

Appendix 2

Higher Courts Qualifications Regulations

1. *The 1992 Regulations*

1.1 The 1992 Regulations provided for three qualifications in all proceedings (covering the High Court and the Crown Court and above), criminal proceedings (Crown Court and above) and civil proceedings (High Court and above) which in scope were similar to today's qualifications. The 1992 Regulations provided two routes for solicitors to qualify to appear before the higher courts:

- *The exemption route* which was similar to that in use today but far more restrictive as regards the requirement for the applicant to have exercised rights of audience in those courts in which the qualification was sought (High Court, Crown Court or both). Solicitors sitting in a judicial capacity in the relevant courts could also use the exemption route, although this applied primarily to those sitting as Recorders in the Crown Court and to a lesser degree to Deputy Recorders (part time judges) in the Crown Court. Solicitors sitting as District Judges or Deputy District Judges in the County Courts could not apply under this route unless they could demonstrate knowledge of the rules and procedures applicable to, and appropriate advocacy experience before the court in which they sought to appear. Applications under this route were by way of portfolio giving details of advocacy/judicial experience and supported by at least two references, at least one provided by a member of the judiciary before whom the applicant had appeared. Applications were considered and decided by the Higher Courts Qualification Casework Committee (HCQCC).
- *The certificate of eligibility, course and tests route* was a complex route requiring the applicant to first obtain a certificate of eligibility by demonstrating advocacy experience in the lower courts (County Court, Magistrate's courts and Tribunals). This enabled them to attend on specific training events and attempt the test of evidence and procedure for either the criminal or civil courts or both if the all proceedings qualification was sought. When the test(s) were passed the applicant then attended an intensive advocacy training course and assessment over a period of three days. The Law Society's Higher Rights Test Board (HRTB) set, organised and ran both the tests of evidence and procedure and the advocacy training and assessments. Applications for certificates of eligibility were considered by the HCQCC whilst the results of tests were ratified by the HRTB.

2. ***The 1998 Regulations***

2.1 Following a review of the operation of the scheme in 1995 it was decided that the 1992 Regulations were too restrictive and did not provide equal opportunities to all solicitors to obtain HRA. An application to amend the existing Regulations led to the implementation of the Higher Courts Qualification Regulations 1998 (the 1998 Regulations) that retained the exemption route, replaced the course and test route and introduced an additional route to qualification.

- *The experience route* enabled applicants to demonstrate their understanding of the rules of evidence and court procedures by experience of litigation for higher courts cases and advocacy in the lower courts without the need to pass a formal written examination in evidence and court procedure. Applications for certificates of eligibility to proceed via the experience route were decided by way of application form and interview with assessor's recommendations being ratified by the HCQCC. The need to attend advocacy training and successfully complete to advocacy assessments in criminal or civil proceedings or both if the all proceedings qualification was sought remained.
- *The training route* was aimed at those solicitors who could not satisfy the experience requirements and primarily applied to those seeking the qualification in civil proceedings. Applicants were required to demonstrate existing advocacy and litigation experience in the lower courts. There were examinations in evidence and procedure for the criminal and civil higher courts that were to be passed before the applicant could proceed to a two-part advocacy training course that was followed by an assessment set, organised and run by the Law Society's Higher Rights of Audience Test Board or a specifically authorised external training organisation.

2.2 All of these routes required that the solicitor must have a minimum of three years post qualification experience before an application could be made.

3. ***The 2000 Regulations***

3.1 The Access to Justice Act 1999 (AJA99) introduced further changes to the way in which HRA could be achieved and resulted in another application under the Schedule 4 procedures, as amended by AJA99, for revisions to the 1998 Regulations. This led to the implementation of the Higher Courts Qualification Regulations 2000 which amended existing routes to qualification and introduced new routes.

- *The exemption route* became available to solicitors and Registered European Lawyers (RELs) who have practiced as lawyers for at least three years and are able to demonstrate experience of advocacy (including judicial experience) in the higher courts of England and Wales or of a comparable jurisdiction. Applications are by way of a questionnaire and references normally provided by a judge before whom the applicant has appeared. The HCQCC decides these applications.

- *The accreditation route* became available to solicitors and RELs who have practiced as lawyers for at least three years and can demonstrate experience of litigation in the higher courts of England and Wales or of a comparable jurisdiction or of a jurisdiction listed in Article 1 of EU Directive 98/5/EC. Applicants apply to the HCQCC for a certificate of eligibility and then have to successfully complete the advocacy assessment appropriate for the qualification they seek. On passing the assessment the applicant makes a simple application for the award of a Higher Courts Qualification which is processed under powers delegated to staff.
- *The development route* was introduced to cater for applicants who do not satisfy the experience requirements of the other two routes or who have less than three years practice experience. This route is of particular relevance to newly admitted solicitors and trainee solicitors who can accumulate up to six months of appropriate advocacy and litigation experience during their training contract. Applicants will:
 - complete training and pass assessments in evidence, procedures and ethics
 - complete training and pass assessments in advocacy
 - prepare a portfolio based on case and other advocacy experience over a twelve months period, this may include experience gained from 'sitting behind' and to a lesser extent certain moot trials and advocacy competitions
 - have a mentor who guides them through the process, provides appropriate advice and feedback and signs off the portfolio
 - provide a copy of the portfolio to the LSRB for monitoring and verification purposes if requested
 - after successful completion of the process be awarded the All Proceedings Qualification.

The training and assessments for this route are provided by external organisations specifically authorised and monitored by the LSRB.

- *The former Barrister route* is open to any solicitor who prior to 31 July 2000 was a barrister who held higher rights of audience at the time of transferring to the solicitor's profession and who has recent advocacy experience. Applications must be supported by a certificate from the General Council of the Bar confirming that the applicant held unrestricted rights of audience prior to transfer and was not subject to disciplinary proceedings. Applications are by way of questionnaire and are decided by the HCQCC.
- *Barristers transferring to become solicitors* – Section 39 of the Access to Justice Act 1999 provides that barristers who transfer to become solicitors after 31 July 2000 and who hold higher rights of audience at the time of their transfer will retain those rights. The award of the All Proceedings Qualification is dealt with as part of the standard admission procedure.

- 3.2 Both the exemption and accreditation routes were scheduled to cease on 31 October 2005 but following an amendment to the Regulations, this was extended until 31 December 2006. A further application for amendment is being prepared to extend the availability of these routes until 31 December 2008 to enable the SRA to complete its review of the ongoing need for restrictions and if appropriate, to apply for removal or further relaxation of the restrictions and development of alternative quality assurance mechanisms.
- 3.3. In all cases appeals from decisions of the HCQCC are dealt with by the Higher Courts Qualification Appeals Casework Committee (HCQACC).