- The LSB confirmed receipt of an application from the SRA on 5 January 2021.
- The 28-day initial decision period for considering the application will end on 1 February 2021.
- This decision notice is effective from 28 January 2021.
- The decision notice will be published on the LSB’s website by 30 January 2021.

## **Background**

1. On 27 October 2020 the LSB approved the SRA’s changes to its regulatory arrangements to introduce a new framework for admission as a solicitor in England and Wales, the Solicitors Qualifying Examination (the “SQE”). The approval means that the SRA will be proceeding to implement the new SQE later this year.
2. The SRA’s application states that it has considered the relationship between the SQE and its higher rights of audience (“HRA”) assessments.
3. Paragraphs 15-17 of the application set out the present position which allows individuals to attempt the relevant HRA assessment prior to their admission as a solicitor. It is notable that they cannot make use of their higher rights of audience until they have been admitted.
4. Paragraph 22 of the application confirms that from August 2014 to July 2020 just 45 individuals applied for HRA prior to admission as a solicitor. This has been provided to illustrate the limited impact expected from the proposed change.

### **Summary of proposed changes**

5. The SRA is proposing to amend its regulatory arrangements to set out that only admitted solicitors can undertake the HRA assessment.
6. The consideration of this issue by the SRA included a public consultation in 2019 which is set out in some detail at paragraphs 32-40 of the application. Most respondents agreed with the proposal made by the SRA.
7. The change is linked to the introduction of the SQE. Currently the assessment is offered both as a standalone assessment post admission and as an elective on the Professional Skills Course (“PSC”), which is undertaken by trainee solicitors. The PSC will be phased out as a consequence of the introduction of the SQE.
8. In addition, the application sets out at paragraphs 24-25 the intention to have clear and logical progression in advocacy training and assessment requirements as follows:
  - legal knowledge will be tested at SQE1<sup>1</sup>;
  - oral advocacy skills will be directly tested at SQE2<sup>2</sup> leading to rights of audience in the lower courts upon admission; and
  - practitioners will then have the option to build on their advocacy skills post-admission through practice and can also elect to undertake the relevant HRA assessment.

### **Key issues considered during assessment of the application**

9. The application provides insight on the SRA’s wider programme of work to provide assurances of satisfactory advocacy standards throughout 2021 and into 2022. The detail is provided at paragraphs 5-14 of the application and within annexes 2a and 2b, which set out revised higher rights of audience assessment standards.
10. The LSB has not assessed the above programme of work as part of this application, as this application focuses exclusively on changes to regulatory arrangements concerning the appropriate timing, and not the content, of the HRA assessment. The application confirms at paragraph 10 that the SRA will engage with the LSB in due course in relation to revisions to its existing Education, Training and Assessment HRA Regulations.
11. During our assessment, we noted that the application is not supported by any evidence that the current process for obtaining HRA leads to any increased risk of poor standards of advocacy. However, we accept that advocacy is a high-risk practice area and the SRA argues at paragraph 39 of the application that the proposed alteration reduces a potential risk that newly qualified solicitors enter the higher courts without first building their knowledge and skills.
12. The SRA explained at paragraph 40 of the application that it has considered whether it would be appropriate to introduce a minimum period of post-admission practice before

---

<sup>1</sup> two exams of multiple-choice questions assessing Functioning Legal Knowledge covering different subject areas.

<sup>2</sup> a series of exams assessing legal skills.

an HRA assessment may be taken. It concluded not to proceed with this suggestion at this time as any such period would be arbitrary and could negatively impact upon access to justice.

13. We asked the SRA whether it had gathered any evidence on differing advocacy standards depending on when practitioners obtained HRA. The SRA explained that it did not hold any data; instead, its case for change is based upon the need for confidence in the assessment and for the desirability of the HRA being awarded to practitioners who have had practical exposure to court room advocacy.

#### *Monitoring and evaluation of impacts*

14. The application explains at paragraph 31 that the SRA will monitor and review the impact of this change on the number of solicitors seeking the HRA qualification as well as on the quality of advocacy.

15. We asked the SRA to explain further how it would monitor and review the impact of the change. The SRA explained that it will monitor the number of individuals taking the HRA assessment. If a downward trend is identified, then it will explore whether this is directly linked to the change.

16. The SRA explained that it will also monitor the quality of advocacy through:
- publishing an aggregated and anonymised summary of the reports it receives, which raise concerns about criminal and civil advocacy and practice in summer 2021. In doing so, the SRA will analyse whether there are any changes to the number of reports relating to solicitors with HRA. The summary exercise will then be carried out on an annual basis to identify trends;
  - ongoing engagement with the judiciary to understand their concerns. This will include higher court advocacy;
  - encouraging appropriate reporting from the public and advocacy stakeholders about advocacy standards; and
  - engaging with solicitors, firms, and stakeholders to further develop evidence about standards and risks.

#### **Decision**

17. The LSB has considered the SRA's application against the criteria in paragraph 25(3) of Schedule 4 to the Act. It accordingly grants the application in full.
18. **Annex A** to this decision notice contains the amended regulatory arrangements that are approved by the LSB.

**Matthew Hill, Chief Executive**  
**Acting under delegated authority granted by the Legal Services Board**  
**28 January 2021**

*Notes:*

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that
  - (a) granting the application would be prejudicial to the regulatory objectives
  - (b) granting the application would be contrary to any provision made by or by virtue of this Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
  - (c) granting the application would be contrary to the public interest
  - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
  - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
  - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
  - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
  - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
  - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules<sup>3</sup> about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

---

<sup>3</sup> Rules for Rule Change Applications – Version 2, April 2018  
[https://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/New%20folder%20\(2\)/FINAL\\_Rules\\_for\\_applications\\_to\\_alter\\_regulatory\\_arrangements.pdf](https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20(2)/FINAL_Rules_for_applications_to_alter_regulatory_arrangements.pdf)

## Annex A

### SRA Authorisation of Individuals (Higher Rights of Audience) (Amendment) Regulations 2020

Regulations made by the SRA Board on 20 October 2020.

Made under sections 2, 13, 28 and 31 of the Solicitors Act 1974 and section 89 of, and paragraphs 2 and 3 of Schedule 14 to, the Courts and Legal Services Act 1990.

#### Regulation 1

1.1 In regulation 9.10 of the SRA Authorisation of Individuals Regulations, after “satisfactorily completed the appropriate *higher courts advocacy qualification*”, insert:

“and that you have done so after the date of your admission as a *solicitor* or initial registration as an *REL*”.

1.2 Regulation 1.1 above does not take effect in respect of *solicitors* or *REs* who have satisfactorily completed the appropriate *higher courts advocacy qualification* before these regulations come into force.

#### Regulation 2

These regulations come into force on 1 April 2021.